

	<p>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. PHONE : 02838-271426/271163 FAX :02838-271425 E-mail id- adj-mundra@gov.in</p>	
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A FILE NO. फाइल संख्या	GEN/ADJ/ADC/152/2025-Adjn-O/o Pr Commr-Cus-Mundra
B OIO NO. आदेश संख्या	MCH/ZDC/ADC/190/2025-26
C PASSED BY जारीकर्ता	Dipak Zala, Additional Commissioner of Customs/अपर आयुक्त सीमा शुल्क, Custom House, Mundra/कस्टम हाउस, मुन्द्रा।
D DATE OF ORDER आदेश की तारीख	18.08.2025
E DATE OF ISSUE जारी करने की तिथि	18.08.2025
F SCN No. & Date कारण बताओ नोटिस क्रमांक	GEN/ADJ/ADC/152/2025-Adjn-O/o Pr Commr-Cus-Mundra dated 15.01.2025
G NOTICEE/ PARTY/ IMPORTER नोटिसकर्ता/पार्टी/आयातक	i. M/s. Prakash Impex (IEC No. AIIPA9798F) ii. M/s. Holistic Global Corporation
H DIN/दस्तावेज पहचान संख्या	20250871MO000001540B

1. यह आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1 में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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

“सीमाशुल्क आयुक्त) अपील,
चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,
नवरंगपुरा, अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA

HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING, ISHWAR BHUVAN ROAD,
NAVRANGPURA, AHMEDABAD-380 009.”

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

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

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

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

- i. उक्त अपील की एक प्रति और A copy of the appeal, and
- ii. इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची 1-के अनुसार न्यायालय शुल्क अधिनियम 1870-के मद सं० 6-में निर्धारित 5 -/रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

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

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

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

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

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

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

BRIEF FACTS OF THE CASE

M/s. Prakash Impex (IEC No. AIIPA9798F) having its registered address at Plot No. 40, Flat B-1102 Maitri Ocean CHS, Sector -20, Khargar, Navi Mumbai, Raigad Maharashtra-410210 (hereinafter referred to as 'the importer') had filed 03 (three) bills of entry for SEZ import Z type (warehouse), declaring the goods as 'Display Panel for Computer LCD 17", 22", 23.6", 24"' at Mundra SEZ (INAJM6) under CTH 85299090. The said Z type bills of entry (warehouse) were filed by the warehousing unit M/s. Holistic Global Corporation, Adani Port & SEZ Ltd, Mundra on behalf of the importer. Further, for the clearance of said goods the bill of entry for DTA clearance T type (home consumption) was filed by M/s. Holistic Global Corporation, Adani Port & SEZ Ltd, Mundra on behalf of the importer. Details are as under:

TABLE – I

Sl. No.	Bill of Entry No. & Date (Z Type/ Warehouse Bill)	Bill of Entry No. & Date (T Type/ DTA sale/ Bill)	Container No.	Assessable Value declared in	Quantity declared in Bill of
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	of Entry)	of Entry)		Bill of Entry in Rs.	Entry in Pcs
1.	4631541 dated 22.07.2024	4779365 dated 30.07.2024	WHSU6493913	12,91,163/-	6830
2.	4643916 dated 22.07.2024	4778579 dated 30.07.2024	WHLU5481316	12,05,514/-	6390
3.	4655137 dated 24.07.2024	4777962 dated 30.07.2024	SUDU6649320	12,25,130/-	6410
	Total			37,21,807/-	19630

2. Following the intelligence, the consignments imported vide Bills of Entry mentioned in Table-1 were put on hold and examined under Panchnama starting from 31.07.2024 to 02.08.202 drawn at M/s. Holistic Global Corporation, Plot No. 3, Block-D, Section 12 N, FTWZ Zone in east of Steinweg plot, Adani Port & SEZ Ltd., Taluka Mundra, District-Kutch, Gujarat 370 421 in the presence of two independent panchas and Shri Rahul Gupta (Aadhar No. 360204283746), authorised representative of M/s. Holistic Global Corporation as well as the importer M/s. Prakash Impex, Navi Mumbai.

2.1 During the examination of the goods imported vide Bill of entry No. 4631541 dated 22.07.2024 (Container No. WHSU6493913), it appeared that some display panels were thick and some were thin. It appeared that some display panels were LCD and some display units were LED while the item description in the Bill of Entry No 4631541 dated 22.07.2024 was declared as "Display Panel for Computer LCD". Further, the number of pieces of display panels was inventoried and total number of 11563 display panels were found in 18 pallets. However number of pieces of display unit declared in Bill of entry No. 4631541 dated 22.07.2024 was 6830. Thus, total 4733 display panels were found excess in quantity.

2.2 Further, during the examination of the goods imported vide Bill of Entry No. 4655137 dated 24.07.2024 (Container No. SUDU6649320), it appeared that some display panels were thick and some are thin. It appeared that display panels were in different sizes and also varied in thickness. It appeared that some display panels were LCD and some display units were LED while the item description in the Bill of Entry No 4655137 dated 24.07.2024 was declared as "Display Panel for Computer LCD". Further, the number of pieces of display panels was inventoried and total number of 10014 display panels were found in 24 pallets. However number of pieces of display panels declared in Bill of entry No. 4655137 dated 24.07.2024 was 6410. Thus, total 3604 display panels were found excess in quantity.

2.3 During the examination of the goods imported vide Bill of Entry No. 4643916 dated 22.07.2024 (Container No. WHLU5481316), it appeared that some display panels were thick and some are thin. It appeared that display panels were in different sizes and also varied in thickness. It appeared that some display panels are LCD and some display units were LED while the item description in the Bill of Entry No 4643916 dated

22.07.2024 was declared as "Display Panel for Computer LCD". Further, during the course of examination total 3384 Central Processing Units (360 HP plus 3024 Dell) were also found concealed, which was not declared in the bill of entry. Further, the number of pieces of display panels were inventoried and total number of 9348 (display panel plus CPU) were found in 20 pallets. However, number of pieces of display unit declared in Bill of entry No. 4643916 dated 22.07.2024 was 6390. Thus, total 2958 display panels & CPU were found excess / undeclared in quantity.

3. Whereas, during the course of examination, it was not ascertainable whether the imported goods is LCD or LED, therefore, upon request, Shri Bhasker G Bhatt, empaneled Chartered Engineer, Mundra inspected the goods imported vide aforesaid Bills of Entry mentioned in Table-1 and collected the samples under Panchnama dated 10.08.2024 in presence of independent panchas and Shri Rahul Gupta (Aadhar No. 360204283746), who handled Customs related works of M/s. Holistic Global Corporation, APSEZ, Mundra and was an Authorised representative of M/s. Holistic Global Corporation, APSEZ, Mundra. He collected 10 samples randomly of Display panels in all sizes and also taken one piece of each Central processing units of HP and Dell.

4. M/s. B. G. Bhatt & Co., Ahmedabad, Customs empaneled Chartered Engineer & Govt. approved Valuer submitted his report vide ref no. BB/H-10.2/24/P dated 12.08.2024 along with his observation and opinion in r/o goods imported vide bills of Entry mentioned in Table-1.

4.1 As per the report:

The Panel were of 17", 20 and 24". All panels were showing stains of stickers of previous usage. Communicating cable was cut or not available. There were camouflaged black stickers affixed on the old manufacturer's stickers. There were stains of cable pasting in all two samples. All samples were verified for the type of the panels where it was found that the panels were affixed with the sticker conveying it as LCD Panel with Fluorescent lamp containing mercury needs to be handle as per local regulation. The sticker of original manufacturer CHIMEI INNOLUX, LG, Samsung, in the panels pasted with the sticker of RoHS Compliant was camouflaged, the old sticker of manufacturers were verified from open source over internet and found that the TFT LCD panel was manufactured by CHIMEI INNOLUX. LG, Samsung The serial number of old stickers were also differing. Number of LCD/ LED Panels declared in the invoice was lesser than the actual panels received by Pallets. The panel was further inspected by opening it was found that it was carrying blackened burnt marks on both ends of Fluorescent lamp kept inside the LCD panel, which shows that the LCD panel was use earlier (old & used). The frame of the panels was also showing stains / scratches of previous usage. The rates declared were cross checked by market inquiry as well as explored from the public domain of made in china make Display panels for computer, lowest rate with bulk discount was considered for the rate of new which was depreciated as per the circular 07/2020 for olds and used for the calculation of the depreciation; that the rates on public domain

convey that the rates are common for the sizes 17", 18.5", 19", 19.5", 20", 20.1", 21.5", 22", 23", 23.6", 23.8" & 24" recorded during panchnama as on 02.08.2024; that rates of LED panels are higher to LCD panels but he has considered same for LED and LCD panels.

