	<p>कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा, सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT& SPL ECONOMIC ZONE, MUNDRA-370421</p>
A. File No.	: GEN/ADJ/COMM/122/2022-Adjn-O/o-Pr Commr-Cus-Mundra
B. Order-in-Original No.	: MUN-CUSTM-000-COM-65-2025-26
C. Passed by	: Nitin Saini Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue	: 11.03.2026 11.03.2026
E. SCN No. & Date	: Gen/ADJ/ADC/151/2022-Adjn dated 14.02.2022
F. Noticee(s)/Co-noticee(s)	: M/s. Daiwik Enterprises, 2085/18, 2 nd Floor CHah Indara, Bhagirath Palace, Bajrang Bazar, Chandni Chowk , Delhi- 110006
G. DIN	: 20260371MO0000444CAD

- यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
- यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए-3 में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-
Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:
“केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 2nd फ्लोर, बहुमाली भवन, मंजुश्री मील कंपाउंड, गिर्धनगर ब्रिज के पास, गिर्धनगर पोस्ट ऑफिस, अहमदाबाद-380 004”
“Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench, 2nd floor, Bahumali Bhavan, Manjushri Mill Compound, Near Girdharnagar Bridge, Girdharnagar PO, Ahmedabad 380 004.”
- उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within three months from the date of communication of this order.
- उक्त अपील के साथ 10000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख या कम माँगा हो -/5000 रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रुपये से अधिक किंतु पचास लाख रुपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रुपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंच आहरित ट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्ड पीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा। Appeal should be accompanied by a fee of Rs. 10000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs.10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत -/5 रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची-1, न्यायालय शुल्क अधिनियम, 1870 के मदसं 6-के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए। The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.
6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और CESTAT (प्रक्रिया) नियम, 1982 सभी मामलों में पालन किया जाना चाहिए। While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा। An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE-

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

2. M/s. ZZEPL was importing Knitted Polyester Fabrics under Customs Tariff Heading 6006 and various other Electrical Goods such as Mosquito Bats, LED Rechargeable Search Lights, Fancy Mini Torches, Small Rechargeable Batteries, Decorative Disco LED Par Lights, Decorative Disco Focus Lights, Laser Lights, LED Rope Lights, Led Christmas Lights etc., of assorted sizes etc. under Chapter 94 and 85 of Customs Tariff Heading and subsequently, clearing the same into DTA to various DTA importers. While importing the goods M/s. ZZEPL filed Bills of Entry with KASEZ authority for clearance of the goods from Mundra Port to their unit in KASEZ. Subsequently, M/ s. ZZEPL also filed DTA Bills of Entry in the name of various domestic buyers 86 cleared the goods on payment of Customs Duty.

3. Accordingly, a Show Cause Notice No. GEN/ADJ/COMM/218/2021-Adjn- O/o Cummr-Cus-Kandla dated 08.09.2021 has been issued to Mis ZZEPL & others. Under the said SCN, M/s. Daiwik Enterprises (IEC: 0516952030) is also one of the noticee as they are one of the domestic buyers of the goods imported by M/s ZZEPL.

4. Further, M/s. Daiwik Enterprises has also imported and cleared similar goods i.e., "Various electrical goods such as Recessed Luminaries LED Flood Light, Fancy LED Strip Rope Light 50 Mtr, Decorative LED Par Light 54L etc." through Mundra Port. Details of such imports are as under:

Table-A

Sl. No.	Bill of Entry No & Date	Item No.	Description goods	Quantity (In Pieces)	Declared price per Piece (In USD)	Declared Assessable value (In Rs.)
1	8543056 dt. 14.02.2017	3	Recessed Luminaries LED Flood Light	3606	2.90	722439.00
2	8549169 dt. 14.02.2017	1	Fancy LED Strip Rope Light 50 Mtr	4608	7.10	2260207.41
3	8631874 dt. 21.02.2017	1	Decorative LED Par Light 54L	680	1.29	60194.41
		2	Decorative LED Par Light Small	2000	0.80	109647.79
		3	Moving Head Beam LED	212	20.10	292013.64
4	9329172 dt. 17.04.2017	1	Decorative LED Par Light 54L	3680	1.33	326586.38
	9337131 dt. 17.04.2017	1	Decoration Light for Car LED	28000	0 2.25	419322.90
6	9654025 dt. 11.05.2017	1	Decoration Light for Car LED	110000	0.225	1627337.84
		2	Fancy LED strip Rope Light 42 MTR	240	6.20	97837.49
		4	108 L LED SMI Rope light 100 Mtr	263	8.00	138340.10
Total						60,53,927/-

5. Consequent to the above modus operandi adopted by M/s ZZEPL and the concerned DTA importers including M/s Daiwik Enterprises, in connivance with Chinese suppliers, it appears that M/ s Daiwik Enterprises, importer of "Various electrical Goods" has also mis-declared/undervalued the goods imported and cleared through Mundra port under the Bills of Entry as per above mentioned Table-A.

6. In continuation of the Show Cause Notice No. GEN/ADJ/COMM/218/2021-Adjn-O/o-Cummr-Cus-Kandla dated 08.09.2021 issued to M/s. ZZEPL & others, the

assessable value & Customs duty thereon of the items of Bills of Entry as per Table-A are also liable to be rejected and redetermined.

7. Therefore, the misdeclared/under-assessed value of Rs 60,53,927/- (Rs. Sixty Lakh Fifty-Three Thousand Nine Hundred and Twenty Seven Only) declared by M/s Daiwik Enterprises at the time of clearance of goods i.e. "Various Electrical Goods", is required to be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the same is required to be re-determined to Rs. 5,71,27,525/- (Rs. Five Crore Seventy One Lakh Twenty Seven Thousand Five Hundred and Twenty Five only) as per ANNEXURE-A to this Show Cause Notice, under Section 14 of the Customs Act, 1962 read with Rule 3, Rule 9 and Rule 10 of the CVR, 2007.

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

9. Accordingly, M/s Daiwik Enterprises (Proprietor: Prem Madaan), 2085/18, 2nd Floor Chah Indara, Bhagirath Palace, Bajarang Bazar, Chandni Chowk, Delhi-110006 were called upon to show cause vide SCN F.No. GEN/ADJ/ADC/151/2022-Adjn dated 14.02.2022 to the Commissioner of Customs, Custom House Mundra, as to why: -

(i) Total assessable value of Rs 60,53,927/- (Rs. Sixty Lakh Fifty-Three Thousand Nine Hundred and Twenty Seven Only) declared by them/assessed at the time of clearance of goods i.e., "Various Electrical Goods", as mentioned in ANNEXURE-A to this show cause notice, should not be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determined to Rs. 5,71,27,525/- (Rs. Five Crore Seventy One Lakh Twenty Seven Thousand Five Hundred and Twenty Five only) as mentioned in ANNEXURE-A to this show cause notice, under sub-section (1) of Section 14 of the Customs Act, 1962 and Rule 3 and 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Rule 10 of

the of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, as applicable, for Bills of Entry, as mentioned in ANNEXURE-A.

(ii) Differential Customs Duty amounting to Rs. 97,35,461/- (Rs. Ninety Seven Lakh Thirty Five Thousand Four Hundred and Sixty One Only) on the goods imported i.e., Various Electrical Goods', under the Bills of Entry, valued (re-determined value) as detailed in ANNEXURE-A should not be demanded and recovered from them, under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

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

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

10. The Subject Show cause Notice dated 14.02.2022 was adjudicated vide OIO No. MUN-CUSTM-000-COM-10-2023-24 dated 14.08.2023 confirming the demand of Rs.97,35,461/- under Section 28(4) of the Customs Act, 1962 alongwith interest under Section 28AA of the Customs Act, 1962. The Adjudicating authority also imposed a penalty of Rs. 97,35,461/- under Section 114A and a penalty of Rs. 5,00,000/- under Section 114AA of the Customs Act, 1962.

11. Being aggrieved with the OIO dated 14.02.2022, the noticee preferred an appeal before the Hon'ble CESTAT, which vide Order No. 10852-10854 dated 12.04.2024 remanded the matter to the Adjudicating Authority with a direction to decide the case after decision in the Show Cause Notice dated 08.09.2021 i.e. SCN dated 08.09.2021 acquires sufficient evidentiary value and after due observation of natural justice in the impugned SCNs and providing various relied upon materials to the appellant and after considering on submissions including made on the point of limitation vis-à-vis' of corrigendum by the appellant.

PERSONAL HEARING-

12. Shri Vikas Mehta, Consultant appeared for personal hearing on behalf of M/s. Daiwik Enterprises on 23.09.2025 and reiterated the submissions dated 23.06.2025 and 26.07.2025.

WRITTEN SUBMISSIONS-

13. M/s. Daiwik Enterprises vide submissions dated 23.06.2025 and 26.07.2025, interalia, stated that-

(i) The impugned notice deals with goods imported at Mundra and cleared under cover of Bills of Entry as above that were filed with Custom House, Mundra.

(ii)The notice doesn't satisfy the requirement of Rule 12(1) inasmuch we were never asked to furnish further information including document or other evidence if there was any doubt about the truth or accuracy of the value declared by us in the bill of entry.

(iii) The primary requirement of Rule 12(1) of CVR, 2007 for rejecting the declared value is not satisfied. Consequently, invocation of Rule 9 and or Rule 10 is premature and therefore not tenable in the eyes of law.

(iv) Annexure-A doesn't contain details of "actual transaction value". Column No. (9) of the said annexure borrows certain values from the earlier SCN dated 08.09.2021 that deals with bills of entry dealing with some other items that were imported during some other period.

(v) The said SCN was issued on the basis of one opinion/report dated 06.07.2018 issued by Shri B. G. Bhatt & Co., Chartered Engineer and not on the basis of any actual transaction value. On this basis, it is submitted that the impugned notice is not based on any evidence suggesting "actual transaction value" (other than those declared by us in the bills of entry).

(vi) The opinion/report dated 06.07.2018 of the Chartered Engineer, at best, deals with only one item covered by the aforesaid bills of entry i.e. decorative LED Part Light. The said opinion/report doesn't deal with any other item imported by us.

(vii) As per Rule 9(2)(v) of CVR, 2007, no value shall be determined under the provisions of this rule on the basis of the price of goods for the export to a country other than India. The printout of the details for the export to a country other than India. The print out of the details retrieved by Chartered Engineer from internet and electronic media, which he has attached to the report does not state that the goods appearing therein were meant for export to India only and not to a country other than India. Moreover, details of users or market enquiry carried out by him is also not forth coming from his report.

(viii) Accordingly, they requested to cross-examine Shri B.G.Bhatt, Chartered Engineer before advancing any further submission on the reliability of his report.

(ix) The impugned notice doesn't rely upon any oral or documentary evidence to support the assumption of "actual transaction value" in respect of goods covered by bills of entry listed in Table-A of the impugned notice.

(x) Reliance placed on earlier notice dated 08.09.2021 that was issued in respect of goods covered by some other bills of entry is misplaced when it comes to rejection of declared value and determination of the value of goods covered by the present notice.

(xi) The impugned notice is issued to the noticee for the following reason mentioned in para 6 of the notice-

"6. In continuation of the Show Cause Notice No. GEN/ADJ/COMM/218/2021-Adjn-O/o-Commr-Cus-Kandla dated 08.09.2021 issued to M/s. ZZEPL & Others ("earlier notice"), the assessable value & Customs duty thereon on the Bills of Entry as per Table-A are also liable to be rejected and re-determined."

(xii) The averment made in the impugned notice as "in continuation of the" earlier notice lacks jurisdiction for adjudication inasmuch as the earlier notice was issued in respect of clearances that were not made from Mundra and so none of the contents of the said notice can be taken up for adjudication by an authority at Mundra, unless notified by competent authority in this regard.

(xiii) Hon'ble Tribunal has observed in their order directing remand that there was no independent inquiry/investigation with respect to goods imported vide Bills of Entry filed at Mundra [para 12 *ibid* refers]. The order of Hon'ble Tribunal containing this observation has attained finality.

(xiv) Continuation is distinct from placing reliance. The impugned notice claiming itself to be in continuation of earlier notice doesn't rely upon the earlier notice except for enclosing a copy thereof. There is no specific averment that it is relying on the earlier notice.

