

**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**

**DIN – 20250678NX0000116809**

**Date of Order: 17.06.2025**

**F. No. S/10-67/2023-24/COMMR/CAC/NS-V/JNCH**

**Date of Issue: 17.06.2025**

**SCN No.: 656/2023-24/COMMR/Gr.VA/CAC/JNCH**

**SCN Date: 20.06.2023**

**Passed by: Sh. Anil Ramteke**

**Commissioner of Customs, NS-V, JNCH**

**Order No: 92/2025-26/COMMR/NS-V/CAC/JNCH**

**Name of Noticees: M/s. Yogi Electronics**

**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. इस आदेश की मूल प्रति की प्रतिलिपि जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।

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. इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम 1962 की धारा 129 (ए) के तहत इस आदेश के विरुद्ध सी.ई.एस.टी.ए.टी., पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट रीज़नल बेंच), 34, पी. डी.मेलो रोड, मस्जिद (पूर्व), मुंबई - 400009 को अपील कर सकता है, जो उक्त अधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

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

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

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, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कम से कम एक प्रति प्रमाणित होनी चाहिए)।

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

**समय सीमा -** इस आदेश की सूचना की तारीख से 3 महीने के भीतर

**Fee -फीस-**

(a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less.

(क) एक हजार रुपये जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये या उस से कम है।

- (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 तथा लगायी गयी शास्ति की 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 तथा लगायी गयी शास्ति की 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 सहायक रजिस्ट्रार, 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 -** विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क अधिनियम, 1962, सीमाशुल्क (अपील) नियम, 1982, सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, 1982 का संदर्भ लिया जाए।

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 इच्छुक व्यक्ति अपील अनिर्णीत रहने तक उसमें माँगे गये शुल्क अथवा उद्गृहीत शास्ति का 7.5 % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमाशुल्क 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. 656/2023-24/Commr/Gr-VA/CAC/NS-V/JNCH dated 20.06.2023 in case of M/s. Yogi Electronics (IEC No. 0309053587) - reg.**

### **BRIEF FACTS OF THE CASE**

**1.1** On An investigation was initiated by the Directorate of Revenue Intelligence, Mumbai Zonal Unit (hereinafter referred to as 'the DRI') against importers namely (i) M/s. Yosha Corporation (IEC No. 0300073615) having its registered office at "2, FLR 3rd, Plot 6, Govardhan Building, V A Patel Marg, Grant Road (E), Mumbai- 400007" and (ii) Yogi Electronics (IEC No. 0309053587) having its registered office at "6, Govardhan Building, 2<sup>nd</sup> Floor, Proctor Road, Grant Road (E), Mumbai- 400007", who were importing various electronic goods and parts by resorting to mis-declaration, mis-classification and undervaluation. It had also come to notice that the said importers were importing the said goods without complying with mandatory provisions under Bureau of Indian Standards (BIS)/ Wireless Planning & Co-ordination (WPC) certificates applicable to the said electronic products. Some of the goods also appeared to be imported in violation of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, as amended (IPR Rules).

**1.2** During the course of investigation, a live shipment under Bill of Entry 9327388 dated 19.12.2018 of M/s Yosha Corporation for clearance of "various electronic goods and parts" was intercepted and put on hold by the DRI. Meanwhile, it was seen that the registered addresses of the said two firms were situated at different floors in the same building. Shri Bharat R. Manek was the sole proprietor of Yogi Electronics and he was also one of the three partners of M/s Yosha Corporation along with his wife Mrs. Bharati Bharat Manek and his brother Shri Chetan R. Manek. However, intelligence revealed that the said two firms were being operated from the registered address of Yogi Electronics situated at "6, Govardhan Building, 2<sup>nd</sup> Floor, Proctor Road, Grant Road (E), Mumbai- 400 007". The said premises were searched under Panchanama dated 20.12.2018 and incriminating materials in the form of various import related documents and electronic devices were taken for further examination. Subsequently, another premises of M/s Yosha Corporation and M/s. Yogi Electronics, situated at '602 Nestor Court, Opposite Toyota Showroom, S. V. Road, Vile Parle (West), Mumbai' was also searched under Panchanama dated 21.12.2018 and incriminating materials in the form of various import related documents and electronic devices were taken for further examination. Subsequently, the said consignment under Bill of Entry No. 9327388 dated 19.12.2018 was examined by the DRI officers on 27.12.2018 under Panchanama. During the examination, it was, inter-alia, found that:

- i. The marking on the packages, number of the packages and gross weight of the consignment were found to be as declared. However, it appeared that the subject consignment was grossly mis-declared in terms of description, quantity and value. Further, the goods declared as "Clump for Charging" were not found during the examination. Instead, the package Nos. said to contain "Clump for Charging" were stuffed with various type of batteries, which were not declared in the import documents.
- ii. As per the import documents, the goods were declared as unbranded and only their generic description was mentioned. However, on examination, the same were found to be of different brands, models, capacities, types and usage. The declared values for the goods under such generic description were same. For example, the goods declared as 'DC motor for audio video' were found to be motors of various kinds viz. DC geared motor, DC motor with housing, Stepper motor of different models and capacities. Similarly, the goods declared as 'Computer wire' were found to be branded HDMI cables of different lengths, etc.
- iii. The various types of 'Batteries' found during examination were of different brands and having capacities ranging from 100 mAh to 16000 mAh. Moreover, the subject goods were found to be without mandatory labelling/ embossing as required under Indian Standard No. (IS) No. IS 8144/ IS 16046:2012 as per the provisions of BIS Act, Rules and Regulations. It appeared that the said goods were being imported without valid BIS certificates.



- iv. The goods declared as 'Image Sensor' were found to be various types of CCTV cameras viz. VR panoramic camera, HD IR camera, VR cloud camera, WIFI digital video camera and night vision camera, etc. Moreover, the subject goods were found to be without mandatory labelling/ embossing as envisaged under IS 13252 (Part 1): 2010 as per the provisions of BIS Rules and Regulations. It appeared that the said goods were being imported without valid BIS certificates.
- v. The quantity of goods declared as 'LED segment modules'. were found to be grossly mis-declared in terms of quantity as the same were found to be 8,79,400 pieces as against the declared quantity of 86,245 pieces. There were many types of LED segment modules found during the examination ranging from normal LED modules to RGB (Red Green Blue) LED modules, which also appeared to be grossly undervalued.
- vi. The goods declared as LED COB Light/ LED Recessed Light were found to be without mandatory labelling/embossing as envisaged under IS 10322 (Part 5/Sec 2):2012/ IS 15885(Part 2/Sec 13):2012\* as per the provisions of BIS Act, Rules and Regulations. It appeared that the said goods were being imported without valid BIS certificates.
- vii. During the examination, certain goods were found to be with markings/ embossing of reputed brands viz. Panasonic, Samsung and LG, etc., which appeared to have been imported in violation' of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, as amended (IPR Rules).
- viii. It was also found that the copies of BIS certificates submitted along with the import documents before the Customs Authorities, had no co-relation vis-a-vis corresponding goods found during examination.

**1.3** Accordingly, the said consignment was seized vide Seizure Memo dated 04.01.2019 under Section 110(1) of the Customs Act, 1962 under the reasonable belief that the goods were liable for confiscation under the provisions of Section 111 of the Customs Act, 1962. Subsequently, a Show Cause Notice No. DRI/MZU/C1/INT-4/2019 dated 03.07.2019 was issued to M/s. Yosha Corporation, answerable to the Commissioner of Customs, NS-V, JNCH.

**2.** Investigations in respect of past consignments imported by M/s. Yosha Corporation (IEC No. 0300073615) and Yogi Electronics (IBC No. 0309053587):

**2.1** M/s. Yosha Corporation had imported a number of consignments of various electronic goods prior to the subject live consignment under the Bill of Entry No. 9327388 dated 19.12.2018. During the investigation of the live consignment, it came to notice that M/s. Yosha Corporation had adopted similar modus-operandi in their past consignments too in order to evade customs duty and also to import various electronic goods and parts by avoiding mandatory statutory provisions applicable on the said goods. After completion of investigation in case of past consignments of M/s. Yosha Corporation, a Show Cause Notice F. No. S/26-Misc.-1058/2021-22/Gr. VA/JNCH dated 29.03.2022 was issued by the Commissioner of Customs, NS-V, JNCH for 8 Bills of Entry assessed in Gr. 5A, JNCH. Further, in case of another Bill of Entry No. 8393399 dated 10.10.2018 assessed in Appraising Group 6, JNCH, a Show Cause Notice No. 622/22-23/Gr.VI/CAC/JNCH dated 26.07.2022 was issued.

**2.2** Similarly, during the subject investigation, it came to notice that another proprietorship firm of Shri Bharat R. Manek i.e. Yogi Electronics, had also adopted similar modus-operandi in their consignments in order to evade Customs duty and also to import various electronic goods and parts by avoiding mandatory statutory provisions applicable on the said goods. Accordingly, the Show Cause Notice pertains to the past consignments of Yogi Electronics, which were subject to this investigation.

**2.3** It is seen that a large number of evidences gathered during the investigation of import consignment under the Bill of Entry No. 9327388 dated 19.12.2018 of M/s. Yosha Corporation, are also relevant in case of investigation conducted for the past consignments of Yogi Electronics.



Accordingly, the same have also been relied upon and discussed at relevant places of the Show Cause Notice.

### 3. Forensic Analysis of the six laptops and one CPU taken over during the Search Panchanamas dated 20.12.2018 and 21.12.2018:-

3.1 Forensic Analysis of the seven laptops and one CPU taken over during the search Panchanama dated 20.12.2018 and 21.12.2018 were done in the Cyber Forensic Lab situated at Directorate of Revenue Intelligence, Mumbai Zonal Unit, Ground Floor, Sir Vithaldas Thackersey Marg, New Marine Lines, Mumbai under Panchanama. The details of the same are as under at Table-I:

Table-I

Sr. No.	Laptop/ CPU Make/ Model	Sr. No. and other details	Search Panchanama date and premise	Belonging to Person/ firm	Date of Forensic Panchanama
1.	Macbook Pro thunderbolt 3 ports	C02TT4MFHV27 HARDWARE UUID- DDF62FD4-32C5- 5088-9A66-771230 E022BO	Search Panchanama date: 20.11.2018. At the Premise "6, Govardhan Building, 2 <sup>nd</sup> Floor, Proctor Road, Grant Road (E), Mumbai-400007"	Shri Chetan R. Manek	24.12.2018
2.	CPU of i-ball make office desktop computer	Product ID:- 00371- OEM8992671-00008 Barcode No. 1106SA01427	-do-	M/s Yosha Corporation/ Yogi Electronics/ Gnanyagna Trading Co.	27.12.2018
3.	Lenovo G50-80, Model No. 80E5	PF0HGHN6 (MTM80E502Q 81H)	Search Panchanama date: 21.12.2018 At the Premise "602, Nestor Court, Opposite Toyota Showroom, S.V. Road, Vile Parle (West), Mumbai"	M/s Yosha Corporation/ Yogi Electronics/ Gnanyagna Trading Co./ M/s. Akshar Inc.	-do-
4.	Lenovo G50-70, Model No. 20351	YB07643276 (MTM59436419)	-do-	-do-	-do-
5.	Lenovo Ideapad-320-151SK, Model No. 80XR	PFOUV36C	-do-	-do-	-do-
6.	Lenovo Ideapad-300-151SK, Model No. 80Q7	PFOCDNMZ (M TM80Q700UG1)	-do-	-do-	-do-
7.	Lenovo Ideapad 320, model name 80xR (Lenovaideapad 320-151AP	PF0UDBZ9, FACTORY ID: JVHFC1MTM 80XR00YNIN	Search Panchanama date: 20.12.2018 At the Premise "6, Gordhan Building; 2 <sup>nd</sup> Floor, Proctor Road, Grand Road (E), Mumbai- 400 007"	Shri Bharat R. Manek	13.02.2019
8.	Lenovo Ideapad-330-151GM-U, Model No. 81D1	PF19RMB7 (MTM81D100H 1IN)	Search Panchanama date: 21.12.2018 At the Premise '602, Nestor Court, Opposite Toyota Showroom, S.V. Road, Vile Parle (West), Mumbai"	M/s Yosha Corporation/ Yogi Electronics/ Gnanyagna Trading Co./ M/s. Akshar Inc.	-do-

3.2 The data retrieved from the forensic analysis of the said electronic devices was analysed. During further analysis of the data retrieved from the Subject laptops and CPU mentioned at Table-I above, two Excel files namely (i) MM CM PACKBIG LIST FOR 2018 12 04 TOTAL 1446 CTNS.xls (ii) and sagar INQUERY FOR 2018 12 04 TOTAL 1446 CTNS.xls, were found to have



import details, which appeared to be similar to the consignment under the Bill of Entry No. 9327388 dated 19.12.2018. On further analysis, it was revealed that the total number of packages (1446 Cartons), Package Nos., original descriptions and quantities found during the examination Panchanama dated 27.12.2018 were same as found in the said consignment under the Bill of Entry No. 9327388 dated 19.12.2018.

**3.3** It is pertinent to mention that in addition to M/s. Yosha Corporation, Yogi Electronics had also imported a number of consignments of various electronic goods prior to the subject consignment under Bill of Entry No. 9327388 dated 19.12.2018. During the above-mentioned forensic analyses, various excel files having names such as "..... PACKING LIST...FOR..... TOTAL.....CTNS" and "sagar INQUERY FOR.....TOTAL CTNS....." were recovered. The names of these excel files were strikingly similar to the files namely (i) MM CM PACKING LIST FOR 2018 12 04 TOTAL 1446 CTNS.xls (ii) and sagar INQUERY FOR 2018 12 04 TOTAL 1446 CTNS.xls as mentioned in above para, which were found to be the actual & detailed packing list and work sheet respectively for the goods imported vide Bill of Entry No. 9327388 dated 19.12.2018. On scrutiny of the said excel files, these also appeared to be detailed packing lists and work sheets of other consignments of M/s. Yosha Corporation and other import firms of Shri Bharat R. Manek viz. (i) Yogi Electronics (iii) M/s Gnanyagna Trading Co. and (iv) M/s. Akshar Inc. Hence, it appeared that similar modus-operandi was adopted by the said firms in past too in order to evade Customs duty and also to import the subject electronic goods by avoiding mandatory provisions applicable on the said goods.

#### 4. Statements recorded under Section 108 of the Customs Act, 1962:-

**4.1** Statement of Shri Bharat R. Manek was recorded under the provisions of Section 108 of the Customs Act, 1962 on 21.12.2018, 02.01.2019, 29.01.2019, 05.02.2019 and 21.06.2019, wherein, he inter-alia stated that :-

- i. He was the sole proprietor of Yogi Electronics. In due course of business, he started three more business firms. The details of business firms related to Shri Bharat R. Manek are as per at Table-II:-

TABLE-II

Sr. No.	Name of the Firm	Year of establishment	No. of Partners	Name of the Partners and their relation with Shri Bharat R. Manek
1	Yogi Electronics	1980	Proprietorship	Shri Bharat R. Manek (Proprietor)
2	M/s Yosha Corporation	2005	3	Shri Bharat R. Manek (HUF), Mrs. Bharati Manek (wife) and Shri Chetan R. Manek (Younger Brother)
3	M/s. Gnanyagna Trading co.	2008	3	Shri Bharat R. Manek, Shri Chetan R. Manek (Younger Brother) and Mrs. Heena Manek (Younger Brother's wife)
4	M/S Akshar Inc.	2016	5	Shri Bharat R. Manek, Mrs. Bharati Manek (wife), Shri Manan Manek (Son), Shri Chetan R. Manek (Younger Brother) and Mrs. Heena Manek (Younger Brother's wife)

- ii. The registered address of M/s. Gnanyagna Trading Co. was same as of Yogi Electronics, whereas the registered address of M/S Akshar Inc. is at '602, Nestor Court, Opposite Toyota Showroom, S.V. Road, Vile Parle (West), Mumbai'.



- iii. He had been importing electronic goods and spare parts mainly from M/S Prayosha Import & Export Co. Ltd, Shenzhen, China since 2002-03 initially through his firm Yogi Electronics. M/s Prayosha Import & Export Co. Ltd was a trader in China and its Proprietor's name was Ms. Nancy Lee. Presently, all the above 4 import firms are importing the electronic goods and spare parts from China and UAE. In case of imports from UAE, the goods were being supplied by NMK International.
- iv. On being shown the printouts of two excel files namely (i) MM CM PACKING LIST FOR 2018 12 04 TOTAL 1446 CTNS.xls (ii) and sagar NQUERY FOR 2018 12 04 TOTAL 1446 CTNS.xls, he confirmed that these excel sheets were the actual & detailed packing list and work sheet respectively for the goods imported vide Bill of Entry No. 9327388 dated 19.12.2018. He further added that the unit price of each of the items shown in the excel sheet 'sagar INQUERY FOR 2018 12 04 TOTAL 1446 CTNS.xls' were correct, however the currency of the unit price is either in RMB (Renminbi) or USD (US Dollar).
- v. On being asked as to what was the meaning of term/ word 'RAMBHAI' as mentioned in several rows of the first column under title 'Serial No.' in the excel sheet "sagar INQUERY FOR 2018 12 04 TOTAL 1446 CTNS.xls", he stated that "RAMBHAI" was a unique code used by them for Chinese currency 'RMB' (an abbreviation of Renminbi). They had taken the term 'RAMBHAI', which had all the three letters of RMB and also was an Indian name for easy reference. For example, on the page No. 1 of the said excel sheet, the term 'RAMBHAI 8115', 'RAMBHAI 35000' and 'RAMBHAI 23250' meant that the subtotal shown at the last column of the sheet are RMB 8115, RMB 35000 and RMB 23250 respectively. Further, the prices shown at 'Price' column were also in the RMB currency for these entries. The relevant page of the said excel sheet "sagar INQUERY FOR 2018 12 04 TOTAL 1446 CTNS.xls" is depicted below as Image-I in the SCN.
- vi. Similarly, on being asked as to what was the meaning of term/ word 'UMESH' as mentioned in the several rows of the first column under title "Serial No." in the said excel sheet "sagar INQUERY FOR 2018 12 04 TOTAL 1446 CTNS.xls", he stated that "UMESH" was unique code used by them for the currency 'USD' (US Dollar). They had taken the term "UMESH", which had both letters of 'US' and also was an Indian name for easy reference. For example, on the page No. 19 of the said excel sheet, the term 'UMESH 1950' and 'UMESH 5182' meant that the subtotal shown at the last column of the sheet were USD 1950 and USD 5182. Further, the prices shown at 'Price' column were also in the USD currency for these entries. The relevant page of the said excel sheet "sagar INQUERY FOR 2018 12 04 TOTAL 1446 CTNS.xls" is depicted as Image-II in the SCN.
- vii. Further, he was asked to explain the meaning of the following foot note in the last page of the said excel sheet "sagar INQUERY FOR 2018 12 04 TOTAL 1446 CTNS.xls" which was as under:

ALL ABOVE MATERIAL IS 1446 CTNS AMT IS 1172331 RAMBHAI AND 89903.87 UMESH
FROM SHENZHEN TO NHAVA SHEVA, CUSTOM, TRUCK, W/H FEE, ALL IN 2128.33 UMESH ONLY
TOTAY SAY 1446 CTNS, 1172331 RAMBHAI AND 92032.22 UMESH ONLY

He replied that above mentioned footnote meant that this consignment had 1446 cartons having amount of RMB 1172331 plus USD 89903.87. Further, total cost of the shipment charge from Shenzhen, China to Nhava Sheva, Customs clearance at China, Truck transport charges up to Shenzhen, China and Warehousing Charges at Load Port was USD 2128.33. Therefore, the total value till loading of the container at load port was RMB



1172331 (mentioned as 172331 due to typographical error) plus USD 92032.22 (USD 89903.87 plus USD 2128.33). so, this amount was the actual C&F value of this consignment under the Bill of Entry No. 9327388 dated 19.12.2018. He further stated that they had to remit the said amount to the supplier. He further submitted that in the past cases, they had remitted the amount as per the import invoices submitted to the Customs. The relevant page of the said excel sheet "sagar INQUERY FOR 2018 12 04 TOTAL 1446 CTNS.xlsx" is depicted below as Image-III in the SCN.

