



सीमा शुल्क आयुक्त का कार्यालय, एनएस-III
OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-III
केंद्रीकृत अधिनिर्णयन प्रकोष्ठ, जवाहरलाल नेहरू सीमा शुल्क भवन
CENTRALIZED ADJUDICATION CELL, JAWAHARLAL NEHRU CUSTOM HOUSE,
न्हावा शेवा, तालुका-उरण, जिला- रायगढ़, महाराष्ट्र -400 707
NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA-400707

File No S/10-134/2024-25/Commr/Gr.III/NS-III/CAC/JNCH

Date:- #approval date

SCN No. 1373/2024-25/Commr/NS-III/Gr.III/CAC/JNCH dated 12.11.2024

DIN	:	20250778NX000000A3AC
	आदेश की तिथि	: 25.07.2025
	Date of Order	
	जारी किए जाने की तिथि	: 28.07.2025
	Date of Issue	
आदेश सं. Order No.	:	138 /2025-26/आयुक्त/एनएस-III/ सीएसी/जेएनसीएच 138/2025-26/Commr./NS-III /CAC/JNCH
पारितकर्ता Passed by		श्री विजय रिशी SH. VIJAY RISI : आयुक्त, सीमाशुल्क (एनएस-3), जेएनसीएच, न्हावा शेवा Commissioner of Customs (NS-III), JNCH, Nhava Sheva
पक्षकार (पार्टी)/ नोटिसी का नाम Name of Party/ Noticee	:	मेसर्स के सी इम्पेक्स M/s. K.C. Impex

मूलआदेश

ORDER-IN-ORIGINAL

- इस आदेश की मूल प्रति की प्रतिलिपि जिस व्यक्तिको जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।
The copy of this order in original is granted free of charge for the use of the person to whom it is issued.
- इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम १९६२ की धारा १२९(ए) (के तहत इस आदेश के विरुद्ध सी ई एस टी ए टी, पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट रीज़नल बेंच), ३४, पी .डी .मेलोरोड, मस्जिद (पूर्व), मुंबई- ४०० ००९ को अपील कर सकता है, जो उक्तअधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।
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.
- अपील दाखिल करने संबंधी मुख्य मुद्दे:-
Main points in relation to filing an appeal:-

फार्म Form	:	फार्म न .सीए ३, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कमसे कम एक प्रति प्रमाणित होनी चाहिए)
		Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy)
समय सीमा Time Limit	:	इस आदेश की सूचना की तारीख से ३ महीने के भीतर
		Within 3 months from the date of communication of this order.
फीस Fee	:	(क) एक हजार रुपये-जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५ लाख रुपये या उस से कम है। (a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less. (ख) पाँच हजार रुपये- जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५ लाख रुपये से अधिक परंतु ५० लाख रुपये 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 (ग) दस हजार रुपये-जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५० लाख रुपये से अधिक है। (c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.
भुगतान की रीति Mode of Payment	:	क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीयकृत बैंक द्वारा सहायक रजिस्ट्रार, सी ई एस टी ए टी, मुंबई के पक्षमें जारी किया गया हो तथा मुंबई में देय हो। A crossed Bank draft, in favour of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.
सामान्य General	:	विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क अधिनियम, १९९२, सीमाशुल्क (अपील) नियम, १९८२ सीमाशुल्क, उत्पादन शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, १९८२ का संदर्भ लिया जाए। 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.

4. इस आदेश के विरुद्ध अपील करने के लिए इच्छुक व्यक्ति अपील अनिर्णीत रहने तक उस में माँगे गये शुल्क अथवा उद्गृहीत शास्ति का ७.५ % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमाशुल्क अधिनियम, १९६२ की धारा १२८ के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।

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 129 of the Customs Act 1962.

BRIEF FACTS

A Show Cause Notice no. 1373/2024-25/COMMR./NS-III/GR.III/CAC/JNCH dated 12.11.2024 was issued to **M/s KC Impex (IEC AVHPC0142R)** having registered address A 402 Sai Pooja Apartment, Hissa No. 18A H. No. 342, Kalamboli, Raigad, Maharashtra-410208 filed Bills of Entry No. 8998874 and 9011298 both dated 30.09.2020 through CB M/s S. Parthasarathy at Nhava Sheva for clearance of goods declared as Girl Leggings, Baby Leggings, Baby Garments Suit, etc. The supplier in both the Bills of Entry is M/s Pujiang Wang Tian Shu Import and Export Co. Ltd, China. The goods covered under the said Bills of Entry 8998874 and 9011298 both dated 30.09.2020 were examined 100% by SIIB(I) JNCH officers under Panchanama dated 03.11.2020 and 05.11.2020 respectively. The goods found during examination appeared to be mis-declared in terms of description and quantity. On the basis of discrepancies found during examination of goods covered under Bills of Entry 8998874 and 9011298 both dated 30.09.2020, the said goods were seized under Section 110(1) of the Customs Act, 1962 vide Seizure Memo dated 06.11.2020 and 09.12.2020. After due investigation a draft Show Cause Notice was forwarded to the Group III, JNCH on 22.02.2022 and accordingly a Show Cause Notice dated 18.04.2022 was issued by Deputy Commissioner of Customs, Gr. III, JNCH.

2. Further, in another case pertaining to the other firm M/s Kunkr Crystal Private Limited, Bill of Entry No. 8964661 dated 27.09.2020 was filed for import of goods from the same supplier M/s Pujiang Wang Tian Shu Import and Export Co. Ltd, China. In the said case also, Gross misdeclaration was noticed and after due investigation an Investigation Report dated 22.02.2022 was forwarded to the Group III, JNCH and accordingly a Show Cause Notice dated 18.04.2022 was issued by Deputy Commissioner of Customs, Gr. III, JNCH. Accordingly another O-in-O 1210/2022-23/ADC/Gr. III/NS-III/CAC/JNCH dated 19.01.2023 was issued by the Additional Commissioner of Customs, Gr. III, NS-III, JNCH whereby Adjudicating Authority redetermined assessable value and duty, imposed Redemption Fine, Penalty on Importing firm M/s Kunkr Crystals and Partner Shri Feroj Raj and Shri Khurshid Alam Chaudhary and appropriated security deposit of Rs 6,25,026/- and Differential duty of Rs 25,00,103/- already paid towards Redemption Fine, Duty, Interest and Penalty. It is pertinent to mention here that both the firms M/s KC Impex and M/s Kunkr Crystal Private Limited belong to Shri Khurshid Alam Choudhary.

3.1. Summons dated 17.11.2020 was issued to Shri Khursheed Alam Choudhury, Proprietor of M/s KC Impex (IEC AVHPC0142R) whose statement was recorded under Section 108 of the Customs Act, 1962 on 17.11.2020 wherein he inter alia stated that:

- i. He is the Proprietor of M/s KC Impex and partner in M/s Kunkr Crystal.
- ii. He admitted of mis-declaration in both the B/E Nos. 8998874 and 9011298 both dated 30.09.2020, presented by M/s KC Impex. He is operating M/s KC Impex since 2019.
- iii. He is the owner of the imported goods. He takes advances from the market.
- iv. His customers directly pay to Chinese supplier.
- v. He further stated that the customers pay money in his account and he transfers the money to the Chinese Supplier through bank.
- vi. He does not have contract for the supplies. That he used to Co-ordinate with the foreign supplier on We-chat.
- vii. He regretted for the mis-declaration and requested the department to take lenient view.

3.2. In the other case of M/s Kunkr Crystal Private Limited, Summons dated 06.10.2020 was issued to Shri Feroj Raj for statement and his statement was recorded under Section 108 of the Customs Act, 1962 wherein he inter alia stated that:

- i. He and Shri Khursheed Alam Choudhary both have worked at Chindia Mall, Panvel. There they met with one Chinese national Mr. Shuang Wang, who advised them to open import firms and import goods from China.

ii. He and Shri Khurshed Choudhary and the Chinese national Mr. Wang, opened three different companies namely M/s Kunkr Crystal Pvt Ltd, M/s Shuang Wang Pvt Ltd and M/s Armsha.

iii. R & I, JNCH booked a case of mis-declaration against M/s Armsha. After that they stopped using M/s Armsha to avoid further detection.

iv. In 2019, they activated M/s Kunkr Crystal Private Limited and started import at Nhava Sheva. The Chinese supplier is related to Mr. Shuang Wang.

v. He along with Mr. Khursheed Alam Chaudhary are Directors of M/s Kunkr Crystal Private Limited.

vi. They used to declare **40% of the real import price** in the B/E. The same declared value is sent to Chinese Supplier via banking Channel. The domestic buyers are also arranged by Mr. Wang himself and the rest of the 60% amount is directly paid to Mr. Wang by domestic buyers or by them through cash. **The same modus operandi is followed for all the Bill of Entry filed by M/s Kunkr Crystal Pvt Ltd and M/s KC Impex.**

vii. He knows the difference between Legging and Plazo. Legging come under HSN6115 and Plazo come in different HSN code having higher rate of duty. To evade Customs duty, they declare plazo as leggings.

viii. Their Chinese partner makes invoice by undervaluing.

3.3. In the other case of M/s Kunkr Crystal Private Limited, Summons dated 06.10.2020 was issued to Shri Khurshid Alam Choudhary, Partner at M/s Kunkr Crystal Private Limited and his statement was recorded on 07.10.2020, wherein he inter-alia stated that:

i. He met Shri Feros Raj in 2017 at Chindia Mall, Panvel. There, they also met Mr. Shuang Wang, one Chinese national who advised them to create importing firms in their names.

ii. He applied for IEC in 2019 in the name of M/s KC Impex and started importing glass beads from Chinese supplier, which in turn is related to Mr. Wang.

iii. He is Proprietor in M/s KC Impex.

iv. They used to **declare 40% of the real import price in the B/E**. The same declared value is sent to Chinese Supplier via banking Channel. The domestic buyers are also arranged by Mr. Wang himself and the rest of the 60% amount is directly paid to Mr. Wang by domestic buyers or by them through cash. **The same modus operandi is followed for all the Bill of Entry filed by M/s Kunkr Crystal Pvt Ltd and M/s KC Impex.**

3.4. Summons dated 27.01.2022 were issued to CB M/s S. Parthasarthy, who had filed the said Bills of Entry 8998874 and 9011298 both dated 30.09.2020. Statement of Shri Venugopal Shetty, Power of Attorney holder in CB M/s S. Parthasarthy was recorded on 03.02.2022 under Section 108 of the Customs Act, 1962 wherein he inter alia stated that:

i. He is Power of Attorney holder in C.B. M/s S. Parthasarthy.

ii. His role is to supervise and administration of all work of their C.B. M/s S. Parthasarthy.

iii. He accepted the mis-declaration i.r.o. description and quantity of the goods.

iv. Forwarder M/s Shree Ram Logistics gave him the work of clearance of importer M/s KC Impex. Forwarder was supposed to pay their C.B. firm Rs. 8000/- per container.

v. Their CB firm has filed a total 06 Bills of Entry of the importer including the said Bills of Entry No. 8998874 & 9011298 both dated 30.09.2021.

vi. He submitted all the KYC documents of M/s KC Impex.

vii. They did all the verification of the said Importer. The Bills of Entry were filed on the basis of the documents provided by the importer.

4. In the live Bills of Entry No. 8998874 and 9011298 both dated 27.09.2020, the importer had declared items like Glass Seed Beads, Girls leggings, Baby leggings, etc. Past Import data of M/s KC Impex was retrieved from the ICES System and it was noticed that M/s KC Impex had

imported similar items in the past Bills of Entry as well. The supplier in the past Bills of Entry too was M/s Pujiang Wang Tian Shu Import and Export Co. Ltd, China. The present SCN is regarding past Bills of Entry wherein the same Modus Operandi was adopted. The details of the said Bills of Entry are as per Annexure- I.

