कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा,
सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421.
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A. File No.	GEN/ADJ/COMM/310/2025-Adjn-O/o Pr Commr-Cus-mundra
B. Order-in-Original No.	**MUN-CUSTM-000-COM- 10-2026-27**
C. Passed by	Nitin Saini, Commissioner of Customs, Customs House, AP & SEZ, Mundra.
D. Date of order and Date of issue:	27. 05.2026 27. 05.2026
E. SCN No. & Date	12/2025-26/COMM/NS/ADJ/MCH Dated 29.05.2025
F. Noticees	1. Harish Kirana Co. (IEC: AKXPG2830R) 2. Shri Harish Kumar Gupta 3. A. A. Enterprises (IEC: AXKPS8029E) 4. Shri Ashok Sharma
G. DIN	20260571MO000000CF6D

1. यहअपीलआदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।
   This Order - in - Original is granted to the concerned free of charge.
2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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

"केन्द्रीय उत्पाद एवं सीमा शुल्क और सेवाकर अपीलीय प्राधिकरण, पश्चिम जोनल पीठ, 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."

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए। Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के साथ -/ 1000रूपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, दंड या शास्ति रूपये पाँच लाख या कम माँगा हो5000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, व्याज, शास्ति या दंड पाँच लाख रूपये से अधिक किंतु पचास लाख रूपये से कम माँगा हो 10,000/- रुपये का शुल्क टिकट लगा होना चाहिए जहाँ शुल्क, दंड व्याज या शास्ति पचास लाख रूपये से अधिक माँगा हो। शुल्क का भुगतान खण्ड पीठ बेंचआहरितट्रिब्यूनल के सहायक रजिस्ट्रार के पक्ष में खण्डपीठ स्थित जगह पर स्थित किसी भी राष्ट्रीयकृत बैंक की एक शाखा पर बैंक ड्राफ्ट के माध्यम से भुगतान किया जाएगा।

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

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

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

6. अपील ज्ञापन के साथ ड्यूटि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. अपील प्रस्तुत करते समय, 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.

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

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

BRIEF FACTS OF THE CASE

Intelligence developed by Directorate of Revenue Intelligence, Indore Zonal Unit (hereinafter referred to as 'DRI') indicated evasion of Customs duty by certain importers by way of under-valuation of "Walnut Kernel" at Adani Port and Special Economic Zone (hereinafter referred to as 'Mundra SEZ'). Further, intelligence developed by DRI indicated that Harish Kirana Co. (IEC: AKXPG2830R) and A. A. Enterprises (IEC: AXKPS8029E) having registered office at 408/1, Katra Maid Green, Khari Boli, Delhi, North Delhi, 110006 and 178, 2nd Floor, Gali Kinari Wali Naya Bans, Khari Baoli, chandni Chowk, North Delhi 110006, respectively (hereinafter both the firms referred to as 'the importers') are indulged in duty evasion by way of under-valuation of "Walnut Kernel" at Mundra SEZ. Both the importers were importing "Walnut Kernel" under Customs Tariff Item (CTI) 0802 32 00 at Mundra SEZ and clearing the imported goods by way of under-valuation at the Unit Price of 1.25 - 1.5 USD per Kgs in Domestic Tariff Area (DTA) to evade Customs duty under the category of Traded Goods. Further, Walnut Kernel under Customs Tariff Item (CTI) 0802 32 00 of the First Schedule to the Customs Tariff Act, 1975 attracts BCD at the rate of 100% and IGST at the rate of 5%.

2. Acting upon the aforesaid intelligence, a search was conducted on 31.05.2024 at the registered premises of Harish Kirana Co. situated at 408/1, Katra Maid Green, Khari Boli, Delhi, North Delhi, 110006. During the search proceedings, Shri Harish Kumar Gupta, proprietor of Harish Kirana Co. was present and no incriminating evidence / document related to the case was found at the premises during the search. The proceedings were recorded under Panchnama dated 31.05.2024 **(RUD-1)** drawn on the spot.

2.1 Further, on 31.05.2024, a search was conducted at the residential premises of Shri Harish Kumar Gupta, proprietor of Harish Kirana Co. situated at H. No. 333-3rd Floor, Gate No. S-6, Near Sai Park, Sector-31, Faridabad, 121 003. Further, no incriminating evidence / document related to the case was found at the residential premises during the search. The proceedings were recorded under Panchnama dated 31.05.2024 **(RUD-2)** drawn on the spot.

3. <u>Statements of Concerned Persons</u>

During the course of investigation, Statements of the concerned persons were also recorded under Section 108 of the Customs Act, 1962 on various dates, which are discussed below:

3.1 Statement of Shri Harish Kumar Gupta, Proprietor of Harish Kirana Co. was recorded on 31.05.2024 under Section 108 of the Customs Act, 1962 (RUD-3), wherein he, inter-alia, stated as under:

➢ his name is Harish Kumar Gupta, aged 41 years and presently residing at House No. 333, 3rd Floor, Gate No. 6, Near Sai Park, Sector-31, Faridabad, 121 003; he is proprietor of Harish Kirana Co.; he completed his Bachelor of Commerce in the year 2005 from Delhi University; he worked as broker of spices in Khari Baoli up to 2017; he worked as broker of dry fruits till 2020; he created firm, Harish Kirana Co. in the year 2019; the firm is a trading firm and mainly imports Walnut Inshell, Walnut Kernel ; they also purchase and sell these goods for brokerage; his email ID is harishkgupta83@gmail.com; his AADHAAR Card No. is 2756 8794 5769; registered address of Harish Kirana Co. is 408/1, Katra Maid Green, Khari Baoli, Delhi-110006

➢ for import of Walnut Kernel , he used to contact Shri Kush Agrawal of Al Arab Dates Factory FZCO, Dubai; he knew Kush Agrawal since 2020 who lives in Dubai and he also visited to India; he has imported Walnut Kernel from Al Arab Dates Factory FZCO, Dubai only; the invoices and packing list were sent by Shri Kush Agrawal to Shri Sumeet Goel of GSM Shipping directly; the Customs Broker filed the Bills of Entry and also sent him copy of Invoice, packing list etc. after filing the Bill of Entry and other process, Shri Sumeet Goel of GSM Shipping used to call him for payment of duty.

➢ he imported Walnut Inshell at a unit price of approx. 1.2 USD per Kgs and Walnut Kernel at unit price of 1.2-1.5 USD per Kgs.

➢ on being asked to justify similar price of Walnut Inshell and Walnut Kernel , he admitted that import price of Walnut Kernel is always higher than Walnut Inshell; he also admitted that Walnut Kernel was imported at under-valued price by him through his firm namely, Harish Kirana Co. to save duty.

➢ Shri Kush Agrawal who is residing in Dubai had suggested him to import Walnut Kernel at lower price; he also suggested him to take help of Shri Sumeet Goel of GSM Shipping for freight forwarding and customs clearance; Shri Kush Agrawal also suggested him to sell and purchase the imported goods to particular buyers in India sometimes; on being asked he stated that he has also purchased and sold goods to Abhinav Traders.

➢ On being asked to state how the correspondence with Shri Kush Agrawal and Shri Sumeet Goel took place, he stated that the correspondence with Shri Kush Agrawal and Shri Sumeet Goel took place through mobile only.

➢ On being asked to submit chat or correspondence made with Shri Kush Agrawal and Shri Sumeet Goel, he stated that he had made correspondence with Shri Kush Agrawal and Shri Sumeet Goel with his iPhone 14; When he came to know that DRI is conducting search at his residential premises situated at 333, 3rd Floor, Gate No. 6, Near Sai Park, Sector-31, Faridabad, 121 003 on 31.05.2024 at 3:30 PM, he destroyed his iPhone 14; on being asked he admitted that as the mobile contained chat and correspondence in respect of under-valuation of Walnut Kernel , he completely destroyed his iPhone 14 mobile phone at his shop situated at Khari Baoli to save himself from the consequences of enquiry being conducted by DRI; as he had destroyed his iPhone mobile, he was not able to provide chat or correspondence made with Shri Kush Agrawal and Shri Sumeet Goel in respect of import of Walnut Kernel .

➢ On being asked to state whether he knew the firm A. A. Enterprises, he stated that he knew the firm A. A. Enterprises and Shri Ashok Sharma is proprietor of the firm; on being asked he stated that he had also made sale and purchase with the A. A. Enterprises.

➢ On being asked to state whether he knew Shri Abhishek Garg of Abhinav Traders, he stated that he is married with Shri Shikha Garg and she is sister of Abhishek Garg; Shri Abhishek Garg of Abhinav Traders is his brother-in-law.

➢ On being asked to state his business relationship with Shri Abhinav Traders, he stated that he also does sale and purchase with Shri Abhishek Garg of Abhinav Traders.

➢ On being asked to peruse bank statement of the firm, A. A. Enterprises which revealed that the large amount of fund was credited to A. A. Enterprises from his firm, Harish Kirana Co. for foreign remittance for goods imported by A. A. Enterprises, he perused the bank statement of A. A. Enterprises and he admitted that he did funding in A. A. Enterprises for foreign remittance; on being asked he also admitted that Shri Ashok Sharma is not aware with the import activities and he had created A. A. Enterprises in July, 2023 for import of Walnut Kernel by way of under-valuation to save import duty; he also admitted that he had placed order for import, paid import duty and sold the goods in domestic market imported in the name of A. A. Enterprises; on being asked he also admit that he had created dummy firm in the name of A. A. Enterprises.

➢ On being asked to state who is in possession of mobile number 9315027094 which is registered number with the account of A. A. Enterprises, he stated that Mobile number 9315027094 which is registered with A. A. Enterprises is in possession of his accountant Shri Nikhil Pandey; as the OTP for transactions is required, he had given this number to his accountant, Shri Nikhil Pandey for bank and other transactions.

3.2 Statement of Shri Harish Kumar Gupta, Proprietor of Harish Kirana Co. was recorded on 05.07.2024 under Section 108 of the Customs Act, 1962 (RUD-4), wherein he, inter-alia, stated as under: -

➢ He had purchased I phone 14 Pro (golden colour) in November, 2022 for Rs. 1,10,000/- on cash payment.

➢ on being asked to explain in details what happens with his iPhone 14, he stated that when he was going to his shop in Khari Baoli from his home situated in Faridabad by scooty, it fell down from his pocket on 31.05.2024; on being asked he stated that he did not remember IMEI numbers of his iPhone.

➢ on being asked to state whether he registered missing complaint of his mobile, he stated that as there was search at his shop on the same day, he did not register missing complaint; on being asked he stated that he had not registered complaint till the recording of statement; as the mobile cannot be opened without password, he did not register complaint.

➢ on being asked to state whether the same mobile number is being used by him, he stated that he is using the same mobile number 9871590099; on being asked he stated that he had approached Airtel office who provided him the new SIM with same number after submitting his AADHAAR Card and the number got activated after 4 hrs.

➢ on being asked to log in into iCloud so that chat in respect of under valuation of Walnut Kernel can be obtained, he stated that he had purchased his iPhone 14 (Gold colour) in November, 2022 and he had created log in ID and password in November, 2022 itself; he had forgotten his iCloud login ID and password and he was not able to recall the same.

3.3 Statement of Shri Ashok Sharma, Proprietor of A. A. Enterprises was recorded on 26.07.2024 under Section 108 of the Customs Act, 1962 (RUD-5), wherein he, inter-alia, stated as under:

➢ his name is Ashok Sharma S/o Shri Radha Krishan Sharma, aged 75 years and presently residing at House No. 1/11063, Lane Number 7F, Subhash Park, Shahdara, North East Delhi- 110032; he is proprietor of A. A. Enterprises having registered address at 178, 2nd Floor, Gali Kinari Wali, Naya Bans, Khari Baoli, Chandan Chawk, Delhi-110006; he completed his High School from Banaras in the year 1966; he worked in Export houses up to 2017 in Delhi wherein he used to supervise garments manufacturing; however, when export houses shifted to nearby cities i.e. Faridabad, Gurugram etc,; he quit his job being residing in Delhi and started managing Dhaba in Narayana Industrial Area, Delhi; the Dhaba was owned by one of his friends namely Shri Tilak Raj Mehta; when he passed away due to Covid in the year 2022, thereafter Dhaba was managed by his sons; On being asked he stated that he does not remember any E-mail ID.