4.2 Opinion: The consignment of the

- *Received cargo by (20+18+24) Total 62 pallets, Qty: 27519 pcs. is of old and used refurbished Display panels for computer LCD and there are LED panels also received in Container Nos. WHSU6493913, WHLU5481316, SUDU6649320.*
- *The cargo of the imported LCD/LED panels declared qty. is lesser than the actual received.*
- *The original manufacturer's printed stickers with the bar code were camouflaged by black or white coloured stickers with miss leading serial number and bar code.*
- *The stains present upon the surface / frame proves that the panels are old and used.*
- *The communicating cables were either cut or removed from the panels.*
- *Stains of previously pasted stickers were also legible.*

4.3 The Chartered Engineer further submitted that the rates are considered after appropriating depreciation as per the applicable HS code 85285259 and in the lieu of YOM it is considered highest for 70% for every types of panel. As per the available data of the public domain irrespective of type and size, it is noticed that rate per piece after bulk discount as FOB INR 1709.63 per panel which is considered for this consignment which is US\$ 20.36 hence depreciated rate is US \$ 6.11. Computer CPU (Dell-3024pcs & HP-360pcs) Total Qty: 3384 pcs (without RAM & HDD) which has value @Rs:300/per piece. i.e. Rs:10,15,200/- but as it is e-waste disposed as per the CPCB (Central Pollution Control Board) guidelines.

4.4 The estimated depreciated FOB value of the old and used Display panels for computer LCD for the 27519 pieces as US \$ 168141 Say US \$ 168100. In words Us Dollars: One Lakh Sixty-Eight Thousand One Hundred Only. However as per exchange rate of Bills of Entry, the Total FOB value of 27519 pieces becomes Rs. **1,42,12,855/-**.

5. Whereas, as per the report submitted by M/s. B. G. Bhatt & Co., customs empaneled Chartered Engineer & Govt. approved Valuer, the goods imported vide Bills of Entry mentioned in Table-1, total no. of 27519 Display panels along with 3384 Central Processing units were seized vide Seizure Memo issued from F. No. DRI/JRU/INQ-04/2024-25 dated 13.08.2024 under Section 110 of the Customs Act, 1962 with a reasonable belief that the said goods were liable for confiscation under the provisions of the Customs Act, 1962 and handed over to Shri Rahul Gupta, authorised representative of M/s. Holistic Global Corporation (IEC No AIIPA9798F), APSEZ Mundra vide SUPRATNAMA dated 13.08.2024 to keep the said goods in safe custody.

6 . During the course of investigation, in order to collect the evidence/corroborative evidence statement of persons who were directly/indirectly involved in importation/clearance of goods were

recorded by the DRI under the provisions of Section 108 of Customs Act, 1962. The facts of statements of such persons have been mentioned in the Show Cause Notice and the records of statements thereof have been attached to Show Cause Notice as RUDs. For sake of brevity contents of statements of such persons are not produced hereunder. The details of the persons whose statements were recorded are as under: -

- Statements of Shri Kanhaiya Jagdish Kasera, Partner of M/s. Holistic Global Corporation recorded u/s 108 of the Customs Act, 1962, on 03.08.2024.
- Statement of Shri Vipul P. Agarwal, Proprietor of M/s. Prakash Impex (Aadhar No. 494824344709) recorded u/s 108 of the Customs Act, 1962 on 05.08.2024 and 21.08.2024.

7. Finding of the Investigation:

7.1. Mis-declaration of goods:

The importer declared in all the three bills of entry as "Display Panel for Computer LCD". But, during examination the goods were found to be old & used refurbished display panels for computer LCD / LED panels. Further, the original manufacturer's printed stickers with the bar code were camouflaged by black or white coloured stickers with misleading the serial number and bar code and communicating cables were either cut or removed from the panels. In the statement dated 05.08.2024 recorded under Section 108 of the Customs Act, 1962, the importer has stated that the said description was declared as Display panels for LCD, was unintentional. As per his knowledge, there was no difference in the duty structure of LCD or LED display panels which meant he was aware that both types of display panels i.e., LCD and LED are present in imported consignment. Moreover, in the Bill of Lading No. JCL23937JEAMUN dated 15.07.2024 attached in Bill of Entry no. 4643916 dated 22.07.2024 (Z type), LED display panels was mentioned, and however the importer did not declare it in Bill of Entry. In addition to above, although the importer denied that he was aware about the fact that display panels were old and refurbished, but the value of display panels declared in the bills of entry mentioned in Table-1 above did not justify it. The price of one display panel declared in invoices was 2\$ to 3\$ whereas, as per Chartered Engineer Certificates, price of new and fresh display panel is 20.36\$ and therefore it appears that the importer intentionally mis-declared the imported goods in Bills of Entry.

7.2 Excess quantity of Goods:

Total number of Display Panels were declared in all the three mentioned Bills of Entry mentioned in Table-1 was 19630, whereas, during examination, total 27519 number of Display Panels were found. Therefore, total 7889 number of Display panels were found excess during examination proceedings. The importer in his statement recorded under Section 108 of the Customs Act, 1962 categorically admitted that he was well aware about the excess quantity of display panels loaded at loading port.

7.3 Undeclared goods recovered during Examination of the goods:

During the course of examination, total 3384 undeclared Central Processing Units (without RAM & HDD) were found concealed with display panels in the container no. WHLU5481316 imported vide Bill of Entry No.4643916 dated 22.07.2024 which appears to be smuggled in the guise of display panels. The importer in his statement recorded under Section 108 of the Customs Act, 1962 has admitted that he was fully aware that the goods were actually loaded in excess from the loading port. Also, there was some excess quantity of display panels and undeclared CPUs in the above said three containers. Therefore, it appears that the importer was well aware that the CPU falls under e-waste and import of CPUs are restricted / prohibited, therefore, he smuggled the said CPUs in the guise of display panels.

7.4 Valuation:

The importer presented 3 warehouse bills of entry, wherein the total assessable value of the goods were declared as Rs. 37,21,807/-. Whereas, M/s. B. G. Bhatt & Co., customs empaneled Chartered Engineer & Govt. approved Valuer, in his report described how he came to the final valuation of the imported goods, total value of the old and used Display panels is Rs.1,42,12,855/- and total value of undeclared / concealed CPUs is Rs.10,15,200/-.

7.4.1 As per the report that the rates declared were cross checked by market inquiry as well as explored from the public domain of made in China make Display panels for computer, lowest rate with bulk discount was considered for the rate of new which was depreciated as per the Circular No. 07/2020 for old and used for the calculation of the depreciation. Further in his report, he had submitted that the rates on public domain convey that the rates are common for the sizes 17", 18.5", 19", 19.5", 20", 20.1", 21.5"22", 23",23.6", 23.8" & 24" recorded during panchnama as on 2-Aug-2024 and that the rates of LED panels are higher to LCD panels but he has considered same for LCD & LED panels. The estimated depreciated FOB value of the old and used Display panels for computer LCD for the 27519 pieces as US \$ 168141 Say US \$ 168100 (US Dollars One Lakh Sixty-Eight Thousand One Hundred Only). However as per exchange rate of Bills of Entry, the Total FOB value of 27519 pieces becomes Rs. **1,42,12,855/-**.

7.4.2 Further, the value for the concealed CPUs, as per the available data of the public domain irrespective of type and size, it was noticed that rate per piece after bulk discount as FOB INR 1709.63 per panel, which is considered for this consignment, which is US\$ 20.36 and the depreciated rate is US \$ 6.11. Hence, total value of Computer CPU (Dell-3024 pcs & HP-360 pcs) having total quantity 3384 pcs (without RAM & HDD) (which has value @Rs.300/- per piece) becomes Rs.10,15,200/-.

7.4.3 Whereas, the declared value of the imported goods covered under 3 warehouse bills of entry as well as in corresponding bills of entry filed for DTA clearance as given in Table-1 above, was Rs.37,21,807/-. However, during the examination of the goods, the goods were found old and used. Thus, in order to ascertain the correct value, the inspection and current valuation of the same was done through empaneled Chartered Engineer

and Govt. approved valuer. The report suggested the estimated value of the consignment as Rs. 1,52,28,055/- (1,42,12,855/- Display Panels + Rs 10,15,200/- Central Processing units). Thus, there appears gross mis-declaration of the consignments with respect to the value thereof.

7.4.4 Whereas, Board's circular No. 07/2020-Customs dated 05.02.2020 (issued vide F. No. 467/34/2066- Cus.V) on "Valuation of Second Hand machinery" stipulates the following:

"6. To sum up the following guidelines shall be followed:

(a) All imports of second hand machinery/used capital goods shall be ordinarily accompanied by an inspection/appraisement report issued by an overseas Chartered Engineer or equivalent, prepared upon examination of the goods at the place of sale.

(b) The report of the overseas chartered engineer or equivalent should be as per the Form A annexed to this circular.

