

**OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-V)**  
**सीमाशुल्कआयुक्त (एनएस - V) काकार्यालय**  
**JAWAHARLAL NEHRU CUSTOM HOUSE, NHAVA SHEVA,**  
**जवाहरलालनेहरुसीमाशुल्कभवन, न्हावाशेवा,**  
**TALUKA – URAN, DISTRICT - RAIGAD, MAHARASHTRA -400707**  
**तालुका - उरण, जिला - रायगढ़, महाराष्ट्र 400707**

<b>DIN – 20250878NX000000FDDDB</b>	<b>Date of Order: 06.08.2025</b>
<b>F. No. S/10-95/2024-25/COMMR/GR.VB/NS-V/CAC/JNCH</b>	<b>Date of Issue: 06.08.2025</b>
<b>SCN No.: 958/2024-25/COMMR/NS-V/CAC/JNCH</b>	
<b>SCN Date: 21.08.2024</b>	
<b>Passed by: Sh. Anil Ramteke</b>	
<b>Commissioner of Customs, NS-V, JNCH</b>	
<b>Order No: 155/2025-26/COMMR/NS-V/CAC/JNCH</b>	
<b>Name of Noticee: M/s. Bro International (IEC: AAUFB7496B)</b>	

**ORDER-IN-ORIGINAL**

**मूल - आदेश**

1. The copy of this order in original is granted free of charge for the use of the person to whom it is issued.

1. इसआदेशकीमूलप्रतिकीप्रतिलिपिसव्यक्तिकोजारीकीजातीहै,  
उसकेउपयोगकेलिएनिःशुल्कदीजातीहै।

2. Any Person aggrieved by this order can file an Appeal against this order to CESTAT, West Regional Bench, 34, P D'Mello Road, Masjid (East), Mumbai - 400009 addressed to the Assistant Registrar of the said Tribunal under Section 129 A of the Customs Act, 1962.

2. इसआदेशसेव्यथितकोईभीव्यक्तिसीमाशुल्कअधिनियम 1962 कीधारा 129 (ए) केतहतइसआदेशकेविरुद्धसी.ई.एस.टी.ए.टी., पश्चिमीप्रादेशिकन्यायपीठ (वेस्टरीज़नलबेंच), 34, पी. डी.मेलोरोड, मस्जिद(पूर्व), मुंबई - 400009 कोअपीलकरसकताहै, जोउक्तअधिकरणकेसहायकरजिस्ट्रारकोसंबोधितहोगी।

3. Main points in relation to filing an appeal: -

3. अपीलदाखिलकरनेसंबंधीमुख्यमुद्दे:-

Form - Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy).

फार्म - सीए3, चारप्रतियोंमेंतथाउसआदेशकीचारप्रतियाँ, जिसकेखिलाफअपीलकीगयीहै (इनचारप्रतियोंमेंसेकमसेकमएकप्रतिप्रमाणितहोनीचाहिए).

**Time Limit -** Within 3 months from the date of communication of this order.

**समयसीमा -** इसआदेशकीसूचनाकीतारीखसे 3 महीनेकेभीतर

**Fee -फीस-**

- (a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less.
- (क) एकहजाररुपयजहाँमाँगेगयेशुल्कएवंब्याजकीतथालगायीगयीशास्तिकीरकम 5 लाखरुपयेयाउससेकमहै।
- (b) Rs. Five Thousand - Where amount of duty & interest demanded & penalty imposed is



more than Rs. 5 Lakh but not exceeding Rs. 50 Lakh.

- (ख) पाँच हजार रुपये - जहाँ माँगे गये शुल्क एवं ब्याज की तथालगायी गयी शास्तिकी रकम 5 लाख रुपये से अधिक परंतु 50 लाख रुपये से कम है।
- (c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.
- (ग) दस हजार रुपये - जहाँ माँगे गये शुल्क एवं ब्याज की तथालगायी गयी शास्तिकी रकम 50 लाख रुपये से अधिक है।

**Mode of Payment** - A crossed Bank draft, in favor of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.

**भुगतान की रीति** - क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीय कृत बैंक द्वारा सहायकर जिस्ट्रार, सी.ई.एस.टी.ए.टी., मुंबई के पक्ष में जारी किया गया हो तथा मुंबई में देय हो।

**General -** For the provision of law & from as referred to above & other related matters, Customs Act, 1962, Customs (Appeal) Rules, 1982, Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 may be referred.

**सामान्य -** विधिके उपबंधों के लिए तथा ऊपर यथासंदर्भित एवं अन्य संबंधित मामलों के लिए, सीमा शुल्क अधिनियम, 1962, सीमा शुल्क (अपील) नियम, 1982, सीमा शुल्क, उत्पाद शुल्क एवं सेवाकर अपील अधिकरण (प्रक्रिया) नियम, 1982 का संदर्भ लिया जाएगा।

4. Any person desirous of appealing against this order shall, pending the appeal, deposit 7.5% of duty demanded or penalty levied therein and produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for non-compliance with the provisions of Section 129E of the Customs Act 1962.

4.

इस आदेश के विरुद्ध अपील करने के लिए ऐडजुक्टेड व्यक्ति अपील अनिर्णीत रहने तक उसमें माँगे गये शुल्क अथवा उद्गृहीत शास्तिका 7.5 % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमा शुल्क अधिनियम, 1962 की धारा 129 E के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।



**Subject: Adjudication of Show Cause Notice No. 958/2024-25/COMMR/NS-V/CAC/JNCH dated 21.08.2024 issued to M/s Bro International (IEC No. AAUFB7496B) – reg.**

**1. BRIEF FACTS OF THE CASE**

**1.1** It is stated in the Show Cause Notice (SCN) No. 958/2024-25/COMMR/NS-V/CAC/JNCH dated 21.08.2024 that based on intelligence developed by the Special Investigation and Intelligence Branch, [SIIB(I)], JNCH, that M/s Bro International (IEC No. AAUFB7496B) through their authorized Customs Broker, M/s Sigma Forwarders (ALEPJ7162K) had imported goods “spectacle /optical lenses” from China by undervaluing the consignment of the said goods, imported vide B/E No. 6811646 dated 10.02.2020 and B/E No. 6871585 dated 13.02.2020.

**1.2** As per the SCN, the subject goods imported vide the above-mentioned Bills of Entry were examined by the SIIB(I) officers under Panchnama dated 18.02.2020, 19.02.2020, & 21.02.2020 for B/E No. 6811646 dated 10.02.2020 and B/E No. 6871585 dated 13.02.2020. The imported goods under the above Bills of Entry were found to be mis-declared with respect to value. As the impugned goods appeared liable for confiscation under Section 111(l) & 111(m) of the Customs Act, 1962, a Show Cause Notice was issued in the case for B/E No. 6811646 dated 10.02.2020 and B/E No. 6871585 dated 13.02.2020 vide F. No. S-26/MISC-1382/2021-22/Gr.VB/JNCH dated 28.02.2022.

**1.3** Past Imports - During the course of the investigation of the consignments imported under B/E No. 6811646 dated 10.02.2020 and B/E No. 6871585 dated 13.02.2020 and recording of statements of the importer, it appeared that the importer had cleared similar goods viz. Optical Frame Lens, as mentioned in Table-1 below:

**Table-I**

Sr. No.	BE No.	BE Date	Type of Goods found	Qty in Pairs/ Pcs/Kgs	UQC	Declared Value (in USD)
1	4649666	26.08.2019	OPTICAL FRAME LENS (UNBRANDED)	185760	PRS	0.018
2	4903946	14.09.2019	OPTICAL FRAME LENS (UNBRANDED)	357701	PRS	0.018
3	4998868	21.09.2019	OPTICAL FRAME LENS (UNBRANDED)	207671	PRS	0.018
4	5096773	28.09.2019	OPTICAL FRAME LENS (UNBRANDED)	233511	PRS	0.018
5	5450124	26.10.2019	OPTICAL FRAME LENS (UNBRANDED)	623496	PRS	0.018
6	5479898	30.10.2019	OPTICAL FRAME LENS (UNBRANDED)	256674	PRS	0.018
7	5583998	07.11.2019	OPTICAL FRAME LENS (UNBRANDED)	132816	PRS	0.018
8	5675676	14.11.2019	OPTICAL FRAME LENS (UNBRANDED)	137364	PRS	0.018
9	5766993	21.11.2019	OPTICAL FRAME LENS (UNBRANDED)	398844	PRS	0.018
10	6043416	12.12.2019	OPTICAL FRAME LENS (UNBRANDED)	91499	PRS	0.018
11	6158334	20.12.2019	OPTICAL FRAME LENS (UNBRANDED)	167546	PRS	0.018
12	6223562	24.12.2019	OPTICAL FRAME LENS (UNBRANDED)	427401	PRS	0.018
13	6334872	03.01.2020	OPTICAL FRAME LENS (UNBRANDED)	101598	PRS	0.018

It was found that the importer had cleared goods in the past, as mentioned in Table-1 above, by means of willful mis-declaration in terms of value (undervaluation) during the years



2019 and 2020 to evade customs duty. The subject Show Cause Notice was regarding the past imports as mentioned in Table - I above.

#### 1.4 Re-determination of value of the goods:

1.4.1 Since the impugned goods appeared mis-declared in terms of their value, the transaction value as declared by the importer appeared liable to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 2007). It appeared that the value of the goods, as mandated by the CVR, 2007, needs to be re-determined by following Rules 4 to 9 sequentially, as it was not correctly declared. Further, it appeared that the value of the goods cannot be re-determined under Rule 4, read with Rule 3 of the CVR, 2007, as data for identical goods was not available for the impugned goods. However, as there was import data from the NIDB for similar goods at a comparable level, the value of the said goods could be re-determined under Rule 5, read with Rule 3 of the CVR, 2007, after rejecting the declared value under Rule 12 of the CVR, 2007. The detailed valuation sheet is enclosed as Annexure-A to the subject SCN.

1.4.2 Accordingly, the re-determined value of the impugned goods covered under the Bills of Entry, as per Annexure-A to the subject SCN, came to Rs. 7,97,25,144/- against the declared Assessable Value of Rs. 47,56,604/-. Further, the re-determined duty came to Rs. 2,03,85,750/- against the duty declared by the importer of Rs. 12,37,866/-. Therefore, there was a differential duty of Rs. 1,91,47,884/- for the Bills of Entry covered under Table - I for the impugned goods.

