	प्रधान आयुक्त का कार्यालय, सीमा शुल्क सदन, मुन्द्रा **OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH** **MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421** ई-मेल/ E-Mail: adj-mundra@gov.in	
A	फा /.सं .FILE NO.	GEN/ADJ/ADC/738/2024-Adjn-O/o Pr Commr-Cus-Mundra
B	मूल आदेश सं. ORDER-IN- ORIGINAL NO.	MCH/ADC/ZDC/204/2026-27
C	द्वारा पारित किया गया PASSED BY	**Dipak Zala,** Additional Commissioner of Customs, Custom House, Mundra
D	आदेश की तिथि DATE OF ORDER	25-06-2026
E	जारी करने की तिथि DATE OF ISSUE	25-06-2026
F	कारण बताओ नोटिस संएवं तिथि . SCN NO. & DATE	GEN/ADJ/ADC/738/2024-Adjn dated 29.04.2024
G	नोटिसीपार्टी / आयातक/ NOTICEE/PARTY/ IMPORTER	**1.** M/s Shaurya Distributors (IEC: BPOPG2565N), **2.** Shri Ankit Garg, Authorized representative of M/s Shaurya Distributors. **3.** M/s Lara Exim Pvt. Ltd.

1. यह अपील आदेश संबन्धित को नि:शुल्क प्रदान किया जाता है।
   This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128A के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-
   Any person aggrieved by this Order - in - Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

   "सीमा शुल्क आयुक्त) अपील(, चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद 380009"

   "The Commissioner of Customs (Appeals), Mundra, 4TH Floor, Hudco Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad-380009."

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

4. उक्त अपील के 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 accompanied by –

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की

प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं°-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

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

6. अपील ज्ञापन के साथ ड्यूटि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के सभी मामलों में पालन किया जाना चाहिए।

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

8. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (Appeals) 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

A intelligence was gathered by the Directorate of Revenue Intelligence (hereinafter referred to as 'DRI') indicated that **M/s. Shaurya Distributors (IEC: BPOPG2565N) 1201/24, Mission Road, Sonipat, Haryana-131001** (hereinafter also referred to as the "Importer") has imported a cargo stuffed in two containers bearing No. TCKU6674599 and SEKU5825836 by making a misdeclaration to evade the Customs Duty. The importer imported the cargo stuffed in container No. TCKU6674599 and SEKU5825836 at MPSEZ, Mundra and jointly filed the Bill of Entry No. 1006707 dated 21.04.2023 having description of the goods "Stainless Steel Sink HSN 73241000" and 1006741 dated 22.04.2023 having description "Stainless Steel Sink HSN 73241000 & Stainless Steel Basket in CKD condition HSN 73249000" with M/s OWS Warehouse Service LLP, Survey No. 169, Sector-8, Village Dhurve, Mitap Road, MPSEZ Mundra. The particulars of the Import consignment are as under:

Bill of Entry No. and Date	1006707 dated 21.04.2023	1006741 dated 22.04.2023
Name of the Importer	M/s. Shaurya Distributors (1201/24, Mission Road, Sonipat, Haryana-131001	M/s. Shaurya Distributors (1201/24, Mission Road, Sonipat, Haryana-131001
IEC No. of the Importer	IEC:BPOPG2565N)	IEC:BPOPG2565N)
Bill of Lading no. and date	TGLSDELF2300309	OSSZ23040123
Name of	M/s Trident Exports Limited,	M/s Trident Exports Limited,

the Shipper	Room No. 35, 08/F, 33-f0, Manfai Building, Manying Street, Jordan, Kowloon, Hongkong.	Room No. 35, 08/F, 33-f0, Manfai Building, Manying Street, Jordan, Kowloon, Hongkong.
Port of Loading	Shekou, China	Shekou, China
Port of Discharge	Mundra (INMUN1)	Mundra (INMUN1)
Gross Weight (Kgs)	27045 Kgs	28330 Kgs
Net Weight (Kgs)	-	-
Quantity of Goods Detained / Seized	9020 Pcs	7920 PCS 261 Bags
Assessable value (as per BOE)	*Rs. 18,79,855/-	19, 74, 894
Invoice No. and Date	OWT 01 dated 25.03.2023	OWT 02 dated 04.04.2023
Description of Import Goods	'Stainless Steel Sink"	'Stainless Steel Sink" "Sink Baskets in CKD Condition"
CTH No.	73241000	73241000 73249000
Container No.	SEKU5825836	TCKU6674599

** The SCN inadvertently mentioned this figure as Rs. 16,79,855/-. The correct declared assessable value as per BE No. 1006707 dated 21.04.2023 is Rs. 18,79,855/-.*

2.1 Acting upon the intelligence, goods of declared description 'Stainless Steel Sink (CTH-73241000) imported vide container No. SEKU5825836covered under bill of entry No. 1006707 dated 21.04.2023 filed by M**/s. Shaurya Distributors (IEC: BPOPG2565N) 1201/24, Mission Road, Sonipat, Haryana-131001**), were taken up for examination. Accordingly, the said goods were examined under Panchnama dated 01.05.2023 drawn at M/s.OWS Warehouse Services LLP, Survey NO. 169, Sector-8, Village Dhruve, Mitap Road, MPSEZ Mundra, Kutch in the presence of representative of customs broker appointed by the Importer. Upon examination, the said container was found to stuffed with "Metallic Kitchen Sinks" of uniform size. The officers counted total No. of pieces Kitchen sinks de-stuffed from the said container and found total 8,883 pieces. The details of the goods found stuffed in the said container are mentioned in a below table.

Container No.	Goods found in the container(in appearance)	Total No. of pieces Declared	Total no. of Pieces found	Total Gross weight Declared	Total Net weight Declared (Goods weight)	Total Net Weight found(Goods weight as per wighment Slip)
SEKU5825836	Metallic Kitchen Sinks	9020 Pcs	8883 Pcs	27045 Kgs	25120 Kgs	28260 Kgs

2.2 Similarly, the goods of declared description 'Stainless Steel Sink(CTH-73241000) and Stainless Steel Basket in CKD condition(CTH 73249000) imported vide container No.TCKU6674599 covered under bill of entry No. 1006741 dated 22.04.2023 filed by M**/s. Shaurya Distributors (IEC:BPOPG2565N) 1201/24, Mission Road, Sonipat, Haryana-131001**), were taken up for examination. Accordingly, the said goods were examined under Panchnama dated 03.05.2023 drawn at M/s. OWS Warehouse Services LLP, Survey NO. 169, Sector-8, Village Dhruve, Mitap Road, MPSEZ Mundra, Kutch in the presence of representative of customs broker appointed by the Importer. Upon examination, the said container was found to stuffed with declared Metalllice Kitchen Sinks stuffed upto75% height of the container. The metallice kitchen sinks were not covered with any packing material/covering box. Above the said metallic Kitchen Sinks there were white, green and yellow colour PP bags stuffed in the rest of the container. It was noticed that some of the plastic bags were filled with plastic item viz plates, fittings and screws and rest of the bags were found filled with small Metallic Pipes of approx. length of 1 ft. On being asked the Customs Broker stated that the said parts will be used in assembling of Kitchen Sink Basket and the same are imported in **Completed Knocked Down(CKD) Condition.** The container was found stuffed with only two types of items i.e. metallic Kitchen Sinks and PP bags consisting of Basket parts unloaded from the container and counted easily. During the examination total No. of PP bags of white, green and yellow colour de-stuffed form the said container which comes to 260 PP bags and 5 transparent small polybags of screws. All the person present during the examination observed that counting of each part stuffed in the said bags is not feasible/possible. Hence, it was mutually decided that only counting of PP Bags of Plastic Side Part(as mentioned in packing list) and no. of Plastic side parts in randomly selected 5 bags will be done in presence of the panchas. The officers have counted total 167 bags(including 1 small bag of 80 Pcs) in which plastic side parts are stuffed and average 120 pieces are filled in each bag, which are matching with the quantity of Plastic Side Parts mentioned in packing list i.e. 167 bags and 20000 pcs. As per the packing list, 2 Plastic Side Parts supposed to be used in assembling of 1 basket. The weighment

of the exact basket parts which are supposed to be used in assembling of 5 Baskets as mentioned in the Packing list and hence average weight of 1 basket (including all parts) found to be 0.300 Kgs. By this way, it can calculated that total weight of 10, 000 baskets (as declared in the packing list) will be 3000 Kgs. The details of parts of the baskets found stuffed in 260 PP bag and 5 transparent small polybags are mentioned below.

Container No.	Goods found in the container(in appearance)	Total No. of Bags declared	Total No. of Bags Found	Total Gross Weight Declared (as per packing list)	Weight of packing material (1 Kg/Pp Bag)	Total Net Weight Declared(Goods Weight)	Total Net weight found(as above)
TCKU6674599	Parts of Kitchen Sink Baskets in CKD	261 Bags Pcs	260Bags+ 5 transparent small polybags	3100Kgs	260 Kgs	2700 Kgs	3000Kgs

Total no. of pieces Kitchen Sinks de-stuffed from the said container which comes to 8065 pieces and net wet of the Kitchen sinks comes to 24,701 Kgs by deducting weight of PP bags and weight of Baskets from the total weight of container found as above. The details of the Kitchen Sinks found stuffed in the said container are mentioned in below table.