- viii. On being asked about the meaning of the terms like "FM NR 4 ME", "FM NOEL 4 RCK" AND "FM SZ VVS 4 DPK" mentioned at several rows of the first column under title 'Serial No.' in the said Excel sheet "sagar INQUERY FOR 2018 12 04 TOTAL 1446 CTNS.xls", he stated that these were the code words for the Chinese suppliers to Indian buyers. For example, "FM NR 4 ME" meant From NR (a Chinese supplier) for MEET (the Indian buyer). Similarly, "FM NOEL 4 RCK" means "From NOEL (a Chinese supplier) for Ruchak (the Indian buyer). He stated that he used to tell the name of the local buyers to his supplier so that they could mention in the inquiry list/ work sheet for their reference. The relevant page of the said excel sheet "sagar INQUERY FOR 2018 12 04 TOTAL 1446 CTNS.xlsx" is depicted as Image-IV in the SCN.
- ix. On being further asked as to what was the meaning of the term "INQUIRY No. 2018 11 30" mentioned at the top left-hand side on the first page of the above mentioned excel sheet "sagar INQUERY FOR 2018 12 04 TOTAL 1446 CTNS.xls", he stated that this sheet was an inquiry sheet/ work sheet which was prepared for materials to be imported before the shipment of the said consignment and the said sheet was sent by the shipper through e-mail to them prior to import of the subject consignments. As in this case, the consignment of 1446 cartons under the Bill of Entry No. 9327388 dated 19.12.2018 was shipped after almost one week on 09.12.2018 (Bill of Lading date). The said inquiry sheet showed the actual value of the shipment and the final invoice and packing list were prepared on this basis. He reiterated that due to mistake they had submitted a different invoice and packing list having Nos. 2018 12 08 dated 08.12.2018 having total value of USD 33018.02 during the filing of the said Bill of Entry. The relevant page of the said excel sheet "sagar INQUERY FOR 2018 12 04 TOTAL 1446 CTNS.xlsx" is depicted as Image-V in the SCN.
- x. During his statement dated 02.01.2019, he also submitted a self-certified, unit price wise & currency-wise detailed invoice-cum-packing list having no. 2018 10 30 dated 23.11.2018, where actual values of the said goods imported under the Bill of Entry No. 9327388 dated 19.12.2018 were mentioned. The first page of the said self-certified, unit price wise & currency-wise detailed invoice-cum-packing list having No. 2018 10 30 dated 23.11.2018 is depicted as Image-VI in the SCN. On comparison of Image-V and Image-VI of the SCN, it appeared that the self-certified, unit price wise & currency-wise detailed invoice-cum-packing list submitted by Shri Bharat R. Manek was nothing but a revised form of the corresponding excel sheet "sagar INQUERY FOR 2018 12 04 TOTAL 1446 CTNS.xlsx" showing No. of pieces in proper column and value in RMB / USD, which were otherwise shown cryptically in the original excel sheet in codes as RAMBHAI / UMESH. On being asked as to on what basis was he confirming that the said detailed packing list and work sheet showed the actual description, value and quantity of the goods imported under the Bill of Entry No. 9327388 dated 19.12.2018, he stated that they generally got offer from the supplier and in this case, such offers were received 2-3 months before the import. The above-mentioned detailed packing list and work sheet were sent by the supplier in this regard. Accordingly, they confirmed the said order and imported the said goods vide Bill of Entry No. 9327388 dated 19.12.2018. That's why he could confirm that the said detailed invoice-cum-packing list and work sheet were of the same goods which were imported under Bill of Entry No. 9327388 dated 19.12.2018.



- xi. On being asked as to why the description, value and quantity mentioned in the Bill of Entry No. 9327388 dated 19.12.2018 and its invoice and packing list were different from the work-sheet and packing list retrieved during the forensic analysis, he stated that in this case, the supplier had committed mistake and had sent the wrong invoice and packing list on the basis of which the said Bill of Entry was filed.
- xii. He was shown two "Remarks" on the last page of the detailed invoice-cum-packing list which was submitted by him. The "Remarks" were as (i) *REMARK: MUKESHJI BIS ITEM 141 CTNS, 3.633 CBM, OTHERS MIX BIS ITEM 211 CTNS, 14.6619, SO TOTAL BIS ITEM 382 CTNS, 24.6888 CBM, ALL MATCH BM DADA GIVE CBM and (ii) JAY SWAMI NARAYAN, PLS CARE RED COLOR, TOTAL 312 CTNS, 14.917 CBM, PLS CHARGE TO CUSTOMER ACCORDINGLY AS HERE PAID EXTRA DUE TO BRANDED JSN*. On being asked to elaborate the meaning of the said "Remarks", he elaborated that the "Remark" mentioned at sr. no. (i) is related to total 141 CTN + 211 CTN (Total 352 CTN) which required BIS certification. He, however, stated that there appeared to be a mistake in totalling as it was shown as 382 CTN as against the total 352 CTN. He further stated that as per "Remark" at Sr. No. (ii) above, the supplier had informed him to take care and collect extra charges for 312 cartons, as these were of different brands e.g. Samsung, Panasonic, Sanyo, LG, Varta, Mitsubishi, Ultralife, Vention, RMC R-Tech, etc. The last page of the said detailed invoice-cum-packing list is depicted as Image-VII in the SCN.

4.2 Statement of Shri Chetan R. Manek, Partner of M/s. Yosha Corporation, M/s. Gnanyagna Trading Co. and M/s. Akshar Inc. was recorded on 06.02.2019 under the provisions of Section 108 of the Customs Act, 1962, wherein he, inter-alia, stated:-

- i. that in M/s. Yosha Corporation, he was responsible for ascertaining present requirements of the market, collection of cheque/ cash from local buyers in lieu of supply of goods and sending of remittance to the overseas suppliers.
- ii. He informed that once they received order from the local buyers, they used to place orders to their overseas supplier i.e. M/s. Prayosha Import & Export Co. Ltd., China. He confirmed that the goods mentioned in the import documents of the Bill of Entry No. 9327388 dated 19.12.2018 had been ordered by the local buyers to them which in turn was being imported from the supplier.
- iii. On being shown the printouts of two excel files namely (i) MM CM PACKING LIST FOR 2018 12 04 TOTAL 1446 CTNS.xls (ii) and sagar INQUERY FOR 2018 12 04 TOTAL 1446 CTNS.xls, he confirmed that these excel sheets are the actual & detailed packing list and work sheet respectively for the goods imported vide Bill of Entry No. 9327388 dated 19.12.2018. He further added that the unit price of each of the items shown in the excel sheet "sagar INQUERY FOR 2018 12 04 TOTAL 1446 CTNS.xls" were correct; however the currency of the unit price was either in RMB or USD.
- iv. He further submitted that his elder brother, Shri Bharat R. Manek had submitted a self-certified, unit price wise & currency wise detailed invoice-cum-packing list on 02.01.2019 during his statement recorded under the provision of the Customs Act, 1962, which showed the correct description, quantity and actual value of the imported goods and the said amount was to be paid to their shipper.
- v. On being asked about the payment to the shipper for the subject consignment under the Bill of Entry No. 9327388 dated 19.12.2018, he stated that no advance payment was made against the import of the said consignment as they did not use to pay advance payment to the said shipper. He added that they usually sent remittance after 2-3 months of the date of import.



- vi. On being asked as to why the description, value and quantity mentioned in the Bill of Entry No. 9327388 dated 09.12.2018 and its invoice & packing list were different from the work-sheet and packing list retrieved from their computer during forensic analysis, he could not explain the same.

**4.3** Statement of Shri Manish G. Amlani, Director of M/s. S.K.D. Shipping & Forwarding Pvt. Ltd. (CHA No. 11/980) was recorded on 15.05.2019 (RUD-18) under the provisions of Section 108 of Customs Act, 1962, wherein he, inter-alia,

- i. confirmed that Bill of Entry No. 9327388 dated 19.12.2018 was filed by his Customs Broker firm M/S S.K.D. Shipping in his client's name M/s. Yosha Corporation. He further confirmed that the CTH/CTI of the subject imported goods were ascertained by their firm and thereafter the checklists were sent to Shri Bharat R. Manek, Partner of M/s. Yosha Corporation for confirmation. After their confirmation, the checklist was uploaded on the ICEGATE and Bill of Entry was filed.
- ii. On being asked as to how the CTH/ CTI was decided for the item "Clump for Charging", he stated that he had confirmed from Shri Bharat R. Manek, Partner of M/s. Yosha Corporation that the said item "Clump for Charging" was type of battery charger and therefore, the same was classified under CTI 85044030 as "Battery Chargers".
- iii. On being further asked about reasons for giving only generic descriptions of the imported goods in the bills of entry like in the case of the Bill of Entry No. 9327388 dated 19.12.2018, goods had descriptions as "wire of audio video", "controller for lighting", "converter for audio video", "DC motor for audio video", "PCB module" and "switch", etc. having no mention of capacity/ usage/ part no., etc., and whether he enquired about details of the goods which had only generic descriptions and its usage before filing of the Bill of Entry, he stated that he had enquired about the absence of part No./capacities (specifications) of the subject items with the importer. However, the importer replied that they were importing the subject goods only from traders and that's why there was no mention of part no. /capacity (specification) in their import invoice.

**4.4** Further statement of Shri Bharat R. Manek, Proprietor of Yogi Electronics and Partner of M/s. Yosha Corporation, M/s. Gnanyagna Trading Co. and M/s. Akshar Inc. were recorded on 04.07.2019 under the provisions of Section 108 of the Customs Act 1962, wherein he, inter-alia:-

- i was shown excel files as retrieved through the said forensic analysis, the details of which are mentioned at Table-III below:

Sr. No.	NAME OF EXCEL FILES AS RETRIEVED THROUGH FORENSIC ANALYSIS
1	PACKNG LIST FOR 2018 09 21 C TOTAL 100 CTNS.xls
2	SAGAR NQUERY FOR 2018 0921 C TOTAL 100 CTNS1.xls
3	copy of 470 CTN P.LIST N.W & G.E (REV).xls
4	SAGAR INQUERY FOR AKSHAR 2018 09 18 TOTAL 470 CTNS.xls
5	as per sagar PACKING LIST FOR 2018 08 10 A TOTAL 648 CTNS.xls
6	SAGAR INQUERY FOR 2018 08 10 A TOTAL 648 CTNS.xls
7	sagar INQUERY FOR 2018 09 01 B TOTAL 912 CTNS1.xls
8	SAVITA PACKNG LIST FOR 2018 09 01 B TOTAL 912 CTNS.xls
9	CM PACKNG LIST FOR 2018 05 11 TOTAL 921 CTNS - copy.xls
10	SAGAR INQUERY FOR 2018 05 11 TOTAL 921 CTNS.xls
11	MM CM PACKING LIST FOR 2018 10 23 TOTAL 998 CTNS.xls
12	SAGAR INQUERY FOR 2018 10 23 TOTAL 998 CTNS.xls
13	CM PACKING FOR 2018 04 29 TOTAL 1009 CTNS -co l.xls
14	INQUERY FOR 2018 04 29 TOTAL 1009 CTNS.xls
15	as per sagar CM PACKING LIST FOR 2018 04 29 TOTAL 1009 CTNS Copy1.xls
16	SAGAR INQUERY FOR 2018 08 01 A TOTAL 1037 CTNS.xls
17	as per sagar MM CM PACKING LIST FOR 2018 08 01 A TOTAL 1037 CTNS -copy.xls
18	INQUERY FOR 2018 11 05 TOTAL 1041 CTNS.xls
19	as per sagar MM CM PACKNG LIST FOR 2018 11 05 TOTAL 1041 CTNS MM.xls



20	MM CM PACKING LIST FOR 2018 08 11 A TOTAL 1119 CTNS MM.xls
21	SAGAR NQUERY FOR 2018 08 11 A TOTAL 1119 CTNS.xls
22	CM PACKING LIST FOR 2018 07 13 B TOTAL 1162 CTNS.xls
23	sagar INQUERY FOR 2018 07 13 B TOTAL 1162 CTNS.xls
24	MM CM PACKING LIST FOR 2018 08 01 B TOTAL 1177 CTNS CM & MM's order.xls
25	REVISED INQUERY FOR 2018 08 01 B TOTAL 1177 CTNS.xls
26	sagar INQUERY FOR 2018 09 27 TOTAL 1290 CTNS.xls
27	as per sagar MM CM PACKNG LIST FOR 2018 09 27 TOTAL 1290 CTNS CTNS MM.xls
28	INQUERY FOR 2018 11 09 TOTAL 1313 CTNS.xls
29	MM CM REVISED PACKNG LIST FOR 2018 11 09 TOTAL 1313 CTNS Copy.xls
30	MADAM sagar INQUERY FOR 2017 01 14 TOTAL 1314 CTNS1.xls
31	SAGAR INQUERY FOR 2018 07 23 B TOTAL 1329 CTNS.xls
32	YO IMP 10 FO 1329 CTN HSN.xlss
33	1329 CTN P.LIST.xls
34	SAGAR ORDER PACKING LIST FOR 2017 01 14 TOTAL 1314 CTNS.xls
35	SAVITA INQUERY FOR 2018 08 21 TOTAL 1443 cms.xls
36	MM CM PACKING LIST FOR 2018 09 11 TOTAL 1466 CNS MM1.xls
37	SAGAR INQUERY FOR 2018 09 11 TOTAL 1466 CTNS1.xls
38	MM CM PACKING LIST FOR 2018 08 10 B TOTAL 1493 CTNS-2.xls
39	SAGAR INQUERY FOR 2018 08 10 B TOTAL 1493 CTNS2.xls
40	MM CM PACKING LIST FOR 2018 09 21 B TOTAL 1516 CTNS MM2.xls
41	SAGAR INQUERY FOR 2018 09 21 B TOTAL 1516 CTNS.xls

On being asked about the content and purpose of the excel files at Table-III above, he stated that these were the actual and detailed packing lists and inquiry lists/ work sheets for the goods imported vide various Bills of Entry by their firms, viz. M/s. Yogi Electronics, M/s. Yosha Corporation, M/s. Gnanyagna Trading Co. and M/s. Akshar inc.

- ii On being asked as to whether the above said excel files were similar to (i) "MM CM PACKNG LIST FOR 201812 04 TOTAL 1446 CTNS.xls" (ii) "sagar INQUERY FOR 2018 12 04 TOTAL 1446 CTNS.xls", which were related to the consignment of 1446 cartons imported vide the Bill of Entry No. 9327388 dated 19.12.2018 as its detailed packing list and inquiry list/ work sheet respectively, he accepted that the excel sheets, as mentioned above at Table-III, were similar to the detailed packing list and inquiry list/ work sheet of the Bill of Entry No. 9327388 dated 19.12.2018 corresponding to the excel files namely (i) "MM CM PACKNG LIST FOR 2018 12 04 TOTAL 1446 CTNS.xls" (ii) "sagar INQUERY FOR 2018 12 04 TOTAL 1446 CTNS.xls".
- iii On being asked as to whether the unique codes, pattern in the said detailed packing lists and inquiry list/ work sheet, as mentioned at Table-III above, were similar to the . detailed packing list and inquiry list/ work sheet of the Bill of Entry No. 9327388 dated 19.12.2018 corresponding to the excel files namely (i) "MM CM PACKNG LIST FOR 201812 04 TOTAL 1446 CTNS.xls" (ii) "sagar INQUERY FOR 2018 12 04 TOTAL 1446 CTNS.xls", he stated that the said excel files were prepared on identical pattern, viz. the term/ word 'RAMBHAI' as mentioned in the several rows of the first column under title "Serial No." was a unique code used by them for Chinese currency 'RMB' (an abbreviation of Renminbi). Further, the prices shown at respective 'Price' column were also in the RMB currency for these entries. Similarly, he confirmed that the term/ word "UMESH" as mentioned in the several rows of the first column under title "Serial No." was a unique code used by them for the currency 'USD' (US Dollar). Further, the prices shown at respective 'Price' column are also in the USD currency for these entries as was in the case of the two excel files related to the Bill of Entry No. 9327388 dated 19.12.2018. He further confirmed that the meaning of all the codes, names and footnotes, etc. as stated by him for the said two excel files having Nos. (i) "MM CM PACKNG LIST FOR 201812 04 TOTAL 1446 CTNS.xls" (ii) "sagar INQUERY FOR 2018 12 04 TOTAL 1446 CTNS.xls", during his statement recorded on 21.06.2019 under Section 108 of the Customs Act, 1962, was totally applicable on the excel sheets mentioned at Table-III above.



iv He was shown the Bills of Entry, their invoices and packing list as submitted before Customs, which were having the same number of cartons in their respective consignments as mentioned in the excel files of packing lists and inquiry lists/ work sheets as mentioned at Table-III above. He was also asked that the details of carton Nos. (Unique alpha numeric codes given on the cartons) as mentioned therein also appeared to be similar as mentioned in the said packing lists and inquiry lists/worksheets. After showing the said import documents and informing him about the similarity of unique alpha numeric codes of the cartons, he was asked to confirm as to whether the packing lists and inquiry list/work sheet as mentioned at Table-III above are related to such Bills of Entry or not. Shri Bharat R. Manek went through the printouts of the said excel files and put his dated signature on each of the said pages in token of having seen the same and then stated that the packing lists and inquiry list/work sheet as mentioned at Table-III are related to the bills of entry of M/s. Yogi Electronics, M/s. Yosha Corporation, M/s. Gnanyagna Trading Co. and M/s. Akshar inc. However, he could not provide the complete details of the Bills of Entry and assured to submit the same at the earliest.