1.5 The statement of Sh. Rupesh Mahesh Patade, Proprietor of M/s Bro International was recorded under Section 108 of Customs Act, 1962, on 25.11.2020 wherein, he inter alia stated that:

- (i) He looks after all sales and purchase activities. They generally import optical items, cutting wheels, wood cutters, hardware items, etc.
- (ii) They started importing spectacle lenses in the year 2019. All the imports have been procured from M/s Jayong Trading Co. Ltd., Zhejiang, China.
- (iii) He was shown the Bills of Entry and invoices wherein the goods, namely spectacle lenses, had been declared. However, as recorded in the inventory during the SIIB(I) examination, the goods have clear markings of index, type, material, and coating.
- (iv) He was unaware of any such factors/particulars in relation to spectacle lenses. Therefore, the value of such spectacle lenses, which was influenced by their type and material, was never known to him. The prices reflected in the invoices were the same as those declared in the Bills of Entry.
- (v) He was shown some invoices raised by Chinese suppliers for the spectacle lenses where all the relevant specifications were declared. In this regard, he said that he was never aware of any such particulars of the said items.
- (vi) He accepted to bear the differential duty and any other liability in the instant matter.



**1.6** As per the SCN, with the introduction of the Self-Assessment Scheme, the onus is on the importer to comply with the various laws, determine their tax liability correctly, and discharge the same. Importers are required to declare the correct description, value, classification, and notification number, if any, on the imported goods. Self-assessment is supported by Sections 17, 18, and 46 of the Customs Act, 1962, and the Bill of Entry (Electronic Declaration) Regulations, 2011. The importer is fully responsible for the self-assessment of duty on imported goods and for filing all declarations and related documents, confirming that these are true, correct, and complete. Self-assessment can result in assured facilitation for compliant importers. However, delinquent importers would face penal action on account of incorrect self-assessment made with the intent to evade duty or avoid compliance with the conditions of notifications, the Foreign Trade Policy, or any other provisions under the Customs Act, 1962, or the allied acts. The relevant provisions of law relating to import, assessment of duty, and the liability of the goods to confiscation and the imposition of penalty are as per the provisions of the Customs Act, 1962, as amended from time to time.

**1.7** The extracts of the following relevant provisions of law relating to import and valuation of goods in general, the Policy and Rules relating to imports, the liability of the goods to confiscation and the persons concerned to penalty for illegal importation under the provisions of the Customs Act, 1962 and the other laws for the time being in force, were mentioned in the subject SCN. The same are not reproduced in this Order-in-Original for the sake of brevity:

- Section 17 - Assessment of duty.
- Section 28 - Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.
- Section 46 - Entry of goods on importation.
- Section 111(m) - Confiscation of improperly imported goods, etc.
- Section 112 - Penalty for improper importation of goods etc.
- Section 114A - Penalty for short-levy or non-levy of duty in certain cases.
- Section 114AA - Penalty for use of false and incorrect material.
- Section 125 - Option to pay fine in lieu of confiscation.

**1.8** Investigation and findings:

M/s Bro International had imported goods, viz. optical frame lenses, by way of willful mis-declaration and undervaluation to evade customs duty, as detailed below:

- a) The importer evaded applicable customs duty by way of mis-declaration and undervaluation of the goods imported vide Bills of Entry as per Annexure-A to the subject SCN. During the statement, they accepted to bear the differential duty and any other liability in the instant matter.



- b) The importer is responsible for providing accurate and complete information in the Bill of Entry, which he willfully mis-declared, therefore, the importer violated Section 46(4) and Section 46(4A) of the Customs Act, 1962.
- c) The importer, M/s Bro International, willfully evaded duty to the tune of Rs. 1,91,47,884/- with applicable interest, by providing incorrect data in the Bills of Entry in terms of the description and value of the imported goods. The non-paid duty of Rs. 1,91,47,884/- is liable to be demanded from the importer under Section 28(4) of the Customs Act, 1962, along with applicable interest thereon, as per the provisions of Section 28AA of the Customs Act, 1962.
- d) This act of willful mis-declaration and undervaluation of the impugned goods by the importer has resulted in short payment of duty. This has made the impugned goods, re-determined at a value of Rs. 7,97,25,144/- (Rupees Seven Crore Ninety Seven Lakh Twenty Five Thousand One Hundred and Forty Four Only), as per Annexure-A to the subject SCN, liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962.
- e) This act of commission and omission, through mis-declaration / mis-statement of the value of the impugned goods, has rendered the subject goods liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962. It has also made the importer liable for penal action under the provisions of Section 112(a)(ii) / 114A of the Customs Act, 1962.
- f) M/s Bro International has demonstrated a consistent pattern of undervaluing and mis-declaring goods across multiple consignments, as evidenced by the past imports listed in Table-1. The repeated nature of these offenses strongly indicated that the mis-declarations were not accidental but deliberate. Furthermore, the significant discrepancy between the declared value of Rs. 47,56,604/- and the re-determined value of Rs. 7,97,25,144/- underscored that this was not a one-time mistake. Instead, it reflected a clear intent to undervalue the goods and evade the correct payment of customs duties. Additionally, during his statement under Section 108, Sh. Rupesh Mahesh Patade, the Proprietor, claimed ignorance of these value-affecting factors. This could be seen either as a deliberate attempt to feign unawareness or as negligence, both of which contribute to establishing willfulness. M/s Bro International's failure to voluntarily disclose the correct value of the goods or amend the inaccurate declarations once discrepancies were identified further supported the argument of willfulness. The fact that Sh. Rupesh Mahesh Patade only accepted liability after being confronted with evidence implied that the importer was aware of the undervaluation but chose not to rectify it. This deliberate decision to proceed with incorrect declarations, despite knowing the true value, was a clear indication of intent to evade duties. Therefore, M/s Bro International, through its Directors, Sh. Rupesh Mahesh Patade and Smt. Mandira Rupesh Patade, had rendered themselves liable for penal action under Section 114AA of the Customs Act, 1962.
- g) The Customs Broker, M/s Sigma Forwarders (ALEPJ7162K), had abetted the importer in the commission and omission of the above acts, as mentioned. Therefore, the Customs



Broker had rendered himself liable for penal action under Section 114AA of the Customs Act, 1962.

**1.9** From the foregoing investigation, it appeared that:

- (i) The total declared value of the offending goods of Rs. 47,56,604/- appeared to be liable for rejection under Rule 12 of the Customs Valuation Rules, 2007, and the same was proposed to be re-determined at Rs. 7,97,25,144/-, as per details given in Annexure-A to the subject SCN, thereby making the goods liable for confiscation under Section 111(m) of the Customs Act, 1962.
- (ii) Thus, the total re-determined Assessable Value of the impugned goods imported vide Bills of Entry covered under Annexure-A to the subject SCN worked out to Rs. 7,97,25,144/-, and the applicable customs duty amounts to Rs. 2,03,85,750/-. Further, the declared duty was Rs. 12,37,867/-, and thus, the differential duty amount worked out to Rs. 1,91,47,884/- with applicable interest.
- (iii) For the acts of omission and commission and willful suppression of facts, the importer M/s Bro International, through its Directors, Shri Rupesh Mahesh Patade and Smt. Mandira Rupesh Patade, has rendered itself liable for penal action under Section 112(a)(ii) / 114A of the Customs Act, 1962.
- (iv) The Customs Broker, M/s Sigma Forwarders (ALEPJ7162K), has abetted the importer in the omission and commission of the above-mentioned acts, hence, the Customs Broker had rendered itself liable for penal action under Section 112(a) / 114A and 114AA of the Customs Act, 1962.

**1.10.1** In view of the above, vide Show Cause Notice No. 958/2024-25/COMMR/NS-V/CAC/JNCH dated 21.08.2024, the importer, M/s Bro International (IEC No. AAUFB7496B), having registered address at 1638/1, Maa Padmavati Complex, Dapode Road, Val-Village, Bhiwandi, Maharashtra - 421302, was called upon to show cause to the Commissioner of Customs (NS-V), JNCH, Nhava Sheva (the Adjudicating Authority), as to why:

- (i) The total declared value of offending goods covered under past Bs/E, as mentioned in Table-I of the subject SCN, amounting to Rs. 47,56,604/- (Rupees Forty Seven Lakh Fifty Six Thousand Six Hundred and Four Only), should not be rejected under Rule 12 of the Customs Valuation Rules, 2007 and same should not be re-determined to Rs. 7,97,25,144/- (Rupees Seven Crore Ninety Seven Lakh Twenty Five Thousand One Hundred and Forty Four Only) as per Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 2007).
- (ii) The self-assessment in respect of past Bs/E, as mentioned in Table-I of the subject SCN, done by the importer in terms of Section 17(1) should not be rejected and re-assessed as per Section 17(4) of the Customs Act, 1962. Consequent to such re-assessment, the differential duty amounting to Rs. 1,91,47,884/- (Rupees One Crore Ninety One Lakh Forty Seven Thousand Eight Hundred and Eighty Four Only) should not be demanded



under Section 28(4) of the Customs Act, 1962, along with applicable interest as per Section 28AA of the Customs Act, 1962.

- (iii) The impugned goods having total re-determined Assessable Value of Rs. 7,97,25,144/-, for the Bills of Entry as mentioned in Table-I of the subject SCN, should not be confiscated under Section 111(m) of the Customs Act, 1962.
- (iv) For acts of omission and commission and wilful suppression of facts, as discussed in the foregoing paragraphs, a penalty should not be imposed on the importer under Sections 112(a)(ii) / 114A, and 114AA of the Customs Act, 1962.

**1.10.2** Shri Rupesh Mahesh Patade (Director) having address at Row House No. B/5, Sector-4, Digha, Airoli, Navi Mumbai, Maharashtra – 400708, was called upon to show cause to the Commissioner of Customs (NS-V), JNCH, Nhava Sheva (the Adjudicating Authority), as to why for the acts of omission and commission and wilful suppression of facts, as discussed in the foregoing paragraphs, penalty should not be imposed on him, in terms of provisions of Section 112(a)(ii) / 114A and 114AA of the Customs Act, 1962.