ANNEXURE I

Annexure - I

Sr. No	Impugned Bill of Entry	Item Description	CTH	Country of origin	Qty	Unit Value Declared / Assessed (USD) (CIF)	Assess Value	Duty	Name of C.B.
1	6277421 dtd 28.12.2019	GLASS SEED BEADS (ASSORTED COLOURS AND SIZE)	70181020	China	8796 Kgs	1.5	948648.6	157001.4	Premier Shipping Agencies (AADFP6841PCHO 07)
		GIRLS LEGGING (MADE OF SYNTHETIC FIBRES) KNITTED UNBRANDED (ASSORTED)	61152990	China	4166.66 Doz	3.6	1078498	303058.1	Premier Shipping Agencies (AADFP6841PCHO 07)
2	6324111 dtd 02.01.2020	GLASS SEED BEADS (ASSORTED COLOURS AND SIZE)	70181020	China	14502 Kgs	1.5	1564041	258848.8	Premier Shipping Agencies (AADFP6841PCHO 07)
		GIRLS LEGGING (MADE OF SYNTHETIC FIBRES) KNITTED UNBRANDED (ASSORTED)	61152990	China	833.33 DOZ	3.6	215699.14	60611.5	Premier Shipping Agencies (AADFP6841PCHO 07)
3	6776213 dtd 06.02.2020	GLASS SEED BEADS (ASSORTED COLOURS SIZE)	70181020	China	11190 Kgs	1.5	1202645	337943.4	OPMS C&F Agencies (P) Ltd. (AAACO0401CCHO 01)
		GIRLS LEGGING (MADE OF SYNTHETIC FIBRES) KNITTED UNBRANDED (ASSORTED)	61152990	China	2536 DOZ	3.6	654135.84	183812.2	OPMS C&F Agencies (P) Ltd. (AAACO0401CCHO 01)
		GARMENT ACCESSORIES	58071090	China	1762 Kgs	1.3	164121.49	39914.3	OPMS C&F Agencies (P) Ltd. (AAACO0401CCHO 01)
4	5679400 dtd 14.11.2019	GIRLS LEGGING (MADE OF SYNTHETIC FIBRES) KNITTED UNBRANDED (ASSORTED)	61152990	China	40 Doz	3.6	10368	2913.5	Micro Clearing Agency (AAIPP7083QCH 002)
5	5681468 dtd 14.11.2019	"	61152990	China	40 Doz	3.6	10368	2913.5	Micro Clearing Agency (AAIPP7083QCH 002)
6	5681987 dtd 14.11.2019	"	61152990	China	35 Doz	3.6	9072	2549.2	Micro Clearing Agency (AAIPP7083QCH 002)
7	5682734 dtd 14.11.2019	"	61152990	China	40 Doz	3.6	10368	2913.5	Micro Clearing Agency (AAIPP7083QCH 002)
8	5682789 dtd 14.11.2019	"	61152990	China	40 Doz	3.6	10368	2913.5	Micro Clearing Agency (AAIPP7083QCH 002)
9	5682790 dtd 14.11.2019	"	61152990	China	40 Doz	3.6	10368	2913.5	Micro Clearing Agency

									(AAIPP7083QCH 002)
10	5687171 dtd 15.11.2019	"	61152990	China	40 Doz	2.5	7200	2023.2	Micro Clearing Agency (AAIPP7083QCH 002)
11	5687263 dtd 15.11.2019	"	61152990	China	40 Doz	2.5	7200	2023.2	Micro Clearing Agency (AAIPP7083QCH 002)
12	5687339 dtd 15.11.2019	"	61152990	China	40 Doz	3.6	10368	2913.5	Micro Clearing Agency (AAIPP7083QCH 002)
13	5689434 dtd 15.11.2019	"	61152990	China	40 Doz	2.5	7200	2023.2	Micro Clearing Agency (AAIPP7083QCH 002)
14	7594114 dtd 05.05.2020	"	61152990	China	6739.25 DOZ	3.6	1883890	529373.1	S. Parthasarathy (AFXPP8270KCH 002)
15	7977161 dtd 22.06.2020	"	61152990	China	6748.25 DOZ	2.44	1269516	356734.1	S. Parthasarathy (AFXPP8270KCH 002)
16	8279953 dtd 25.07.2020	GIRLS LEGGING (MADE OF SYNTHETIC FIBRES) KNITTED UNBRANDED(ASORTED)	61152990	China	5174 DOZ	3.6	1417469	398308.8	S. Parthasarathy (AFXPP8270KCH 002)
		BABY LEGGING (MADE OF SYNTHETIC FIBRES) ASSORTED KNITTED UNBRANDED	61152990	China	1918 Doz	2.5	364899.5	102536.8	S. Parthasarathy (AFXPP8270KCH 002)
17	8468801 dtd 13.08.2020	GIRLS LEGGING (MADE OF SYNTHETIC FIBRES) KNITTED UNBRANDED(ASORTED)	61152990	China	3750 DOZ	3.6	1022625	287357.6	S. Parthasarathy (AFXPP8270KCH 002)
		BABY LEGGING (MADE OF SYNTHETIC FIBRES) ASSORTED KNITTED UNBRANDED	61152990	China	1751.5 Doz	2.5	331690.31	93205	S. Parthasarathy (AFXPP8270KCH 002)
		PU MEN JACKET (WITH ZIPPER & WITH HUD CASUAL WEAR) WOVEN UNBRANDED	62104090	China	3000 Pcs	2.5	568125	233156.3	S. Parthasarathy (AFXPP8270KCH 002)
18	8672288 dtd 02.09.2020	GIRLS LEGGING (MADE OF SYNTHETIC FIBRES) KNITTED UNBRANDED(ASORTED)	61152990	China	4209.16 6667 DOZ	3.6	1150112.7	323181.7	S. Parthasarathy (AFXPP8270KCH 002)
		BABY LEGGING (MADE OF SYNTHETIC FIBRES) ASSORTED KNITTED UNBRANDED	61152990	China	2508.33 333 Doz	2.5	475956.25	133743.7	S. Parthasarathy (AFXPP8270KCH 002)

15	8781281 dtd 11.09.2020	GIRLS LEGGING (MADE OF SYNTHETIC FIBRES) KNITTED UNBRANDED(ASO RTED)	61152990	China	4208.66 6667 DOZ	3.6	1122703.9 2	315479.8	S. Parthasarathy (AFXPP8270KCH 002)
		BABY LEGGING (MADE OF SYNTHETIC FIBRES) ASSORTED KNITTED UNBRANDED	61152990	China	2508.33 333 Doz	2.5	464668.75	130571.9	S. Parthasarathy (AFXPP8270KCH 002)
20	8913127 dtd 23.09.2020	GIRLS LEGGING (MADE OF SYNTHETIC FIBRES) KNITTED UNBRANDED(ASO RTED)	61152990	China	1676.5 DOZ	3.6	450240.84	126517.7	S. Parthasarathy (AFXPP8270KCH 002)
		BABY LEGGING (MADE OF SYNTHETIC FIBRES) ASSORTED KNITTED UNBRANDED	61152990	China	1185.5 Doz	2.5	221095.75	62127.9	S. Parthasarathy (AFXPP8270KCH 002)
		GARMENT ACCESSORIES BUTTON	96062200	China	73 Kgs	1.3	7079.54	2193.3	S. Parthasarathy (AFXPP8270KCH 002)
		BABY GARMENTS SUIT (MADE OF SYNTHETIC FIBRES) ASSORTED KNITTED UNBRANDED	62093000	China	1557.5 DOZ	2.5	290473.75	81623.2	S. Parthasarathy (AFXPP8270KCH 002)

5. In respect of investigation pertaining to the past shipments, Summonses dated 30.05.2024, 07.06.2024 and 04.10.2024 were issued to the Importer, however no one appeared for the said proceedings. Further, Summonses dated 04.10.2024 were also issued to the Customs Brokers concerned (as per Annexure-I) for their appearance on 08/09/10.10.2024. Representative of M/s Micro Clearing Agency appeared before investigation on 10.10.2024. All other Customs Brokers did not join the investigation.

5.1. The statement of Shri Anil S. Pandit, Proprietor and F-Card holder of M/s Micro Clearing Agency was recorded under Section 108 of the Customs Act, 1962 wherein he inter alia stated that:

- i. He was aware about procedures/rules to be followed by CB. That they take Letter of Authority, PAN Card, Aadhar Card, GST Registration Copy, IEC Copy, Electricity Bill etc.
- ii. They also verified the address of the importer.
- iii. He supervises import related activities viz document filling, clearance etc.
- iv. They have handled total 10 shipments filed under Bill of Entry Nos. 5679400, 5681468, 5681987, 5682734, 5682789, 5682790 all dated 14.11.2019, 5687171, 5687263, 5687339 and 5689434 all dated 15.11.2019. The item imported was Girls Leggings.
- v. The goods were supplied by M/s Pujiang Jinyingzi Import Export Co. Ltd, China.
- vi. Shri Krishna Shahi from Freight Forwarder firm M/s Shree Ram Logistics introduced them to the importer M/s KC Impex for their clearance work.
- vii. They submitted the import documents viz BL, Invoice & Packing List by hand.
- viii. Their office had verified KYC document of the importer viz IEC on DGFT website online. After that they physically met & verified the address of the Importer, the said importer seemed genuine. The Electricity Bill was also in the name of Shri Khurshid Alam Chaudhary. Accordingly, they proceeded to file the subject Bills of Entry.
- ix. They did not notice any discrepancy w.r.t. declaration of goods, classification, value, prohibition/restriction etc in the import shipments of M/s KC Impex. They filed the Bills of Entry on the basis of documents provided by the importer.
- x. They did not seek any document from the importer with respect to valuation of the goods as the value of the goods appeared fine.

- xi. They advised their client to comply with the provisions of the Customs Act, allied acts.
- xii. They submitted the copy of KYC documents, Letter of Authority and Bills of Entry.

Valuation of the Impugned goods:-

6. The importer Shri Khursheed Alam Choudhary in his voluntary statements revealed their modus-operandi that they used to declare 40% of the actual transaction value in their Bills of Entry pertaining to M/s KC Impex and M/s Kunkr Crystal Private Limited. Further, the Importer-M/s KC Impex had mis-declared inter-alia the value of the goods covered under live Bills of Entry No. 8998874 and 9011298 both dated 27.09.2020, through which Glass Seed Beads, Girls leggings, Baby leggings, etc. were imported. The importer had imported similar goods i.e. Glass seed Beads, Girls leggings, Baby leggings, etc. from the same supplier M/s Pujiang Wang Tian Shu Import and Export Co. Ltd, China in the past Bills of Entry also. Hence it is reasonable to believe that the importer M/s KC Impex had mis-declared the value in the Past Bills of Entry also, in order to evade applicable duty on the imported goods. The said belief is strengthened by the statements given by Shri Khursheed Alam Choudhary and Shri Feroj Raj. Therefore, the declared value of the goods in respect of impugned past Bills of Entry mentioned in Annexure-I is not the actual transaction value. As the importer had undervalued the goods and submitted undervalued invoices for clearance of the said goods (as explained in following paras), the declared value is liable to be rejected in terms of explanation 2(iii)(f) given under Rule 12 of Customs Valuation (Determination of value of imported goods) Rules 2007 (hereinafter referred to as CVR, 2007).

6.1. Rule 12 explanation 2(iii)(f) of CVR,2007 is re-produced below:-

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation.-(1) For the removal of doubts, it is hereby declared that:-

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include –

(f) the fraudulent or manipulated documents.

The declared value of the goods imported under Past Bills of Entry is liable for rejection in terms of Rule 12 of CVR, 2007 read with Section 14(1) of the Customs Act, 1962 and in such case, the value needs to be re-determined in accordance with CVR, 2007.

6.2. Rule 3(1) of CVR, 2007 reads as under:

Subject to Rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provision of Rule 10.

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;

..

...

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

4. Transaction value of identical goods. –

(1)(a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued; Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

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

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

However, data for Identical goods for the relevant period is not available to ascertain valuation of the impugned goods using Rule 4 of the CVR, 2007.

5. Transaction value of similar goods.-

(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued: Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

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

6.3. Valuation of items Glass Seed Beads and Girls Leggings- In a similar case of M/s Kunkr Crystal Private Limited as mentioned above, Invoice Nos. 19 WTS-15 dated 05.12.2019 and 19 WTS-16 dated 05.12.2019 were recovered during search of premises. The said Invoices were issued to present importer M/s KC Impex which is sister concern of M/s Kunkr Crystal Private Limited. The supplier in the said recovered invoices is M/s Pujiang Wang Tian Shu Import and Export Co. Ltd, China. In the recovered Invoice No. 19WTS-15 dated 05.12.2019, Glass Beads are supplied at the Price of USD 9.8592 per Kg. Therefore, the value of item Glass Seed Beads-Assorted Colour and Size may be re-determined as USD 9.8592 in terms of Rule 5 of CVR, 2007 as the imported items under past Bills of Entry being similar and supplier also being the same. In the recovered Invoice 19WTS-16 dated 05.12.2019, the value of Girls Legging has been mentioned as USD 1.2676 per unit. Hence the value of girls legging in the impugned Bills of Entry re-determined as USD 15.211 per DOZ (1.2676×12) for the valuation purpose.

6.4. Valuation of items Glass Seed Beads and Girls Leggings- In the above said case of M/s Kunkr Crystal Private Limited, Shri Feroj Raj in his statement dated 10.06.2020, stated that he along with Mr. Khurshed Choudhary are Directors of M/s Kunkr Crystals Private Limited. They used to declare 40% of the real import price in the B/E. The same declared value is sent to Chinese Supplier via banking Channel. The domestic buyers are also arranged by Chinese Supplier Mr. Wang himself and the rest of the 60% amount is directly paid to Mr. Wang by domestic buyers or by them through cash. The same modus operandi is followed for all the Bills of Entry filed by M/s Kunkr Crystal Pvt Ltd and M/s KC Impex.

On the basis of statements given by Proprietor, incriminating invoices found and contemporaneous imports of similar items like baby leggings, baby garments etc, it appeared that Importer has undervalued the goods covered under the past Bills of entry as per Annexure-I and therefore, the same is liable for rejection in terms of Rule 12 of the CVR, 2007. Hence the value of the same has been enhanced by 250% to nullify undervaluation of 60% as accepted by the Importer. Further, in absence of availability of the actual freight and insurance paid by the importer, freight has been taken as 20% of the value of the goods and insurance has been taken as 1.125% as per provisions of Rule 10 of CVR, 2007. Thus, the value of Baby Leggings was re-determined as USD 6.25 per DOZ.

6.5. Valuation of other items - For valuation of few impugned items viz. Baby Garments, Suit (Made of Synthetic Fibres), Assorted Knitted Unbranded, Garment Accessories, Garment Accessories Button and PU Men Jacket (With Zipper & With Hud Casual Wear) Woven Unbranded, value of similar goods for contemporaneous period, is available. Thus, valuation of these items has been re-determined according to Rule 5 of the Customs Valuation Rules, 2007.