➢ On being asked to state when did he obtain IEC in the name of A. A. Enterprises and to state registered address of A. A. Enterprises, he stated that when Dhaba was taken over by his friend's sons, he was jobless; as he used to purchase pulses from Shri Harish Kumar Gupta for Dhaba and used to sell pulses in nearby Dhabas; when he was jobless, he contacted Shri Harish Kumar Gupta of Harish Kirana Co. for any work; Shri Harish Kumar Gupta created A. A. Enterprises in his name in the year 2023; A. A. Enterprises is having registered at 178, 2nd Floor, Gali Kinari Wali, Naya Bans, Khari Baoli, Chandan Chawk, Delhi-110006; he did not have any agreement with this address and Shri Harish Gupta got the agreement prepared at this address for getting IEC in the name of A. A. Enterprises.

➢ the IEC in the name of A. A. Enterprises was created by Shri Harish Kumar Gupta and he had ordered for import of Walnut Kernel and sold the goods in domestic market; he was paid Rs. 25,000-30,000 per container for being holder of IEC; he stated that he was not aware with the import price of Walnut Kernel as well as domestic price of Walnut Kernel .

➢ On being asked to state business relationship with Shri Harish Kumar Gupta**,** he stated that IEC in the name of A. A. Enterprises was created by Shri Harish Kumar Gupta; he is the proprietor of A. A. Enterprises; he is not aware with any type of import and he was paid Rs. 25,000-30,000/- per container only; he remembers that 3 containers were imported in the name of A. A. Enterprises; Shri Harish Kumar Gupta was known to him and there is no other business relationship with him.

➢ On being asked to state how the remittance was made with the foreign supplier for imported goods in the name of A. A. Enterprises, he stated that he was not aware how the remittance was made with the foreign supplier for imported goods in the name of A. A. Enterprises; Shri Harish Kumar Gupta can state how the foreign remittance took place to supplier for imported goods as he had ordered for importation of goods; his bank account in this regard was also handled by Shri Harish Kumar Gupta only.

3.4 Statement of Shri Sumeet Goyal, proprietor of GSM Shipping was recorded on 02.07.2024 under Section 108 of the Customs Act, 1962 (RUD-6), wherein he, inter-alia, stated as under: -

- he is proprietor of GSM Shipping, a forwarding firm having address at Plot No. 41, Sector 9, Officer No. 211, Patel Chambers, Gandhidham, Kachchh; he completed his Senior Secondary from Gandhidham; he perused Bachelor of Computer Application but could not complete; he started GSM Shipping in the year 2008; It is a proprietorship firm and he is the owner of the firm; being forwarding firm, he mainly does transportation of imported goods; the importer approaches him for clearance and transportation of the imported goods; In the case of import from SEZ, he forwards import documents to SEZ entity for filing Bills of Entry and in the case of import from port, they forward import documents to Space Freight Logistics for filing Bills of Entry; after customs clearance of the imported goods, they transport the goods to the destination given by the importers.

- GSM Shipping take work of customs clearance and transport of the imported goods, therefore, they send import documents received from the importer to SEZ entity and Customs Broker for clearance of imported goods and do transportation of imported goods to the destination given by the importers.

- On being asked to state the procedure of filing Bills of Entry for warehousing and DTA sale in Mundra SEZ, he stated that they receive import documents i.e. Invoice, packing list, Bill of lading, country of origin certificate etc. from the importers; they send it to the SEZ Unit / Warehouse for filing Bill of Entry; the SEZ Unit / Warehouse file the Bill of Entry before the customs; customs assesses the Bill of Entry and duty payment challan gets generated; they receive information from the SEZ unit for payment of duty and accordingly, they inform the importers for payment of duty; after payment of duty, they transport the imported goods to the destination given by the importers; on being asked he stated that they filed the Bills of Entry for Warehouse and DTA sale on behalf of Abhinav Traders, Harish Kirana Co. Janakidas Raghubar Dayal, P. S. Packaging, A. A. Enterprises.

- On being asked to state how the Bill of Entry on behalf of Abhinav Traders, Harish Kirana Co. Janakidas Raghubar Dayal, P. S. Packaging, A. A. Enterprises for clearance of Walnut Kernel were filed at Mundra SEZ, he stated that Shri Harish Kumar Gupta who is the proprietor of the firm Harish Kirana Co. contacted him for clearance at Mundra SEZ for Harish Kirana & Co. and A. A. Enterprises.

- On being asked he stated that the importer had instructed suppliers for sending the import documents directly to him, therefore, import documents were received by him directly from the suppliers; on being asked, he stated that the importer had informed that they were sending documents directly so that the import clearance does not get delayed.

- They have also cleared Walnut Inshell on behalf of Harish Kirana & Co. and A. A. Enterprises at Mundra SEZ.

- Walnut Kernel is obtained from Walnut Inshell and Walnut Kernel always has higher price than Walnut Inshell; he agreed that the *declared price* of Walnut Kernel is at lower side.

4. Shri Harish Kumar Gupta vide his letter dated 11.06.2024 alleged that statement recorded on 31.05.2024 was prepared on the laptop by the SIO and without allowing him to read the contents of the said statement, he was asked / compelled to sign the same. Further, he requested that the enquiry may be transferred to DRI, Delhi Zonal Unit **(RUD-7)**. This unit vide letter dated 01.07.2024 sent a rebuttal and informed Shri Harish Kumar Gupta that the voluntarily statement was recorded as per his say and he had put his dated signature on each page after reading the statement and upon finding the same as per his say. Further, the statement tendered by him was voluntary and without any threat or coercion and the behaviour of the officers was cordial during the recording of statement and the same facts was also endorsed by him while putting his signature on the statement. It was informed that as the Directorate of Revenue Intelligence, Indore Zonal Unit is investigating import of Walnut Kernel by way of undervaluation at Mundra SEZ, therefore, presence for tendering voluntary statement and submission of documents etc. is required at the office of DRI, Indore Zonal Unit situated at Indore **(RUD-8)**. Further, voluntarily statement of Shri Harish Kumar Gupta was recorded on 05.07.2024 wherein he did not state that he was compelled to sign his earlier statement dated 31.05.2024 without allowing him to read the contents of the said statement and he also did not make any request for transfer of the case to DRI, Delhi Zonal Unit.

5. Walnut In-Shell and Walnut Kernel (Walnut Shelled) :

To extract the edible part (Kernels), Walnuts undergo several processing operations including harvesting, hulling, drying, and shelling. During these operations, large quantities of by-products (leaves, hulls, shells, broken Kernels) are produced and often underutilized, resulting in their wasted potential value. Walnuts are available as shelled (without shell) or with the shell (whole Walnut). The ones which are shelled or the outer cover is removed are known as Walnut Kernels which is the inside fruit. When Kernels are removed from the In-shell Walnut, there is production in the range of 50% to 60% depending upon the types of Walnut In-shell.

6. Import of Walnut In-Shell by Harish Kirana Co. and A. A. Enterprises:-

There is no import of Walnut In-Shell from port by both the firms. Both the importers have imported Walnut In-Shell at Mundra SEZ and the import data of Walnut In-Shell for the period July, 2023 to September, 2024 are as follows;

I. Harish Kirana Co.:-

S. No.	BE Number	BE date	Country of Origin	Invoice Currency	Item Description	Quantity	UQC	Unit Price
1	1013484	17-07-2023	Chile	USD	INSHELL WALNUTS (GRADE 3)	100000	KGS	1.01
2	1019924	28-09-2023	Chile	USD	INSHELL WALNUTS CHANDLER 34/36	18000	KGS	1.05
3	1019932	28-09-2023	Chile	USD	INSHELL WALNUTS, CHANDLER 30/34	18000	KGS	1.05
4	1019932	28-09-2023	Chile	USD	INSHELL WALNUTS, CHANDLER 30/34	18000	KGS	1.05
5	1020405	03-10-2023	Chile	USD	INSHELL WALNUTS CHANDLER 30/34	18000	KGS	1.05
6	1020674	06-10-2023	Chile	USD	INSHELL WALNUTS, CHANDLER 30/34	18000	KGS	1.05
7	1020669	06-10-2023	Chile	USD	INSHELL WALNUTS, CHANDLER 30/34	18000	KGS	1.05
8	1021785	17-10-2023	Chile	USD	WALNUT INSHELL	18000	KGS	1.01
9	1023331	03-11-2023	Chile	USD	WALNUTS INSHELL	18000	KGS	1.01
10	1023330	03-11-2023	Chile	USD	WALNUTS INSHELL	18000	KGS	1.01

11	1024042	13-11-2023	Chile	USD	WALNUTS INSHELL	140000	KGS	1.01
12	1027675	27-12-2023	Chile	USD	CHANDLER INSHELL WALNUTS (JUMBO)	20000	KGS	1
13	1027674	27-12-2023	Chile	USD	CHANDLER INSHELL WALNUTS (JUMBO)	20000	KGS	1
14	1001133	16-01-2024	Chile	USD	CHANDLER INSHELL WALNUTS (JUMBO)	20000	KGS	1
15	1001132	16-01-2024	Chile	USD	CHANDLER INSHELL WALNUTS (JUMBO)	20000	KGS	1
16	1003808	20-02-2024	Chile	USD	CHANDLER INSHELL WALLNUTS (JUMBO)	20000	KGS	1
17	1003807	20-02-2024	Chile	USD	CHANDLER INSHELL WALLNUTS (JUMBO)	20000	KGS	1

II. A. A. Enterprises:-

S. No.	BE Number	BE date	Country of Origin	Invoice Currency	Item Description	Quantity	UQC	Unit Price
1	1015365	07-08-2023	Chile	USD	INSHELL WALNUTS	36000	KGS	1
2	1019079	18-09-2023	Chile	USD	INSHELL WALNUTS CHILEAN NATURAL CHANDLER 34-36MM	15000	KGS	1.02
3	1020670	06-10-2023	Chile	USD	SHELLED WALNUTS	19800	KGS	1.25
4	1021783	17-10-2023	Chile	USD	INSHELL WALNUTS CHILEAN NATURAL CHANDLER (30-34	18000	KGS	1.01

					MM)			
5	1023328	03-11-2023	Chile	USD	INSHELL WALNUTS CHANDLER 30-34 MM	18000	KGS	1.02
6	1024596	20-11-2023	Chile	USD	INSHELL WALNUTS CHANDLER 34-36MM	15972	KGS	1.02
7	1025524	30-11-2023	Chile	USD	INSHELL WALNUTS CHILEAN NATURAL CHANDLER 36MM+	15000	KGS	1.02
8	1026175	08-12-2023	Chile	USD	INSHELL WALNUTS CHANDLER 34-36MM	15972	KGS	1.02
9	1026462	12-12-2023	Chile	USD	INSHELL WALNUTS CHILEAN NATURAL CHANDLER 34-36MM	15000	KGS	1.02
10	1000525	06-01-2024	Chile	USD	INSHELL WALNUTS CHANDLER 34-36MM	15972	KGS	1.02
11	1001392	19-01-2024	Chile	USD	INSHELL WALNUTS CHANDLER 36+ MM	14520	KGS	1.02
12	1002127	31-01-2024	Chile	USD	INSHELL WALNUTS, CHANDLER 34-36 MM	15972	KGS	1.02
13	1002299	01-02-2024	Chile	USD	INSHELL WALNUTS CHANDLER, 34-36 MM	15972	KGS	1.02
14	1002296	01-02-2024	Chile	USD	INSHELL WALNUTS CHANDLER, 30-34 MM	18000	KGS	1.02
15	1002939	09-02-2024	Chile	USD	INSHELL WALNUTS, CHANDLER 30-34 MM	18000	KGS	1.02
16	1004175	24-02-2024	Chile	USD	INSHELL WALNUTS, CHANDLER 30-34MM	18000	KGS	1.02
17	1012156	19-07-2024	Chile	USD	INSHELL WALLNUTS CANDLER 30-34MM	18000	KGS	1.25
18	1012540	01-08-2024	Chile	USD	INSHELL WALNUTS CHANDLER 36MM	18000	KGS	1.25
19	1012981	13-09-2024	Chile	USD	INSHELL WALNUTS CHANDLER	18000	KGS	1.25

20	10131 21	27-09-2024	Chile	USD	INSHELL WALNUTS, CHANDLER	18000	KGS	1.2 5

The import data of Mundra SEZ for the period July, 2023 to September, 2024 reveals that Harish Kirana Co. and A. A. Enterprises have imported "Walnut In-shell" at the unit price of 1 to 1.25 USD per kgs from Chile. **Further, both the importers have also imported "Walnut Kernel" at the similar price of "Walnut In-shell" at Mundra SEZ i.e. 1.25 - 1.5 USD per Kgs.** When Kernels are removed from the In-Shell Walnut, there is yield in the range of 50% to 60%. It shows that the minimum unit price of Walnut Kernels is always more than double of the unit price of Walnut In-shell. Therefore, both the importers were importing and clearing "Walnut Kernel" by way of under-valuation at the Unit Price of 1.25 - 1.50 USD per Kgs in Domestic Tariff Area (DTA) at Mundra SEZ.