Container No.	Goods found in the container(in appearance)	Total No. of pieces Declared	Total no. of Pieces found	Total Gross weight Declared	Total Net weight Declared (Goods weight)	Total Net Weight found(Goods weight as per wighment Slip)
TCKU6674599	Metallic Kitchen Sinks	7920 Pcs	8065 Pcs	25230 Kgs	25120 Kgs	28260 Kgs

3. During the investigation it was found that the importer has grossly mis declared the value of the cargo imported vide aforesaid Bill of Entry No. 1006707 dated 21.04.2023 as Rs. 18,79,855/- and 1006741 dated 22.04.2023 as Rs.1974894/-. Therefore to ascertain the correct value of the cargo the examination of the cargo was done vide Panchanama dated 19.10.2023 in presence of empaneled Chartered Engineer Shri Tushar Zankat who submitted his two valuation report No. CE/TZ/MUN/201003/2023-24 dated 20.10.2023 and CE/TZ/MUN/201002/2023-24 dated 20.10.2023 for the respective cargo. The details of the valuation report is listed in below table

Table:

CE/TZ/MUN/201003/2023-24 dated 20.10.2023							

Sr. No.	SEZ Bill of Entry No.	Item Description	Total No. of Pieces Declared	Total No. of Pieces found during examination	Weight in Kgs. as per declaration	Weight in Kgs. as per weighment slip	Declared CIF invoice value in USD		Evaluated CIF Value in USD		
							Unit Price per Kg.	Total Price as per declared weight	Unit Price per Pc.	Unit Price per Kg.	Total Price
1.	1006707 dated 21.04.2023	Metallic Kitchen Sinks	9020	8883	25,120	28,260	0.90	22608.00	8.7485	2.75	77,715
										Total	**77,715**
CE/TZ/MUN/201002/2023-24 dated 20.10.2023											
2.	1006741 dated 22.04.2023	Metallic Kitchen Sinks	7920	8065	23,690	24,700	0.90	21,321.00	8.422	2.75	67,925
3.		Stainless steel basket in CKD Condition	10,000	10,000	2,700	3,000	0.90	2430.00	0.7425	2.75	7,425
										Total	**75,350**

4. There appears to be a mis declaration with respect of aforesaid goods which were imported by M/s Shaurya Distributors, 1201/24, Mission Road, Sonipat Haryana, 131001 in value and quantity particulars. The Importer/Consignee/ notify party had not declared the correct value and quantity in Warehouse Bill of Entry filed by them with Customs. There existed a reasonable belief that the goods mentioned in above table No. **1** were liable for confiscation under the provisions of the Customs Act, 1962. The declared goods "Stainless Steel Sink" as per the SEZ Bill of Entry No. 1006707 dated 21.04.2023 having the declared value as USD 22608 (Rs. 18,79,855/-) whereas the actual value of the cargo is USD 77715 (Rs. **64,62,002/-**). The goods imported vide SEZ Bill of Entry No. 1006741 dated 22.04.2023 declared as "Stainless Steel Sink and Steel Basket in CKD" having the declared value as USD 23751 (Rs. 1974894/-) whereas the actual value of the cargo is USD 75350 **(Rs. 62,65,352/-)**

Therefore the goods imported vide 1006707 dated 21.04.2023 and 1006741 dated 22.04.2023 were placed under seizure under section 110 of the Customs Act, 1962 vide Seizure Memorandum dated 20.10.2023 (DIN-202310DDZ1000000E929). The seized consignment was handed over to the custodian M/s OWS Warehouse Services LLP, MPSEZ, Mundra with a direction not to part away or deal with in any manner, with the said goods without the prior written permission of proper officer from DRI and to keep the seized goods in safe custody and to produce the said goods, as and when needed by the DRI.

5. The investigation could not be completed in the stipulated time period of six months from the date of the seizure of goods due to unforeseen circumstances. The competent authority vide letter dated 30.10.2023 granted the extension by a further period of six months i.e. 30.04.2024 for issuance of Show Cause Notice in respect of seized goods in terms of the first proviso of Section 110(2) of the Customs Act, 1962 as amended by the Finance Act, 2018.

6. During investigation, statements of following persons were recorded under Section 108 of the Customs Act, 1962, which are briefly discussed herein-below:

6.1 Statement of Shri Ankit Garg, Authorized representative of **M/s. Shaurya Distributors (IEC:BPOPG2565N) 1201/24, Mission Road, Sonipat, Haryana-131001** was recorded under Section 108 of the Customs Act, 1962 on 04.01.2024 wherein he inter alia stated that;

- His wife Smt. Garima Garg, is a house wife and she is proprietor of firm M/s Shaurya Distributor. (IEC BPOPG2565N), under which they have been engaged in the trading of Kitchen Sink, Kitchen Sink Basket and fabric. He looked after all the business of this firm related import and local sell business. He used to import Kitchen Sink, Kitchen Sink Basket and fabric and sell them in the local market of Delhi
- Earlier they were doing local online trading business of suitcase through Flipkart and Amazon in the name of M/s Shaurya Distributors since September, 2020. After that they were doing the business of import since November, 2022.
- He had imported 7-8 consignment related to fabric and the same was cleared from MPSEZ, Mundra.
- He used to import at Mundra Port only since 2014. He had never import through other port.
- He never come to Mundra for import of Kitchen sink and Shri Sebastian George, Customs Broker who look after his import clearance work at Mundra Port and Shri Sebastian George only connected with SEZ Entity M/s OWS Warehouse Services LLP., MPSEZ, Mundra. He never came to Mundra. For this consignment, they talked to Sebastian George, Customs Broker only on phone (9426214521) and it was Sebastian George, Customs Broker who talked to SEZ entity M/s OWS Warehouse Services LLP., MPSEZ, Mundra.
- He had given all the documents related to this consignment under B/E No. 106707 dated 21.04.2023 and 1006741 dated 22.04.2023 to Shri Sebastian George, Customs Broker, who contacted M/s OWS Warehouse Services LLP., MPSEZ, Mundra and got the B/E filed for warehousing at M/s. OWS Warehouse Services LLP., MPSEZ, Mundra.
- Shri Sebastian George, working as Customs Broker firm M/s Lara Exim Pvt. Ltd., Gandhidham. and he had asked him to get this consignment cleared.
- He had never received checklist from Customs Broker for approval. He had

authorised Customs Broker to file Bill of Entry without my approval. Also for this consignment import under B/E No. 106707 dated 21.04.2023 and 1006741 dated 22.04.2023 customs broker had not sent checklist to him for approval.

- They negotiated the price with the Chinese Suppliers in respect of each consignment. Since they placed bulk orders, the Chinese suppliers supply the goods on discounted rates. Similarly, in respect of the said 02 consignment, since they placed order in bulk, they were given the goods at a discounted price.
- He had not made any advance payment to the Chinese supplier in respect of the said 02 consignment. Full payment is yet to be done.
- He had not made any advance payment in respect of the present consignment. Full payment was to be made after 10-15 days of the final delivery of the goods.
- He did not have Chinese export documents for the present consignment. The export documents will be with the supplier of China.
- He received the invoice, packing list and all related documents from our agent in China.
- He had planned to sold the said consignment to M/s Steadfast Overseas, 41, Pocket-A Sector-4, DSIIDC Bawana Industrial Area Complex, Bawana, north West Delhi-110039. The selling price decided was approx. Rs. 150/- per kg of kitchen sink to Steadfast Overseas.
- I had perused the Panchnama dated 01.05.2023 and 03.05.2023 and weightment slip. I find that the Quantity and weight of the goods not found as per declared in the Bill of Entry. In token of having seen variation in quantity and weight of the goods mentioned in the Panchnama dated 01.05.2023 and 03.05.2023 and weighment slip and put my dated signature on the said both Panchnama dated 01.05.2023 and 03.05.2023 and weighment slip.
- I have perused the valuation Reports given by the Chartered Engineer and Valuer. I find that the total assessable value of the goods in respect of both consignment as per the valuation reports is Rs. 1,27,27,355/-. In token of having seen the valuation reports and put my dated signature on the first page of both the valuation reports.
- He inquired about the quality of the kitchen sink and kitchen sink basket and the price mentioned in B/Es. Accordingly, he confirmed that the declared assessable value is lesser than the actual assessable value.
- The bank account no. is 4648485823 (Kotak Mahindra Bank) of M/s Shaurya Distributors

6.2 Statement of Shri **Shri Sabu George alias Shri Sebastian Geoge**, authorized representative of Customs Broker M/s Lara Exim Pvt. Ltd., Office No. 220, 2nd floor, Gokul Park Building was recorded under Section 108 of the Customs Act, 1962 on 04.01.2024 wherein he inter alia stated that;

- He had seen the statement dated 04.01.2024 of Shri Ankit Garg, Authorized person of M/s Shaurya Distributors, Sonipat, Haryana, which I had perused and put his dated signature on all pages of the said statement in token of having seen the same.

- He stated that M/s Shaurya Distributors is their client since last 2-3 years. They handle all the work related to clearance of the import consignments of M/s Shaurya Distributors.
- He submitted the copy of KYC documents of M/s Shaurya Distributors viz. IEC certificate, GST Registration Certificate, AADHAR Card, rent agreement.
- All the documents for filing of Bill of Entry in respect of the 02 import consignments under B/E No. 106707 dated 21.04.2023 and 1006741 dated 22.04.2023, which were put on hold by DRI in April-2023, were finalized by M/s Lara Exim Pvt. Ltd. Thereafter, they sent all the documents for filing of Bill of Entry to M/s OWS Warehouse Services LLP., APSEZ, Mundra who then filed Bill of Entry on behalf of M/s Shaurya Distributors, Sonipat, Haryana.
- They never sent the checklist to the importer before filing the Bill of Entry on behalf of Importer because they had discussed telephonically with importer before filing the bill of entry but they said that there was no need to send checklist.
- He was shown the valuation reports submitted by the Chartered Engineer in respect of subject 02 consignments under B/E No. 106707 dated 21.04.2023 and 1006741 dated 22.04.2023. He put his dated signature on the first page of all the valuation reports and stated he was not aware how the importer decided the value of the import goods.
- They only file Bill of Entries on the basis of documents provided by the importer. They were not involved in deciding the value of import goods.

7. In view of the above, the value declared by the importer in the corresponding Bills of Entry and invoices did not appear to be the true transaction value under the provisions of Section 14 of the Customs Act, 1962 read with the provisions of the Customs Valuation (determination of Value of Imported Goods) Rules, 2007 and thus the same appear liable to be rejected in terms of Rule 12 of CVR, 2007. The value is required to be re-determined by sequentially proceeding in terms of **Rules 4 to 9 of CVR, 2007**. The relevant Rules of CVR, 2007 are reproduced hereunder: -

8. Rejection of transaction value of the imported goods and determination of the value of the import goods

As regards the value declared in the Bill of Entry, the importer did not produce any payment details to determine the value of the goods imported. Further, during the recording of statement dated 04.01.2024 of Shri Ankit Garg authorized by the Ms. Garima Garg, Proprietor of M/s Shaurya Distributors vide letter accepted that they had made misdeclaration in terms of valuation by declaring the lesser assessable value in Bill of Entry than the actual assessable value. The declared value appears to be not acceptable as transaction value and merits rejection in terms of Section 14 of Customs Act, 1962 read with Rule 12 of Customs Valuation

(Determination of Value of Imported Goods) Rules, 2007. The value is required to be re-determined by sequentially proceeding in terms of Rules 4 to 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Since the quality of imported cargo vide two Bill of Entry i.e. 106707 dated 21.0.2023 and 1006741 dated 22.04.2023 is superior therefore it cannot be fully compared with similar/identical imports, their value appears to be determinable under Rule 9 (Residual method) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with sub-section (1) of Section 14 of Customs Act, 1962 and on the basis of objective and quantifiable data available in India. The relevant Rules of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 are reproduced hereunder:-

9. *Determination of the method of valuation-*

(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

(2) Value of imported goods under sub-rule (1) shall be accepted:

Provided that -

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -

(i) are imposed or required by law or by the public authorities in India; or

(ii) limit the geographical area in which the goods may be resold; or

(i) do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

4. Transaction value of identical goods. -

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

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

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

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

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

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

Rule 5 (Transaction value of similar goods).-

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

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

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

Further, as per Rule 6 of the CVR, 2007, if the value cannot be determined under Rule 3, 4 & 5, then the value shall be determined under Rule7 of CVR, 2007.

