

	<p style="text-align: center;"> कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421. PHONE : 02838-271426/271163 FAX :02838-271425 E-mail id- adj-mundra@gov.in </p>	
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A	FILE NO. फाइल संख्या	GEN/ADJ/ADC/938/2024-Adjn-O/o Pr Commr-Cus-Mundra
B	OIO NO. आदेश संख्या	MCH/ADC/AKM/309/2024-25
C	PASSED BY जारीकर्ता	Amit Kumar Mishra/ अमित कुमार मिश्रा, Additional Commissioner of Customs/ अपर आयुक्त सीमा शुल्क, Custom House, Mundra/कस्टम हाउस, मुन्द्रा।
D	DATE OF ORDER आदेश की तारीख	19.02.2025
E	DATE OF ISSUE जारी करने की तिथि	21.02.2025
F	SCN No. & Date कारण बताओ नोटिस क्रमांक	CUS/APR/BE/SAO/107/2023-Gr. 1 O/o Pr Commr-Cus-mundra Dated 20.05.2024
G	NOTICEE/ PARTY/IMPORTER नोटिसकर्ता/पार्टी/आयातक	M/s. Krupa Enterprises,
H	DIN/दस्तावेज़ पहचान संख्या	20250271MO0000303347

1. यहआदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

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

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

**“सीमाशुल्कआयुक्त (अपील),
चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन रोड,
नवरंगपुरा,अहमदाबाद 380 009”**

**“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
HAVING HIS OFFICE AT 4TH FLOOR, HUDCO BUILDING, ISHWAR BHUVAN ROAD,
NAVRANGPURA, AHMEDABAD-380 009.”**

3. उक्तअपील यहआदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

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

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

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

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

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

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

6. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और सीमाशुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।
While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।
An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE

M/s. Krupa Enterprises, Shop No. 129-130, White Pearls, Green City Road, Laxmi Food Inn, Pal, Surat, Gujarat, India-395009 (IEC: 5212009146) (hereinafter referred as '*Importer*') filed SEZ Bill of Entry for Home Consumption-1015218 dated 04.08.2023 through their CB M/s. Lara Exim, (CB Code 6DELCUS2007) for import of Electrical Goods having CTH-94054200. Item wise details given below as per the packing list provided by the Custom Broker:-

TABLE-I

Sr. No.	Item Description	No. of Cartons/Boxes	Total Quantity
1	LED CHIP LIGHTING	43	87000
2	REMOTE	13	13000
3	STROBE LIGHT	50	100
4	10L LED FESTIVAL LIGHT(LK-02)	82	8200
5	36L LED FESTIVAL LIGHT(LK-03)	117	11700
6	104L LED FESTIVAL LIGHT(LK-04)	40	2402
7	240L LED FESTIVAL LIGHT(LK-08)	36	864
8	380L LED FESTIVAL LIGHT(LK-10)	05	100
9	20L LED FESTIVAL LIGHT(LK-02)	273	54600
10	66L LED FESTIVAL LIGHT(LK-04)	150	15000
11	104L LED FESTIVAL LIGHT(LK-05)	117	5850
12	108L LED FESTIVAL LIGHT(LK-12)	300	30000
13	144L LED FESTIVAL LIGHT(LK-06)	1	40
14	180L LED FESTIVAL LIGHT(LK-07)	7	210

2.1 On the basis of specific intelligence, the consignment in respect of SEZ Bill of Entry for Home Consumption-1015218 dated 04.08.2023 pertaining to M/s. Krupa Enterprise filed through their CB M/s. Lara Exim, (CB Code 6DELCUS2007) was put on hold for examination by the DRI Officers. Goods examined under panchnama dtd. 19.08.2023 at M/s. OWS Warehouse Services LLP, Mundra. During the examination, Shri Vipul Gadhavi provided

the documents related to the import viz. Bill of Entry, Packing List, Invoice and the BIS Certificate of the Manufacturer, duly signed by him. Goods found during the examination are as below:-

TABLE-II

Sr. No.	Item Description	No. of Cartons/Boxes	Total Quantity
1	LED CHIP LIGHTING	43	87000
2	REMOTE	13	13000
3	STROBE LIGHT	50	100
4	10L LED FESTIVAL LIGHT(LK-02)	82	8200
5	36L LED FESTIVAL LIGHT(LK-03)	117	11700
6	104L LED FESTIVAL LIGHT(LK-04)	40	2402
7	240L LED FESTIVAL LIGHT(LK-08)	36	864
8	380L LED FESTIVAL LIGHT(LK-10)	05	100
9	20L LED FESTIVAL LIGHT(LK-02)	273	54600
10	66L LED FESTIVAL LIGHT(LK-04)	150	15000
11	104L LED FESTIVAL LIGHT(LK-05)	117	5850
12	108L LED FESTIVAL LIGHT(LK-12)	300	30000
13	144L LED FESTIVAL LIGHT(LK-06)	1	40
14	180L LED FESTIVAL LIGHT(LK-07)	7	210

As the goods found as declared, the officer under the panchnama, took all the representative samples of each type of goods for the valuation purpose.