The data from ICES 1.5 was retrieved and the details of the relevant Bills of Entry through which similar goods from China have been imported, along with valuation particulars is as per Table I below:

Table I

Sr. No	Referenc e Bill of Entry	Item Description	CTH	Qty	Value for said item in referenc e BoE (USD) (CIF)	Impugne d Bill of Entry	Item Descriptio n	CTH	Qty	Value Declar ed/Ass essed (USD) (CIF)
1	7428199 dtd 11.04.20 20	NON PRINTED LABEL STRIP FOR GARMENT INDUSTRY RS7191SLIT EDGE SINGLE FACE RECYCLED POLYESTER SATIN WHITE 30MM X 183M (UNIT	580710 90	102 5 Kgs	6.9636	6776213 dtd 06.02.202 0	GARMENT ACCESSORI ES	5807 1090	1762 Kgs	1.3
2	8202445 dtd 17.07.20 20	METAL FITING (PRESS BUTTON) (1000 PKTS)	960622 00	140 Kgs	4	8913127 dtd 23.09.202 0	GARMENT ACCESSORI ES BUTTON	9606 2200	73 Kgs	1.3
3	8490108 dtd 17.08.20 20	BABIES WOVEN OVERALL 100%POLYE STER (169459) (MRP PER PCS-2699)	620930 00	137 NO S	10.18	8913127 dtd 23.09.202 0	BABY GARMENT S SUIT (MADE OF SYNTHETIC FIBRES) ASSORTED KNITTED UNBRAND ED	6209 3000	1557 DOZ	2.5
4	7460217 dtd 16.04.20 20	MENS WOVEN JACKET SHELL 100% POLYSTER COATING POLYURETH ANE SHELL 100% POLYSTER COATING POLYURETH ANE LINING	621040 90	472 NO S	16.05	8468801 dtd 13.08.202 0	PU MEN JACKET (WITH ZIPPER & WITH HUD CASUAL WEAR) WOVEN UNBRAND ED	6210 4090	3000 NOS	2.5

7. Relevant Legal Provisions

A. Section 17:- Assessment of Duty

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(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefor under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

B. SECTION 28: Recovery of duties not levied or not paid or short-levied or short- paid/ or erroneously refunded

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(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 reasons of, -

- (a) collusion;
- (b) any willful 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.

Section 28 AA. Interest on delayed payment of duty: -

- (1) Notwithstanding anything contained in any judgement, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person who is liable to pay duty in accordance with the provision of section 28, shall, in addition to such payment is made voluntarily or after determination of the duty under that section.
- (2) Interest at such rate not below ten percent and not exceeding thirty-six percent per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be , up to the date of payment of such duty.
- (3) Notwithstanding anything contained in sub-section(1), no interest shall be payable where,-
 - a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under Section 151A; and
 - b) Such amount of duty is voluntarily paid in full, within forty five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.

C. SECTION 46: Entry of goods on importation: -

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46(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, 12[and such other documents relating to the imported goods as may be prescribed].

(4A) The importer who presents a bill of entry shall ensure the following namely:-

- (a) The accuracy and completeness of the information given therein;
- (b) the authenticity and validity of any documents supporting it; and

(c) Compliance with the restriction or prohibition, if any, relating to the goods under this Act or under other law for the time being in force

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

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.....

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];*

D) SECTION 112. Penalty for improper importation of goods, etc.- Any person, -

- (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or*
- (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111, shall be liable,*
- (i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;*
- (ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of Section 114A, to a penalty not exceeding ten per cent of the duty sought to be evaded or five thousand rupees, whichever is higher:*
Provided that where such duty as determined under sub-Section (8) of Section 28 and the interest payable thereon under Section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this Section shall be twenty-five per cent of the penalty so determined;
- (iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under Section 77 (in either case hereafter in this Section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;*
- (iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;*
- (v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.*

E. 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 willful 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 that where such duty or interest, as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under section 28AA. is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by Such person under this

section shall be Twenty-five per cent of the duty or interest, as the case may be, so determined:

PROVIDED FURTHER that the benefit of reduced penalty under the first provision shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

PROVIDED ALSO that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

PROVIDED ALSO that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the maybe, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section [28AA], and twenty-five per cent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect

PROVIDED ALSO that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

Explanation: For the removal of doubts, it is hereby declared that –

- i) The provisions of this Section shall also apply to cases in which the order determining the duty or interest under sub-Section (8) of Section 28 relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;*
- ii) Any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.*

F. Section 114AA of the Customs Act, 1962 reads as follows:

“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”.

8. Para 10 (d) & (e) of Customs Brokers Licensing Regulations, 2018, reads as follows:

Para 10. Obligations of Customs Broker. — A Customs Broker shall —

(d) advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

(e) exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;

(q) co-operate with the Customs authorities and shall join investigations promptly in the event of an inquiry against them or their employees.

9. Whereas, from the investigation, it appeared that:

9.1. The importer M/s KC Impex having registered address A 402, Sai Pooja Apartment, Hissa No. 18a H. No. 342, Kalamboli, Raigad, Maharashtra 410208, had filed Bills of Entry No. 8998874 and 9011298 both dated 30.09.2020 for import of goods from the supplier M/s Pujiang Wang Tian Shu Import and Export Co. Ltd, China. **The investigation with respect to said Bills of Entry revealed gross mis-declaration of the goods with respect to description, classification, quantity and valuation. Further investigation also led to recovery of invoices issued to M/s KC Impex by the supplier M/s Pujiang Wang Tian Shu Import and Export**

Co. Ltd, China, wherein value of the similar goods was higher than the value declared in the Bills of Entry No. 8998874 and 9011298 both dated 30.09.2020. The import data showed that the importer had imported various items from the said Chinese supplier under past Bills of Entry as mentioned in Annexure-I.

9.2. The importer in his voluntary statements also revealed that they resorted to undervaluation of goods by 60% of the actual transaction value in all the Bills of Entry filed by M/s KC Impex. Further, on perusal of the data retrieved from ICES 1.5, it is evident that similar goods in about similar quantity have been imported at much higher price at the relevant time from China. In view of the contemporaneous import data, voluntary statement of the importer and recovery of invoices showing higher value of the goods, it appeared that the importer has wilfully undervalued goods and suppressed the facts in respect of past consignments as mentioned above with intention to evade the Custom duty.

9.3. Therefore, it appeared that Impugned goods imported by M/s KC Impex vide Bills of Entry mentioned in Annexure-I were undervalued, thereby rendering the impugned goods liable for confiscation under 111(m) of the Customs Act, 1962. Consequently, for their acts of omission and commission, the firm M/s KC Impex appeared to be liable for penalty under Section 112 of the Customs Act, 1962.

9.4. As it appeared that the importer M/s KC Impex has suppressed the fact about correct value of the goods imported by him vide Bills of Entry mentioned in Annexure-I to evade the duty, made false declarations in the Bills of Entry and used forged/fabricated invoices, consequently for their act of use of false and incorrect material knowingly, the importer M/s KC Impex appeared to be liable for penal action under Section 114 AA of the Customs Act, 1962.

9.5. The re-determined value of the impugned goods imported by M/s KC Impex vide Bills of Entry mentioned in Annexure-I, is Rs. 8,11,46,575/- (Rupees Eight Crore Eleven Lakh Forty-Six Thousand Five Hundred Seventy-Five Only) and applicable customs duty in respect of imported goods comes to Rs 2,10,91,838/- (Rupees Two Crore Ten Lakh Ninety-One Thousand Eight Hundred Thirty-Eight Only). Though the importer had already voluntarily paid the duty of amount Rs. 45,43,399/- (Rupees Forty-Five Lakh Forty-Three Thousand Three Hundred Ninety-Nine Only) at the time of import, the total differential duty amount comes to Rs. 1,65,48,439/- (Rs One Crore Sixty-Five Lakh Forty-Eight Thousand Four Hundred Thirty Nine only) as mentioned in Annexure-II.

ANNEXURE II

Annexure-II

Sr. No.	BE No.	BE date	Item Desc	CTI	QTY	UNIT PRICE AS PER BE (USD)	UNIT PRICE AS PER BE (USD)	ASSESSABLE VALUE AS PER BE (Rs.)	Duty Rate	Total duty (Rs.)	Exch Rt.	REDETERMINED UNIT PRICE (USD)	REDETERMINED ASSESSABLE VALUE (Rs.)	RETERMINED DUTY (Rs.)	DIFFERENTIAL DUTY (Rs.)	Remarks
1	5679400	14-Nov-19	GIRLS LEGGING (MADE OF SYNTHETIC FIBRES) KNITTED UNBRANDED (ASSORTED)	61152990	40 DOZ	2.5	3.6	10368	28.10%	2913.408	72	15.211	43807.68	12309.958	9396.55008	Invoice No. 19WTS-16 dated 05.12.2019
2	5681468	14-Nov-19	GIRLS LEGGING (MADE OF SYNTHETIC FIBRES) KNITTED UNBRANDED (ASSORTED)	61152990	40 DOZ	2.5	3.6	10368	28.10%	2913.408	72	15.211	43807.68	12309.958	9396.55008	Invoice No. 19WTS-16 dated 05.12.2019
3	5681987	14-Nov-19	GIRLS LEGGING (MADE OF SYNTHETIC FIBRES) KNITTED UNBRANDED (ASSORTED)	61152990	35 DOZ	2.5	3.6	9072	28.10%	2549.232	72	15.211	38331.72	10771.213	8221.98132	Invoice No. 19WTS-16 dated 05.12.2019
4	5682734	14-Nov-19	GIRLS LEGGING (MADE OF SYNTHETIC FIBRES) KNITTED UNBRANDED (ASSORTED)	61152990	40 DOZ	2.5	3.6	10368	28.10%	2913.408	72	15.211	43807.68	12309.958	9396.55008	Invoice No. 19WTS-16 dated 05.12.2019
5	5682789	14-Nov-19	GIRLS LEGGING (MADE OF SYNTHETIC FIBRES) KNITTED UNBRANDED (ASSORTED)	61152990	40 DOZ	2.5	3.6	10368	28.10%	2913.408	72	15.211	43807.68	12309.958	9396.55008	Invoice No. 19WTS-16 dated 05.12.2019
6	5682790	14-Nov-19	GIRLS LEGGING (MADE OF SYNTHETIC FIBRES) KNITTED UNBRANDED (ASSORTED)	61152990	40 DOZ	2.5	3.6	10368	28.10%	2913.408	72	15.211	43807.68	12309.958	9396.55008	Invoice No. 19WTS-16 dated 05.12.2019
7	5687171	15-Nov-19	GIRLS LEGGING (MADE OF SYNTHETIC FIBRES) KNITTED UNBRANDED (ASSORTED)	61152990	40 DOZ	2.5	2.5	7200	28.10%	2023.2	72	15.211	43807.68	12309.958	10286.7581	Invoice No. 19WTS-16 dated 05.12.2019
8	5687263	15-Nov-19	GIRLS LEGGING (MADE OF SYNTHETIC FIBRES) KNITTED UNBRANDED (ASSORTED)	61152990	40 DOZ	2.5	2.5	7200	28.10%	2023.2	72	15.211	43807.68	12309.958	10286.7581	Invoice No. 19WTS-16 dated 05.12.2019
9	5687339	15-Nov-19	GIRLS LEGGING (MADE OF SYNTHETIC FIBRES) KNITTED UNBRANDED (ASSORTED)	61152990	40 DOZ	2.5	3.6	10368	28.10%	2913.408	72	15.211	43807.68	12309.958	9396.55008	Invoice No. 19WTS-16 dated 05.12.2019
10	5689434	15-Nov-19	GIRLS LEGGING (MADE OF SYNTHETIC FIBRES) KNITTED UNBRANDED (ASSORTED)	61152990	40 DOZ	2.5	2.5	7200	28.10%	2023.2	72	15.211	43807.68	12309.958	10286.7581	Invoice No. 19WTS-16 dated 05.12.2019
11	6277421	28-Dec-19	GIRLS LEGGING (MADE OF SYNTHETIC FIBRES) KNITTED UNBRANDED (ASSORTED)	61152990	4166.66 DOZ	1.5	3.6	1078498.27	28.10%	303058.01	71.9	15.211	4356954.8	1280504.3	977446.283	Invoice No. 19WTS-16 dated 05.12.2019
12	6324111	02-Jan-20	GIRLS LEGGING (MADE OF SYNTHETIC FIBRES) KNITTED UNBRANDED (ASSORTED)	61152990	833.33 DOZ	1.1	3.6	215699.14	28.10%	60611.458	71.9	15.211	911388.77	256100.24	195488.786	Invoice No. 19WTS-16 dated 05.12.2019
13	6776213	06-Feb-20	GLASS SEED BEADS (ASSORTED COLOURS AND SIZE)	70181020	14502 KGS	1.1	1.5	1564040.7	16.55%	258848.74	71.9	9.8592	1028012.7	1701361	1442512.24	Invoice No. 19WTS-15 dated 05.12.2019
			GIRLS LEGGING (MADE OF SYNTHETIC FIBRES) KNITTED UNBRANDED (ASSORTED)	61152990	2536 DOZ	3.2	3.6	654135.84	28.10%	183812.17	71.65	15.211	2763905.6	776657.48	592845.311	Invoice No. 19WTS-16 dated 05.12.2019
			GLASS SEED BEADS (ASSORTED COLOURS AND SIZE)	70181020	11190 KGS	1.2	1.5	1202645.25	28.10%	337943.32	71.65	9.8592	7904746.7	2221233.8	1883290.51	Invoice No. 19WTS-15 dated 05.12.2019 Value as per BE No. 7428199 did 11.04.2020 in terms of Rule 5 of CVR, 2007
			GARMENT ACCESSORIES	58071090	1762 KGS	1.1	1.3	164121.49	24.32%	39914.346	71.65	6.9636	879135.7	213805.8	173891.455	Invoice No. 19WTS-16 dated 05.12.2019
14	7594114	05-May-20	GIRLS LEGGING (MADE OF SYNTHETIC FIBRES) KNITTED UNBRANDED (ASSORTED)	61152990	6739.25 DOZ	2.300001	3.6	1883889.95	28.10%	529373.08	77.65	15.211	7959958.3	2236748.3	1707375.21	Invoice No. 19WTS-16 dated 05.12.2019
15	7977161	22-Jun-20	GIRLS LEGGING (MADE OF SYNTHETIC FIBRES) ASSORTED KNITTED UNBRANDED	61152990	6748.25 DOZ	2.4416	2.4416	1269516.42	28.10%	356734.11	77.05	15.211	7908999.9	2222429	1865694.87	Invoice No. 19WTS-16 dated 05.12.2019
16	8279953	25-Jul-20	BABY LEGGING (MADE OF SYNTHETIC FIBRES) ASSORTED KNITTED UNBRANDED	61152990	5174 DOZ	2.8	3.6	1417469.04	28.10%	398308.8	76.1	15.211	5989200.4	1682965.3	1284656.52	Invoice No. 19WTS-16 dated 05.12.2019 Value enhanced by 250% as per statement of the importer
17	8468801	13-Aug-20	GIRLS LEGGINGS (MADE OF SYNTHETIC FIBRES) ASSORTED KNITTED UNBRANDED	61152990	1918 DOZ	2.312998	2.5	364899.5	28.10%	102536.76	76.1	6.25	912248.75	256341.9	153805.139	Invoice No. 19WTS-16 dated 05.12.2019 Value enhanced by 250% as per statement of the importer
			BABY LEGGING (MADE OF SYNTHETIC FIBRES) ASSORTED KNITTED UNBRANDED	61152990	3750 DOZ	2.8	3.6	1022625	28.10%	287357.63	75.75	15.211	4320874.7	1214165.8	926808.162	Invoice No. 19WTS-16 dated 05.12.2019 Value enhanced by 250% as per statement of the importer
			BABY LEGGING (MADE OF SYNTHETIC FIBRES) ASSORTED KNITTED UNBRANDED	61152990	1751.5 DOZ	1.8	2.5	331690.31	28.10%	93204.977	75.75	6.25	829225.78	233012.44	139807.467	Invoice No. 19WTS-16 dated 05.12.2019 Value enhanced by 250% as per statement of the importer