(c) In the event of the importer failing to procure an overseas report of inspection/appraisement of the goods, he may have the goods inspected by any one of the Chartered Engineers empanelled locally by the respective Custom Houses.

(d) In cases where the report is to be prepared by the Chartered Engineers empanelled by Custom Houses, the same shall be in the Form B annexed to this circular.

(e) The value declared by the importer shall be examined with respect to the report of the Chartered Engineer. Similarly, the declared value shall be examined with respect to the depreciated value of the goods determined in terms of the circular No. 493/124/86-Cus VI dated 19/11/1987 and dated 4/1/1988. If such comparison does not create any doubt regarding the declared value of the goods, the same may be appraised under rule 3 of the Customs Valuation Rules, 2007. If there are significant differences arising from such comparison, Rule 12 of the Customs Valuation Rules, 2007 requires that the proper officer shall seek an explanation from the importer justifying the declared value. The proper officer may then evaluate the evidence put forth by the importer and after giving due consideration to factors such as depreciation, refurbishment or reconditioning (if any), and condition of the goods, determine whether the declared transaction value conforms to Rule 3 of Customs Valuation Rules, 2007. Otherwise, the proper officer may proceed to determine the value of the goods, sequentially, in terms of rule 4 to 9.

7.4.5 Therefore, in view of above, it appears that the value declared before Customs by the importer for clearance of the aforesaid imported goods cannot be considered as representing true transaction value under Rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 2007) and the same is liable for rejection under Rule 12 of the said rules. As per sub explanation (1) of explanation (1) of Rule 12,

"This rule by itself does not provide a method for

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

7.4.6 APPLICATION OF RULE 4, 5 OF CVR. 2007 (TRANSACTION VALUE OF THE IDENTICAL/ SIMILAR GOODS):

Efforts were made to find out the correct assessable value of the imported goods. As the imported goods were found to have been mis-declared and were found as old and used, it was not possible to find identical or similar goods, which were old and used and of same description, brand, make, model, quantity and Country of Origin. As the import data extracted with respect to contemporaneous imports was general in nature and contemporaneous data for imports of identical or similar old and used goods was not available, therefore, the value could not be determined under Rules 4 or Rule 5 of CVR, 2007.

7.4.7 APPLICATION OF RULE 6 OF CUSTOMS VALUATION RULES, 2007:

Rule 6 of the CVR, 2007 is reproduced below:

"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 the rule, under rule 8."

As per Rule 6 *ibid*, if the value cannot be determined under Rules 3, 4 and 5, same shall be under the provisions of Rule 7 or when same cannot be determined under that rule then under Rule 8.

7.4.8 DEDUCTIVE VALUE (RULE 7) OF CVR, 2007:

Rule 7 of the CVR, 2007 is reproduced below:

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

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

(ii) The usual cost of transport and insurance and associated cost incurred with in India

(iii) the customs duties and other taxes payable in India by

reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India

(b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

7.4.9 As the imported goods were found to have been mis-declared and were found as old & used in nature, in different variety, description, specification, model, brand, make, sizes quality and having varying life span, the sale price of identical or similar goods was not available in the domestic market. Therefore, determination of transaction value under Rule 7 of CVR, 2007 was not possible.

7.4.10 COMPUTED VALUE (RULE 8) OF CVR, 2007:

Rule 8 of the Customs Valuation Rules, 2007 is reproduced below:

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

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

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

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

7.4.11 As substantial data related to the cost or value of materials and fabrication or other processing employed in producing the imported goods is required to compute the value under Rule 8 is also not available and as the impugned goods are not brand new but are an assortment of old & used (second hand) goods of varied description, variety, specification, they are not comparable to any goods made by manufacturer for export to India. Therefore, valuation of the impugned goods could not be ascertained

under Rule 8 of CVR, 2007.

7.4.12 RESIDUAL METHOD (RULE 9) OF CVR, 2007:-

Rule 9 of the Customs Valuation Rules, 2007 is reproduced below:

“(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.”

7.4.13 As, the value of imported goods cannot be determined under the provisions of Rules 3, 4, 5, 7 and 8 of Customs Valuation Rules, 2007, therefore, in the present case the transaction value has been determined under Rule 9 of Customs Valuation Rules, 2007.

7.4.14 The imported goods were examined by the customs empaneled Chartered Engineer & Govt. approved Valuer in order to arrive at the correct value of goods. Therefore, on the basis of their reports with respect to the said import consignments and in terms of Rule 9 of the Customs Valuation Rules, 2007, valuation of the goods has been done. Accordingly, calculation table of value calculated on the basis of residual method of the valuation as per Rule 9 of Customs Valuation Rules, 2007 is as mentioned in table below:

Table-II

Sl. No.	Bill of Entry No & Date (Z Type)	Assessable Value declared in Bill of Entry (in Rs.)	Quantity actually found in Bill of Entry in pcs	Market value as per Chartered Engineer Report in Rs per piece 6.11\$
1.	4631541 dated 22.07.2024	12,91,163/-	11563	Rs. 1,52,28,055/- (1,42,12,855/- Display Panels + Rs.10,15,200/- Central Processing units).
2.	4643916 dated 22.07.2024	12,05,514/-	5942	
			3384 CPUs	
3.	4655137 dated 24.07.2024	12,25,130/-	10014	

7.5 Restriction on import of Second Hand Goods other than Capital Goods and E-waste:

7.5.1 The policy relating to Import / Exports is given in Chapter 2 of the Foreign Trade policy 2015-2020 and as per Para 2.01 of the said Foreign Trade Policy 2015-2020, the Exports and Imports shall be 'Free' except when regulated by way of 'prohibition', 'restriction' or 'exclusive trading through State Trading Enterprises (STEs)' as laid down in Indian Trade Classification (Harmonised System) [ITC (HS)] of Exports and Imports.

7.5.2 In terms of Section 3 of the Foreign Trade (Development and Regulation) Act, 1992, as amended by the Foreign Trade (Development & Regulation) Amendment Act, 2010;

7.5.3 Powers to make provisions relating to imports and exports -

(1) The Central Government may, by Order published in the Official Gazette, make provision for the development and regulation of foreign trade by facilitating imports and increasing exports.

(2) The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods.

(3) All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.

7.5.4. In terms of Section 11 of the Foreign Trade (Development and Regulation) Act, 1992, as amended in 2010, no export or import shall be made by a person except in accordance with the provisions of this Act, the rules and orders made there under and the Foreign Trade Policy for the time being in force.

7.5.5 Section 11 (2) of the Foreign Trade (Development and Regulation) Act, 1992, as amended by the Foreign Trade (Development & Regulation) Amendment Act, 2010 states that where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made there under or the export and import policy, he shall be liable to a penalty not less than ten thousand rupees or five times the value of the goods in respect of which any contravention is made.

7.5.6 As per Rule 14 (1) of the Foreign Trade (Regulation) Rules, 1993, no person shall make, sign or use or cause to be made, signed or used any declaration, statement or document for the purposes of importing any goods knowing or having reason to believe that such declaration, statement or document is false in any material particular.

7.5.7 As per Rule 14 (2) of the Foreign Trade (Regulation) Rules, 1993, No person shall employ any corrupt or fraudulent practice for the purposes of obtaining any licence or importing or exporting any goods.

7.5.8 As per Para No. 2.31 of the Foreign Trade Policy, 2015-20:

S. No	Categories of Second Hand Goods	Import Policy	Conditions, if any
1	Second Hand Capital Goods		
(a)	i. Desktop Computers, ii. Refurbished/re-conditioned spares of re-furbished parts of Personal Computers/ Laptops. iii. Air conditioners iv. Diesel generating sets	Restricted	Importable against Authorization
(b)	All electronics and IT Goods notified under the Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2012 as amended from time to time	Restricted	(i) Importable against an authorization subject to conditions laid down under Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2012 as amended from time to time. (ii) Import of unregistered/noncompliant notified products as in CRO, 2012 as amended from time to time is "Prohibited".
(c)	Refurbished / re-conditioned spares of Capital Goods	Free	Subject to production of Chartered Engineer certificate to the effect that such spares have at least 80% residual life of original spare.
(d)	All other second hand capital goods {other than (a) (b) & (c) above}	Free	
II	Second Hand Goods other than capital goods	Restricted	Importable against an authorization.
III	Second Hand Goods imported for the purpose of repair / refurbishing / reconditioning or re-engineering	Free	Subject to condition that waste generated during the repair / refurbishing of imported items is treated as per domestic Laws/ Rules/ Orders/ Regulations/ technical specifications/ Environmental / safety and health norms and the imported item is re-exported back as per the Customs Notification.