2.2 Further, a Govt. approved Valuer Shri Bhasker G. Bhatt, Chartered Engineer/Valuer submitted its valuation report no. BB/H-19/23/LED LIGHTS/DRI-G'DHAM dtd. 09.09.2023 for the said consignment under BE No. 1015218 dtd. 04.08.2023. The relevant extract of the valuation report reproduced hereunder:

Valuation Report No. BB/H-19/23/LED LIGHTS/DRI-G'DHAM dtd. 09.09.2023 for BE No. 1015218 dtd. 04.08.2023

(i) Details of material as actual:

- Various types & size of smaller & bigger single & multi coloured LED festival Light inside the corrugated boxes.
- It is accepted that total 1234 nos. cartons(Qty.142153 pcs.) which were counted and were tallied with the invoice cum packing list for numbers and found to be true.
- The Led Festival Lights, decoration lights, celebration function lights printed boxes with local brands / similar overseas brands & sizes were also common some of them were different.
- Different Led Festival Lights has different number of bulbs, length, diameters which was cross checked with the embossed number upon the packed in to various size of pre-printed paper box, such boxes kept in to the corrugated box.
- Various types of Led Festival Lights having similar quantity of LED bulbs as identical, it was considered on basis for size to estimate FOB value of Led Festival Lights.

- The Details available for the verification of randomly selected LED Lights in context to the pre-printed code were sufficient for arriving estimation of FOB value about the type and application of the LED Lights for the usage for Garden/Festivals/Occasion/Decoration OR other similar purposes.
- Statement Showing estimated FOB value of the imported consignment for Invoice No. KT11072023A Dtd. 11.07.2023 is as following:-

TABLE-III

Sr. No.	Description of Goods	Model No. (As per BIS)	Total Qty PCS	Estimated rate INR per PC	Estimated Discounted FOB value in INR.
1	DOB LED CHIP LIGHTING	N.A.	87000	3.39	294930.00
2	REMOTE	N.A.	13000	63.60	826800.00
3	STROBE Decorative Festival Light 50 Boxes containing 100 PCS	N.A.	100	3500.20	350020.00
4	10L LED FESTIVAL LIGHT	LK-02	8200	5.74	47068.00
5	36L LED FESTIVAL LIGHT	LK-02	11700	20.67	241839.00
6	104L LED FESTIVAL LIGHT	LK-04	2402	59.70	143399.40
7	240L LED FESTIVAL LIGHT	LK-08	864	137.77	119033.28
8	380L LED FESTIVAL LIGHT	LK-10	100	218.14	21814.00
9	20L LED FESTIVAL LIGHT	LK-02	54600	11.48	626808.00
10	66L LED FESTIVAL LIGHT	LK-04	15000	37.89	568350.00
11	104L LED FESTIVAL LIGHT	LK-05	5850	59.70	349245.00
12	108L LED FESTIVAL LIGHT	LK-12	30000	62.00	1860000.00
13	144L LED FESTIVAL LIGHT	LK-06	40	82.66	3306.40
14	180L LED FESTIVAL LIGHT	LK-07	210	103.33	21699.30
	TOTAL		142153		5474312.38

(ii) Basis of forming opinion for the consignment FOB value

- Chartered Engineer relied upon the quoted prices published in public domain adjusted for quantity discount, before duties and taxes, freight charges or similar add on expenses for the LED lights.
- The rate of local market are considered after deduction of margin of profit, incident expenses, duties, taxes, breakage etc influencing landed price of items under import which were further compared with the data of public domain and lower of these was considered for the estimation of the FOB value of the item under import which are mentioned in the above statement.
- The estimated values are also cross checked with the input LED bulb cost, aluminium wire, soldering materials and labour charges with the arm's length profit of manufacturer, the value arrived found around the value of public domain and in absence of authenticated supporting

exact data for the calculated value, therefore the value of public domain is accepted for estimation of FOB value.