(xv) Hon'ble Tribunal has already held that the only basis of issuing the impugned notice is the earlier notice (which deals with goods cleared from KASEZ), without any independent inquiry/investigation with respect to goods cleared from Mundra port. Consequently, the impugned notice is not left with any independent basis to support itself and to undergo adjudication by your Honour since it has already been adjudicated once by Ld. Commissioner of Customs, Kandla.

(xvi) The earlier notice is already adjudicated by Ld. Commissioner of Customs, Kandla. Hence, the impugned notice that is issued in continuation of earlier notice, can not be re-adjudicated. The current proceedings would amount to re-adjudication of one and same set of evidences qua goods cleared under kandla jurisdiction or would amount to part-adjudication of one and the same show cause notice by different adjudicating authorities again based on one and same of evidences qua goods cleared under Kandla jurisdiction, which is anathema to law.

(xvii) It is most respectfully submitted that in the facts and circumstances where the earlier notice is already adjudicated in an adverse manner by Ld. Commissioner of Customs, Kandla and the impugned notice having been issued without any independent inquiry/investigation as duly noted by the Hon'ble Tribunal, the current adjudication proceedings would either amount to re-appreciation and re-adjudication of one and the same set of evidences as contained in earlier notice (without any review by department of adjudication order already passed) or may amount to adjudication in vacuum, given the absence of any independent evidence to be appreciated & adjudicated upon other than those already covered by earlier order.

(xviii) The mechanism to initiate rejection of declared value is prescribed in Rule 12 of CVR, 2007. However, instead of delving into Rule 12, the impugned notice would cite earlier notice which dealt with goods that were cleared at some other port (KASEZ), at some other time and in totally different and distinguishable facts and circumstances.

(xix) As per Rule 12(1) of CVR, "*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 information including documents or other evidence.*" This basic requirement of law is not fulfilled in the impugned notice.

(xx) They have relied upon the decision of Tribunal in the matter of Avis Electronics Pvt. Ltd. [2000 (117) E.L.T 571 (Tri.-LB)] wherein it is held that when a particular thing is to be performed in a manner, statutorily, it should be performed in that manner itself and not otherwise. Similarly, in Commissioner of Central Excise v. Jellapore Tea Estate [2011 (268) ELT 14 (Gau.)], the Hon'ble High Court of Gauhati held that "what is required to be done in a manner prescribed by law, ought to be done in that manner only or not at all."

(xxi) Simultaneous invocation of Rule 9 and 10 of CVR is not tenable in the eyes of law inasmuch as these rules deal with different situations. As a matter of fact, as per Rule 3(4) *ibid*, if the value can not be determined under the provisions of sub-rule(1), the value shall be determined by proceeding sequentially through rule 4 to 9. There is no mention of Rule 10. In other words, determination of value under Rule 10 is not provided in law.

(xxii) As per Rule 10(4), no addition shall be made to the price actually paid or payable in determining the value of the imported goods except as provided for in this rule.

(xxiii) As per proviso to Rule 9(1), the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration, for the sale or offer of sale.

(xxiv) Since the proviso contains a caveat that price must be the sole consideration for the sale or offer for sale and assuming the worst that price was not the sole consideration for the sale or offer for sale, the onus lay squarely on department to quantify the addition as per the requirement of rule 10(4).

(xxv) It may kindly be appreciated that the aforesaid proviso doesn't carve out any exception to the oral evidence that may or may not be retracted in due course of time.

(xxvi) Thus, it is incumbent upon the notice to bring on record the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place for importation in the course of international trade.

(xxvii) There is neither any addition in terms of Rule 10(4) nor there is any specific allegation that price is not the sole consideration for the sale or offer for sale for the goods under consideration, to deny application of proviso to Rule 9(1).

(xxviii) Thus, the notice hits a dead end where it neither complies with rule 9 in providing details of the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place for importation in the course of international trade nor gives details of additions, if any, in accordance with rule 10(4) of CVR.

(xxix) Consequently, the notice is not supported by any legal authority to determine the value of goods exceeding the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation (Mundra) to M/s. Daiwik in the course of international trade. This, however, is not done.

(xxx) It may kindly be appreciated from the legal position as above that the impugned notice, fails the requirement of rule 9 as well as Rule 10 of CVR. Hence, on this ground also, the impugned notice is liable to be vacated.

(xxxi) The earlier notice relies upon a Panchnama dated 24.01.2018 prepared at Cyber Forensic Lab, DRI, MZU, Mumbai. According to this Panchnama, one mobile phone (Iphone Model IA 1586 IMEI number 355402078172953) is attached to the forensic data analysing/retrieving equipment in the presence of panchas and workable image of the data stored in the said mobile phone is created and saved to a Hard Disk Drives provided by the officer.

(xxxiv) No material particulars of the said Hard Disk Drive (like make, serial number, capacity etc.) is noted in the Panchnama. The Panchnama doesn't even record that the said drive was in sealed condition and empty at the time when officer gave it to Shri Mahesh Ku,ar Gupta, Cyber Forensic Engineer.

(xxxv) Further, it is recorded in the Panchnama that on completion of the cyber forensic proceedings, an extraction report dated 24.01.2018 in r/o- the said device is generated and is handed over to the DRI officer. Thereafter, the above said mobile phone is placed inside fresh green coloured envelope. The sealed envelope contains seized mobile phone and the Extraction report dated 24.01.2018 are taken over by the DRI officer for the purpose of enquiry.

(xxxvi) The Hard Disk was not put in the sealed cover along with the mobile phone and Extraction report, as per the Panchnama.

(xxxvii) As per Para 22.2 of the earlier show cause notice, Shri Manoj Madaan was shown print outs from the data (stored in the USB Hard Disk) said to be retrieved from his phone under the above Panchnama dated 24.01.2018 drawn at Cyber Forensic Laboratory, DRI, Mumbai. And on this basis, his further statement dated 26.01.2019 was recorded.

(xxxviii) However, given the fact that it is nowhere forthcoming that the hard disc drive given by the DRI officer to Cyber Forensic Engineer was sealed and empty and was returned to the concerned officer after data retrieval in duly signed condition/sealed alongwith mobile phone and extraction report dated 24.01.2018 and that it was very same hard disc from which print out was taken and shown to Shri Manoj Madaan on 26.06.2019, the statement of Shri Madaan that was recorded on 26.06.2019 can not be said to be voluntary and would lose the evidentiary value. There is no link between the mobile phone of Shri Manoj Madaan and the hard disc drive from which print out was supposedly taken, as claimed in the earlier notice.

(xxxix) In the event if any other proposition is to be believed, it is requested to allow Shri Manoj Madaan to cross examine Shri Harendra Kumar Bhalothia, IO, Shri Mahesh Kumar Gupta, Cyber Forensic Engineer, Shri Dhyaneshwar Manohar Single and Shri Pavan Rajaram Karavande (the two Panchas).

(xxxx) The Hon'ble Tribunal, in order no. 10852-10854/2024 dated 12.04.2024 has taken due note of the fact that Shri Manoj Madaan has retracted his statements tendered before DRI.

(xxxxi) Kind attention is invited towards Section 138(2) and 138(4) of Customs Act, 1962 inasmuch as there is no link between the mobile phone and the hard disc drive from which print out was taken, the conditions laid down in Section 138(2) can not be said to have been satisfied insofar as hard disc drive is concerned. The statutory requirement of a certificate in terms of Section 138B (4) qua print out from unconnected hard disc drive automatically stand unfulfilled.

(xxxxii) Hence, reliance purportedly placed on the data retrieval exercise dated 24.01.2018 and statements of Shri Manoj Madaan without establishing the link between his mobile phone and print out shown to him, is completely misplaced.

DISCUSSION AND FINDINGS-

14. The present adjudication proceedings are being undertaken in compliance with the directions issued by the Hon'ble Tribunal vide Order Nos. 10852-10854 dated 12.04.2024, whereby the matter was remanded with a specific direction to decide the instant case after the Show Cause Notice dated 08.09.2021 attains requisite evidentiary finality. It is observed from the records that the said Show Cause Notice dated 08.09.2021 has since been adjudicated by the Commissioner of Customs, Kandla, vide Order-in-Original No. KND-CUSTM-000-COM-07-2024-25 dated 17.07.2024. A copy of the said Order-in-Original is already available with M/s. Daiwik Enterprises, they being one of the co-noticees in the said proceedings. In view of the above, as the Show Cause Notice dated 08.09.2021 has since attained evidentiary finality upon its adjudication by the competent authority, the present Show Cause Notice is now taken up for adjudication on merits.

15. The issues before me, to be decided, are:-

(i) Whether the declared transaction value of Rs. 60,53,927/- in respect of "Various Electrical Goods" imported by M/s. Daiwik Enterprises under the Bills of Entry listed in Table-A is liable to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007?

(ii) Whether the assessable value of the impugned goods can be re-determined at Rs. 5,71,27,525/- under Section 14 of the Customs Act, 1962 read with Rules 3, 9 and/or Rule 10 of CVR, 2007, as applicable, in the facts and circumstances of the case?

(iii) Whether duty of Rs. 97,35,461/- is to be demanded and recovered from them, under Section 28(4) of the Customs Act, 1962.

(iv) Whether the imported goods are liable to confiscation under Sections 111(m) and 111(d) of the Customs Act, 1962?

(v) Whether penalties are imposable upon M/s. Daiwik Enterprises under Sections 112(a)/(b), 114A and 114AA of the Customs Act, 1962, and if so, to what extent?

16. Intelligence was developed by the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit, indicating that M/s. Zip Zap Exim Pvt. Ltd. (ZZEPL), a Delhi-based entity operating a trading unit in Kandla Special Economic Zone (KASEZ), had, in concert with its domestic buyers/actual importers, devised a modus operandi to circumvent normal customs procedures and effect clearances of imported goods into the Domestic Tariff Area (DTA) through gross undervaluation, thereby evading substantial customs duty. The intelligence further revealed that dealings with overseas suppliers were in fact undertaken by the domestic buyers, and that ZZEPL merely acted as a facilitating conduit for undervalued clearances, charging commission for such facilitation. Investigations established that ZZEPL imported Knitted Polyester Fabrics as well as various electrical goods such as LED flood lights, rope lights, decorative lighting, mini torches, rechargeable batteries and similar items, which were first brought to their KASEZ unit and thereafter cleared into DTA through Bills of Entry filed in the names of several domestic buyers, including M/s. Daiwik Enterprises. Pursuant thereto, a Show Cause Notice dated 08.09.2021 was issued to ZZEPL and co-noticees, wherein M/s. Daiwik Enterprises (IEC:

0516952030) was implicated as one of the DTA buyers. In parallel, it was noticed that M/s. Daiwik Enterprises had themselves imported and cleared similar electrical goods through Mundra Port under various Bills of Entry listed in Table-A, declaring a total assessable value of ₹60,53,927/-. The present proceedings arise from allegations that these imports were also undervalued and that the declared transaction values are liable to rejection under the Customs Valuation Rules, 2007.

17. In this context, it is pertinent to note that the instant Show Cause Notice has been issued in continuation of the investigation undertaken by the Directorate of Revenue Intelligence in respect of the operations of M/s. Zip Zap Exim Pvt. Ltd. and various domestic buyers, including M/s. Daiwik Enterprises, which investigation culminated in the issuance of the comprehensive Show Cause Notice dated 08.09.2021. The said SCN has since been adjudicated vide Order-in-Original dated 17.07.2024 passed by the Commissioner of Customs, Kandla. As the present proceedings draw upon and rely upon the factual findings, evidentiary material and conclusions emerging from the said investigation, it becomes necessary and appropriate to refer to the same and to examine its evidentiary value in the adjudication of the instant notice.

18. The noticee has contended that the present proceedings effectively amount to a re-adjudication or re-appreciation of the very same evidences that were already examined and decided in the OIO dated 17.07.2024 passed by the Commissioner of Customs, Kandla in respect of the earlier SCN dated 08.09.2021. I have carefully considered the above issue. It is noted that the present proceedings arise from the impugned SCN dated 14.02.2022, which pertains exclusively to the valuation of goods imported by the noticee through Mundra Port. The adjudication undertaken herein is therefore confined to the subject Bills of Entry filed at Mundra and the transaction value declared therein. The earlier OIO dated 17.07.2024 passed by the Commissioner of Customs, Kandla, pertained to a distinct SCN dated 08.09.2021, which concerned undervaluation of goods imported into the Kandla Special Economic Zone (KASEZ) and then cleared into Domestic Tariff Area (DTA) to various DTA buyers. While evidentiary materials may overlap on account of same suppliers, similar goods, and the contemporaneous time period, the cause of action, show cause notices, and import transactions themselves are separate and independent.