** Redetermined duty calculated with IGST@12%

Accordingly, it appeared that the extended period under Section 28(4) of the Customs Act, 1962 is rightly invocable in this case, and consequently importer is also liable to penal action under Section 114A of the Customs Act 1962.

9.8. Further, the summonses were issued to the Customs Brokers concerned for recording of statements. However, except M/s Micro Clearing Agency, no Customs Broker appeared before the investigation. The Customs Brokers have not cooperated with the investigation. Also, from the facts of the case, it appeared that the Customs Brokers have failed to perform their duty by filing Bills of Entry after verifying the value of the goods. It appeared that they failed to seek proper documentary evidences from the importer that could justify the declared unit price of the goods. Custom Brokers as mentioned in Annexure-I are liable to pay penalty under Section 112 of the Customs Act, 1962.

I. The declared value of **Rs.1,69,61,215/- (One Crore Sixty Nine Lakh Sixty One Thousand Two Hundred and Fifteen Only)** for the good imported vide Past Bills of Entry as mentioned in Annexure-I, should not be rejected under Rule 12(2), Explanation (1)(iii) of the CVR, 2007 and the same should not be re-

determined to **Rs. 8,11,46,575/- (Rupees Eight Crore Eleven Lakh Forty Six Thousand Five Hundred Seventy Five Only).**

- II. The differential duty amounting to **Rs. 1,65,48,439/- (Rs One Crore Sixty Five Lakh Forty Eight Thousand Four Hundred Thirty Nine only)** should not be demanded and recovered from Importer under Section 28(4) of Customs Act, 1962, along-with applicable interest thereon in terms of provisions of Section 28AA of the Customs Act, 1962.
- III. The imported goods with re-determined value **8,11,46,575/- (Rupees Eight Crore Eleven Lakh Forty Six Thousand Five Hundred Seventy Five Only)** should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962.
- IV. Penalty should not be imposed on the importer **M/s KC Impex under Section 112 and 114 AA of the Customs Act, 1962.**
- V. Penalty should not be imposed on the importer **M/s KC Impex under Section 114 A of the Customs Act, 1962.**
- VI. Penalty should not be imposed on **Shri Khurshid Alam Choudhary, Proprietor of M/s KC Impex under Section 112(a)/114A and 114AA of the Customs Act, 1962.**
- VII. Penalty should not be imposed on **Custom Broker Premier Shipping Agencies (AADFP6841PCH007)** who filed the bill of entry on behalf of importer M/s KC Impex under Section 112 of the Customs Act, 1962.
- VIII. Penalty should not be imposed on **Custom Broker OPMS C&F Agencies (P) Ltd. (AAACO0401CCH001)** who filed the bill of entry on behalf of importer M/s KC Impex under Section 112 of the Customs Act, 1962.
- IX. Penalty should not be imposed on **Custom Broker Micro Clearing Agency (AAIPP7083QCH002)** who filed the bill of entry on behalf of importer M/s KC Impex under Section 112 of the Customs Act, 1962.
- X. Penalty should not be imposed on **Custom Broker S. Parthasarathy (AFXPP8270KCH002)** who filed the bill of entry on behalf of importer M/s KC Impex under Section 112 of the Customs Act, 1962.

11. WRITTEN SUBMISSION OF THE NOTICEE

All the Noticee's were directed to submit written reply in their defense within 30 days of receipts of the SCN, however, so far, no reply has been received from the Noticee's.

12. RECORDINGS OF PERSONAL HEARING:

There are six Noticee's i.e. **M/s. K C Impex, Shri Khurshid Alam Chaudhary Proprietor M/s K C Impex, M/s Premier Shipping Agencies, OPMS (C&F) Forwarding Agencies Pvt Ltd, Micro Clearing Agency, S Parthasarathy** following the principle of natural justice opportunities for personal hearing in this matter were granted to the Noticees on 23.01.2025,

07.07.2025, 18.07.2025. However, neither Noticee's nor any of their authorized representatives appeared before the undersigned on scheduled dates and time for personal hearing in compliance of the said personal hearing Memos nor did they make any written submission. As enough opportunities were given to all the Noticee's & considering the time limit of the adjudication, further opportunity for personal hearing was not given to the Noticee's.

13. **DISCUSSION AND FINDINGS:**

13.1 I have carefully gone through the Show Cause Notice, material on record and facts of the case. Accordingly, I proceed to decide the case on merit.

Principles of natural justice

13.2 Before going into the merits of the case, I observe that in the instant case, in compliance of the provisions of Section 28(8) of the Customs Act, 1962 and in terms of the principle of natural justice, total **three Personal Hearing opportunities on 23.01.2025, 07.07.2025 and 18.07.2025** were granted to all the Noticee's to appear before the Adjudicating Authority for personal hearing, however, the Noticee's neither filed any written reply to the SCN nor appeared before the adjudicating authority for personal hearing on the scheduled dates and time. These acts on the part of the Noticee's amounts to non-cooperation and tactic to delay adjudication proceedings. However, adjudication being a time bound proceeding, same cannot be kept pending indefinitely. Therefore, I am constrained to proceed with the adjudication proceedings *ex-parte* on the basis of available facts and evidences on record.

I thus find that the principle of natural justice has been followed and I can proceed ahead with the adjudication process. I also refer to the following case laws on this aspect-

- Sumit Wool Processors Vs. CC, Nhava Sheva [2014 (312) E.L.T. 401 (Tri. - Mumbai)]
- Modipon Ltd. Vs. CCE, Meerut [reported in 2002 (144) ELT 267 (All.)]

13.2.1 I observe that the Importer did not participate in the adjudication proceedings in spite of the servicing of letters for Personal Hearings in terms of Section 153 of Customs Act, 1962. Section 153 of the Customs Act, 1962 reads as under:

- ***Section 153. Modes for service of notice, order, etc. (1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely: -***
- ***(b) by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;***
- ***(c) by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;***
- ***(e) by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.***

13.2.2 Therefore, in terms of Section 153 of the Customs Act, 1962, it is observed that PH letters were duly sent to the Noticee's at their known addresses (as mentioned in the SCN and import documents) through Registered Post, but the Noticee's did not honour the same. It is observed that sufficient opportunities have been given to the Noticee's to file a written reply to the SCN and to appear for Personal Hearing before the adjudicating authority, but they choose not to join the adjudication proceedings. As the matter pertains to recovery of Government dues and the adjudication being a time bound proceedings, so even in absence of the Noticee's from adjudication proceedings, I am compelled to decide the matter in time.

13.2.3 In view of the above, I observe that sufficient opportunities have been given to the Noticee's but they chose not to join the adjudication proceedings. Having complied with the requirement of the Principle of Natural Justice and having granted Personal Hearings, the adjudication proceeding is a time bound matter and cannot be kept pending indefinitely. I, therefore, proceed with the adjudication of the case *ex-parte*, on the basis of available evidences on record.

13.3 Issue in brief

i. M/s K C Impex, had undervalued goods imported under Bill of Entry No. 8998874 and 9011298 both dated 30.09.2020 investigated by SIIB(I), JNCH and same modus operandi was adopted for earlier Bills of Entry filed by M/s K C Impex.

ii. The undervaluation done by the Noticee's were to the tune of 60% as accepted by the Noticee's in their statement under section 108 of the Customs Act, 1962. The Re-assessed value of the impugned goods imported by M/s K C impex vide Bills of Entry mentioned in Annexure I is Rs. 8,11,46,575/-and applicable customs duty in respect of imported goods comes to Rs.2,10,91,838 /-. The importer has already paid the duty amount of Rs. 45,43,399/- at the time of import, however, the differential duty comes to Rs. 1,65,48,439/- (Rs One Crore Sixty-Five Lakhs Forty Eight Thousand Four Hundred Thirty Nine only) as mentioned in Annexure-II.

13.4 Framing of issues

Pursuant to a meticulous examination of the Show Cause Notice and a thorough review of the case records, the following pivotal issues have been identified as requisite for determination and adjudication:

- I. As to whether the declared value of **Rs.1,69,61,215/- (One Crore Sixty-Nine Lakh Sixty One Thousand Two Hundred and Fifteen Only)** for the good imported vide Past Bills of Entry as mentioned in Annexure-I, should be rejected under Rule 12(2), Explanation (1)(iii) of the CVR, 2007 and the same should not be re-determined to **Rs. 8,11,46,575/- (Rupees Eight Crore Eleven Lakh Forty-Six Thousand Five Hundred Seventy Five Only).**
- II. As to whether the differential duty amounting to **Rs. 1,65,48,439/- (Rs One Crore Sixty-Five Lakh Forty-Eight Thousand Four Hundred Thirty-Nine only)** should be demanded and recovered from Importer under Section 28(4) of Customs Act, 1962, along-with applicable interest thereon in terms of provisions of Section 28AA of the Customs Act, 1962.
- III. As to whether the imported goods with re-determined value **8,11,46,575/- (Rupees Eight Crore Eleven Lakh Forty-Six Thousand Five Hundred Seventy-Five Only)** should be held liable to confiscation under Section 111(m) of the Customs Act, 1962.
- IV. As to whether penalty should be imposed on the **importer M/s KC Impex** under Section 112/114 A and 114AA of the Customs Act, 1962.
- V. As to whether penalty should be imposed on **Shri Khurshid Alam Choudhary, Proprietor of M/s KC Impex** under Section 112(a)/114A and 114AA of the Customs Act, 1962.

VI. As to whether penalty should be imposed on **Custom Broker M/s Premier Shipping Agencies (AADFP6841PCH007), Custom Broker M/s OPMS C&F Agencies (P) Ltd. (AAACO0401CCH001), Custom Broker M/s Micro Clearing Agency (AAIPP7083QCH002) and Custom Broker M/s S. Parthasarathy (AFXPP8270KCH002)** who filed the bill of entry on behalf of importer M/s KC Impex under Section 112 of the Customs Act, 1962.

13.5 After having framed the substantive issues raised in the SCN which are required 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; nuances of various judicial pronouncements, and documents / evidences available on record.

I. Now I take up the first question as to whether the declared value of Rs.1,69,61,215/- (One Crore Sixty-Nine Lakh Sixty-One Thousand Two Hundred and Fifteen Only) for the good imported vide Past Bills of Entry as mentioned in Annexure-I, should be rejected under Rule 12(2), Explanation (1)(iii) of the CVR, 2007 and the same should not be re-determined to Rs. 8,11,46,575/- (Rupees Eight Crore Eleven Lakh Forty-Six Thousand Five Hundred Seventy-Five Only).