Rule 7 of the CVR, 2007, stipulates that:-

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

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

(ii) the usual costs of transport and insurance and associated costs incurred within India;

(iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

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

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

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

Rule 8 of the CVR, 2007, stipulates that:-

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.

Rule 9 of the CVR, 2007, stipulates that:-

(1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India;

Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

(2) No value shall be determined under the provisions of" this rule on the basis of –

(i) the selling price in India of the goods produced in India;

(ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;

(iii) the price of the goods on the domestic market of the country of exportation; (iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;

(v) the price of the goods for the export to a country other than India;

(vi) minimum customs values; or

(vii) arbitrary or fictitious values.

10. As mentioned above, the value of the goods **Rs. 18,79,855/-** as per as per Bill

of Entry No. 1006707 dated 21.04.2023 and **Rs. 19, 74, 894/-** as per Bill of Entry No. 1006741 dated 22.04.2023 cannot be considered as assessable value of the goods and hence the same is liable to be rejected under Rule 12 of Customs Valuation Rules 2007 as there has been observed misdeclaration of goods in terms of value and quantity.

In absence of credible data of import of similar goods and other constraints the value of these goods cannot be determined in terms of Rule 4, 5, 6, 7, 8 of Customs Valuation Rules 2007. Hence the value is to be determined in terms of Rule 9 of said rules.

Therefore, the Assessable value based on the market price as provided by the Chartered Engineer may be considered as the value of these goods. Therefore, the invoice value of the goods is required to be rejected under Rule 12 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 and re-determined under Section 14 of the Customs Act, 1962 also the report of Chartered Engineer may be considered the assessable value as the basis for arriving at actual market value of these goods.

11. Mis-declaration in respect of value and quantity of the goods:-

11. 1. As mentioned in forgoing paras it appears that the importer had also mis-declared the quantity and value of the goods at the time of filing of Warehouse Bills of Entry. The present import consignments have been imported from a Hong Kong Supplier M/s. Trident Exports Limited. Prima facie the declared value of the import goods appeared to be gross undervalued whereas the quantity of cargo is misdeclared in terms of weight. Accordingly, import data, examination panchanama dated 01.05.2023, examination panchanama dated 03.05.2023 of the said goods was analysed which showed that the subject import consignments have been mis-declared in respect of value and quantity thereof in order to evade the applicable Customs Duty.

11.2. From the above, it appears that M/s Shaurya Distributors also indulged in the evasion of Customs Duty by way of undervaluation and misdeclaration in quantity of imported goods. On calculating the appropriate assessable value of the goods as per the valuation report submitted by the Govt. Charter Engineer for the declared goods "Stainless Steel Sink" as per the SEZ Bill of Entry No. 1006707 dated 21.04.2023 having the declared value as USD 22608 (Rs. 18,79,855/-) whereas the actual value of the cargo is USD 77715 (**Rs. 64,62,002/-).** The goods imported vide SEZ Bill of Entry No. 1006741 dated 22.04.2023 declared as "Stainless Steel Sink and Steel Basket in CKD" having the declared value as USD 23751 (Rs. 1974894/-) whereas the actual value of the cargo is USD 75350 **(Rs. 62,65,352/-)**

12. Liability of imported goods for confiscation

In view of facts of investigation narrated in foregoing paras, it appears that the that M/s Shaurya Distributor hatched the conspiracy of importing the high quality Stainless Steel Sink by mis declaring the value and quantity. It was well planned that by declaring the goods lesser assessable value and quantity they will import the high quality Stainless Steel Sink & Stainless Steel Basket in CKD condition which were found mis declared in terms of value and quantity.

It further appears that the price of imported goods mentioned in the Bill of Entry No. 1006707 dated 21.04.2023 having the declared value as USD 22608 (Rs. 18,79,855/-) The goods imported vide SEZ Bill of Entry No. 1006741 dated 22.04.2023 declared as "Stainless Steel Sink and Steel Basket in CKD" having the declared value as USD 23751 (Rs. 19,74,894/-). M/s Shaurya Distributors vide letter accepted the new assessable value Rs. 64,62,002 in r/o cargo imported by warehouse Bill of Entry No. 1006707 dated 21.04.2023. Similarly, M/s Shaurya Distributors vide letter accepted the new assessable value Rs. 62,65,352 in r/o cargo imported by warehouse Bill of Entry No. 1006741 dated 22.04.2023. Shri Ankit stated that the actual value of the Cargo was higher in compare to the quality of goods imported. It is evident that the consignment has been undervalued and the actual value of the consignment pertaining to SEZ Bill of Entry No. 1006707 dated 21.04.2023 is USD 77715 **(Rs. 64,62,002/-)** where as actual value of cargo pertaining to SEZ Bill of Entry No. 1006741 dated 22.04.2023 is USD 75350 **(Rs. 62,65,352/-).** Further, the importer has misdeclared the weight of the cargo and the weight of the cargo for both the Bill of Entry during examination was found excess. The declared goods "Stainless Steel Sink" as per the SEZ Bill of Entry No. 1006707 dated 21.04.2023 having the declared Net weight 25120 Kgs whereas the actual Net weight found was 28260 Kgs**.** The goods imported vide SEZ Bill of Entry No. 1006741 dated 22.04.2023 declared as "Stainless Steel Sink and Steel Basket in CKD" having the declared Net weight as 23,690 Kgs whereas the actual net weight of the cargo is 27,700 Kgs. Hence it appears that the subject goods are liable to be confiscated under the 111(l) and 111(m) of the Customs Act, 1962.

13. Demand

13.1 M/s. Shaurya Distributors undervalued the imported goods pertaining to SEZ Bill of Entry No. 1006707 dated 21.04.2023 and SEZ Bill of Entry No. 1006741 dated 22.04.2023. M/s. Shaurya Distributors deliberately suppressed the facts regarding the value and actual weight of the imported goods which came out during the investigation. M/s. Shaurya Distributors was well aware about the implication of higher duties on said import goods on its actual value and they have knowingly

and deliberately undervalued the import goods with intent to evade the Customs Duties. During investigation the government empaneled valuer determined the actual value pertaining to SEZ Bill of Entry No. 1006707 dated 21.04.2023 is USD 77715 **(Rs. 64,62,002/-)** where as actual value of cargo pertaining to SEZ Bill of Entry No. 1006741 dated 22.04.2023 is USD 75350 **(Rs. 62,65,352/-).** The total value of the cargo both the cargo was found to be **Rs. 1,27,27,354/-**. The goods were correctly classifiable under CTH 73241000 and CTH 73249000 under which applicable Basic Custom duty is 10%. Therefore the total Duty for the goods imported by M/s Shaurya Distributors will be Rs. 3942934/-(Thirty Nine Lacs Fourty Two Thousands Nine Hundred Thirty Four Only). The duty calculation is as per the table below:-

S.No	Bill Of Entry No. & date	CTH	Assessable Value	BCD 10 %	SWS 10%	IGST 18%	Total Duty(Rs)
1.	1006707 dated 21.04.2023	73241000	64,62,002/-	6,46,200	64,620	12,91,108	20,01,928/-
2.	1006741 dated 22.04.2023	73241000 & 73249000	62,65,352/-	6,26,535	62,653	12,51,817	19,41,006/-
Total							**39,42,934/-**

13.2 By the aforesaid acts of willful mis statement and suppression of facts, M/s. Shaurya Distributors tried to short pay the applicable Customs Duty and other allied duties/taxes by way of deliberate undervaluation, willful mis-statement and suppression of facts leading to revenue loss to the government exchequer. The importer and its associates had planned to pay the short amount of duty by declaring the lesser amount of assessable value. The applicable duties on imports are liable to be demanded and recovered from them under Section 28 of Customs Act, 1962 along with applicable interest under Section 28AA of Customs Act, 1962. From the facts on record, it further appears that M/s. Shaurya Distributors have mis-declared the import goods with respect to their valuation and weight, the goods imported by them were mis-declared were also liable to confiscation under Sections 111(l) and 111(m) of the Customs Act, 1962. The importer/any person, who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, is liable to penalty under Section 112 (a) of the Customs Act, 1962. M/s. Shaurya Distributors is, thus liable to penalty under Section 112 (a) of the Customs Act, 1962. They were involved in carrying, removing, depositing, selling and dealing with the subject goods which were liable to confiscation under Section 111 of Customs Act, 1962. For this commission and omission on the part of M/s. Shaurya Distributors they are liable to penalty under

Section 112 (b) of the Customs Act, 1962 too. Further, since the subject amount of duty was evaded by M/s. Shaurya Distributors by way of suppression of facts and willful mis-statement, they are also liable to penalty under Section 114A of the Customs Act, 1962. Since, M/s. Shaurya Distributors its representatives knowingly and intentionally mis-declared the import goods by way of false or incorrect declarations, in quantity and weight l particular, for the purposes of evasion of import duties under the Customs Act,1962, therefore they shall also be liable to penalty under Section 114AA of the Customs Act, 1962.

14. Relevant Legal provision

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

(a) any goods imported by sea or air which are unloaded or attempted to be unloaded at any place other than a customs port or customs airport appointed under clause (a) of section 7 for the unloading of such goods;

(b) any goods imported by land or inland water through any route other than a route specified in a notification issued under clause (c) of section 7 for the import of such goods;

(c) any dutiable or prohibited goods brought into any bay, gulf, creek or tidal river for the purpose of being landed at a place other than a customs port;

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

(e) any dutiable or prohibited goods found concealed in any manner in any conveyance;

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an import manifest or import report which are not so mentioned;

(g) any dutiable or prohibited goods which are unloaded from a conveyance in contravention of the provisions of section 32, other than goods inadvertently unloaded but included in the record kept under sub-section (2) of section 45;

(h) any dutiable or prohibited goods unloaded or attempted to be unloaded in contravention of the provisions of section 33 or section 34;

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

(j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;

(k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced under section 109 is not produced or which do not correspond in any material particular with the specification

contained therein;

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

(n) any dutiable or prohibited goods transited with or without transshipment or attempted to be so transited in contravention of the provisions of Chapter VIII;

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

[3][(p) any notified goods in relation to which any provisions of Chapter IVA or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.]