7. Provisions of Law relevant to this case:

Undervaluation is resorted to with the intent to avoid payment of Customs duties. The various provisions of law/ rules relevant to import of the goods in general, liability of goods to confiscation and liability of persons concerned for penalty for improper importation of goods, are summarized below:

(A) Provisions under Customs Act, 1962

7.1 Section 2(33) of the Customs Act, 1962:

"prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.

7.2 Section 2(39) of the Customs Act, 1962:

"Smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113.

7.3 Section 11A (a) of the Customs Act, 1962:

"illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force.

7.4 Section 17 of the Customs Act, 1962:

(1) An importer entering any imported goods under section 46 or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

(3) For the purposes of verification under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods **or otherwise** that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

7.5 Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

7.5.1 In terms of Rule 11 of the CVR, 2007, the importer or his agent shall furnish a declaration disclosing full and accurate details relating to the value of imported goods; and any other statement, information or document including an invoice of the manufacturer or producer of the imported goods. The provisions of the Customs Act, 1962 (52 of 1962) relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished under these rules.

7.5.2 Rule 12 of the CVR, 2007, which pertains to the Rejection of Declared Value specifies that – (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

7.5.3 Further, as per Rule 12 of CVR, 2007 - The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include - (a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed; (b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price; (c) the sale involves special discounts limited to exclusive agents; (d) the mis-declaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production; (e) the non-declaration of parameters such as brand, grade, specifications that have relevance to value; (f) the fraudulent or manipulated documents. It is also specified that in case the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

7.5.4 Section 14 (1) of the Customs Act, 1962 stipulates that – for the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force, the value of the imported goods and export goods shall be the 'transaction value' of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf. Further, in terms of proviso to the said section, the transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and license fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf.

7.5.5 As per the Rule 2 (1) (g) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (hereinafter referred to as CVR, 2007), the 'Transaction Value' means the value referred to in sub-section (1) of section 14 of the Customs Act, 1962. As per Rule 2 (1) (d) of CVR, 2007 "identical goods" means imported goods - (i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued; (ii) produced in the country in which the goods being valued were produced; and (iii) produced by the same person who produced the goods; Rule 2 (1) (f) defines "similar goods" as goods which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark; produced in the country in which the goods being valued were produced; and produced by the same person who produced the goods being valued;

7.5.6 As per Rule 3(1) of the CVR, 2007, subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10.

7.5.7 Rule 4 of the CVR, 2007, relates to transaction value of identical goods and specifies that 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.

7.5.8 Rule 5 relates to Transaction value of similar goods and specified that 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.

7.5.9 Rule 6 specifies that if the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8.

7.5.10 Rule 7 relates to the Deductive value method and specifies that (1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the deductions of commission, 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; the costs of transport and insurance; the customs duties and other taxes payable in India.

7.5.11 Rule 8 relates to the Computed value method and specifies that the Computed value 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.

7.5.12 The Residual method under Rule 9 of the CVR, 2007 specifies that (1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India; Provided that 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 for sale.

7.6 SECTION 28 (4). Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded:-

(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,
(a) collusion; or
(b) any willful misstatement; or
(c) suppression of facts,
by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

7.7 SECTION 46: Entry of goods on importation:-

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.
(4A) The importer who presents a bill of entry shall ensure the following, namely: —
(a) the accuracy and completeness of the information given therein;
(b) the authenticity and validity of any document supporting it; and
(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

7.8 SECTION 111(m) of the Customs Act, 1962-Confiscation of improperly imported goods, etc.

"The following goods brought from a place outside India shall be liable to confiscation:
(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;

7.9 SECTION 112: Penalty for improper importation of goods, etc. - Any person-

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

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

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty 216 [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

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

7.10 SECTION 114A of the Customs Act, 1962- Penalty for short-levy or non-levy of duty in certain cases-

"Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

Provided that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect :

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

Explanation. - For the removal of doubts, it is hereby declared that –

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (8) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person."

7.11 Section 114AA of the Customs Act, 1962 –

Penalty for use of false and incorrect material

"If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods."

7.12 Section 124 of the Customs Act, 1962 –

Issue of show cause notice before confiscation of goods, etc. –

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person –

(a) is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and
(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

7.13 Section 125 of the Customs Act, 1962 –

Option to pay fine in lieu of confiscation. –

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

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.

(B) RELEVANT PROVISIONS OF SEZ ACT, 2005:

Definitions — In this Act, unless the context otherwise requires

………..

(o) “import” means—

(i) bringing goods or receiving services, in a Special Economic Zone, by a Unit or Developer from a place outside India by land, sea or air or by any other mode, whether physical or otherwise; or

(ii) receiving goods, or services by a Unit or Developer from another Unit or Developer of the same Special Economic Zone or a different Special Economic Zone;

Section 21: Single enforcement officer or agency for notified offences.—

1. The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for the purposes of this Act.

2. The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offence or offences committed in a Special Economic Zone.

3. Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection, search or seizure as is provided under the relevant Central Act in respect of the notified offences.

Notification Nos. 2665(E) and 2667(E) dated 05.08.2016:
1. In exercise of the powers conferred by section 22 of the Special Economic Zones Act, 2005 (28 of 2005), the Central Government by Notification No. 2667(E) dated 05.08.2016 issued by the Ministry of Commerce & Industry, has authorized the jurisdictional Customs Commissioner, in respect of offences under the Customs Act, 1962 (52 of 1962) to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone. The enforcement officer(s), for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in a Special Economic Zone or Unit with prior intimation to the Development Commissioner, concerned. Under Section 21(1) of the SEZ Act, 2005, the Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for the purposes of this Act.

2. The Central Government, by the Notification 2665(E) dated 05.08.2016 has notified offences contained in Sections 28, 28AA, 28AAA, 74, 75, 111, 113, 115, 124, 135 and 104 of the Customs Act, 1962 (52 of 1962) as offences under the SEZ Act, 2005.

(C). RELEVANT PROVISIONS OF SPECIAL ECONOMIC ZONES RULES, 2006:

47 (4) Valuation and assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made there under.

47 (5) Refund, Demand, Adjudication, Review and Appeal with regard to matters relating to authorise operations under Special Economic Zones Act, 2005, transactions, and goods and services related thereto, shall be made by the Jurisdictional Customs and Central Excise Authorities in accordance with the relevant provisions contained in the Customs Act, 1962, Central Excise Act, 1944, and the Finance Act, 1994 and the rules made thereunder or the notifications issued thereunder.

8. Valuation of the undervalued imported goods cleared by Harish Kirana Co. and A. A. Enterprises:-

8.1 In the case of consignments imported by **Harish Kirana Co. and A. A. Enterprises** under DTA Thoka Numbers as mentioned in Table-I and II of Para 9.2, the value declared at the time of import did not specify the actual value of the goods as similar goods were imported at the significantly higher value at which at or about the same time in comparable quantities in a comparable commercial transaction were assessed.

8.2 Therefore, it appears that the invoices submitted at the time of import of the said consignments imported under DTA Thoka Numbers were false document in terms of Rule 11 of CVR, 2007. Thus, it is evidently clear that the transaction value declared by the importers for the goods covered under said consignments is liable to be rejected under Rule 12 of the CVR, 2007. For the purpose of re-determination of assessable value of these goods, Rule 3 to Rule 9 of the said Valuation Rules have been applied. As the value of the subject goods cannot be determined under the provisions of sub-rule (1) of Rule 3 of the CVR, 2007, the same is required to be determined by sequentially proceeding in terms of Rule 4 to Rule 9 of the Customs Valuation Rules, 2007. Efforts were made to ascertain the value of the subject goods by perusing the NIDB data relating to contemporaneous import of identical goods of same in all respects, including physical characteristics, quality and reputation as the goods being valued, produced in the country in which the goods being valued were produced, produced by the same person who produced the goods in terms of Rule 4 of CVR, 2007. As no such data is available, the value of impugned goods could not be ascertained under Rule 4 of CVR, 2007. Therefore, the same is required to be determined by sequentially proceedings to Rule 5 of the CVR, 2007.

8.3 Further, it was gathered that other importers imported similar goods at the ports at the same time and the details of the same are as follows:

I. Country of Origin Chile:-

S. No.	Port	BE Number	BE Date	Item Description	Invoice currency	Unit Price
1	INMUN1	3730999	14-12-2022	Shelled Walnuts Broken And Pieces	USD	3.25
2	INMUN1	4345991	25-01-2023	Shelled Walnuts Broken And Pieces	USD	3.25
3	INMUN1	4346816	25-01-2023	Shelled Walnuts Broken And Pieces	USD	3.25

4	INNSA1	4672473	16-02-2023	Walnut Kernels (Grade-2)	USD	2.1
5	INNSA1	4672473	16-02-2023	Walnut Kernels (Grade-2)	USD	2.1
6	INNSA1	4703135	18-02-2023	Walnut Kernels (Grade-2)	USD	2.1
7	INNSA1	4703135	18-02-2023	Walnut Kernels (Grade-2)	USD	2.1
8	INNSA1	4722158	20-02-2023	Walnut Kernels	USD	3.02
9	INMUN1	4776903	24-02-2023	Shelled Walnuts Broken And Pieces	USD	3.25
10	INMUN1	4776905	24-02-2023	Shelled Walnuts Broken And Pieces	USD	3.25
11	INMUN1	4889665	03-03-2023	Shelled Walnuts-Broken And Pieces	USD	3
12	INMUN1	4888495	03-03-2023	Shelled Walnuts-Broken And Pieces	USD	3
13	INMUN1	4889081	03-03-2023	Shelled Walnuts-Broken And Pieces	USD	3
14	INMUN1	4889662	03-03-2023	Shelled Walnuts-Broken And Pieces	USD	3
15	INNSA1	5063823	15-03-2023	Walnut Kernels	USD	3.09
16	INNSA1	5570651	18-04-2023	Walnut Kernels (Grade 2)	USD	2.1
17	INNSA1	6574611	24-06-2023	Walnut Shelled (Grade 2)	USD	2.25
18	INNSA1	7323328	12-08-2023	Walnuts Shelled	USD	2.8
19	INNSA1	7323328	12-08-2023	Walnuts Shelled	USD	2.8
20	INNSA1	7323328	12-08-2023	Walnuts Shelled	USD	2.8
21	INNSA1	7323328	12-08-2023	Walnuts Shelled	USD	2.8
22	INBDM6	7337838	13-08-2023	Shelled Walnut (1800 Ctn/10kg)	USD	2.1
23	INMUN1	7544067	26-08-2023	Shelled Walnuts	USD	2.85
24	INMUN1	7681332	05-09-2023	Shelled Walnuts	USD	2.8
25	INBDM	79060	19-09-2023	Shelled Walnut (2000	USD	2.11