14. I observe that the investigation with respect to said Bills of Entry revealed gross mis-declaration of the goods with respect to description, classification, quantity and valuation. Further investigation also led to recovery of invoices issued to M/s KC Impex by the supplier M/s Pujiang Wang Tian Shu Import and Export Co. Ltd, China, wherein value of the similar goods was higher than the value declared in the Bills of Entry No. 8998874 and 9011298 both dated 30.09.2020. The import data showed that the importer had imported various items from the said Chinese supplier under past Bills of Entry as mentioned in Annexure-I. I observe that this fact of undervaluation was confirmed by the Proprietor of the importing firm, Shri Khurshid Alam Chaudhary in his voluntary statements recorded u/s. 108 of the Customs Act, 1962 which is corroborated with the recovery of Invoice No.19 WTS-15 dated 05.12.2019 during the course of office premise search of the Importing firm. I observe that the subject Invoice was declared with actual import value of the imported items which was wilfully and consciously mis-stated by the Importer in the import documents which resulted in gross undervaluation of the goods, which subsequently resulted in short levy of Customs Duty at the time of assessment of the goods.

14.1 I further observe that in a similar case of another firm of the importer namely M/s Kunkr Crystal Private Limited as mentioned above, Invoice Nos. 19 WTS-15 dated 05.12.2019 and 19 WTS-16 dated 05.12.2019 were recovered during search of premises. The said Invoices were issued to present importer M/s KC Impex which is a sister concern of M/s Kunkr Crystal Private Limited. The supplier in the said recovered invoices was same M/s Pujiang Wang Tian Shu Import and Export Co. Ltd, China. In the recovered Invoice No. 19WTS-15 dated 05.12.2019, Glass Beads are supplied at the Price of USD 9.8592 per Kg. Therefore, the value of item Glass Seed Beads-Assorted Colour and Size may be re-determined as USD 9.8592 in terms of Rule 5 of CVR, 2007 as the imported items under past Bills of Entry being similar and supplier also being the same. In the recovered Invoice 19WTS-16 dated 05.12.2019, the value of Girls Legging has been mentioned as USD 1.2676 per unit. Hence the value of girls legging in the impugned Bills of Entry re-determined as USD 15.211 per DOZ (1.2676×12) for the valuation purpose.

14.2 I observe that on the basis of statements given by Proprietor, incriminating invoices found and contemporaneous imports of similar items like baby leggings, baby garments etc, it is clear that Importer has undervalued the goods covered under the past Bills of entry as per Annexure-I and therefore, the same is liable for rejection in terms of Rule 12 of the CVR, 2007. Further, the value of data of contemporaneous import of baby Leggings is not available in the system, hence the value of the same has been enhanced to nullify undervaluation of 60% as accepted by the Importer. Further, in absence of availability of the actual freight and insurance

paid by the importer, freight has been taken as 20% of the value of the goods and insurance has been taken as 1.125% as per the provisions of Rule 10 of CVR, 2007. Thus, the value of Baby Leggings was re-determined as USD 6.25 per DOZ.

14.3 I observe that for valuation of few impugned items viz. Baby Garments, Suit (Made of Synthetic Fibres), Assorted Knitted Unbranded, Garment Accessories, Garment Accessories Button and PU Men Jacket (With Zipper & With Hud Casual Wear) Woven Unbranded, value of similar goods for contemporaneous period, is available. Thus, valuation of these items has been re-determined according to Rule 5 of the Customs Valuation Rules, 2007.

The data from ICES 1.5 was retrieved and the details of the relevant Bills of Entry through which similar goods from China have been imported, along with valuation particulars is as per Table I below:

Table I

Sr. No	Referenc e Bill of Entry	Item Description	CTH	Qty	Value for said item in referenc e BoE (USD) (CIF)	Impugne d Bill of Entry	Item Descriptio n	CTH	Qty	Value Declar ed/Ass essed (USD) (CIF)
1	7428199 dtd 11.04.20 20	NON PRINTED LABEL STRIP FOR GARMENT INDUSTRY RS7191SLIT EDGE SINGLE FACE RECYCLED POLYESTER SATIN WHITE 30MM X 183M (UNIT	580710 90	102 5 Kgs	6.9636	6776213 dtd 06.02.202 0	GARMENT ACCESSORI ES	5807 1090	1762 Kgs	1.3
2	8202445 dtd 17.07.20 20	METAL FITING (PRESS BUTTON) (1000 PKTS)	960622 00	140 Kgs	4	8913127 dtd 23.09.202 0	GARMENT ACCESSORI ES BUTTON	9606 2200	73 Kgs	1.3
3	8490108 dtd 17.08.20 20	BABIES WOVEN OVERALL 100%POLYE STER (169459) (MRP PER PCS-2699)	620930 00	137 NO S	10.18	8913127 dtd 23.09.202 0	BABY GARMENT S SUIT (MADE OF SYNTHETIC FIBRES) ASSORTED KNITTED UNBRAND ED	6209 3000	1557 DOZ	2.5
4	7460217 dtd 16.04.20 20	MENS WOVEN JACKET SHELL 100% POLYSTER COATING POLYURETH ANE SHELL 100% POLYSTER	621040 90	472 NO S	16.05	8468801 dtd 13.08.202 0	PU MEN JACKET (WITH ZIPPER & WITH HUD CASUAL WEAR) WOVEN UNBRAND ED	6210 4090	3000 NOS	2.5

		COATING POLYURETH ANE LINING								
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14.4 I observe that it is cardinal law that ‘*What is accepted need not to be proved*’. In this matter, Proprietor of the Importing firm in his voluntary statement accepted that they used to declare the value of the imported goods to the extent of 40% only and the said value was transferred to the foreign supplier through Banking Channel and rest 60% was handed over in cash to one Shri Wang, who is a Chinese national and associate of the Proprietor of the Importing firm.

14.5 I observe that the Legal position about the importance and validity of statements rendered under Section 108 of the Customs Act, 1962 is well settled. It has been held by various judicial fora that Section 108 is an enabling act and an effective tool in the hands of Customs to collect evidences in the form of voluntary statements. The Hon’ble Courts in various judicial pronouncements, have further strengthened the validity of this enabling provision. It has been affirmed that the statement given before the Customs officers is a material piece of evidence and certainly can be used as substantive evidence, among others, as held in the following cases:

- i. *Asst. Collector of Central Excise, Rajamundry v. M/s. Duncan Agro India Ltd.* reported in 2000 (120) E.L.T. 280 (S.C.) : Statement recorded by a Customs Officer under Section 108 is a valid evidence
- ii. In 1996 (83) E.L.T. 258 (S.C.) in the case of *Shri Naresh J. Sukawani v. Union of India* : “4. *It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act.*”
- iii. It was held that statement recorded by the Customs officials can certainly be used against a co-noticee when a person giving a statement is also tarnishing his image by making admission of guilt. Similar view was taken in the case of *In Gulam Hussain Shaikh Chougule v. S. Reynolds* (2002) 1 SCC 155 = 2001 (134) E.L.T. 3 (S.C.)
- iv. State (NCT) Delhi Vs Navjot Sandhu @ Afsan Guru, 2005 (122) DLT 194 (SC): Confessions are considered highly reliable because no rational person would make admission against his interest unless prompted by his conscience to tell the truth. “Deliberate and voluntary confessions of guilt, if clearly proved are among the most effectual proofs in law.” (Vide Taylors’s Treatise on the Law of Evidence, VI. I).
- v. There is no law which forbids acceptance of voluntary and true admissional statement if the same is later retracted on bald assertion of threat and coercion as held by Hon’ble Supreme Court in the case of *K.I. Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin*, (1997) 3 SCC 721.
- vi. Hon’ble Supreme Court in the case of *Kanhailal Vs. UOI*, 2008 (1) Scale 165 observed: “*The law involved in deciding this appeal has been considered by this court from as far back as in 1963 in Pyare Lal Bhargava’s case (1963) Supp. 1 SCR 689. The consistent view which has been taken with regard to confessions made under provisions of section 67 of the NDPS Act and other criminal enactments, such as the Customs Act, 1962, has been that such statements may be treated as confessions for the purpose of Section 27 of the Indian Evidence Act.*”
- vii. **Hon’ble High Court of Mumbai in FERA Appeal No 44 OF 2007 in the case of KANTILAL M JHALA Vs UNION OF INDIA vide judgment dated: October 5, 2007 (reported in 2007-TIOL-613-HC-MUM-FEMA) held that “Confessional statement corroborated by the seized documents, admissible even if retracted”.**
- viii. The Apex Court in the case *Hazari Singh V/s. Union of India* reported in 110 E.L.T. 406, and case of *Surjeet Singh Chhabra V/s. Union of India & Others* reported in 1997 (1) S.C.C. 508 has held that the confessional statement made before the Customs Officer even though retracted, is an admission and binding on the person.-”
- ix. The Hon’ble Supreme Court in the case of *Badaku Joti Savant Vs. State of Mysore* [1966 AIR 1746 = 1978 (2) ELT J 323 (SC 5 member bench)] laid down that statement to

a Customs officer is not hit by section 25 of Indian Evidence Act, 1872 and would be admissible in evidence and in conviction based on it is correct.

- x. In the case of Bhana Khalpa Bhai Patel Vs. Asstt. Collr. of Customs, Bulsar [1997 (96) E.L.T. 211 (SC)], the Hon'ble Apex Court at Para 7 of the judgment held that :-“ *It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence vide Romesh Chandra v. State of West Bengal, AIR 1970 S.C. 940 and K.I. Pavunny v. Assistant Collector (H.Q.), Central Excise Collectorate, Cochin, 1997 (90) E.L.T. 241 (S.C.) = (1997) 3 S.C.C. 721.*”
- xi. In the case of Raj Kumar Karwal Vs. UOI & Others (1990) 2 SCC 409, the Court held that *officers of the Department of Revenue Intelligence who have been vested with the powers of an Officer-in-Charge of a police station under Section 53 of the NDPS Act, 1985, are not police officers within the meaning of Section 25 of the Evidence Act. Therefore, a confessional statement recorded by such officer in the course of investigation of a person accused of an offence under the Act is admissible in evidence against him.*
- xii. Hon. Supreme Court's decisions in the case of Romesh Chandra Mehta Vs. the State of West Bengal (1969) 2 S.C.R. 461, A.I.R. 1970 S.C. 940. The provisions of Section 108 are judicial provisions within statement has been read, correctly recorded and has been made without force or coercion. In these circumstances there is not an iota of doubt that the statement is voluntary and truthful. The provisions of Section 108 also enjoin that the statement has to be recorded by a Gazetted Officer of Customs and this has been done in the present case. The statement is thus made before a responsible officer and it has to be accepted as a piece of valid evidence
- xiii. Jagjit Singh vs State Of Punjab And Another, Hon'ble Punjab and Haryana High Court in Crl. Appeal No.S-2482-SB of 2009 Date of Decision: October 03, 2013 held that : *The statements under Section 108 of the Customs Act were admissible in evidence as has been held by the Hon'ble Supreme Court in Ram Singh vs. Central Bureau of Narcotics, 2011 (2) RCR (Criminal) 850.*

14.6 In view of the above referred consistent judicial pronouncements, the importance of statements rendered under Section 108 of the Customs Act, 1962 during the case is quite imperative. **I observe that the statements made in the case were voluntary and are very much valid in Law and can be relied upon as having full evidentiary value.**

14.7 I observe that the re-determination of value the goods is to be done on the basis of reference Invoice No.19 WTS-15 dated 05.12.2019 found during the course of office premise search of the Importing firm contemporaneous value of the similar goods available in NIDB and after adding freight and insurance as per provisions of Rule 10 *ibid*. The valuations rules relevant for redetermination of the imported goods are reproduced as follows:

“Section 14 of the Customs Act, 1962:. 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:

Provided further that the rules made in this behalf may provide for,-

- (i) the circumstances in which the buyer and the seller shall be deemed to be related;*
- (ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;*
- (iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:*

Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.

(2) Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.”

The Rule 12 of the Customs Valuation Rules, 2007 reads as under:

“(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation.-(1) For the removal of doubts, it is hereby declared that:-

- (i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.*
- (ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.*
- (iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include –*
 - (a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;***

- (b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;*
- (c) the sale involves special discounts limited to exclusive agents;*
- (d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;*
- (e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;*
- (f) the fraudulent or manipulated documents.”*

14.8 Explanation 1(iii)(a) of Rule 12 of the Customs Valuation (Determination of the Value of Imported Goods) Rules, 2007 clearly mention that the proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value if the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed. Therefore, I hold that the declared assessable value of Rs. **1,69,61,215/-** in respect of goods declared in Bills of entry mentioned at annexure-1 cannot be treated as the correct and fair value and therefore, is liable for rejection under Rule 12 of the Customs Valuation Rules, 2007 read with Section 14(1) of the Customs Act, 1962.

Rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 is reproduced below:

“Rule 4. Transaction value of identical goods -

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

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

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

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

- (2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.*
- (3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.”*

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;

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

4. Transaction value of identical goods. –

(1)(a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued; Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

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

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

However, data for Identical goods for the relevant period is not available to ascertain valuation of the impugned goods using Rule 4 of the CVR, 2007.