2.3 DRI, Gandhidham Regional Unit, Gandhidham transferred the Investigation to Custom House, Mundra alongwith the Panchnama dtd. 19.08.2023 and valuation report of the Chartered Engineer. Wherein, they stated that BIS certificate/License No. R-41127078 in respect of manufacturer was verified and found to be genuine and in the instant case, the modus operandi seems to be undervaluation.

2.5 The said CE report was sent to the Importer on email to offer their comments. The Importer vide its email dated 16.10.2023 informed that they do not agree with the valuation report of the cargo, presented by CE, and requested to release the cargo provisionally as the goods are for the purpose of Deepavali Festival.

2.6 Summons to the importer and the authorised representative of importer i.e. M/s. Krupa Enterprise Shri Sabu George, presented himself on 18.10.2023 for the statement (**RUD-6**). The relevant abstract of the statement are as under:-

- He agreed with the contents of SEZ Bill of entry no. 1015218 dtd. 04.10.2023.
- He agreed with the contents of Panchnama dtd. 19.08.2023 drawn at the M/s. OWS Services LLP.
- After perusing the Chartered Engineers report, he did not agree with the value declared by the CE and stated that the value is very high as source appeared to be <https://alibaba.com> and requested to do the valuation as per NIDB data.
- Further, requested to release the cargo on provisional basis as the cargo is related to decorative items and for the occasions of like NAVRATRA and Diwali. And stated that they will submit the Bank Guarantee as per Customs Act, 1962.

2.7 Further, a letter dtd. 26.10.2023 to Import Assessment (Group-06) for provisional release of the Cargo of SEZ Bill of entry No. 1015218 dtd. 04.08.2023 with the condition to submitting a Bond/Bank Guarantee (BG) cover the differential duty imported by the said bill of entry. Provisional release of the goods was allowed upon furnishing a Bond of Value Rs. 54,74,312/- and Bank Guarantee of Rs. 30,00,000/- by the importer and after acceptance of the same and letter dated 01.11.2023 was sent to the Specified Officer of Customs, MP & SEZ in this regard.

3. Valuation of the goods:

3.1 Rejection of declared value & Redetermination of Assessable Value:

Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 (hereinafter referred to as “*the CVR, 2007*”) provides the method of valuation. Rule 3(1) of the CVRs, 2007 provides that "Subject to Rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10". Rule 3(4) ibid states that "if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through Rule 4 to 9 of CVR, 2007". Whereas, it appears that, transaction value in terms of Rule 3 of the CVR,

2007, is to be accepted only where there are direct evidences with regard to the price actually paid or payable in respect of the imported goods by the importer. Whereas, in the present case, it appears that, there is reasonable doubt regarding the truth and accuracy of the declared value, and hence is liable to be rejected in terms of Rule 12 of the CVR, 2007.

3.2 It appeared that the value of the impugned goods could not be determined under Rule 4 and 5 ibid since the value of contemporaneous imports of identical and similar goods of same quality and composition was not found. Proceeding sequentially, it is stipulated under Rule 6 ibid that where the value is not determinable under Rule 3, 4 and 5, the value is to be determined under Rule 7 or when the value cannot be determined under that Rule, under Rule 8. Whereas, Rule 7 provides for 'Deductive Value' i.e. the value is to be determined on the basis of valuation of identical goods or similar imported goods sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, subject to deductions stipulated under the rule. Whereas, for the reasons detailed above, the values also cannot be determined as per the said Rule 7 ibid. Likewise, for application of Rule 8 of the CVR, 2007, the cost of production or processing involved in the imported goods are not available as the manufacturer is situated overseas. In the absence of requisite data, the value cannot be determined by taking recourse to these rules either.

3.3 Whereas, it appears that, the provisions of Rule 4 to 8 ibid, are not applicable in the instant case, the value of the impugned goods is required to be determined under the provisions of Rule 9 of the CVR 2007, which reads as under:-

"Rule 9 : Residual method – (1) *Subject to the provisions of Rule 3, where the value of the 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:"*

3.4 Whereas, the assessable value of the impugned goods appeared to be re-determined under Rule 9 ibid, i.e. as per the residual method. Hence, accordingly the assessable CIF value of the consignment value was taken on the basis of report submitted by the Chartered Engineer for the purpose of valuation under provisions of Rule 9 of the CVR, 2007 read with note 2 of the interpretative notes for Rule 9 of the CVR, 2007. Accordingly, it appeared that, the total value of the goods having declared assessable value of Rs. 9,80,501/- was liable to be rejected and assessable value of the impugned goods was liable to be re-determined as Rs. 54,74,312/- as per valuation report submitted by the CE.