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 [4][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 [7][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 [9][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 in the Customs Act, 1962- —Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding ten thousand rupees.

Section 125: Option to pay fine in lieu of confiscation.
(i) 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 [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:

15. Roles of various persons in smuggling

SUSPECTED ROLE OF THE PARTIES

From the above, it appears that Proprietorship firm M/s Shaurya Distributors and various persons were involved in the conspiracy of mis-declaration and undervaluation of subject goods. Investigation revealed that following persons have appeared to be involved and connived with the importer M/s Shaurya

Distributors for aforesaid violations of statutory provisions:

15.1 Role of M/s. Shaurya Distributors: M/s. Shaurya Distributors tried to short pay the applicable Customs Duty and other allied duties/taxes by way of deliberate undervaluation, willful mis-statement and suppression of facts leading to revenue loss to the government exchequer. M/s. Shaurya Distributors have mis-declared the import goods with respect to their valuation and weight, the goods imported by them were mis-declared were also liable to confiscation under Sections 111(l) and 111(m) of the Customs Act, 1962. The importer/any person, who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, is liable to penalty under Section 112 (a) of the Customs Act, 1962. M/s. Shaurya Distributors is, thus liable to penalty under Section 112 (a) of the Customs Act, 1962. They were involved in carrying, removing, depositing, selling and dealing with the subject goods which were liable to confiscation under Section 111 of Customs Act, 1962. For this commission and omission on the part of M/s. Shaurya Distributors they are liable to penalty under Section 112 (b) of the Customs Act, 1962 too.. Further, since the subject amount of duty was evaded by M/s. Shaurya Distributors by way of suppression of facts and willful mis-statement, they are also liable to penalty under Section 114A of the Customs Act, 1962. Since, M/s. Shaurya Distributors its representatives knowingly and intentionally mis-declared the import goods by way of false or incorrect declarations, in quantity and weight l particular, for the purposes of evasion of import duties under the Customs Act,1962, therefore they shall also be liable to penalty under Section 114AA of the Customs Act, 1962.

15.2 Role of Shri Ankit Garg, Authorized person of M/s Shaurya Distributors:

Shri Ankit Garg was authorized by Ms. Garima Garg, proprietor of M/s Shaurya Distributors vide letter to gave statement Ms. Garima Garg informed vided letter Shri Ankit Garg is the only responsible person for all the transaction and business running in the name of M/s Shaurya Distributors

Shri Ankit Garg has admitted that they had grossly undervalued the Assessable value of the cargo and weight of the cargo imported by Bill of Entry No. 1006707 dated 21.04.2023 and 1006741 dated 22.04.2023 to evade the applicable Customs Duty. The omission and commission on the part of Shri Ankit Garg i.e. mis-declaration of subject goods by way of forging documents, fraud, collusion, willful mis-statement and suppression of facts have rendered the subject illegally imported goods vide Bill of Entry No. 1006707 dated 21.04.2023" and 1006741 dated 22.04.2023liable to confiscation under 111(l) and 111(m) of the Customs Act,1962. Also, since Shri Ankit Garg was knowingly connived in importing,

purchasing/selling and dealing with such goods, he has rendered himself liable to penalty under Section 112 (a) and Section112 (b) of the Customs Act, 1962.

15.3 Role of M/s Lara Exim Pvt. Ltd. M/s Lara Exim Pvt. Ltd. is fully aware of the Customs Act, 1962, and CBLR 2018. Moreover, they have been providing Customs Clearing Agent services to their customers for a considerable period. Therefore, it is the responsibility and duty of M/s Lara Exim Pvt. Ltd. to guide the importer regarding the correct declaration of the assessable value of the imported cargo. If the DRI had not initiated an investigation against Shaurya Distributors, they would have potentially evaded a significant amount of Customs Duty by paying duty based on the declared value. Additionally, M/s Lara Exim never sent the checklist to the importer for approval before filing the Bill of Entry. The Bill of Entry was filed without obtaining any approval from the importer for the checklist. The omission and commission on the part of M/s Lara Exim Pvt. Ltd. made the filing of Bill of Entry without verifying the approval for Checklist received from the Importer or not have rendered the mis-declaration of assessable value of goods by way of forging documents, fraud, collusion, willful mis-statement and suppression of facts have rendered the subject illegally imported goods vide Bill of Entry No. 1006707 dated 21.04.2023" and 1006741 dated 22.04.2023liable to confiscation under 111(l) and 111(m) of the Customs Act,1962. Also, since M/s Lara Exim Pvt. Ltd. was knowingly connived in dealing with such goods, he has rendered himself liable to penalty under Section 112 (a) and Section112 (b) of the Customs Act, 1962.

16. Further, **M/s Shaurya Distributors has submitted a letters** in which they stated they had accepted both Charter Engineer cum valuer Certificate report No. CE/TZ/MUN/201003/2023-24 dated 20.10.2023(and CE/TZ/MUN/201002/2023-24 dated 20.10.2023. Further, they accepted that the consignments were undervalued, accepted actual value of the consignment pertaining to SEZ Bill of Entry No. 1006707 dated 21.04.2023 is USD 77715 **(Rs. 64,62,002/-)** where as actual value of cargo pertaining to SEZ Bill of Entry No. 1006741 dated 22.04.2023 is USD 75350 (Rs. 62,65,352/-). M/s Shaurya Distributors want to pay the duty on assessable value of. **(Rs. 64,62,002/-) pertaining to Bill of Entry No.** 1006707 dated 21.04.2023 and (Rs. 62,65,352/-) SEZ Bill of Entry No. 1006741 dated 22.04.2023 alongwith interest and penalty, if any without any litigation. Further they requested to allow them to file DTA B/E to deposit the appropriate Customs duty on aforesaid assessable value and get cleared thier cargo urgently and they would submit the copy of challan to DRI office after depositing the differential customs duty.

In response of thier letter, this office has issued a letter to Customs Authority ,Mundra requesting to allow M/s Shaurya Distributors for filing DTA Bill of Entry against the warehouse Bill of Entry No. 1006707 dated 21.04.2023 and 1006741 dated 22.04.2023 and to allow them to pay applicable Customs Duty. Further M/s Shaurya Distributors vide mail dated 16.04.2024 informed this unit that they had paid the Customs Duty of Rs. 2023318/- (including interest of Rs. 21390/-)for cargo imported vide warehouse Bill of Entry No. 1006707 dated 21.04.2023 vide Challan No. AP&SEZ/54/24-25 dated 08.04.2024 and Rs. 1941006/- (including interest of Rs. 20890/-) for warehouseBill of Entry No. 1006741 dated 22.04.2023 vide Challan No. AP&SEZ/53/24-25 dated 08.04.2024**.**

17. Accordingly, Show Cause Notice No. GEN/ADJ/ADC/738/2024-Adjn dated 29.04.2024 was issued to M/s. Shaurya Distributors (IEC: BPOPG2565N) calling upon it to show cause as to why:

(i) The imported goods pertaining to SEZ Bill of Entry No. 1006707 dated 21.04.2023 having assessable value as **USD 77715 (Rs. 6462002/-)** and cargo pertaining to SEZ Bill of Entry No. 1006741 dated 22.04.2023 having assessable value as **USD 75350 (Rs. 6265352/-)** should not be confiscated under section 111(l) and 111(m) of the Customs Act,1962.

(ii) The declared assessable value of **Rs. 18,79,855/-** for total 8883 Pcs pieces of "Metallic Stainless Steel Sink" imported vide ware house Bill of Entry No. 1006707 dated 21.04.2023 does not appear to be true transaction value as per forgoing paras, should not be rejected under Rule 12 of Customs Valuation Rules 2007 as there has been observed significant mis-declaration, and should not be re-determined under Section 14 of the Customs Act, 1962 under Rule 5 Customs Valuation (Determination of value of imported goods) Rules, 2007 as **Rs. 64,62,002/-,** and Customs Duty of **Rs. 20,01,928/-** paid vide Challan no. AP&SEZ/54/24-25 dated 08.04.2024 should not be appropriate against the duty demanded.

(iii) The declared assessable value of **Rs. 19,74,894/-** for total 8065 Pcs of "Metallic Stainless Steel Sink" and basket in CKD items imported vide ware house Bill of Entry No. 1006741 dated 22.04.2023 does not appear to be true transaction value as per forgoing paras, should not be rejected under Rule 12 of Customs Valuation Rules 2007 as there has been observed significant mis-declaration, and should not be re-determined under Section 14 of the Customs Act, 1962 under Rule 5 Customs Valuation (Determination of value of imported goods) Rules, 2007 as **Rs. 62,65,352/-,** and Customs Duty of **Rs. 19,41,006/-** paid vide Challan no.

AP&SEZ/53/24-25 dated 08.04.2024 should not be appropriate against the duty demanded.

(iv) Penalty should not be imposed on M/s Shaurya Distributors under Section 112(a) &112(b), 114(A), 114AA & 117 of the Customs Act, 1962.

(v) Penalty should not be imposed on Shri Ankit Garg, under Section 112(a) &112(b), of the Customs Act, 1962.

(vi) Penalty should not be imposed on M/s Lara Exim Pvt. Ltd., under Section 112(a) &112(b), of the Customs Act, 1962.

RECORDS OF PERSONAL HEARING

18.1 Opportunity of personal hearing was given to all the noticees on 16.01.2025. However, only Noticee No. 3 M/s Lara Exim Pvt. Ltd. appeared for the said hearing. Shree Sabu George, authorized signatory of M/s Lara Exim Pvt. Ltd. attended the personal hearing. He stated that the role of CHA is very limited to filing of the document and clearance of goods. He further stated that CHA does not have any role in determination of valuation of goods. He requested to drop the charges against him.

18.2 A further opportunity of personal hearing was given on 29.01.2025. Shri Harish Kohli, Advocate appeared on behalf of Noticee No. 1 M/s Shaurya Distributors and Noticee No. 2 Shri Ankit Garg. He stated that the value declared by them is the negotiated transaction value. He further stated that he was not in agreement with the CE report and requested for cross-examination of CE Shri Tushar Zankat.