7.5.9 The Hazardous and Other Wastes (Management and Trans

boundary Movement) Rules, 2016 The Hazardous and Other Wastes (Management and Trans boundary Movement) Rules, 2016 were notified by the Ministry of Environment, Forest and Climate Change vide GSRNo. 395(E) dated 04th April 2016. Hazardous Waste Management Rules are notified to ensure safe handling, generation, processing, treatment, package, storage, transportation, use reprocessing, collection, conversion, and offering for sale, destruction and disposal of Hazardous Waste. These Rules came into effect in the year 1989 and have been amended later in the years 2000, 2003 and with final notification of the Hazardous Waste (Management, Handling and Trans boundary Movement) Rules, 2008 in supersession of former notification. The Rules lay down corresponding duties of various authorities such as MoEF, CPCB, State/UT Govts., SPCBs/PCCs, DGFT, Port Authority and Custom Authority while State Pollution Control Boards/ Pollution Control Committees have been designated with wider responsibilities touching across almost every aspect of Hazardous wastes generation, handing and their disposal. The relevant provisions in so far as they relate to the present case are discussed as follows:

Rule 3. Definitions. - (1) In these rules, unless the context otherwise requires, -

3. "authorisation" means permission for generation, handling, collection, reception, treatment, transport, storage, reuse, recycling, recovery, pre-processing, utilisation including co-processing and disposal of hazardous wastes granted under sub-rule (2) of rule 6;

4. "Basel Convention" means the United Nations Environment Programme Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal;

17. "hazardous waste" means any waste which by reason of characteristics such as physical, chemical, biological, reactive, toxic, flammable, explosive or corrosive, causes danger or is likely to cause danger to health or environment, whether alone or in contact with other wastes or substances, and shall include - (i) waste specified under column (3) of Schedule I; (ii) waste having equal to or more than the concentration limits specified for the constituents in class A and class B of Schedule II or any of the characteristics as specified in class C of Schedule II; and

(iii) wastes specified in Part A of Schedule III in respect of import or export of such wastes or the wastes not specified in Part A but exhibit hazardous characteristics specified in Part C of Schedule III;

18. "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

19. “importer” mean any person or occupier who imports hazardous or other waste;

23. “other wastes” means wastes specified in Part B and Part D of Schedule III for import or export and includes all such waste generated indigenously within the country;

32. “transboundary movement” means any movement of hazardous or other wastes from an area under the jurisdiction of one country to or through an area under the jurisdiction of another country or to or through an area not under the jurisdiction of any country, provided that at least two countries are involved in the movement;

CHAPTER III IMPORT AND EXPORT OF HAZARDOUS AND OTHERWASTES

11. Import and export (transboundary movement) of hazardous and other wastes. – The Ministry of Environment, Forest and Climate Change shall be the nodal Ministry to deal with the transboundary movement of the hazardous and other wastes in accordance with the provisions of these rules.

12. Strategy for Import and export of hazardous and other wastes.-

(1) No import of the hazardous and other wastes from any country to India for disposal shall be permitted.

(2) The import of hazardous and other wastes from any country shall be permitted only for recycling, recovery, reuse and utilisation including co-processing.

(3) The import of hazardous waste in Part A of Schedule III may be allowed to actual users with the prior informed consent of the exporting country and shall require the permission of the Ministry of Environment, Forest and Climate Change.

(4) The import of other wastes in Part B of Schedule III may be allowed to actual users with the permission of the Ministry of Environment, Forest and Climate Change.

(5) The import of other wastes in Part D of Schedule III will be allowed

as per procedure given in rule 13 and as per the note below the said Schedule.

(6) No import of the hazardous and other wastes specified in Schedule VI shall be permitted.

.....

13. Procedure for import of hazardous and other wastes.-

(1) Actual users intending to import or transit for transboundary movement of hazardous and other wastes specified in Part A and Part B of Schedule "I shall apply in Form 5 along with the documents listed therein, to the Ministry of Environment, Forest and Climate Change for the proposed import together with the prior informed consent of the exporting country in respect of Part A of Schedule III waste, and shall send a copy of the application, simultaneously, to the concerned State Pollution Control Board for information and the acknowledgement in this respect from the concerned State Pollution Control Board shall be submitted to the Ministry of Environment, Forest and Climate Change along with the application.

.....

(3) For Part B of Schedule III, in case of import of any used electrical and electronic assemblies or spares or part or component or consumables as listed under Schedule I of the E-Waste (Management and Handling) Rules, 2011, as amended from time to time, the importer need to obtain extended producer responsibility-authorisation as producer under the said E-Waste (Management and Handling) Rules, 2011.

(4) Prior to clearing of consignment of wastes listed in Part D of Schedule III, the Custom authorities shall verify the documents as given in column (3) of Schedule VIII.

(5) On receipt of the complete application with respect to Part A and Part B of Schedule III, the Ministry of Environment, Forest and Climate Change shall examine the application considering the comments and observations, if any, received from the State Pollution Control Boards, and may grant the permission for import within a period of sixty days subject to the condition that the importer has - (i) the environmentally sound facilities; (ii) adequate arrangements for treatment and disposal of wastes generated; (iii) a valid authorisation and consents from the State Pollution Control Board; (iv) prior informed consent from the exporting country in case of Part A of Schedule III wastes.

(6) The Ministry of Environment, Forest and Climate Change shall forward a copy of the permission to the concerned Port

and Customs authorities, Central Pollution Control Board and the concerned State Pollution Control Board for ensuring compliance with respect to their respective functions given in Schedule VII. 10

(7) The importer of the hazardous and other wastes shall maintain records of the hazardous and other waste imported by him in Form 3 and the record so maintained shall be made available for inspection.

(8) The importer of the hazardous and other wastes shall file an annual return in Form 4 to the State Pollution Control Board on or before the 30th day of June following the financial year to which that return relates.

.....

7.5.10 Basel No. B1110 of Part D of Schedule-III of Hazardous and Other Waste (Management and Transboundary Movement) Rules, 2016;

Electrical and electronic assemblies (including printed circuit boards, electronic components and wires) destined for direct reuse and not for recycling or final disposal

*- Used electrical and electronic assemblies imported for repair and to be re-exported back after repair within one year of import * * **

*- Used electrical and electronic assemblies imported for rental purpose and re-exported back within one year of import * * **

*- Used electrical and electronic assemblies exported for repair and to be reimport after repair - Used electrical and electronic assemblies imported for testing, research and development, project work purposes and to be re-exported back within a period of three years from the date of import * * **

*- Spares imported for warranty replacements provided equal number of defective or nonfunctional parts are exported back within one year of the import * * **

*- Used electrical and electronic assemblies imported by Ministry of Defence, Department of Space and Department of Atomic Energy * * **

- Used electrical and electronic assemblies (not in bulk, quantity less than or equal to three) imported by the individuals for their personal uses

- Used Laptop, Personal Computers, Mobile, Tablet up to 01 number each imported by organisations in a year - Used electrical and electronic assemblies owned by individuals and imported on transfer of residence

- *Used multifunction print and copying machines (MFDs) * * * * -*

-*Used electrical and electronic assemblies imported by airlines for aircraft maintenance and remaining either on board or under the custodianship of the respective airlines warehouses located on the airside of the custom bonded areas*

7.5.11 Customs Circular No.-27/2011 dated 04.07.2011

Para 3: The administrative Ministry viz. Ministry of Environment and Forests has been consulted and they have confirmed that items at A1180 of the said Schedule III relating to waste electrical and electronic assemblies or scrap containing components such as accumulators and other batteries etc. require Prior informed Consent. It is also confirmed that items at B1110 of the said Schedule III can be imported with permission from Ministry of Environment and Forests. This entry includes electrical and electronic assemblies (including printed circuit board electronic components and wires) destined for direct re-use and not for recycling or final disposal. The Ministry of Environment and Forests has also confirmed that imports of second hand computers would require the permission of that Ministry.

Para 4: In view of the above, the Board desires that the field formations should carefully and strictly implement the provisions of Hazardous Waste (Management, Handling and Transboundary) Rules, 2008. In particular, it should be noted that all imported goods falling within the purview of entry B 1110 of Part B of Schedule III of the said Rules, indicating second hand computers, would require the permission of the Ministry of Environment and Forests for import into India. It merits mention that the field formations should also refer to Rule 17 of the said Rules that treats contravening imports as illegal traffic requiring the importer to re-export the wastes at his cost within 90 days from the date of arrival. We must ensure that India does not become a destination for dumping junk electronic products.

7.5.12 E-Waste Management Rules, 2022: The E-Waste Management Rules, 2016 have been superseded by the E-Waste Management Rules, 2022. Under these Rules, the definition of 'producer' has been widened to include a person or entity who imports used electrical and electronic equipment. further, the responsibilities of the 'producer' are specified in rule 6 of these rules, the Customs authorities have been specified to include verification of the import or export with respect to Extended Producer Responsibility, inform central Pollution Control Board of any illegal traffic and to take action against the importer under the Customs Act, 1962.