3.6 In view of the above facts and discussions, total duty of the consignment came to Rs. 24,78,278/- instead of self-assessed duty of Rs. 4,79,979/- declared by the importer in the BE. The differential duty came to Rs.19,98,299/- as calculated under:

(Amount in Rs.)

Sr. No.	SEZ Bill of Entry No. & Date	Value Declared in the BE	FOB value per CE (in Rs.)	Duty paid as per BE	Duty liability as per CE (in Rs.)	Differential Duty to be paid (in Rs.)

1	1015218 dtd. 04.08.2023	9,80,501/-	54,74,312/-	4,79,979/-	24,78,278/-	19,98,299/-
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4.1 M/s OWS Warehouse Services LLP, SEZ had filed SEZ Bill of Entry for Home Consumption-1015218 dated 04.08.2023 for and on behalf of its client M/s. Krupa Enterprise through their Customs Broker, M/s Lara Exim at Mundra SEZ port for import. Furthermore, the said goods had also been brought into the APSEZ, Mundra i.e. a place in India from a place outside India by sea. Hence, the same falls under the definition of 'import' as provided in the SEZ Act, 2005.

5. From the forgoing facts and legal position, it appeared that, the Importer highly undervalued the imported goods had contravened the provisions of Section 46 and Section 17 of the Customs Act, 1962, in as much as, they failed to make correct and true declaration and information to the Customs Officer in the form of Bill of Entry and also failed to assess their duty liability correctly. Such an act of false declaration of value of the imported goods renders the said goods liable for confiscation under Section 111(m) of the Customs Act, 1962. The said acts of omission and commission on the part of the M/s. Krupa Enterprise had rendered themselves liable for penalty under the provisions of Section 112(a) of the Customs Act, 1962.

6. Accordingly, the Importer, **M/s. Krupa Enterprises**, was called upon to show cause as to why:

- i. The value of the goods declared in SEZ BE No. 1015218 dtd. 04.08.2023 of **Rs. 9,80,501/- (Rupees Nine Lakh Eighty Thousand Five Hundred one only)** should not be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.
- ii. The assessable value of the consignment should not be re-determined as **Rs. 54,74,312/- (Rupees Fifty Four Lakh Seventy Four Thousand Three Hundred Twelve only)** under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962 on the basis of report submitted by the empaneled chartered engineer.
- iii. The Bill of Entry mentioned at (i) should not be re-assessed accordingly under Section 17 of the Customs Act, 1962.
- iv. The goods covered under impugned Bill of Entry as mentioned at (i) above, should not be confiscated under Section 111(m) of the Customs Act, 1962.
- v. Penalty should not be imposed upon the importer under the provisions of Sections 112(a) of the Customs Act, 1962.
- vi. Bond executed by the importer should not be enforced in terms of Section 143(3) of the Customs Act, 1962 and the Bank Guarantee submitted by the importer should not be encashed for the recovery of duty, fine and penalty leviable on the importer.

7. DEFENCE SUBMISSIONS: Importer through their letter dated 25.01.2025 submitted their written submissions wherein they

interalia stated that:

- i. The noticee has declared CIF value of the goods in the said Bill of Entry. However as per Chartered Engineer, the FOB value of the said goods revised. Since the importer was not in agreement with the valuation report, and to pay differential duty worked out on the basis of highly inflated/enhanced value, the importer requested for provisional release of goods on execution of Bond and Bank Guarantee. Accordingly the goods were released provisionally vide letter dated 06.11.2023 on execution of Bond valued at Rs. 54,74,313 and furnishing of Bank Guarantee of Rs. 30,00,000/-.
- ii. The importer has correctly declared transaction value including cost of Insurance and freight i.e. CIF value in terms of Section 14 of the Customs Act, 1962, however before revising value of the imported goods, the assessing officer failed to provide any cogent reason before rejecting the value declared by the importer.
- iii. Considering the exchange rate of Rs. 84.54 per USD on the date of submission of BE the importer has declared CIF value of goods as Rs.9,80,500/- The said CIF value has to be accepted.
- iv. The importer has reason to say so as the buyer and seller are not related and the price of the imported goods declared was the sole consideration and there exists no other conditions specified in the Section 14(1) read with Rules made in this regard.
- v. Assessing officer failed to provide what were the doubt or cogent reasons for not accepting the transaction value declared by the importer and straight way without giving any reason the valuation of the impugned goods carried out with the help of Chartered Engineer. Importer placed reliance on the judgement in the case of Commissioner of Customs, Excise and Service Tax, Noida, vs Sanjivani Non-Ferrous Trading Pvt. Ltd reported as 2019 (365) E.L.T. 3 (S.C.).
- vi. , the assessing officer rejected the transaction value for the import by taking recourse to Rule 12(1) ibid without any other reasonable doubt. This action is not legal and factually incorrect. Impugned notice and investigation carried out has not put forth what was the doubt in the mind of the assessing office for not accepting the transaction value declared by the importer. Therefore, the importer contends that in the absence of any cogent doubt of any nature specified in the explanation to said rules, the transaction value cannot be rejected. He placed reliance on the judgment in the case of **Century Metal Recycling Pvt.Ltd vs Union of India reported as 2019(367) ELT3 (SC)**.
- vii. Therefore finally the importer submit that the rejection of declared value by the assessing officer and in the absence of any cogent doubt calling Chartered Engineers for valuation of goods imported and reliance on the said Certificate is unfounded and cannot be the "Reasonable doubt" for invoking the provision of Rule 12(1) ibid that too the assessing officer have ignored the essence of "transaction value of such goods that is to say that the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation used in the section 14 ibid and wrongly rejected the declared value as discussed in para supra therefor the action of the assessing officer is against the substance and spirit of section 14 of the Customs Act,1962 read with rule 3(1) of ibid.
- viii. without any cogent reason for rejection of CIF value declared by the importer the department has got valuation of the imported goods from the Chartered Engineers is very much high. The CIF value of Rs.9,80,500/- declared by the importer is enhanced to FOB value of Rs.54,74,312/-not only that it has added cost of Insurance @ 1.125% and cost of Freight @ of 20%, and derived CIF value Rs.66,30,761/-, though the same were included in CIF value declared by the importer. Thus, as per Chartered Engineers Certificate, there on an average there is increase to the extent of 676.26% in the CIF value which is too much.
- ix. The rate of goods taken by the Chartered Engineer from Alibaba web portal is not for similar or identical goods, nor does it have any reference of the exporter

from China or from anywhere else for the prices displayed on the Alibaba web portal. Therefore, reliance on such unauthenticated prices is not correct but erroneous. He placed reliance on the judgment in the case of **Technigroup International Pvt. Ltd. Versus Commissioner Of Customs, Chennai** Final Order No. 40417 of 2024 in Appeal No. C/42168 of 2014, decided on 12-4-2024 **(2024) 19 Centax 226 (Tri.-Mad).**

- x. As submitted herein above, the rejection of declared value and its revision on the basis of Chartered Engineers' certificate is legally not sustainable as the importer has correctly declared the value of goods imported, there is no allegation of any undervaluation in the value of the goods imported, this being the case the goods imported by the importer is not liable for confiscation in terms of Section 111(m).
- xi. As stated herein above, the imported humbly submit that, the value declared by them in the Bill of entry is correct transaction value in terms of Section 14 read with rules made there under; that the goods is not liable for confiscation in terms of Section 111(m); that they are not liable to any penalty in terms of Section 112(a), the bond executed cannot be enforced and Bank guarantee furnished while provisionally releasing goods, be released unconditionally.

8. RECORDS OF PERSONAL HEARING

- Following the principles of natural justice, Personal hearing was granted to the Importer on 20.01.2025 which was attended by Shri Sabu Geoge (Authorised representative of the firm). He stated that duty was paid under protest and Bond/Bank Guarantee was submitted at the time of clearance of the goods. He stated that detailed submissions will be submitted in the subject matter.

DISCUSSIONS AND FINDINGS

9. I have gone through the facts of the case, Show Cause Notice dated 20.05.2024 and the noticee's submissions both, in written and in person. I now proceed to frame the issues to be decided in the instant SCN before me. On a careful perusal of the subject Show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided: -

- i. Whether the value is liable to be rejected and re-determined or otherwise.
- ii. Whether the goods liable to be confiscated under Section 111(m) of the Customs Act, 1962.
- iii. Whether penalty is liable to be imposed on the Import under Section 112(a) of the Customs Act, 1962 or otherwise.
- iv. Whether the Bond and Bank Guarantee executed at the time of provisional release of the goods liable to encashed or otherwise.

10. I find that M/s. Krupa Enterprises filed SEZ Bill of Entry No. 1015218 dated 04.08.2023 for the clearance of goods as mentioned under Table-I above. I also observed that goods were found as declared in respect of quantity. However, goods were found mis-declared in respect of value of the same. The Importer had declared assessable value of the imported goods of Rs. 9,80,501/- (Rupees Nine Lakh Eighty Thousand Five Hundred one only),

however, upon examination goods were appeared to be found undervalued. Importer during investigation period did not agreed with the value proposed by the department and requested to provisionally release the goods. Accordingly, goods were released to the Importer for home consumption on execution of Bond valued at Rs. 54,74,313 and Bank Guarantee of Rs. 30,00,000/-. Thus, issue remains here regarding valuation of the goods and confiscation of the goods consequent upon this undervaluation.