DISCUSSION ON EVIDENCES REFERRED AND RELIED UPON IN THE INVESTIGATION OF DRI, AHMEDABAD IN THE MATTER OF SCN DATED 08.09.2021 ISSUED TO M/S. ZIP ZAP EXIM PVT. LTD. & OTHERS-

19. Having examined the Order-in-Original dated 17.07.2024 passed by the Commissioner of Customs, Kandla in respect of the Show Cause Notice dated 08.09.2021, it is seen that the investigation conducted by the Directorate of Revenue Intelligence brought on record substantial evidence establishing the role of Shri Manoj Madaan, proprietor/representative of M/s. Daiwik Enterprises, in the undervaluation of electrical goods imported through M/s. Zip Zap Exim Pvt. Ltd. (KASEZ Unit) as well as through independent imports at Mundra.

20. Statements of **Shri Manoj Madaan, Authorized person of M/s Daiwik Enterprises (IEC: 0516952030)**, 2085/18, Chah Indara, Bhagirath Palace, Chandni Chowk, Delhi (Proprietorship firm of his father Shri Prem Madaan) were recorded on dated **09.01.2018 and 26.02.2018 (RUD-30)** under Section 108 of Customs Act, 1962. On 09.01.2018, Shri Manoj Madaan inter alia stated that they came in contact of Shri

Gajraj Singh Baid of M/s ZZEPL, Delhi in 2017 and asked Shri Gajraj Singh Baid to do his imports (imports for Manoj Madaan) through M/s ZZEPL Delhi. **He further admitted that instructions were issued to the overseas supplier to make two different set of invoices one showing the actual price and another showing lower price as informed by them and the invoice showing original price was signed and sent back to the supplier whereas the invoice with lower value was directly sent to M/s ZZEPL, by the overseas supplier for presenting it to customs for clearance purpose.**

21. He further admitted that **the value which was declared before the Customs at the time of Import was sent through the account of M/s ZZEPL and the differential amount was sent to the overseas supplier through channels other than banking channels; that he had imported the aforesaid electrical goods from China, through M/s ZZEPL (SEZ unit) by resorting to undervaluation** and he was ready to pay the differential duty on account of such undervaluation.

22. Further statement of **Shri Manoj Madaan, Authorised person of M/s Daiwik Enterprises, Delhi** was recorded on **26.06.2019 (RUD-58)** under Section 108 of Customs Act, 1962 **in which he was shown his earlier statement recorded on 26.02.2018 and he agreed with the contents of the same.** He further stated that Shri Vaibhav Baid and Shri Gajraj Baid, Directors of M/s ZZEPL had approached him to do the import of electrical items from China through M/s Zip Zap Exim Pvt. Ltd, (SEZ unit) since the cost overhead for unit in SEZ was less as compared to direct import from regular ports; **that he was also assured by Shri Vaibhav Baid and Shri Gajraj Baid, Directors of M/s. ZZEPL that they could arrange the import in the name of M/s ZZEPL by resorting to undervaluation and thereafter showing the DTA sales of the said imported goods in the name of M/s. Daiwik Enterprise, Delhi by showing the undervalued rates; that accordingly M/s. Daiwik Enterprise required to pay less duty as compared the duty payable on the goods imported directly from ports;** that it was decided between him and Directors of M/s. ZZEPL that the electrical items would be imported in the name of M/s ZZEPL in the SEZ and cleared into DTA to M/s. Daiwik Enterprise at undervalued rate; that they paid 04 to 06 percent of the value of the goods to M/s. ZZEPL for the said arrangement which also included their profit margin/commission **and other sundry expenses;** that the Customs duty at the time of import from SEZ unit to DTA was borne by M/s. Daiwik Enterprise for their consignments.

23. During the course of recording of statement on 26.06.2019, Shri Manoj Madaan of M/s Daiwik Enterprises was also shown the Panchnama dated 24.1.2018 (RUD-27) drawn at Cyber Forensic Laboratory, Directorate of Revenue Intelligence, Mumbai, wherein the data from his mobile phone "Iphone Model A1586, IMEI 355402078172953" submitted by him during his statement recorded on dated 09.01.2018, was retrieved. He went through the above said Panchnama dated 24.01.2018 and his said statement recorded on dated 09.01.2018 and agreed with both.

24. Shri Manoj Madaan was shown the printouts from the data (stored in the USB hard-disk) retrieved from his aforesaid phone retrieved under the above referred

Panchnama dated 24.1.2018 drawn at Cyber Forensic Laboratory, Directorate of Revenue Intelligence, Mumbai. The same were shown to him and he explained as under:-

By following path “Exported Data of Image of Apple IphoneManojMadaan>2018-01-24.12-57-41>AppleDevice_Advanced Logical> files >Document> 6beb8251-9e05-4c41-a235-b7a1459b6b28”.

The contents of the aforesaid work file “6beb8251-9e05-4c41-a235-b7a1459b6b28” are reproduced below:

“A LETTER OF GUARANTEE

AS COMPANY NAME: PRANSH ENTERPRISES

Adress: ADDRESS-2085/18, 2ND FLOOR,CHAN INDARA,BHAGI RATH PALACE, CHANDNI CHOWK,DELHI-110006

We guarantee payment before AUG 31, 2017 payment mentioned below to WINSUN IMP.& EXP.GROUP CO.,LTD. NO 39 KAI XI ROAD,JIAXING,ZHEJIANG,CHINA

Invoice: 2017WSZ231096(PRA048)

Product name: LED ROPE LIGHT/LED ROPE LIGHT SPARE PARTS/LED STRIP LIGHT

Amount: USD240855

Shipment Date: JUN.02th,2017

Bill of lading number: SZXCB17006240

Invoice: 2017WSZ231108(PRA056)

Product name: LED ROPE LIGHT

Amount: USD142969

Shipment Date: JUN.08th,2017

Bill of lading number: HDMUYNIN1311005

AS COMPANY NAME: DAIWIK ENTERPRISES

Adress: 2085/18 2ND FLOOR CHAH INDARA HHAGIRATH PALACE HAJRANG BAZAR

We guarantee payment before AUG 31, 2017 payment mentioned below to WINSUN IMP.& EXP.GROUP CO.,LTD. NO 39 KAI XI ROAD,JIAXING,ZHEJIANG,CHINA

Invoice: 2017WSZ231113A(PRA049A)

Product name: LED ROPE LIGHT

Amount: USD73751.75

Shipment Date: JUN.23th,2017

Bill of lading number: HDMUYNIN1320372

TOTAL ORDER AMOUNT FROM WINSUN

USD457575.75(NOT INCLUDE DEPOSIT)

Export Company : WINSUN IMP&EXP GROUP CO.,LTD.

Address: NO. 39 KAIXI ROAD,JIAXING,ZHEJIANG,CHINA

Bank of information:

A/C : 363658344007

BANK OF CHINA, JIAXING BRANCH

NO. 218 ZHONGSHAN EAST ROAD, JIAXING, ZHEJIANG, CHINA

TEL: 0086-573-82056188

Swift: BKCHCNBJ92F

Commitment to company and Signature:

Date:

”

25. On being asked to explain the contents of the aforesaid word file, *Shri Manoj Madaan* stated that the above letter of guarantee was given by him for the purchase/import of goods viz. LED ROPE LIGHT, LED ROPE LIGHT SPARE PARTS & LED STRIP LIGHT from the Chinese supplier namely WINSUN IMP&EXP GROUP CO.,LTD.; that the said Guarantee was given by him as Proprietor of Pransh Enterprises as the negotiations with the said Chinese supplier were being done by him in the name of Pransh Enterprises; that however, at the time of import the same were imported in ZZEPL for onward DTA clearances of the same in their other firm namely M/s Daiwik Enterprises; **that he had imported the aforesaid three consignments of electrical goods in his firm M/s. Daiwik Enterprises through ZZEPL, KASEZ at the value mentioned in the aforesaid letter of guarantee. He further stated that however, while filing the Bills of entry in respect of aforesaid consignments, he had filed Bill of entry showing grossly undervalued price;** that the Comparison of the actual transaction value vis-à-vis value shown before the Customs authority was tabulated as hereunder:

Sr.No.	Bill of lading No. & Date	Product Name	Actual Invoice No.	Actual amount in USD (FOB)	Invoice No. & Date presented to Customs	Amount shown in Custom Invoice in USD
1	SZXCBI7 006240 / 02.06.201 7	LED ROPE LIGHT/LED ROPE LIGHT SPARE PARTS/LED STRIP LIGHT	2017WSZ2310 96 (PRA048)	240855	20170531M/31. 05.2017	16046.14
2	HDMUYNI N1311005 / 08.06.201 7	LED ROPE LIGHT	2017WSZ2311 08 (PRA056)	142969	20170606 / 06.06.2017	9720.00
3	HDMUYNI N1320372 / 23.06.201 7	LED ROPE LIGHT	2017WSZ2310 96 (PRA049A)	73751.75	20170621-M / 21.06.2017	9129.00
		Total		457575.75		34895.14

26. Shri Manoj Madaan was further shown the three dockets bearing Job No. 129 for SEZ Bill of Entry No. 1011446 dated 20.07.2017, Job No. 140 for SEZ Bill of Entry No. 1012174 dated 01.08.2017 & Job No. 141 for SEZ Bill of Entry No. 1012176 dated 01.08.2017. He further stated that the said dockets contained the copies of Bills of Entry and other import documents in respect of aforesaid three consignments. **He agreed and accepted that the invoices contained in the said dockets are showing the undervalued price as detailed in the aforesaid table. In this regard, on being asked further, he stated that he has already stated in his statement dated 26.02.2018 that the invoice showing the undervalued price were presented to Customs while the invoice showing the actual value were signed by him and sent back to the said Chinese supplier.**

27. Shri Manoj Madaan was further shown the document available at path- "*Exported Data of Image of Apple IphoneManoj Madaan>2018-01-24.12-57-41>Apple Device AdvancedLogical>files>Document>772ce6cf-12a5-40f8-b0e8-6b2a8537c835*" which is reproduced below:-

1

A LETTER OF GUARANTEE

AS COMPANY NAME: PRANSH ENTERPRISES

Address: ADDRESS-2085/18 . 2ND FLOOR, CHAN INDARA, BHAGI RATH PALACE, CHANDNI CHOWK, DELHI-110006

We guarantee payment before AUG 31, 2017 payment mentioned below to WINSUN IMP.& EXP.GROUP CO.,LTD. NO 39 KAI XI ROAD,JIAXING,ZHEJIANG,CHINA

Invoice: 2017WS2231096(PRA048)

Product name: LED ROPE LIGHT/LED ROPE LIGHT SPARE PARTS/LED STRIP LIGHT

Amount: USD240855

Shipment Date: JUN.02th,2017

Bill of lading number: SZXCB17006240

Invoice: 2017WS2231108(PRA056)

Product name: LED ROPE LIGHT

Amount: USD142969

Shipment Date: JUN.08th,2017

Bill of lading number: HDMUYNIN1311005

AS COMPANY NAME: DAIWIK ENTERPRISES

Address: 2085/18 2ND FLOOR CHAH INDARA HHAGIRATH PALACE HAJRANG BAZAR

We guarantee payment before AUG 31, 2017 payment mentioned below to WINSUN IMP.& EXP.GROUP CO.,LTD. NO 39 KAI XI ROAD,JIAXING,ZHEJIANG,CHINA

Invoice: 2017WS2231113A(PRA049A)

Product name: LED ROPE LIGHT

Amount: USD73751.75

Shipment Date: JUN.23th,2017

Bill of lading number: HDMUYNIN1320372

TOTAL ORDER AMOUNT FROM WINSUN

USD457575.75(NOT INCLUDE DEPOSIT)

Export Company : WINSUN IMP&EXP GROUP CO.,LTD.