**4.5** Further statement of Shri Bharat R. Manek, Proprietor of M/s. Yogi Electronics and Partner of M/s. Yosha Corporation, M/s. Gnanyagna Trading Co. and M/s. Akshar Inc. was recorded on 27.08.2021 under section 108 of the Customs Act 1962, wherein he, inter-alia, stated that:-

- i. He provided the details of the complete Bills of Entry against the excel files mentioned at Table-III above. Accordingly, the consolidated list of corresponding Bills of Entry, date and importers were provided by Shri Bharat R. Manek for all the said 41 excel files. He confirmed that the packing lists and inquiry list/ work sheet as mentioned at Column 'B' of the Table-IV below were related to the corresponding Bills of Entry and its date of the importer Yogi Electronics as shown at Column E and F of the said Table-IV below:

**Table-IV**

Sr. No.	NAME OF EXCEL FILES	DETAILS OF EXCEL FILES	NO. OF CARTON/ PKG	RELATED TO BILL OF ENTRY	DATE OF BILL OF ENTRY
A	B	C	D	E	F
1	as per sagar PACKING LIST FOR 2018 08 10 A TOTAL 648 CTNS.xls	DETAILED PACKNG LIST	648	7819410	28-08-2018
2	SAGAR INQUERY FOR 2018 08 10 A TOTAL 648 CTNS.xls	INQUIRY LIST/ WORK SHEET	648	7819410	28-08-2018
3	SAGAR INQUERY FOR 2018 08-01 A TOTAL 1037 CTNS.xls	INQUIRY LIST/ WORK SHEET	1037	7698186	20-08-2018
4	as per sagar MM CM PACKNG LIST FOR 2018 08 01 A TOTAL 1037 CTNS - Copy.xls	DETAILED PACKING LIST	1037	7698186	20-08-2018
5	INQUERY FOR 2018 11 05 TOTAL 1041 CTNS.xls	INQUIRY LIST/ WORK SHEET	1041	8953720	22-11-2018
6	as per sagar MM CM PACKNG LIST FOR 2018 11 05 TOTAL 1041 CTNS	DETAILED PACKING LIST	1041	8953720	22-11-2018
7	MM CM PACKING LIST FOR 2018 08 11 A TOTAL 1119 CTNS	DETAILED PACKING LIST	1119	7819116	28-08-2018
8	SAGAR INQUERY FOR 2018 08 11 A TOTAL 1119 CTNS.xls	INQUIRY LIST/ WORK SHEET	1119	7819116	28-08-2018
9	SAVITA INQUERY FOR 2018 08 21 TOTAL 1443 CTNS.xls	INQUIRY LIST/ WORK SHEET	1443	7987469	10-09-2018
10	MM CM PACKNG LIST FOR 2018 09 21 B TOTAL 1516 CTNS MM2.xls	DETAILED PACKING LIST	1516	8487003	16-10-2018
11	SAGAR INQUERY FOR 2018 09 21 B TOTAL 1516 CTNS.xls	INQUIRY LIST/ WORK SHEET	1516	8487003	16-10-2018
12	sagar INQUERY FOR 2018 09 27 TOTAL 1290 CTNS.xls	INQUIRY LIST/ WORK SHEET	1290	8533279	20-10-2018



13	as per sagar MM CM PACKING LIST FOR 2018 09 27 TOTAL 1290 CNS MM.xls	DETAILED PACKING LIST	1290	8533279	20-10-2018
----	--	-----------------------	------	---------	------------

- ii. Shri Bharat R. Manek was further asked to go through all the said excel files and to provide the detailed and clear descriptions of the items imported and mentioned therein. Accordingly, he submitted a list as 'Annexure-A' during the statement having detailed description at Column '7' of the said Annexure-A.

**4.6** Statement of Shri Manish G. Amlani, Director of M/s S.K.D. Shipping & Forwarding Pvt. Ltd. (CHA No. 11/980) was recorded on 02.03.2022 under the provisions of Section 108 of Customs Act, 1962, wherein:-

- i. Shri Manish G. Amlani accepted that his Customs Broker firm i.e. M/s. S.K.D. Shipping & Forwarding Pvt. Ltd. had handled the consignments of 4 import firms related to Shri Bharat R. Manek viz. (i) M/s. Yosha Corporation (ii) Yogi Electronics (iii) Akshar Inc. and (iv) Gnanyagna Trading Co.
- ii. Shri Manish G. Amlani was shown the statements of Shri Bharat R. Manek dated 04.07.2019 and 27.08.2021 recorded under Section 108 of the Customs Act, 1962, wherein Shri Bharat R. Manek had accepted that the said 41 excel files, as mentioned at Table-III above, were the actual packing lists and inquiry list / work sheet of the concerned Bills of Entry of his above mentioned 4 import firms. On being asked as to whether his Customs Broker firm had filed the said Bills of Entry, he confirmed that the said Bills of Entry were filed by his Customs Broker firm only.
- iii. He was further shown the Annexure-A submitted by Shri Bharat R. Manek during his statement dated 27.08.2021, which was prepared on the basis of the said 41 excel files retrieved through forensic analysis, wherein he had submitted a detailed description of the items actually imported vide the related Bills of Entry. On being asked as to how the goods actually imported were of different description than the declared descriptions in the Bill of Entry and the declared value of the imported goods were at lower side than the actual value, Shri Manish G. Amlani replied that they used to prepare the checklist on the basis of commercial invoice and packing list submitted by the said importers and they were not aware that the said importers were importing the goods by such under valuation. He further stated that as per his understanding, the descriptions of the majority of the goods were proper as per common parlance.
- iv. On being asked as to why even if considerable amount of batteries were imported against the declared description of 'Clump for Charging' and also in violation of BIS provisions, but the same never came into light during examination of the said consignment in presence of representatives of Customs Broker, he stated that they could never notice such discrepancy during examination.

**5. Scrutiny of excel files pertaining to consignments of Yogi Electronics, retrieved during the forensic analysis:**

**5.1** Detailed scrutiny of the content of the above mentioned excel files vis-a-vis the import documents of the related Bills of Entry of Yogi Electronics, inter-alia revealed that:

- i The excel files of "Inquiry lists / work sheets" have more detailed description of the imported goods having part No./ model No. / Brand No./ Capacity, etc., and these goods have actually been imported in different quantities and at different prices. However, in the 'detailed packing list', the imported goods have been bunched together and given a common generic description. Subsequently, the same common generic descriptions have been used in the import documents filed before Customs, viz. import invoice, import



packing list and the Bill of Entry, wherein a substantially lower price per piece against the common generic description has been declared by the importer. The imported goods have been given such generic descriptions, which could have multiple meanings and at the same time no meaning at all. For example, any type of connector with different cables viz. HDMI cable connector, Aux cable, etc. have been given a single generic description as 'Wire of Audio Video'. Similarly, any type of battery has been given a generic description as 'Clump for charging', which itself has no logical meaning.

- ii As discussed in foregoing paras, the currency of the said imported goods have been mentioned in codes (RAMBHAI for RMB and UMESH for USD) in the said Inquiry list/ worksheet. Other details viz. number of cartons, total amount in RMB plus USD, other costs incurred up to landing of the goods at Nhava Sheva port (except insurance charges), number of cartons which required BIS certificates and instructions to charge extra to customers (local buyers) in lieu of branded goods have also been mentioned in the said Inquiry list/ worksheet.
- iii As in the case of the live Bill of Entry No. 9327388 dated 19.12.2018, it is seen that the respective inquiry list / work sheet at its footnote have similar details as deliberated at Para 6.1 (g) of the Show Cause Notice, wherein a final endorsement regarding the subject consignment viz. (i) carton Nos., (ii) value in RMB & USD currencies and (iii) expense in shipment charges from Shenzhen, China to Nhava Sheva, Customs clearance charges at China, Truck Transport up to Shenzhen, China and warehousing charges at Load Port in USD currency were given. Excel file "SAGAR INQUERY FOR 2018 09 21 B TOTAL 1516 CTNS.xls" as mentioned at Sr. No. 11 of Table-IV above, which belongs to one of the past shipments of Yogi Electronics, has the similar footnote showing the such expenses. The image of the said excel file 'SAGAR INQUERY FQR 2018 09 21 B TOTAL 1516 CTNS.xls' is shown as Image-VIII in the SCN. It indicates that the subject consignment of 1516 cartons, had the goods of value of "1369715RAMBHAI" i.e. RMB1369715 plus "3745UMESH" i.e. USD 3745. Further, the total transport & other charges from Shenzhen Port, China to Nhava Sheva port has been shown as "2237.5 UMESH" i.e. USD 2237.5. Hence, the actual total C&F value of the subject consignment would be RMB 1369715 plus USD 5982.5 (USD 3745 + USD 2237.5).
- iv Further, various branded goods appear to have been imported for which enquiry under IPR Rules could not be initiated as the said goods had already been cleared.
- v Various imported goods appeared to have been imported without the mandatory BIS certificates.

**5.2** Scrutiny of various files retrieved during the said forensic analysis indicated that the preparation of worksheets / inquiry sheets showing the actual description, quantity and value, etc. of the goods imported under the above-mentioned consignments, were being prepared at the premises of the importers only. Thereafter, after various steps of editing, the related import documents viz. the import invoices and packing lists were prepared by mentioning generic description. The values declared in the said import invoices and the packing lists were fraction of the actual values mentioned in the related worksheets / inquiry sheets. It can be seen that in some of the cases, quantities were also shown to be less than the actual quantity imported. For illustration, scrutiny of the following files retrieved during the said forensic analysis and having similar names were done in order to ascertain the objective and purpose of creation of the said files-The details of the said files are at Table-VA and VB below:



Table-VA

Sr. No.	File Name	File Type	Belonging to the Bill of Entry No. & Date	Screenshots of the said files shown as Image No. in the SCN
1	SAGAR INQUERY FOR 2018 08 10 A TOTAL 648 CTNS	excel	7819410 dated 28.08.2018	Image-IX
2	as per sagar PACKING LIST FOR 2018 08 10 A TOTAL 648 CTNS, Sheet 1	excel	7819410 dated 28.08.2018	Image-X

Table-VB

Sr. No.	File Name	File type	Belonging to the Bill of Entry No. & Date	Screenshots of the said files shown as Image No. in the SCN
1	648 PLIST YE	excel	7819410 dated 28.08.2018	Image-XI
2	648 1-ISN	excel	7819410 dated 28.08.2018	Image-XII
3	648	excel	7819410 dated 28.08.2018	Image-XIII
4	648 INV.pdf	pdf	7819410 dated 28.08.2018	Image-XIV

5.3 On scrutiny of the above said images, it appears that:

- The file '648 PLIST YE' appears to have been prepared by Yogi Electronics on the excel sheet first which is having the details as available in the excel files "as per sagar PACKING LIST FOR 2018 08 10 A TOTAL 648 CTNS.xls" and "SAGAR INQUERY FOR 2018 08 10 A TOTAL 648 CTNS.xls" as mentioned at Sr. No. 1 and No. 2 at Table-IV for corresponding Bill of Entry No. 7819410 dated 28.08.2018 of M/s. Yogi Electronics. Although the complete descriptions as available in the above mentioned 2 excel files have been deliberately omitted in the file '648 PLIST YE'. For example, the description 'PIXEL LED USC190319CM JEL WIRE CAP RGB 2500PCS/CTN' as mentioned in the said two excel files were conveniently amended to "LED TORAN LIGHT FOR LIGHTING" in import invoice in the pdf form.
- Further, the declared price of the goods imported in the prepared import invoice was mentioned at the lower price than that of the excel sheets and the same was produced during filing of the subject Bill No.7819410 dated 28.08.2018.

## 6. Inference from analysis of the data retrieved from the forensic analysis and the statements of concerned persons responsible in case of past imports made by Yogi Electronics:

6.1 It appears that M/s. Yogi Electronics used to take import orders from various local buyers. Thereafter, M/s. Yogi Electronics used to consolidate the same and, as per the requirements, they used to place orders for the consignment for 20' or 40' container (as the case may be) to their overseas suppliers. Before placing the order to their overseas suppliers, Yogi Electronics appeared to have prepared an inquiry list/ worksheet wherein actual details such as packet Nos., detailed description of the goods, codes/ names of the local buyers, total quantity, price per piece and total value of the subject goods etc. were mentioned. Thereafter, Yogi Electronics appear to have prepared a detailed packing list, wherein goods were clubbed as per the convenience and they were given a generic description name. Thereafter, on the basis of the inquiry list/ work sheet and said packing list, they appear to have prepared the import invoice and import packing list by putting generic description as against the more detailed actual description and also putting value of the said goods at substantially lower side. Yogi Electronics have imported various electronic goods and parts vide various Bills of Entry for which corresponding inquiry list / work sheet and detailed packing list were found during the forensic analysis. Out of which, the details of the Bill of Entry filed at JNCH, Nhava Sheva is mentioned at Table-VI below:



TABLE-VI

Sr. No.	BILL OF ENTRY NO.	DATE	NO. OF CARTON/ PKG	NAME OF PORT	IMPORT INVOICE No. & DATE	DECLARED ASSESSABLE VALUE (IN RS.)	DUTY PAID (IN RS.)
A	B	C	D	E	F	G	H
1	7819410	28-08-2018	648	JNCH, NHAVA SHEVA	2018 08 15 DATED 15-08-2018	1508319	291306
2	7698186	20-08-2018	1037	-Do-	2018 08 16 DATED 16-08-2018	2291143	798989
3	8953720	22-11-2018	1041	-Do-	2018 11 10 DATED 10-11-2018	1811558	589860
4	7819116	28-08-2018	1119	-Do-	2018 08 16 DATED 16-08-2018	2291143	798989
5	7987469	09-10-2018	1443	-Do-	2018 08 28 DATED 28-08-2018	2442424	841261
6	8487003	16-10-2018	1516	-Do-	2018 09 27B DATED 27-09-2018	3107512	1121364
7	8533279	20-10-2018	1290	-Do-	2018 10 05 DATED 05-10-2018	2384070	833019
					TOTAL	15836169	5274788

**6.2** The currency of the said goods were mentioned in codes (RAMBHAI for RMB and UMESH for USD) in the said inquiry list/ worksheet. Other details viz. number of cartons, total amount in RMB plus USD, other costs incurred up to landing of the goods at Nhava Sheva port (except insurance charges) were also mentioned in the said Inquiry list/ worksheet.

**6.3** It is pertinent to mention that the said Bills of Entry as mentioned at Table-VI above were filed by M/s. S.K.D. Shipping & Forwarding Pvt. Ltd. (CHA No. 11/980) on behalf of Yogi Electronics.

**7. Ascertainment of actual description and classification of the imported goods and re-determination of value of the goods imported by Yogi Electronics vide the Bills of Entry mentioned at Table-VI above:-**

**7.1** Shri Bharat R. Manek, during his statement dated 27.08.2021 was asked to provide the detailed and clear descriptions of the items imported vide the Bills of Entry as mentioned at Table-VI above. Accordingly, he submitted a list as 'Annexure-A' to the said statement having detailed descriptions at Column '7' of the said Annexure-A. Accordingly, with the help of the detailed descriptions as provided by Shri Bharat R. Manek and also through the information available at open source for the goods having vague /complex descriptions, the actual descriptions have been arrived at with its proposed classification, which are annexed at Annexure-I (for the goods which required mandatory BIS certificates) and Annexure-II( for the goods which did not appear to require BIS certificates) to the Show Cause Notice.

**7.2** As discussed in Para 5 above, a case of the Bill of Entry No. 7819410 dated 28.08.2018 has been discussed on sample basis, so as to exhibit as to how the import invoices and packing lists were prepared locally by Yogi Electronics by manipulating the actual description, quantity and value. It was seen that the self-certified, unit price wise & currency-wise detailed packing list submitted by Shri Bharat R. Manek during his statement dated 27.08.2021 recorded under Section 108 of the Customs Act, 1962, was nothing but a revised form of the corresponding excel sheet "as per sagar PACKING LIST FOR 2018 08 10 A TOTAL 648 CTNS, Sheet 1" (retrieved during the forensic analysis) showing number of pieces and value in RMB / USD, which were otherwise



shown cryptically as RAMBHAI / UMESH in said retrieved excel sheet. Similarly, the inquiry list / work sheets retrieved during forensic analysis also appear to be actual invoice-cum-packing list for their corresponding Bills of Entry.

7.3 Accordingly, the import invoice as mentioned at Column 'F' corresponding to the Bill of Entry & its date at Column 'B' & 'C' respectively, at Table-VI above, appear to be fabricated import invoices which were submitted by the importer to evade Customs duty.

7.4 The Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 ('CVR, 2007' in short), stipulates that:

*Rule 3. Determination of the method of valuation.-*

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

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

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

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

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

*(iii) do not substantially affect the value of the goods;*

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

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

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

7.5 In this case, the inquiry list / work sheet shown at Column 'C' against the corresponding Bill of Entry Date at Column 'E' & 'F' at Table-IV above, appears to show the correct value of the said goods as against the value mentioned in the import invoices produced before the Customs Authorities at the time of clearance of the subject consignments. During their statements, Shri Bharat R. Manek and Chetan R. Manek, the partners of Yogi Electronics had accepted the said fact and also stated that only the said amount was paid /payable to the supplier. Accordingly, the value shown in the said corresponding inquiry list / work sheet appear to be the transaction value of the goods imported vide the Bills of Entry as mentioned at Table VI above. Hence, the same appears to be the correct transaction value of the subject consignment in terms of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) of CVR, 2007 which is to be adjusted as per the provisions of Rule 10 ibid.

7.6 Accordingly, the value shown in the said inquiry list / work sheet list appear to be the correct "C&F value" of the goods, as discussed in detail at para 7.1(c) of the Show Cause Notice. The transportation and other charges as given at the foot note of the Inquiry List have been taken as pro rata basis to arrive at the C&F value, for which the calculation has been shown at Annexure III of the Show Cause Notice. In case of the Bills of Entry No. 7819410 dated 28.08.2018 and 7698186 dated 20.08.2018 (Sr. No. 1 and 2 of Annexure 'III'), the said transportation and other charges have not been shown at the foot note of the corresponding Inquiry Lists. Hence, in these cases, the transportation charges have been taken as 20% of the FOB value of the said consignments as per the provisions of Rule 10 of CVR, 2007. Further, insurance amount @ 1.125% of the FOB value has also been added in the said CFR value to arrive at the Assessable Value as per the provisions of Rule 10 ibid.