18.3 Another opportunity of personal hearing was given to all the noticees on 04.07.2025. However, none of the noticees appeared on the said date.

WRITTEN SUBMISSION OF THE NOTICEES

19. Shri Harish Kohli, Advocate submitted an interim reply dated 28.01.2025 on behalf of M/s Shaurya Distributors (Noticee No. 1) and Shri Ankit Garg (Noticee No. 2), wherein the following submissions were made:

(i) That the value declared in both Bills of Entry represents the negotiated transaction value with the Chinese supplier, arrived at on account of bulk order discount. All import documents including commercial invoice and packing list were truthful and their correctness was not doubted or questioned anywhere in the Show Cause Notice.

(ii) That the differential duty was paid by the importer only to avoid further

business losses, demurrage and detention charges and to secure early clearance of the goods, and not as an admission of the correctness of the enhanced value proposed in the SCN. Reliance was placed on *Laxmi Colour Lab v. CC, 1992 (62) ELT 613 (Tribunal)* as affirmed by the Hon'ble Supreme Court and *Marcandy Prasad Radhakrishna Prasad Pvt. Ltd. v. CCE, 1998 (102) ELT 705 (Tribunal)* as affirmed by the Hon'ble Supreme Court, for the proposition that acceptance of enhanced value under compelled circumstances does not estop the noticee from challenging the enhancement in adjudication proceedings.

(iii) That the CE report is based entirely on hypothetical calculations, unidentified web sources, and experience-based analytical calculations with assumptions, without any independent market enquiry, sample testing, or reference to NIDB data. The CE himself admitted at Point 6 of the disclaimer in his report that the method adopted for valuation was based on hypothetical calculation and assumptions. Reliance was placed on *Commissioner of Customs, Mumbai v. Mansi Impex, 2011 (270) ELT 631 (SC)* for the proposition that without any sample market survey, the department cannot arrive at a legally justified and correct value determination.

(iv) That the CE is not registered as a valuer with the Ministry of Finance and was not officially appointed as a valuer by any authority — as admitted by the CE himself. He is only a Chartered Engineer empanelled with Customs. Hence his valuation report has no legal sanctity and cannot form a valid basis for rejection of the declared transaction value.

(v) That the transaction value is binding under Section 14 of the Customs Act, 1962 read with Rule 3 of CVR 2007. Reliance was placed on *Eicher Tractors Ltd. v. Commissioner of Customs, Mumbai, 2000 (122) ELT 321 (SC)* for the proposition that rejection of transaction value requires cogent reasons and only thereafter can value be determined sequentially through Rules 4 to 9 of CVR 2007. The rejection of declared transaction value solely on the basis of a CE report based on presumptions and assumptions is arbitrary, illogical and legally impermissible.

(vi) That there is no allegation anywhere in the SCN of any clandestine payment made by the importer to the Chinese supplier over and above the declared transaction value. The buyer and seller are not related and price is the sole consideration for the sale. In the absence of these conditions, the declared transaction value cannot be rejected and Rule 9 of CVR 2007 cannot be invoked.

(vii) That the quantity variation found during examination was arrived at on average basis and individual pieces were not counted one by one, which was not feasible given the manner in which the goods were packed — a fact admitted even by the CE during cross-examination. Hence the alleged quantity misdeclaration is also not established.

(viii) That when confiscation under Section 111 of the Customs Act, 1962 is not sustainable on the facts, no penalty under Sections 112(a), 112(b), 114A, 114AA or

117 of the Customs Act, 1962 can be levied on any of the noticees.

(ix) That cross-examination of CE Shri Tushar Zankat be granted in the interest of natural justice before any final decision is taken, and the declared transaction value be accepted, and all proposals of confiscation and penalty be dropped.

CROSS-EXAMINATION RECORD

20. In response to the request of M/s Shaurya Distributors for cross-examination of Chartered Engineer Shri Tushar Zankat, cross-examination was conducted on 26.02.2025. Shri Harish Kohli, Advocate appeared on behalf of M/s Shaurya Distributors and Shri Tushar Zankat, CE appeared and participated respectively. The record of cross-examination is as under:

Que. 1: Are you currently empanelled as a chartered engineer with Customs?
Ans. 1: Yes, I am currently empanelled as a chartered engineer with Customs.

Que. 2: What is the difference between an engineer and a chartered engineer?
Ans. 2: An engineer does the assigned work. A Chartered Engineer works based on his degree, experience and expertise.

Que. 3: To the best of my knowledge there is no need for a specific degree, you just have to enter yourself in the institute to be a Chartered Engineer?
Ans. 3: Yes, I agree.

Que. 4: Are you registered as a valuer with the Ministry of Finance?
Ans. 4: No.

Que. 5: Are you empanelled only as a Chartered Engineer with Customs?
Ans. 5: Yes.

Que. 6: At what time did you reach for the examination at Customs?
Ans. 6: I don't remember the exact time.

Que. 7: Can you tell me how long did the examination take?
Ans. 7: Yes, it took around 2-3 hours.

Que. 8: Did you draw any samples from the respective consignments?
Ans. 8: No, I did not draw any samples.

Que. 9: What time did you come back from the examination?
Ans. 9: I don't remember.

Que. 10: How did you get this work of Customs?
Ans. 10: DRI approached me to examine the consignment lying at the OWS yard.

Que. 11: Who authorised you for the examination?

Ans. 11: I don't remember the name of the officer who contacted me. The officer who was present at the time of the examination — if he had contacted and approached me — his name will be in the panchnama.

Que. 12: His name is Manish in the panchnama. So did Manish contact you?
Ans. 12: I don't remember the name of the officer who contacted me for authorising me this work.

Que. 13: How did they contact you?
Ans. 13: I was contacted over phone.

Que. 14: So there was no official authorisation letter issued by DRI for authorising you as a valuer?
Ans. 14: Yes, it is correct that no official authorisation letter was issued to me by DRI or Customs.

Que. 15: So, is it correct to say that you were not appointed by any authority officially as a valuer?
Ans. 15: Yes, it is correct that I was not appointed as a valuer.

Que. 16: Please see Point No. 6 of the disclaimer in your report, wherein it is mentioned that — "*the method adopted for valuation based on hypothetical calculation, collected information from web portals, documents submitted by the parties concerned and experience based analytical calculation with assumptions*" — so it is clearly saying that you have made your report based on your hypothetical calculation or your assumptions?
Ans. 16: No.

Que. 17: Do you agree to have written at Point 6 that — "*the method adopted for valuation based on hypothetical calculation, collected information from web portals, documents submitted by the parties concerned and experience based analytical calculation with assumptions*"?
Ans. 17: Yes.

Que. 18: When you say 'documents submitted by the party', my question is who are those parties?
Ans. 18: Since I was contacted by the DRI, they had provided me with the importer's invoices.

Que. 19: We are saying that the invoices submitted are true and correct and issued on the negotiated value by the Chinese supplier. Then how did you come to this imaginary value?
Ans. 19: Since the goods mentioned are stainless kitchen sink and stainless steel basket, during the examination we checked the quality, approximate thickness and size of the basket.

Que. 20: What was the thickness of the subject goods?

Ans. 20: I did not check the thickness as the invoice is based on per kg. We did not need to check the thickness or the size.

Que. 21: How did you conclude that the value of the imported goods is three times than that declared by the importer?
Ans. 21: After the examination we rely upon the web sources.

Que. 22: Are these sources from China?
Ans. 22: No.

Que. 23: Which are these sources?
Ans. 23: Web sources.

Que. 24: Which web sources?
Ans. 24: I will send the web sources I relied upon with prices and e-mail it.

Que. 25: I suggest that your reports are absolutely false, fabricated and made under the influence of the DRI officer?
Ans. 25: It is wrong to suggest that the reports are false, fabricated and made under the influence of the DRI officer.

Que. 26: Is it correct to say that the goods you examined were found to be same as declared in the B/E and invoices?
Ans. 26: Yes, the goods I examined were found to be same as declared in the BE and the invoices, but there was an issue of quantity.

Que. 27: Did you count them one by one?
Ans. 27: No. Because of the way sinks were packed one into another it was not possible to count them.

Que. 28: Point No. 1 of the disclaimer states — "*The Inspection and certificate issued do not absolve manufacturer/seller from their Contractual obligations towards their buyer regarding any harmful defects not visible or detected during the inspection*" — please explain.
Ans. 28: It is not specific. It is our general disclaimer for all cases.

Que. 29: Have you ever valued such goods before?
Ans. 29: No. This was my 1st consignment of this product.

Que. 30: Did you check any prior BE from NIDB data in this regard?
Ans. 30: I did not check any relevant data of that time under which the BEs were filed for the similar product. But in case when there is NIDB data available, the CE will not be required.

Que. 31: I suggest that the value declared in both the BEs is true, correct and based on the negotiated transaction value between the importer and the Chinese supplier?

Ans. 31: I don't agree. It is wrong to suggest so.

Que. 32: Your valuation is biased and inaccurate.
Ans. 32: It is wrong to suggest that my valuation is biased and inaccurate.

Que. 33: I suggest that you are not authorised as a valuer to submit these reports.
Ans. 33: Yes, I am not a valuer. I am only a CE.

DISCUSSION AND FINDINGS

21. I have carefully examined Show Cause Notice No. GEN/ADJ/ADC/738/2024-Adjn dated 29.04.2024, the case records, the interim reply dated 28.01.2025 filed by Noticees No. 1 and 2, the cross-examination record dated 26.02.2025, the personal hearing records dated 16.01.2025 and 29.01.2025, and all judicial pronouncements cited by the noticees. I find that the principles of natural justice have been fully complied with by granting adequate and reasonable opportunity to all noticees to present their defence, including the opportunity of cross-examination of the Chartered Engineer as requested. I now proceed to examine, issue-wise, the questions arising for determination in this adjudication. On careful perusal of the Show Cause Notice, written submissions and case records, I find that the following issues arise for determination:

(i) Whether the declared assessable value of **Rs. 18,79,855/-** in respect of BE No. 1006707 dated 21.04.2023 and **Rs. 19,74,894/-** in respect of BE No. 1006741 dated 22.04.2023 are liable for rejection under Rule 12 of CVR 2007 and whether the same are to be re-determined under Rule 9 of CVR 2007 as **Rs. 64,62,002/-** and **Rs. 62,65,352/-** respectively; and whether the applicable Customs Duty of **Rs. 20,01,928/-** paid vide Challan No. AP&SEZ/54/24-25 dated 08.04.2024 in respect of BE No. 1006707 dated 21.04.2023 and **Rs. 19,41,006/-** paid vide Challan No. AP&SEZ/53/24-25 dated 08.04.2024 in respect of BE No. 1006741 dated 22.04.2023, are to be appropriated against the respective duty liabilities on the re-determined assessable values;

(ii) Whether the imported goods pertaining to BE No. 1006707 dated 21.04.2023 and BE No. 1006741 dated 22.04.2023 are liable for confiscation under Section 111(l) and 111(m) of the Customs Act, 1962'

(iii) Whether penalty is imposable on M/s Shaurya Distributors under Sections 112(a), 112(b), 114A, 114AA and 117 of the Customs Act, 1962;

(iv) Whether penalty is imposable on Shri Ankit Garg under Sections 112(a) and 112(b) of the Customs Act, 1962;

(v) Whether penalty is imposable on M/s Lara Exim Pvt. Ltd. under Sections 112(a) and 112(b) of the Customs Act, 1962.