Address: NO. 39 KAI XI ROAD,JIAXING,ZHEJIANG,CHINA

Bank of information:

A/C: 363658344007

BANK OF CHINA, JIAXING BRANCH

NO. 218 ZHONGSHAN EAST ROAD, JIAXING, ZHEJIANG, CHINA

TEL: 0086-573-82056188

Swift: BKCHCNBJ92F

Commitment to company and Signature:

Date:

For PRANSH ENTERPRISES

Proprietor

28. On being asked, Shri Manoj Madaan stated that the said pdf image was of the aforesaid letter of Guarantee given by him and signed by him as Proprietor of Pransh Enterprises, for the purchase/import of goods viz. LED ROPE LIGHT, LED ROPE LIGHT SPARE PARTS & LED STRIP LIGHT from the Chinese supplier namely WINSUN IMP&EXP GROUP CO.,LTD, as detailed above.

29. Shri Manoj Madaan was further shown document available at path "**Exported Data of Image of Apple Iphone Manoj Madaan>2018-01-24.12-57-41>AppleDevice_AdvancedLogical>files>Document>d45ffb44-c973-4adb-a6 18-fe90aa1b8914**" which is reproduced below:-

DAIWIK ENTERPRISES

DEALS IN - Led Lights, Dj Lights & Other Types of Electrical Goods

CONFIRMATION LETTER

TO,

WINSUN IMP.& EXP.GROUP CO.,LTD

ADD-NO 39 KAI XI ROAD,JIAXING,ZHEJIANG,
CHINA

AS We Have made payment against the invoices mentioned below to the A/C :
363658344007

BANK OF CHINA, JIAXING BRANCH

Invoice: 2017WSZ231113A(PRA049A)
Product name: LED ROPE LIGHT
Amount: USD73751.75
Shipment Date: JUN.23th,2017
Bill of lading number: HDMUYNIN1320372

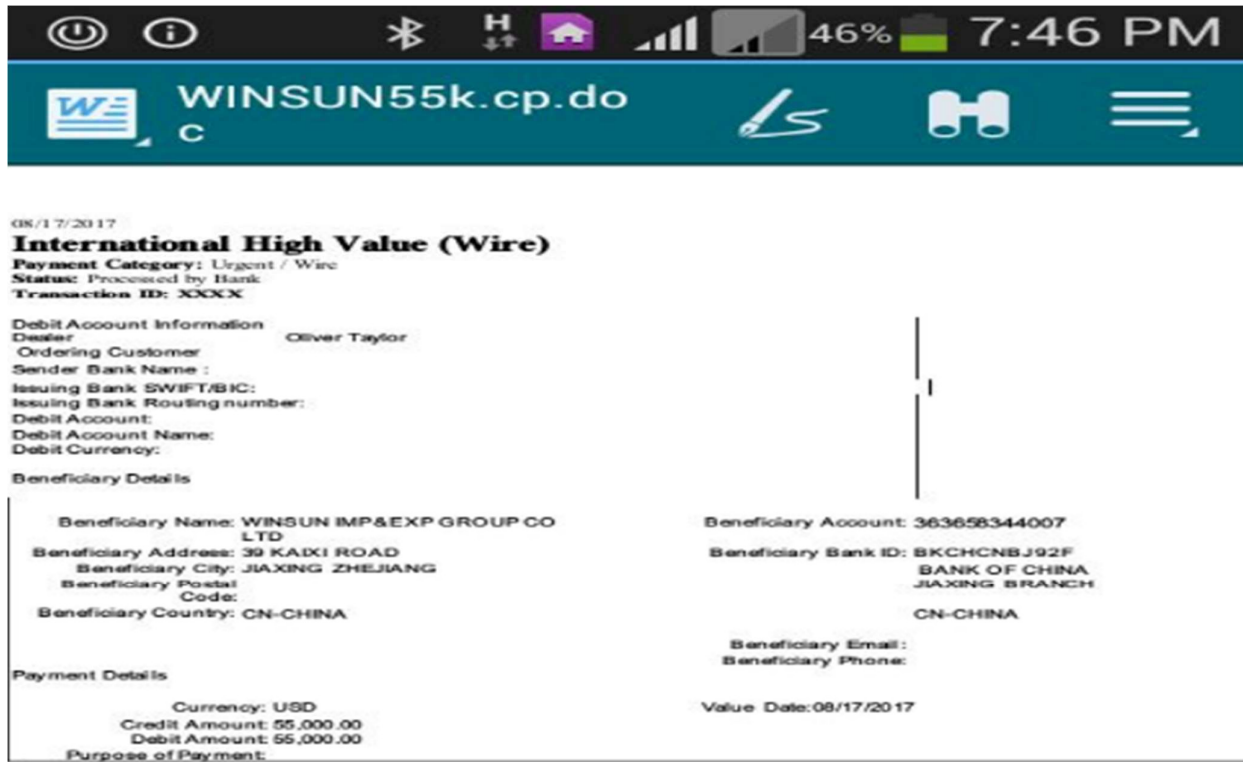
This amount have been paid till date
We request you to kindly confirm the payment by affixing stamp and signature on this letter.

Thanks and obliged.
Daiwik Enterprises

Add- 2085/18, 2nd Floor Bajrang Bazar Chah Indara, Bhagirath Palace, Chandni Chowk, Delhi-110006
011-23874745,+91-9999784200

30. Shri Manoj Madaan stated that the said pdf image was the confirmation letter sent by him for payment of USD 73751.75 in lieu of import of LED Rope Light vide invoice 2017WSZ231096 (PRA049A), Bill of Lading number HDMUYNIN1320372/ 23.06.2017. **He further stated that as stated by him for the aforesaid letter of Guarantee, the said goods were imported by him through Zip Zap Exim Pvt Ltd, KASEZ vide undervalued invoice no. 20170621-M dtd 21.06.2017 (SEZ BE No. 1012176 dtd 01.08.2017 & DTA BE NO. 2007653 dtd 03.08.17) by declaring its price/value as USD 9129 instead of its actual value of USD 73751.75.**

31. He was further shown the document available at path "Exported Data of Image of Apple IphoneManoj Madaan>2018-01-24.12-57-41>AppleDevice_AdvancedLogical>files>Images> 2ed4ad94-e854-4d2d-8381-9c30af047f42" – The same is reproduced as below:-



32. On being asked regarding above, **Shri Manoj Madaan stated that the said pdf image was about the transfer of USD 50,000/- to the aforesaid Chinese supplier namely WINSUN IMP&EXP GROUP CO. LTD through wire transfer as differential amount over and above the value of the goods shown in the invoices presented before Indian Customs at the time of import in Zip Zap Exim Pvt Ltd, KASEZ and the actual price.** He further stated that the said transfer of money were other than normal banking channel used for transferring the said differential amount, which usually not comes under scrutiny for any Government agency.

33. Other such transfer of differential amount to said Chinese supplier by them are accessed by following path “Exported Data of Image of Apple IphoneManoj Madaan>2018-01-24.12-57-41>AppleDevice_Advanced Logical>files>Images> 5003_600” and by following path “Exported Data of Image of Apple IphoneManoj Madaan>2018-01-24.12-57-41>AppleDevice_AdvancedLogical>files>Images> 5003_659”, “Exported Data of Image

of Apple IphoneManojMadaan>2018-01-24.12-57-41>AppleDevice_AdvancedLogical>files>Images> f77a57e4-aa12-4064-b6d9-978d73d649eb”

34. The said pdf images are attached to his said statement as page no. 5 and 6 &6A . The said documents are reproduced as below :

08/21/2017

International High Value (Wire)

Payment Category: Urgent/Wire
 Status: Processed by Bank
 Transaction ID: XXXX

Debit account information
 Dealer: Oliver Taylor
 Ordering Customer:
 Sender Bank Name:
 Issuing Bank SWIFT/BIC:
 Issuing Bank Routing number:
 Debit Account :
 Debit Account Name:
 Debit Currency:

Beneficiary details

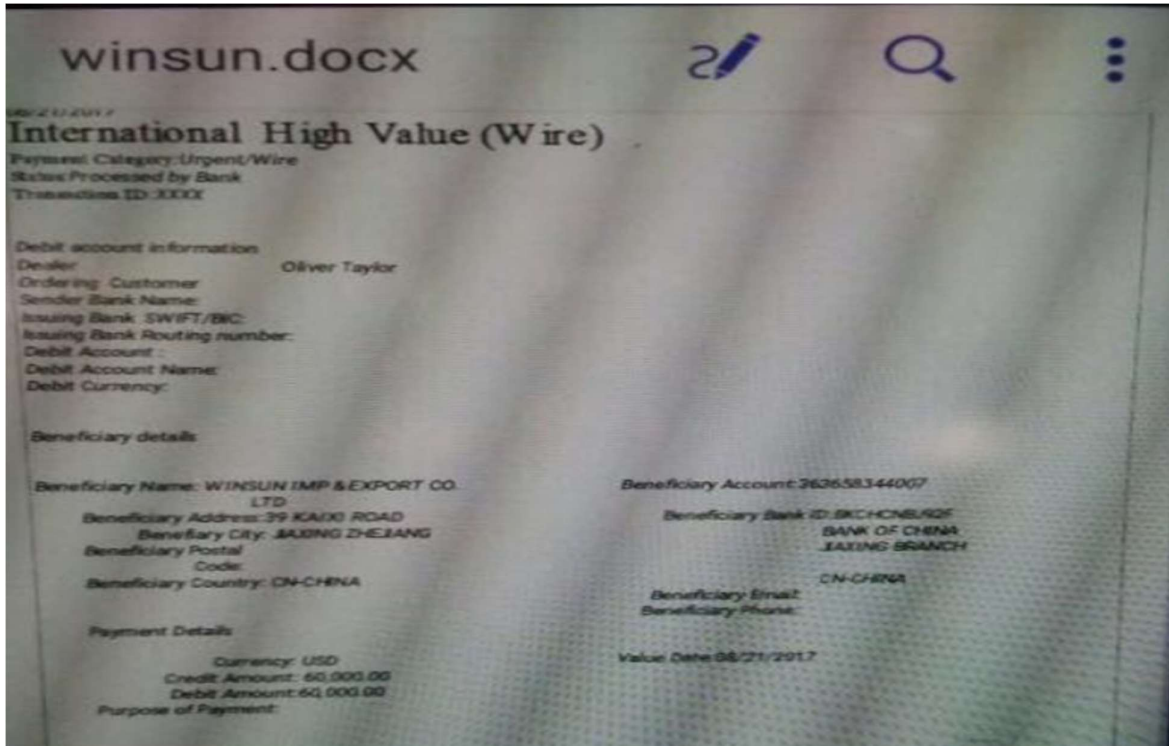
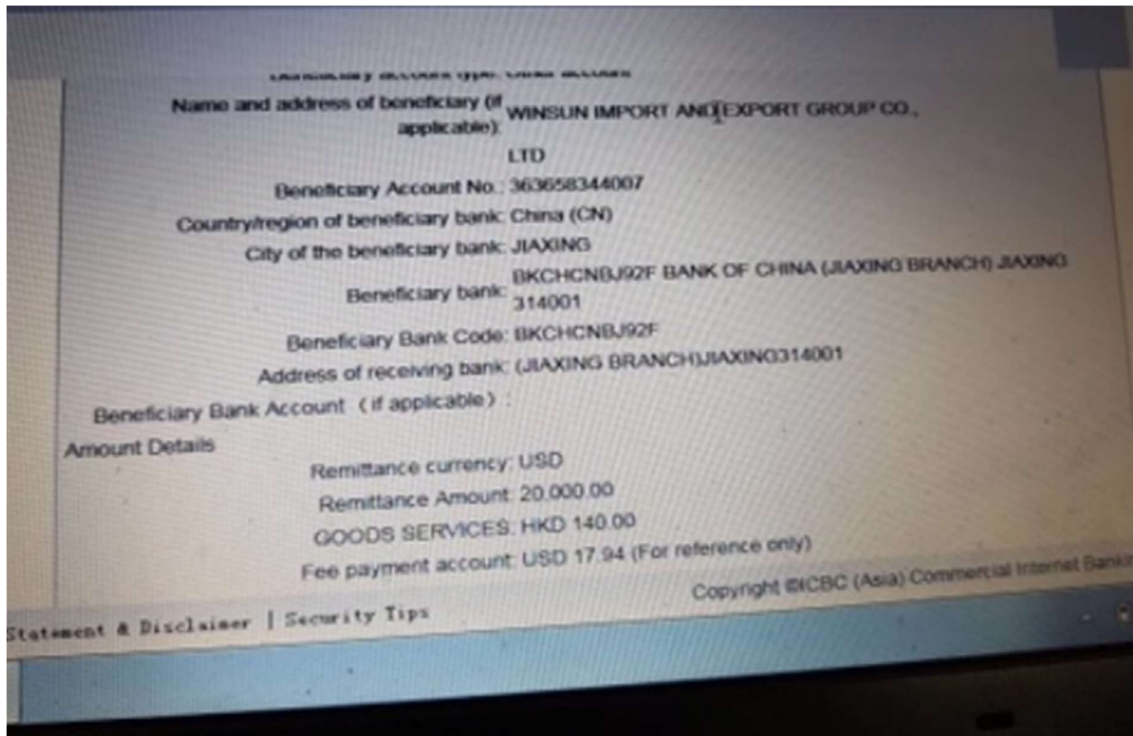
Beneficiary Name: WINSUN IMP & EXPORT CO.
 LTD
 Beneficiary Address: 39 KANJI ROAD
 Beneficiary City: JIAXING ZHEJIANG
 Beneficiary Postal Code:
 Beneficiary Country: CN-CHINA