8.5.13. As illustrated above, it appears that the goods imported vide Bills of Entry as mentioned in Table-1 are old, used and refurbished and were imported in contravention of the Provision Trade of Rule 11 of the Foreign

Rules, 1993. As per Para 2.31 of Import Policy for Second Hand Goods in Chapter 2-General Provisions Regarding Imports and Exports of Foreign Trade Policy 2023, import of second hand goods other than capital goods is restricted and is allowed only against authorisation.

7.5.14 As the Importer could not produce any such authorisation issued by the competent authority, it appears that the imported goods are prohibited goods and in contravention of the provision of Section 11(1) of the Foreign Trade (Development & Regulation) Act, 1992. Furthermore, these old and used LED panels have been imported in violation of the Hazardous and Other Waste (Management and Transboundary Movement) Rules, 2016 read with Customs Circular No- 27/2011 dated 04.07.2011 read with Section 3 of the Foreign Trade (Development & Regulation) Act, 1992 further read with Section 11 of the Customs Act, 1962.

7.5.15 Whereas, during examination of the goods imported vide Bill of entry No. 4643916 dated 22.07.2024 [Container No. WHLU5481316, total 3384 Central Processing Units (360 HP plus & 3024 Dell)] were also found which were not declared in the Bill of Entry. As illustrated above, the undeclared CPU (Dell-3024pcs & HP-360pcs) having total quantity 3384 pcs (without RAM & HDD) having determined value Rs.10,15,200/-, is e-waste and to import the same, certificate from the competent authority is required. Therefore, it appears that in absence of required certificate from the competent authority, the importer tried to smuggle the same in the guise of display panels.

8. Relevant legal provisions of the Customs Act, 1962:

SECTION 2(26): "importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner, beneficial owner or any person holding himself out to be the importer;

Section 2 (33) "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;

SECTION 2(39): "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.

Section 46: Entry of goods on importation. -

(1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting ¹ [electronically] ² [on the customs automated system] to the proper officer a bill of entry for home consumption or warehousing ³ [in such form and manner as may be prescribed] :

(2).....

(3).....

(4) The importer while presenting a bill of entry shall 12 [* * *] 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, 13 [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.

Section 111: Confiscation of improperly imported goods, etc. -

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

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

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

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

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, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -

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

(ii) in the case of dutiable goods, other than prohibited goods, subject

to the provisions of section 114A, to a penalty not exceeding ten per cent of the duty sought to be evaded or five thousand rupees, whichever is higher :

Provided that where such duty 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 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 penalty so determined;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

Section 114AA: Penalty for use of false and incorrect material.

-

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

Section 117: Penalties for contravention, etc., not expressly mentioned

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

Section 119: Confiscation of goods used for concealing smuggled goods:

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

Section 124: 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.

9. Whereas, the importer had subscribed to a declaration as to the truthfulness of the contents of the Bills of Entry in terms of Section 46(4) of the Customs Act, 1962, in all their import declarations. Further, in terms of Section 46(4A) the importer had subscribed to declare the accuracy and completeness of information, authenticity and validity of any document support in it and 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. Further, consequent upon the amendment to Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-Assessment' had been introduced in Customs. Section 17 of the Customs Act, 1962, effective from 08.04.2011, provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry, in electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make an entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulation, 2018 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which was defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Bill of Entry number was generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it was the importer who must doubly ensure that he declared the correct classification / CTH of the imported goods, the applicable rate of duty, value, the benefit of exemption notification claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 08.04.2011, it was the added and enhanced responsibility of the importer to declare the correct description, value, Notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the

imported goods.

10. In view of the discussion supra, it is evident that the importer was well aware about the imported goods in the aforesaid three bills of entry, i.e. Display panels being old and refurbished and come under Restricted Category for Import into India and are importable against an authorization. Therefore, the importer did not declare the actual description of the goods in Bills of Entry. Although the importer denied that he was aware about the fact that display panels were old and refurbished, but the value of display panels declared in the bills of entry mentioned in Table-1 above did not justify it. The price of one display panel declared in invoices was 2\$ to 3\$, whereas, the price does not correspondence with new and fresh display panel. As per the Chartered Engineer & Govt. approved Valuer Certificate, considering the bulk discount and depreciation the price / value of one display panel is US\$20.36 and therefore it appears that the importer intentionally mis-declared the imported goods in Bills of Entry to clear the restricted goods. Further, total number of Display Panels were declared in all the three mentioned Bills of Entry was 19630, whereas, total number of Display Panels found during examination proceeding was 27519, therefore, total 7889 pcs of Display panels were imported in excess. The importer in his statement recorded under Section 108 of the Customs Act, 1962 categorically admitted that he was well aware about the excess quantity of display panels loaded at loading port. In addition to above, during examination, total 3384 undeclared Central Processing Units (without RAM & HDD) were found concealed with display panels in the container no. WHLU5481316 imported vide Bill of Entry No.4643916 dated 22.07.2024 which appears to be smuggled in the guise of display panels. Further, the importer in his statement recorded under Section 108 of the Customs Act, 1962 has admitted that he was fully aware about the undeclared CPUs (without RAM & HDD) in the above said three containers. Therefore, it appears that the importer was well aware that the CPUs (without RAM & HDD) falls under the category of e-waste and import of CPUs (without RAM & HDD) are restricted / prohibited and they do have not any authorization to import the said restricted goods, therefore, the importer concealed the CPUs and tried to smuggle in the guise of display panels. Thus, in view of above, the importer had mis-declared the actual description, value and other parameters of the imported goods at the time of importation by way of wilful and intentional suppression of these facts in the Bills of Entry as mentioned in Table -I, and thus appears to have cleared the restricted / prohibited goods. Furthermore, these old and used LED panels have been imported in violation of Sr. No. 2.31 of the Foreign Trade Policy, 2023 read with Section 3 of the Foreign Trade (Development & Regulation) Act, 1992 further read with Section 11 of the Customs Act, 1962. Furthermore, these old and used LED panels have been imported in violation of the Hazardous and Other Waste (Management and Transboundary Movement) Rules, 2016 read with Customs Circular No- 27/2011 dated 04.07.2011 read with Section 3 of the Foreign Trade (Development & Regulation) Act, 1992 further read with Section 11 of the Customs Act, 1962. By the act of mis-declaration, concealment of smuggled goods and undervaluation of the subject goods, and on account of violations and restrictions imposed on import of such goods, the said goods having a total re-determined assessable value of Rs.1,52,28,055/- are liable to confiscation under Section 111(d), 111(l), Section 111(m) and 119 of the Customs Act, 1962. It further appears that the said goods are to be construed as 'smuggling'

within the meaning of Section 2(33) of the said Act. By above acts of omission and commission, it appears that the importer were fully aware that the import of the said goods is restricted/prohibited. It appears that the importer has involved himself in carrying, keeping, concealing and dealt with the offending goods in a manner which he knew or had reasons to believed were liable to confiscation under the Customs Act, 1962. In the above manner, the importer has rendered himself liable for penal action under the provisions of Sections 112 (a) & (b) of the Customs Act, 1962. Further, for his acts of making false declaration in the bills of entry and having knowingly involved himself in the smuggling of old and used LED panels & CPUs, the importer also appears liable for penalty under Section 114AA and 117 of the Customs, Act, 1962.

11. Whereas, M/s. Holistic Global Corporation filed the Z-type (warehouse) and T-type (DTA clearance) Bills of Entry on behalf of the importer M/s. Prakash Impex. Section 46 (4) of the Customs Act, 1962, specifies that, the importer while presenting a bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the content 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. Further, Section 46 (4A) specify to declare the accuracy and completeness of information, authenticity and validity of any document support in it and 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. M/s. Holistic Global Corporation filed Z-type (warehouse) bill of entry and after customs procedure they de-stuffed and warehoused the goods in their warehouse. It appears that while de-stuffing and warehoused the goods, they became full aware about the actual description, quantity and value of the goods. Hence, M/s. Holistic Global Corporation was very much aware that the warehoused goods are restricted, excess in quantity and even having undeclared/smuggled goods. Even though while filing T-type (DTA clearance) bill of entry they deliberately mis-declared the goods, whereas, they were having sufficient/actual/present information about the description, quantity and value of the goods. Although Shri Kanhaiya Jagdish Kasera, Partner of M/s. Holistic Global Corporation in his statement recorded under Section 108 of the Customs Act, 1962 denied that he was aware about the huge quantity of undeclared old and used display panels and also the consignment contains 3384 undeclared CPUs which were loaded in the said container in the guise of display unit, which appears to be totally false. In view of the same, it appears that M/s. Holistic Global Corporation involved themselves in carrying, keeping, concealing and dealt with the offending goods in a manner which they knew or had reasons to believed were liable to confiscation under the Customs Act, 1962. In the above manner, M/s. Holistic Global Corporation has rendered themselves liable for penal action under the provisions of Sections 112 (a) & (b) of the Customs Act, 1962. Further, for their acts of making false declaration in the bills of entry and having knowingly involved themselves in the smuggling of old and used LED panels & CPUs, M/s. Holistic Global Corporation also appears liable for penalty under Section 114AA and 117 of the Customs, Act, 1962.