	6	64		Ctn/10kg)		
26	INNSA1	81003 15	30-09-2023	Walnut Kernels	USD	2.6
27	INNSA1	81026 34	01-10-2023	Walnut Kernels	USD	2.6
28	INMUN 1	82350 10	10-10-2023	Shelled Walnuts	USD	2.8
29	INBDM 6	85784 96	02-11-2023	Shelled Walnut 80% Extra Light Halves Machine Cracked (1800 Ctn/10kg)	USD	2.1
30	INNSA1	86315 83	04-11-2023	Walnut Kernels	USD	2.1
31	INNSA1	86338 08	05-11-2023	Walnut Kernels	USD	2.6
32	INBDM 6	87045 80	09-11-2023	Shelled Walnut Chandler Halves 80/20 (1800 Ctn/10kg)	USD	2.1
33	INMUN 1	89444 62	25-11-2023	Walnut Kernels	USD	2.6
34	INMUN 1	89444 78	25-11-2023	Walnut Kernels	USD	2.66
35	INNSA1	94950 44	01-01-2024	Walnut Kernels	USD	3.25
36	INBDM 6	95349 70	05-01-2024	Shelled Walnut 80% Extra Light Haves Machine Cracked (1800 Ctn/10kg)	USD	2.1

8.4 On perusal of NIDB import data the value of the contemporaneous import of the similar goods at other ports is detailed at Para 8.3 above. Accordingly, it appears that the value declared by the importer appears to be under-valued in comparison with contemporary values available in NIDB data, which resulted in short levy of Customs duty. Hence, the value declared is not found to be the transaction value and is liable for rejection under Rule 12 of the Customs Valuation (Determination of value of imported Goods) Rules, 2007. Walnut Kernel have been imported in the name of Harish Kirana Co. and A. A. Enterprises during the period January, 2023 to January, 2024 from Chile, therefore, the contemporaneous imports about the same time of similar goods having comparable quantity have been taken which is available in NIDB data, hence the value is re-determined under the provisions of Rule 5 of the said Rules ibid. Further, as per sub rule 2 of Rule 5 if the more than one transaction value of similar goods is found, the lowest such value shall be used to determine the value of imported goods, therefore, the value has been re-determined as USD 2.1 per Kgs for imports made from Chile.

8.5 Accordingly, actual value of the goods covered under DTA Thoka Numbers has been re-determined under Section 14 read with Rule 5 of the CVR, 2007 which provides for valuation on the basis of Transaction Value of similar goods and specified that 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. After doing the same, the assessable value has been arrived at and differential duties upon the same have been calculated. **(Annexure- I, II)**

9. Duty Liability

9.1 The differential duty liable to be demanded under Section 28 (4) of the Customs Act, 1962 in relation to the imports of goods vide DTA Thoka Numbers in respect of past consignments in the name of **Harish Kirana Co. and A. A. Enterprises** is computed in **Annexure I & II.**

9.2 The gist of the relevant details appearing in the said **'Annexure-I and II'** is produced in the **Table-I and II** is as under:

TABLE-I
Harish Kirana Co,

S. No.	Thoka Number	Thoka date	Declared/ Assessed value (In Rs.)	Re-determined Assessable value (In Rs.)	Duty paid (In Rs.)	Duty liable to be paid (In Rs.)	Diff Duty payable (In Rs.)
1	2001468	24-01-2023	12360290.83	17249404.63	13596319.91	18974345.09	5378025.18
2	2002828	11-02-2023	5020856.25	7006856.25	5522941.88	7707541.88	2184600.00
3	2004313	07-03-2023	5851648.69	8166268.69	6436813.56	8982895.56	2546082.00
4	2012377	08-07-2023	11337882.19	18961872.19	12471670.41	20858059.41	8386389.00
Total			**34570678**	**51384402**	**38027746**	**56522842**	**18495096**

TABLE-II
A. A. Enterprises

S. No.	Thoka Number	Thoka date	Declared/ Assessed value (In Rs.)	Re-determined Assessable value (In Rs.)	Duty paid (In Rs.)	Duty liable to be paid (In Rs.)	Diff Duty payable (In Rs.)
1	2019204	02-10-2023	2080237.50	3494799.00	2288261.25	3844278.90	1556017.65
2	2024919	30-11-2023	2081475.00	3496878.00	2289622.50	3846565.80	1556943.30
3	2001773	22-01-2024	2081475.00	3496878.00	2289622.50	3846565.80	1556943.30
		Total	**6243188**	**10488555**	**6867506**	**11537411**	**4669905**

Summary of Investigation by DRI

10. **<u>From the investigation carried out by DRI, as described in the foregoing paras, the following facts appear to emerge</u>**: -

10.1 Shri Harish Kumar Gupta created firm namely Harish Kirana Co. in his name and another proprietorship firm namely A. A. Enterprises in the name of Shri Ashok Sharma for the purpose of evasion of Customs Duty by way of under valuation. He imported "Walnut Kernel" from different suppliers in Dubai i.e. Al Arab Dates Factory FZCO, Dubai & South East Global Impex PTE Ltd, Dubai in the name of **Harish Kirana Co. & A. A. Enterprises** by way of gross undervaluation at Mundra SEZ. During his statement recorded on 31.05.2024, Shri Harish Kumar Gupta stated to have imported Walnut Kernel at lower price on the suggestion of Shri Kush Agrawal who resides in Dubai. Shri Harish Kumar Gupta has been engaged in trading of dry fruits for many years and importing goods from different suppliers. It appears that he was trying to name other person to mislead the investigation. Based on the under-valued invoices for the purpose of evasion of customs duty, the Bills of Entry were filed in the name of Harish Kirana Co. and A. A. Enterprises for clearance of the imported goods. Shri Harish Kumar Gupta admitted under-valuation in import of Walnut Kernel by his firm i.e. Harish Kirna Co. and he also admitted to create another firm i.e. A. A. Enterprises in the name of Shri Ashok Sharma.

10.2 The import data of Mundra SEZ for the period January, 2023 to January, 2024 reveals that Harish Kirana Co. and A. A. Enterprises imported "Walnut In-shell" at the unit price of 1 to 1.25 USD per kgs from Chile. Further, they also imported "Walnut Kernel" at the similar price of "Walnut In-shell" at Mundra SEZ i.e. 1.25 - 1.50 USD per Kgs. When Kernels are removed from the In-Shell Walnut, there is yield in the range of 50% to 60%. It shows that the minimum unit price of Walnut Kernels is always more than double of the unit price of Walnut In-shell. Therefore, Harish Kirana Co. and A. A. Enterprises were importing and clearing “Walnut Kernel” by way of under-valuation at the Unit Price of 1.25 - 1.50 USD per Kgs in Domestic Tariff Area (DTA) at Mundra SEZ.

10.3 It further appears that the actual value of the imported goods had not been declared in the said invoices or the Thoka Numbers and that importer had not only failed to make a truthful declaration regarding the contents of the Thoka Numbers, but had also used under-valued invoices for the purpose of filing the said Thoka Numbers. It appears that by not declaring the actual value of the imported goods, importer had contravened the provisions of Section 46(4) of the Customs Act, 1962.

10.4 Circular No. 17/2011- Customs dated 08.04.2011 issued by Ministry of Finance, Department of Revenue, Central Board of Excise & Customs vide F.No.450/26/2011-Cus. IV, Section 17 of the Customs Act, 1962 provides for self-assessment of duty by the importer himself on the goods imported, by filling a Bill of Entry in the electronic form. The importer at the time of self-assessment is required ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting Bill of Entry. It was seen that both the importers had submitted under-valued invoices and had failed to disclose the correct value of the goods in respect of the imported goods at the time of importation.

10.5 From the facts given above it appears that Harish Kirana Co. and A. A. Enterprises had wilfully mis-declared the value of the goods. Both the importers had submitted under-valued invoices to evade Customs duty by wilful mis-statement of value of the goods. Hence, it appears that the Customs duty short paid is recoverable in terms of clause (b) of Section 28(4) of the Customs Act, 1962 due to wilful mis-statement of value of the goods by the importers before the Customs Authorities.

10.6 It further appears that Harish Kirana Co. and A. A. Enterprises had suppressed the actual value of the value of the goods and not declared the correct value. Hence, suppressing facts from Assessing Officer about the actual value of the goods, Customs duty was evaded. The same is recoverable in terms of clause (c) of Section 28(4) of the Customs Act, 1962 due to suppression of actual value of the goods.

11. Demand of differential duty, liability to confiscation and penalty.

11.1 The declared value of Rs. 3,45,70,678 /- (Rupees Three Crore Forty Five Lakhs Seventy Thousand Six Hundred and Seventy Eight only) of the goods imported and cleared by Harish Kirana Co. in respect of 04 Thoka Numbers mentioned in Table –I of Para 9.2 above, and as detailed in Annexure I to the SCN, is liable to be rejected under Rule 12 of CVR, 2007 and proposed to be re-determined as Rs. 5,13,84,402 /- (Rupees Five Crore Thirteen Lakhs Eighty Four Thousand Four Hundred and Two Only) in terms of Section 14 of the Customs Act, 1962, read with Rule 5 of CVR, 2007.

11.2 The declared value of Rs. 62,43,188/-(Rupees Sixty Two Lakhs Forty Three Thousand One Hundred and Eighty Eight only) of the goods imported and cleared by A. A. Enterprises in respect of 03 Thoka Numbers mentioned in Table –II of Para 9.2 above and as detailed in Annexure II to this SCN, is liable to be rejected under Rule 12 of CVR, 2007 and proposed to be re-determined as Rs. 1,04,88,555/- (Rupees One Crore Four Lakhs Eighty Eight Thousand Five Hundred and Fifty Five Only) in terms of Section 14 of the Customs Act, 1962, read with Rule 5 of CVR, 2007.

11.3 It appears that Harish Kirana Co. have contravened the provisions of Section 46(4) and Section 14 of the Customs Act, 1962 by mis-declaring the value, in respect of the imported goods cleared in the past under Thoka Numbers mentioned in Table I of Para 9.2, having total re-determined assessable value of Rs. 5,13,84,402/- (Rupees Five Crore Thirteen Lakhs Eighty Four Thousand Four Hundred and Two Only) by gross mis-declaration of value. Accordingly, it appears that the said goods are liable for confiscation under Section 111(m) of the Customs Act, 1962.

11.4 It appears that A. A. Enterprises have contravened the provisions of Section 46(4) and Section 14 of the Customs Act, 1962 by mis-declaring the value, in respect of the imported goods cleared in the past under DTA Thoka Numbers mentioned in Table II of Para 9.2, having total re-determined assessable value of Rs. 1,04,88,555/- (Rupees One Crore Four Lakhs Eighty Eight Thousand Five Hundred and Fifty Five Only) by gross mis-declaration of value. Accordingly, it appears that the said goods are liable for confiscation under Section 111(m) of the Customs Act, 1962.

11.5 Further, in respect of past consignments covered by DTA Thoka Numbers, differential duty amounting to Rs. 1,84,95,096/- (Rupees One Crore Eighty Four Lakhs Ninety Five Thousand and Ninety Six only), as worked out in the Annexure I and mentioned in Table I of Para 9.2, appears liable to be recovered from Harish Kirana Co. under Section 28 (4) of the Customs Act, 1962 along with interest under Section 28AA ibid.

11.6 Further, in respect of past consignments covered by DTA Thoka Number, differential duty amounting to Rs. 46,69,905/- (Rupees Forty Six Lakhs Sixty Nine Thousand Nine Hundred and Five only), as worked out in the Annexure II and mentioned in Table II of Para 9.2, appears liable to be recovered from A. A. Enterprises under Section 28 (4) of the Customs Act, 1962 along with interest under Section 28AA ibid.

11.7 Further, as the duty was short paid by wilful mis-statement and suppression of facts by both the importers, as discussed in paras 10.5 and 10.6 above, Harish Kirana Co. and A. A. Enterprises appears to liable for penalty under the provisions of Section 114A of the Customs Act, 1962.