Beneficiary Account: 363658348007
 Beneficiary Bank ID: BKCHCNBJ92F
 BANK OF CHINA
 JIAXING BRANCH
 CN-CHINA
 Beneficiary Email:
 Beneficiary Phone:

Payment Details

Currency: USD
 Credit Amount: 50,000.00
 Debit Amount: 50,000.00
 Purpose of Payment:

Value Date: 08/24/2017



35. On having been explained the aforesaid evidences retrieved from his aforesaid Mobile Phone to him, **Shri Manoj Madaan admitted that for the imports made by him in his firm M/s Daiwik Enterprises through Zip Zap Exim Pvt Ltd, KASEZ by declaring lower values than the actual transaction values of the said goods was to evade the payment of appropriate Customs Duty;** that as per the understanding between him and the overseas suppliers as stated by him in his earlier statement dated 26.02.2018, the overseas suppliers used to issue two sets of invoices, one for full negotiated value and one invoice for lower value, in the name of Zip Zap Exim Pvt Ltd. (ZZEPL), KASEZ, to be presented before the Customs authority at the time of import. He further stated that thereafter the said goods were imported in ZZEPL, KASEZ. In KASEZ, the said goods were assessed at the price/rate declared in the said invoices; that thereafter, the said goods were cleared to them in M/s. Daiwik Enterprises by adding 4 to 6 % of the value the said goods assessed at the time of import in ZZEPL, KASEZ from China; that the value declared before the Customs were being paid by them to ZZEPL who used to remit the said amount to said overseas supplier through normal banking channel and the **payments of the remaining/balance amount were being paid by them either in cash to the persons sent by the overseas suppliers or through Telegraphic Transfers being done through third party accounts, as advised by the said overseas suppliers.** Shri Manoj Madaan further disclosed that the actual transaction price of the goods imported/purchased by them in their aforesaid firm from M/s Zip Zap Exim Pvt Ltd, KASEZ was as per the Annexure-A attached to his statement. Shri Manoj Madaan further stated that the value disclosed in his earlier statement dated 26.02.2018 may be corrected as per the actual / transaction value disclosed by him in Annexure-A attached to this statement i.e. recorded on 26.06.2019.

36. The noticee submits that the electronic evidence relied upon in the earlier proceedings is fundamentally unreliable, as the Panchnama dated 24.01.2018 drawn at the Cyber Forensic Laboratory of the Directorate of Revenue Intelligence (DRI), Mumbai Zonal Unit records that data from the mobile phone of Shri Manoj Madaan (iPhone Model A1586, IMEI 355402078172953) was copied onto a hard disk provided by the officer, yet the Panchnama does not mention any identifying particulars of the said hard disk—such as its make, serial number, or capacity—nor does it record that the drive was sealed or empty prior to use, thereby leaving the chain of custody unestablished. The noticee contends that although the mobile phone and the extraction report dated 24.01.2018 were sealed and taken over by the DRI officer, the hard disk was not sealed or enclosed with them, and the Panchnama does not show that it was returned in a sealed or authenticated condition. It is further argued that, as per Para 22.2 of the earlier SCN, the printouts shown to Shri Manoj Madaan on 26.06.2019 were stated to have been taken from the data stored on this very hard disk, but given the absence of any evidence linking the seized phone to the hard disk ultimately used for generating those printouts, the noticee submits that the statement recorded from Shri Manoj Madaan on 26.06.2019 cannot be regarded as voluntary or reliable and loses its evidentiary value, as there is no demonstrable or legally secure link between the device allegedly seized and the hard disk from which the data was purportedly retrieved.

36.1 During the course of statement dated 09.01.20218 (RUD-30 to the SCN dated 08.09.2021), Shri Manoj Madaan submitted his cell-phone “I-phone Model A1586, IMEI

355402078172953” in an envelope sealed with Paper seal bearing the relevant description and my signature on the same as if it could not be opened without tempering the seal.

36.2 It is observed that the data from the aforesaid mobile phone was retrieved at the Cyber Forensic Laboratory of the Directorate of Revenue Intelligence (DRI), Mumbai Zonal Unit vide Panchnama dated 24.01.2018 (RUD-27), in the presence of two independent panchas and the cyber forensic engineer Shri Mahesh Kumar Gupta. The Panchnama records that a letter dated 19.01.2018 was issued to Shri Manoj Madaan requesting him to remain present during the forensic examination of his device; however, neither he nor any authorised representative appeared to witness the proceedings. The sealed envelope containing the seized mobile phone was opened in the presence of the panchas, the device was connected to the forensic data-retrieval equipment, and a workable image of the data stored therein was created and saved onto a hard disk provided by the officer. Upon completion of the forensic exercise, an extraction report dated 24.01.2018 was generated by Shri Mahesh Kumar Gupta and handed over to the DRI officer. Thereafter, during the course of voluntary statement dated 26.06.2019, Shri Manoj Madaan was shown the Panchnama dated 24.01.2018 to which he agreed. In token of the same, he put his dated signature on the panchnama. Thereafter, during his voluntary statement dated 26.06.2019, Shri Manoj Madaan was shown the Panchnama dated 24.01.2018, and he acknowledged the same by placing his dated signature on it. He was also shown certain materials stated to have been retrieved from his mobile phone, such as Letters of Guarantee, confirmation letters, and wire transfer documents. Upon being shown these materials, he elaborated on the manner in which the undervaluation was undertaken by him in coordination with the SEZ unit, namely M/s. Zip Zap Exim Pvt. Ltd.

36.3 From the above, it is evident that Shri Manoj Madaan not only acknowledged the Panchnama dated 24.01.2018 but also accepted the materials shown to him as contents of his own mobile phone during his voluntary statement dated 26.06.2019. He proceeded to explain in detail the modus of undervaluation undertaken in coordination with the SEZ unit, namely M/s. Zip Zap Exim Pvt. Ltd., which explanation was subsequently found to be true and corroborated by other co-noticees, as discussed in detail in the OIO dated 17.07.2024. Although he later sought to retract his statement, the said retraction was duly rebutted by the investigating agency for reasons already recorded earlier in this order. In these circumstances, when the noticee himself did not dispute the contents shown from the device and, in fact, elaborated upon them in a manner consistent with other evidentiary material, the allegation that the hard disk may have been tampered with does not hold merit and is without factual foundation.

37. During the course of recording of statement on 26.06.2019, regarding local sales of the electrical items imported in M/s. Daiwik Enterprises, Shri Manoj Madaan stated that **he had shown the lower value in respect of the electrical goods imported by him and sold in local market in cash**; that since the import price of these items were undervalued, the local sale price was also shown undervalued; that the amount over and above the price shown in the Tax invoice was collected by them in cash from their local customers.

RETRACTION OF STATEMENT AND ITS REBUTTAL-

38. During the initial phase of investigation proceedings, statements of Shri Manoj Madaan, Authorized person of M/s Daiwik Enterprises were recorded on dated 09.01.2018 and 26.02.2018 under Section 108 of the Customs Act, 1962 wherein he categorically admitted that he had imported the aforesaid electrical goods from China, through M/s ZZEPL (SEZ unit) by resorting to undervaluation and he was ready to pay the differential duty on account of such undervaluation. Shri Manoj Madaan further stated in his statement recorded on 26.02.2018 item wise list of electrical goods and their respective declared prices and actual price. Another statement dtd 26.06.2019, i.e. almost 01 year and 04 months after the statement dtd 26.02.2018 was recorded, wherein Shri Manoj Madaan further elaborated the facts of the aforesaid undervaluation in the said imports stated in his earlier statements dtd 09.01.2018 and 26.02.2018 and he was confronted with various evidences on records. He again admitted the aforesaid undervaluation of electrical goods imported through M/s ZZEPL, KASEZ by his firm M/s Daiwik Enterprise. However, he vide his letter dated 28.06.2019 retracted the aforesaid statement dtd 26.06.2019. Since the facts narrated in the said letter were baseless, devoid of any truth, made to mis-lead the inquiry, the said retraction was rebutted vide letter dtd 09.07.2019 (RUD-107 to the SCN dated 08.09.2021).

39. Further summons dated 09.08.2019 was issued to Shri Manoj Madaan to appear on 27.08.2019 but he did not appear for the same. Instead, he sent the letter dated 23.08.2019 (RUD-109 to the SCN dated 08.09.2021) showing his inability to appear mentioning ill health of his maternal grand-father. Another summons dated 11.09.2019 was issued to Shri Manoj Madaan again for appearing on 24.09.2019 but he again did not appear for the same again and vide his letter dated 24.09.2019 (RUD-110) showed his inability again mentioning sudden ill health of his maternal grand father.

40. Retraction of the statement was made by Shri Manoj Madaan without giving any substantial reason. When the retraction was rebutted and he was requested to appear before the investigating officers they all tried to evade the appearance by citing cyclostyled reasons of ill health.

CERTIFICATE OF CHARTERED ENGINEER-

41. Shri B.G. Bhatt & Co. Chartered Engineer vide his report dated 06.07.2018 provided the approximate FOB value of the imported goods. In order to arrive at the FOB value, the Chartered Engineer, having examined and inspected the imported goods, visited actual user places and cross checked the values by verbal information of their purchases from India suppliers of such imported goods. He has considered MOC (Materials of Construction) of items imported, application in local market and prices available of similar goods of various manufacturer FOB rate of such imported goods/items, as available through internet/electronic media for sale in international market were also viewed and considered to arrive at estimated FOB value of Imported goods/items listed in Annexure-A to the report. While calculating the FOB value of imported goods/items, factors like material cost, manufacturing process cost and arms length profit of the traders, taxes and incidental charges have been duly accounted for.

42. In view of the above, it is seen that Shri Manoj Madaan, proprietor of M/s Daiwik Enterprises, admitted in his statements dated 09.01.2018 and 26.02.2018 that he was

importing LED lights, batteries and other electrical goods from China through M/s Zip Zap Exim Pvt. Ltd. (ZZEPL), KASEZ by declaring grossly undervalued prices so that the DTA Bills of Entry reflected only a small portion of the actual transaction value. As per his own explanation, he negotiated the actual higher prices directly with the Chinese suppliers and communicated these to Shri Gajraj Singh Baid / Shri Vaibhav Baid of ZZEPL. ZZEPL then issued undervalued invoices showing only the declared price, which Madaan paid through normal banking channels (RTGS). However, the differential amount, i.e., the portion of the price over and above the declared / invoice value, representing the true negotiated value of the goods, was paid in cash through non-banking channels, thus keeping the extra payment outside official records and enabling the undervaluation. This modus was confirmed when the DRI confronted him with phone data, emails and price lists recovered from his mobile during the statement dated 26.06.2019, where he again admitted that his firm had imported electrical goods through ZZEPL “by resorting to undervaluation” and was “ready to pay the differential duty” on the same, thereby establishing that the concealed portion of the price was being settled outside the banking system.