1 2 . Accordingly, Show Cause Notice No. GEN/ADJ/ADC/152/2025-Adjn dated 15.01.2025 was issued to Importer, M/s. Prakash Impex (IEC No. AIIPA9798F) wherein they were called upon to show cause in writing to

the Additional Commissioner of Customs, Customs House, Mundra, as to why:-

(i) The goods imported vide the Bills of Entries mentioned in Table-I which were seized vide Seizure Memorandum dated 13.08.2024 should be held liable for confiscation under Section 111 (d), 111 (l) & 111 (m) of Customs Act 1962.

(ii) The value for the goods covered under Bills of Entry as mentioned in Table-01 imported by M/s Prakash Impex, declared as Rs.37,21,807/- should be rejected under Rule 12 of Customs Valuation Rules, 2007 and re-determined as Rs.1,52,28,055/- under provisions of Rule 9 of Customs Valuation Rules, 2007.

(iii) Penalty should not be imposed on them under Section 112 (a), 112(b), 114AA & 117 of the customs Act, 1962.

13. Further, vide Show Cause Notice No. GEN/ADJ/ADC/152/2025-Adjn dated 15.01.2025, M/s. Holistic Global Corporation, was also called upon to show cause to the Additional Commissioner of Customs, Custom House, Mundra having office at PUB Building 5B, Adani Port, Mundra, as to why:

(i) Penalty should not be imposed on them under Section 112 (a), 112(b), 114AA & 117 of the customs Act, 1962.

Written Submission & Personal Hearing

14. Importer M/s. Prakash Impex vide letter dated 08.08.2025 submitted that the impugned goods have been under prolonged detention, resulting in significant financial hardship to them due to heavy demurrage detention and storage charges. They accepted the valuation suggested by chartered engineer and requested to expedite the adjudication process. Vide said letter they also waived their right to personal hearing in the matter. They further requested to allow re-export of the impugned goods.

14.1 M/s. Holistic Global Corporation vide their letter dated 08.08.2025 submitted that they acted solely in the capacity of a warehouse service provider, and their role was limited to filing the Bill of Entry on behalf of the importer. They had no prior knowledge or involvement in the importation of restricted, excess, or undeclared goods, including the CPUs found in the consignment. Furthermore, as the goods have already been de-stuffed, they continue to occupy substantial space within our premises. This has significantly impacted their regular operations, as the occupied area cannot be utilised for other consignments or business activities. They requested to expedite the adjudication process and they do not want personal hearing in the matter. They also requested to take lenient view in the matter.

Discussion and Findings

15. I have carefully gone through the records of the case. I find that in the present case principle of natural justice as provided in Section 122A of

the Customs Act, 1962 have been complied with and therefore, I proceed to decide the case on the basis of documentary evidences available on record.

16. I find that the importer declared in all the three bills of entry mentioned in Table-1 as "Display Panel for Computer LCD". But, during examination the goods were found to be old & used refurbished display panels for computer LCD / LED panels. Further, the original manufacturer's printed stickers with the bar code were camouflaged by black or white coloured stickers with misleading the serial number and bar code and communicating cables were either cut or removed from the panels.

17. Further, total number of Display Panels were declared in all the three mentioned Bills of Entry mentioned in Table-1 was 19630, whereas, during examination, total 27519 number of Display Panels were found. Therefore, total 7889 number of Display panels were found excess during examination proceedings. The importer in his statement recorded under Section 108 of the Customs Act, 1962 categorically admitted that he was well aware about the excess quantity of display panels loaded at loading port.

18. During the course of examination, total 3384 undeclared Central Processing Units (without RAM & HDD) were found concealed with display panels in the container no. WHLU5481316 imported vide Bill of Entry No.4643916 dated 22.07.2024 which appears to be smuggled in the guise of display panels. The importer in his statement recorded under Section 108 of the Customs Act, 1962 has admitted that he was fully aware that the goods were actually loaded in excess from the loading port. Also, there was some excess quantity of display panels and undeclared CPUs in the above said three containers. Therefore, it appears that the importer was well aware that the CPU falls under e-waste and import of CPUs are restricted / prohibited, therefore, he smuggled the said CPUs in the guise of display panels.

Therefore, it is observed that the importer was well aware that the CPUs (without RAM & HDD) falls under the category of e-waste and import of CPUs (without RAM & HDD) are restricted / prohibited and they do have not any authorization to import the said restricted goods, therefore, the importer concealed the CPUs and tried to smuggle in the guise of display panels. Thus, in view of above, the importer had mis-declared the actual description, value and other parameters of the imported goods at the time of importation by way of wilful and intentional suppression of these facts in the Bills of Entry as mentioned in Table -I

19. Valuation of the goods:

19.1 The importer filed three warehouse Bills of Entry wherein the total assessable value declared for the imported goods was ₹37,21,807/-. However, the goods were subjected to detailed examination and valuation by M/s. B.G. Bhatt & Co., a Chartered Engineer empanelled by Customs and a Government-approved valuer. The said Chartered Engineer, after physical inspection and market inquiry, submitted a comprehensive

valuation report determining the total value of the imported goods as ₹1,52,28,055/-, comprising:

- ₹1,42,12,855/- for 27,519 pieces of old and used display panels; and
- ₹10,15,200/- for 3,384 undeclared/concealed Central Processing Units (CPUs) without RAM and HDD.

19.2 The valuation report indicates that the fair market value of the goods was derived using bulk discounted rates for new goods of similar make (Made in China), sourced through market inquiry and public domain data. Thereafter, the depreciated value was determined in accordance with CBIC Circular No. 07/2020-Customs dated 05.02.2020, which prescribes guidelines for valuation of second-hand machinery. Though LCD and LED display panels were noted to vary in price, the valuer adopted a uniform rate for both, based on the lowest prevailing rates for common sizes (ranging from 17" to 24"). The total depreciated Free on Board (FOB) value of the display panels was thus estimated at US\$ 168,100, which translates to ₹1,42,12,855/- as per the exchange rate applicable on the date of the Bills of Entry.

19.3 As regards the CPUs, the report determined a depreciated FOB value of ₹300/- per piece (US\$ 6.11), based on an original FOB value of US\$ 20.36, resulting in a total value of ₹10,15,200/- for 3,384 units (Dell – 3024 pcs, HP – 360 pcs). These CPUs were not declared in the Bills of Entry and were concealed within the consignment.

19.4 The declared assessable value of ₹37,21,807/- thus appears to be grossly undervalued. In view of the significant variance between the declared and the assessed value, it is evident that there has been willful mis-declaration of value with an intention to evade customs duty.

19.5 As per para 6(c) of CBIC Circular No. 07/2020-Customs dated 05.02.2020, in cases where the importer fails to produce an overseas Chartered Engineer's inspection report, the goods may be valued based on inspection conducted by a Chartered Engineer empanelled by Customs. The instant valuation was accordingly undertaken by a locally empanelled Chartered Engineer, and the report was furnished in the prescribed Format-B annexed to the said Circular.

19.6 In accordance with Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the declared value was examined vis-à-vis the report of the Chartered Engineer and found to be unreliable. The significant undervaluation warranted rejection of the declared transaction value. Further, I find as per Rule 3(4) & 12(1) of CVR, 2007, if the value cannot be determined under the provisions of sub-rule (1), the value of the imported goods is required to be determined by proceeding sequentially through Rule 4 to 9 of the CVR, 2007

19.7 From the plain reading of Rule 4, it is evident that the said Rule provides for the determination of transaction value of the imported goods by comparing the declared value with the contemporaneous imports of identical goods in a sale at the same commercial level and in substantially

the same quantity as the goods being valued shall be used to determine the value of imported goods. Further, I find that Rule 5 of the CVR 2007 provides for the determination of the transaction value of the imported goods by comparing the declared transaction value of the similar goods imported by other importer(s) at or around the same time and goods which can be considered as similar goods are specified in Rule 2(f) of the CVR, 2007.

In the instant case, efforts were made to determine the value based on contemporaneous imports of identical or similar goods. However, owing to the old and used nature of the goods, varying brands, models, specifications, and lack of import data for identical or similar second-hand goods, it is not feasible to re-determine the transaction value of the imported goods under Rule 4 and Rule 5 of CVR, 2007.

19.8 Further, I find that as per the provisions of Rule 6 of CVR, 2007 if the value cannot be determined under Rules 3, 4 and 5, same shall be determined under the provisions of Rule 7 or when same cannot be determined under that Rule, then under Rule 8. Rule 7 of the Customs Valuation Rules, 2007, provides for 'deductive value', i.e. the value is to be determined on the basis of unit price of goods being valued for identical goods or similar imported goods sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, subject to deductions stipulated under the rule.