**1.10.3** Smt. Mandira Rupesh Patade (Director) having address at Row House No. B/5, Sector-4, Digha, Airoli, Navi Mumbai, Maharashtra – 400708, was called upon to show cause to the Commissioner of Customs (NS-V), JNCH, Nhava Sheva (the Adjudicating Authority), as to why for the acts of omission and commission and wilful suppression of facts, as discussed in the foregoing paragraphs, penalty should not be imposed on her, in terms of provisions of Section 112(a)(ii) / 114A and 114AA of the Customs Act, 1962.

**1.10.4** M/s. Sigma Forwarders (Customs Broker), having address at Door No. 7/18, First Floor, Karnan Street, Rangarajapuram, Kodambakkam, Chennai, Tamil Nadu – 600024, was called upon to show cause to the Commissioner of Customs (NS-V), JNCH, Nhava Sheva (the Adjudicating Authority), as to why penalty should not be imposed on them under Section 112(a) / 114A and 114AA of the Customs Act, 1962.

**1.11** Before proceeding further, it is pertinent to mention here that in the SCN in para 5 and 8(f), the noticee, Sh. Rupesh Mahesh Patade, has been mentioned as 'Proprietor' of M/s Bro International, whereas in rest of the places in the SCN, he has been mentioned as 'Director' of M/s Bro International. Further, another noticee in the SCN, Smt. Mandira Rupesh Patade, has also been mentioned as 'Director' of M/s Bro International. In view of the above discrepancy in the role/position of Sh. Rupesh Mahesh Patade, the IEC details of M/s Bro International (IEC No. AAUFB7496B) were checked from the Directorate General of Foreign Trade (DGFT) web portal. From the 'IEC Details' of M/s Bro International (IEC No. AAUFB7496B) available on DGFT web portal, it was found that of M/s Bro International is a 'Partnership' firm with Sh. Rupesh Mahesh Patade and Smt. Mandira Rupesh Patade, as its two partners. In view of the above, I note that M/s Bro International is a Partnership firm and Sh. Rupesh Mahesh Patade and Smt. Mandira Rupesh Patade, are its two partners.



## **2. WRITTEN SUBMISSION OF THE NOTICEES**

None of the Noticees submitted any written submission in their defence during the adjudication proceeding, inspite of the same being called vide subject Show Cause Notice dated 21.08.2024.

## **3. RECORD OF PERSONAL HEARINGS**

**3.1** There are total four Noticees in the subject SCN viz.

- (i) Noticee No.1 - M/s Bro International.
- (ii) Noticee No.2 – Sh. Rupesh Mahesh Patade, Partner, M/s Bro International.
- (iii) Noticee No.3 - Smt. Mandira Rupesh Patade, Partner, M/s Bro International.
- (iv) Noticee No.4 - M/s. Sigma Forwarders (Customs Broker).

**3.2** In compliance of provisions of Section 28(8) read with Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, all the Noticees were granted opportunity of Personal Hearing (PH) on 09.06.2025, 25.06.2025 and 03.07.2025 and PH intimation letters were issued by speedpost. However, none of the Noticees attended any of the PH opportunity provided to them.

## **4. DISCUSSION AND FINDINGS**

**4.1** I have carefully gone through the subject Show Cause Notice (SCN) and its enclosures, material on record and facts of the case. Accordingly, I proceed to decide the case on merit.

**4.2** Section 122A of the Customs Act, 1962, stipulates that the Adjudicating Authority shall give an opportunity of being heard to a party in a proceeding, if the party so desires. The adjudicating authority may, if sufficient cause is shown, at any stage of proceeding, grant time, from time to time, to the parties or any of them and adjourn the hearing, provided that no such adjournment shall be granted more than three times to a party during the proceeding.

**4.3** I find that in the instant case, in compliance of provisions of Section 28(8) read with Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, opportunity for Personal Hearing (PH) on 09.06.2025, 25.06.2025 and 03.07.2025 was granted by the Adjudicating Authority to all the Noticees. It is observed that PH letters were sent on the address given in the SCN via speedpost. However, none of the Noticees appeared before the Adjudicating Authority in the Personal Hearings granted to them nor submitted any letter or email in response to the Personal Hearing intimation letters. From the aforesaid facts, it is observed that sufficient opportunities have been given to all the Noticees but they chose not to join the adjudication proceedings.



4.4 The Noticees did not participate in the adjudication proceedings inspite of the fact of service of letters for personal hearings in terms of Section 153 of Customs Act, 1962. Section 153 of the Customs Act, 1962 reads as under:

**SECTION 153. Modes for service of notice, order, etc.** - (1) *An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely: -*

-----  
(b) *by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;*  
-----

Therefore, in terms of Section 153 of the Customs Act, 1962, it is observed that PH letters were duly served to the Noticees, but they did not respond. From the aforesaid facts, it is observed that sufficient opportunities have been given to the Noticees but they chose not to join the adjudication proceedings. As the matter pertains to recovery of government dues, so even in absence of the Noticees from adjudication proceedings, I am compelled to decide the matter in the interest of revenue in time bound and logical manner.

4.5 In this regard, it is pertinent to refer to the case of *Sumit Wool Processors Vs. CC, Nhava Sheva* [2014(312) E.L.T. 401 (Tri.-Mumbai)] wherein Hon'ble CESTAT, Mumbai has observed that natural justice not violated when opportunity of being heard given and notices sent to addresses given by the Noticee. If appellants fail to avail such opportunity, mistake lies on them - Principles of natural justice not violated.

*"8.3 We do not accept the plea of Mr. Sanjay Kumar Agarwal and Mr. Parmanand Joshi that they were not heard before passing of the impugned orders and principles of natural justice has been violated. The records show that notices were sent to the addresses given and sufficient opportunities were given. If they failed in not availing of the opportunity, the mistake lies on them. When all others who were party to the notices were heard, there is no reason why these two appellants would not have been heard by the adjudicating authority. Thus, the argument taken is only an alibi to escape the consequences of law. Accordingly, we reject the plea made by them in this regard."* 2014 (312) E.L.T. 401 (Tri. - Mumbai)"

4.6 Considering the aforesaid scenario and the fact that the Noticees have not participated in the adjudication proceedings, I take up this SCN for discussion on the merit of the case. With regard to proceeding to decide the case following the principle of natural justice, reliance is placed on the decision of the Hon'ble High Court of Allahabad in the case of *Modipon Ltd. Vs. CCE, Meerut* [reported in 2002(144) ELT 267 (All.)] effectively dealing with the issue of natural



justice and personal hearing. The extract of the observations of Hon'ble Court is reproduced herein below for reference:

*“Natural justice - Hearing - Adjournment - Adjudication - Principle of audi alteram partem does not make it imperative for the authorities to compel physical presence of the party for hearing and go on adjourning proceedings so long as party does not appear before them - What is imperative for the authorities to afford the opportunity- If the opportunity afforded is not availed of by the party concerned, there is no violation of the principles of natural justice. The fundamental principles of natural justice and fair play are safeguards for the flow of justice and not the instruments for delaying the proceedings and thereby obstructing the flow of justice.*

*Natural justice - Hearing - Adjudication - Requirement of natural justice complied with if person concerned afforded an opportunity to present his case before the authority - Any order passed after taking into consideration points raised in such application not invalid merely on ground that no personal hearing had been afforded, all the more important in context of taxation and revenue matters. [1996 (2) SCC 98 relied on][para 22]”.*

In view of the above, it is observed that sufficient opportunities have been given to all the Noticees but they chose not to join the adjudication proceedings. Having complied with the requirement of the principle of natural justice and having granted Personal Hearings, I proceed to decide the matter, being time bound in terms of Section 28(9) of the Customs Act, 1962.

4.7 The fact of the matter is that a Show Cause Notice No. 958/2024-25/COMMR/NS-V/CAC/JNCH dated 21.08.2024 was issued to 4 Noticees viz. M/s Bro International; its two Partners, Sh. Rupesh Mahesh Patade and Smt. Mandira Rupesh Patade, and Customs Broker M/s. Sigma Forwarders, on the basis of investigation conducted by SIIB(I), JNCH regarding undervaluation of ‘Optical Frame Lens’ imported by M/s Bro International vide 13 Bills of Entry filed during the period 26.08.2019 to 03.01.2020. It is alleged in the SCN that vide above 13 Bs/E, M/s Bro International had imported goods grossly undervaluing them to evade legitimately payable Customs duty. Thus, the SCN proposes rejection of the declared Assessable Value of the imported goods and re-determination of the same to Rs. 7,97,25,144/-; demand of differential duty to the tune of Rs. 1,91,47,884/- along with applicable interest in terms of Section 28AA of the Customs Act, 1962; confiscation of the impugned goods under Section 111(m), *ibid*, and imposition of penalty on all the Noticees under Section 112(a)(ii) / 114A & 114AA, *ibid*.

4.8 On a careful perusal of the 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 total declared value of offending goods covered under past B/Es, as mentioned in Table-I of the subject SCN, amounting to Rs. 47,56,604/- (Rupees Forty Seven Lakh Fifty Six Thousand Six Hundred and Four Only), should be rejected under Rule 12 of the Customs Valuation Rules, 2007 and same should be re-determined to Rs.



7,97,25,144/- (Rupees Seven Crore Ninety Seven Lakh Twenty Five Thousand One Hundred and Forty Four Only) as per Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 2007).

- (ii) Whether the self-assessment in respect of past B/Es, as mentioned in Table-I of the subject SCN, done by the importer, M/s Bro International, in terms of Section 17(1) should be rejected and re-assessed as per Section 17(4) of the Customs Act, 1962. Consequent to such re-assessment, the differential duty amounting to Rs. 1,91,47,884/- (Rupees One Crore Ninety One Lakh Forty Seven Thousand Eight Hundred and Eighty Four Only) should be demanded under Section 28(4) of the Customs Act, 1962, along with applicable interest as per Section 28AA of the Customs Act, 1962.
- (iii) Whether the impugned goods having total re-determined Assessable Value of Rs. 7,97,25,144/-, for the Bills of Entry as mentioned in Table-I of the subject SCN, should be confiscated under Section 111(m) of the Customs Act, 1962.
- (iv) Whether for acts of omission and commission and wilful suppression of facts, as discussed in the foregoing paragraphs, penalty should be imposed on the importer, M/s Bro International, under Sections 112(a)(ii)/ 114A, and 114AA of the Customs Act, 1962.
- (v) Whether for the acts of omission and commission and wilful suppression of facts, penalty should be imposed on Shri Rupesh Mahesh Patade, Partner, M/s Bro International, in terms of provisions of Section 112(a)(ii)/ 114A and 114AA of the Customs Act, 1962.
- (vi) Whether for the acts of omission and commission and wilful suppression of facts, penalty should be imposed on Smt. Mandira Rupesh Patade, Partner, M/s Bro International, in terms of provisions of Section 112(a)(ii)/ 114A and 114AA of the Customs Act, 1962.
- (vii) Whether penalty should be imposed on M/s. Sigma Forwarders (Customs Broker) under Section 112(a)/ 114A and 114AA of the Customs Act, 1962.