Whether duty demanded under the impugned SCN dated 14.02.2022 can be determined on the basis of investigation carried out by DRI in respect of imports made through SEZ which resulted into issuance of SCN dated 08.09.2021 and OIO dated 17.07.2024.

43. It is observed that the impugned Show Cause Notice dated 14.02.2022 was issued in continuation of the investigation undertaken by the Directorate of Revenue Intelligence, Ahmedabad Zonal Unit, which culminated in issuance of the comprehensive Show Cause Notice dated 08.09.2021 to M/s. Zip Zap Exim Pvt. Ltd. and various co-noticees. The DRI investigation pertained to import of fabric and electrical goods into the Kandla Special Economic Zone (KASEZ) by resorting to gross undervaluation and their subsequent clearance into the Domestic Tariff Area (DTA). It is noted that the said SCN dated 08.09.2021 incorporated several DTA Bills of Entry filed by M/s. Daiwik Enterprises and brought out their role as a domestic buyer/actual importer in the undervaluation scheme. In this background, the independent imports of similar goods made by M/s. Daiwik Enterprises directly through Mundra Port were also taken into consideration leading to issuance of the present impugned SCN dated 14.02.2022 for determination of the correctness of the declared value and duty liability in respect of such imports.

44. It is further noted that the investigation culminating in SCN dated 08.09.2021 was a water-tight inquiry conducted by the Directorate of Revenue Intelligence, bringing out in detail the modus operandi adopted for undervaluation of imports into the Kandla Special Economic Zone (KASEZ) and their subsequent clearances into the Domestic Tariff Area (DTA). As recorded in the OIO dated 17.07.2024, the foreign suppliers were issuing two parallel sets of invoices—one showing suppressed values declared before Customs and another reflecting the actual transaction price, which was recovered during the investigation. The DRI also brought on record WeChat communications exchanged between the Chinese suppliers and the SEZ unit/DTA buyers, wherein the prices to be declared before Customs, the higher actual prices, and the modalities for routing the differential payments were discussed in detail. Further, the investigation recovered Letters of Guarantee, differential payment records, and other financial documents establishing

that amounts over and above the declared invoice values were remitted abroad through informal, non-banking channels. These findings were supported by voluntary statements of the persons connected with the SEZ unit as well as various DTA buyers whose Bills of Entry were incorporated in the SCN dated 08.09.2021. The adjudicating authority, in the OIO dated 17.07.2024, observed that the investigation was backed by extensive documentary, digital, financial, and oral evidence clearly establishing the practice of undervaluation.

45. In quasi-judicial proceedings under the Customs Act, 1962, it is well settled that the Department is not required to establish its case with the standard of proof applicable to criminal trials. The applicable test is that of preponderance of probability, under which the adjudicating authority is required to assess whether the totality of evidence on record tilts the balance towards a conclusion that the facts asserted by the Department are more probable than not. This position has been authoritatively affirmed by the Hon'ble Supreme Court of India in Collector of Customs, Madras v. D. Bhoormull, 1983 (13) E.L.T. 1546 (S.C.), wherein it was held that while the initial burden lies on the Department, such burden is not required to be discharged with "mathematical precision", rather, it stands satisfied where the Department establishes a degree of probability on which a prudent person may reasonably rely in drawing the inference sought to be proved. The same principle was reiterated in the matter of DEVI DASS GARG Versus COMMISSIONER OF CENTRAL EXCISE, DELHI -I2010 (257) E.L.T. 289 (Tri. -Del.), emphasising that the standard of proof required in the Departmental proceedings under the provisions of the Customs Act, 1962 or Central Excise Act, 1944 or of the Rules made thereunder, for confiscation of goods, confirmation of demand for duty evaded, and imposition of penalty is the preponderance of probability. For establishing to be preponderance of probability, the adjudicating authority has to evaluate the evidence of both the sides and decide what is most probable.

46. The noticee has contended that the adjudicating authority at Mundra Port cannot rely upon or draw support from the evidences and findings emerging from the investigation conducted in respect of imports routed through the Kandla Special Economic Zone (KASEZ), which formed the basis of the earlier Show Cause Notice dated 08.09.2021. According to the noticee, such reliance would be impermissible particularly in view of the observation of the Hon'ble CESTAT that no independent investigation had been carried out in respect of the impugned goods imported through Mundra Port. In this regard, it is noted that it is an undisputed position that no separate or independent investigation was undertaken in relation to the goods imported by M/s. Pransh Enterprise through Mundra Port. The impugned Show Cause Notice dated 14.02.2022 has been issued entirely on the basis of the investigation conducted in relation to imports made into the Kandla Special Economic Zone (KASEZ), which formed the foundation of the earlier SCN dated 08.09.2021. It is relevant to note that the Hon'ble CESTAT Ahmedabad, while observing that no separate investigation had been carried out in respect of the Mundra imports, did not set aside the proceedings initiated under the impugned SCN. Instead, the Tribunal held that adjudication of the present notice may proceed only if the first SCN dated 08.09.2021, upon adjudication, acquires sufficient evidentiary value to support the allegations. Accordingly, it becomes necessary to examine whether material gathered during the SEZ investigation—such as statements, communications, or documents referred to in the SCN dated 08.09.2021—can legitimately validate issuance of the present SCN dated 14.02.2022. This requires evaluating whether such material, when assessed on the touchstone of the

preponderance-of-probability standard, can reasonably be applied to the independent imports made by M/s. Pransh Enterprise through Mundra Port.

47. I find that Shri Manoj Madaan, authorized person of M/s. Daiwik Enterprise in his statements dated 09.01.2018 and 26.02.2018 admitted that in M/s. Daiwik Enterprises, till March-April 2017, they were directly importing the China Made lights such as rope light, LED Strips, Par Lights etc. from China mainly from Shenzhen Xinyoutong Import and Export (H.K) Ltd., Guanzhou, China and Winsun Import and Export Group Co. Ltd., Yiwu, China. Afterwards, having come in contact with Shri Gajraj Singh Baid of M/s. Zip Zap Exim Pvt. Ltd., Delhi (SEZ unit), they started importing the aforesaid goods from the aforesaid Chinese suppliers through the SEZ unit. For the said arrangement Shri Manoj Madaan used to give order to the aforesaid Chinese suppliers over telephone and communicate the same to Shri Gajraj Singh Baid or his son Shri Vaibhav Baid. He used to interact with Mr. Jimmy for the said imports from Shenzhen Xinyoutong Import & Export (H.K.) Ltd., Guangzhou and with Ms Fish for the imports from Winsun Imp & Exp Group Co Ltd, Yiwu, China for confirming the type of items, quantity and their prices of the imported item. He further admitted that Instructions were issued to the overseas suppliers to make two different set of invoices one showing the actual price and another showing lower price as informed by them. The invoice showing the original price was signed and sent back to the supplier whereas the invoice with lower value was directly sent to M/s. Zip Zap Exim pvt. Ltd., by the overseas supplier for presenting it to customs for clearance purpose. Further, it is seen that Shri Manoj Madaan, during his statement dated 26.06.2019, perused a letter of Guarantee issued by him for the purchase of goods viz. LED ROPE LIGHT, LED ROPE LIGGHT SPARE PARTS & LED STRIP LIGHT from the Chinese supplier namely WINSUN IMP & EXP GROUP CO. LTD.. The said Letter of Guarantee, reproduced below, was given in the name of Pransh Enterprises and at the time of DTA clearances, the same were cleared in the name of M/s. Daiwik Enterprises:-

A LETTER OF GUARANTEE

AS COMPANY NAME: PRANSH ENTERPRISES
 Address: ADDRESS-2085/18 . 2ND FLOOR,CHAN INDARA,BHAGI RATH PALACE, CHANDNI CHOWK,DELHI-110006
 We guarantee payment before AUG 31, 2017 payment mentioned below to WINSUN IMP& EXPGROUP CO.,LTD. NO 39 KAI XI ROAD,JIAXING,ZHEJIANG,CHINA

Invoice: 2017WS2231096(PRA048)
 Product name: LED ROPE LIGHT/LED ROPE LIGHT SPARE PARTS/LED STRIP LIGHT
 Amount: USD240855
 Shipment Date: JUN-02th,2017
 Bill of lading number: 52XCB17006240

Invoice: 2017WS2231108(PRA056)
 Product name: LED ROPE LIGHT
 Amount: USD142969
 Shipment Date: JUN-08th,2017
 Bill of lading number: HDMUYNIN1311005

AS COMPANY NAME: DAIWIK ENTERPRISES
 Address: 2085/18 2ND FLOOR CHAH INDARA HHAGIRATH PALACE HAJRANG BAZAR
 We guarantee payment before AUG 31, 2017 payment mentioned below to WINSUN IMP.& EXP.GROUP CO.,LTD. NO 39 KAI XI ROAD,JIAXING,ZHEJIANG,CHINA

Invoice: 2017WS2231113A(PRA049A)
 Product name: LED ROPE LIGHT
 Amount: USD73751.75
 Shipment Date: JUN-23th,2017
 Bill of lading number: HDMUYNIN1320372

TOTAL ORDER AMOUNT FROM WINSUN
 USD457575.75(NOT INCLUDE DEPOSIT)

Export Company : WINSUN IMP&EXP GROUP CO.,LTD.
 Address: NO. 39 KAI XI ROAD,JIAXING,ZHEJIANG,CHINA
 Bank of information:
 A/C: 363658344007
 BANK OF CHINA, JIAXING BRANCH
 NO. 218 ZHONGSHAN EAST ROAD, JIAXING, ZHEJIANG, CHINA
 TEL: 0086-573-82056188
 Swift: BKCHCNBJ92F

Commitment to company and Signature:
 Date: _____
For PRANSH ENTERPRISES

 Proprietor

Further he also perused confirmation letter and wire transfer of differential amount as discussed above and admitted the modus of undervaluation.

47.1 In the instant case, I find that the subject Bills of Entry indicate that the foreign suppliers of the goods imported through Mundra were the very same suppliers from whom the noticee had procured similar goods routed through the SEZ, as detailed below:-

Sl. No.	Bill of Entry No & Date	Item No.	Description goods	Name of the supplier	Quantity (In Pieces)	Declared price per Piece (In USD)	Declared Assessable value (In Rs.)
1.	8543056 dt. 14.02.2017	3	Recessed Luminaries LED Flood Light	Winsui Imp & Export Group Co. Ltd.	3606	2.90	722439.00
2.	8549169 dt. 14.02.2017	1	Fancy LED Strip Rope Light 50 Mtr	Winsui Imp & Export Group Co. Ltd.	4608	7.10	2260207.41
3.	8631874 dt. 21.02.2017	1	Decorative LED Par Light 54L	Shenzen Xinyoutong Import & Export (HK) Co. Ltd.	680	1.29	60194.41
		2	Decorative Disc LED Par Light Small		2000	0.80	109647.79
		3	Moving Head Elite Beam LED		212	20.10	292013.64
4.	9329172 dt. 17.04.2017	1	Decorative LED Par Light 54L	Shenzen Xinyoutong Import & Export (HK) Co. Ltd.	3680	1.33	326586.38
5.	9337131 dt. 17.04.2017	1	Decoration Strip Light for Car LED	Winsui Imp & Export Group Co. Ltd.	28000	0.225	419322.90
6.	9654025 dt. 11.05.2017	1	Decoration Strip Light for Car LED	Winsui Imp & Export Group Co. Ltd.	110000	0.225	1627337.84
		2	Fancy LED strip Rope Light 4 MTR		240	6.20	97837.49
		4	108 L LED Small Rope light 100 Mtr		263	8.00	138340.10
Total							60,53,927/-

47.2 From the above factual matrix, particularly the admissions of Shri Manoj Madaan and the documentary material examined during the investigation culminating in the SCN dated 08.09.2021, a relevant inference emerges for the purpose of applying the test of preponderance of probability in the present proceedings. The subject Bills of Entry filed at Mundra Port reveal that M/s. Daiwik Enterprises procured similar electrical goods from the same overseas suppliers—namely Shenzhen Xinyoutong Import & Export (HK) Co. Ltd. and Winsun Import & Export Group Co. Ltd.—with whom the noticee admittedly had commercial arrangements during the period when undervalued imports were routed through the Kandla Special Economic Zone (KASEZ). This continuity in suppliers, similarity of goods, and the procurement pattern indicates that the nature of commercial dealings between the noticee and the foreign exporters remained materially unchanged, even though the modus of import shifted from direct imports through Mundra Port to the SEZ route. In the context of the standard of proof applicable to quasi-judicial proceedings under the Customs Act, 1962—which requires assessing whether, on a balance of probabilities, the facts asserted by the Department appear more likely than not—these

circumstances become relevant and are capable of lending support to the Department's case.