From the plain reading of Rule 7 of CVR, 2007, it appears that in order to arrive at a reasonable value under the said rule, authentic data regarding sale of the imported goods, or identical or similar imported goods to unrelated persons shall be the benchmark. However, in the instant case, the goods were second-hand and not sold in the same condition in India, and no sales data for identical or similar imported goods was available within the relevant timeframe. Moreover, due to variation in make, model, and condition, no reliable domestic market sale price data was available, therefore, the value cannot be re-determined under Rule 7 of CVR, 2007.

19.9 I find that Valuation under Rule 8 could also not be adopted as sufficient data regarding cost of production, profit margins, and general expenses incurred by manufacturers in the country of export (China) was not available. Further, as the goods were second-hand and sourced through unknown channels, cost-based valuation was not practical or reliable. Therefore, in absence of requisite data, the value of the imported goods, cannot be determined by taking recourse to Rule 8 of CVR, 2007 either.

19.10 Further, I find that Rule 9 provides that 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. Section 14 provides that the value of the imported 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, where the buyer and seller of the goods are not related and price is the sole consideration for the sale. Accordingly, the

value was determined using reasonable means, consistent with the principles and general provisions of the Customs Valuation Rules, 2007, and based on reliable data available in India. The report submitted by the empanelled Chartered Engineer, which was prepared after physical examination of the goods, forms a valid basis for this valuation.

In view of the above discussion, the declared value of ₹37,21,807/- is rejected under Rule 12 of the Customs Valuation Rules, 2007, and the assessable value of the impugned goods is determined at ₹1,52,28,055/- under Rule 9 of the said Rules.

20. Liability to Confiscation:

20.1 I find that during examination of the consignment, it has been found that the goods declared in the Bill of Entry are old and used LED display panels, which fall under the category of second-hand goods. Furthermore, 3384 units of undeclared Central Processing Units (CPUs) were also recovered from the consignment. These CPUs were found to be used/refurbished and without essential components such as RAM and HDD.

20.2 I find that as per Para 2.01 of the Foreign Trade Policy (FTP) 2015-2020, exports and imports shall be 'free' except when regulated by way of prohibition, restriction, or exclusive trading through State Trading Enterprises (STEs), as laid down in ITC (HS). As per Para 2.31 of FTP 2015-2020, the import of second-hand goods other than capital goods is restricted and importable only against a valid authorization.

20.3 I find that as per Rule 11 of the Foreign Trade (Regulation) Rules, 1993, no import shall be made except in accordance with the provisions of the Act, the rules and orders made thereunder, and the FTP for the time being in force. In the instant case, the importer has not produced any authorization or certificate from the Directorate General of Foreign Trade (DGFT) or Ministry of Environment, Forest and Climate Change (MoEF&CC) for import of such restricted goods.

20.4 I find that Rule 11 and Rule 12 of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, prohibit import of hazardous wastes for disposal and permit import only for recycling, reuse, and co-processing with authorisation from MoEF&CC. Basel No. B1110 of Part D of Schedule III allows import of electrical and electronic assemblies only under specific conditions and permissions. As per Customs Circular No. 27/2011 dated 04.07.2011, imports falling under B1110 category, including used computers, require MoEF&CC permission. The imported goods, including old CPUs, fall under this category, and the importer failed to present the required permission. Moreover, the CPUs, being used electronic assemblies without RAM/HDD and not covered under any exempted personal use or defence-related exception, qualify as hazardous or other waste under Rule 3(17) read with Part D of Schedule III (Basel No. B1110) of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. Import of such items requires prior permission from the Ministry of Environment, Forest and Climate Change (MoEF&CC) and compliance with associated procedures including

Extended Producer Responsibility (EPR), none of which were fulfilled.

20.5 In the view of the above, I find that these old and used LED panels have been imported in violation of Sr. No. 2.31 of the Foreign Trade Policy, 2023 read with Section 3 of the Foreign Trade (Development & Regulation) Act, 1992 further read with Section 11 of the Customs Act, 1962. Furthermore, these old and used LED including old CPUs panels have been imported in violation of the Hazardous and Other Waste (Management and Transboundary Movement) Rules, 2016 read with Customs Circular No- 27/2011 dated 04.07.2011 read with Section 3 of the Foreign Trade (Development & Regulation) Act, 1992 further read with Section 11 of the Customs Act, 1962. By the act of mis-declaration, concealment of smuggled goods and undervaluation of the subject goods, and on account of violations and restrictions imposed on import of such goods, the said goods having a total re-determined assessable value of Rs.1,52,28,055/- are liable to be treated as prohibited goods under Section 2(33) of the Customs Act, 1962 and therefore, are liable to confiscation under Section 111(d), 111(l), 111(m) of the Customs Act, 1962.

21. Redemption Fine

21.1 As the impugned goods are found to be liable for confiscation under Section 111(d), 111(l) and 111(m) 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 in respect of the impugned goods as alleged vide subject SCN dated..... The Section 125 ibid reads as under: -

"Section 125. Option to pay fine in lieu of confiscation.-(1) Whenever confiscation of any goods is authorised 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 1[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."

A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. In the current scenario, I therefore, deem it fit to allow re-export the goods upon payment of penalty and fine imposed in lieu of confiscation. However, in case, the importer does not re-export the goods and pay the redemption fine imposed within the time limit prescribed under the Act, the goods shall be absolutely confiscated.

22. Imposition of penalty on Importer M/s. Prakash Impex (IEC No. AIIPA9798F)

22.1 In view of the foregoing discussion, it is evident that the importer was fully aware of the nature and condition of the goods imported under the three subject Bills of Entry mentioned in Table-1. The imported goods, i.e., display panels, were found to be old and used refurbished panels,

which fall under the Restricted Category for import into India and are importable only against a valid authorization. Despite this, the importer failed to declare the true nature and condition of the goods in the Bills of Entry.

22.2 I find that the importer, in his statement recorded under Section 108 of the Customs Act, 1962, denied prior knowledge of the refurbished nature of the goods, such denial is contradicted by the gross undervaluation reflected in the declared invoice value. The declared unit value of each display panel was in the range of USD 2 to USD 3, which is not commensurate with the price of new display panels. As per the Chartered Engineer and Government Approved Valuer's Certificate, the value of a new display panel, after accounting for bulk discount and depreciation, is approximately USD 20.36. This undervaluation reinforces the conclusion that the importer intentionally misdeclared the goods to circumvent the import restrictions and duty liability.

22.3 Further, as per the examination reports, the importer had declared a total quantity of 19,630 display panels across the three Bills of Entry. However, physical examination revealed the presence of 27,519 display panels, indicating an excess of 7,889 undeclared panels. The importer, in his statement under Section 108, categorically admitted that he was aware of the excess quantity loaded at the port of export, thereby confirming the deliberate nature of the concealment.

Additionally, during examination of container No. WHLU5481316 (imported under Bill of Entry No. 4643916 dated 22.07.2024), 3,384 undeclared Central Processing Units (CPUs)—without RAM and HDD—were found concealed among the display panels. The importer has admitted in his statement under Section 108 that he was fully aware of the presence of these undeclared CPUs in all three containers. CPUs without RAM and HDD qualify as e-waste and their import is classified as restricted/prohibited, requiring specific authorization under relevant laws. The attempt to smuggle these CPUs by concealing them amongst declared goods further establishes the mala fide intent of the importer.

22.4 Thus, I find that the importer has willfully misdeclared the description, quantity, value, and condition of the goods at the time of importation by suppressing vital facts in the Bills of Entry mentioned in Table-I. The importer has thereby sought to illegally clear restricted/prohibited goods in contravention of Sr. No. 2.31 of the Foreign Trade Policy, 2023, read with Section 3 of the Foreign Trade (Development & Regulation) Act, 1992, and Section 11 of the Customs Act, 1962. Moreover, the import of old and used LED display panels also violates the provisions of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, read with CBEC Circular No. 27/2011-Customs dated 04.07.2011, and the relevant provisions of the

Foreign Trade (Development & Regulation) Act, 1992.

22.5 Therefore, by virtue of these acts of misdeclaration, concealment, undervaluation, and import of restricted/prohibited goods, the subject goods having a re-determined assessable value of ₹1,52,28,055/- are rendered liable for confiscation under Section 111(d), 111(l) and 111(m) of the Customs Act, 1962. Accordingly, the importer, having knowingly carried, kept, concealed, and dealt with goods that he knew or had reason to believe were liable to confiscation, renders himself liable to penal action under Section 112(a)(i) of the Customs Act, 1962.

Further, the importer has willfully misdeclared the description, quantity, value, and condition of the goods at the time of importation by suppressing vital facts in the Bills of Entry mentioned in Table-I. Thus he had knowingly and intentionally made/signed/used and/or caused to be made/ signed/ used the import documents and other related documents which were false or incorrect in material particular such as description, quantity and value etc., with mala-fide intention, and therefore, the importer is also liable to penalty under Section 114AA of the Customs Act, 1962.