**4.9** After having identified and framed the main issues to be decided, I now proceed to examine each of the issues individually based on the facts and circumstances mentioned in the SCN; provision of the Customs Act, 1962; nuances of various judicial pronouncements, as well as documents / evidences available on record.

**4.10 Whether the total declared value of offending goods covered under past B/Es, as mentioned in Table-I of the subject SCN, amounting to Rs. 47,56,604/- (Rupees Forty Seven Lakh Fifty Six Thousand Six Hundred and Four Only), should be rejected under Rule 12 of the Customs Valuation Rules, 2007 and same should be re-determined to Rs. 7,97,25,144/- (Rupees Seven Crore Ninety Seven Lakh Twenty Five Thousand One Hundred and Forty Four Only) as per Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 2007).**

**4.10.1** I note that based on undervaluation found in live consignments of the importer, M/s. Bro International, investigation was initiated by SIIB(I), JNCH, into the past consignments of 'Optical Frame Lens' imported by M/s Bro International vide 13 Bills of Entry filed during the period 26.08.2019 to 03.01.2020. The declared price of the imported goods was analysed viz-a-



viz similar goods that were imported at or about the same time in comparable quantities, using contemporaneous import data from National Import Database (NIDB), and it was noticed that the similar goods were being imported at higher value. Thus, it was revealed that the goods were grossly mis-declared in terms of value and hence, the same had been imported into India in contravention of provisions of the Customs Act, 1962. Therefore, as per Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 2007), the declared transaction value of the goods covered under aforesaid 13 Bills of Entry cannot be considered as transaction value and the same has to be rejected in terms of Rule 12 of the CVR, 2007 read with Section 14(1) of the Customs Act, 1962. Accordingly, the transaction value needs to be re-determined by following Rules 4 to 9 of CVR, 2007 sequentially, as it was not correctly declared.

**4.10.2** I find that the investigation revealed that the value of the impugned imported goods had been mis-declared by the importer in the 13 Bills of Entry filed during the period 26.08.2019 to 03.01.2020 to evade the Custom duty. The investigation agency has relied on Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 2007) to reject the declared value and re-determine the value of the subject goods by following Rules 4 to 9 of CVR, 2007 sequentially. Rule 4 and Rule 5 of CVR, 2007 stipulates valuation based on the contemporaneous import data of identical and similar goods, respectively. The value of the goods could not be re-determined under Rule 4 of the CVR, 2007, as data for identical goods was not available for the impugned goods. However, there was import data from the NIDB for similar goods at a comparable level, therefore, the value of the impugned goods was re-determined under Rule 5 of the CVR, 2007. The detailed valuation sheet is enclosed as Annexure-A to the subject SCN.

**4.10.3** The details of the declared value and re-determined value as per Annexure-A to the subject SCN are as under:

Sr. No.	Declared Description of the Goods	Declared Value (per Piece) (in Rs.)	Re-determined Value (per Piece) (in Rs.)
1.	Optical Frame Lens (Unbranded)	1.29 to 1.95	24

**4.10.4** From the above, I find that there is abnormal difference in the value declared by the importer in the Invoice submitted at the time of filing of the Bills of Entry and in the import price of the similar goods available from NIDB data. I find that the value declared by M/s Bro International in respect of the impugned goods i.e. ‘Optical Frame Lens’, imported at Nhava Sheva Port is on very lower side compared to the contemporaneous import data from NIDB available for similar goods. In view of the above, I find that that the declared value has been rightly rejected under Rule 12, and the value of the imported goods has been appropriately re-determined under Rule 5 of the CVR, 2007, based on data of similar goods available from NIDB. Therefore, I find that the assessable value of Rs. 24/- per piece of the goods ‘Optical Frame Lens’, arrived by following the above-mentioned valuation method under CVR, 2007, is just and proper.



**4.10.5** Further, I find that Shri Rupesh Mahesh Patade, Partner of M/s Bro International, in his statement recorded on 25.11.2020 under Section 108 of the Customs Act, 1962, had accepted that the declared value in their consignments were low than the shown data of contemporaneous import. Further, he had accepted the valuation arrived at by the department and had accepted to bear the differential duty and any other liability arising in the instant matter. I find that the instant case is based on wilful mis-declaration and suppression by the Noticee, hence, the statement recorded under Section 108 of the Customs Act, 1962 is crucial and having legal value and admissible as evidence. As regards to admissibility of statement, it is a settled law that the statement recorded under Section 108 of the Customs Act, 1962 is relevant and admissible evidence as held in umpteen number of legal pronouncements. In this regard, I take reliance upon the following case law:

- (i) Asst. Collector of Central Excise, Rajamundry Vs. M/s. Duncan Agro India Ltd. reported in [2000 (120) E.L.T. 280 (S.C.)]: Statement recorded by a Customs Officer under Section 108 is a valid evidence.
- (ii) Shri Naresh J. Sukawani Vs. Union of India reported in [1996 (83) E.L.T. 258 (S.C.)]:  
“4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act.”

Therefore, I find that the re-determined assessable value of Rs. 24/- per piece of the goods ‘Optical Frame Lens’, arrived by following the above-mentioned valuation method under CVR, 2007, was also accepted by the importer.

**4.10.6** On comparison of the declared price of the subject goods with the price of the similar goods available from NIDB data, I find that the impugned imported goods were grossly mis-declared in terms of value. Therefore, it is apparent that the importer had undervalued the goods imported vide past 13 Bs/E and accordingly, it was rightly rejected and re-determined. I find that based on the re-determined value of Rs. 7,97,25,144/- calculated by the investigative agency as against Rs. 47,56,604/- declared by the importer, the duty on the subject imported goods has been rightly calculated and re-determined to Rs. 2,03,85,750/- against the duty of Rs. 12,37,866/- declared by the importer. Therefore, there is a differential duty demand of Rs. 1,91,47,884/- for the impugned goods covered under 13 Bills of Entry mentioned in Annexure-A to the SCN.

**4.10.7** In view of the above, value declared by the importer for the clearance of the impugned imported goods i.e. ‘Optical Frame Lens’ imported at Nhava Sheva could not be considered as true transaction value and the same is liable to be rejected in terms of Rule 12 of the Customs Valuation. Therefore, I hold that the total declared value of offending goods covered under past 13 Bs/E, as mentioned in Annexure-A to the subject SCN, amounting to Rs. 47,56,604/- (Rupees Forty Seven Lakh Fifty Six Thousand Six Hundred and Four Only), should be rejected under Rule 12 of the Customs Valuation Rules, 2007 and the same should be re-determined to Rs.



7,97,25,144/- (Rupees Seven Crore Ninety Seven Lakh Twenty Five Thousand One Hundred and Forty Four Only) as per Rule 5 of the CVR, 2007.

**4.11 Whether the self-assessment in respect of past B/Es, as mentioned in Table-I of the subject SCN, done by the importer, M/s Bro International, in terms of Section 17(1) should be rejected and re-assessed as per Section 17(4) of the Customs Act, 1962. Consequent to such re-assessment, the differential duty amounting to Rs. 1,91,47,884/- (Rupees One Crore Ninety One Lakh Forty Seven Thousand Eight Hundred and Eighty Four Only) should be demanded under Section 28(4) of the Customs Act, 1962, along with applicable interest as per Section 28AA of the Customs Act, 1962.**

**4.11.1** After having determined the correct valuation of the impugned imported goods, it is imperative to determine whether the self-assessment done by the importer in respect of past 13 B/Es in terms of Section 17(1) of the Customs Act, 1962, should be rejected and re-assessed as per Section 17(4), *ibid*, and also to determine whether the demand of differential Customs duty as per the provisions of Section 28(4) of the Customs Act, 1962, in the subject SCN is sustainable or otherwise. The relevant legal provisions are as under:

**Section 17 of the Customs Act, 1962**

***Assessment of duty -***

**Section 17(1) :** *An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.*

**Section 17(4) :** *Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.*

**SECTION 28(4) of the Customs Act, 1962.**

***Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded. –***

**(4)** *Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, -*

- (a)** *collusion; or*
- (b)** *any wilful mis-statement; or*
- (c)** *suppression of facts,*



*by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.*

**4.11.2** Consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in Customs clearance. **Under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry.** Thus, with the introduction of self-assessment by amendments to Section 17, it is the added and enhanced responsibility of the importer, to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. In the instant case, as explained in paras supra, the Noticee/importer has undervalued the goods and thus, willfully evaded payment of applicable duty resulting in a loss of Government revenue and in turn accruing monetary benefit. Since the Noticee/importer has willfully mis-declared and suppressed the facts with an intention to evade applicable duty by undervaluation, hence, the self-assessment done by the importer in terms of Section 17(1) of the Customs Act, 1962, is liable to be rejected and the same should be re-assessed in term of Section 17(4), *ibid.*

**4.11.3** The scheme of RMS wherein the importers are given so many facilitations, also comes with responsibility of onus for truthful declaration. The Tariff classification and Description of the item, are the first parameters that decides the rate of duty for the goods, which is the basis on which Customs duty is payable by any importer. However, if the importer does not declare the complete details and evades payment of correctly payable duty, it definitely amounts to misleading the Customs authorities, with an intent to evade payment of legitimate Customs duty leviable on the said imported goods.