48. In light of the above observations, the continuity in foreign suppliers, the similarity of goods, and the procurement pattern admitted by the noticee furnish sufficient grounds to entertain a reasonable doubt regarding the correctness of the transaction value declared in the subject Bills of Entry. Under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, such reasonable doubt is adequate for rejection of the declared value. I therefore hold that the transaction value declared by the noticee is not acceptable under Rule 12 of the CVR, 2007.

48.1 The noticee has argued that the mandatory pre-conditions prescribed under Rule 12(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 were not satisfied prior to rejection of the declared transaction value. It is argued that (i) no valid "reasonable doubt" was formed on the correctness of the declared value, and (ii) the proper officer did not call upon the importer to submit further documents or explanations to remove such doubt. The noticee therefore submits that the rejection of the declared value is contrary to Rule 12 and unsustainable in law.

48.2 Rule 12(1) mandates that where 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. In the present case, as already recorded above, the continuity in foreign suppliers, similarity in goods, and the procurement pattern admitted by the noticee—when read with the material forming part of the investigation culminating in the SCN dated 08.09.2021—provided objective grounds for formation of such reasonable doubt. The basis for this doubt has been clearly spelt out in the impugned SCN dated 14.02.2022. Further, the SCN itself placed the noticee on notice regarding the grounds of doubt and specifically called upon the noticee to show cause and produce any evidence to substantiate the correctness of the declared value. The noticee was thus afforded a full and adequate opportunity to furnish supporting documents or explanations, which satisfies the requirement under Rule 12(1) of calling upon the importer to provide further information. The noticee, however, did not produce any contemporaneous evidence—such as supplier quotations, catalogue prices, remittance details, procurement contracts or negotiated price records—that could dispel the reasonable doubt raised in the SCN. In these circumstances, the requirements of Rule 12(1) stand duly fulfilled. I, therefore, hold that the transaction value declared by the noticee is not acceptable under Rule 12 of the CVR, 2007.

REDETERMINATION OF VALUE-

49. Rule 3, inter-alia, of the CVR, 2007 provides the method of valuation. Rule 3(1) of the CVR, 2007 provides that "Subject to Rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10". Rule 3(4) ibid states that "if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through Rule 4 to 9 of CVR, 2007".

49.1 In the instant case, it is noted that since there are no direct evidences with regard to the actual transaction value, the same is required to be re-determined by proceeding sequentially through Rule 4 to 9 of CVR, 2007.

DETERMINATION OF VALUE IN TERMS OF PROCEEDING SEQUENTIALLY FROM RULE 4 TO 9 OF CVR, 2007 IN RESPECT OF REMAINING ELECTRICAL GOODS:-

49.2 Therefore, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9 of CVR, 2007 (in terms of Rule 3(4) of CVR, 2007).

49.3 Rules 4 and 5 of CVR, 2007 are reproduced a under:-

4. Transaction value of identical goods. –

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

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

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

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

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

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

5. Transaction value of similar goods.-

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

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

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

49.4 The above rule position is examined w.r.t the facts of the case, and it is seen that the following aspects are relevant to state that re-determining the values in terms of Rules 4 and 5 is not possible:-

- There are no identical or similar goods of neutral importers whose true and correct values are available and which can be considered to be at arms length transaction for the purpose of Section 14(1) of Customs Act, 1962 and Rule 3(1) of CVR, 2007.
- There have been multiple types of electrical goods imported by M/s. Daiwik Enterprises and their identical nature in all respects cannot be compared with other goods imported in India by neutral importers.
- The value of electrical goods supplied by the foreign suppliers to other neutral importers in India or abroad cannot be applied in the instant case with reference to rule 4 and 5 keeping in mind the significant variations in terms of physical characteristics, quality, brand, model, reputation etc. Likeness in characteristics/quality/usability and interchangeability cannot be established.
- The subject goods did not fulfill the criteria for determining value under rule 4 and 5 of Customs Valuation (Determination of Value of imported goods) Rules, 2007 read with its interpretative notes as there have not been demonstrated evidences which clearly establishes the reasonableness and accuracy of the adjustments to be made under these rules. Therefore, in the absence of proper objective measure, recourse of re-determining value under rule 4 and 5 of the said rules is not appropriate.

49.5 VALUATION IN TERMS OF RULE 7 AND 8:-

Rule 7 and 8 are reproduced as under:-

“7. Deductive value.-

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

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

(ii) the usual costs of transport and insurance and associated costs incurred within India; (iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods

or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India. (b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

8. Computed value.-

Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:-

(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;

(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;

(c) the cost or value of all other expenses under sub-rule (2) of rule 10.

49.6 Further the value in respect of the above goods cannot be re-determined as per Rules 7 and 8 of CVR, 2007 for the following reasons:-

- Deductive or computed value as discussed in Rule 7 and 8 respectively of the said Rules respectively cannot be determined in instant case for the reason that deduction like profits and general expenses in connection with the sale as prescribed under rule 7 are not ascertainable in the instant case. It is also evident that as per the requirement of rule 8, cost or value of materials in producing the imported goods along with profit and general expenses are also not ascertainable in instant case.

- Fabrication or manipulation of import documents originating at the suppliers' end has also been indicated in certain instances. Hence, it is amply clear that application of deductive and computed value method in absence of all relevant details is not feasible.

49.7 RESIDUARY METHOD UNDER RULE 9 OF CVR, 2007:-

Residual method for determining transaction value is adopted where the value of imported goods cannot be determined under the provisions of rule 4 to 8 and then value has to be derived under rule 9 using reasonable means consistent with the principles and general provisions of CVR, 2007 and on the basis of data available in India. In the instant case since Rules 4 to 8 are not applicable for re-determination of value, hence, Rule 9 of CVR, 2007 has to be resorted to.

49.8 Factors considered for Redetermination of Assessable value under Rule 9 of CVR, 2007:-

A. Wherever evidences for re-determination of value are not available, but values of the goods stand corroborated with secondary evidences and the same have also been admitted by importer, the said value has been considered under Rule 9 of CVR, 2007.

B. Also, if goods with same specification as at (A) above have been imported by the other DTA importers and value has been considered for the said DTA importers under Rule 9 of CVR, 2007 as at (A) above, that value has been considered for determining the transaction value where no other evidences are available.

C. Since some goods were not physically available, value of the same has been determined using reasonable means consistent with the principles and general provisions of CVR, 2007 and on the basis of various data available.

D. Wherever FOB value is available (but not CIF value) the same has been calculated in terms of Rule 10(1) and Rule 10(2) of CVR, 2007 to ascertain the correct assessable value.

E. Where values could not be determined on the basis of documentary evidences which were corroborated with statements of DTA importers so as to provide transaction value under Rule 3(1), valuation report from Government approved Certified Chartered Engineer has been taken for various electrical goods. In some cases, where actual values for electrical goods have been admitted by respective DTA importers in their statements but no evidences like invoices, purchase orders etc. with actual value are on record and simultaneously, values in respect of those goods have been found higher in Chartered Engineer Certificate, the value given by the government approved independent expert rather than that given by one of the conspirators has been taken.

F. Where Chartered Engineer's valuation is not available, but DTA importers have admitted actual value of electrical goods and there are corroborative evidences supporting their admitted values, there the said admitted values have been considered for re-determination.

G. Where no Chartered Engineer's certificate is available and no other corroborative values are available in respect of importers who have not produced evidences or have not appeared for investigation even after summons issued to them, in those cases, valuation is re-determined on residual method under rule 9 of CVR, 2007.

49.9 In the instant imports, "*Interpretative Notes*" as specified under Rule 13 of the said rules have been taken into consideration while determining the value under Rule 9. Interpretative Note to Rule 9 specifies that the methods of valuation to be employed under rule 9 may be those laid down in rule 3 to 8, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of rule. The Interpretative Notes to Rule 9 are reproduced below:-

Note to Rule 9.

1. Value of imported goods determined under the provisions of rule 9 should to the greatest extent possible, be based on previously determined customs values.

2. The methods of valuation to be employed under rule 9 may be those laid down in rules 3 to 8, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of rule 9.

3. Some examples of reasonable flexibility are as follows:

(a) Identical goods. - The requirement that the identical goods should be imported at or about the same time as the goods being valued could be flexibly interpreted; identical imported goods

produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of rules 7 and 8 could be used.

(b) Similar goods. - The requirement that the similar goods should be imported at or about the same time as the goods being valued could be flexibly interpreted; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of rules 7 and 8 could be used.

(c) Deductive method. - The requirement that the goods shall have been sold in the "condition as imported" in rule 7(1) could be flexibly interpreted; the ninety days requirement could be administered flexibly.

50. The OIO dated 17.07.2024 has affirmed the values as proposed in the SCN dated 08.09.2021 in respect of the similar goods imported and cleared into DTA as follows:-

TABLE-B

Import B/E No/ Date	Buyer name & IECode- by zip zap	Item Description	Goods Measurement Unit	Corresponding Rate (in USD/given unit) as finalised in Investigation in respect of M/s Zip Zap by DRI	Currency	Basis of Re-determined Unit value of Goods (CE stands for Chartered Engineer and ST stands for Statement)
0007754/20.05.17	DAIWIK ENTERPRISES-0516952030	LED STRIP LIGHT 5MTR	PCS	0.86	USD	ST of Manoj Madaan dtd 26.06.19
1018784/20.11.17	DEVI SALES CORPORATION-0509094368	RECESSED LUMINARIES LED FLOOD LIGHT	PCS	13.33	USD	Average Value Taken
0009863/22.06.17	JIA LIGHTING & AUDIO EQUIPMENT CO.-0510056717	DECORATIVE LED PAR LIGHT 54L	PCS	31.06	USD	CE CERTIFICATE DATED 06.07.18
0007758/20.05.17	DAIWIK ENTERPRISES-0516952030	108 L LED SMD ROPE LIGHT 96 MTR	PCS	33.62	USD	ST OF MANOJ MADAAN DATED 26.06.19 (AS PER LETTER OF GUARANTEE MENTIONED IN ST)
0007756/20.05.17	DAIWIK ENTERPRISES-0516952030	108 L LED SMD ROPE LIGHT 100 MTR	PCS	33.62	USD	ST OF MANOJ MADAAN DATED 26.06.19 (AS PER LETTER OF GUARANTEE MENTIONED IN ST)
1012181/01.8.17	DAIWIK ENTERPRISES-0516952030	50 MTR LED ROPE LIGHT (CHAIN LIGHT)	PCS	58.14	USD	ST OF MANOJ MADAAN DATED 26.06.19 (AS PER LETTER OF GUARANTEE MENTIONED IN ST)

0008715/ 06.06.17	DAIWIK ENTERPRISES- 0516952030	MOVING HEAD ELITE BEAN LED	PCS	61.45	USD	ST OF MANOJ MADAAN DATED 26.06.19
0008832/ 07.06.17	JIA LIGHTING & AUDIO EQUIPMENT CO.- -0510056717	DECORATIVE DISCO LED PAR LIGHT SMALL	PCS	121.12	USD	CE CERTIFICATE DATED 06.07.18

50.1 Thus, considering the reasonable flexibility as provided under Rule 9, I find that various LED products imported at KASEZ under Bills of Entry mentioned in Table-B are similar to various LED Light products imported at Mundra port under Bill of Entry mentioned in Table-A above.

50.2 In view of the above, I hold that the total assessable value re-determined at ₹5,71,27,525/-, as detailed in Annexure-A to the instant SCN, in terms of Section 14 of the Customs Act, 1962 read with Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, is correct, legal and proper.

CROSS- EXAMINATION-

51. The noticee has requested that an opportunity be granted to cross-examine the following individuals whose roles are referred to in the investigation: Shri Harendra Kumar Bhalothia (Investigating Officer), Shri Mahesh Kumar Gupta (Cyber Forensic Engineer), and the two panch witnesses viz. Shri Dhyaneshwar Manohar Single and Shri Pavan Rajaram Karavande. He also requested cross-examination of Shri B G Bhatt, chartered Engineer.