12. Role played by various persons

12.1 Role played by Shri Harish Kumar Gupta, Proprietor of Harish Kirana Co.

Shri Harish Kumar Gupta created proprietorship firm namely Harish Kirana Co. in his own name in the year 2019 and A. A. Enterprises in the name of Shri Ashok Sharma in July, 2023. Shri Ashok Sharma was known / acquainted to him. Both the firms were solely formed for the purpose of evasion of Customs Duty by way of under valuation. He is beneficial owner of the goods i.e Walnut Kernel imported in the name of A. A. Enterprises. He imported Walnut Kernel from Dubai by way of gross undervaluation at Mundra SEZ. The orders for import on behalf of Harish Kirana Co. and A. A. Enterprises were being placed by him and imported goods were sold in domestic market by him only. Based on the under-valued invoices for the purpose of evasion of customs duty, the Thoka Numbers were filed in the name of **Harish Kirana Co. and A. A. Enterprises** for clearance of the imported goods. This fact of orders for import on behalf of Harish Kirana Co. and A. A. Enterprises were being placed by him and imported goods were sold in domestic market by him only was also admitted by him in his statement recorded on 31.05.2024 under Section 108 of the Customs Act, 1962. Further, for all the Thoka Numbers filed in the name of Harish Kirana Co. and A. A. Enterprises, Shri Harish Kumar Gupta, appears to have done the acts of omission and commission which appear to have rendered the said goods liable to confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, Shri Harish Kumar Gupta appears liable for penalty under the provisions of Section 112(a) and Section 112(b) of the Customs Act, 1962.

Further, Shri Harish Kumar Gupta, knowingly and intentionally submitted invoices, declarations under the provisions of CVR, 2007, which did not divulge the actual value of the imported goods. It therefore appears that the documents and declarations used/ made at the time of the import of the consignments were knowingly and intentionally false / incorrect. Accordingly, Shri Harish Kumar Gupta appears liable for penalty under the provisions of Section 114AA of the Customs Act, 1962.

12.2 Role played by Shri Ashok Sharma, Proprietor of A. A. Enterprises;

Shri Ashok Sharma is proprietor of A. A. Enterprises. A. A. Enterprises was created in his name by his acquainted, Shri Harish Kumar Gupta in July, 2023. Shri Ashok Sharma was aware that the firm, A. A. Enterprises was solely formed for the purpose of evasion of Customs Duty by way of under valuation. Walnut Kernels were imported from Dubai by way of gross under valuation at Mundra SEZ. He was getting renumeration of Rs. 25,000-30,000 per container from Shri Harish Kumar Gupta. Based on the under-valued invoices for the purpose of evasion of customs duty, the Thoka Numbers were filed in the name of A. A. Enterprises for clearance of the imported goods. Further, for all the Thoka Numbers filed in the name of A. A. Enterprises, for clearance of the imported goods, Shri Ashok Sharma, appears to have done the acts of omission and commission which appear to have rendered the said goods liable to confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, Shri Ashok Sharma appears liable for penalty under the provisions of Section 112(a) and Section 112(b) of the Customs Act, 1962.

13. The investigation in the matter has revealed that Harish Kirana Co. and A. A. Enterprises have imported "Walnut Kernel" by way of under-valuation at Mundra SEZ. During this period, Harish Kirana Co. and A. A. Enterprises had filed DTA Thoka Numbers for import of "Walnut Kernel ", at Mundra SEZ having total re-determined Assessable Value of Rs. Rs. 5,13,84,402/-, Rs. 1,04,88,555/-, respectively (as detailed in Annexure- I and II) by way of gross under-valuation. In view of the above stated under-valuation, wilful mis-statement and suppression of facts, Harish Kirana Co. and A. A. Enterprises has evaded payment of Customs duty aggregating to Rs. 1,84,95,096/- and Rs. 46,69,905/-, respectively as detailed in Annexures- I and II attached with this SCN.

14. Now, Therefore,

14.1 Shri Harish Kumar Gupta, Proprietor of Harish Kirana Co. (IEC: AKXPG2830R) and **M/s Harish Kirana Co.** with regard to the imports made vide Thoka Numbers specified in Table I of Para 9.2 above, are hereby called upon to show cause, in writing, to the Commissioner of Customs, Custom House, Mundra, having his office at 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370421 within 30 (Thirty) days from the receipt of this notice, as to why

(i) The value of the goods imported vide 04 Thoka Numbers specified in Table I of Para 9.2 above should not be rejected under rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and why the same should not be re-determined as **Rs. 5,13,84,402/-** (Rupees Five Crore Thirteen Lakhs Eighty Four Thousand Four Hundred and Two Only) in terms of Section 14 of the Customs Act, 1962, read with Rule 5 of CVR, 2007;

(ii) The goods, imported vide 04 Thoka Numbers specified Table I of Para 9.2 above, having re-determined value of **Rs. 5,13,84,402/-** (Rupees Five Crore Thirteen Lakhs Eighty Four Thousand Four Hundred and Two Only), should not be held liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962;

(iii) The differential duty payable i.e. **Rs. 1,84,95,096/-** (Rupees One Crore Eighty Four Lakhs Ninety Five Thousand and Ninety Six only) should not be demanded and recovered under the provision of Section 28(4) of the Customs Act, 1962;

(iv) The interest on the duty short paid should not be demanded and recovered from them under Section 28AA of the Act ibid;

(v) Penalty should not be imposed upon M/s Harish Kirana Co. under Section 114A of the Customs Act, 1962;

(vi) Penalty should not be imposed on Shri Harish Kumar Gupta under Section 112(a) and 112(b) of the Customs Act, 1962;

(vii) Penalty should not be imposed on Shri Harish Kumar Gupta under Section 114AA of the Customs Act, 1962.

14.2 Shri Harish Kumar Gupta, beneficial owner of A. A. Enterprises and A.A. Enterprises (IEC: AXKPS8029E) with regard to the imports made vide Thoka Numbers specified in Table II of Para 9.2 above, are hereby called upon to show cause, in writing, to the Commissioner of Customs, Custom House, Mundra, having his office at 5B, Port User Building, Mundra Port, Mundra, Kutch, Gujarat-370421 within 30 (Thirty) days from the receipt of this notice, as to why:

(i) The value of the goods imported vide 03 Thoka Numbers specified in Table II of Para 9.2 above should not be rejected under rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and why the same should not be re-determined as **Rs. 1,04,88,555/-** (Rupees One Crore Four Lakhs Eighty Eight Thousand Five Hundred and Fifty Five Only) in terms of Section 14 of the Customs Act, 1962, read with Rule 5 of CVR, 2007;

(ii) The goods, imported vide 03 Thoka Numbers specified Table II of Para 9.2 above, having re-determined value of **Rs. 1,04,88,555/-** (Rupees One Crore Four Lakhs Eighty Eight Thousand Five Hundred and Fifty Five Only) should not be held liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962;

(iii) The differential customs duty payable i.e. **Rs. 46,69,905/-** (Rupees Forty Six Lakhs Sixty Nine Thousand Nine Hundred and Five only) should not be demanded and recovered under the provision of section 28(4) of the Customs Act, 1962;

(iv) The interest on the duty short paid should not be demanded and recovered from them under Section 28AA of the Act ibid;

(v) Penalty should not be imposed on A. A. Enterprises under Section 114A of the Customs Act, 1962;

(vi) Penalty should not be imposed on Shri Harish Kumar Gupta under Section 112(a) and 112(b) of the Customs Act, 1962;

(vii) Penalty should not be imposed on Shri Ashok Kumar Sharma under Section 112(a) and 112(b) of the Customs Act, 1962;

(viii) Penalty should not be imposed on Shri Harish Kumar Gupta under Section 114AA of the Customs Act, 1962.

WRITTEN SUBMISSION AND PERSONAL HEARING

15. I observe that 'Audi alteram partem', is an important principal of natural justice that dictates to hear the other side before passing any order. Therefore, personal hearing in the matter was granted to the noticee on 28.01.2026, 27.03.2026 and 16.04.2026. Accordingly, Shri Ajay Kumar, authorized representative for all 4 noticees i.e Harish Kirana Co., Shri Harish Kumar Gupta, M/s A. A. Enterprises and Shri Ashok Sharma appeared for personal hearing through virtual mode on 16.04.2026. During the personal hearing, he reiterated the submissions as made in the reply dated 05.07.2025 wherein he interalia stated as below:

i. Pre-Notice Consultation:
The noticees have contended that no pre-notice consultation was issued before the SCN as required under the Pre-Notice Consultation Regulations, 2018, and have relied upon the judgments of the Delhi High Court in Gulati Enterprisesvs. CBIC & Ors. and Amadeus India Pvt. Ltd. vs. Pr. Commissioner, C.Ex., ST & CT (2019) to urge that the SCN is vitiated on this ground.

ii. Combined SCN for Both Firms:
The noticees have contended that M/s Harish Kirana Co. and M/s A. A. Enterprises are separate legal entities having different PAN numbers and GST registrations, and that the issuance of a combined SCN is

legally untenable. They have further contended that the suppliers of the two firms were different — M/s Al Arab Dates Factory FZCO, Dubai for M/s Harish Kirana Co. and M/s Southeast Global Impax PTE Ltd., Singapore for M/s A. A. Enterprises — and that the allegation of the two firms working in connivance is based on mere assumption and presumption.

iii. Yield Factor and Grade Variations:
The noticees have contended that the yield of 50-60% stated in the SCN is incorrect and that the actual yield of Walnut Kernel from Walnut Inshell is only 33-40% as per the Walnut Reports of 2023 of Chile. They have further contended that Walnut Kernels are available in various grades depending upon factors such as dryness, cleanliness, freedom from shell and foreign material, insect injury, decay, rancidity, and damage caused by shriveling, mold, and discoloration, and that the size and colour of Walnut Kernels also vary significantly across different categories. It has accordingly been urged that in view of such variations in yield, grade, size, and colour, no two consignments of Walnut Kernel can be compared with each other, and therefore the department's theory of under-valuation based on yield is fundamentally flawed and unsustainable.

iv. Beneficial Ownership and Individual Penalties:
The noticees have contended that the term 'beneficial owner' is not defined anywhere in the Customs Act, 1962, and therefore Shri Harish Kumar Gupta cannot be held liable as the beneficial owner of M/s A. A. Enterprises merely on the basis of assumption and presumption. They have further contended that both M/s Harish Kirana Co. and M/s A. A. Enterprises are separate legal persons having separate PAN numbers under the Income Tax Act and separate GST registrations under the GST Act, 2017, and that the law of the land recognizes them as distinct legal entities. It has accordingly been urged that imposition of individual penalties under Sections 112(a), 112(b), and 114AA on Shri Harish Kumar Gupta in respect of M/s A. A. Enterprises amounts to double penalty on the same person, which is not sustainable in law.

DISCUSSION AND FINDING

16. I have carefully gone through the Show Cause Notice, the statements of the concerned persons recorded under Section 108 of the Customs Act, 1962, all the Relied Upon Documents, the written submissions filed by M/s Harish Kirana Co., M/s A. A. Enterprises, Shri Harish Kumar Gupta and Shri Ashok Sharma and all other material available on record. I have also duly considered the oral submissions advanced by the noticees' authorized representatives during the personal hearing granted in the matter. I find that the following issues arise for my determination in the present proceedings:

(i) Whether the declared transaction value of 'Walnut Kernel' imported by M/s Harish Kirana Co. and M/s A. A. Enterprises is liable to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (hereinafter referred to as 'CVR, 2007') and whether the assessable value is required to be re-determined under Rule 5 of CVR, 2007 read with Section 14 of the Customs Act, 1962;

(ii) Whether the goods imported under the DTA Thoka Numbers mentioned in Table I and Table II of Para 9.2 of the SCN are liable to confiscation under Section 111(m) of the Customs Act, 1962;

(iii) Whether the differential duty of **Rs. 1,84,95,096/-** is recoverable from M/s Harish Kirana Co. and differential duty of **Rs. 46,69,905/-** is recoverable from Shri M/s A. A. Enterprises respectively under Section 28(4) of the Customs Act, 1962, along with interest under Section 28AA ibid;

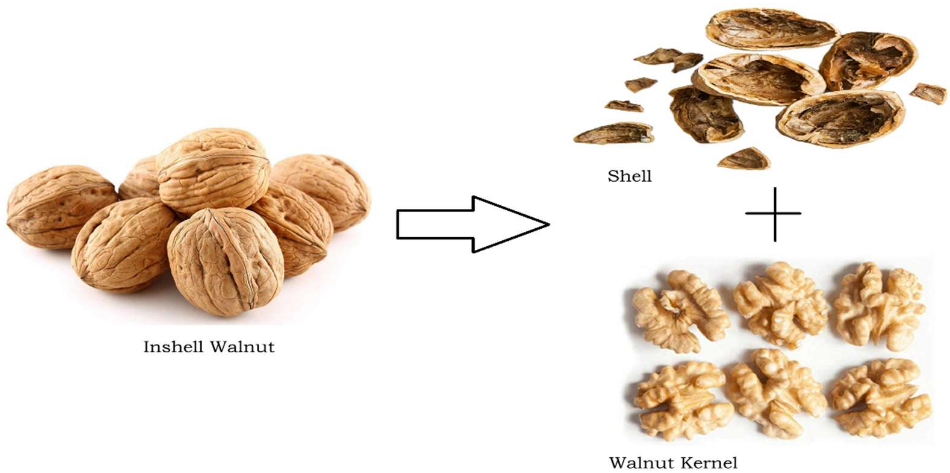
(iv) Whether penalties are imposable on M/s Harish Kirana Co. and M/s A. A. Enterprises under Section 114A, on Shri Harish Kumar Gupta under Sections 112(a), 112(b) and 114AA, and on Shri Ashok Sharma under Sections 112(a) and 112(b) of the Customs Act, 1962.