**8. Summary of investigation:** From the investigations conducted and from the foregoing discussions, it appears that:-

- i. Yogi Electronics have deliberately put generic descriptions/ vague descriptions of the said imported electronic goods and parts in the import documents in order to grossly mis-declare their actual goods in terms of quantity and value and also to facilitate clearance of the undeclared goods which are otherwise not allowed to be imported, as the said goods were not in compliance of the mandatory BIS provisions applicable on the said imported goods.
- ii. Shri Bharat R. Manek, the Proprietor of Yogi Electronics, during his statements recorded under Section 108 of the Customs Act, 1962, accepted that the inquiry lists / work sheets and packing lists, which were retrieved during forensic examination of their computers, were the actual packing lists of import and corresponded to the Bills of Entry as discussed at above Para 6. Not only that, they appear to have prepared the import invoices and packing lists in their own office as elaborated at above Para 5.3. This points towards a well-planned conspiracy on the part of Shri Bharat R. Manek and others to illegally import the said goods as well as to evade payment of full Customs duty.
- iii. Shri Chetan R. Manek, the Partner of M/s. Yosha Corporation, during his statement dated 06.02.2019 recorded under Section 108 of the Customs Act, 1962, confirmed that the self-certified, unit price wise & currency-wise detailed invoice-cum-packing list, submitted by his brother Shri Bharat R. Manek, showed the correct description, quantity and actual value of the goods under the Bill of Entry No. 9327388 dated 19.12.2018. He also confirmed that the amount mentioned in the said inquiry list /work sheet was to be paid to their shipper. The consignment under the Bills of Entry as mentioned at Table-VI above also appeared to have been imported by the same modus operandi as also accepted by Shri Bharat R. Manek. Hence, it appears that the difference of the actual amount to be paid to the supplier and the value shown in the commercial invoices of the said Bills of Entry as show at Table-VI above were sent abroad through illegal means by them.
- iv. Shri Manish G. Amlani, Director of Customs Broker, M/s. S.K.D. Shipping & Forwarding Pvt. Ltd. (CHA No. 11/980), during his statement dated 15.05.2019 and 02.03.2022, stated that the CTH / CTI of the imported goods were ascertained by their firm and thereafter the checklists Were sent to Shri Bharat R. Manek, Proprietor of Yogi Electronics for confirmation. Thereafter, the checklist was uploaded on the ICEGATE and Bill of Entry was filed. On being asked about the generic descriptions of variety of electronic goods and parts, he stated that he had enquired about the absence of part No. / Capacities (specifications) of the subject items with the importer. However, he got convinced by the importer regarding no mention of the part No. / Capacity. Moreover, on being asked about the glaring discrepancies in terms of description and value between the items declared in the import documents and the documents actually imported, he simply stated that he was not aware of such discrepancies. In case of improper import of batteries despite the mandatory statutory provisions of BIS, he simply stated that they were not aware of such imports. It appears that the importer has adopted the said modus-operandi for a very long time. For all the past 7 Bills of Entry, the Customs Broker is same i.e. M/S S.K.D. Shipping & Forwarding Pvt. Ltd., who had never raised any objection to the importer regard to the generic and vague descriptions of the electronic goods and parts in the said consignment. Further, a substantial amount of the goods has been imported without the mandatory BIS requirements. It is not possible to import such mis-declared and restricted goods without the knowledge of the Customs Broker, especially when all the shipments have been cleared by the same Customs Broker. Hence, it appears that M/S S.K.D. Shipping & Forwarding Pvt. Ltd. have not performed their duties diligently as required under Customs Broker Licensing Regulations, 2013 ('CBLR, 2013' in short).



v. As discussed at Para 7 above, the import invoices as mentioned at Column 'F' corresponding to the Bill of Entry & its date at Column 'B' & 'C' respectively, at Table-VI above, appear to be fabricated invoices submitted in violation of Rule 11 of the CVR, 2007. Accordingly, the inquiry list / work sheet shown at Column 'C' against the corresponding Bill of Entry & Date at Column 'E' & 'F' at Table-IV, appear to have shown the correct transaction value of the said consignments in terms of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) of CVR, 2007. Accordingly, the assessable value of the respective consignment has been arrived at, as discussed at Para 7 above.

9. Show Cause Notice relied upon various legal provisions viz. Section 14, 17, 28(4), 46(4), 111(d), 111(m), 112, 114A & 114AA of the Customs Act, 1962, Circular No. 17/2011-Customs dated 08.04.2011 and Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

**10. Obligations under self-assessment and demand invoking extended period:**

**10.1** The subject Bills of Entry as mentioned at Table-VI above, filed by Yogi Electronics, wherein they had declared the description, CTI and value of the imported goods, were self-assessed by them. However, during forensic analysis of the firm's electronic devices, it appeared that the goods which were actually imported against the said Bill of Entry, were having different description and value. Shri Bharat R. Manek, proprietor of Yogi Electronics has accepted and admitted the same during his various statements recorded under Section 108 of the Customs Act, 1962, thereby corroborating the said documentary evidence recovered during forensic examination of the firm's electronic devices.

**10.2** Section 17 of the Customs Act, 1962 was substituted w.e.f. 08.04.2011 by introducing self-assessment of goods by the importers. Accordingly, the impugned goods were self-assessed by the importer and Bill of Entry was filed wherein wrong declarations were made intentionally. Under the self-assessment procedure, it is obligatory on the part of importers to correctly declare all the particulars such as description of the goods, value and quantity. Therefore, by not self-assessing the subject goods properly, it appears that the importer wilfully evaded Customs duty on the impugned goods. By not declaring the true and correct description, quantity and value at the time of import and clearance of the said imported goods, the importer appeared to have indulged in suppression of facts with intent to evade payment of applicable Customs duties and to circumvent the BIS requirements which they had not fulfilled.

**10.3** Therefore, it appears that the importer knowingly and deliberately mis-declared the description and value of the goods. It appears to be indicative of their *mensrea*. Moreover, the importer appears to have suppressed the said facts from the Customs authorities and also wilfully mis-stated the actual description and value of the goods during filing of the Bill of Entry and thereby caused evasion of Customs duty. Accordingly, it appears that provisions of Section 28(4) of the Customs Act, 1962 are invocable in this case. For the same reasons, the importer also appears liable to penalty under Section 114A of the Customs Act, 1962.

**11. Mis-declaration by Yogi Electronics —liability of goods to Confiscation, demand of differential duty and liability to penalties: -**

**11.1** Sub-section (4) of section 46 of the Customs Act, 1962, specifies that the importer, while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such Bill of Entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods. From the evidences discussed above, it appears that the importer had suppressed the relevant facts and intentionally evaded Customs duty on the impugned goods and hence, contravened the provisions of section 46 of the Customs Act, 1962 read with Section 11(3) of the Foreign Trade (Development and Regulation) Act, 1992.



**11.2** As mentioned in foregoing paras, certain goods appear to have been imported in contravention of mandatory BIS provisions. Further, the said goods have been found to be not corresponding in respect of value and correct description as declared in the respective Bills of Entry. Hence, the said goods having re-determined assessable value of Rs. 5,95,73,075/- (Rupees Five Crore Ninety-Five Lakh Seventy-Three Thousand and Seventy-Five Only) are liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962. A list of such goods is annexed herewith as “Annexure I” to this Notice.

**11.3** It is to be noted that various imported goods appeared to be of different brands as per the description. However, as the goods have already been cleared, no enquiry can be conducted under the IPR Rules, 2007 to get it examined by the Rights Holders for their authenticity.

**11.4** Further, remaining goods have been found to be not corresponding in respect of value and correct description as declared in the respective Bills of Entry. Hence, the said goods having determined assessable value of 1,77,94,698/- (Rupees One Crore Seventy-Seven Lakh Ninety-Four Thousand Six Hundred and Ninety-Eight Only) are liable for confiscation under Section 111(m) of the Customs Act, 1962. The list of such goods is annexed herewith as “Annexure II” to this Notice.

**11.5** A gist of the above-mentioned goods liable for confiscation under various provisions of the Customs Act, 1962 is shown below at Table-VII:

Table-VII

Sr. No.	Re-determined Assessable Value in Rs.	Applicable duty (in Rs.)	Applicable Sections	Annexure No. to the SCN
1	2	3	4	5
1	5,59,73,075/-	2,17,65,993/-	Section 111(d) and 111(m) of the Customs Act, 1962	I
2	1,77,97,698/-	57,26,555/-	Section 111(m) of the Customs Act, 1962	II
Total	7,73,67,773/-	2,74,92,548/-		

**11.6** Further, as discussed at Para 5.3 above, it appears that the "fabricated import documents were prepared in the premises belonging to the importer i.e. Yogi Electronics only, which were submitted before Customs. Therefore, it appears that they are also liable for imposition of penalty under Section 114AA of the Customs Act, 1962.

**12. Role of concerned persons in facilitating the subject import-liability to penalties:**

**12.1 Role of Shri Bharat R. Manek-** Shri Bharat R. Manek is the Partner of M/s Yosha Corporation and Proprietor of Yogi Electronics. During his statement recorded under the provisions of Section 108 of the Customs Act, 1962, he has admitted that the said firm was formed/ incorporated by him and run by him with the help of his family members. He appears to be the master mind of this modus operandi, wherein actual invoices and packing lists of the overseas suppliers were manipulated and wilful mis-declarations in the import documents are done to evade Customs duty on the imported goods. Further, he appears to be the main person behind creating certain codes as “RAMBHAI”, “UMESH” against the currencies RMB and USD respectively in communication with the overseas supplier, to smoothly and discreetly run his uniquely developed modus-operandi. During his statements recorded under Section 108 of the Customs Act, 1962, he accepted and admitted that the inquiry list/ work sheet and detailed packing list as mentioned at Table-IV above were the actual invoice-cum-packing list of the goods imported under the corresponding Bills of Entry as mentioned at Table-VI above. Moreover, as discussed at Para 5.3 above, it appeared that the import invoice and packing list were infact prepared in the office premise of Yogi Electronics only. This appear to establish that he was the mastermind of all the



manipulations done in the import documents. Such manipulations in the import documents clearly point out the *mens-rea* on the part of Shri Bharat R. Manek. His acts of such omission and commission appear to have rendered the goods liable for confiscation under Section 111(d) Section 111(m) of the Customs Act, 1962. Therefore, he appears liable for imposition of penalty under Section 112(a) and 114AA of the Customs Act, 1962.

**12.2 Role of Shri Chetan R. Manek-** Shri Chetan R. Manek, during his statement, had stated that he used to look after the collection of cheque/ cash from the local buyers and sending the remittance to the overseas suppliers. He further confirmed that the invoice-cum-packing list submitted by his elder brother, Shri Bharat R. Manek during his statement, showed the correct description, quantity and actual value of the imported goods under the Bill of Entry No. 9327388 dated 19.12.2018. He also stated that actual amount shown in the said invoice-cum-packing list was to be paid to the supplier. Therefore, it appears that Shri Chetan R. Manek was also well aware of such kind of manipulation in the import documents. As he was responsible for collection of payments from the local buyers and also for the overseas payment of remittance, it appears that the difference of amount actually to be paid to the overseas supplier and the remittance made as per the import documents were sent by him through illegal channels. It appears that he has actively aided and abetted in the import of goods under the Bills of Entry mentioned at Table-VI above as the said consignments were also imported on the same *modus-operandi*. Such aiding and abetting clearly point out the *mens-rea* on the part of Shri Chetan R. Manek. His acts of such omission and commission appear to have rendered the goods liable for confiscation under Section 111(d) and Section 111(m) of the Customs, Act, 1962. Therefore, he appears liable for imposition of penalty under Section 112(a) and 114AA of the Customs Act, 1962.

**12.3 Role of Customs Broker, M/s S.K.D. Shipping & Forwarding Pvt. Ltd. (CHA No. 11/980):**

Shri Manish G. Amlani, Director of Customs Broker, M/s. S.K.D. Shipping & Forwarding Pvt. Ltd. (CHA No. 11/980) during his statement dated 15.05.2019 and 02.03.2022, stated that the CTH / CTI of the imported goods were ascertained by their firm and thereafter the checklists were sent to Shri Bharat R. Manek, Partner of M/s. Yosha Corporation and Proprietor of Yogi Electronics for confirmation. It is seen that generic descriptions of variety of electronic goods and parts were mentioned in the Bills of Entry and the Customs Broker was part of the conspiracy to do the same. Further, it appears that the importer has adopted the said *modus-operandi* for very long time. In all the past 7 Bills of Entry, the Customs Broker is same i.e. M/s. S.K.D. Shipping & Forwarding Pvt. Ltd., who had never raised any objection to the importer with regard to the generic and vague descriptions of the said consignment. It may not be possible to import such mis-declared and prohibited goods without the knowledge of the Customs Broker, especially when all the past shipments have been cleared by the same Customs Broker. Hence, it appears that M/s. S.K.D. Shipping & Forwarding Pvt. Ltd. have not performed their duties diligently as required under Customs Broker Licensing Regulations, 2013 ('CBLR, 2013' in short) and therefore they appear liable for imposition of penalty under Section 112(a) of the Customs Act, 1962

**13.** Therefore, in exercise of the powers conferred by Section 28 read with Section 124 of the Customs Act, 1962, the importer Yogi Electronics (IEC No. 0309053587) having its registered address as 6, Govardhan Building, 2<sup>nd</sup> Floor, Proctor Road, Grant Road (E), Mumbai- 400007, was called upon to Show Cause (SCN No. 656/2023-24/Commr/Gr-VA/CAC/NS-V/JNCH dated 20.06.2023) to the Commissioner of Customs, NS-V Jawaharlal Nehru Custom House, Nhava Sheva, Taluka- Uran, District — Raigad, Maharashtra-400707, within 30 days of the receipt of the SCN, as to why:

The invoice presented during the assessment of the consignment imported vide the Bill of Entry mentioned at Table-VI above, are false and incorrect, as discussed at para 7 above, in terms of Rule 11 of the CVR, 2007;



- i. The impugned goods should not be classified/ re-classified as shown in the 'Annexure-I' and 'Annexure II' to the Show Cause Notice;
- ii. The correct transaction value of the goods covered under the consignment imported vide the Bills of Entry as mentioned at Table-VI above, having total declared assessable value of Rs. 1,58,36,169/- (Rupees One Crore Fifty-Eight Lakh Thirty-Six Thousand One Hundred and Sixty-Nine Only) should not be taken as Rs. 7,73,67,773/- (Rupees Seven Crore Seventy-Three Lakh Sixty-Seven Thousand Seven Hundred Seventy-Three Only) determined in terms of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) of CVR, 2007, as detailed in "Annexure-I" and "Annexure-II" to the Show Cause Notice;
- iii. The total duty amounting to Rs. 2,74,92,548/- (Rupees Two Crore Seventy-Four Lakh Ninety-Two Thousand Five Hundred and Forty-Eight Only) is payable in this case, as calculated in "Annexure-I" and "Annexure-II" of the Notice. As the importer has already paid an amount of 52,74,788/- (Rupees Fifty-Two Lakh Seventy-Four Thousand Seven Hundred and Eighty-Eight Only) towards duty during clearance of the subject Bills of Entry why the differential duty amounting to Rs. 2,22,17,760/- (Rupees Two Crore Twenty-Two Lakh Seventeen Thousand Seven Hundred and Sixty Only) should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962;
- iv. The impugned goods having assessable value of Rs. 5,95,73,075/- (Rupees Five Crore Ninety-Five Lakh Seventy-Three Thousand and Seventy-Five Only) as mentioned in "Annexure-I" should not be held liable for confiscation as per the provisions of Section 111(d) and 111(m) of the Customs Act, 1962 as elaborated at Table-VII above.
- v. The remaining impugned goods having assessable value of Rs. 1,77,94,698/- (Rupees One Crore Seventy-Seven Lakh Ninety-Four Thousand Six Hundred and Ninety-Eight Only) as mentioned at "Annexure-II" should not be held liable for confiscation as per the provisions of Section 111 (m) of the Customs Act, 1962.
- vi. Penalty should not be imposed on Yogi Electronics under Section 112(a) or Section 114A of the Customs Act, 1962; .
- vii. Penalty should not be imposed on Yogi Electronics under Section 114AA of the Customs Act, 1962 and;

**13.1** Shri Bharat R. Manek, Proprietor of M/s Yogi Electronics (read with corrigendum dated 05.05.2025) was called upon to show cause, in writing, within 30 days of the receipt of this notice, to the aforementioned Adjudicating Authority as to why penalty under Section 112(a) and Section 114AA of the Customs Act, 1962 should not be imposed on him.

**13.2** Shri Chetan R. Manek, Partner of M/s. Yosha Corporation was called upon to show cause, in writing, within 30 days of the receipt of this notice, to the aforementioned Adjudicating Authority as to why penalty under Section 112(a) and Section 114AA of the Customs Act, 1962 should not be imposed on him.

**13.3** M/S. S.K.D. Shipping & Forwarding Pvt. Ltd., the Customs Broker (CHA No. 11/980) was called upon to show cause, in writing, within 30 days of the receipt of this notice, to the aforementioned Adjudicating Authority as to why penalty under Section 112(a) of the Customs Act, 1962 should not be imposed on him.

#### **WRITTEN REPLY OF THE NOTICEE IN RESPONSE TO THE SHOW CAUSE NOTICE:**

**14.** Shri Anil Balani, Advocate on behalf of M/s. Yogi Electronics (Noticee No. 1), Shri Bharat R. Manek, Proprietor of M/s. Yogi Electronics (Noticee No.2) and Shri Chetan R. Manek, Partner of M/s. Yosha Corporation (Noticee No.3) submitted written submission vide letter dated



13.07.2023, 07.06.2024, 28.04.2025 and 21.05.2025. In their written submission, it is inter-alia submitted that:

**14.1** Noticees denied all the allegations and charges contained in the notice and added that the statements of the Noticees were recorded under pressure and coercion and retraction was not possible due to fear and threats. It is further added that before admitting such statements in evidence, noticees be examined in the adjudication proceedings as laid down in Section 138B. Further, the notice relies on printouts obtained from certain phones/computers, before admitting such printouts as evidence, conditions laid down in sub-section 2 of Section 138C of the Customs Act, 1962 should be satisfied. He further stated that the said conditions have not been fulfilled, hence, the said printouts be rejected and discarded.