11. VALUATION OF THE IMPORTED GOODS:

11.1 I find that Bill of Entry was filed by the Importer M/s. Krupa Enterprises, however, upon examination it has been found that value was not declared correctly by the Importer. Thus, opinion of Govt. approved Valuer Shri Bhasker G. Bhatt, Chartered were taken who submitted valuation report no. BB/H-19/23/LED LIGHTS/DRI-G'DHAM dtd. 09.09.2023 for the said consignment under BE No. 1015218 dtd. 04.08.2023. On perusal of the valuation report, I observed that market survey was conducted based on the sample collected during examination of the Container. As per valuation report, the details available for the verification of randomly selected LED Lights in context to the pre-printed code were sufficient for arriving estimation of FOB value about the type and application of the LED Lights for the usage for Garden/Festivals/Occasion/Decoration OR other similar purposes.

11.2 I also find that at the time of valuation; quoted prices which published in the public domain were adjusted for quantity discount, before duties and taxes, freight charges or similar add on expenses for the LED Lights. The rates of local market were also considered after deduction of margin of profit, incidental expenses, duties, taxes, breakage, etc influencing landed price of item under import which were further compared with the data of public domain. I observed that lowest price was considered for the estimation of the FOB value of the item under import.

11.3 I find that these estimated value (lowest price) were also cross checked with the input LED bulb cost, aluminium wire, soldering material and labour charges with arm's length profit of manufacturer. The value arrived found around the value of Public domain and in absence of authenticated supporting exact data for the calculated value, therefore the value of public domain is accepted for estimation of FOB value.

11.4 I also observe that value was estimated after market survey/inquiry from the related Local Electrical/Electronic goods/item whole-seller/Dealers/Supplier/Traders, adjusting rates of similar type & size of wide range of 10L-TO-380L LED Festival Lights/Remotes/Strobe Light/LED Chip Lighting & as available on public domain after deducting Margin of profit/bulk Discount/Freight/Handling/Transportation/other Incidental charges, govt. taxes(as applicable) as well as discount for bulk buying etc.

11.5 From the above it may be seen that proper procedure has been followed during the valuation of the imported goods. I also find that Importer during defence submissions stressed upon NIDB Data

reference, however, as per the investigation report, no similar or identical goods were available at the material time. I also noticed that the Importer also failed to produce any data of similar/identical goods which were under import at the material time.

11.6 I state that "Value" has been defined under Section 2(41) of the Customs Act, 1962 as "Value", in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of section 14".

11.7 As per Rule 11 of the CVR, 2007, Importer is required to furnish declaration disclosing full and accurate details relating to the value of the imported goods along with other documents & information including the invoice in respect of the actual transaction price. However, the investigation revealed/indicate that the value was not declared truly at the time of filing of Bills of Entry for the purpose of the Customs clearance.

11.8 As per Rule 3 of the CVR 2007, the transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export. I find that Rule 3(1) of Rules 2007 provides that "*subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10*". Rule 3(4) ibid states that "*if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9 of Custom Valuation Rules, 2007*". I state that transaction value in terms of Rule 3 of the CVR, 2007, is to be accepted only where there are direct evidences with regard to the price actually paid or payable in respect of the imported goods by the importer. However, in absence of the same criteria in the present case, there was a reasonable doubt regarding the truth and accuracy of the declared value. The Explanation (l)(iii) to Rule 12 of the CVR, 2007 provides that the proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include (a) significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed, (b) an abnormal discount/ reduction from the ordinary competitive price, (c) sale involves special discounts limited to exclusive agents, (d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production, (e) the non-declaration of parameters such as brand, grade, specifications that have relevance to value, (f) the fraudulent or manipulated documents. In the present case Importer is failed to provide the corroborative evidence during the investigation despite the fact that valuation report was provided to them well before the issuance of the Show Cause Notice. Without furnishing any documents in support declared value they just choose to provisional clearance of the goods simply stating that value is not acceptable to them. In absence of any corroborative evidence from the Importer's end, I find that the declared value is liable to be rejected in terms of Rule 12 of the Customs Valuation (Determination of value of Imported Goods) Rules, 2007. The relevant Rules of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 are reproduced hereunder:-

3. *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 Rule 7 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.