22.6 I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty on M/s. Prakash Impex under Section 112(b) of the Act wherever, penalty under Section 112(a) of the Customs Act, 1962, is to be imposed.

22.7 As regards the penalty under Section 117 proposed on importer M/s. Prakash Impex, I find that Section 117 of the Customs Act, 1962 is a covering provision which lays down that for any other contravention of the Customs Act for which express penalty has not been provided elsewhere, the person liable can be charged for penalty under this section. In this regard, I find that penalty against M/s. Prakash Impex already confirmed under the provisions of Section 112 of the Customs Act, 1962, hence, penal action under section 117 does not appears to be warranted in the subject case against importer M/s. Prakash Impex.

23. Imposition of penalty on M/s. Holistic Global Corporation

23.1 I find that M/s. Holistic Global Corporation filed Z-type (Warehouse) and T-type (DTA Clearance) Bills of Entry on behalf of the importer, M/s. Prakash Impex, in respect of the impugned goods. Under the provisions of Section 46(4) of the Customs Act, 1962, it is mandatory that the importer, while presenting a Bill of Entry, makes and subscribes to a declaration as to the truth of the contents of such Bill of Entry and supports the same with the invoice and other relevant documents. Further, Section 46(4A) casts an obligation upon the importer (and, by extension, their agent under the handling provisions of Section 147) to ensure the accuracy and completeness of the information, authenticity and validity of supporting documents, and compliance with any restriction or prohibition under the Customs Act or any other applicable law.

23.2 I find that M/s. Holistic Global Corporation filed the Z-type (warehouse) Bill of Entry and, after completion of initial Customs formalities, de-stuffed and warehoused the consignment in their designated warehouse. It is pertinent to note that during the process of de-stuffing and warehousing, the actual description, quantity, and nature of the goods became fully apparent to them. The goods, upon examination, were found to be:

- Old and used refurbished display panels, falling under the 'Restricted' category, requiring prior import authorization;
- 7889 display panels in excess of the declared quantity;
- 3384 undeclared Central Processing Units (CPUs) without RAM and HDDs, which were concealed beneath layers of display units and not declared in the Bills of Entry.

Despite having physical custody and clear access to the consignment during the warehousing stage, M/s. Holistic Global Corporation proceeded to file the subsequent T-type (DTA clearance) Bill of Entry without correcting or updating the declaration with respect to the true nature, condition, and quantity of the goods. This omission was not inadvertent, as sufficient knowledge and physical access existed to enable them to know the true facts, and yet they deliberately proceeded with a false declaration.

23.3 Further, in his statement recorded under Section 108 of the Customs Act, 1962, Shri Kanhaiya Jagdish Kasera, Partner of M/s. Holistic Global Corporation, denied knowledge of the presence of the excess and undeclared goods, including the CPUs. However, such denial is contradicted by the factual circumstances and appears to be false and an afterthought. Given the opportunity and responsibility of physically verifying the goods before filing the T-type Bill of Entry, it is evident that they were aware—or at the very least, ought to have been aware—of the restricted, excess, and undeclared nature of the goods.

23.4 I find that the role of M/s. Holistic Global Corporation was as a warehouse and M/s. Holistic Global Corporation filed the Z-type (warehouse) Bill of Entry and, after completion of initial Customs formalities, de-stuffed and warehoused the consignment in their designated warehouse. Thus, M/s. Holistic Global Corporation was involved in keeping and dealing with offending goods. In view of the foregoing, it is held that M/s. Holistic Global Corporation was knowingly involved in carrying, concealing, keeping, and dealing with offending goods which they knew or had reason to believe were liable to confiscation under the Customs Act, 1962. Accordingly, M/s. Holistic Global Corporation has rendered themselves liable for penal action under Section 112(b)(i) of the Customs Act, 1962.

23.5 I find that Shri Kanhaiya Jagdish Kasera, Partner of M/s. Holistic

Global Corporation, in his statement recorded under Section 108 of the Customs Act, 1962, denied having knowledge of the excess and undeclared restricted goods. However, this denial is inconsistent with the sequence of events and is not tenable, particularly in light of the fact that the goods had been fully de-stuffed and warehoused under their supervision and control. The falsehood of the statement further corroborates the conscious and deliberate nature of the mis-declaration.

In light of the above, it is evident that M/s. Holistic Global Corporation knowingly made a false declaration and presented false documents at the time of filing the DTA clearance Bill of Entry. The deliberate misrepresentation of material facts, with the knowledge that such documents and declarations were false, renders them squarely liable for penalty under Section 114AA of the Customs Act, 1962.

23.6 I find that imposition of penalty under Section 112(a) and 112(b) simultaneously tantamount to imposition of double penalty, therefore, I refrain from imposition of penalty on M/s. Holistic Global Corporation under Section 112(a) of the Act wherever, penalty under Section 112(b) of the Customs Act, 1962, is to be imposed.

23.7 As regards the penalty under Section 117 proposed on M/s. Holistic Global Corporation, I find that Section 117 of the Customs Act, 1962 is a covering provision which lays down that for any other contravention of the Customs Act for which express penalty has not been provided elsewhere, the person liable can be charged for penalty under this section. In this regard, I find that penalty against M/s. Holistic Global Corporation already confirmed under the provisions of Section 112 of the Customs Act, 1962, hence, penal action under section 117 does not appears to be warranted in the subject case against M/s. Holistic Global Corporation.

24. In view of above, I pass the following order:

ORDER

- i. I reject the value for the goods covered under Bills of Entry as mentioned in Table-1 imported by M/s. Prakash Impex, declared as Rs. 37,21,807/- under Rule 12 of Customs Valuation Rules, 2007 and order to re-determine the same as Rs. 1,52,28,055/- under the provisions of Rule 9 of Customs Valuation Rules, 2007.
- ii. I order to confiscate the goods imported vide the Bills of entry mentioned in Table-1 which were seized vide Seizure Memo date 13.08.2024 and having assessable value as Rs. 1,52,28,055/- under Section Section 111(d), 111(l), 111(m) of the Customs Act, 1962. However, I give an option to M/s. Prakash Impex to re-deem the goods under the provisions of the Section 125 of the Customs Act, 1962 for limited purpose of re-export on payment of **Rs. 10,00,000/- (Rupees Ten Lakh only)**. If the Redemption fine imposed is not paid within a period of one hundred and twenty days

from the date of receipt of this order, the option to redeem the goods for re-export shall become void, unless an appeal against such order is pending.

- iii. I impose penalty of **Rs. 4,00,000/- (Rupees Four Lakh only)** on the importer M/s. Prakash Impex under Section 112 (a)(i) of the Customs Act, 1962.
 - iv. I impose penalty of **Rs. 2,00,000/- (Rupees Two Lakh only)** on the importer M/s. Prakash Impex under Section 114AA of the Customs Act, 1962.
 - v. I refrain from imposing penalty on the importer M/s. Prakash Impex under Section 112(b) and 117 of the Customs Act, 1962.
 - vi. I impose penalty of **Rs. 1,00,000/- (Rupees One Lakh only)** on M/s. Holistic Global Corporation under Section 112(b)(i) of the Customs Act, 1962.
 - vii. I impose penalty of **Rs. 1,00,000/- (Rupees One Lakh only)** on M/s. Holistic Global Corporation under Section 114AA of the Customs Act, 1962.
 - viii. I refrain from imposing penalty on the importer M/s. Holistic Global Corporation under Section 112(a) and 117 of the Customs Act, 1962.
- 25.** This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.
- 26.** The Show Cause Notice vide File No. GEN/ADJ/ADC/152/2025-Adjn-O/o Pr Commr-Cus-Mundra dated 15.01.2025 stands disposed in above terms.

**Additional Commissioner,
Custom House, Mundra.**

F. No. GEN/ADJ/ADC/152/2025-Adjn.

To,

1. **M/s. Prakash Impex (IEC No. AIIPA9798F)**
Plot No. 40, Flat B-1102 Maitri Ocean CHS,

Sector -20, Khargar, Navi Mumbai,
Raigad Maharashtra-41021

2. **M/s. Holistic Global Corporation,**
Plot No. 3, Block-D, Section 12 N,
FTWZ Zone in east of Steinweg plot,
Adani Port & SEZ Ltd., Taluka Mundra,
District-Kutch, Gujarat 370 421

Copy to:

1. The Deputy Director, Directorate of Revenue Intelligence, Jamnagar
2. The Specified Officer, AP& SEZ, Mundra
3. The Deputy Commissioner, RRA Section, Mundra
4. The Deputy Commissioner, TRC Section, Mundra
5. The Deputy Commissioner, EDI Section, Mundra
6. Guard File.

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