**4.11.4** In terms of Section 46(4) of the Customs Act, 1962, the importer is required to make a true and correct declaration in the Bill of Entry submitted for assessment of Customs duty. However, in the instant case, I find that the Noticee had evaded payment of applicable duty on the goods imported by them by undervaluation. I find that the Noticee evaded correctly payable duty by intentionally suppressing the correct value of the imported product by not declaring the same at the time of filing of the Bills of Entry. By resorting to this deliberate and wilful evasion of duty, the Noticee has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. Thus, I find that this willfull and deliberate act was done with the clear intention to evade payment of due duty. As the importer has wrongfully assessed the impugned goods and evaded the payment of the applicable duty thereon on the date of importation, the Noticee can only come clean of its liability by way of payment of duty not paid.



**4.11.5** I have determined in the preceding paras that M/s Bro International, had evaded correct Customs duty by intentionally suppressing the actual value of the imported goods by not declaring the same at the time of filing of the Bills of Entry. They deliberately suppressed the actual value of the goods before Customs and undervalued the same. By resorting to this deliberate suppression of value, the importer has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. This wilful and deliberate act was done with the fraudulent intention to pay lower rate of duty. Thus, it is evident that the importer deliberately mis-declared the goods with an intention to evade Customs duty by declaring the lower value in order to get financial benefits. Thus, the importer indulged in wilful mis-statement and suppressed the facts with intention to evade duties of customs. Therefore, the matter falls under the purview of Section 28(4) of the Customs Act, 1962.

**4.11.6** I find that the Noticee was well aware of the correct value of the goods and leviability of duty thereon. However, in the instant case, the Noticee undervalued the goods and did not declare the correct value of the imported goods in the Bills of Entry. Had the department not raised the issue and initiated procedure under the Customs Act, 1962 in this case, the duty so evaded might have gone unnoticed & unpaid. The Noticee has paid less duty by non-payment of applicable duty on the subject goods, which tantamount to suppression of material facts and wilful mis-statement. The Noticee undervalued the goods and suppressed the correct value and leviability of correct duty on the goods to evade duty. This shows wilful suppression, mis-statement and malafide intention of the Noticee to evade payment of legitimately payable duty. As the Noticee got monetary benefit due to their wilful mis-declaration and evasion of applicable duty on the subject goods, hence, I find that duty is correctly demandable under Section 28(4) of the Customs Act, 1962, by invoking extended period.

**4.11.7** I find that in the instant case, it is evident that with malafide intention the importer had been evading Customs Duty over a period of time causing loss to Government Revenue which the importer had been doing knowingly and wilfully so as to maximize monetary gains by evading customs duty. The investigation carried out by the SIIB (Import), JNCH, brought such violations to the notice of the Customs authorities. Therefore, it is apparent that M/s Bro International has been deliberately contravening the provisions of the Customs Act, 1962, which shows 'mens rea' on their part. Therefore, I find that in the instant case there is an element of 'mens rea' involved. In the instant case, the Noticee deliberately chose to undervalue the imported goods to evade duty, being fully aware of the correct value of the imported goods. This wilful and deliberate act clearly brings out their 'mens rea' in this case. Once the 'mens rea' is established on the part of the Noticee, the extended period of limitation, automatically get attracted.

**4.11.8** Moreover, I find that the Noticees did not participate in the adjudication proceedings and did not attend any of the Personal Hearing opportunities provided to them. Non-submission of any reply and non-participation in adjudication proceedings implies that they have nothing to submit in their defence and points out towards their culpability.



**4.11.9** In view of the foregoing, I find that, due to deliberate suppression and wilful misstatement, duty demand against the Importer has been correctly proposed under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation. In support of my stand of invoking extended period, I rely upon the following court decisions:

- (a) 2013(294)E.L.T.222(Tri.-LB): Union Quality Plastic Ltd. Versus Commissioner of C.E. & S.T., Vapi [Misc. Order Nos.M/12671-12676/2013-WZB/AHD, dated 18.06.2013 in Appeal Nos. E/1762-1765/2004 and E/635- 636/2008]

*In case of non-levy or short-levy of duty with intention to evade payment of duty, or any of circumstances enumerated in proviso ibid, where suppression or wilful omission was either admitted or demonstrated, invocation of extended period of limitation was justified*

- (b) 2013(290)E.L.T.322 (Guj.): Salasar Dyeing & Printing Mills (P) Ltd. Versus C.C.E. & C., Surat-I; Tax Appeal No. 132 of 2011, decided on 27.01.2012.

*Demand - Limitation - Fraud, collusion, wilful misstatement, etc. - Extended period can be invoked up to five years anterior to date of service of notice - Assessee's plea that in such case, only one year was available for service of notice, which should be reckoned from date of knowledge of department about fraud, collusion, wilful misstatement, etc., rejected as it would lead to strange and anomalous results;*

**4.11.10** In view of the above, I find that the differential duty resulting from re-assessment of the past 13 Bs/E as proposed in the subject Show Cause Notice, is recoverable from M/s Bro International under extended period in terms of the provisions of Section 28(4) of the Customs Act, 1962.

**4.11.11** Therefore, I hold that the self-assessment in respect of past 13 B/Es, as mentioned in Table-I of the subject SCN, done by the importer, M/s Bro International, in terms of Section 17(1) should be rejected and re-assessed as per Section 17(4) of the Customs Act, 1962. Consequent to such re-assessment, the differential duty amounting to Rs. 1,91,47,884/- (Rupees One Crore Ninety One Lakh Forty Seven Thousand Eight Hundred and Eighty Four Only) should be demanded under Section 28(4) of the Customs Act, 1962.

**4.11.12** Further, as per Section 28AA of the Customs Act, 1962, the person, who is liable to pay duty in accordance with the provisions of Section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2) of Section 28AA, whether such payment is made voluntarily or after determination of the duty under that section. From the above provisions, it is evident that regarding demand of interest, Section 28AA of the Customs Act, 1962 is unambiguous and mandates that where there is a short payment of duty, the same along with interest shall be recovered from the person who is liable to pay duty. The interest under the Customs Act, 1962 is payable once demand of duty is upheld and such liability arises automatically by operation of law. In an umpteen number of judicial pronouncements, it has been



held that payment of interest is a civil liability and interest liability is automatically attracted under Section 28AA of the Customs Act, 1962. Interest is always accessory to the demand of duty as held in case of *Pratibha Processors Vs UOI [1996 (88) ELT 12 (SC)]*. In *Directorate of Revenue Intelligence, Mumbai Vs. Valecha Engineering Limited*, Hon'ble Bombay High Court observed that, in view of Section 28AA, interest is automatically payable on failure by the assessee to pay duty as assessed within the time as set out therein.

**4.11.13** I have already held in the above paras that the differential duty amounting to Rs.1,91,47,884/- (Rupees One Crore Ninety One Lakh Forty Seven Thousand Eight Hundred and Eighty Four Only) should be demanded and recovered from the Noticee, M/s Bro International, under the provisions of Section 28(4) of the Customs Act, 1962 by invoking extended period. Therefore, in terms of the provisions of Section 28AA of the Customs Act, 1962, interest on the aforesaid amount of differential duty is also liable to be recovered from the Noticee.

**4.12 Whether the impugned goods having total re-determined Assessable Value of Rs. 7,97,25,144/-, for the Bills of Entry as mentioned in Table-I of the subject SCN, should be confiscated under Section 111(m) of the Customs Act, 1962.**

**4.12.1** I note that the SCN proposes confiscation of goods imported vide past 13 Bills of Entry as mentioned in Table-I of the subject SCN, having total re-determined Assessable Value of Rs. 7,97,25,144/-, under the provisions of Section 111(m) of the Customs Act, 1962.

**4.12.2** Section 111(m) of the Customs Act, 1962 states that the following goods brought from a place outside India shall be liable to confiscation:

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

**4.12.3** From the discussions above, I find that the importer had failed to assess and discharge the customs duty correctly by way of undervaluation of goods, imported by them vide 13 Bills of Entry, by willful mis-declaration of facts and suppressing the true transaction value of goods and thereby contravened the provisions of Section 46 the Customs Act, 1962. Thus, I find that the subject goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. Further, I find that Section 111(m) deals with any and all types of mis-declaration regarding any particular of Bill of Entry. Therefore, the gross undervaluation of the imported goods resorted to by the importer amounts to mis-declaration and shall make the goods liable to confiscation in terms of Section 111(m) of the Customs Act, 1962.



**4.12.4** I have already held in foregoing paras that the importer had grossly undervalued the impugned imported goods. The Noticee was very well aware of the actual nature of the imported goods and their correct value. However, they deliberately suppressed this correct value of the imported goods, and declared lower value to evade payment of legitimate duty. As discussed in the foregoing paras, it is evident that the Noticee deliberately suppressed the correct value of the goods and willfully undervalued the imported goods, resulting in short levy of duty. This deliberate suppression of facts and willful mis-declaration resorted by the Noticee, therefore, renders the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, I find that acts of omission and commission on part of the Noticee has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

**4.12.5** As per Section 46 of the Customs Act, 1962, the importer of any goods, while making entry on the Customs automated system to the Proper Officer, shall make and subscribe to a declaration as to the truth of the contents of such Bill of Entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed. He shall ensure the accuracy and completeness of the information given therein and the authenticity and validity of any document supporting it.

**4.12.6** I find that the Importer while filing the Bills of Entry for the clearance of the subject product had subscribed to a declaration as to the truthfulness of the contents of the Bills of Entry in terms of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2011 in all their import declarations. Section 17 of the Act, w.e.f. 08.04.2011, provides for self-assessment of duty on imported goods by the importer themselves by filing a Bill of Entry, in the electronic form. Section 46 of the Act makes it mandatory for the importer to make an entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulation, 2011 (issued under Section 157 read with Section 46 of the Act), the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic integrated declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares all the particulars of the imported goods correctly e.g., the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods when presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8<sup>th</sup> April, 2011, the complete onus and responsibility is on the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and claim correct exemption notification and pay the applicable duty in respect of the imported goods.