17. I find that intelligence was developed by the DRI, Indore Zonal Unit indicating evasion of Customs duty by way of under-valuation of 'Walnut Kernel' imported at Mundra SEZ. The intelligence specifically pointed to M/s Harish Kirana Co. and M/s A. A. Enterprises, as being engaged in such evasion. Both the firms were importing 'Walnut Kernel' under Customs Tariff Item (CTI) 0802 32 00 and clearing the same into the Domestic Tariff Area (DTA) at a declared unit price of USD 1.25 to 1.50 per Kg, which is a price comparable to 'Walnut Inshell' imported by the same firms and is commercially and logically untenable given that Walnut Kernel is a processed product obtained from Walnut Inshell and must always command a significantly higher price.

17.1 Acting upon the intelligence, search operations were conducted and Statements of the concerned persons were recorded under Section 108 of the Customs Act, 1962. Investigation revealed that Shri Harish Kumar Gupta had himself admitted under-valuation of Walnut Kernel by his firm i.e M/s Harish Kirana & Co. to save Customs duty and also admitted that he created M/s A. A. Enterprises as a dummy firm in the name of Shri Ashok Sharma, a 75-year-old retired individual with no background in import trade, solely for further evasion of duty through under-valuation, and admitted to placing all import orders, funding all foreign remittances, and selling all imported goods in the domestic market on behalf of M/s A. A. Enterprises as well. He also deliberately destroyed his iPhone 14 mobile phone containing chat evidence of under-valuation upon learning of the search. Shri Ashok Sharma, the nominal proprietor of M/s A. A. Enterprises, confirmed that the firm was entirely created and operated by Shri Harish Kumar Gupta and that he merely received Rs. 25,000 to 30,000 per container for lending his name.

18. Nature of the Goods - Walnut Kernel:

18.1 Before proceeding to the question of valuation, it is necessary to first understand the true nature of the impugned goods i.e 'Walnut Kernel'. Being a processed product derived from 'Walnut Inshell', the value of Walnut Kernel is inherently and directly linked to the price of its raw material i.e Walnut Inshell. A proper understanding of this relationship is therefore a necessary starting point for determining the correct value of the impugned goods. The pictorial representation of the same is produced below:



18.2 Walnut Inshell is the whole walnut fruit enclosed within its hard outer shell. To obtain the edible inner portion i.e the Walnut Kernel, the Inshell walnut undergoes drying, and shelling. These operations involve mechanical processing, labour, costs, and result in significant by-products and wastage in the form of shells, broken pieces, and debris. The Walnut Kernel is the commercially valuable edible product and is sold as a ready-to-consume commodity.

18.3 A critical commercial reality that governs the price relationship between these two products is the 'yield factor'. When Walnut Kernels are extracted from Walnut Inshell, the yield obtained is in the range of 50% to 60% by weight, depending upon the variety and quality of the Walnut Inshell. This means that to produce 1 Kg of Walnut Kernel, one requires approximately 1.67 Kg to 2 Kg of Walnut Inshell as raw material, in addition to incurring the costs of processing, shelling, labour etc. The commercial implication of this is straightforward: the price at which an importer procures Walnut Kernel must necessarily be higher than the price at which he procures Walnut Inshell, as the former involves additional processing costs, shelling charges over and above the raw material cost, further compounded by the yield loss in the range of 50% to 60% which means that a significantly larger quantity of Walnut Inshell is required to produce every kilogram of Walnut Kernel. This is a basic and well-accepted commercial reality of the dry fruit trade, and admits of no dispute.

19. Analysis of Declared Values and Rejection under Rule 12 of CVR, 2007:

19.1 The first and foundational question to be addressed is whether the declared transaction value of 'Walnut Kernel' imported by both firms deserves acceptance under Section 14(1) of the Customs Act, 1962, or whether it is liable to be rejected under Rule 12 of CVR, 2007. For this purpose, it is necessary to examine the declared prices in the context of the import data on record.

19.2 The import data of M/s Harish Kirana Co. reveals that the firm imported 'Walnut Inshell' at Mundra SEZ from Chile during the period July 2023 to February 2024 in 17 consignments, at unit prices consistently ranging from USD 1.00 to USD 1.05 per Kg. Further, the import data of M/s A. A. Enterprises similarly reveals that this firm imported 'Walnut Inshell' at Mundra SEZ from Chile during the period August 2023 to September 2024 in 20 consignments at unit prices ranged from USD 1.00 to USD 1.25 per Kg.

19.3 Against this background, the DTA Thoka Numbers filed for clearance of 'Walnut Kernel' by M/s Harish Kirana Co. and M/s A. A. Enterprises reflect the unit prices in range of USD 1.25 to USD 1.50 per Kg, a price range that is almost identical to the price at which the same firms were importing 'Walnut Inshell' from Chile. As established in Para 18.3 above, this is commercially and physically impossible. To reiterate the economic logic: if Walnut Inshell costs USD 1.00 to USD 1.05 per Kg, and if one requires at minimum 1.67 Kg to 2 Kg of Walnut Inshell to produce 1 Kg of Walnut Kernel, then the raw material cost alone for 1 Kg of Walnut Kernel works out to USD 1.67 to USD 2.1 per Kg, without even adding processing costs, labour etc. A declaration of USD 1.25 to USD 1.50 per Kg for Walnut Kernel is therefore not merely questionable, it is demonstrably and mathematically impossible to represent the true transaction value.

19.4 Furthermore, the NIDB data of contemporaneous imports of similar goods, Walnut Kernel / Shelled Walnut of Chilean origin during the overlapping period clearly establishes that such goods were being imported by other importers at significantly higher prices. The NIDB data at Para 8.3 of the SCN presents 36 entries of such contemporaneous imports from Chile with higher value. A careful analysis of the above NIDB data reveals that not a single contemporaneous import of Walnut Kernel / Shelled Walnut from Chile at any Indian port during the period under reference was assessed at a unit price anywhere near USD 1.25 to USD 1.50 per Kg. The range of contemporaneous import prices spans USD 2.10 to USD 3.25 per Kg. Therefore, the declared prices of USD 1.25 to USD 1.50 per Kg are not only below the average but are 29% to 41% below even the lowest contemporaneous value. This disparity is not minor or explainable by commercial variation but it is a significant, systematic, and substantial under-valuation.

19.5 In view of the above analysis, both from the logical standpoint of the yield factor establishing the impossibility of the declared price, and from the NIDB data establishing the significantly higher prices at which similar goods were being imported at or about the same time, I find that there is more than adequate reason to doubt the truth and accuracy of the transaction value declared in the Thoka Numbers by both M/s Harish Kirana Co. and M/s A. A. Enterprises, in terms of Rule 12(1) of CVR, 2007. Furthermore, this is not a case where the doubt is based merely on statistical comparison alone. The doubt is firmly corroborated by the categorical admission made by Shri Harish Kumar Gupta himself in his statement dated 31.05.2024 that Walnut Kernel was imported at under-valued prices by his firm to save duty, and that he had intentionally destroyed his iPhone 14 which contained chat evidence of under-valuation. The invoices submitted at the time of import were, therefore, false documents in terms of Rule 11 of CVR, 2007. Accordingly, the declared transaction value is hereby rejected under Rule 12 of CVR, 2007.

20. Re-determination of Assessable Value under Rule 5 of CVR, 2007:

20.1 Having rejected the declared transaction value under Rule 12 of CVR, 2007, the assessable value is required to be re-determined by proceeding sequentially through Rules 4 to 9 of CVR, 2007, as mandated by Rule 12(2) thereof read with Section 14 of the Customs Act, 1962.

20.2 Rule 4 of CVR, 2007 provides for determination of value on the basis of the transaction value of identical goods i.e goods which are same in all respects including physical characteristics, quality, reputation and produced by the same person in the same country. As noted in the SCN, no NIDB data was available for identical goods (i.e. goods produced by the exact same producer in Chile). Accordingly, the value cannot be determined under Rule 4, and the exercise proceeds sequentially to Rule 5.

20.3 Rule 5 of CVR, 2007 provides for determination of value on the basis of the transaction value of similar goods. 'Similar goods' are defined under Rule 2(1)(f) of CVR, 2007 as goods which, although not alike in all respects, have like characteristics and like component materials enabling them to perform the same functions and to be commercially interchangeable with the goods being valued, having regard to quality, reputation and the existence of trade mark, and are produced in the same country. The NIDB data at Para 8.3 of the SCN contains 36 entries of contemporaneous imports of Walnut Kernel, Shelled Walnuts, all of Chilean origin, and all imported at Indian ports at or about the same time as the subject imports. These constitute 'similar goods' for the purpose of Rule 5 of CVR, 2007 i.e they are shelled walnut products from Chile, commercially interchangeable with the goods being valued, capable of performing the same function as a ready-to-eat dry fruit product.

20.4 Sub-rule (2) of Rule 5 of CVR, 2007 specifically provides that where more than one transaction value of similar goods is found, the lowest such value shall be used to determine the value of imported goods. The NIDB data shows contemporaneous import values ranging from USD 2.10 to USD 3.25 per Kg for similar goods of Chilean origin. In strict compliance with sub-rule (2) of Rule 5, the lowest available contemporaneous transaction value of USD 2.10 per Kg has been adopted for re-determination of the assessable value. Accordingly, the assessable value has been re-determined at **USD 2.10 per Kg** under Rule 5 of CVR, 2007 read with Section 14 of the Customs Act, 1962.

20.5 In view of above, the importer wise re-determined value is produced below:

M/s Harish Kirana Co.: The declared assessable value of Rs. 3,45,70,678/- in respect of 04 Thoka Numbers detailed in Table I of Para 9.2 of the SCN is hereby rejected under Rule 12 of CVR, 2007 and the assessable value is re-determined as **Rs. 5,13,84,402/-** under Rule 5 of CVR, 2007 read with Section 14 of the Customs Act, 1962.

M/s A. A. Enterprises: The declared assessable value of Rs. 62,43,188/- in respect of 03 Thoka Numbers detailed in Table II of Para 9.2 of the SCN is hereby rejected under Rule 12 of CVR, 2007 and the assessable value is re-determined as **Rs. 1,04,88,555/-** under Rule 5 of CVR, 2007 read with Section 14 of the Customs Act, 1962.

21. Discussion on Submissions of the Noticees

21.1 On the objection regarding non-issuance of Pre-Notice Consultation**:**

The noticees have contended that no pre-notice consultation was issued before the SCN as required under the Pre-Notice Consultation Regulations, 2018, and have relied upon the judgments of the Delhi High Court in Gulati Enterprisesvs. CBIC & Ors. and Amadeus India Pvt. Ltd. vs. Pr. Commissioner, C.Ex., ST & CT (2019) to urge that the SCN is vitiated on this ground. He also relied upon the instruction of CBIC that "Pre-notice Consultation" mandatory in all cases comprising a demand of Rs. 50 lakhs or more.