**14.2** The proceedings were barred by time and hit by limitation. When SCN was issued for live consignment in 2018, the department was aware about all the facts. Nothing prevented the department from issuing the notice. The instant notice is issued on 20.06.2023 after gross and unjustified delay by lazily invoking the extended period. He further requested for cross-examination of the Investigating Officers and the Forensic Experts who obtained the computer printouts.

**14.3** In para 6.4(d) excel files are relied upon as RUD-20. From a perusal of the RUDs in the CD supplied with the SCN the said crucial RUD-20 is missing. The Notice claimed that the Excel Sheets were shown to noticees and they admitted the values shown therein. Copies of the said Excel Sheets must be made available to noticees and to the Adjudicating Authority at the earliest, before proceeding further. The entire case of the department is based on this evidence allegedly retrieved from computers of noticees. However, till date this evidence has not been placed on record by the department. In the absence of this evidence, the enhancement of value can never be justified. The declared value must be accepted and the proceedings must be dropped. .

**14.4** M/s. Yogi Electronics is the sole proprietorship firm of Shri Bharat R. Manek. Shri Chetan Manek is neither related nor concerned with M/S. Yogi Electronics. As per the Notice, Bharat Manek provided details of 41 excel files, printouts of which were shown to him while recording his statement. It is practically impossible to provide details of Bill of Entry, description of goods, value, etc. in the course of one statement. Therefore, the statement dated 04.07.2019 of Bharat Manek does not inspire confidence. Bharat Manek's son was getting married and the DRI put pressure on Bharat and forced him to sign the statement prepared by them. The said statement is neither voluntary nor true. The excel sheets printouts allegedly shown by the department to Bharat Manek were not retrieved as per the protocol and requirement of Section 138C of the Customs Act, 1962. Hence, they should be rejected.

**14.5** The Officers failed to follow the best practice and traditional method for recovery of the 5 laptops on 21-12-2018 at no. 602, Nestor Court, SV Road, Vile Parle, SV Road, Vile Parle (W), Mumbai- 4000056. The panchas were not present during the entire proceeding. The Officers unauthorizedly searched the laptops for evidence. There could be a possibility that evidence was planted in the laptops.

- i. The Officers visited the premises at 12.30 hrs. on 21-12-2018 for carrying out the search. During the search carried out at the premises of at 602, Nestor Court, Opposite Toyota Showroom, SV Road, Vile Parle (W), Mumbai -400056, the investigating officers took over certain documents from the premises under the reasonable belief that the same were relevant to their ongoing investigation and also 5 laptops in the reasonable belief that documents and data relevant to their investigation had been stored and secreted in the said laptops. While the Officers were carrying out the search, Shri Mahesh Gurjar, Engineer of Cyber Forensic Lab of DRI along with Shri Venugopal Aiyer, SIO, DRI, Mumbai also arrived at the premises at around 14.30 hrs. The panchas were made to sit in a corner of the Office and they did not witness anything and they did not know what the Officers and the



- Engineer of Cyber Forensic Lab were doing. In the panchnama dated 21-12-2018, the physical arrangement of computers in the place searched and peripheral and other evidences were not at all recorded.
- ii. The Officers asked Shri Manan and Shri Prakhar who were present in the premises to switch on all the laptops kept in the workstations and started scrutinizing the laptops for evidence. Pictures of the screens as they appear were not taken to record the date, time and time zone of the devices and compared with the time from a reliable source such as a time sync server. Programs running on RAM were not noted. The laptops were all automatically connected to the office Wi-fi network immediately when they were switched on. When a computer or laptop is connected to a wi-fi network, it could potentially be manipulated by the user. The Officers did not take any precaution to switch of the modem, router to prevent the laptops from communicating with any network or wireless communication. The noticees suggest that the evidence alleged to have been found in the laptops later during the forensic examination could have been planted on 21-12-18 when the laptops were scrutinized by the officers.
  - iii. As per the legal procedure, when carrying out a search of the premises, the investigating officer should not use the computer or attempt to search the computer for any evidence. However, the Officers scrutinized the laptops for documents relevant to their investigation stored in the said laptops. The action of the said Officers is like a fishing expedition for catching fish by throwing a net in a river or in a big pond knowing that there must be some fish after all, an activity which has been frequently likened in the judicial parlance with the activity of Customs and DRI searching for evidence in the belief that there must be some offence after all.
  - iv. In several judgements the courts have come down heavily against search and seizure on the basis of mere fishing expedition. In the case of P.K. Ghosh vs. K M Mazodia - 2000 (117) ELT 14 (Cal.), the Calcutta High Court has held that the Customs Officers cannot search and seize the goods in the hope of ultimately discovering some grounds to justify the search and seizure nor they can go on fishing expedition to find out whether any irregularities are committed. In the case of Innovation, Secunderabad vs. CBEC 1984 (15) ELT 91(AP), the High Court held that it is well settled that an officer cannot search any premises, or seize any goods. in the hope or ultimately discovering some basis or ground to justify the search or seizure, as the case may be, nor can they go on a fishing expedition to find out whether any irregularities are committed. The Calcutta High Court laid in Bishnu Kumar Shrestha v. Union of India and Others. 1987 (27) ELT 369 ( Cal.) that searches of roving or fishing type for finding some incriminating document is not permissible in law.
  - v. The usage of the computer and/or search should be conducted only by a properly authorized and qualified person, like a properly qualified forensic examiner by following all the prescribed legal procedure for collection of digital evidence. However, in the present case, the Officers carried out the searches of the laptops haphazardly without following any legal procedure. After scrutinizing the laptops, the Officers took over the 5 laptops as they had reasons to believe that documents and data relevant to their investigation had been stored and secreted in the said laptops.
  - vi. The laptops were put in individual green envelope. However, nothing is recorded in the panchnama as to whether the laptops were switched off after scrutiny or were packed in switched on condition only. If the computer is powered on, the investigating officer should not power off the computer. If the device is powered on, it may contain volatile data, including encryption keys, and should not be turned off as far as possible, the investigating officer to secure the services of a computer forensic examiner to download the data available in the volatile memory i.e., RAM since the said data would be lost on the powering down of the computer or laptop. This was not done before packing the laptops. Cable/charger to the laptops were also taken over by the Investigating Officers. However, this fact was not recorded in the panchnama.



- vii. Powering down a computer system in a manner that will not corrupt the integrity of existing files is a complicated computer security procedure. In the event of a suspected computer incident, great care must be taken to preserve evidence in its original state. While it may seem that simply viewing files on a system would not result in alteration of the original media, merely opening a file change it. In a legal sense, it is no longer the original evidence and at that point may be inadmissible in any subsequent legal or administrative proceedings.
- viii. No "Write Blocking Hardware" was used while the Officers scrutinised the data in the laptops. Write Blocking Hardware is a device that allows investigators to examine media while preventing data writes from occurring on the subject media. It is a tool that prevents all computer storage media connected to a computer from being written to or modified. The primary purpose of a hardware write blocker is to intercept and prevent (or 'block') any modifying command operation from ever reaching the storage device. If any file is opened without using write blocker, time stamping will change and that would amount to tampering of the evidence. In the absence of usage of any Write Blocking Hardware, writing or modifying the data in the laptops during the scrutiny by the Officers is not ruled out. In view of this fact, the integrity of the digital evidence retrieved from the laptops during forensic examination is doubtful.
- ix. The panchas were not present all throughout from 12.30 hrs to 19.15 hrs on 21-12-2018 but were called in the evening for putting their signatures on the panchnama, on the documents recovered by the officers and on the green envelopes wherein the laptops were kept. Hence, the contents in the panchanama cannot be relied upon. Where the failure to comply with the provisions, leave the evidence in an unsatisfactory condition, so that there is reasonable doubt as to whether the offending evidence were really found in the laptops recovered, any conviction based on the said evidence ought not to be sustained.
- x. If the recovery/seizure in a case appeared to be the result of caprice or in the course of a roving enquiry or was undertaken for a purpose which was not even collateral to the purpose for which the search was made under the Customs Act or under similar enactments, then such a seizure resulting for a naked arbitrary exercise of power was illegal and the resultant order passed if any should also be considered as illegal.

**14.6** No Chain of Custody was maintained to document the chronological custodial history of the evidence. In the absence of Chain of Custody, the integrity of the digital evidence collected is doubtful and liable to be rejected:

- i. In the present case, recovery of laptops/CPU alleged to have contained digital evidence were recovered on the dates and by the Officers. No chain of custody was maintained by the respective officers in respect of the electronic devices recovered by them. It is not known where were the devices kept and whose custody. The abovesaid devices were transported/moved to the Cyber Forensic Lab, DRI, Mumbai. Transfer of the devices from person to person/s were not documented in a Chain of Custody. In the absence of chain of custody, it is for presumption that some devices were in the custody of the recovery officer for 4 to 7 days and two devices were in the custody of the recovery officer nearly for 55 days and they were responsible for not documenting the possession in a chain of custody. The delay of 55 days for forensic examination of the 2 devices has not been properly explained. When the devices were transferred to the other Officers, that transaction was also not documented and the Officers acted in a very casual manner.
- ii. The said electronic devices could have been tampered or manipulated while in the custody of the recovery officers or in the custody of the officers who took over the devices from the recovery officers and in therefore the integrity of the evidence is doubtful. The chain of custody requires that from the moment the evidence is collected, every transfer of evidence from person to person be documented and that it be provable that nobody else could have accessed that evidence. When evidence can be used in court to convict persons of crimes, it must be handled in a scrupulously careful manner to prevent tampering or



contamination. The idea behind recording the chain of custody is to establish that the alleged evidence is in fact related to the alleged crime, rather than having, for example, been "planted" fraudulently to make someone appear guilty.

- iii. The production of evidence in the modern digital world is a complex task. For these reasons, it is essential that the digital evidence should be accepted as valid in court only if the chain of custody can assure exactly what was the evidence, why it was collected and analysed and how evidentiary data was collected, analysed and reported. Additionally, the chain of custody must demonstrate exactly where, when and who came into contact with the electronic evidence in each stage of investigation and any manipulation of the evidence. As a consequence, the admissibility of evidence is associated with the existence of a solid chain of custody, which contributes to the fairness, efficiency and reliability of the process. In this way, digital evidence can't be admitted without chain of custody, because usually it is away from sensory perception

**14.7** Cyber Forensic Lab, DRI, Mumbai Zonal Unit does not appear to be a legally approved/notified Examiner of Electronic Evidence by the Ministry of Electronics and Information Technology (MeitY). Therefore, forensic examination of the electronic devices carried out at Cyber Forensic Lab, DRI, Mumbai is not reliable. Electronic evidence retrieved during the said forensic examination cannot be relied upon.

**14.8** Consent of owners of the electronic devices not taken for forensic examination of the said devices. Alternatively, search warrant from the competent authority for search of computers should have been obtained. In the absence of consent of the owners or search warrant to search for evidence in the electronic devices, forensic examination carried out is illegal.

**14.9** Forensic examination of the electronic devices was carried out at Cyber Forensic Lab DRI Mumbai on 24-12-18, 27-12-18 and 13-02-19 in the presence of panchas. It appears that the Lab Technicians Cyber Forensic Lab, DRI, Mumbai before whom the electronic devices were produced for forensic examination do not appear to have the expertise to carry out forensic examination. They failed to follow the standard legal, universal and proper procedure, for forensic examination of the electronic devices for extraction of digital evidence. Like an amateur baker, the failed not only to put necessary ingredients but also burnt the cake and made it not suitable for consumption. Data and evidence alleged to have been forensically extracted from the devices cannot be relied upon. Proposals made in the impugned SCN, based on the evidence allegedly found in the laptops for penal action against the noticees are not sustainable.

**14.10** The Excel sheets alleged to have been retrieved from the cloned hard disk were not seized. However, they were relied upon in the resent case against the noticees. The laptops were also not seized. Without seizure of the laptops and the said excel sheets alleged to be containing incriminating evidence, the said excel sheets cannot be relied upon as evidence. Moreover, there is no certificate issued under section 65B of Evidence Act to validate the said documents. Noticee relied on following case laws:

- (1) Anvar P.V. vs P.K. Basheer - 2017 (352) ELT 416 (S.C.)
- (2) S.N. Agrotech vs Commissioner of Customs, New Delhi - 2018 (361) ELT 761
- (3) State (NCT of Delhi) vs Navjot Sandhu alias Afsan Guru.

**14.11** The manners in which the evidence was allegedly retrieved is in violation of the relevant positions of the Evidence Act, 1872 and Customs Act, 1962. Even if the said evidence is produced now it deserves to be discarded. The statements were recorded under coercion and noticees must be examined under section 138B of the Customs Act, 1962. Such goods are commonly imported at all ports and the values which are declared in this case are accepted by the department. NIDB data of the same must be taken on record.



**14.12** The demand is barred by time and hit the limitation because all other evidences were available to the department in 2021. The extension under section 28(9) of the Customs Act, 1962 was in violation of the principal of Natural Justice.

**15.** Shri Ashwani Kumar Prabhakar, Advocate on behalf of M/s. S.K.D. Shipping and Forwarding Pvt Ltd (Noticee No. 4), submitted written submission vide letter dated 20.06.2024. In their written submission, it is inter-alia submitted that:

**15.1** Noticee denied the allegation made in the SCN stating that the same are devoid of facts and merits. The allegations levelled are also not legally sustainable as M/s. S.K.D Shipping & Forwarding Pvt. Ltd., has not contravened any provisions of the Customs Act, 1962 or any other law for the time being in force.

**15.2** The noticee being a Custom House Agent (CHA) / Custom Broker (CB) submitted that they had filed checklist for the Bills of Entry on the basis of the documents received from the importer and sent to importer for approval. On receiving the approval from the importer, the noticee filed 7 Bills of Entry in the ICEGATE system. The Bills of Entry were assessed to duty and physically examined by the then proper officer of the customs department. No discrepancy/ adverse comment was reported in any of the Bills of Entry by the officers who had examined the goods. After satisfying all the parameters of the goods the proper officer had allowed the importer to clear the goods for home consumption. Accordingly, the noticee had cleared the goods from the docks and handed over to the importer. In the whole process the role of the noticee is very transparent. The CB had neither done any manipulation in any import document nor done any misdeclaration of the goods with respect to the relevant import invoice received from the importer. Hence, the allegation that the Custom Broker was a part of the conspiracy is improper and without any basis and therefore, all the allegations levelled against the Noticee are liable to be dropped forthwith.

**15.3** The noticee submitted that nothing has been come out in the investigation that the Customs Broker has obtained undue money from importer or any other person to abet in the conspiracy. There is no incriminating statement against the CB by any person. Moreover, the noticee had not obtained any abnormal charges for filing the impugned Bill of Entry and clearance of the goods. Hence, it is evident that the noticee had filed Bill of Entry in good faith on the basis of the documents received from the importer and the action of the noticee was bonafide. Therefore, no penal action should be initiated against the noticee on the basis of the assumption and presumption. The noticee relied on the following case law:

2019 (365) E.L.T. 453 (Tri. - Bang.) N.S. MAHESH Versus COMMISSIONER OF CUSTOMS, COCHIN - Penalty on Customs House Agent for abatement not imposable in absence of corroborative evidence of active participation in misdeclaration and undervaluation of imported goods - Section 112(a) of Customs Act, 1962.

**15.4** The noticee had no benefit in the non-payment/ short payment of the custom duty or any kind of duty which needs to be paid by the importer to the department for the process of importation of goods. The work of the CB was limited to the filing of documentation and clearance of goods from the port on behalf of the Importer. The noticee performed all his functions and duties diligently under the four walls of the Customs Act, 1962 and the CBLR, 2018. Therefore, no penalty should be imposed on the noticee/CB under the Customs Act, 1962. The noticee relies on the case laws reported at 2021(377) ELT 456(Tri. Chan.) in the case of OTA Falloons Forwarders Pvt Ltd vs Commissioner of Customs, Ludhiana.

**15.5 No Mens rea:** The Noticee had neither done any misdeclaration nor had knowledge about any incorrect material which was allegedly used by the importer to illegally import the said goods as well as to evade payment of full Customs duty as mentioned in the SCN. The Noticee only filed Bills of Entry on the basis of invoices and other documents, which he received from the importer,



in good faith and was not aware of the fake generated packing lists, import invoices which are mentioned in the SCN.

**15.6** No evidence to put charges on CB: The noticee submitted that the department relies only on the statement obtained from the noticee on 15.05.2019 and 02.03.2022 where the noticee never accepted or said that he was aware of the fake packing lists and invoices which the importer used to create for evading duty. The noticee only stated that they used to prepare the checklist on the basis of commercial invoice and packing list provided by the importer and the CB/noticee was not aware that the said importers were importing the goods by such under valuation and in contravention of BIS provisions. The noticee only worked in good faith and filed Bills of Entry and suggested the Importer the CTH/CTI of the imported goods on the basis of documents which he used to get from the importer. The noticee was not aware of any fraudulent way by which the importer was using to evade payment of custom duty. The noticee even inquired with the importer about the generic descriptions of the imported goods. The noticee relies on the case law reported at 2021 (377) E.L.T. 615 (Tri. - Chan.) in the matter of M.S. EXIM SERVICES Versus C.C., LUDHIANA.

**15.7** The noticee submits that there is no such evidence against their CHA Firm individually. The noticee has been dragged into the matter mechanically just because the name of all the CHAs have been incorporated in SCN. In absence of tangible evidence against the noticee the common allegations by the department in the SCN as far as the noticee is concerned would therefore, be considered as based on assumptions and presumptions by the department. Hence, all the allegations levelled against the noticee is liable to be dropped forthwith.