5. Transaction value of similar goods.-

(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued: Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

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

14.9 I find that the declared value of the goods amounting to Rs. 1,69,61,215/- in respect of bills of entry mentioned in Annexure-A should be rejected under Rule 12 of CVR, 2007 and to re-determine the same at Rs. **8,11,46,575/-** on the basis of extent of under valuation accepted by the proprietor and in respect of Invoice No.19 WTS-15 dated 05.12.2019 which was found during the course of office premise search of the Importing firm and the importer's statement under Rule 5 read with Rule 10 of said Rules read with section 14 of the Customs Act, 1962 *ibid*.

14.10 In view of the facts above, I agree with the proposal of the Investigating Agency for re-determining the value of the goods at **Rs. 8,11,46,575/-**.

II. Now I take up the next question as to whether the differential duty amounting to Rs. 1,65,48,439/- (Rs One Crore Sixty-Five Lakh Forty-Eight Thousand Four Hundred Thirty-Nine only) should be demanded and recovered from Importer under Section 28(4) of Customs Act, 1962, along-with applicable interest thereon in terms of provisions of Section 28AA of the Customs Act, 1962.

15.1 I observe that it was the Importer's responsibility to declare correct value, description of the goods in the entry made under section 17 of the Customs Act, 1962. I observe that the Importer had submitted false declaration under section 46(4) of the Customs Act, 1962 with respect to value of the goods and due to this act of the importer, there was loss to Government Exchequer of Rs. **1,65,48,439/- (Rs One Crore Sixty-Five Lakh Forty-Eight Thousand Four Hundred Thirty-Nine only)** as detailed in Annexure-II.

15.2 I observe that consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in Customs clearance. Section 17 of the Customs Act, effective from 08.04.2011 [CBEC's (now CBIC) Circular No 17/2011 dated 08.04.2011] provides for self-assessment of duty on imported goods by the Importer himself by filing a bill of entry, in the electronic form. Section 46 of the Customs Act, 1962 makes it mandatory for the Importer to make entry for the imported goods by presenting a bill of entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Declaration) Regulation, 2011 (issued under Section 157 read with Section 46 of the Customs Act, 1962), the bill of entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under 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, since 08.04.2011, it is the added and enhanced responsibility of the Importer to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. In the instant case, the Importer had self-assessed the impugned goods and consciously and wilfully undervalued the goods which resulted in short levy of the legitimate Customs duty.

15.3 I observe that the importer had mis-declared the value of goods in order to evade the legitimate Customs duty amounting to **Rs. 1,65,48,439/-** as detailed in Annexure-II. As the Importer got monetary benefit due to the said act, it is apparent that the same was done deliberately by wilful mis-statement and undervaluation of the said goods. The "*mens rea*" can be deciphered only from "*actus-reus*". Thus, providing the wrong declaration with respect to value of the goods by the said Importer, taking a chance to clear the goods by undervaluing it, amply points towards their "*mens rea*" to evade the payment of Customs duty.

15.4 The relevant legal provisions of Section 28(4) are 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 Noticee or the exporter or the agent or employee of the Noticee 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.

15.5 Therefore, I find that importer has wilfully misrepresented the facts and had evaded correct Customs duty by intentionally mis-declared the facts & undervalued the goods grossly to evade

the legitimate Customs duty. By resorting to this deliberate suppression of facts and wilful mis-declaration, the importer 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 fraudulent intention to claim ineligible rate of duty.

15.6 Therefore, I observe that there is an element of ‘mens rea’ involved. The instant case is not a simple case of bona-fide wrong availment customs duty benefits. Instead, in the instant case, the importer had undervalued the goods. This wilful and deliberate act clearly brings out their ‘mens rea’ in this case. Once the ‘mens rea’ is established on the part of the Noticee, the extended period of limitation, automatically get attracted.

15.7 In view of the foregoing, I observe that, due to deliberate / wilful mis-classification of goods, duty demand against the Noticee has been correctly proposed under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation. In support of my stand of invoking extended period, I rely upon the following court decisions:

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

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

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

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

- (c) 2005 (191) E.L.T. 1051 (Tri. - Mumbai): Winner Systems Versus Commissioner of Central Excise & Customs, Pune: Final Order Nos. A/1022-1023/2005-WZB/C-I, dated 19-7-2005 in Appeal Nos. E/3653/98 & E/1966/2005-Mum.

Demand - Limitation - Blind belief cannot be a substitute for bona fide belief - Section 11A of Central Excise Act, 1944. [para 5]

- (d) 2006 (198) E.L.T. 275 - Interscape v. CCE, Mumbai-I.

It has been held by the Tribunal that a bona fide belief is not blind belief. A belief can be said to be bona fide only when it is formed after all the reasonable considerations are taken into account;

15.8 Therefore I find that the Importer/Noticee has willfully mis-stated the facts to get undue benefits from Customs. Therefore, the differential duty of **Rs. 1,65,48,439/-** is recoverable from the Importer/Noticee in terms of the provisions of Section 28(4) along with interest under section 28AA of the Customs Act, 1962, by invoking extended period.

III. Now I take up the next question as to whether the imported goods with re-determined value 8,11,46,575/- (Rupees Eight Crore Eleven Lakh Forty-Six Thousand Five Hundred Seventy-Five Only) should be held liable to confiscation under Section 111(m) of the Customs Act, 1962.

16. I have already held in foregoing paras that the Importer has wilfully misrepresented the facts and had evaded correct Customs duty by intentionally mis-stated the facts & wrongly availed Customs duty benefits. By resorting to this deliberate suppression of facts and wilful mis-declaration, the importer 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

fraudulent intention to evade duty. Therefore, on account of the aforesaid mis-declaration / mis-statement in the aforementioned Bills of Entry, the impugned goods having a total re determined Assessable Value of **Rs. 8,11,46,575/-** are liable for confiscation under Section 111(m), of the Customs Act, 1962. Accordingly, I find that acts of omission and commission on part of the importer has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962.

16.1 As the Noticee, through wilful mis-statement and suppression of facts, has wilfully and deliberately mis-declared the value of imported goods, with an intent to evade the applicable Customs duty, resulting in short levy and short payment of duty, I find that the confiscation of the past imported goods under Section 111(m) is justified & sustainable in law.

16.2 However, I find that the goods imported are not available for confiscation, but I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited [reported in 2018 (9) G.S.T.L. 142 (Mad.)] wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

“23. The penalty directed against the Noticee under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, “Whenever confiscation of any goods is authorised by this Act”, brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. We accordingly answer question No. (iii).”

16.3 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.).

16.4 I also find that the decision of Hon'ble Madras High Court has been followed 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.

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

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

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

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

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

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

16.7 In view of the above, I find that the decision of **Hon’ble Madras High Court in case of M/s Visteon Automotive Systems India Limited** reported in 2018 (9) G.S.T.L. 142 (Mad.), which has been passed after observing decision of Hon’ble Bombay High Court in case of M/s Finesse Creations Inc. reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A. 120 (SC), is squarely applicable in the present case. Accordingly, I observe that the present case also merits imposition of Redemption fine having held that the impugned goods are liable for confiscation under Section 111(m) of the Customs Act, 1962.

IV. Now I take up the next question as to whether penalty should be imposed on the importer M/s KC Impex under Section 112 or 114A and 114 AA of the Customs Act, 1962.

17. The provisions of Section 114 A / 112 (a) of the Customs Act, 1962 are reproduced as under:
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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** that where such duty or interest, as the case may be, as determined under [sub-section (8) of [section 28](#)], and the interest payable thereon under section [28AA], is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:*

***Provided** further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :*

***Provided** also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:*

***Provided** also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section [28AA], and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect :*

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

***Explanation . -** For the removal of doubts, it is hereby declared that -*

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest 3 [sub-section (8) of [section 28](#)] relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;*

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.]

SECTION 112. Penalty for improper importation of goods, etc. — Any person, -

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

17.1 It is a settled law that fraud and justice never dwell together (Fraus et Jus nunquam cohabitant). Lord Denning had observed that “no judgement of a court, no order of a minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything” there are numerous judicial pronouncements wherein it has been held that no court would allow getting

any advantage which was obtained by fraud. The Hon'ble Supreme Court in case of CC, Kandla vs. Essar Oils Ltd. reported as 2004 (172) ELT 433 SC at paras 31 and 32 held as follows:

*“31. ‘‘Fraud’’ as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. **It is also well settled that misrepresentation itself amounts to fraud.** Indeed, innocent misrepresentation may also give reason to claim relief against fraud. **A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood.** It is a fraud in law if a party makes representations, which he knows to be false, although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (Ram Chandra Singh v. Savitri Devi and Ors.[2003 (8) SCC 319].*

32. ‘‘Fraud’’ and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. Principle Bench of Tribunal at New Delhi extensively dealt with the issue of Fraud while delivering judgment in Samsung Electronics India Ltd. Vs commissioner of Customs, New Delhi reported in 2014(307)ELT 160(Tri. Del). In Samsung case, Hon'ble Tribunal held as under.

‘‘If a party makes representations which he knows to be false and injury ensues there from although the motive from which the representations proceeded may not have been bad is considered to be fraud in the eyes of law. It is also well settled that misrepresentation itself amounts to fraud when that results in deceiving and leading a man into damage by wilfully or recklessly causing him to believe on falsehood. Of course, innocent misrepresentation may give reason to claim relief against fraud. In the case of Commissioner of Customs, Kandla vs. Essar Oil Ltd. - 2004 (172) E.L.T. 433 (S.C.) it has been held that by ‘‘fraud’’ is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial. ‘‘Fraud’’ involves two elements, deceit and injury to the deceived.

Undue advantage obtained by the deceiver will almost always cause loss or detriment to the deceived. Similarly a ‘‘fraud’’ is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (Ref: S.P. Chagalvaraya Naidu v. Jagannath [1994 (1) SCC 1: AIR 1994 S.C. 853]. It is said to be made when it appears that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly and carelessly whether it be true or false [Ref :RoshanDeenv. PreetiLal [(2002) 1 SCC 100], Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education [(2003) 8 SCC 311], Ram Chandra Singh's case (supra) and Ashok Leyland Ltd. v. State of T.N. and Another [(2004) 3 SCC 1].

Suppression of a material fact would also amount to a fraud on the court [(Ref: Gowrishankarv. Joshi Amha Shankar Family Trust, (1996) 3 SCC 310 and S.P. Chengalvaraya Naidu's case (AIR 1994 S.C. 853)]. No judgment of a Court can be allowed to stand if it has been obtained by fraud. Fraud unravels everything and fraud vitiates all transactions known to the law of however high a degree of solemnity. When fraud is established that unravels all. [Ref: UOI v. Jain Shudh Vanaspati Ltd. - 1996 (86) E.L.T. 460 (S.C.) and in Delhi Development Authority v. Skipper Construction Company (P) Ltd. - AIR 1996 SC 2005]. Any undue gain made at the cost of Revenue is to be restored back to the treasury since fraud committed against Revenue voids all judicial acts, ecclesiastical or temporal and DEPB scrip obtained playing fraud against the public authorities are non est. So also no Court in this country can allow any

benefit of fraud to be enjoyed by anybody as is held by Apex Court in the case of Chengalvaraya Naidu reported in (1994) 1 SCC 1 : AIR 1994 SC 853. Ram Preeti Yadav v. U.P. Board High School and Inter Mediate Education (2003) 8 SCC 311.

A person whose case is based on falsehood has no right to seek relief in equity [Ref: S.P. Chengalvaraya Naidu v. Jagannath, AIR 1994 S.C. 853]. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues there from although the motive from which the representations proceeded may not have been bad. [Ref: Commissioner of Customs v. Essar Oil Ltd., (2004) 11 SCC 364 = 2004 (172) E.L.T. 433 (S.C.)].

When material evidence establishes fraud against Revenue, white collar crimes committed under absolute secrecy shall not be exonerated as has been held by Apex Court judgment in the case of K.I. Pavunnyy.AC, Cochin - 1997 (90) E.L.T. 241 (S.C.). No adjudication is barred under Section 28 of the Customs Act, 1962 if Revenue is defrauded for the reason that enactments like Customs Act, 1962, and Customs Tariff Act, 1975 are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives.

It is a cardinal principle of law enshrined in Section 17 of Limitation Act that fraud nullifies everything for which plea of time bar is untenable following the ratio laid down by Apex Court in the case of CC. v. Candid Enterprises - 2001 (130) E.L.T. 404 (S.C.). Non est instruments at all times are void and void instrument in the eyes of law are no instruments. Unlawful gain is thus debarred.”

As explained above, it is conclusively established that the importing firm M/s. K C Impex, had grossly undervalued the goods. Thus, the importing firm has deliberately suppressed these facts before Customs and submitted counterfeited the invoices and undervalued the goods. Therefore, the importing firm evaded the duty of Rs.1,65,48,439/-, which should be demanded and recovered from the importing firm under Section 28 (4) of the Customs Act, 1962, by invoking extended period. Consequently, the importing firm are liable for penalty under Section 114A of the Customs Act, 1962.

17.2 Since I will be imposing penalty on the importer under Section 114A, I shall refrain from imposing Penalty under Section 112(a) of the Act on the importer, M/s. K C Impex, in terms of the fifth proviso to Section 114A of the Act *ibid*.