I have carefully gone through the submission and find that the reliance placed by the noticees on *Gulati Enterprises v. CBIC* and *Amadeus India Pvt. Ltd. v. Pr. Commissioner* is wholly misconceived and misplaced, as both the said decisions were rendered in the context of Rule 142(1A) of the CGST Rules, 2017 and Central Excise/Service Tax proceedings respectively, and have absolutely no application to proceedings under the Customs Act, 1962. Similarly, the CBIC Instruction of December 2015 prescribing mandatory pre-notice consultation for demands of Rs. 50 lakhs or more (except for preventive/offence related SCNs) was also issued in the context of Central Excise and Service Tax matters and is not a Customs-specific instrument. All three references cited by the noticees thus pertain to an entirely different statutory regime and are therefore not binding, relevant or applicable to the present Customs proceedings.

I further find that the present Show Cause Notice has been issued under Section 28(4) of the Customs Act, which applies specifically to cases of collusion, willful misstatement and suppression of facts, and the said sub-section contains no such proviso mandating pre-notice consultation. Accordingly, the submission that the SCN is vitiated on account of non-issuance of pre-notice consultation is devoid of any legal merit and is liable to be rejected.

21.2 On the contention that separate SCNs should have been issued for both firms:

The noticees have argued that M/s Harish Kirana Co. and M/s A. A. Enterprises are separate legal entities having different PAN numbers and GST registrations, and that the issuance of a combined SCN is legally untenable.

I find this submission to be wholly without merit in the facts and circumstances of this case. The fact that two entities have separate PAN numbers or GST registrations does not immunize the adjudicating authority from examining their interconnected activities in a single proceeding when the evidence clearly establishes that both entities were being operated by the same individual as part of a single, integrated scheme of Customs duty evasion. In the present case, the following facts conclusively establish that M/s A. A. Enterprises was not an independent entity but a dummy firm created and operated by Shri Harish Kumar Gupta: (a) Shri Harish Kumar Gupta himself admitted creating A. A. Enterprises as a dummy firm; (b) The IEC and registered address of A. A. Enterprises were arranged by Shri Harish Kumar Gupta; (c) All import orders, foreign remittances, bank operations, and domestic sales for A. A. Enterprises were handled solely by Shri Harish Kumar Gupta; (d) The bank account of A. A. Enterprises was funded from the accounts of Harish Kirana Co. for foreign remittances. In these circumstances, the issuance of a composite SCN covering the related import activities of both firms is not only legally permissible but is the most appropriate course of action, as it comprehensively addresses the common scheme of evasion orchestrated by Shri Harish Kumar Gupta. This objection is rejected.

21.3 On the Yield Factor and Grade Variations**:**

The noticees have contended that the yield of 50-60% stated in the SCN is incorrect and that the actual yield of Walnut Kernel from Walnut Inshell is only 33-40% as per the Walnut Reports of 2023 of Chile.

I have carefully considered this submission. Interestingly, the noticees' own argument on yield, far from assisting their case, actually strengthens the department's case against them. If the yield is as low as 33-40% as claimed by the noticees, it means that to produce 1 Kg of Walnut Kernel, one requires 2.5 Kg to 3 Kg of Walnut Inshell and making the minimum procurement price of Walnut Kernel even higher than what the department has calculated on the basis of a 50-60% yield. Whether the yield is 33-40% or 50-60%, the inescapable commercial conclusion remains identical: Walnut Kernel must always be priced substantially higher than Walnut Inshell, and the declared prices of USD 1.25 to USD 1.50 per Kg are commercially impossible under either scenario. The noticees' own argument on yield therefore does not assist their case and it reinforces the finding of under-valuation.

21.4 On the challenge to 'beneficial ownership' and individual penalties:

The noticees have argued that the concept of 'beneficial owner' is not defined in the Customs Act, 1962, and that on the basis of mere assumption and presumption, Shri Harish Kumar Gupta cannot be held liable as the beneficial owner of M/s A. A. Enterprises or be subjected to double penalty.

I find this argument to be without any merit. The term 'beneficial owner' is specifically defined under Section 2(3A) of the Customs Act, 1962, as any person on whose behalf the goods are being imported or who exercises effective control over the goods being imported. Further, the definition of 'importer' under Section 2(26) of the Act specifically includes a 'beneficial owner'. In the present case, this is not a matter of assumption or presumption but the facts on record, including the admissions of Shri Harish Kumar Gupta himself, establish beyond doubt that he created M/s A. A. Enterprises in the name of Shri Ashok Sharma, placed all import orders, funded all foreign remittances from his own firm's accounts, managed all banking operations, controlled all clearance processes through GSM Shipping, and sold all imported goods in the domestic market. He is, in every meaningful sense, the person on whose behalf the goods were imported and who exercised effective control over the entire import activity carried out in the name of M/s A. A. Enterprises, squarely falling within the definition of 'beneficial owner' under Section 2(3A) and consequently within the definition of 'importer' under Section 2(26) of the Customs Act, 1962.

Confirmation of Confiscation, Demand and Penalties.

22. Confiscation of goods:

22.1 In the present case, both M/s Harish Kirana Co. and M/s A. A. Enterprises filed Thoka Numbers declaring the value of 'Walnut Kernel' at USD 1.25 to USD 1.50 per Kg, which has been found to be grossly under-valued as against the re-determined assessable value of USD 2.10 per Kg. The goods imported under the said Thoka Numbers thus clearly do not correspond in respect of value with the entries made at the time of importation, thereby contravening the provisions of Section 46(4) and Section 14 of the Customs Act, 1962 and attracting confiscation under Section 111 of the Customs Act, 1962. I accordingly hold that the goods imported under the 04 Thoka Numbers of M/s Harish Kirana Co. and the 03 Thoka Numbers of M/s A. A. Enterprises are liable to confiscation under **Section 111(m)** of the Customs Act, 1962.

22.2 As the impugned goods are found to be liable for confiscation under Section 111 of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation. I find that, in the present case, the subject goods are not physically available for confiscation at this stage. The goods have already been cleared and are no longer under the control of the Customs. Therefore, physical confiscation of the goods is not feasible. 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."

22.3 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.

23. Differential Duty.

23.1 The rejection of the declared transaction value and re-determination of the assessable value at USD 2.10 per Kg under Rule 5 of CVR, 2007 having been established in Para 20 above, the next question that arises is the recovery of the differential duty short paid by both the firms. Both M/s Harish Kirana Co. and M/s A. A. Enterprises had wilfully mis-declared the value of the impugned goods by submitting under-valued invoices at the time of filing the Thoka Numbers, in clear contravention of Section 46(4) of the Customs Act, 1962, which casts a statutory obligation on the importer to make a truthful declaration of the contents of the Bill of Entry. The short payment of duty was therefore not on account of any inadvertent error or bona fide difference of opinion on valuation, but was a direct and calculated consequence of deliberate under-valuation with the intent to evade Customs duty. In his statement dated 31.05.2024 recorded under Section 108 of the Customs Act, 1962, Shri Harish Kumar Gupta categorically admitted that Walnut Kernel was imported at under-valued prices to save Customs duty. He further admitted to creating a dummy firm solely for the purpose of further evasion of duty through under-valuation. Most significantly, upon learning of the search being conducted by DRI, he deliberately destroyed his iPhone 14 mobile phone containing chat evidence of under-valuation — an act which is itself the clearest possible indicator of a guilty mind and a conscious and deliberate attempt to conceal the truth from the investigating agency. These facts, taken together, conclusively establish that the short payment of duty was the result of wilful mis-statement and suppression of the actual value of the goods. Accordingly, I hold that the differential duty is liable to be demanded and recovered under **Section 28(4)** of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. Accordingly, the firm-wise confirmed demand is as under:

23.2 M/s Harish Kirana Co.: The differential duty calculation is produced below:

S. No.	Thoka Number	Thoka date	Declared /Assessed value (In Rs.)	Re-determined Assessable value (In Rs.)	Duty paid (In Rs.)	Duty liable to be paid (In Rs.)	**Diff Duty payable (In Rs.)**
1	2001468	24-01-2023	12360291	17249405	13596320	18974345	5378025
2	2002828	11-02-2023	5020856	7006856	5522942	7707542	2184600
3	2004313	07-03-2023	5851649	8166269	6436814	8982896	2546082
4	2012377	08-07-2023	11337882	18961872	12471670	20858059	8386389
Total			34570678	51384402	38027746	56522842	**18495096**

In view of above table, the differential duty of **Rs. 1,84,95,096/-** (Rupees One Crore Eighty Four Lakhs Ninety Five Thousand and Ninety Six only) is hereby determined and confirmed under Section 28(8) of the Customs Act, 1962 and is recoverable from M/s Harish Kirana Co. under Section 28(4) of the Customs Act, 1962 along with interest thereon under Section 28AA ibid.

23.3 M/s A. A. Enterprises: The differential duty calculation is produced below:

S. No.	Thoka Number	Thoka date	Declared/Assessed value (In Rs.)	Re-determined Assessable value (In Rs.)	Duty paid (In Rs.)	Duty liable to be paid (In Rs.)	**Diff Duty payable (In Rs.)**
1	2019204	02-10-2023	2080238	3494799	2288261	3844279	1556018
2	2024919	30-11-2023	2081475	3496878	2289623	3846566	1556943
3	2001773	22-01-2024	2081475	3496878	2289622	3846566	1556944
Total			6243188	10488555	6867506	11537411	**4669905**

23.3.1 Further, it is established on record that all acts constituting the imports in question namely investment of funds, placement of import orders, arrangement of payments and disposal of imported goods after clearance were exclusively performed by Shri Harish Kumar Gupta. The Proprietor of M/s A.A. Enterprisesreceived only a fixed facilitation fee per container and played no independent role in the import transactions. Accordingly, I find that Shri Harish Kumar Gupta is the beneficial owner of the imports made in the name of M/s A.A. Enterpriseswithin the meaning of Section 2(26) of the Customs Act, 1962 and therefore, the duty demand of Rs. 46,69,905 is being determined and confirmed on M/s A. A. Enterprisesand is being ordered to be recovered from Shri Harish Kumar Gupta, beneficial owner of M/s A.A. Enterprisesunder Section 28(8) of the Customs Act, 1962 for the imports made under M/s A.A. Enterprise.

24. <u>Penalty.</u>

24.1 Penalty under Section 114A of the Customs Act, 1962 for imports made in name of M/s Harish Kirana Co.:

24.1.1 As established in the preceding paras, the short payment of Customs duty by M/s Harish Kirana Co. was neither accidental nor a result of any bona fide difference of opinion on valuation but it was a direct, deliberate, and calculated consequence of submitting under-valued invoices before the Customs authorities with the sole intent of evading payment of duty lawfully leviable on the impugned goods. Accordingly, duty to be recovered under Section 28(4) of the Customs Act, 1962 from M/s Harish Kirana Co. as discussed in foregoing paras. Therefore, I hold that M/s Harish Kirana Co., in respect of the 04 Thoka Numbers, is liable for penalty under the provisions of Section 114A of the Customs Act, 1962. Further, in view of the last proviso to Section 114A, no separate penalty under Section 112 is imposed on M/s Harish Kirana Co.

24.1.2 Since M/s Harish Kirana Co. is a proprietorship concern, it has no independent legal identity distinct from its proprietor in the eyes of law. The penalty under Section 114A imposed on M/s Harish Kirana Co. is therefore in effect a penalty on Shri Harish Kumar Gupta in his capacity as its proprietor. To additionally impose penalty under Section 112 on Shri Harish Kumar Gupta as proprietor of M/s Harish Kirana Co. would therefore amount to visiting the same person twice with penalty for the same transactions — a course of action expressly prohibited by the last proviso to Section 114A. Accordingly, no separate penalty under Section 112 is imposed on Shri Harish Kumar Gupta in his capacity as proprietor of M/s Harish Kirana Co.