**15.8** Penalty under section 112(a) of the Customs Act, 1962 not imposable since no act of abetment on part of the noticee: Section 112(a) of Customs Act, 1962 says that penalty for improper importation of goods may be imposed on any person who is in relation to any goods does or abets the doing such an act which would render such goods liable for confiscation under section 111 of Custom Act, 1962. Penalty under section 112(a) can only be imposed on either the Importer of the goods or any other person who commits or abets in doing such act due to which the goods are held liable for confiscation under section 111 of Customs Act, 1962. The noticee should not be charged for penalty under section 112(a) as there is no such proper evidence against the noticee for alleging the offence for abetment. The Show Cause Notice proposes the noticee liable for penalty under section 112(a) for abetment of doing improper importation of goods merely on the basis of presumption and assumption. Levelling charges of abetment on the CB either on the basis of the statement recorded by the investigating officer or on the basis of the retrieved documents without any corroborative evidence is neither proper nor legally tenable because the chance of coercion or intimidation while recording statement of the noticee or any other person by the investigating officer or technical manipulation of data while retrieving cannot be ignored. The department cannot expect the expertise of Mechanical or Electronics engineering from the noticee. Therefore, the allegation levelled on the noticee is arbitrary and not legally tenable. Hence, all the all allegations are liable to be dropped. The noticee relied on the following Case Laws:

- (i) 2019 (370) E.L.T. 675 (Tri. - Chennai) GLOBAL STAR LOGISTICS (CHA) Versus COMMISSIONER OF CUSTOMS, TUTICORIN -
- (ii) 2019 (369) E.L.T. 1560 (Tri. - Mumbai) P.N. SHIPPING AGENCY Versus COMMISSIONER OF CUSTOMS, NHAVA SHEVA-I -
- (iii) 2019 (365) E.L.T. 558 (Tri. - Chennai) QUICK SYSTEMS Versus COMM. OF CUS. (AIRPORT & AIRCARGO), CHENNAI -
- (iv) 2019 (365) E.L.T. 453 (Tri. - Bang.) N.S. MAHESH Versus COMMISSIONER OF CUSTOMS, COCHIN
- (v) 2019-TIOL-2295-CESTAT-MUM M/S PARIKH CLEARING AGENCY PVT LTD vs COMMISSIONER OF CUSTOMS (IMPORT)

**15.9** There is no evidence available on record that the noticee was aware of the alleged irregularity. The CB has filed the Bills of Entry in good faith after obtaining approval on checklist



from the importer, Moreover, the goods of the past consignments were cleared after assessment and examination done by the proper officer of the department. Therefore, CB has neither committed nor omitted to do anything nor abetted anyone to do anything which can render the goods liable for confiscation under section 111 of the Customs Act, 1962. With reference to the charges levelled by the department on the CB regarding their non-performance of duties diligently as required under CBLR, 2013 the noticee submitted that there are catena judgements wherein the Hon 'ble Courts/ Tribunals has held that penalty under Customs Act, 1962 cannot be imposed against violation of any provision of CBLR, 2013. The Noticee relies on the following case laws:

- (i) COMMISSIONER OF CUSTOMS, TUTICORIN Versus SRI DURGA SHIPPING SERVICES [2019 (370) E.L.T. 832 (Tri. Chennai)]
- (ii) ADANI WILMAR LTD. Versus COMMISSIONER OF CUSTOMS (PREV.), JAMNAGAR [2015 (330) E.L.T. 549 (Tri. Ahmd.)]
- (iii) P.D. PRASAD & SONS PVT. LTD. Versus COMMISSIONER OF CUS. (EXPORT), NEW DELHI [2017 (358) E.L.T. 1004 (Tri. Del.)]

**15.10** Noticee submitted that there is not any incriminating statement against the Noticee was given by any other Noticee in the SCN and the Noticee had no idea of any fake invoices and packing list which the importer used to make in his office to evade custom duty as mentioned in the SCN dated 06.11.2023. The Noticee relied on the following case laws:

- (i) HINDUSTAN CARGO LTD. Versus COMMISSIONER OF C.EX., CHENNAI [2007 (220) E.L.T. 349 (Tri. - Chennai)]
- (ii) ADANI WILMAR LTD. Versus COMMISSIONER OF CUSTOMS (PREV.), JAMNAGAR [2015 (330) E.L.T. 549 (Tri. Ahmd.)]

**15.11** The Pr. Chief Commissioner of Customs, Zone-I, NCH, Mumbai has issued an Advisory No. 01/2022 dated 29.12.2022 vide CCCO/TECH/ 15/2022 dated 29.12.2022 inter alia directing as under:-

*"4. Numerous judicial pronouncements exist wherein it has been, inter-alia, held that in cases where there is no evidence of complicity in the illegal importation of goods or wrong intent or prior knowledge about the violation, the penalty cannot be imposed on the Customs Broker.*

*5. Implicating Customs Brokers in a routine manner in matters involving interpretation of statute & valuation matters is not only improper but also against the National Litigation Policy of the Government, as such cases invariably fall in Court. This not only increases the number of legal disputes but also defeats the Government's objective of Ease of Doing Business by reducing the 'ease of paying taxes', which is a parameter for measuring 'Ease of Doing Business'."*

**15.12** Similarly, an advisory No.01/2022-JNCH dated 02.12.2022 has also been issued by the Office of the Chief Commissioner of Customs. Mumbai Zone-II, JNCH, Nhava Sheva directing the officers not to implicate and impose penalty on the Custom House Agents as a routine manner. In this case, the noticee had neither connived with the importer nor abetted the importer nor had any mens rea, therefore, imposition of penalty on the noticee is arbitrary and illegal. Therefore, all the charges levelled on the noticee is liable to be dropped and no penalty is imposable on the Appellant. Hence, the impugned order is liable to be set aside.

**15.13** Thus, in view of the above noticee has neither committed nor omitted to do anything which can render the goods liable for confiscation under section 111 of the Customs Act, 1962. Therefore, no penal action under section 112(a) under the Customs Act, 1962 is warranted against the Noticee.

## **16. RECORD OF PERSONAL HEARINGS**

**16.1** Following the principal of natural justice, the Noticee was granted opportunities for personal hearing (PH) in terms of Section 28(8) read with Section 122A of the Customs Act, 1962.



Shri Anil Balani, Advocate on behalf of M/s. Yogi Electronics (Noticee No. 1), Shri Bharat R. Manek, Proprietor of M/s. Yogi Electronics (Noticee No.2) and Shri Chetan R. Manek, Partner of M/s. Yosha Corporation (Noticee No.3) attended the personal hearing on 29.04.2025. Shri Anil Balani argued the case and reiterated the written submission dated 13.07.2023, 07.06.2024 and 28.04.2025. He further stated that the CD furnished with the SCN does not contain all the RUDs as mentioned in the SCN, it only contains Annexure-A, B, C and Annexure-R. He further requested to provide the same.

**16.2** After supplying the said RUDs another personal hearing was granted. Shri Anil Balani, Advocate on behalf of M/s. Yogi Electronics (Noticee No. 1), Shri Bharat R. Manek, Proprietor of M/s. Yogi Electronics (Noticee No. 2) and Shri Chetan R. Manek, Partner of M/s. Yosha Corporation (Noticee No. 3) attended the personal hearing on 21.05.2025. Shri Anil Balani argued the case and submitted the written submission dated 21.05.2025, the same has been taken on record along with the earlier written submissions dated 13.07.2023, 07.06.2024 and 28.04.2025. He further stated that case is regarding the valuation of the goods and for the valuation of the goods imported against the 7 bills of entry should have been done on the basis of NIDB data not on the basis of statements and the excel sheets allegedly retrieved from their computers. He further added that noticee no. 2 is proprietor of M/s. Yogi Electronics (Noticee No. 1), hence the both the noticee (No. 1 & 2) should be considered as single identity.

**16.3** Shri Ashwani Kumar Prabhakar, Advocate on behalf of M/s. S.K.D. Shipping and Forwarding Pvt. Ltd. (Noticee No. 4) attended the personal hearing on 19.05.2025. Shri Ashwani Kumar Prabhakar argued the case and reiterated the written submission dated 20.06.2024. He further stated that the Customs Broker prepared the checklist as per the documents submitted by the importer and sent the importer for approval and after approval of the same they filed the bill of entry. He further added that no statement incriminate the Customs Broker is involved in mis-classification of goods. He also referred instruction No. 20/2024-Customs dated 03.09.2024, wherein, it is instructed that Customs broker should not be implicated as co-noticee in cases involving interpretative disputes in routine manner. He further requested to drop the proceedings against his client.

### **DISCUSSION AND FINDINGS**

**17.** The fact of the matter is that a Show Cause Notice (SCN) No. 656/2023-24/Commr/Gr-VA/CAC/NS-V/JNCH dated 20.06.2023 was issued to M/s. Yogi Electronics (Noticee No. 1), Shri Bharat R. Manek, Proprietor of M/s. Yogi Electronics (Noticee No. 2) and Shri Chetan R. Manek, Partner of M/s. Yosha Corporation (Noticee No. 3) and M/s. S.K.D. Shipping and Forwarding Pvt. Ltd. (Noticee No. 4) alleging that the goods imported by them have been mis-classified by declaring vague /complex descriptions to evade mandatory compliances and also cleared the goods using under-valued invoices . The SCN was served for said mis-classification and valuation, demanding differential Customs duty of Rs. 2,22,17,760/- (Rupees Two Crore Twenty-Two Lakh Seventeen Thousand Seven Hundred and Sixty Only) as detailed in Annexure- 'I' & 'II' to the SCN invoking extended period under Section 28 of the Customs Act, 1962 along with interest in terms of section 28AA of the Customs Act, 1962 and consequential penalties under section 112(a)/114A/114AA of the Customs Act,1962. Show cause Notice also proposed liability to confiscation of imported goods under Section 111(d) and 111(m) of the Customs Act, 1962.

**17.1** I find that the subject Show Cause Notice was issued on 22.06.2023. On 18.06.2024, the Chief Commissioner of Customs, JNCH, Mumbai Zone-II has granted extension of time limit to adjudicate the case up to 19.06.2025 as per the first proviso to Section 28(9) of the Customs Act, 1962. Therefore, the case has now been taken for adjudication proceedings within the time limit as per Section 28(9) of the Customs Act, 1962.



17.2 I have gone through the subject Show Cause Notice, charges levelled against the importer, Relied upon documents, the written submission of the Noticees and material on record and accordingly, I proceed to decide the case on merit.

18. On a careful perusal of the subject show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided: -

(i) Whether the invoices presented during the assessment of the consignment imported vide the Bill of Entry mentioned at Table-VI above, are false & incorrect and the impugned goods should be classified/ re-classified as shown in the 'Annexure-I' and 'Annexure II' to the Show Cause Notice or otherwise;

(ii) Whether the correct transaction value of the goods covered under the consignment imported vide the Bills of Entry as mentioned at Table-VI above, having total declared assessable value of Rs. 1,58,36,169/- (Rupees One Crore Fifty-Eight Lakh Thirty-Six Thousand One Hundred and Sixty-Nine Only) should be determined in terms of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) of CVR, 2007 Rs. 7,73,67,773/- (Rupees Seven Crore Seventy-Three Lakh Sixty-Seven Thousand Seven Hundred Seventy-Three Only), as detailed in "Annexure-I" and "Annexure-II" to the Show Cause Notice or otherwise;

(iii) Whether the differential duty of differential duty amounting to Rs. 2,22,17,760/- (Rupees Two Crore Twenty-Two Lakh Seventeen Thousand Seven Hundred and Sixty Only) as mentioned in "Annexure-I" and "Annexure-II" to the SCN, should be recovered from the importer under section 28(4) of the Customs Act, 1962 or otherwise;

(iv) Whether the impugned goods having assessable value of Rs. 5,95,73,075/- (Rupees Five Crore Ninety-Five Lakh Seventy-Three Thousand and Seventy-Five Only) as mentioned in "Annexure-I" should be held liable for confiscation as per the provisions of Section 111(d) and 111(m) of the Customs Act, 1962 or otherwise;

(v) Whether the remaining impugned goods having assessable value of Rs. 1,77,94,698/- (Rupees One Crore Seventy-Seven Lakh Ninety-Four Thousand Six Hundred and Ninety-Eight Only) as mentioned at "Annexure-II" should be held liable for confiscation as per the provisions of Section 111 (m) of the Customs Act, 1962 or otherwise;

(vi) Whether penalty should be imposed on M/s. Yogi Electronics under Section 112(a) and /or 114A and 114AA of the Customs Act, 1962; Shri Bharat R. Manek, Proprietor of M/s Yogi Electronics under Section 114AA of the Customs Act, 1962; Shri Chetan R. Manek, Partner of M/s. Yosha Corporation under Section 112(a) and 114AA of the Customs Act, 1962 and M/s. S.K.D. Shipping & Forwarding Pvt. Ltd. under Section 112(a) of the Customs Act, 1962 or otherwise.

19. After having identified and framed the main issues to be decided, I now proceed to examine each of the issues individually for detailed analysis based on the facts and circumstances mentioned in the SCN; provision of the Customs Act, 1962, as well as written submissions of notice and documents / evidences available on record.

20. **Whether the invoices presented during the assessment of the consignment imported vide the Bill of Entry mentioned at Table-VI above, are false & incorrect and the impugned goods should be classified/ re-classified as shown in the 'Annexure-I' and 'Annexure II' to the Show Cause Notice or otherwise.**

20.1 I find that a live shipment under Bill of Entry 9327388 dated 19.12.2018 of M/s Yosha Corporation for clearance of "various electronic goods and parts" was intercepted and put on hold by the DRI. Meanwhile, it was seen that the registered addresses of the two firms (i) M/s Yosha



Corporation (ii) M/s. Yogi Electronics were situated at different floors in the same building. Shri Bharat R. Manek was the sole proprietor of Yogi Electronics and he was also one of the three partners of M/s. Yosha Corporation along with his wife, Mrs. Bharati Bharat Manek and his brother, Shri Chetan R. Manek. However, intelligence revealed that the said two firms were being operated from the registered address of M/s. Yogi Electronics situated at "6, Govardhan Building, 2<sup>nd</sup> Floor, Proctor Road, Grant Road (E), Mumbai- 400 007". The said premises were searched under Panchanama dated 20.12.2018 and incriminating materials in the form of various import related documents and electronic devices were taken for further examination. Subsequently, another premises of M/s Yosha Corporation and M/s. Yogi Electronics, situated at "602 Nestor Court, Opposite Toyota Showroom, S. V. Road, Vile Parle (West), Mumbai" was also searched under Panchanama dated 21.12.2018 and incriminating materials in the form of various import related documents and electronic devices were taken for further examination. Subsequently, the said consignment under Bill of Entry No. 9327388 dated 19.12.2018 was examined by the DRI officers on 27.12.2018 under Panchanama. During the examination, the subject consignment, was found grossly mis-declared in terms of description, quantity and value and some goods were not as per mandatory compliances. It was seen by the investigating agency that a large number of evidences gathered during the investigation of import consignment under the Bill of Entry No. 9327388 dated 19.12.2018 of M/s. Yosha Corporation, are also relevant in the case of investigation conducted for the past consignments of M/s. Yogi Electronics.

**20.2** I find that Forensic Analysis of the seven laptops and one CPU taken over during the search Panchanama dated 20.12.2018 and 21.12.2018, were done in the Cyber Forensic Lab situated at Directorate of Revenue Intelligence, Mumbai Zonal Unit, Ground Floor, Sir Vithaldas Thackersey Marg, New Marine Lines, Mumbai under Panchanama dated 24.12.2018, 27.12.2018 and 13.02.2019. During analysis of the data retrieved from the Subject laptops and CPU, two Excel files namely (i) MM CM PACKBIG LIST FOR 2018 12 04 TOTAL 1446 CTNS.xls (ii) sagar INQUERY FOR 2018 12 04 TOTAL 1446 CTNS.xls, were found to have import details, which appeared to be similar to the consignment under the Bill of Entry No. 9327388 dated 19.12.2018. On further analysis, it was revealed that the total number of packages (1446 Cartons), Package Nos., original descriptions and quantities found during the examination Panchanama dated 27.12.2018 were same as found in the said consignment under the Bill of Entry No. 9327388 dated 19.12.2018. During the above-mentioned forensic analyses, various excel files having names such as "..... PACKING LIST...FOR..... TOTAL.....CTNS" and "sagar INQUERY FOR.....TOTAL CTNS....." were recovered. On scrutiny of the said excel files, these also appeared to be detailed packing lists and work sheets of other consignments of M/s. Yosha Corporation and other import firms of Shri Bharat R. Manek viz. (i) Yogi Electronics (ii) (iii) M/s Gnanyagna Trading Co. and (iv) M/s Akshar Inc. In the SCN, it is alleged that similar modus-operandi was adopted by the said firms in past too in order to evade Customs duty and also to import the subject electronic goods by avoiding mandatory provisions applicable on the said goods.

**20.3** During statement under the provisions of Section 108 of the Customs Act, 1962, Shri Bharat R. Manek, proprietor of Yogi Electronics:

(i) confirmed that excel sheets (i) MM CM PACKING LIST FOR 2018 12 04 TOTAL 1446 CTNS.xls (ii) sagar INQUERY FOR 2018 12 04 TOTAL 1446 CTNS.xls, were the actual & detailed packing list and work sheet, respectively for the goods imported vide Bill of Entry No. 9327388 dated 19.12.2018. He further added that the unit price of each of the items shown in the excel sheet 'sagar INQUERY FOR 2018 12 04 TOTAL 1446 CTNS.xls" were correct, however the currency of the unit price is either in RMB (Renminbi) or USD (US Dollar).

(ii) submitted a self-certified, unit price wise & currency-wise detailed invoice-cum-packing list having no. 2018 10 30 dated 23.11.2018, where actual values of the said goods imported under the Bill of Entry No. 9327388 dated 19.12.2018 were mentioned. The first page of the said self-



certified, unit price wise & currency-wise detailed invoice-cum-packing list having No. 2018 10 30 dated 23.11.2018 is depicted as Image-VI in the SCN. On comparison of Image-V and Image-VI of the SCN, it appeared that the self-certified, unit price wise & currency-wise detailed invoice-cum-packing list submitted by Shri Bharat R. Manek was nothing but a revised form of the corresponding excel sheet "sagar INQUERY FOR 2018 12 04 TOTAL 1446 CTNS.x1x" showing No. of pieces in proper column and value in RMB / USD, which were otherwise shown cryptically in the original excel sheet in codes as RAMBHAI / UMESH.

(iii) On being asked about the content and purpose of the excel files at Table-III above, he stated that these were the actual and detailed packing lists and inquiry lists/ work sheets for the goods imported vide various Bills of Entry by their firms, viz. M/s. Yogi Electronics, M/s. Yosha Corporation, M/s. Gnanyagna Trading Co. and M/s. Akshar inc. He confirmed that the excel sheets were similar to the detailed packing list and inquiry list/ work sheet of the Bill of Entry No. 9327388 dated 19.12.2018 corresponding to the excel files namely (i) "MM CM PACKNG LIST FOR 2018 12 04 TOTAL 1446 CTNS.xls" (ii) "sagar INQUERY FOR 2018 12 04 TOTAL 1446 CTNS.x1s".

(iv) provided the details of the complete Bills of Entry against the excel files mentioned at Table-III above and submitted a list as 'Annexure-A' to the statement dated 27.08.2021 having detailed description of the imported goods at Column '7' of the said Annexure-A and confirmed that the packing lists and inquiry list/ work sheet as mentioned at Column 'B' of the Table-IV above were related to the corresponding Bills of Entry & its date as shown at Column 'E' and 'F' of the said Table-IV pertaining to importer M/s. Yogi Electronics.