51.1 With respect to the request for cross-examination of the Investigating Officer, Shri Harendra Kumar Bhalothia, it is noted that the noticee has not produced any material to indicate that the said officer committed any error or impropriety in the course of the investigation. In this context, reference is made to the recent judgment of the Hon'ble Delhi High Court in Sanjeev Maggu vs. Additional Commissioner of Customs (2026-TIOL-101-HC-DEL-CUS), wherein the Court held that departmental officers who discharge their functions in an official capacity cannot, as a matter of right, be subjected to cross-examination. The Hon'ble Court reiterated the settled legal position, as previously held in M/s Vallabh Textiles vs. Additional Commissioner, Central Tax GST, Delhi East (2025-TIOL-680-HC-DEL-GST), that the right to cross-examination is not absolute and must be granted only where the party seeking it is able to demonstrate prejudice such that the absence of cross-examination would impede the course of substantial justice. The excerpt of the decision is reproduced below:-

"15. Insofar as the remaining individuals are concerned, some of them are officials in the Customs Department, including, Mr. Pankaj Verma, Inspector Bond Section, Mr. Devender Singh, Tax Assistant Customs Department, Mr. Kishan Lal, Senior Tax Assistant Bond Section, Mr. Pramod Kumar, Superintendent, Audit Branch, Mr. Puneet Sethi, Air Customs Officer, Ms. Geeta Juneja, Superintendent, Mr. Mahindra Kapoor, Superintendent, Mr. Kulwendra Singh, Assistant Commissioner.

16. The aforesaid persons being Customs Officials, this Court is of the considered view that they were discharging their duties in an official capacity. Consequently, they cannot, as a matter of right, be subjected to cross-examination, particularly in view of the settled position of law laid down by this Court in W.P.(C) 4576/2026 titled M/s Vallabh Textiles vs. Additional Commissioner Central Tax GST, Delhi East and Ors. = [2025-TIOL-680-HC-DEL-GST](#), wherein the Court has held that the right to cross examination is not an

unfettered and absolute right. Prejudice has to be shown which would lead to a conclusion that without cross examination substantial justice cannot be done. The relevant portion of the said decision in M/s Vallabh Textiles (Supra) reads as under:

"18. A perusal of the above decisions reveals that while cross-examination would be required in certain cases, it need not be given as a matter of right in all cases. The provision of the opportunity to cross-examine depends on the facts and circumstances of each case and is warranted only when the party seeking such an opportunity is able to demonstrate that prejudice would be caused in the absence thereof.

51.2 In this regard, I also rely upon the decision of FORTUNE IMPEX Versus COMMISSIONER OF CUSTOMS, CALCUTTA, 2001 (138) E.L.T. 556 (Tri.-Cal) [03-07-2001] wherein the Hon^{ble} Tribunal has held that-

"Natural justice - Cross-examination not to be allowed of all witnesses - No specific reasons given for cross-examination of 26 witnesses including co-noticees as well as Director/Partner/employee of clients - Principles of natural justice not violated. - The cross-examination of the witness, wherever necessary, has to be allowed in Departmental proceedings. But 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 them. Some of the persons mentioned therein are co-noticees and some of them are Director/Partner/employees of his clients. If the appellants are accused persons the question of calling them for cross-examination does not arise. Again he had mentioned a number of officers by designation without indicating their names and role played by them in the investigation of the matter against his client. In view of these facts and circumstances 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."

51.3 It is further observed that the noticee has not placed any material on record to demonstrate that any prejudice has been caused to him by the actions of the Cyber Forensic Engineer Shri Mahesh Kumar Gupta or the independent panch witnesses Shri Dhyaneswar Manohar Single and Shri Pavan Rajaram Karavande. On the contrary, during his voluntary statement dated 26.06.2019, the noticee accepted the Panchnama dated 24.01.2018 as well as the materials shown to him from the device and proceeded to explain the modus operandi in detail. Once the noticee himself acknowledged the contents attributed to his mobile phone and responded to them without objection, no allegation of prejudice survives, nor is cross-examination warranted. In this regard, I rely upon the decision of Hon^{ble} Supreme Court of India in the matter of SURJEET SINGH CHHABRA Versus UNION OF INDIA, 1997 (89) E.L.T. 646 (S.C.), wherein the Hon^{ble} Apex court held that-

"2. *It is contended by learned counsel for the petitioner that the petitioner is entitled to cross-examine the Panch witnesses and the Seizing Officer for the goods seized in contravention of the FERA & Customs Duty Act and that the opportunity has not been given. Therefore, it is violative of natural justice.*

3. *It is true that the petitioner had confessed that he purchased the gold and had brought it. He admitted that he purchased the gold and converted it as a Kara. In this situation, bringing the gold without permission of the authority is in contravention of the Customs Duty Act and also FERA. When the petitioner seeks for cross-examination of the witnesses who have said that the recovery was made from the petitioner, necessarily an opportunity requires to be given for the cross-examination of the witnesses as regards the place at which recovery was made. Since the dispute concerns the confiscation of the jewellery, whether at conveyor belt or at the green channel, perhaps the witnesses were required to be called. But in view of confession made by him, it binds him and, therefore, in the facts and circumstances*

of this case the failure to give him the opportunity to cross-examine the witnesses is not violative of principle of natural justice. It is contended that the petitioner had retracted within six days from the confession. Therefore, he is entitled to cross-examine the panch witnesses before the authority takes a decision on proof of the offence. We find no force in this contention. The Customs officials are not police officers. The confession, though retracted, is an admission and binds the petitioner. So there is no need to call Panch witnesses for examination and cross-examination by the petitioner."

51.4 With respect to the request for cross-examination of the Chartered Engineer, it is noted that Dr. G.K. Sarkar, representing M/s. Daiwik Enterprises, had already been afforded the opportunity to cross-examine Shri B.G. Bhatt during the adjudication of the earlier SCN dated 08.09.2021, and the said cross-examination stands duly recorded in Para 148.14 of the OIO dated 17.07.2024. Once cross-examination has already been granted and exercised, there is no justification to permit the same exercise again in the present proceedings, particularly when no new grounds or inconsistencies have been demonstrated. Accordingly, the request for cross-examination of the Chartered Engineer is rejected.

52. From the discussion above, it is apparent that M/s. Daiwik Enterprises has suppressed the actual transaction value and the mis-declaration of value has been done wilfully with sole purpose of executing this modus of undervaluation to evade duty. Accordingly, I find that it is appropriate to invoke Section 28(4) of the Customs Act, 1962 in the instant case.

CONFISCATION OF GOODS-

53. I find that the noticee has mis-declared the goods in terms of its value while importing the goods through Mundra port as elaborated in earlier paras. The gross undervaluation has been established by carefully examining the evidences placed on record. It is a settled law that once mis-declaration is established, goods become liable for confiscation. Such acts on their part have rendered the subject goods liable for confiscation under the provisions of Section 111(d) and 111(m) of the Customs Act, 1962. In this regard, I rely on the judgement of CC Mumbai Vs Multimetal Ltd-2002(Tri-Mumbai) wherein the Hon'ble Tribunal held that when mis-declaration is established, goods are liable for confiscation. This judgement of Hon'ble Tribunal has been upheld in Apex court in 2003 (ELT A309 (SC)).

54. As the impugned goods are liable for confiscation under Section 111(d) and Section 111(m) of the Customs Act, 1962, it becomes necessary to examine whether redemption fine under Section 125 of the Act is imposable in lieu of such confiscation. In this regard, it is noted that the subject goods are no longer physically available for confiscation, as they were cleared in the past and are not presently within the custody or control of Customs. However, I note that the Hon'ble CESTAT, Ahmedabad, in the case of M/s. Van Oord India Pvt. Ltd. vs. Commissioner of Customs, Ahmedabad [Customs Appeal No. 10679 of 2024-DB], has held that redemption fine can be imposed even when the goods are not physically available for confiscation. Further, this points were already settled in case of Judgment dated 11.08.2017 of Hon'ble High Court of Madras in C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT, Chennai [2018 (9) G.S.T.L. 142 (Mad.)]. Para 23 of the said Judgment is as follows:

"The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods.

The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act."

55. I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.) and the same has not been challenged by any of the parties concerned. Hence, from the above discussion and relying on the above judgements. I find that goods are liable for confiscation and redemption fine can be imposed. I note that the case involves undervaluation of imported goods with the sole intent to evade/short payment of Customs Duty. However, in as much as goods have already been cleared and perhaps already consumed, I believe that the ends of justice would be met if the redemption fine is restricted to approx. 50% of the differential duty.

56. With regard to penalty under Section 114A of the Customs Act, 1962, I find that since the duty is determined under Section 28(4) of the Customs Act, 1962, penalty under Section 114A is attracted. However, as per fifth proviso to Section 114A of the Customs Act, 1962, once penalty is imposed under Section 114A, no penalty is imposable under Section 112 of the Act.

57. With regard to penalty under Section 114AA of the Customs Act, 1962, I find that the noticee has engaged in undervaluation of goods by suppressing their actual transaction value and declaring figures that do not reflect the true consideration paid or payable to the overseas suppliers. The material examined in this order emanating from the SEZ-based investigation establishes that the undervaluation was undertaken with full knowledge and intent, resulting in the submission of false and misleading documents and declarations before Customs. In the present case, the undervaluation has been found to be deliberate, and the noticee's declarations in the Bills of Entry have been proven incorrect in material particulars relating to value. Therefore, the ingredients of Section 114AA stand satisfied, and the noticee is liable for penalty under the said provision.

58. In view of the above discussion and findings, I hereby pass the following order:-

ORDER-

(i) I reject the total assessable value of Rs 60,53,927/- (Rs. Sixty Lakh Fifty-Three Thousand Nine Hundred and Twenty Seven Only) declared by them at the time of clearance of goods i.e., "Various Electrical Goods", as mentioned in ANNEXURE-A to the show cause notice, under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and order to re-determine the same at Rs. 5,71,27,525/-

(Rs. Five Crore Seventy One Lakh Twenty Seven Thousand Five Hundred and Twenty Five only) under sub-section (1) of Section 14 of the Customs Act, 1962 read with Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 as applicable, for Bills of Entry, as mentioned in ANNEXURE-A.

(ii) I determine and confirm the differential Customs Duty amounting to Rs. 97,35,461/- (Rs. Ninety Seven Lakh Thirty Five Thousand Four Hundred and Sixty One Only) on the goods imported i.e., Various Electrical Goods', as detailed in ANNEXURE-A under Section 28(8) of the Customs Act, 1962 and order to recover the same from M/s. Daiwik Enterprises, under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

(iii) I hold that the goods i.e. Various Electrical Goods imported by them valued at Rs. 5,71,27,525/- as mentioned in ANNEXURE-A, are liable for confiscation under Section 111(m) and 111(d) of the Customs Act, 1962. Since the goods have been cleared in the past and are not physically available for confiscation, I impose Redemption fine of Rs. 50,00,000/- (Rupees Fifty lakhs only) under Section 125(1) of the Customs Act, 1962 in lieu of confiscation.

(iv) I impose a penalty of Rs. 97,35,461/- (Rs. Ninety Seven Lakh Thirty Five Thousand Four Hundred and Sixty One Only) under Section 114A of the Customs Act, 1962. However, I refrain from imposing any penalty under Section 112(a) of the Customs Act, 1962 for the reason discussed above.

(v) I impose a penalty of Rs. 25,00,000/- (Rs. Twenty Five Lakhs Only) under Section 114AA of the Customs Act, 1962.

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

(Nitin Saini)
Commissioner of Customs,
Custom House, Mundra

F. No. GEN/ADJ/COMM/122/2022-Adjn

DIN- 20260371MO0000444CAD

To,

M/s. Daiwik Enterprises (Proprietor: Prem Madaan),
2085/18, 2nd Floor Chah Indara, Bhagirath Palace,
Bajarang Bazar, Chandni Chowk, Delhi- 110006.

Copy to: -

- a. Additional Director General, DRI, AZU, Unit No.15, Magnet Corporate Park, Thaltej, Ahmedabad-380054
- b. The office of Chief Commissioner, Gujarat Customs Zone, Ahmedabad
- c. The Deputy/Assistant Commissioner, (EDI/TRC) Customs House Mundra.