21.1 Before proceeding to examine the issues on merit, I note that the Show Cause

Notice has inadvertently mentioned the declared assessable value of BE No. 1006707 dated 21.04.2023 as **Rs. 16,79,855/-.** However, as is evident from BE No. 1006707 dated 21.04.2023 itself, the correct declared assessable value as per the Bill of Entry is Rs. **18,79,855/-** (Rupees Eighteen Lakhs Seventy Nine Thousand Eight Hundred and Fifty Five only). This typographical error in the SCN is hereby noted and corrected for the purposes of this Order. Accordingly, the declared assessable value of BE No. 1006707 dated 21.04.2023 shall be read as **Rs. 18,79,855/-** throughout this Order. This correction does not affect the substance of the proceedings, the re-determined assessable value, or the duty calculations in any manner. The BE No. 1006707 dated 21.04.2023 is reproduced below:

BILL OF ENTRY FOR HOME CONSUMPTION

ORIGINAL COPY — **Adani Ports and special Econonic Zone(INAJM6)** — SEZOnline Request Id:**172301229321** / Page: 1 / 1

Port Code	S = Sea A = Air L = Land	Prior Entry Stamp	Import Dept. S.No & Date	Custom House Agent Code	Importer's Code & BIN	Importer's Name & Address Whether Government or Private
INMUN1	S	.	1006707 - 21/04/2023	6DELCUS2007	SEZ Entity: BIN: NA IEC/PAN: 0316043771/AAEFO8034G GSTIN: 24AAEFO8034G2ZD (24) Client: IEC: BPOPG2565N, GSTIN: 06BPOPG2565N1ZE (06)	SEZ Entity: OWS WAREHOUSE SERVICES LLP,Survey No. 169, Sector-8, Village Dhruve., Mitap Road, MPSEZ Mundra, Dist. Kutch, Kutch - 370421, Gujarat, India OTHERS Client:(Indian), SHAURYA DISTRIBUTORS, 1201/24,MISSIONROAD,SONIPAT,Sonipat,Haryana,131001, India(IN)

Vessel's Name/ Agent's Name	Rotation No. & Date	Line No.	Port of shipment	Country of Origin & code	Country of Consignment (if different) and Code	Bill of Lading No. & Date
KMTC DELHI	2340547 - 11/04/2023	-	Shekou	China(CN)	-	MB/L-TGLSDELF2300309/27/03/2023

PACKAGES		SR. No.	QUANTITY		DESCRIPTION	Customs Tariff Heading	Nature Of Duty Code	Assessable Value Under Section 14 Customs Act. 1962	CUSTOMS DUTY		C. E. T. Item	MRP per Unit, if any	Amount Of Abate-mene, If any	Value for the purpose of Section 3 of Customs Tariff Act 1975		ADDITIONAL DUTY		TOTAL DUTY
No. & Description	Marks & Numbers		Unit Code	Weight/ Volume Number etc.	R.I.T.C. Number (Give detail of each class separately) Exim Scheme Code, Where applicable	Exemption Notification No. & Year			Rate Basic	Amount Basic	Exemption Notification No & Year			Col. 9+C0. 11 Where the provisions of Sub-section(2) of Section 4 A of the Central Excise Act, 1944 does not apply	Where the provision of sub-section(2) of section 4A of the Central Excise Act, 1944 apply	Rate Basic	Amount Basic	Col. : (11) + Col. : (15) Rs.
									Auxiliary	Auxiliary						Auxiliary	Auxiliary	
1	2	3	4	5	6	7	8	9	10	11	12	12A	12B	13	13A	14	15	16
9020 PKG	AS PER INVOICE	1	NA	9020 PCS	STEEL KITCHEN SINK SIMS NO.STL718875 ,DATE.15.04.2023 (73241000) - Others	73241000 ---------- 050/2017377	NA	1879855.08 (Rs. Eighteen Lakh Seventy Nine Thousand Eight Hundred and Fifty Five and Eight ps. Only)	10% SWS Customs 10%	187985.51 18798.55	73241000	NA	NA	2086639.14	NA	18% IGST 001/2017 II139 0% SWS IGST 013/2018	375595.05 0.00	582379.10

Container Details:SEKU5825836, CE255799, FCL	AD Code: 6392005 - ICICI BANK LIMITED	Total Duty:582380 Five Lakh Eighty Two Thousand Three Hundred and Eighty Only

Gross Weight	Total Number Of Packages (in words)	Import Clerk	Customs Duty other than IGST	IGST & Compensation Cess Duty
27045 KGS	Nine Thousand and Twenty PACKAGES		Forgone : 206785.00	Forgone : 375595.00

S. No	Invoice Value(FC),(CIF) Currency	Value	Freight	Insurance	Currency Code	Exch. Rate	Loading/ Local Agency Commission @	Misc. Charges	Total Value (In Rupees)	Landing Charges (Rs.)	Assessable Value (In Rupees)
1	USD	22608.00	-	-	USD	83.1500	-	-	1879855.08	-	1879855.08
Total	USD	22608.00	0.00	0.00	-	-	0.00/ 0.00	0.00	1879855.08	-	1879855

(Declaration to be signed by the Custom House Agent)

1. I/ We declare that the contents of this Bill of Entry for goods imported against Bill of Landing No. **MB/L-TGLSDELF2300309** dated **27/03/2023** are in accordance with the Invoice No. **OWT-01** dated **25/03/2023**and other documents presented herewith.
2. I/ We declare that I/ We have not received any other documents or information showing a different, price, value, quantity or description of the said goods and that if any time hereafter, I/ We receive any documents from the importer showing a different state of facts I/ We will immediately make the same known to the Commissioner of Customs.

N.B. :- Where a declaration is this made by the Custom House agents a declaration in the prescribed form shall be furnished by the importers of the goods covered by this Bill of Entry.

I.T.C. License or C.C.P. No. & Date/ Part & S.No./ O.G.L. No./ Exemption No. & Value debited to License/ C.C.P. (in case of Letter of Authority, Name of Person to whom issued, No. & Date)	Debit P.D. A/c No.	Stamp for collection/ FREE No. & Date	
			This BOE Form is Digitally Signed & Submitted by ASSADULLAH VASIULLAH SIDDIQUE on behalf of SEZ Entity This BOE Form is Digitally Signed & Assessed by DHARAMSINGH MEENA, SEZ Authorised Officer on 24/04/2023.

22. <u>Rejection of declared value and re-determination</u>

22.1 Regarding the first issue, I find that M/s Shaurya Distributors imported metallic kitchen sinks and stainless steel baskets in CKD condition vide two warehouse Bills of Entry i.e. BE No. 1006707 dated 21.04.2023 under CTH 73241000 declaring assessable value of **Rs. 18,79,855/-** and BE No. 1006741 dated 22.04.2023 under CTH 73241000 / 73249000 declaring assessable value of **Rs. 19,74,894/-**. The goods arrived at APSEZ Mundra in containers SEKU5825836 and TCKU6674599 respectively, shipped by M/s Trident Exports Limited, Hong Kong, from Shekou, China.

22.2 I find that DRI, acting on specific intelligence, got the goods examined under Panchnama dated 01.05.2023 (BE No. 1006707 dated 21.04.2023) and Panchnama dated 03.05.2023 (BE No. 1006741 dated 22.04.2023). The examination revealed discrepancies in both quantity and weight, the actual number of pieces and actual

net weight of goods found in both Bills of Entry were at variance from the declared quantities and weights. In respect of container SEKU5825836, 8,883 pieces were found against 9,020 declared, and actual net weight was 28,260 kgs against declared 25,120 kgs. In respect of container TCKU6674599, 8,065 pieces of kitchen sinks were found against 7,920 declared, and actual total net weight of sinks was 24,701 kgs. These discrepancies in weight and quantity themselves reflect that the declared particulars did not faithfully represent the cargo actually imported.

22.3 I find that to ascertain the correct value, a further examination was conducted under Panchnama dated 19.10.2023 in the presence of empanelled Chartered Engineer Shri Tushar Zankat, who subsequently submitted two valuation reports — CE/TZ/MUN/201003/2023-24 dated 20.10.2023 pertaining to BE No. 1006707 dated 21.04.2023 and CE/TZ/MUN/201002/2023-24 dated 20.10.2023 pertaining to BE No. 1006741 dated 22.04.2023. The CE determined the value of metallic kitchen sinks at USD 2.75 per kg as against the declared rate of USD 0.90 per kg, arriving at a re-determined CIF value of USD 77,715 (Rs. 64,62,002/-) for BE No. 1006707 dated 21.04.2023 and USD 75,350 (Rs. 62,65,352/-) for BE No. 1006741 dated 22.04.2023. The declared assessable values of **Rs. 18,79,855/-** and **Rs. 19,74,894/-** were found to be grossly undervalued.

22.4 I find that Shri Ankit Garg, authorized representative of M/s Shaurya Distributors, in his voluntary statement recorded under Section 108 of the Customs Act, 1962 on 04.01.2024, specifically admitted that the declared assessable value of both consignments was lesser than the actual assessable value. He perused the valuation reports of the Chartered Engineer and put his dated signature on the first page of both valuation reports in affirmation. He further specifically stated that the total assessable value of goods in respect of both consignments as per the valuation reports is **Rs. 1,27,27,355/-**. This voluntary and unretracted admission under Section 108 of the Customs Act, 1962 constitutes strong independent evidence of misdeclaration in value, independent of and beyond the CE report. The Hon'ble Supreme Court in *Romesh Chandra Mehta v. State of West Bengal, 1999 (110) ELT 324 (SC)* and *Percy Rustomji Basta v. State of Maharashtra, 1983 (13) ELT 1443 (SC)* has consistently held that statements recorded under Section 108 by Customs officers are admissible as valid evidence and are not hit by Section 24 of the Evidence Act.