4.12.7 Prior to 08.04.2011, sub-section (2) of Section 2 of the Customs Act, 1962 read as under:

(2) "assessment" includes provisional assessment, reassessment and any order of assessment in which the duty assessed is nil;

Finance Act, 2011 introduced provision for self-assessment by the importer. Subsequent to substitution by the Finance Act, 2011 (Act 8 of 2011), (w.e.f. 08.04.2011) sub-section (2) of Section 2 *ibid* read as under:

Section 2 - Definitions, Sub-section (2) – assessment:

(2) "assessment" includes provisional assessment, **self-assessment**, re-assessment and any assessment in which the duty assessed is nil;

With effect from 29.03.2018, the term 'assessment' in sub-section (2) of Section 2 *ibid* means as follows:

(2) "assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to-

- a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;
  - b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;
  - c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;
  - d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;
  - e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods,
  - f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,
- and includes provisional assessment self-assessment, re-assessment and any assessment in which the duty assessed is nil;

4.12.8 From a plain reading of the above provisions related to assessment, it is very clear that w.e.f. 08.04.2011, the importer must self-assess the duty under Section 17 read with Section 2(2) of the Customs Act, and since 2018 the scope of assessment was widened. Under the self-assessment regime, it was statutorily incumbent upon the importer to correctly self-assess the goods in respect of classification, valuation, claimed exemption notification and other particulars. With effect from



29.03.2018, the term 'assessment', which includes provisional assessment also, the importer is obligated to not only establish the correct classification but also to ascertain the correct value and eligibility of the imported goods for any duty exemptions. From the facts of the case as detailed above, it is evident that M/s Bro International has deliberately failed to discharge this statutory responsibility cast upon them.

**4.12.9** Besides, as indicated above, in terms of the provisions of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such Bill of Entry. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. However, in the subject case, the importer while filing the Bill of Entry has resorted to deliberate suppression of correct value of the goods and wilful mis-declaration of value of the goods. Further, the above said under-valuation and mis-declaration was done with the sole intention to fraudulently evade the correctly payable duty. Thus, the Importer has failed to correctly assess and pay the appropriate duty payable on the imported goods before clearing the same for home consumption.

**4.12.10** I find that the Importer has undervalued the imported goods, therefore, it is apparent that the Importer has not made the true and correct disclosure with regard to the actual valuation of the goods in respective Bills of Entry leading to willful mis-statement and suppression of facts. From the above discussions and findings, I find that the Importer has done deliberate suppression of value and wilful mis-declaration of the goods and has submitted misleading declaration under Section 46(4) of the Customs Act, 1962 with an intent to evade duty. Due to this deliberate suppression of facts and wilful statement, the Importer has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. In view of the above, I find that the impugned goods having total re-determined Assessable Value of Rs. 7,97,25,144/-, for the Bills of Entry as mentioned in Table-I of the subject SCN, should be confiscated under Section 111(m) of the Customs Act, 1962.

**4.12.11** As the Importer, through wilful mis-statement and suppression of facts, had claimed lower rate of duty while filing Bill of Entry with an intent to evade the applicable Customs duty, resulting in short levy and short payment of duty, I find that the confiscation of the imported goods under Section 111(m) is justified & sustainable in law. However, I find that the goods imported are not available for confiscation, but I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited [reported in 2018 (9) G.S.T.L. 142 (Mad.)] wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

*"23. 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. We accordingly answer question No. (iii)."*

**4.12.11.1** I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), has been cited by Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.).

**4.12.11.2** I also find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) and the decision of Hon'ble Gujarat High Court in case of M/s Synergy Fertichem Pvt. Ltd. reported in 2020 (33) G.S.T.L. 513 (Guj.) have not been challenged by any of the parties and are in operation.

**4.12.11.3** I find that the declaration under Section 46(4) of the Customs Act, 1962 made by the importer at the time of filing Bills of Entry is to be considered as an undertaking which appears as good as conditional release. I further find that there are various orders passed by the Hon'ble CESTAT, High Court and Supreme Court, wherein it is held that the goods cleared on execution of Undertaking/ Bond are liable for confiscation under Section 111 of the Customs Act, 1962 and Redemption Fine is imposable on them under provisions of Section 125 of the Customs Act, 1962. A few such cases are detailed below:

- a. M/s Dadha Pharma h/t. Ltd. Vs. Secretary to the Govt. of India, as in 2000 (126) ELT 535 (Chennai High Court);
- b. M/s Sangeeta Metals (India) Vs. Commissioner of Customs (Import) Sheva, as reported in 2015 (315) ELT 74 (Tri-Mumbai);
- c. M/s SacchaSaudhaPedhi Vs. Commissioner of Customs (Import), Mumbai reported in 2015 (328) ELT 609 (Tri-Mumbai);
- d. M/s Unimark Remedies Ltd. Versus. Commissioner of Customs (Export Promotion), Mumbai reported in 2017(335) ELT (193) (Bom)
- e. M/s Weston Components Ltd. Vs. Commissioner of Customs, New Delhi reported in 2000 (115) ELT 278 (S.C.) wherein it has been held that:



*“if subsequent to release of goods import was found not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods - Section 125 of Customs Act, 1962, then the mere fact that the goods were released on the bond would not take away the power of the Customs Authorities to levy redemption fine.”*

- f. Commissioner of Customs, Chennai Vs. M/s Madras Petrochem Ltd. as reported in 2020 (372) E.L.T. 652 (Mad.) wherein it has been held as under:

*“We find from the aforesaid observation of the Learned Tribunal as quoted above that the Learned Tribunal has erred in holding that the cited case of the Hon’ble Supreme Court in the case of Weston Components, referred to above is distinguishable. This observation written by hand by the Learned Members of the Tribunal, bearing their initials, appears to be made without giving any reasons and details. The said observation of the Learned Tribunal, with great respect, is in conflict with the observation of the Hon’ble Supreme Court in the case of Weston Components.”*

**4.12.11.4** In view of above, I find that any goods improperly imported as provided in any sub-section of the Section 111 of the Customs Act, 1962, the impugned goods become liable for confiscation. Hon’ble Bombay High Court in case of M/s Unimark reported in 2017(335) ELT (193) (Bom) held Redemption Fine (RF) imposable in case of liability of confiscation of goods under provisions of Section 111(o). Thus, I also find that the goods are liable for confiscation under other sub-sections of Section 111 too, as the goods committing equal offense are to be treated equally. I opine that merely because the importer was not caught at the time of clearance of the imported goods, can’t be given different treatment.

**4.12.11.5** In view of the above, I find that the decision of Hon’ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), which has been passed 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), is squarely applicable in the present case. Accordingly, I observe that the present case also merits imposition of Redemption Fine having held that the impugned goods are liable for confiscation under Section 111(m) of the Customs Act, 1962.

**4.13 Whether for acts of omission and commission and wilful suppression of facts, as discussed in the foregoing paragraphs, penalty should be imposed on the importer, M/s Bro International, under Sections 112(a)(ii) / 114A, and 114AA of the Customs Act, 1962.**

**4.13.1** I find that in the era of self-assessment, the Noticee had wrongly self-assessed the Bills of Entry and evaded the payment of legitimate duty in respect of the impugned imported goods covered under 13 Bill of Entry as mentioned in Table-1 of the subject SCN. As the Noticee got monetary benefit due to their wilful mis-declaration and evasion of applicable duty on the aforesaid goods, I find that duty was correctly demanded under Section 28(4) of the Customs Act, 1962 by invoking extended period.



**4.13.2** In this regard, I observe that self-assessment has been introduced on 08.04.2011 vide Finance Act, 2011 wherein under Section 17(1) of the Customs Act, 1962, an importer is required to do self-assessment, thus, placing more reliance on the importers. Further, as per the provisions of Section 46(4) of the Customs Act, 1962, the importer of any goods is required to file a Bill of Entry before the proper officer mentioning therein the true and correct quality, quantity and value of the goods imported and subscribe to a declaration as to the truth and accuracy of the contents of such Bill of Entry. It is an admitted fact that the benefit of less duty on account of mis-declaring the value accrued to the importer.

**4.13.3** As discussed above, I find that the subject Bills of Entry were self-assessed by the importer M/s Bro International. They were having knowledge of correct value of the imported goods. However, still they willfully suppressed the correct value and undervalued the same before Customs authorities. By resorting to the aforesaid undervaluation, they paid lower rate of duty and thereby evaded legitimately payable duty. Under the self-assessment scheme, it is obligatory on the part of importers to declare truthfully all the particulars relevant to the assessment of the goods, ensuring their accuracy and authenticity, which the importer clearly failed to do with malafide intention. They suppressed the fact before the Customs Department regarding correct value of the goods to claim the undue duty benefit at the time of clearance of the said imported goods. Thus, the importer, by their various acts of omission and commission discussed above, have rendered the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and thereby made themselves liable for penalty under Section 112(a)(ii) *ibid*. Accordingly, I agree with the proposal made in the subject SCN and hold that penalty should be imposed on the Noticee, M/s Bro International under Section 112(a)(ii) of the Customs Act, 1962.

**4.13.4** Further, I find that as per Section 114A, imposition of penalty is mandatory once the elements for invocation of extended period is established. Hon'ble Supreme Court in *Grasim Industries Ltd. V. Collector of Customs, Bombay* [(2002) 4 SCC 297=2002 (141) E.L.T.593 (S.C.)] has followed the same principle and observed:

*"Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for Court to take upon itself the task of amending or altering the statutory provisions."* (para 10).

Hon'ble Supreme Court has again in *Union of India Vs. Ind-Swift Laboratories* has held: *"A taxing statute must be interpreted in the light of what is clearly expressed. It is not permissible to import provisions in a taxing statute so as to supply any assumed deficiency...."* [2011 (265) ELT 3 (SC)].

Thus, in view of the mandatory nature of penalty under Section 114A no other conclusion can be drawn in this regard. I also rely upon case reported in 2015 (328) E.L.T. 238 (Tri. - Mumbai) in the case of *SAMAY ELECTRONICS (P) LTD. Versus C.C. (IMPORT) (GENERAL), Mumbai*, in which it has been held:



*Penalty - Imposition of - Once demand confirmed under Section 28 of Customs Act, 1962 read with Section 9A of Customs Tariff Act, 1975 on account of fraud, penalty under Section 114A ibid mandatory and cannot be waived - Therefore imposition of penalty cannot be faulted - Section 114A ibid.*

**4.13.5** As I have held above, that the extended period of limitation under Section 28(4) of the Customs Act, 1962 for the demand of duty is rightly invoked in the present case. Therefore, penalty under Section 114A is rightly proposed on the Noticee, M/s Bro International, in the impugned SCN. Accordingly, the Noticee is liable for a penalty under Section 114A of the Customs Act, 1962 for wilful mis-declaration and suppression of facts, with an intent to evade duty.