11.9 From the investigation, I noticed that there were no specific identifications were mentioned in the import documents based on which comparison of the impugned goods with other goods can be made. Thus, the vital specifications essential for holding the goods to be identical or similar were not available on the records. I find that the value of the impugned goods could not be determined under Rule 4 and 5 ibid since the value of contemporaneous imports of identical and similar goods of same quality and composition was not found. Proceeding sequentially, it is stipulated under Rule 6 ibid that where the value is not determinable under Rule 3, 4 and 5, the value is to be determined under Rule 7 or when the value cannot be determined under that Rule, under Rule 8. Whereas, Rule 7 provides for 'Deductive Value' i.e. the value is to be determined on the basis of valuation of identical goods or similar imported goods sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, subject to deductions stipulated under the rule. I notice that deductive value as provided for under Rule 7 cannot be arrived at in the absence of exact sales values and the data required for quantification of the deductions allowed under the said Rule 7. Further, computed value, as provided under Rule 8, cannot be calculated in the absence of quantifiable data relating to cost of production, manufacture or processing of import goods. In such scenario, I find it appropriate to invoke the provisions of Rule 9 i.e. residual method for determining the value of the impugned import goods. Rule 9 provides for determination of value using reasonable means consistent with the principles and general provisions of these rules. The methods based on which value has been estimated, has been well discussed at para 11.1 to 11.5 above and I have found no infirmity in the same. Thus, I find it appropriate to consider the value arrived after taking opinion of the govt. approved valuer for the valuation of the imported goods. As the procedure followed to arrive at the correct valuation is fair/proper, I hold that the total value of the goods having declared assessable value of Rs. 9,80,501/- is liable to be rejected and assessable value of the impugned goods is liable to be re-determined as **Rs. 54,74,312/-**. I hold that item wise value of the goods is as per the below Table and the value indicated in the table may be taken basis for valuation at the time of re-assessment of the Bill of Entry:

TABLE-IV

Sr. No.	Description of Goods	Model No. (As per BIS)	Value Declared in the BE	Estimated Discounted FOB as per CE
1	DOB LED CHIP LIGHTING	N.A.	29861.40	294930.00

2	REMOTE	N.A.	21980.53	826800.00
3	STROBE Decorative Festival Light 50 Boxes containing 100 PCS	N.A.	67209.70	350020.00
4	10L LED FESTIVAL LIGHT	LK-02	27729.28	47068.00
5	36L LED FESTIVAL LIGHT	LK-02	59347.43	241839.00
6	104L LED FESTIVAL LIGHT	LK-04	34521.27	143399.40
7	240L LED FESTIVAL LIGHT	LK-08	29947.53	119033.28
8	380L LED FESTIVAL LIGHT	LK-10	3888.86	21814.00
9	20L LED FESTIVAL LIGHT	LK-02	184636.45	626808.00
10	66L LED FESTIVAL LIGHT	LK-04	126810.75	568350.00
11	104L LED FESTIVAL LIGHT	LK-05	59347.43	349245.00
12	108L LED FESTIVAL LIGHT	LK-12	329707.95	1860000.00
13	144L LED FESTIVAL LIGHT	LK-06	541.06	3306.40
14	180L LED FESTIVAL LIGHT	LK-07	4970.98	21699.30
			980501	5474312

12. CONFISCATION OF THE GOODS UNDER SECTION 111(m) OF THE CUSTOMS ACT, 1962:

12.1 It is alleged in the SCN that the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. In this regard, I find that as far as confiscation of goods are concerned, Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111 of the Customs Act, 1962 are reproduced below: -

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

12.2 I have already discussed in details in previous paras that values had been mis-declared by the Noticee and true transaction value had not been disclosed while filing bills of entry. It had been observed that the offence was of a serious nature involving a substantial loss of revenue to the govt. exchequer. Further, Section 2(39) of Customs Act, 1962 defines "smuggling" in relation to any goods, means any act or omission which will render such goods liable to confiscation under Section 111 or Section 113 of the Customs Act, 1962. The impugned undervalued goods were liable to confiscation under section 111(m) of the Customs Act, 1962 and hence, the illegal import of such goods falls under the category of "smuggling" in terms of section 2(39) of the Customs Act, 1962. Which makes the act of importation of impugned goods Smuggling and impugned goods as smuggled goods itself. I find that true transaction value was not declared in the bills of entry before the Customs authorities. Thus, I find that the Noticee have contravened the provisions of Customs Act, 1962, in as much as they had willfully mis-declared the imported goods, in the corresponding import documents. Thus, I find that the said smuggled goods are liable for confiscation under the provisions of Section 111 (m) of the Customs Act, 1962. For the said contravention, I find that the Importer had also rendered themselves liable for penalty under the provisions of Section 112(a) of the Customs Act, 1962.