22.5 I further find that M/s Shaurya Distributors voluntarily wrote two letters accepting the re-determined assessable values of **Rs. 64,62,002/-** for BE No. 1006707 dated 21.04.2023 and **Rs. 62,65,352/-** for BE No. 1006741 dated 22.04.2023 respectively, and on the basis of this acceptance, actually paid the full customs duty of **Rs. 20,23,318/-** (including interest) for BE No. 1006707 dated 21.04.2023 vide Challan No. AP&SEZ/54/24-25 dated 08.04.2024 and Rs. **19,41,006/-** (including interest) for BE No. 1006741 dated 22.04.2023 vide Challan No. AP&SEZ/53/24-25 dated 08.04.2024.

22.6 The noticees have contended that the duty payment was made under duress to avoid business losses, demurrage and detention charges, and that acceptance of

enhanced value does not estop them from contesting the valuation. Reliance has been placed on *Laxmi Colour Lab v. Collector of Customs, 1992 (62) ELT 613 (Tri.-Del.)*, wherein the Tribunal, placing reliance on *Dunlop India Ltd. v. Union of India, 1983 (13) ELT 1566 (SC)*, held that acceptance of escalated value to secure early clearance does not preclude the importer from challenging the enhancement, as there cannot be estoppel against law. Reliance has also been placed on *Marcandy Prasad Radhakrishna Prasad Pvt. Ltd. v. CCE, 1998 (102) ELT 705 (Tribunal)* as affirmed by the Hon'ble Supreme Court in *1999 (107) ELT A121 (SC)*.

I have considered these submissions. I find that the aforesaid judgments address the situation where an acceptance letter is sought to be used as estoppel against an importer — they do not govern the evidentiary value of a voluntary Section 108 statement. In the present case, Shri Ankit Garg made a clear and specific admission under Section 108 before a gazetted DRI officer on 04.01.2024 — nearly eight months after the panchnama examination — that the declared assessable value was lesser than the actual value, and put his dated signature on both CE valuation reports in affirmation. No retraction of this statement has been filed at any point. A voluntary, unretracted Section 108 statement recorded by a gazetted officer stands on a qualitatively different footing from a commercial acceptance letter and retains full evidentiary value independently of the CE report.

22.7 I now proceed to consider the CE report and the contentions raised against it. I find that Chartered Engineers are empanelled by the respective Custom House after following the due procedure prescribed in CBIC Circular No. 07/2020 dated 05.02.2020 and are well-versed and experienced to carry out examination and assessment of imported goods. In the present case, Shri Tushar Zankat, an empanelled Chartered Engineer, physically examined the subject goods and submitted his valuation reports determining the value of metallic kitchen sinks at USD 2.75 per kg on the basis of his examination, web sources and experience-based analytical assessment. I find that the methodology adopted by the CE is consistent with the framework of Rule 9 of CVR 2007 which permits determination of value using reasonable means on the basis of data available in India. The contentions raised against the CE report are therefore not accepted.

22.8 More importantly, I find that the CE report does not stand in isolation. The re-determination of value is independently corroborated by the voluntary statement of Shri Ankit Garg recorded under Section 108 of the Customs Act, 1962 on 04.01.2024, wherein he specifically admitted that the declared assessable value of both consignments was lesser than the actual assessable value and put his dated signature on both CE valuation reports in affirmation. This admission is further corroborated by the written acceptance letters of M/s Shaurya Distributors *(RUD Nos. 13 and 14 of the SCN)* accepting the re-determined values of **Rs. 64,62,002/-** and **Rs. 62,65,352/-** respectively. In view of the specific admission of undervaluation by the authorized representative and the corroborating evidence on record, I find that the re-determination of value under Rule 9 of CVR 2007 is fully sustained on the totality of evidence on record.

22.9 On the question of the method of re-determination, the SCN has proposed and the CE has applied Rule 9 (Residual Method) of CVR 2007. The SCN itself acknowledges that Rules 4, 5, 6, 7 and 8 could not be applied due to absence of credible data of import of similar goods. The noticees have not produced any evidence to demonstrate that value could have been determined under any of the preceding rules. The SCN show cause clause (b) and (c) erroneously refers to "Rule 5" — this is a typographical inconsistency in the SCN, as the body of the SCN clearly sets out the application of Rule 9. Since the SCN body, the reliance documents and the CE report all clearly proceed on Rule 9 basis, and the noticees have had full knowledge of and opportunity to contest the Rule 9 methodology, this typographical reference to "Rule 5" in the show cause clause does not vitiate the proceedings. I accordingly proceed to confirm the re-determination under Rule 9 of CVR 2007 read with Section 14 of the Customs Act, 1962.

22.10 In view of the above, I hold that the declared assessable values of Rs. **18,79,855/-** in respect of BE No. 1006707 dated 21.04.2023 and **Rs. 19,74,894/-** in respect of BE No. 1006741 dated 22.04.2023 are liable to be rejected under Rule 12 of CVR 2007. The same are re-determined under Rule 9 of CVR 2007 read with Section 14 of the Customs Act, 1962 as **Rs. 64,62,002/-** and **Rs. 62,65,352/-** respectively, as per Annexure-A to the SCN. The applicable rate of duty is **30.98%** [BCD @ 10% + SWS @ 10% of BCD + IGST @ 18%]. The details of declared assessable value, re-determined assessable value, duty thereon and the differential duty are as under:

BE Details	Declared Assessable Value (Rs.)	Re-determined Assessable Value (Rs.)	Duty on Declared AV @ 30.98% (Rs.)	Duty on Re-determined AV @ 30.98% (Rs.)	Differential Duty (Rs.)
BE No. 1006707 dt. 21.04.2023	18,79,855	64,62,002	5,82,379	20,01,928	14,19,549
BE No. 1006741 dt. 22.04.2023	19,74,894	62,65,352	6,11,823	19,41,006	13,29,183
Total	**38,54,749**	**1,27,27,354**	**11,94,202**	**39,42,934**	**27,48,732**

The total customs duty payable on the re-determined assessable values amounts to **Rs. 39,42,934/-,** which has already been paid in full alongwith the applicable interest by the importer vide Challan Nos. AP&SEZ/54/24-25 dated 08.04.2024 and AP&SEZ/53/24-25 dated 08.04.2024.

23. CONFISCATION

23.1 Regarding the second issue, I find that Section 111(l) of the Customs Act, 1962 provides that goods which are not included or are in excess of those included in the entry made under the Act shall be liable to confiscation. Section 111(m) provides that goods which do not correspond in respect of value or in any other particular with the entry made under the Act shall be liable to confiscation.

23.2 I find that the physical examination of the two containers under Panchnamas dated 01.05.2023 and 03.05.2023 revealed discrepancies in both quantity and weight vis-à-vis the declared particulars in the warehouse BEs. Actual pieces and net weight were found in excess of the declared quantities in both containers. The declared value has also been found to be a gross undervaluation, the declared assessable value of **Rs. 18,79,855/-** against the actual value of **Rs. 64,62,002/-** in respect of BE No. 1006707 dated 21.04.2023, and the declared assessable value of **Rs. 19,74,894/-** against the actual value of **Rs. 62,65,352/-** in respect of BE No. 1006741 dated 22.04.2023, as confirmed by the CE's valuation report and the importer's own voluntary admission under Section 108. Misdeclaration in both quantity/weight and value has thus been established on record in respect of both consignments. The subject goods are accordingly liable to confiscation under both Section 111(l) and Section 111(m) of the Customs Act, 1962.

23.3 Once the goods are held liable for confiscation, the next question before me is whether to allow the release of the impugned goods on Redemption Fine. I note that the subject goods have already been cleared from APSEZ Mundra by the importer on payment of full duty on the re-determined assessable value and are therefore not physically available for confiscation. I find sub-section (1) of Section 125 of the Customs Act, 1962 prescribes that:

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

Further, I find that the Hon'ble courts in various judicial pronouncements have held that the physical availability of the goods does not have any significance for imposition of redemption fine under Section 125 of the Act. In this regard, I place my reliance on the following judgments:

(i) In case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) regarding imposition of Redemption Fine in absence of goods liable for confiscation, after observing decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc. reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A.120(SC), the Hon'ble Madras High Court held in para 23 of the judgment that "*The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of*

Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, 'Whenever confiscation of any goods is authorised by this Act....', brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act."

(ii) In the case of Synergy Fertichem Pvt. Ltd. Vs State of Gujarat as reported in 2019(12) TMI 1213, the Hon'ble High Court of Gujarat, relying on the judgement of the Apex Court in the case of Weston Components Ltd. vs. Commissioner of Customs, New Delhi, has observed that "*The pre-requisite for making an offer of fine under Section 130 of the Act is pursuant to the finding that the goods are liable to be confiscated. In other words, if there is no authorisation for confiscation of such goods, the question of making an offer by the proper officer to pay the 'redemption fine', would not arise. Therefore, the basic premise upon which the citadel of Section 130 of the Act rests is that the goods in question are liable to be confiscated under the Act. It, therefore, follows that what is sought to be offered to be redeemed, are the goods, but not the improper conduct of the owner to transport the goods in contravention of the provisions of the Act or the Rules.*"

It is amply clear from the said section that, where the confiscated goods are not prohibited for import, discretion has been vested in the adjudicating authority to decide the issue on the basis of facts and circumstances involved. In view of this settled legal position, I find it appropriate to impose Redemption Fine in lieu of confiscation. Therefore, I hold that the imported goods pertaining to BE No. 1006707 dated 21.04.2023 and BE No. 1006741 dated 22.04.2023 are liable to confiscation under Section **111(l)** and **111(m)** of the Customs Act, 1962. Since the goods are not prohibited goods, I give an option to M/s Shaurya Distributors to redeem the goods on payment of Redemption Fine under Section 125 of the Customs Act, 1962.