17.3 I observe that the SCN proposes a penalty under Section 112(a) and/or 112 (b) and/or 114A and 114AA of the Customs Act, 1962 on the Importing firm, M/s. K C Impex for their act of deliberate omission and commission that rendered the goods liable to confiscation. I find that provisions of Sections 114AA of the Customs Act, 1962 are appropriate to be invoked against the firm. I find that it is a matter of fact that Proprietor of the Importing firm in his voluntary statements recorded u/s. 108 of the Customs Act, 1962 admitted that they used to declare the value in the import documents to the extent of 40% of its actual value. This deposition of the importer is corroborated with the recovery of Invoice No. 19 WTS-15 dated 05.12.2019 from the Office premise of M/s. K C Impex which shows the actual transaction value of the goods. Therefore, I agree with the proposal of imposing penalty on the importing firm, M/s. K C Impex u/s.114 AA of the Customs Act, 1962.

17.4 It is a settled law that fraud and justice never dwell together (Fraus et Jus nunquam cohabitant). Lord Denning had observed that “no judgement of a court, no order of a minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything” there are numerous judicial pronouncements wherein it has been held that no court would allow getting any advantage which was obtained by fraud. The Hon’ble Supreme Court in case of CC, Kandla vs. Essar Oils Ltd. reported as 2004 (172) ELT 433 SC at paras 31 and 32 held as follows:

“31. ‘‘Fraud’’ as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. **It is also well settled that misrepresentation itself amounts to fraud.** Indeed, innocent misrepresentation may also give reason to claim relief against fraud. **A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood.** It is a fraud in law if a party makes representations, which he knows to be false, although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res judicata*. (*Ram Chandra Singh v. Savitri Devi and Ors.* [2003 (8) SCC 319].

32. ‘‘Fraud’’ and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. Principle Bench of Tribunal at New Delhi extensively dealt with the issue of Fraud while delivering judgment in *Samsung Electronics India Ltd. Vs commissioner of Customs, New Delhi* reported in 2014(307)ELT 160(Tri. Del). In *Samsung* case, Hon’ble Tribunal held as under.

“If a party makes representations which he knows to be false and injury ensues there from although the motive from which the representations proceeded may not have been bad is considered to be fraud in the eyes of law. It is also well settled that misrepresentation itself amounts to fraud when that results in deceiving and leading a man into damage by wilfully or recklessly causing him to believe on falsehood. Of course, innocent misrepresentation may give reason to claim relief against fraud. In the case of *Commissioner of Customs, Kandla vs. Essar Oil Ltd. - 2004 (172) E.L.T. 433 (S.C.)* it has been held that by ‘‘fraud’’ is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial. ‘‘Fraud’’ involves two elements, deceit and injury to the deceived.

Undue advantage obtained by the deceiver will almost always cause loss or detriment to the deceived. Similarly a ‘‘fraud’’ is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another’s loss. It is a cheating intended to get an advantage. (Ref: *S.P. Changalvaraya Naidu v. Jagannath* [1994 (1) SCC 1: AIR 1994 S.C. 853]. It is said to be made when it appears that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly and carelessly whether it be true or false [Ref : *RoshanDeenv. PreetiLal* [(2002) 1 SCC 100], *Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education* [(2003) 8 SCC 311], *Ram Chandra Singh’s case* (*supra*) and *Ashok Leyland Ltd. v. State of T.N. and Another* [(2004) 3 SCC 1].

Suppression of a material fact would also amount to a fraud on the court [(Ref: *Gowrishankarv. Joshi Amha Shankar Family Trust*, (1996) 3 SCC 310 and *S.P. Chengalvaraya Naidu’s case* (AIR 1994 S.C. 853)]. No judgment of a Court can be allowed to stand if it has been obtained by fraud. Fraud unravels everything and fraud vitiates all transactions known to the law of however high a degree of solemnity. When fraud is established that unravels all. [Ref: *UOI v. Jain Shudh Vanaspati Ltd. - 1996 (86) E.L.T. 460 (S.C.)* and in *Delhi Development Authority v. Skipper Construction Company (P) Ltd. - AIR 1996 SC 2005*]. Any undue gain made at the cost of Revenue is to be restored back to the treasury since fraud committed against Revenue voids all judicial acts, ecclesiastical or temporal and DEPB scrip obtained playing fraud against the public authorities are non est. So also no Court in this country can allow any benefit of fraud to be enjoyed by anybody as is held by Apex Court in the case of *Chengalvaraya Naidu* reported in (1994) 1 SCC 1 : AIR 1994 SC 853. *Ram Preeti Yadav v. U.P. Board High School and Inter Mediate Education* (2003) 8 SCC 311.

A person whose case is based on falsehood has no right to seek relief in equity [Ref: S.P. Chengalvaraya Naidu v. Jagannath, AIR 1994 S.C. 853]. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues there from although the motive from which the representations proceeded may not have been bad. [Ref: Commissioner of Customs v. Essar Oil Ltd., (2004) 11 SCC 364 = 2004 (172) E.L.T. 433 (S.C.)].

When material evidence establishes fraud against Revenue, white collar crimes committed under absolute secrecy shall not be exonerated as has been held by Apex Court judgment in the case of K.I. Pavunnyv.AC, Cochin - 1997 (90) E.L.T. 241 (S.C.). No adjudication is barred under Section 28 of the Customs Act, 1962 if Revenue is defrauded for the reason that enactments like Customs Act, 1962, and Customs Tariff Act, 1975 are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives.

It is a cardinal principle of law enshrined in Section 17 of Limitation Act that fraud nullifies everything for which plea of time bar is untenable following the ratio laid down by Apex Court in the case of CC. v. Candid Enterprises - 2001 (130) E.L.T. 404 (S.C.). Non est instruments at all times are void and void instrument in the eyes of law are no instruments. Unlawful gain is thus debarred."

As explained above, it is conclusively established that the importing firm M/s. K C Impex, had grossly undervalued the goods and deliberately suppressed these facts before Customs and submitted counterfeited the invoices and undervalued the goods. Therefore, the importing firm evaded the duty of **Rs. 1,65,48,439/-**, which should be demanded and recovered from the importing firm under Section 28 (4) of the Customs Act, 1962, by invoking extended period. Consequently, the importing firm are liable for penalty under Section 114AA of the Customs Act, 1962.

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.

17.5 Further, as observed in above paras, in the instant case, there is clear evidence of conspiracy, fraud and suppression of facts and producing fake invoices. The Importer M/s K C Impex cleared the imported goods by knowingly and intentionally resorting to use of false and incorrect declaration, invoices and value of the goods to evade the customs duty etc. Therefore, I hold that the Importer is liable for imposition of penalty under Section 114AA *ibid*.

V. Now I take up the next question as to whether penalty should be imposed on Shri Khurshid Alam Choudhary, Proprietor of M/s KC Impex under Section 112(a)/114A and 114AA of the Customs Act, 1962.

18. I observe that the SCN proposes a penalty under Section 112(a) and/or 112 (b) and/or 114A and 114AA of the Customs Act, 1962 on Shri Khurshid Alam Chaudhary, Proprietor of the Importing firm, M/s. K C Impex for his act of deliberate omission and commission that rendered the goods liable to confiscation. I observe that provisions of Sections 114 A and 114AA of the Customs Act, 1962 are appropriate to be invoked against the proprietor of the Importing firm. I find that it is a matter of fact that the proprietor of the Importing firm in his voluntary statement

recorded under section 108 of the Customs Act, 1962 admitted that they used to declare the value in the import documents to the extent of 40% of its actual value. This deposition of proprietor are corroborated with the recovery of Invoice No. 19 WTS-15 dated 05.12.2019 from the Office premise of M/s. K C impex which shows the actual transaction value of the goods. Therefore, I agree with the proposal of imposing penalty on Shri Khurshid Alam Chaudhary, Proprietor of the Importing firm, M/s. K C impex under section 114A of the Customs Act, 1962.

Section 114 A is reproduced below:-

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 that where such duty or interest, as the case may be, as determined under [sub-section (8) of section 28], and the interest payable thereon under section [28AA], is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section [28AA], and twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect :

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

Explanation . - For the removal of doubts, it is hereby declared that -

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest 3 [sub-section (8) of section 28] relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;*

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.]

18.1 It is a settled law that fraud and justice never dwell together (Fraus et Jus nunquam cohabitant). Lord Denning had observed that “no judgement of a court, no order of a minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything” there are numerous judicial pronouncements wherein it has been held that no court would allow getting any advantage which was obtained by fraud. The Hon’ble Supreme Court in case of CC, Kandla vs. Essar Oils Ltd. reported as 2004 (172) ELT 433 SC at paras 31 and 32 held as follows:

“31. ‘‘Fraud’’ as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. **It is also well settled that misrepresentation itself amounts to fraud.** Indeed, innocent misrepresentation may also give reason to claim relief against fraud. **A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood.** It is a fraud in law if a party makes representations, which he knows to be false, although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (Ram Chandra Singh v. Savitri Devi and Ors.[2003 (8) SCC 319].

32. ‘‘Fraud’’ and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. Principle Bench of Tribunal at New Delhi extensively dealt with the issue of Fraud while delivering judgment in Samsung Electronics India Ltd. Vs commissioner of Customs, New Delhi reported in 2014(307)ELT 160(Tri. Del). In Samsung case, Hon’ble Tribunal held as under.

“If a party makes representations which he knows to be false and injury ensues there from although the motive from which the representations proceeded may not have been bad is considered to be fraud in the eyes of law. It is also well settled that misrepresentation itself amounts to fraud when that results in deceiving and leading a man into damage by wilfully or recklessly causing him to believe on falsehood. Of course, innocent misrepresentation may give reason to claim relief against fraud. In the case of Commissioner of Customs, Kandla vs. Essar Oil Ltd. - 2004 (172) E.L.T. 433 (S.C.) it has been held that by ‘‘fraud’’ is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill-will towards the other is immaterial. ‘‘Fraud’’ involves two elements, deceit and injury to the deceived.

Undue advantage obtained by the deceiver will almost always cause loss or detriment to the deceived. Similarly a ‘‘fraud’’ is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another’s loss. It is a cheating intended to get an advantage. (Ref: S.P. Chagalvaraya Naidu v. Jagannath [1994 (1) SCC 1: AIR 1994 S.C. 853]. It is said to be made when it appears that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly and carelessly whether it be true or false [Ref :RoshanDeenv. PreetiLal [(2002) 1 SCC 100], Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education [(2003) 8 SCC 311], Ram Chandra Singh’s case (supra) and Ashok Leyland Ltd. v. State of T.N. and Another [(2004) 3 SCC 1].

Suppression of a material fact would also amount to a fraud on the court [(Ref: Gowrishankarv. Joshi Amha Shankar Family Trust, (1996) 3 SCC 310 and S.P. Chengalvaraya Naidu's case (AIR 1994 S.C. 853)]. No judgment of a Court can be allowed to stand if it has been obtained by fraud. Fraud unravels everything and fraud vitiates all transactions known to the law of however high a degree of solemnity. When fraud is established that unravels all. [Ref: UOI v. Jain Shudh Vanaspati Ltd. - 1996 (86) E.L.T. 460 (S.C.) and in Delhi Development Authority v. Skipper Construction Company (P) Ltd. - AIR 1996 SC 2005]. Any undue gain made at the cost of Revenue is to be restored back to the treasury since fraud committed against Revenue voids all judicial acts, ecclesiastical or temporal and DEPB scrip obtained playing fraud against the public authorities are non est. So also no Court in this country can allow any benefit of fraud to be enjoyed by anybody as is held by Apex Court in the case of Chengalvaraya Naidu reported in (1994) 1 SCC 1 : AIR 1994 SC 853. Ram Preeti Yadav v. U.P. Board High School and Inter Mediate Education (2003) 8 SCC 311.

A person whose case is based on falsehood has no right to seek relief in equity [Ref: S.P. Chengalvaraya Naidu v. Jagannath, AIR 1994 S.C. 853]. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues there from although the motive from which the representations proceeded may not have been bad. [Ref: Commissioner of Customs v. Essar Oil Ltd., (2004) 11 SCC 364 = 2004 (172) E.L.T. 433 (S.C.)].

When material evidence establishes fraud against Revenue, white collar crimes committed under absolute secrecy shall not be exonerated as has been held by Apex Court judgment in the case of K.I. Pavunnyv.AC, Cochin - 1997 (90) E.L.T. 241 (S.C.). No adjudication is barred under Section 28 of the Customs Act, 1962 if Revenue is defrauded for the reason that enactments like Customs Act, 1962, and Customs Tariff Act, 1975 are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives.

It is a cardinal principle of law enshrined in Section 17 of Limitation Act that fraud nullifies everything for which plea of time bar is untenable following the ratio laid down by Apex Court in the case of CC. v. Candid Enterprises - 2001 (130) E.L.T. 404 (S.C.). Non est instruments at all times are void and void instrument in the eyes of law are no instruments. Unlawful gain is thus debarred."

As explained above, it is conclusively established that the proprietor of the importing firm M/s. K C Impex, had grossly undervalued the goods. Thus, the importing firm has deliberately suppressed these facts before Customs and submitted counterfeited the invoices and undervalued the goods. Therefore, the importing firm evaded the duty of Rs.1,65,48,439/-, which should be demanded and recovered from the importing firm under Section 28 (4) of the Customs Act, 1962, by invoking extended period. Consequently, the importing firm are liable for penalty under Section 114A of the Customs Act, 1962.

18.2 Since I will be imposing penalty on the importer under Section 114A, I shall refrain from imposing Penalty under Section 112(a) of the Act on Shri Khurshid Alam Choudhary in terms of the fifth proviso to Section 114A of the Act *ibid*.

18.3 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.