13. REDEMPTION FINE IN LIEU OF CONFISCATION:

(i) I find that goods were released provisionally to the Importer upon furnishing of provisional duty bond of Rs. 54,74,313 and Bank Guarantee of Rs. 30,00,000/-.

(ii) As I already held these goods liable for confiscation in previous paras under Section 111(m) of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject SCNs. The Section 125 ibid reads as under:-

“Section 125. Option to pay fine in lieu of confiscation.—(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods 1/or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit.”

(iii) A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods by paying redemption fine. I find that in the instant case option to redeem the goods for re-export goods has already been availed by the Importer. Now the question remains that whether redemption fine can be imposed on the goods which already allowed for re-export. In this regard, I place reliance on the judgment of the Hon'ble Apex Court in the case of **M/s. WESTON COMPONENTS LTD. Versus COMMISSIONER OF CUSTOMS, NEW DELHI-2000 (115) E.L.T. 278 (S.C.)** wherein the Apex Court held that:

“It is contended by the learned Counsel for the appellant that redemption fine could not be imposed because the goods were no longer in the custody of the respondent-authority. It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under these circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the customs authorities to levy redemption fine.”

I believe the ratio of the aforementioned judgment is directly applicable to the present case, as the goods in the current shipment were also allowed under Bond and Bank Guarantee. Consequently, I find that a redemption fine is warranted in this matter and see no grounds to challenge its imposition.

14. IN VIEW OF DISCUSSION AND FINDINGS SUPRA, I PASS THE FOLLOWING ORDER:

ORDER

i) I order to reject the declared value of the goods imported vide Bill of Entry No. 1015218 dtd. 04.08.2023 and order to re-determine the same at **Rs. 54,74,312/- (Rupees Fifty Four Lakh Seventy Four**

Thousand Three Hundred Twelve only) in terms of Rule 9 of the Customs Valuation(Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.

- ii) I order re-assess the Bill of Entry No. 1015218 dtd. 04.08.2023 with the re-determined value (as determined at i) above) under Section 17(4) of the Customs Act, 1962
- iii) I order to confiscate the impugned goods having re-determined value of Rs. 54,74,312/- (Rupees Fifty Four Lakh Seventy Four Thousand Three Hundred Twelve only) under Section 111(m) of the Customs Act, 1962. As the goods already redeemed by the Importer, I impose a redemption fine of **Rs. 8,20,000/- (Rupees Eight Lakhs Twenty Thousand only)** under Section 125 of Customs Act, 1962 in lieu of confiscation of the goods for the reasons state in foregoing paras.
- iv) I impose penalty of **Rs. 1,80,000/- (Rupees One Lakh Eighty only)** upon the Importer under Section 112(a)(ii) of the Customs Act, 1962.
- v) I order to **enforce** the Bond amounting to Rs. 54,74,313/- & Bank Guarantee of Rs. 30,00,000/- respectively furnished by the Importer at the time of provisional release of the goods. If the amount of duty, redemption fine & penalty (as confirmed above) paid in full by the Noticee; the Bond & Bank Guarantee may be cancelled by the competent authority.

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

16. The Show Cause Notice bearing No. CUS/APR/BE/SAO/107/2023-Gr. 1 O/o Pr Commr-Cus-mundra dated 20.05.2024 stands disposed off in above terms.

अपर आयुक्त सीमा शुल्क,
(अधिनिर्णयन अनुभाग)
कस्टम हाउस, मुंद्रा।

फाइल संख्या: GEN/ADJ/ADC/938/2024-Adjn.

DIN/दस्तावेज़ पहचान संख्या: 20250271MO0000303347

To,

M/s. Krupa Enterprises,
Shop No. 129-130, White Pearls,
Green City Road, Laxmi Food Inn, Pal,
Surat, Gujarat, India-395009. (Email: Aditya_fancylight@hotmail.com)

Copy to:

1. The Dy./Asstt. Commissioner (Review Cell), Customs House, Mundra
2. The Dy./Asstt. Commissioner (RRA/TRC), CH, Mundra.

3. The Dy./Asstt. Commissioner (EDI), Customs House, Mundra... *(with the direction to upload on the official website immediately in terms of Section 153 of the Customs Act, 1962)*
4. The Dy. Commissioner of Customs, SIIB, CH, Mundra
5. Guard File.