24. <u>Penalty on M/s Shaurya Distributors</u>

24.1 Regarding the third issue, I find that M/s Shaurya Distributors, as the importer, was responsible under the self-assessment regime introduced by the Finance Act, 2011, for filing a true, correct and complete Bill of Entry as mandated under Sections 17 and 46(4) of the Customs Act, 1962. The goods covered under both Bills of Entry have been held liable to confiscation under Section 111(l) and Section 111(m) of the Customs Act, 1962 as discussed in paras 23.1 and 23.2 above. Section 112(a)(ii) of the Customs Act, 1962 provides for imposition of penalty on any person who does or omits to do any act which renders goods liable to

confiscation under Section 111, where the goods are dutiable goods other than prohibited goods. I find that M/s Shaurya Distributors, by filing both Bills of Entry with deliberately mis-declared assessable value and quantity, supported by commercial invoices and packing lists reflecting values and quantities far below the actual values and quantities found during examination, has committed acts which have rendered the goods liable to confiscation under Section 111(l) and Section 111(m) of the Customs Act, 1962. M/s Shaurya Distributors is accordingly liable to penalty under **Section 112(a)(ii)** of the Customs Act, 1962.

24.2 The SCN also proposes penalty on M/s Shaurya Distributors under Section 112(b) of the Customs Act, 1962. I find that simultaneous imposition of penalty under both Section 112(a) and Section 112(b) in respect of the same act would amount to double penalty for the same offence, and accordingly I refrain from imposing penalty under Section 112(b) of the Customs Act, 1962 on M/s Shaurya Distributors.

24.3 The SCN has also proposed penalty on M/s Shaurya Distributors under Section 114A of the Customs Act, 1962. I find that the last proviso to Section 114A specifically provides that where penalty is imposed under Section 112 of the Customs Act, 1962, no penalty shall be imposed under Section 114A in respect of the same goods. Since penalty under Section 112(a)(ii) is being imposed on M/s Shaurya Distributors as discussed above, I accordingly refrain from imposing penalty under Section 114A of the Customs Act, 1962 on M/s Shaurya Distributors.

24.4 Regarding proposed penalty under Section 114AA, I find that Section 114AA of the Customs Act, 1962 provides that 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. In the present case, I find that Smt. Garima Garg is the Proprietor of M/s Shaurya Distributors and Shri Ankit Garg has been authorized by her as the only person responsible for all transactions and business activities of the firm including negotiation of price with the Chinese supplier, engagement of the customs broker, and clearance of consignments, as stated by Shri Ankit Garg himself in his statement recorded under Section 108 of the Customs Act, 1962 on 04.01.2024. I find that in both Bills of Entry, declarations were made as to the truth of the contents under Section 46(4) of the Customs Act, 1962, while the assessable value and quantity of goods were knowingly under-declared. The commercial invoices and packing lists submitted as part of the import dockets reflected values and quantities far below the actual values and quantities found during examination, which were known to the importer. Shri Ankit Garg, in his Section 108 statement, specifically admitted that the declared assessable value was lesser than the actual assessable value and that the importer was fully aware of the actual price negotiated with the Chinese supplier. These declarations and supporting documents were thus false and incorrect in material particulars, namely the assessable value and quantity of goods

imported. M/s Shaurya Distributors, through its authorized representative Shri Ankit Garg, knowingly made and used such false and incorrect declarations in the transaction of business under the Customs Act, 1962. M/s Shaurya Distributors has accordingly rendered itself liable to penalty under **Section 114AA** of the Customs Act, 1962.

24.5 Regarding Section 117, I find that this provision is a residuary penal provision applicable only where no express penalty is elsewhere provided. Since specific penalty provisions under Sections 112(a) and 114AA already cover the acts and omissions of M/s Shaurya Distributors, Section 117 is not applicable and I refrain from imposing any penalty under Section 117 on M/s Shaurya Distributors.

25. Penalty on Shri Ankit Garg

25.1 Regarding the fourth issue, I find that Shri Ankit Garg was authorized by Smt. Garima Garg, Proprietor of M/s Shaurya Distributors, as the only person responsible for all transactions and business conducted in the name of M/s Shaurya Distributors. He looked after all aspects of the import business including negotiation of price with the Chinese supplier, engagement of the customs broker, and clearance of consignments. In his Section 108 statement he specifically admitted that the declared assessable value was less than the actual assessable value and that the actual value of the cargo was higher in comparison to the declared value.

25.2 I find that Shri Ankit Garg, as the person who managed and controlled all import transactions of M/s Shaurya Distributors, was knowingly concerned in the misdeclaration of value and quantity of the imported goods. His acts and omissions have rendered the goods liable to confiscation under Sections 111(l) and 111(m) of the Customs Act, 1962. He is accordingly liable to penalty under **Section 112(a)(ii)** of the Customs Act, 1962. I refrain from imposing penalty under Section 112(b) simultaneously, for the same reasons stated in para 24.2 above.

26. Penalty on M/s Lara Exim Pvt. Ltd.

26.1 Regarding the fifth issue, I find that M/s Lara Exim Pvt. Ltd. is a licensed Customs Broker and was engaged by M/s Shaurya Distributors for clearance of the subject two consignments. In his statement dated 04.01.2024, Shri Sabu George, authorized representative of M/s Lara Exim Pvt. Ltd., admitted that M/s Lara Exim had handled all customs clearance work for M/s Shaurya Distributors for 2-3 years, had received all documents for filing the BEs, and had filed the BEs for warehousing at M/s OWS Warehouse Services LLP. He further admitted that checklist was never sent to the importer before filing the Bill of Entry. At the personal hearing, he reiterated that CHA's role is limited to filing of documents and clearance of goods and requested that charges be dropped against him.

26.2 I have examined the allegations against M/s Lara Exim Pvt. Ltd. carefully. I find that M/s Lara Exim, as a licensed Customs Broker, was fully aware of its

obligations under the said Regulations. As a professional customs broker handling clearance work for M/s Shaurya Distributors for 2-3 years, M/s Lara Exim was in possession of all import documents including commercial invoices and packing lists before filing the Bills of Entry. It was the duty and responsibility of M/s Lara Exim to guide the importer regarding the correct declaration of assessable value of the imported cargo. Further, M/s Lara Exim admittedly never sent the checklist to the importer for approval before filing the Bills of Entry in violation of Regulation 10(d) of CBLR 2018, thereby facilitating the filing of Bills of Entry without verification and approval of the importer. Had M/s Lara Exim discharged its professional duty diligently and sent the checklist to the importer before filing the BEs, the misdeclaration in value may have been detected and prevented. The acts and omissions on the part of M/s Lara Exim have thus contributed to the filing of Bills of Entry containing misdeclaration of assessable value, rendering the goods liable to confiscation under Section 111 of the Customs Act, 1962. M/s Lara Exim is accordingly liable to penalty under **Section 112(a)(ii)** of the Customs Act, 1962. I refrain from imposing penalty under Section 112(b) simultaneously on M/s Lara Exim for the same reasons stated in para 24.2 above.

ORDER

27. In view of the above discussion and findings, I pass the following Order:

(i) I reject the declared assessable value of **Rs. 18,79,855/-** in respect of Bill of Entry No. 1006707 dated 21.04.2023 under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determine the same at **Rs. 64,62,002/-** under Rule 9 of the said Rules read with Section 14 of the Customs Act, 1962;

(ii) I reject the declared assessable value of **Rs. 19,74,894/-** in respect of Bill of Entry No. 1006741 dated 22.04.2023 under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determine the same at **Rs. 62,65,352/-** under Rule 9 of the said Rules read with Section 14 of the Customs Act, 1962;

(iii) I order confiscation of the imported goods covered under Bills of Entry Nos. 1006707 dated 21.04.2023 and 1006741 dated 22.04.2023, having total re-determined assessable value of **Rs. 1,27,27,354/-** (Rupees One Crore Twenty-Seven Lakh Twenty-Seven Thousand Three Hundred and Fifty-Four Only), under Section 111(l) and Section 111(m) of the Customs Act, 1962. However, I give an option to M/s Shaurya Distributors to redeem the same on payment of Redemption Fine of **Rs. 10,00,000/-** (Rupees Ten Lakhs Only) under Section 125 of the Customs Act, 1962;

(iv) I confirm the Customs Duty of **Rs. 20,01,928/-** against BE No. 1006707 dated 21.04.2023 and **Rs. 19,41,006/-** against BE No. 1006741 dated 22.04.2023 totalling **Rs. 39,42,934/-** (Rupees Thirty-Nine Lakh Forty-Two Thousand Nine Hundred and Thirty-Four only) as payable on the re-determined assessable values under Section

14 of the Customs Act, 1962 read with Rule 9 of the CVR, 2007, and order for appropriation of the said amounts paid vide Challan No. AP&SEZ/54/24-25 dated 08.04.2024 and Challan No. AP&SEZ/53/24-25 dated 08.04.2024 respectively against the respective duty liabilities;

(v) I impose a penalty of **Rs. 2,50,000/-** (Rupees Two Lakh Fifty Thousand Only) on M/s Shaurya Distributors under Section 112(a)(ii) of the Customs Act, 1962;

(vi) I impose a penalty of **Rs. 1,00,000/-** (Rupees One Lakh Only) on Shri Ankit Garg under Section 112(a)(ii) of the Customs Act, 1962;

(vii) I impose a penalty of **Rs. 50,000/-** (Rupees Fifty Thousand Only) on M/s Lara Exim Pvt. Ltd. under Section 112(a)(ii) of the Customs Act, 1962;

(viii) I impose a penalty of **Rs. 50,000/-** (Rupees Fifty Thousand only) on M/s Shaurya Distributors under Section 114AA of the Customs Act, 1962;

28. This Order is issued without prejudice to any other action that may be taken against the noticees or any other person(s) under the 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.

29. Show Cause Notice No. GEN/ADJ/ADC/738/2024-Adjn dated 29.04.2024 stands disposed of in the above terms.

Digitally signed by
Dipakbhai Zala
Date: 25-06-2026
11:42:52

(Dipak Zala)
Additional Commissioner of Customs,
Custom House, Mundra

To,

1. M/s Shaurya Distributors (IEC: BPOPG2565N),
1201/24, Mission Road, Sonipat,
Haryana – 131001
(Email: shauryagarg424@gmail.com)

2. Shri Ankit Garg,
R/o 1201/24, Mission Road, Sonipat,
Haryana – 131001
(Email: ankit.garg1011@hotmail.com)

3. M/s Lara Exim Pvt. Ltd.,
Office No. 220, 2nd Floor, Gokul Park Building,
Gandhidham – 370201

Copy to:

1. The Additional Director General, Directorate of Revenue Intelligence, Gandhidham
2. The Deputy Commissioner, Review, Customs House, Mundra
3. The Deputy Commissioner, TRC, Custom House, Mundra
4. The Deputy Commissioner, EDI, Custom House, Mundra
5. The Deputy Commissioner, APSEZ, Mundra
6. Guard File