**4.13.6** I have already held above that by their acts of omission and commission, the importer has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962, making them liable for a penalty under Section 112(a)(ii) ibid. However, I find that the penalty under Section 114A and Section 112 of the Customs Act, 1962 are mutually exclusive and both cannot be imposed simultaneously. Therefore, in view of fifth proviso to Section 114A, no penalty is imposed on the Noticee under Section 112(a)(ii) ibid.

**4.13.7** Further, I find that the importer has mis-declared the subject goods by way of gross undervaluation and, deliberately and knowingly given false declaration regarding value. I find that the importer has furnished documents such as Bills of Entry and its invoices containing false or incorrect material particular with the purpose of clearance of the imported goods by undervaluing the goods. In the instant case, there is clear evidence of conspiracy, fraud and suppression of facts. I find that the importer was actively and knowingly involved in evading Customs duty by resorting to undervaluation and mis-declaration of imported goods before Customs authorities which rendered the goods liable for confiscation under Section 111(m) of Customs Act, 1962. The importer cleared the undervalued impugned imported goods by knowingly and intentionally resorting to use of false and incorrect declaration, statement and documents. In view of the above facts, I find that M/s Bro International, has deliberately and intentionally committed the contraventions as discussed supra covered under the ambit and scope of Section 114AA of the Customs Act, 1962 and accordingly, has rendered itself liable to penalty under Section 114AA of the Customs Act, 1962.

**4.14 Whether for the acts of omission and commission and wilful suppression of facts, penalty should be imposed on Shri Rupesh Mahesh Patade, Partner, M/s Bro International, in terms of provisions of Section 112(a)(ii)/ 114A and 114AA of the Customs Act, 1962.**

**4.14.1** Shri Rupesh Mahesh Patade, was the Partner of the importing firm M/s Bro International. His statement under Section 108 of the Customs Act, 1962 was recorded on 25.11.2020 wherein he admitted that he looks after all the sale and purchase activities. Further, he accepted the ownership of the entire shipments. From the above, I find that he was the decision maker in the



importer firm, M/s Bro International. He was responsible for import made by the importer firm and all rates and payments regarding import were decided by him.

**4.14.2** I find that during the adjudication proceedings, he neither submitted any reply to the SCN nor joined the adjudication proceedings despite multiple Personal Hearing opportunities given to him. It proves that he has nothing to submit in his defence. His deliberate evasion from joining the adjudication proceedings point towards his complicity in the said offence and his mens rea.

**4.14.3** From the above, I find that while dealing with Customs clearance of the impugned goods, Shri Rupesh Mahesh Patade was instrumental in determining the valuation of the goods being imported and was responsible for clearance of the goods from Customs authorities. He was very well aware of the correct value of the impugned goods, but still he knowingly mis-declared the same before Customs authorities. Further, in his statement dated 25.11.2020, he accepted the valuation arrived at by the department and accepted to bear the differential duty and any other liability arising in the instant matter. I find that Shri Rupesh Mahesh Patade, being a decision maker of the said importer firm, was the conspirator of this whole fraud involving undervaluation of goods to evade payment of correct duty.

**4.14.4** Thus, I find that Shri Rupesh Mahesh Patade was fully aware of correct value of the imported goods and was also aware that their undervaluation would lead to evasion of the Customs duty. His willful and deliberate acts have rendered the impugned goods liable to confiscation under the provision of the Section 111(m) of the Customs Act, 1962. This willful and deliberate mis-declaration of value of the imported goods by Shri Rupesh Mahesh Patade with an intention to pay lesser customs duty has rendered him liable for penalty under the provisions of Section 112(a)(ii) of the Customs Act, 1962.

**4.14.5** As regards imposition of penalty under Section 114A of the Customs Act, 1962 on Shri Rupesh Mahesh Patade, I find that Section 114A provides that where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined. In the instant case, as the short paid duty and interest has been demanded from the Importer firm M/s Bro International, therefore, penalty under Section 114A is not imposable on Shri Rupesh Mahesh Patade. Therefore, as I have imposed penalty under Section 114A of the Customs Act, 1962 on M/s Bro International, I refrain from imposing penalty under Section 114A ibid on Shri Rupesh Mahesh Patade.

**4.14.6** Further, as observed by me above, in the instant case, there is clear evidence of conspiracy, fraud and suppression of facts. Shri Rupesh Mahesh Patade being Partner of the importer firm was well aware of its operation and was having full control over its affairs. I find that Shri Rupesh Mahesh Patade was actively and knowingly involved in evading Customs duty



by resorting to undervaluation and mis-declaration of imported goods before Customs authorities which rendered the goods liable for confiscation under Section 111(m) of Customs Act, 1962. Shri Rupesh Mahesh Patade cleared the undervalued impugned imported goods by knowingly and intentionally resorting to use of false and incorrect declaration and documents. The aforesaid acts of omission and commission of Shri Rupesh Mahesh Patade resulted in use of false and incorrect declaration and documents in the clearance of the impugned goods, hence, he is also liable for penal action under Section 114AA *ibid*.

**4.15 Whether for the acts of omission and commission and wilful suppression of facts, penalty should be imposed on Smt. Mandira Rupesh Patade, Partner, M/s Bro International, in terms of provisions of Section 112(a)(ii)/ 114A and 114AA of the Customs Act, 1962.**

**4.15.1** Smt. Mandira Rupesh Patade, was the Partner of the importing firm, M/s Bro International. Being Partner, she alongwith Shri Rupesh Mahesh Patade were the decision makers in the importer firm, M/s Bro International and were responsible for import made by the importer firm and all rates and payments regarding import were decided by them.

**4.15.2** During the adjudication proceedings, she neither submitted any reply to the SCN nor joined the adjudication proceedings despite multiple Personal Hearing opportunities given to her. It proves that she has nothing to submit in her defence. Her deliberate evasion from joining the adjudication proceedings point towards her complicity in the said offence and her *mens rea*.

**4.15.3** I find that being Partner of the Importer firm, Smt. Mandira Rupesh Patade, was fully aware of its operations and was having full control over its affairs. Along with Shri Rupesh Mahesh Patade, they were part of this conspiracy and fraud involving undervaluation of imported goods to evade payment of correct duty. After evading the legitimately payable duty thereon, they cleared and took possession of the undervalued and mis-classified offending goods. Thus, I find that Smt. Mandira Rupesh Patade, being a decision maker of the said importer firm, was also one of the conspirators of this whole fraud involving undervaluation of goods to evade payment of correct duty.

**4.15.4** Thus, I find that Smt. Mandira Rupesh Patade was fully aware of correct value of the imported goods and was also aware that their undervaluation would lead to evasion of the Customs duty. Her willful and deliberate acts have rendered the impugned goods liable to confiscation under the provision of the Section 111(m) of the Customs Act, 1962. This willful and deliberate mis-declaration of value of the imported goods by Smt. Mandira Rupesh Patade with an intention to pay lesser customs duty has rendered her liable for penalty under the provisions of Section 112(a)(ii) of the Customs Act, 1962.

**4.15.5** As regards imposition of penalty under Section 114A of the Customs Act, 1962 on Smt. Mandira Rupesh Patade, I find that Section 114A provides that where the duty has not been



levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined. In the instant case, as the short paid duty and interest has been demanded from the Importer firm M/s Bro International, therefore, penalty under Section 114A is not imposable on Smt. Mandira Rupesh Patade. Therefore, as I have imposed penalty under Section 114A of the Customs Act, 1962 on M/s Bro International, I refrain from imposing penalty under Section 114A *ibid* on Smt. Mandira Rupesh Patade.

**4.15.6** Further, as observed by me above, in the instant case, there is clear evidence of conspiracy, fraud and suppression of facts. Smt. Mandira Rupesh Patade being Partner of the importer firm was well aware of its operation and was having full control over its affairs. I find that Smt. Mandira Rupesh Patade was actively and knowingly involved in evading Customs duty by resorting to undervaluation and mis-declaration of imported goods before Customs authorities which rendered the goods liable for confiscation under Section 111(m) of Customs Act, 1962. Smt. Mandira Rupesh Patade cleared the undervalued impugned imported goods by knowingly and intentionally resorting to use of false and incorrect declaration and documents. The aforesaid acts of omission and commission of Smt. Mandira Rupesh Patade resulted in use of false and incorrect declaration and documents in the clearance of the impugned goods, hence, she is also liable for penal action under Section 114AA *ibid*.

**4.16 Whether penalty should be imposed on M/s. Sigma Forwarders (Customs Broker) under Section 112(a)/114A and 114AA of the Customs Act, 1962.**

**4.16.1** I have held in the foregoing paras that the impugned imported goods were highly undervalued by the importer. The Customs clearance of the impugned imported goods covered under 13 Bills of Entry was undertaken by the Customs Broker, M/s. Sigma Forwarders. I find that while undertaking the clearance of these goods, the Customs Broker was in possession of all the relevant import documents pertaining to these consignments and was aware of the goods being highly undervalued. The Customs Broker had undertaken clearance of multiple consignments of the importer, M/s Bro International over a period of time and was thus aware of this consistent undervaluation being resorted to by the importer causing loss to Government Revenue.

**4.16.2** I find that during the adjudication proceedings, the Customs Broker, M/s. Sigma Forwarders neither submitted any reply to the SCN nor joined the adjudication proceedings despite multiple Personal Hearing opportunities given to them. It proves that they have nothing to submit in their defence. Their deliberate evasion from joining the adjudication proceedings point towards their complicity in the said offence and their *mens rea*.



**4.16.3** As per the provisions of the Customs Brokers Licensing Regulations, 2018, it was obligatory on the part of the Customs Broker to advise their client to comply with the provisions of the Act, other allied Acts and the Rules and Regulations thereof, and in case of non-compliance, the Customs Broker shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be. But in the instant case, the Customs Broker, M/s. Sigma Forwarders undertook clearance of multiple consignments of the importer which were highly undervalued. The Customs Broker was well aware of this high undervaluation, but still failed to bring the same to the notice of the department.

**4.16.4** Also, being a Customs Broker (CB), it was expected from them to possess sufficient knowledge of the valuation so that they can guide their clients and ensure correct valuation of imported goods. From the facts of the case, I find that the Customs Broker, M/s. Sigma Forwarders failed to guide the importer to ensure correct valuation, rather they aided the importer in resorting to this under valuation. Further, after evading the legitimately payable duty thereon, the Customs Broker handled and cleared the under-valued offending goods.