**20.4** From the investigation it can be inferred that the inquiry lists / work sheets and packing lists, which were retrieved during forensic examination of their computers, were the actual packing lists of import and corresponded to the Bills of Entry as detailed in above Table-VI and statements of Shri Bharat R. Manek has confirmed the same. This fact states that the importer had two type of invoices, one original invoice which has been retrieved from above said forensic analysis and other invoice was used by them to file the bill of entry with vague/complex description. In view of the above, it can be inferred that importer had prepared the import invoices and packing lists in their own office and cleared the goods against these invoices and packing lists. This indicates a well-planned conspiracy on the part of Shri Bharat R. Manek and others to illegally import the said goods as well as to evade payment of full Customs duty. Further, the difference of the actual amount to be paid to the supplier and the value shown in the commercial invoices of the said Bills of Entry as show at Table-VI above were sent abroad through illegal means by them.

**20.5** I find that the currency of the said goods was mentioned in codes (RAMBHAI for RMB and UMESH for USD) in the said inquiry list/ worksheet. Other details viz. number of cartons, total amount in RMB plus USD, other costs incurred up to landing of the goods at Nhava Sheva port (except insurance charges) were also mentioned in the said Inquiry list/ worksheet.

**20.6** In their written submissions, the noticees raised objections regarding the search and forensic proceedings. However, they failed to provide any supporting evidence for these claims. As an apparent afterthought, the noticees also requested to be examined under Section 138B of the Customs Act, asserting that their statements were made under coercion. I find no merit in this assertion, particularly as the statements in question merely confirmed that the Excel sheets (retrieved during forensic analysis from laptops/computers) related to their previous consignments, which had already been duly correlated by the investigating agency. Hence, these allegations are only afterthoughts to counteract the incriminating evidence uncovered through lawful and thorough investigative procedures and to create doubt about voluntarily made admissions that have already been validated through corroborative material recovered during the investigation.

**20.7** Furthermore, the noticees argued that the conditions outlined in Sub-section (2) of Section 138C of the Customs Act, 1962 must be fulfilled before the printouts obtained from specific phones



and computers can be admitted as evidence. However, it is observed that Shri Bharat R. Manek, Proprietor of M/s. Yogi Electronics, has already acknowledged in statements recorded under Section 108 of the Customs Act, 1962 that the Excel sheets in question relate to their previously imported consignments. Moreover, the noticee has not, at any point in the written submissions, denied that the said Excel sheets pertain to their consignments or claimed that they belong to any third party. A similar pattern is evident in the consignment imported under Bill of Entry No. 9327388 dated 19.12.2018 by M/s. Yosha Corporation, where the goods discovered during examination matched the Excel sheets recovered from their laptops/computers, rather than the items declared in the bill of entry. I rely on the case "Laxmi Enterprises Vs. C C (preventive)", wherein, it is held that:

*"11. The appellant has raised objections to the admissibility of the documents recovered from the laptop. They have cited the provisions of Section 138C of the Customs Act. We find such objections without basis in as much as the truth of the documents printed-out from the laptop has been admitted by Shri Sumit Chawla son of the proprietor in clear terms. Further, their clear admission by him that these invoices recovered, reflect the correct valuation at which the transaction was concluded with the valuation supplier. Further the appellant was given an opportunity to prove the correct transaction value of the goods imported under 32 bills of entry by providing bank attested genuine invoices but Shri Sumit Chawla did not make same available. On the other hand, in his statement dated 19.01.2016, that the prices indicated in the invoices/commercial invoices could be taken for assessment of all past imports as the rate of product did not change much during period of imports. We are of the view that there is no infirmity on the part of the adjudicating authority in re-determining the value of the past imported goods on the basis of such invoices. In the peculiar facts and circumstances of the present case, there is no need for the Revenue to collect evidence in the form of contemporaneous imports."*

**20.8** Further, it is evident that the goods imported under the seven Bills of Entry filed by M/s. Yogi Electronics correspond to those listed in the Excel sheets referenced in Table-IV above, rather than to the descriptions provided in the Bills of Entry. During the investigation, it was observed that the noticee deliberately used generic or vague product descriptions, leading to the misclassification of goods with the likely intent of avoiding applicable duties and circumventing mandatory compliance obligations. Based on the actual product descriptions in the Excel sheets, the goods are correctly classifiable under the CTI specified in Annexure-I and Annexure-II of the Show Cause Notice.

**20.9** In view of the above, I find that:

- (i) M/s. Yogi Electronics have deliberately put generic descriptions/ vague descriptions of the said imported electronic goods and parts in the import documents in order to grossly mis-declare their actual goods in terms of quantity and value and also to facilitate clearance of the undeclared goods which are otherwise not allowed to be imported, as the said goods were not in compliance of the mandatory BIS provisions applicable on the said imported goods.
- (ii) the currency of the said goods was mentioned in codes (RAMBHAI for RMB and UMESH for USD) in the said inquiry list/ worksheet. Other details viz. number of cartons, total amount in RMB plus USD, other costs incurred up to landing of the goods at Nhava Sheva port (except insurance charges) were also mentioned in the said Inquiry list/ worksheet.
- (iii) the invoices presented during the assessment of the consignment imported vide the Bill of Entry mentioned at Table-VI above, were false and incorrect and the actual invoice/packing list was as detailed in excel sheet mentioned in column 'B' of the Table- IV above.
- (iv) M/s. Yogi Electronics mis-classified the goods under generic descriptions/ vague descriptions of the said imported electronic goods and same are rightly classifiable under CTI as detailed in Annexure-I and Annexure-II of the SCN.



**20.10** In view of the above, I hold that the invoices presented during the assessment of the consignment imported vide the Bills of Entry mentioned at Table-VI above, are false and incorrect in violation of Rule 11 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and correct invoice/packing list is as per the excel sheets as mentioned in Table-IV above and the impugned goods are classifiable as shown in the 'Annexure-I' and 'Annexure II' to the Show Cause Notice.

**21. Whether the correct transaction value of the goods covered under the consignment imported vide the Bills of Entry as mentioned at Table-VI above, having total declared assessable value of Rs. 1,58,36,169/- (Rupees One Crore Fifty-Eight Lakh Thirty-Six Thousand One Hundred and Sixty-Nine Only) should be determined in terms of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) of CVR, 2007 to Rs. 7,73,67,773/- (Rupees Seven Crore Seventy-Three Lakh Sixty-Seven Thousand Seven Hundred Seventy-Three Only), as detailed in "Annexure-I" and "Annexure-II" to the Show Cause Notice or otherwise.**

**21.1** I find that importer has declared the assessable value of the imported goods of seven Bills of Entry as detailed in Table- VI above, however, as discussed above, the actual goods imported are as per the excel sheets mentioned in the Table-IV above, the same has been admitted by Shri Bharat R. Manek, Proprietor of M/s. Yogi Electronics in the statements recorded under section 108 of the Customs Act, 1962 and submitted detailed descriptions of the goods imported vide seven Bills of Entry. Further, I find that the currency of the said goods was mentioned in codes (RAMBHAI for RMB and UMESH for USD) in the said inquiry list/ worksheet as stated by Shri Bharat R. Manek in his statement dated 04.07.2019. Other details viz. number of cartons, total amount in RMB plus USD, other costs incurred up to landing of the goods at Nhava Sheva port (except insurance charges) were also mentioned in the said Inquiry list/ worksheet.

**21.2** In view of the above, I find that the goods imported by the import invoice as mentioned at Column 'F' corresponding to the Bill of Entry & its date at Column 'B' & 'C' respectively, at Table-VI above, are fabricated import invoices which were submitted by the importer to evade Customs duty.

**21.3** Clearly, there is abnormal difference in declared value and value declared in the excel sheets mentioned in Table-IV above. It is evident therefore that the goods were mis-declared in terms of value, hence, the same had been imported into India in contravention of provisions of Customs Act 1962. Further, the goods were mis-declared in quantity, description, CTH and value. As a result, the declared values in the Bills of Entry are unreliable and are liable to be rejected, and must be re-determined in accordance with the provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

**21.4** I find that the inquiry list / work sheet shown at Column 'C' against the corresponding Bill of Entry Date at Column 'E' & 'F' at Table-IV above, show the correct value of the said goods as against the value mentioned in the import invoices produced before the Customs Authorities at the time of clearance of the subject consignments. During his statements, Shri Bharat R. Manek, proprietor of Yogi Electronics had accepted the said fact and also stated that only the said amount was paid /payable to the supplier. Accordingly, I conclude that the value shown in the said corresponding inquiry list / work sheet is the correct transaction value of the goods imported vide the Bills of Entry as mentioned at Table VI above in terms of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) of CVR, 2007 which is to be adjusted as per the provisions of Rule 10 ibid. The Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 ('CVR, 2007' in short), stipulates that:

*Rule 3. Determination of the method of valuation.-*

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



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

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

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

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

(iii) *do not substantially affect the value of the goods;*

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

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

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

**21.5** Further, procedure for valuation of goods has been laid down under section 14 of the Customs Act, 1962. Relevant sub-section 14(1) of the same has been re-produced as follows:

**Section 14. Valuation of goods. -**

*(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:*

*Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf: .....*

**21.6** In view of the above, I find that the value shown in the said inquiry list / work sheet list is the correct "C&F value" of the goods. Further, the transportation and other charges had been given at the foot note of the Inquiry List need to be taken as pro rata basis to arrive at the C&F value as shown at Annexure III of the Show Cause Notice. In case of the Bills of Entry No. 7819410 dated 28.08.2018 and 7698186 dated 20.08.2018 (Sr. No. 1 and 2 of Annexure 'III'), the said transportation and other charges had not been shown at the foot note of the corresponding Inquiry Lists. Hence, in these cases, the transportation charges need to be taken as 20% of the FOB value of the said consignments as per the provisions of Rule 10 of CVR, 2007. Further, insurance amount @ 1.125% of the FOB value had also been added in the said CFR value to arrive at the Assessable Value as per the provisions of Rule 10 ibid. Accordingly, the value of goods has been calculated as per the Annexure-I and Annexure-II of the SCN which amounts to Rs. 7,73,67,773/- in respect of the said seven bills of entry.

**21.7** In view of the above, I hold that total declared assessable value of Rs. 1,58,36,169/- of Bills of Entry as mentioned at Table-VI above is liable to be rejected and need to be re-determined to Rs. 7,73,67,773/- in terms of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) of CVR, 2007, as detailed in "Annexure-I" and "Annexure-II" to the Show Cause Notice.



**22. Whether the differential duty of differential duty amounting to Rs. 2,22,17,760/- (Rupees Two Crore Twenty-Two Lakh Seventeen Thousand Seven Hundred and Sixty Only) as mentioned in "Annexure-I" and "Annexure-II" to the SCN, should be recovered from the importer under section 28(4) of or otherwise**

**22.1** After having determined the correct valuation of the impugned imported goods against 7 Bills of Entry, it is imperative 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 provision is as under:

*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.*

**22.2** The subject Bills of Entry as mentioned at Table-VI above, filed by Yogi Electronics, wherein they had declared the description, CTI and value of the imported goods, were self-assessed by them. However, during forensic analysis of the firm's electronic devices, it was noticed that the goods which were actually imported against the said Bill of Entry, were having different description and value. Shri Bharat R. Manek, proprietor of Yogi Electronics has accepted and admitted the same during his various statements recorded under Section 108 of the Customs Act, 1962, thereby corroborating the said documentary evidence recovered during forensic examination of the firm's electronic devices.

**22.3** In terms of Section 46(4) of the Customs Act, 1962, the importer is required to make a true and correct declaration in the Bills of Entry submitted for assessment of Customs duty. In the instant case, I find that the importer has not declared correct description, CTI and value of the goods imported against the Bills of Entry mentioned in Table-IV above, by wilfully and deliberately indulging in mis-declaration of goods in terms of description, CTI and value, only with the clear intention to evade duty.

**22.4** In view of the above, I find that the Noticee had evaded correct Customs duty by intentionally not declaring correct description, CTI and value for the imported product at the time of filing of the Bills of Entry. By resorting to this deliberate and wilful mis-classification of the goods, the Noticee has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. Thus, this wilful and deliberate act was done with the clear intention to claim ineligible lower rate of duty.

**22.5** 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, CTI, 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 importer has wilfully mis-classified the goods under wrong description, value and CTI, thereby evading payment of applicable duty resulting in a loss of Government revenue and in turn accruing monetary benefit to the importer. Since the importer has wilfully mis-declare, mis-classified and suppressed the facts with an intention to evade applicable duty, provisions of Section 28(4) are invokable in this case and the duty, so evaded, is recoverable under Section 28(4) of the Customs Act, 1962.

**22.6** I find that in the instant case, as elaborated in the foregoing paras, the Noticee had wilfully mis-declared the correct description, value and CTI for the imported goods by not declaring the same at the time of filing of the Bills of Entry. Further, to evade payment of correctly leviable duty, they mis-classified and suppressed the correct heading for the impugned goods, and also fraudulently paid lower duty. Therefore, I find that in the instant case there is an element of 'mens rea' involved. The instant case is not a simple case of bona fide mis-classification. Instead, in the instant case, the Noticee deliberately declared incorrect description, value and CTI, being fully aware of the correct chapter heading for the imported goods. Once the 'mens rea' is established on the part of the Noticee, the extended period of limitation, automatically get attracted.

**22.7** The scheme of RMS wherein the importers are given so many facilitations, also comes with responsibility of onus for truthful declaration. The description, value and CTI of the items, are the basic parameters that decides the amount of duty for the goods, which is the basis on which Customs duty is payable by any importer. However, if the importer declared the item description and picks the CTH/description of goods covered in the Bill of entry in a false manner, it definitely amounts to mis-leading the Customs Authorities, with an intent to evade payment of Customs duty leviable, on the said imported goods.

**22.8** In view of the foregoing, I find that the 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 decision of the Tribunal:-

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.*

**22.9** I find that as calculated in "Annexure-I" and "Annexure-II" to the Show Cause Notice, the differential duty amounts to Rs. 2,74,92,548/- in respect of seven bills of entry, however, the importer has already paid an amount of 52,74,788/- towards duty during clearance of the subject Bills of Entry. Accordingly, the differential duty amounting to Rs. 2,22,17,760/- (Rupees Two Crore Twenty-Two Lakh Seventeen Thousand Seven Hundred and Sixty Only) against the said 7 bills of entry is recoverable from the Noticee under extended period in terms of the provisions of Section 28(4) of the Customs Act, 1962.

**22.10** With regard the interest liability of the importer under Section 28AA of the Customs Act, 1962, I find it apt to mention the scheme of assessment and collection of duty under the Customs Act, 1962. It is settled law that duty is payable only at the point when the goods leave the Customs barrier. On importation, the importer is required to file a bill of entry for home consumption under section 46(1) of the Act. The proper officer of customs then under Section 17 of the Customs Act, 1962 inspects and examines the goods and thereafter assess them. The importer then pays the assessed duty. The proper officer then passes an order for permitting clearance for home



consumption in terms of Section 47(1) of the Customs Act. Further, Section 28 is a specific provision which confers power on the proper officer of customs to levy duty by issuance of show cause notice in those cases where duty has not been levied or has been short levied or erroneously refunded or when any interest payable has not been paid, part paid or erroneously refunded. Section 28AA provides that any person liable to pay duty under Section 28 shall also be liable to pay interest on the delayed payment of such duty. The applicable rate and conditions for interest are as prescribed from time to time by the Central Government through relevant notifications.

**22.11** Under Section 28AA of the Customs Act, 1962, the person who is liable to pay duty in accordance with the provisions of the Section 28, shall in addition to such duty, be liable to pay interest. In the case of M/s Kamat Printers Pvt. Ltd., the Hon'ble Bombay High Court observed that once duty is ascertained then by operation of law, such person in addition shall be liable to pay interest at such rate as fixed by the Board. The proper officer, therefore, in ordinary course would be bound once the duty is held to be liable to call on the party to pay interest as fixed by the Board.

**22.12** I find that the Courts in various judgments pronounced that interest payable is compensatory for failure to pay the duty. It is not penal in character in that context. The Supreme Court under the provisions of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 in Collector of C. Ex., Ahmedabad vs. Orient Fabrics Pvt. Ltd 2003 (158) E.L.T. 545 (S.C.) was pleased to observe that when the breach of the provision of the Act is penal in nature or a penalty is imposed by way of additional tax, the constitutional mandate requires a clear authority of law for imposition for the same. The Court observed that, the law on the issue of charge of interest, stands concluded and is no longer res integra. We may only gainfully refer to the judgment in India Carbon Ltd. Vs State of Assam, (1997) 6 S.C.C. 497. The Court there observed as under:

*"This proposition may be derived from the above: interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf". Therefore, once it is held that duty is due, interest on the unpaid amount of duty becomes payable by operation of law under section 28AA.*

**22.13** In case of 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.

**22.14** In view of the above, I am of the considered opinion that imposition of interest on the duty not paid, short paid is the natural consequence of the law and the importers are liable to pay the duty in respect of the said imported goods along with applicable interest.

**23. Whether the impugned goods having assessable value of Rs. 5,95,73,075/- (Rupees Five Crore Ninety-Five Lakh Seventy-Three Thousand and Seventy-Five Only) as mentioned in "Annexure-I" should be held liable for confiscation as per the provisions of Section 111(d) and 111(m) of the Customs Act, 1962 or otherwise**

**23.1** The next issue is to be decided is confiscation of the impugned goods having Assessable value of Rs. 5,95,73,075/- (Rupees Five Crore Ninety-Five Lakh Seventy-Three Thousand and Seventy-Five Only) as mentioned in "Annexure-I" should be held under Section 111(d) & 111 (m) of the Customs Act, 1962 for non-compliance of BIS provisions or not. Provisions of Section 111(d) and (m) of the Customs Act, 1962 states as under:

*Section 111. Confiscation of improperly imported goods, etc. –*

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

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



111(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.*

**23.2** I find that provision of Section 111(d) of the Customs Act, 1962 having provision of confiscation of imported goods which are “*contrary to any prohibition imposed by or under this Act or any other law for the time being in force*” and I observed that in the instant case the importer has imported the goods as detailed in Annexure-I to the SCN which do not correspond to compliance of BIS provisions. Thus, this act of importer appropriately attracts the provision of Section 111(d) of the Customs Act, 1962. I find that the confiscation of the imported goods invoking Section 111(d) is justified & sustainable.

**23.3** As the section 111(m) of the Customs Act, 1962 deals with any and all types of mis-declaration regarding any particular of entry inward, the declaration of importer herein by mis-declaration of description, value and CTI of the impugned goods, amounts to mis-declaration and shall make the goods liable to confiscation. I find that Section 111(m) provides for confiscation even in cases where goods do not correspond in respect of any other particulars in respect of which the entry made under this act. I have to restrict myself only to examine the words “in respect any other particular with the entry made under this act” would also cover case of mis-declaration of the description, value and CTI. As this act has resulted in short levy and short payment of duty, I find that the confiscation of the imported goods invoking Section 111(m) is justified & sustainable.