24.2 Penalty under Section 114A of the Customs Act, 1962 for imports made in name of M/s A. A. Enterprise:

24.2.1 As established in the preceding paras, the short payment of Customs duty by M/s A. A. Enterprises was neither accidental nor a result of any bona fide difference of opinion on valuation but it was a direct, deliberate, and calculated consequence of submitting under-valued invoices before the Customs authorities with the sole intent of evading payment of duty lawfully leviable on the impugned goods. Accordingly, duty to be recovered under Section 28(4) of the Customs Act, 1962 from Shri Harish Kumar Gupta, beneficial owner of the imports made in the name of M/s A.A. Enterprisesas discussed in foregoing paras.

24.2.2 On the question of penalty, I refer to the Section 114A of the Customs Act, 1962, which reads as under:

> *"Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, <u>the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28, shall also be liable to pay a penalty equal to the duty or interest so determined.</u>"*

24.2.3 A plain reading of this provision makes it unambiguous that the liability to pay penalty under Section 114A is not independently assignable at the discretion of the adjudicating authority but it is a mandatory statutory consequence that attaches automatically to the person against whom duty stands determined under Section 28(8) of the Customs Act, 1962. The section does not say that penalty shall be imposed on the person proposed in the Show Cause Notice for such penalty but it says penalty shall be imposed on the person liable to pay duty as determined under Section 28(8). The identity of that person is therefore determined by the adjudication order itself, and not by the proposal contained in the Show Cause Notice.

24.2.4 Since duty stands determined and confirmed against Shri Harish Kumar Gupta, beneficial owner of M/s A.A. Enterprisesunder Section 28(8) of the Customs Act, 1962, the mandatory penalty under Section 114A rides upon that determination and attaches to Shri Harish Kumar Gupta by operation of the statute itself. Therefore, Shri Harish Kumar Gupta, beneficial owner of M/s A.A. Enterprise, in respect of the 03 Thoka Numbers, is liable for penalty under Section 114A of the Customs Act, 1962. Further, in view of the last proviso to Section 114A, no separate penalty under Section 112 is imposed on Shri Harish Kumar Gupta, beneficial owner of M/s A. A. Enterprise.

24.2.5 As regards the proposal of penalty under Section 114A against the Proprietor of M/s A.A. Enterprise, I find that since duty demand is not being confirmed against the Proprietor of M/s A.A. Enterprisesunder Section 28(8), the statutory precondition for attracting Section 114A is itself absent. Furthermore, the foundational ingredients of Section 114A namely wilful misstatement and suppression of facts are not established against the Proprietor of M/s A.A. Enterpriseson the facts and evidence on record, inasmuch as all impugned acts of suppression, misstatement and wilful evasion were exclusively those of Shri Harish Kumar Gupta, who conducted, controlled and benefited from the import transactions in their entirety. Therefore, the proposal for penalty under Section 114A against the Proprietor of M/s A.A. Enterprisesis accordingly dropped.

25. Penalty under Section 112 of the Customs Act, 1962 on Shri Ashok Sharma regarding M/s A.A. Enterprises:

25.1 The duty demand in respect of imports made under M/s A.A. Enterprises has been determined and confirmed to be recovered from Shri Harish Kumar Gupta in his capacity as beneficial owner and penalty under Section 114A has also been confirmed upon him in that capacity. In view of the last proviso to Section 114A, no separate penalty under Section 112 is therefore imposable upon Shri Harish Kumar Gupta in respect of the imports made under M/s A.A. Enterprises. However, the protection afforded by the said proviso is strictly personal in its operation, it operates only for the benefit of the person upon whom penalty under Section 114A has been levied, and cannot be stretched to cover any other individual. Shri Ashok Sharma, the nominal proprietor of M/s A.A. Enterprises, is a distinct and separate person and upon whom no penalty under Section 114A has been imposed. The statutory bar created by the last proviso to Section 114A is therefore entirely inapplicable to Shri Ashok Sharma, and the question of penalty on Shri Ashok Sharma, the nominal proprietor of M/s A.A. Enterprises, to be considered independently under Section 112 of the Customs Act, 1962.

25.2 As regards his role, the facts on record are unambiguous. Shri Ashok Sharma, in his statement recorded on 26.07.2024 under Section 108 of the Customs Act, 1962, admitted that the firm M/s A.A. Enterprises was created in his name by Shri Harish Kumar Gupta for the purpose of import of Walnut Kernel and he was aware that the IEC and registered address were arranged by Shri Harish Kumar Gupta. He also admitted that he was paid Rs. 25,000 to 30,000 per container for lending his name. He recalls three containers being imported in the name of M/s A.A. Enterprises. While Shri Ashok Sharma did not himself conduct or control the import transactions, his willing participation as the nominal proprietor, in full knowledge of the purpose for which the firm was being used and in receipt of consideration for each container cleared, establishes that he was concerned in dealing with goods which he had reason to believe were liable to confiscation under Section 111(m) of the Customs Act, 1962. The receipt of a fixed per-container remuneration is itself indicative of his awareness that each container constituted a discrete import transaction.

25.3 Accordingly, I hold that Shri Ashok Sharma is liable for penalty under **Section 112(b)(ii)** of the Customs Act, 1962. Considering his limited and facilitative role as against the active and masterminding role of Shri Harish

Kumar Gupta and the fact that he derived no benefit beyond a fixed facilitation fee, I will impose a penalty proportionate to his role.

26. Penalty under Section 114AA of the Customs Act, 1962:

26.1 Penalty under Section 114AA on Shri Harish Kumar Gupta in respect of M/s Harish Kirana Co.: Shri Harish Kumar Gupta, as the proprietor of M/s Harish Kirana Co., knowingly and intentionally caused to be submitted invoices and declarations before the Customs authorities at the time of filing the Thoka Numbers which did not reflect the actual and correct value of the imported goods. His own categorical admission in his statement dated 31.05.2024 that Walnut Kernel was imported at under-valued prices to save Customs duty leaves no room for any plea of inadvertence or ignorance. Accordingly, Shri Harish Kumar Gupta is held liable for penalty under Section 114AA of the Customs Act, 1962 in respect of the transactions of M/s Harish Kirana Co.

26.2 Penalty under Section 114AA on Shri Harish Kumar Gupta in respect of M/s A. A. Enterprises: Shri Harish Kumar Gupta, in his capacity as the beneficial owner of M/s A. A. Enterprises, with the same deliberateness and intent, caused to be submitted invoices and declarations before the Customs authorities at the time of filing the Thoka Numbers in the name of M/s A. A. Enterprises which were equally false and incorrect in respect of the value of the imported goods. The creation of M/s A. A. Enterprises itself was a premeditated act to spread under-valued imports across a second entity to reduce the risk of detection, and his act of destroying his iPhone 14 upon learning of the DRI search conclusively establishes his full knowledge and intentionality in respect of the false documents filed in the name of M/s A. A. Enterprises as well. Accordingly, Shri Harish Kumar Gupta is held liable for penalty under Section 114AA of the Customs Act, 1962 in respect of the transactions of M/s A. A. Enterprises also.

27. In view of the aforesaid discussions and findings, I pass the following order:

<u>ORDER</u>

27.1 For imports by M/s Harish Kirana Co.:

(i) I reject the value of the goods, imported vide 04 Thoka Numbers specified in Table I of Para 9.2 above, under rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and order to re-determine as **Rs. 5,13,84,402/-** (Rupees Five Crore Thirteen Lakhs

Eighty Four Thousand Four Hundred and Two Only) in terms of Section 14 of the Customs Act, 1962, read with Rule 5 of CVR, 2007;

(ii) I hold the goods, imported vide 04 Thoka Numbers specified Table I of Para 9.2 above, having re-determined value of **Rs. 5,13,84,402/-** (Rupees Five Crore Thirteen Lakhs Eighty Four Thousand Four Hundred and Two Only), liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962. I impose redemption fine of **Rs.90,00,000/-** (Rupees Ninety Lakh only) under Section 125(1) of the Customs Act, 1962, in lieu of confiscation.

(iii) I determine and confirm the differential duty amounting to **Rs. 1,84,95,096/-** (Rupees One Crore Eighty Four Lakhs Ninety Five Thousand and Ninety Six only) under the provisions of Section 28(8) of the Customs Act, 1962 and order to recover the same from M/s Harish Kirana Co. under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA of the Customs Act, 1962;

(iv) I impose a penalty of **Rs. 1,84,95,096/-** (Rupees One Crore Eighty Four Lakhs Ninety Five Thousand and Ninety Six only) upon M/s Harish Kirana Co. under Section 114A of the Customs Act, 1962. However, I do not impose any penalty under Section 112(a)/112(b) of the Customs Act, 1962.

(v) I impose a penalty of **Rs. 30,00,000/-** (Rupees Thirty Lakh only) on Shri Harish Kumar Gupta under Section 114AA of the Customs Act, 1962.

27.2 For imports by M/s A.A. Enterprises:

(i) I reject the value of the goods, imported vide 03 Thoka Numbers specified in Table II of Para 9.2 above, under rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and order to re-determine as **Rs. 1,04,88,555/-** (Rupees One Crore Four Lakhs Eighty Eight Thousand Five Hundred and Fifty Five Only) in terms of Section 14 of the Customs Act, 1962, read with Rule 5 of CVR, 2007;

(ii) I hold the goods, imported vide 03 Thoka Numbers specified Table II of Para 9.2 above, having re-determined value of **Rs. 1,04,88,555/-** (Rupees One Crore Four Lakhs Eighty Eight Thousand Five Hundred and Fifty Five Only), liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962. I impose redemption fine of **Rs.22,00,000/-** (Rupees Twenty Two Lakh only) under Section 125(1) of the Customs Act, 1962, in lieu of confiscation.

(iii) I determine and confirm the differential duty amounting to **Rs. 46,69,905/-** (Rupees Forty Six Lakhs Sixty Nine Thousand Nine Hundred and Five only) on M/s A. A. Enterprises under the provisions of Section 28(8) of the Customs Act, 1962 and order to recover the same from Shri Harish Kumar Gupta, beneficial owner of M/s A. A. Enterprises, under Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA of the Customs Act, 1962;

(iv) I impose a penalty of **Rs. 46,69,905/-** (Rupees Forty Six Lakhs Sixty Nine Thousand Nine Hundred and Five only) on Shri Harish Kumar Gupta, beneficial owner of M/s A. A. Enterprises, under Section 114A of the Customs Act, 1962. However, I do not impose any penalty under Section 112(a)/112(b) of the Customs Act, 1962.

(v) I impose a penalty of **Rs. 1,50,000/-** (Rupees One Lakh Fifty Thousand only) on Shri Ashok Sharma under Section 112(b)(ii) of the Customs Act, 1962;

(vi) I impose a penalty of **Rs. 7,00,000/-** (Rupees Seven Lakh only) on Shri Harish Kumar Gupta, beneficial owner of M/s A. A. Enterprises, under Section 114AA of the Customs Act, 1962.

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

Digitally signed by
Nitin Saini
Date: 27-05-2026
15:54:54

(Nitin Saini)
Commissioner of Customs
Custom House, Mundra

F.No. GEN/ADJ/COMM/310/2025-Adjn

To the Noticees,

1. Harish Kirana Co. situated at 408/1, Katra Maid Green, Khari Boli, Delhi, North Delhi, 110006.
2. Shri Harish Kumar Gupta having residential address at H. No. 333-3rd Floor, Gate No. S-6, Near Sai Park, Sector-31, Faridabad, 121 003.

3. A. A. Enterprises situated at 178, 2nd Floor, Gali Kinari Wali Naya Bans, Khari Baoli, chandni Chowk, North Delhi 110006.
4. Shri Ashok Sharma having residential address at House No. 1/11063, Lane Number 7F, Subhash Park, Shahdara, North East Delhi- 110032

Copy to:

(i) The Additional Director, Directorate of Revenue Intelligence (DRI), Indore, First Floor, BSNL Telephone Exchange Building, Transport Nagar, Indore (M. P.)-452014.

(ii) The Deputy/ Assistant Commissioner of Customs, CCO, Ahmedabad.

(iii) The Deputy/ Assistant Commissioner (EDI), Custom House, Mundra.

(iv) Notice Board.

(v) Guard File.