**4.16.5** From the above, I find that due to these deliberate acts, the Customs Broker, M/s. Sigma Forwarders, aided and abetted the importer to indulge in undervaluation and evasion of legitimate Customs duty. Therefore, I find that Customs Broker, M/s. Sigma Forwarders had not discharged their obligation and responsibilities as envisaged under Customs Broker Licencing Regulations, 2013 (CBLR, 2013).

**4.16.6** I find that the CB was having sufficient experience in their field and had handled clearance of multiple consignments. It was, therefore, expected from them to have exercised sufficient due diligence before undertaking clearance of the impugned goods. However, I find that in the instant case, they have undertaken clearance of the highly undervalued goods of the importer without scrutinizing the veracity of the same. This raises serious question regarding their capability of performing their duties as Customs Broker. These acts and/or omissions on their part have rendered the impugned goods liable to confiscation under Section 111(m) of the Customs Act, 1962, thus making them liable for penalty under the provisions of Section 112(a) *ibid.*

**4.16.7** In this regard, I note that in the case of *Noble Agency Vs. Commissioner of Customs, Mumbai* [2002(142)E.L.T. 84 (Tri.-Mumbai)], the Division Bench of the CEGAT, West Zonal Bench, Mumbai observed:

*"12. The CHA occupies a very important position in the Custom House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the Government Agencies. To ensure appropriate discharge of such trust, the relevant*



*regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations. Any deliberate contravention of the law has to be dealt with most seriously. "*

The aforesaid observations of the CEGAT, West Zonal Bench, Mumbai was approved by Hon'ble Apex Court in the case of *Commissioner of Customs Vs. K.M. Ganatra & Co.* [2016 (332) E.L.T. 15 (S.C.)] and it was held that misconduct on behalf of CHA had to be viewed seriously.

**4.16.8** The responsibility of the Customs Broker becomes all the more important and serious in the regime of self-assessment in Customs introduced since 2011. The Customs Broker is expected to advise his client to comply with the provisions of the Act and Rules and in case of non-compliance by the importer, he should bring it to the notice of the Customs officer. The Customs Broker is also expected to exercise due diligence to ascertain the correctness of any information which he imparts to his client.

**4.16.9** Therefore, I find that above discussed willful and deliberate acts of omission and commission of Customs Broker, M/s. Sigma Forwarders, have rendered the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Therefore, they are liable for imposition of penalty under Section 112(a) of the Customs Act, 1962.

**4.16.10** As regards imposition of penalty under Section 114A of the Customs Act, 1962 on the Customs Broker, M/s. Sigma Forwarders,, I find that Section 114A provides that where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined. In the instant case, as the short paid duty and interest has been demanded from the importer, M/s Bro International, therefore, penalty under Section 114A is not imposable on the Customs Broker, M/s. Sigma Forwarders. Therefore, as I have imposed penalty under Section 114A of the Customs Act, 1962 on the importer, M/s Bro International, I refrain from imposing penalty under Section 114A *ibid* on Customs Broker, M/s. Sigma Forwarders.

**4.16.11** Further, as observed by me above, in the instant case, there is clear evidence of conspiracy, fraud and suppression of facts. Customs Broker, M/s. Sigma Forwarders was well aware of this fraud, and actively and knowingly aided and abetted the importer in perpetuating the same. The Customs Broker was aware of the consistent undervaluation being resorted to by the importer causing loss to Government Revenue. The Customs Broker cleared the undervalued impugned imported goods by knowingly and intentionally resorting to use of false and incorrect declaration and documents. The aforesaid acts of omission and commission of the Customs



Broker, M/s. Sigma Forwarders resulted in use of false and incorrect declaration and documents in the clearance of the impugned goods, hence, they are also liable for penal action under Section 114AA *ibid*.

**4.16.12** In view of the above findings, I agree with the proposal made in the subject SCN and hold that penalty should be imposed on Customs Broker, M/s Sigma Forwarders under Section 112(a) and 114AA of the Customs Act, 1962.

**5.** In view of the facts of the case, the documentary evidences on record and findings as detailed above, I pass the following order:

### ORDER

- (i) I order that the total declared value of offending goods covered under past B/Es, as mentioned in Table-I of the subject SCN, amounting to Rs. 47,56,604/- (Rupees Forty Seven Lakh Fifty Six Thousand Six Hundred and Four Only), should be rejected under Rule 12 of the Customs Valuation Rules, 2007 and the same should be re-determined to Rs. 7,97,25,144/- (Rupees Seven Crore Ninety Seven Lakh Twenty Five Thousand One Hundred and Forty Four Only) as per Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 2007).
- (ii) I order that the self-assessment in respect of past B/Es, as mentioned in Table-I of the subject SCN, done by the importer, M/s Bro International, in terms of Section 17(1) should be rejected and re-assessed as per Section 17(4) of the Customs Act, 1962. Consequent to such re-assessment, the differential duty amounting to **Rs. 1,91,47,884/- (Rupees One Crore Ninety One Lakh Forty Seven Thousand Eight Hundred and Eighty Four Only)** should be demanded and recovered from the importer, M/s Bro International under Section 28(4) of the Customs Act, 1962, along with applicable interest as per Section 28AA of the Customs Act, 1962.
- (iii) I order that the impugned goods having total re-determined Assessable Value of Rs. 7,97,25,144/- (Rupees Seven Crore Ninety Seven Lakh Twenty Five Thousand One Hundred and Forty Four Only), for the Bills of Entry as mentioned in Table-I of the subject SCN, should be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

However, even though the goods are not available, I impose a Redemption Fine of **Rs. 80,00,000/- (Rupees Eighty Lakh Only)** on M/s Bro International in lieu of confiscation under Section 125(1) of the Customs Act, 1962.



- (iv) I impose a penalty equivalent to differential duty of **Rs. 1,91,47,884/- (Rupees One Crore Ninety One Lakh Forty Seven Thousand Eight Hundred and Eighty Four Only)** along with applicable interest under Section 28AA of the Customs Act, 1962, on M/s Bro International under Section 114A of the Customs Act, 1962, for the acts of omission and commission and wilful suppression of facts.

In terms of the first and second proviso to Section 114A *ibid*, if **duty and interest is paid within thirty days** from the date of the communication of this order, the amount of penalty liable to be paid shall be **twenty-five per cent of the duty and interest**, subject to the condition that the amount of penalty is also paid within the period of thirty days of communication of this order.

As penalty is imposed under Section 114A of the Customs Act, 1962, no penalty is imposed under Section 112(a) in terms of the fifth proviso to Section 114A *ibid*.

- (v) I impose a penalty of **Rs. 40,00,000/- (Rupees Forty Lakh Only)** under Section 114AA of the Customs Act, 1962, on M/s Bro International for the acts of omission and commission and wilful suppression of facts.
- (vi) I impose a penalty of **Rs. 10,00,000/- (Rupees Ten Lakh Only)** under Section 112(a)(ii) of the Customs Act, 1962, on Shri Rupesh Mahesh Patade, Partner, M/s Bro International for the acts of omission and commission and wilful suppression of facts.
- (vii) I impose a penalty of **Rs. 40,00,000/- (Rupees Forty Lakh Only)** under Section 114AA of the Customs Act, 1962, on Shri Rupesh Mahesh Patade, Partner, M/s Bro International for the acts of omission and commission and wilful suppression of facts.
- (viii) I impose a penalty of **Rs. 10,00,000/- (Rupees Ten Lakh Only)** under Section 112(a)(ii) of the Customs Act, 1962, on Smt. Mandira Rupesh Patade, Partner, M/s Bro International for the acts of omission and commission and wilful suppression of facts.
- (ix) I impose a penalty of **Rs. 40,00,000/- (Rupees Forty Lakh Only)** under Section 114AA of the Customs Act, 1962, on Smt. Mandira Rupesh Patade, Partner, M/s Bro International for the acts of omission and commission and wilful suppression of facts.
- (x) I impose a penalty of **Rs. 5,00,000/- (Rupees Five Lakh Only)** under Section 112(a) of the Customs Act, 1962, on M/s. Sigma Forwarders (Customs Broker) for the acts of omission and commission and wilful suppression of facts.
- (xi) I impose a penalty of **Rs. 20,00,000/- (Rupees Twenty Lakh Only)** under Section 114AA of the Customs Act, 1962, on M/s. Sigma Forwarders (Customs Broker) for the acts of omission and commission and wilful suppression of facts.



6. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or the persons/firms concerned, covered or not covered by this show cause notice, under the provisions of Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

*Anil Ramteke* 6/8/25  
(अनिल रामटेके / ANIL RAMTEKE)

सीमा शुल्क आयुक्त / Commissioner of Customs  
एनएस-V, जेएनसीएच / NS-V, JNCH

To,

1. **M/s Bro International,**  
**1638/1, Maa Padmavati Complex,**  
**Dapode Road, Val-Village,**  
**Bhiwandi, Maharashtra - 421302**
2. **Shri Rupesh Mahesh Patade,**  
**(Partner of M/s Bro International),**  
**Row House No. B/5, Sector-4,**  
**Digha, Airoli, Navi Mumbai,**  
**Maharashtra - 400708**
3. **Smt. Mandira Rupesh Patade,**  
**(Partner of M/s Bro International),**  
**Row House No. B/5, Sector-4,**  
**Digha, Airoli, Navi Mumbai,**  
**Maharashtra - 400708**
4. **M/s. Sigma Forwarders (Customs Broker)**  
**Door No.7/18, First Floor,**  
**Karnan Street, Rangarajapuram,**  
**Kodambakkam, Chennai, Tamil Nadu - 600024**

Copy to:

1. The Addl. Commissioner of Customs, Group VB, JNCH
2. The Dy./Asstt. Commissioner, Chief Commissioner's Office, JNCH
3. The Dy./Asstt. Commissioner, Centralized Revenue Recovery Cell, JNCH
4. The Dy./Asstt. Commissioner, SIIB(I), JNCH.
5. The Dy./Asstt. Commissioner, Custom Broker Section, New Custom House, Mumbai.
6. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
7. EDI Section.
8. Office copy.