**23.4** In view of above discussion, I find that the imported goods are undervalued, misclassified and non-compliance of BIS provisions, which have rendered the goods liable for confiscation under Section 111(d) and Section 111(m) of the Customs Act, 1962.

**23.5** I further find that Section 17(1) of the Customs Act, 1962 provides that “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”. Therefore, the responsibility to correctly assess duty has been cast on the importer. The government has thus placed huge reliance on the self-assessment made by the importer. Further, in terms of Section 46(4) of the said Act, the importers were required to make declaration as regards the truth of contents of the Bill of Entry submitted for assessment of Customs duty but they have contravened the provisions of Section 46(4) in as much as they have mis-declared, undervalued and mis-classified the imported goods knowingly and intentionally to evade payment of Customs duty. Thus, once the breach occurs, this attracts Section 111 of the Customs Act, 1962, so the goods covered under the impugned bills of entry imported by the noticee, as detailed in Annexure-I to the notice, are liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962.

**23.6** I find that once goods liable to confiscation under Section 111, their physical availability does not have significance on imposition of redemption fine under Section 125 of the Act. Therefore, redemption fine in lieu of confiscation needs to be imposed even if the imported goods are not available. In this regard, I rely on the judgment of M/s Visteon Automotive Systems India Limited reported as 2018 (9) G.S.T.L A2 (Mad.) wherein the Hon'ble High Court of Madras has held that:

*"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 regularized, 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 operating words of Section 125, "Whenever confiscation of any goods is authorized by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization 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....."*

**23.7** 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.).

**23.8** 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.

**23.9** 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.

**23.10** Accordingly, I find that the impugned goods as detailed in Annexure-I of the SCN having declared value of Rs. 5,95,73,075/- (Rupees Five Crore Ninety-Five Lakh Seventy-Three Thousand and Seventy-Five Only), are liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962. Consequently, I hold that redemption fine is imposable on goods imported vide Bills of Entry as mentioned in Annexure-I of the SCN (having held them liable to confiscation).

**24. Whether the remaining impugned goods having assessable value of Rs. 1,77,94,698/- (Rupees One Crore Seventy-Seven Lakh Ninety-Four Thousand Six Hundred and Ninety-Eight Only) as mentioned at "Annexure-II" should be held liable for confiscation as per the provisions of Section 111 (m) of the Customs Act, 1962 or otherwise**

**24.1** The next issue is to be decided is confiscation of the impugned goods having Assessable value of Rs. 1,77,94,698/- (Rupees One Crore Seventy-Seven Lakh Ninety-Four Thousand Six Hundred and Ninety-Eight Only) as mentioned in "Annexure-II" to the SCN should be held under Section 111 (m) of the Customs Act, 1962 for non-compliance of BIS provisions or not.

**24.2** As the section 111(m) of the Customs Act, 1962 deals with any and all types of mis-declaration regarding any particular of entry inward, the declaration of importer herein by mis-declaration of description, value and CTI of the impugned goods, amounts to mis-declaration and shall make the goods liable to confiscation. I find that Section 111(m) provides for confiscation even in cases where goods do not correspond in respect of any other particulars in respect of which the entry made under this act. I have to restrict myself only to examine the words "in respect any other particular with the entry made under this act" would also cover case of mis-declaration of the description, value and CTI. As this act has resulted in short levy and short payment of duty, I find that the confiscation of the imported goods as mentioned in "Annexure-II" to the SCN invoking Section 111(m) is justified & sustainable.



**24.3** In view of above discussion, I find that the imported goods are undervalued, misclassified and mis-declared, which have rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

**24.4** I further find that Section 17(1) of the Customs Act, 1962 provides that “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”. Therefore, the responsibility to correctly assess duty has been cast on the importer. The government has thus placed huge reliance on the self-assessment made by the importer. Further, in terms of Section 46(4) of the said Act, the importers were required to make declaration as regards the truth of contents of the Bill of Entry submitted for assessment of Customs duty but they have contravened the provisions of Section 46(4) in as much as they have mis-declared, undervalued and mis-classified the imported goods knowingly and intentionally to evade payment of Customs duty. Thus, once the breach occurs, this attracts Section 111 of the Customs Act, 1962, so the goods covered under the impugned bills of entry, as detailed in Annexure-II to the notice, are liable for confiscation under Section 111(m) of the Customs Act, 1962.

**24.5** I find that once goods liable to confiscation under Section 111, their physical availability does not have significance on imposition of redemption fine under Section 125 of the Act. Therefore, redemption fine in lieu of confiscation needs to be imposed even if the imported goods are not available. In this regard, I rely on the judgment of M/s Visteon Automotive Systems India Limited reported as 2018 (9) G.S.T.L A2 (Mad.) wherein the Hon'ble High Court of Madras has held that:

*"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 regularized, 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 operating words of Section 125, "Whenever confiscation of any goods is authorized by this Act....", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization 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....."*

**24.6** 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.).

**24.7** 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.

**24.8** 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.

**24.9** Accordingly, I find that the impugned goods as detailed in Annexure-II of the SCN having declared value of Rs. 1,77,94,698/- (Rupees One Crore Seventy-Seven Lakh Ninety-Four Thousand Six Hundred and Ninety-Eight Only), are liable for confiscation under Section 111(m) of the Customs Act, 1962. Consequently, I hold that redemption fine is imposable on goods imported vide Bills of Entry as mentioned in Annexure-II of the SCN (having held them liable to confiscation).

**25. Whether penalty should be imposed on M/s. Yogi Electronics under Section 112(a) and /or 114A and 114AA of the Customs Act, 1962, on Shri Bharat R. Manek, Proprietor of M/s Yogi Electronics under Section 114AA of the Customs Act, 1962, on Shri Chetan R. Manek, Partner of M/s. Yosha Corporation under Section 112(a) and 114AA of the Customs Act, 1962 and on M/s. S.K.D. Shipping & Forwarding Pvt. Ltd. under Section 112(a) of the Customs Act, 1962 or otherwise.**

**25.1** Regarding the issue of imposition of penalty, it is appropriate to reproduce the provisions of Section 112, 114A and 114AA as under:

***Section 112 (Penalty for improper importation of goods etc.) reads as:***

*"Any person,-*

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

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

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

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

***Section 114A. Penalty for short-levy or non-levy of duty in certain cases.***

*Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any 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:*

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

***[Section 114AA. Penalty for use of false and incorrect material. -***

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

**25.2** 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. In the instant case, the importer has mis-declared the subject goods in terms of description, value and CTI. Consequently, the importer has paid less duty and cleared the goods without BIS compliances. By non-payment of applicable duty on the subject goods, which tantamount to suppression of material facts and willful mis-statement. The 'mens rea' can be deciphered clearly from '*actus Reus*' and in the instant case, I find that the importer is an entity of repute and thus providing wrong information/declaration in the various documents filed with the Customs and thereby, claiming undue benefit by not paying the applicable duty thereon, amply points towards their '*mens rea*' to evade the payment of duty. Thus, I find that the demand of differential IGST duty is rightly invoked in the present case by invoking Section 28(4) of the Customs Act, 1962. Taking all the issues relating to the subject imports into account and in view of my findings that goods were mis-declared in the fashion discussed above, I find that the importer by his acts of omission have rendered the goods liable for confiscation and thus made themselves liable for penalty under Section 114A of the Customs Act, 1962. Further in terms of proviso to 114A, once penalty under section 114A has been imposed, no penalty can be imposed under section 112. Thus, the penalty under Section 112 has to be dropped.

**25.3** Further, in the instant case, there is mens rea on the part of the importer, M/s. Yogi Electronics to evade customs duty and applicable BIS compliances by suppressing correct description, value and CTI of goods and clear the goods against the 7 bills of entry under false/incorrect invoice/packing list. The aforesaid acts of omission and commission of the importer resulted in use of false and incorrect declaration in the clearance of goods, hence, the importer is also liable for penal action under Section 114AA *ibid*.

**25.4** I find that in the SCN, it is proposed to impose penalty on M/s. Yogi Electronics and Shri Bharat R. Manek, Proprietor of M/s Yogi Electronics under Section 112(a) and 114AA of the Customs Act, 1962, however, being a proprietorship firm, M/s. Yogi Electronics and Shri Bharat R. Manek are to be considered as single entity, hence, penalty under section 112(a) and 114AA can be imposed on either M/s Yogi Electronics or Shri Bharat R. Manek, not on both. In respect of this, I rely on the case Anil Kumar Mahensaria vs. Commisioner of Customs reported at 2008 (228) ELT 166(Del), wherein Hon'ble Delhi High Court has held that only one set of penalty can be imposed either on the proprietor or proprietorship firm.

**25.5** I find that Shri Chetan R. Manek, during his statement, had stated that he used to look after the collection of cheque/ cash from the local buyers and sending the remittance to the overseas suppliers. He further confirmed that the invoice-cum-packing list submitted by his elder brother, Shri Bharat R. Manek during his statement as mentioned in para-4 above, showed the correct description, quantity and actual value of the imported goods under the Bill of Entry No. 9327388 dated 19.12.2018. He also stated that actual amount shown in the said invoice-cum-packing list was to be paid to the supplier. Therefore, it can be inferred that Shri Chetan R. Manek was also well aware of such kind of manipulation in the import documents, as he was responsible for collection of payments from the local buyers and also for the overseas payment of remittance, it indicates that the difference of amount actually to be paid to the overseas supplier and the remittance made as per the import documents were sent by him through illegal channels. Hence, he was actively aided and abetted in the import of goods under the Bills of Entry mentioned at Table-VI above as the said consignments were also imported on the same *modus-operandi*. Such aiding and abetting clearly point out the mens-rea on the part of Shri Chetan R. Manek. His acts of such omission and commission had rendered the goods liable for confiscation under Section 111(d) and Section 111(m) of the Customs, Act, 1962. Therefore, he is liable for imposition of penalty under Section 112(a) of the Customs Act, 1962.



**25.6** Further, in the instant case, as discussed above, there is mens-rea on the part of the Shri Chetan R. Manek to evade customs duty and applicable BIS compliances by suppressing correct description, value and CTI of goods and cleared the goods against the 7 bills of entry under false/incorrect invoice/packing list. The aforementioned acts and omission and commission led to the submission of false and inaccurate declarations during the clearance of goods. Consequently, Shri Chetan R. Manek, partner of M/s. Yosha Corporation, who played an active role in manipulating the import documentation, is liable for penal action under Section 114AA of the Customs Act.

**25.7** Further, I find that in the SCN, it is proposed to imposed penalty on Customs Broker M/s. S.K.D. Shipping & Forwarding Pvt. Ltd. under Section 112(a) of the Customs Act, 1962. From the provisions of Section 112, there can be no doubt that a 'Customs Broker' can be penalised under Section 112 of Customs Act, 1962 but that penalty must follow a finding that an act of omission or commission on the part of 'Customs broker' rendered the goods liable for confiscation under the section 111(d) & 111(m) of the Act. I find that there are no findings in the SCN to justify that the customs broker M/s. S.K.D. Shipping & Forwarding Pvt. Ltd. did or omit to do any act or abet the doing of any act which rendered the said goods liable for confiscation under the section 111(d) & 111(m) of the Act. Further, during investigation, no corroborative evidences, oral or written, have been found to substantiate or establish the fact that the C.B. was involved in this case.

**25.7.1** Merely for the reason that the M/s. S.K.D. Shipping & Forwarding Pvt. Ltd. discharged duty as a Custom Broker in the matter of import of the said goods, will not entail penalties without establishing that the respondent CB played an active role in the offences of knowingly assisting in the import of the impugned goods. No evidence in the form of any statements adduced to prove any omission or commission on the part of CB which rendered the goods liable for confiscation under Section 111(d) & 111(m) of the Act. Further, I note that being a Customs Broker did not have any wherewithal to verify the genuineness or authenticity of the imported goods and the importer mis-declared the goods to evade applicable duty and circumvent the policy violations. Neither the Customs Broking Licensing Regulations, 2013/2018 nor any other provisions require the respondent as a Customs Broker to establish the genuineness of the goods imported, before using/filing the declarations of importer for Customs clearance of the goods.

**25.7.2** There is nothing on record to show that the CB had knowingly or intentionally mis-declared, mis-stated or made any false or incorrect details in any of the documents in respect of the said import consignment. The CB has filed the Bill of Entry on the basis of documents received from the importer. I find that there is no statement from any of the persons involved in clearance of goods attributing any role to CB. In view of the above, I find that it is not legal and proper to impose penalty on the CB, under Section 112 of the Customs Act, 1962.

**25.7.3** Vide Advisory No. 1/2022-INCH dated 02.12.2022, it is advised that the practice of routinely proposing penal provision under the Customs Act, 1962 against Customs Brokers should be avoided. Further, I find that no evidence has been produced in the SCN that customs broker was aware of or involved in this mis-declaration in terms of value, description and CTI. In view of the above, I do not find any merit in imposing the penalty on customs broker M/s. S.K.D. Shipping & Forwarding Pvt. Ltd. under Section 112(a) of the Customs Act, 1962.

**26.** In view of the above discussions, I pass the following order:

#### **ORDER**

- (i) I reject the classification of goods imported vide 7 Bills of Entry as mentioned in the Table-VI above and order to be re-classified them under correct CTH with correct description as shown in the 'Annexure-I' and 'Annexure II'.



- (ii) I reject the declared value of the goods covered under the consignment (as detailed in "Annexure-I" and "Annexure-II" to the SCN) imported vide 7 Bills of Entry as mentioned in the Table-VI above, under Rule 12 of CVR, 2007 and order to re-determine the assessable value amounting to Rs. 7,73,67,773/- (Rupees Seven Crore Seventy-Three Lakh Sixty-Seven Thousand Seven Hundred Seventy-Three Only) as detailed in "Annexure-I" and "Annexure-II" to the SCN in terms of Section 14 (1) of the Customs Act, 1962 read with Rule 3 (1) of CVR, 2007.
- (iii) I confirm the demand of differential duty amounting to **Rs. 2,22,17,760/- (Rupees Two Crore Twenty-Two Lakh Seventeen Thousand Seven Hundred and Sixty Only)** under Section 28(4) along with applicable interest under Section 28AA of the Customs Act, 1962 and order to recover the same from the importer M/s Yogi Electronics.
- (iv) I order to confiscate the imported goods having assessable value of Rs. 5,95,73,075/- (Rupees Five Crore Ninety-Five Lakh Seventy-Three Thousand and Seventy-Five Only) as mentioned in "Annexure-I" under Section 111(d) & 111(m) of the Customs Act, 1962, even though the goods are not available for confiscation. However, I give an option to the importer to redeem these goods on payment of redemption fine of **Rs. 50,00,000/- (Rupees Fifty Lakhs Only)** under Section 125 of the Customs Act, 1962.
- (v) I order to confiscate the imported goods having assessable value of Rs. 1,77,94,698/- (Rupees One Crore Seventy-Seven Lakh Ninety-Four Thousand Six Hundred and Ninety-Eight Only) as mentioned in "Annexure-II" under Section 111(m) of the Customs Act, 1962, even though the goods are not available for confiscation. However, I give an option to the importer to redeem these goods on payment of redemption fine of **Rs. 15,00,000/- (Rupees Fifteen Lakhs Only)** under Section 125 of the Customs Act, 1962.
- (vi) I impose penalty of differential duty of **Rs. 2,22,17,760/- (Rupees Two Crore Twenty-Two Lakh Seventeen Thousand Seven Hundred and Sixty Only)** along with **applicable interest under Section 28AA of the Customs Act, 1962**, on M/s Yogi Electronics, under section 114A of the Customs Act, 1962.
- (vii) I refrain from imposing any penalty under Section 112(a) of the Customs Act, 1962 on the importer M/s Yogi Electronics as discussed above.
- (viii) I impose a penalty of **Rs. 50,00,000 /- (Rupees Fifty Lakhs Only)** under Section 114AA of Customs Act, 1962, on the importer M/s Yogi Electronics, for the reason aforesaid.
- (ix) I refrain from imposing any penalty under Section 112(a) and 114AA of the Customs Act, 1962 on the importer Shri Bharat R. Manek, Proprietor of M/s Yogi Electronics as discussed above.
- (x) I impose a penalty of **Rs. 10,00,000 /- (Rupees Ten Lakhs Only)** under Section 112(a) of Customs Act, 1962, on the importer Shri Chetan R. Manek, partner of M/s. Yosha Corporation, for the reason aforesaid.
- (xi) I impose a penalty of **Rs. 10,00,000 /- (Rupees Ten Lakhs Only)** under Section 114AA of Customs Act, 1962, on the importer Shri Chetan R. Manek, partner of M/s. Yosha Corporation, for the reason aforesaid.
- (xii) I refrain from imposing any penalty under Section 112(a) of the Customs Act, 1962 on the customs broker M/s. S.K.D. Shipping & Forwarding Pvt. Ltd. as discussed above.



27. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved under the provisions of the Customs Act, 1962, and/or other law for the time being in force in the Republic of India.



(ANIL RAMTEKE)

Commissioner of Customs (NS-V),  
JNCH, Nhava Sheva

To,

1. M/s. Yogi Electronics,  
6 Govardhan Building, 2<sup>nd</sup> Floor,  
Proctor Road, Grant Road (E), Mumbai – 400 007,  
Email ID- info@yogiele.com
2. Shri Bharat R. Manek,  
Proprietor of Yogi Electronics  
6 Govardhan Building, 2<sup>nd</sup> Floor,  
Proctor Road, Grant Road (E),  
Mumbai – 400 007
3. Shri Chetan R. Manek,  
Partner of M/s. Yosha Corporation,  
2, 3<sup>rd</sup> Floor, Plot No. 6, Govardhan Building,  
V.A. Patel Marg, Grant Road (E),  
Mumbai – 400 007
4. M/s. S.K.D. Shipping & Forwarding Pvt. Ltd. (CB No. 11/980),  
301, Kesar Plaza, Plot No. 239,  
Charkop Market, Above Noble Chemist,  
Kandivali (West), Mumbai – 400 067

**Copy to :-**

1. The Addl. Commissioner of Customs, Group VA, JNCH, Nhava Sheva, Mumbai-II.
2. The Addl. Director General, DRI, MZU, Mumbai.
3. The AC/DC (Review Cell), Chief Commissioner's Office, JNCH.
4. The AC/DC, Centralized Revenue Recovery Cell, JNCH.
5. Supdt.(P), CHS Section, JNCH – For display on JNCH Notice Board.
6. The AC/DC, CAC, JNCH.
7. Office Copy.