18.4 Further, as observed in above paras, in the instant case, there is clear evidence of conspiracy, fraud and suppression of facts and producing fake invoices. The Importer Shri Khurshid Alam Chaudhary cleared the imported goods by knowingly and intentionally resorting

to use of false and incorrect declaration, invoices and value of the goods to evade the customs duty etc. Therefore, I hold that the proprietor Shri Khurshid Alam Chaudhary is liable for imposition of penalty under Section 114AA *ibid*.

VI. As to whether penalty should be imposed on Custom Broker M/s Premier Shipping Agencies, M/s Opms (C&F) Forwarding Agencies Pvt Ltd, M/s Micro Clearing Agency and M/s S Parthasarathy who filed the bill of entry on behalf of importer M/s KC Impex under Section 112 of the Customs Act, 1962.

19. I reiterate my findings at para 14 to 14.10 and 15 to 15.8 wherein it is very evident that the Importing firm has under valued the imported goods in order to enrich themselves by short payment of legitimate Customs Duty and the customs broker had not duly verified all the details, documents, valuation of the subject goods. Summons dated 04.10.2024 under section 108 of the Customs Act, 1962 were issued to the Customs Brokers to appear on 08/09/10.10.2024. I find that F-card holder of CB M/s Micro Clearing agency has appeared before the investigating agency and his statement was recorded under section 108 of the Customs Act, 1962 wherein he has confessed that they have not verified the documents regarding valuation of the goods. I find that other 03 Customs Brokers namely **M/s Premier Shipping Agencies, M/s Opms (C&F) Forwarding Agencies Pvt Ltd, and M/s S Parthasarathy** has not cooperated with the investigating agency as per the show cause notice.

19.1 Relevant provision of Section 112 of the Customs Act, 1962 is as under:-

SECTION 112. Penalty for improper importation of goods, etc. — Any person, -

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

19.2 As per Regulation 10 of CBLR, 2018 :

10. Obligations of Customs Broker—A Customs Broker shall —

- (d) *advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;*
 (m) *discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay.*

iii. I observe that in this case, the Customs Broker failed to fulfil his obligations by not advising his client to adhere to the relevant notification provisions. Furthermore, he neglected to report the non-compliance to the Deputy Commissioner as required under Regulation 10(d) of CBLR, 2018.

iv. I further observe that the Customs Broker breached his obligations under Regulation 10(m) of the Customs Brokers Licensing Regulations (CBLR) 2018, as he failed to discharge his duties with utmost efficiency. For which separate proceeding under CBLR 2018 may be initiated.

19.3 In a trade facilitation regime, Customs Brokers play a pivotal role as intermediaries between Customs Authorities and importers/exporters, and exercise significant influence over the smooth operation of international trade. As such, they are entrusted with a high level of trust and responsibility. However, when Customs Brokers fail to adhere to the Customs Act and Customs Broker Licensing Regulations (CBLR) that leads to unlawful imports, resulting in significant revenue losses for the government. In this case, as enumerated above, the Customs Broker failed to comply with the Customs Act as well as CBLR Regulations. To support my view, I rely on the following judgments:

19.4 The Hon'ble Madras High Court in case of M/s Cappithan Agencies Versus Commissioner of Customs, Chennai-Viii, [2015(326) ELT 0150 Mad.], had held that:

“13. The very purpose of granting a licence to a person to act as a Customs House Agent is for transacting any business relating to the entry or departure of conveyance or the import or export of goods in any customs station. For that purpose, under Regulation 9 necessary examination is conducted to test the capability of the person in the matter of preparation of various documents determination of value procedures for assessment and payment of duty, the extent to which he is conversant with the provisions of certain enactments, etc. Therefore, the grant of licence to act as a Custom House Agent has got a definite purpose and intent. On a reading of the Regulations relating to the grant of licence to act as CHA, it is seen that while CHA should be in a position to act as agent for the transaction of any business relating to the entry or departure of conveyance or the import or export of goods at any customs station, he should also ensure that he does not act as an Agent for carrying on certain illegal activities of any of the persons who avail his services as CHA. In such circumstances, the person playing the role of CHA has got greater responsibility. The very description that one should be conversant with the various procedures including the offences under the Customs Act to act as a Custom House Agent would show that while acting as CHA, he should not be a cause for violation of those provisions. A CHA cannot be permitted to misuse his position as CHA by taking advantage of his access to the Department. The grant of licence to a person to act as CHA is to some extent to assist the Department with the various procedures such as scrutinizing the various documents to be presented in the course of transaction of business for entry and exit of conveyances or the import or export of the goods. In such circumstances, great confidence is reposed in a CHA. Any misuse of such position by the CHA will have far reaching consequences in the transaction of business by the customs house officials. Therefore, when, by such malpractices, there is loss of revenue to the custom house, there is every justification for the Respondent in treating the action of the Petitioner Applicant as detrimental to the interest of the nation and accordingly, final order of revoking his licence has been passed.

14. In view of the above discussions and reasons and the finding that the petitioner has not fulfilled their obligations under above said provisions of the Act, Rules and Regulations, the impugned order, confirming the order for continuation of prohibition of the licence of the petitioner is sustainable in law, which warrants no interference by this Court. Accordingly, this writ petition is dismissed.”

19.5 Further, I rely upon the judgment of Hon'ble CESTAT Delhi in case of M/S. Rubal Logistics Pvt. Ltd. Versus Commissioner of Customs (General) wherein in para 6.1. Hon'ble Tribunal held as under:

"Para 6.1 *These provisions require the Customs Broker to exercise due diligence to ascertain the correctness of any information and to advise the client accordingly. Though the CHA was accepted as having no mensrea of the noticed mis-declaration /under- valuation or mis-quantification but from his own statement acknowledging the negligence on his part to properly ensure the same, we are of the opinion that CH definitely has committed violation of the above mentioned Regulations. These Regulations caused a mandatory duty upon the CHA, who is an important link between the Customs Authorities and the importer/exporter. Any dereliction/lack of due diligence since has caused the Exchequer loss in terms of evasion of Customs Duty, the original adjudicating authority has rightly imposed the penalty upon the appellant herein."*

19.6 Further, the Hon'ble Supreme Court in the case of Commissioner of Customs V/s. K. M. Ganatra and Co. in civil appeal no. 2940 of 2008 approved the observation of Hon'ble CESTAT Mumbai in M/s. Noble Agency V/s. Commissioner of Customs, Mumbai that:

“A Custom Broker occupies a very important position in the customs House and was supposed to safeguard the interests of both the importers and the Customs department. A lot of trust is kept in CB by the Government Agencies and to ensure made under CBLR,

2013 and therefore rendered themselves liable for penal action under CBLR, 2013 (now CBLR, 2018)”.

19.7 I rely on the judgment of Hon’ble Supreme Court in the case of Commissioner of Customs Versus M/s K M Ganatra & Co as reported in 2016 (2) TMI 478 - SUPREME COURT held as under:

“15. In this regard, Ms. Mohana, learned senior counsel for the appellant, has placed reliance on the decision in Noble Agency v. Commissioner of Customs, Mumbai 2002 (142) E.L.T. 84 (Tri. - Mumbai) wherein a Division Bench of the CEGAT, West Zonal Bench, Mumbai has observed:-

“The CHA occupies a very important position in the Custom House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the Government Agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations. ...”

We approve the aforesaid observations of the CEGAT, West Zonal Bench, Mumbai and unhesitatingly hold that this misconduct has to be seriously viewed.”

19.8 I also place reliance in the precedence laid down by the CESTAT Hyderabad while highlighting the criticality of the role of Customs Broker, in the case of Shakelly Venkat Chand Vs Commissioner of Customs, Vijayawada arising out of Customs Appeal No. 31287 of 2018 wherein it has been held that

7. *The moot question for deciding in this Appeal is whether in the facts of the case, the Appellant viz., Shri Shakelly Venkat Chand was acting in good faith, exercising due diligence or there was any malafide intent in tacitly helping the importer to clear the consignment, which was found to be grossly misdeclared. The role of the **Customs Broker is very crucial in the process of clearance of goods as they are required to do due diligence before facilitating filing of relevant documents for clearance of goods. As a regular Customs Broker, it is not expected that he would accept any document including KYC in a mechanical manner.** He is expected to exercise due diligence to satisfy about the bonafide of the importer and the documents submitted by him. The employee of the Customs Broker in the instant case has in fact noted and admitted that there was some kind of impersonation and that should have alerted him and he should have brought to the notice of the Customs Authority immediately, instead he remained silent. This is the admitted position in the statement given by the Appellant and the Appellant is also not denying this fact nor giving any substantive reason about him being silent about the impersonation in the first place. He is responsible for the act of his employee also who is misrepresenting the CHB before the Customs Authorities.....*

19.9 In the nutshell, in view of the negligence rendered by the M/s Premier Shipping Agencies, M/s Opms (C&F) Forwarding Agencies Pvt Ltd, M/s Micro Clearing Agency, M/s S Parthasarathy who filed the bill of entry on behalf of importer M/s K C Impex have failed in discharging their duties and despite knowing or having reason to believe that the impugned goods imported are liable to confiscation under section 111(m) of the Customs Act, 1962 and aided the importer M/s. K C Impex in clearing the impugned goods. Therefore, I find that the CB M/s Micro Clearing Agency in their statement under section 108 has confessed that they have not verified the documents regarding valuation of the goods and CB M/s Premier Shipping Agencies, CB M/s Opms (C&F) Forwarding Agencies Pvt Ltd and CB M/s S Parthasarathy has not cooperated with the investigating agency as per the Show Cause Notice. Therefore CB M/s Premier Shipping Agencies, CB M/s Opms (C&F) Forwarding Agencies Pvt Ltd, CB M/s Micro Clearing Agency and CB M/s S Parthasarathy are liable for penalty under Section 112 (a) of the Customs Act, 1962 for bills of entry cleared by them respectively.

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

ORDER

- I. I order to reject the declared value for the good imported vide Past Bills of Entry as mentioned in Annexure-I of **Rs.1,69,61,215/- (One Crore Sixty-Nine Lakh Sixty-One Thousand Two Hundred and Fifteen Only)**, under Rule 12(2), Explanation (1)(iii) of the CVR, 2007 and order to re-determined the same to **Rs. 8,11,46,575/- (Rupees Eight Crore Eleven Lakh Forty-Six Thousand Five Hundred Seventy-Five Only)** under Rule 5, Rule 10 of the CVR, 2007 read with section 14 of the Customs Act, 1962.
- II. I confirm the demand of differential duty amounting to **Rs. 1,65,48,439/- (Rs One Crore Sixty-Five Lakh Forty-Eight Thousand Four Hundred Thirty-Nine only)** and order to recover the same from Importer under Section 28(4) of Customs Act, 1962, along-with applicable interest thereon in terms of provisions of Section 28AA of the Customs Act, 1962.
- III. Even though the goods are not available, I hold the impugned goods having total re-determined Assessable value of **Rs. 8,11,46,575/- (Rupees Eight Crore Eleven Lakh Forty-Six Thousand Five Hundred Seventy-Five Only)** liable to confiscation under Section 111(m) of the Customs Act, 1962. However, I impose a redemption fine of **Rs. 2,00,00,000/- (Rs. Two Crores only)** on M/s K C Impex in lieu of confiscation under Section 125(1) of the Customs Act, 1962.
- IV. I impose a penalty of **Rs. 75,00,000/- (Rs. Seventy-Five lakhs only)** on the importing firm M/s K C Impex under Section 114 AA of the Customs Act, 1962.
- V. I impose a penalty equivalent to differential duty of **Rs. 1,65,48,439/- (Rs One Crore Sixty-Five Lakh Forty-Eight Thousand Four Hundred Thirty-Nine only)** with interest accrued there upon on the importing firm, M/s K C Impex under Section 114A of the Customs Act, 1962.
In terms of the first and second proviso to Section 114A *ibid*, if duty and interest is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid shall be twenty-five per cent of the duty and interest, subject to the condition that the amount of penalty is also paid within the period of thirty days of communication of this order.
- VI. I impose a penalty equivalent to differential duty of **Rs. 1,65,48,439/- (Rs One Crore Sixty-Five Lakh Forty-Eight Thousand Four Hundred Thirty-Nine only)** with interest accrued there upon on Shri Khurshid Alam Choudhary proprietor of M/s K C Impex under Section 114A of the Customs Act, 1962.
In terms of the first and second proviso to Section 114A *ibid*, if duty and interest is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid shall be twenty-five per cent of the duty and interest, subject to the condition that the amount of penalty is also paid within the period of thirty days of communication of this order.

- VII.** I impose a penalty of Rs. **75,00,000/- (Rs. Seventy-Five lakhs only)** on Shri Khurshid Alam Choudhary, Proprietor of M/s KC Impex under Section 114AA of the Customs Act, 1962.
- VIII.** I impose a penalty of **Rs. 3,40,000/- (Rs. Three Lakhs Forty Thousand Only)** on Custom M/s Broker Premier Shipping Agencies (AADFP6841PCH007) who filed the bill of entry on behalf of importer M/s KC Impex under Section 112 of the Customs Act, 1962.
- IX.** I impose a penalty of **Rs. 2,60,000/- (Rs. Two Lakhs Sixty Thousand Only)** on Custom Broker M/s OPMS C&F Agencies (P) Ltd. (AAACO0401CCH001) who filed the bill of entry on behalf of importer M/s KC Impex under Section 112 of the Customs Act, 1962.
- X.** I impose a penalty of **Rs. 10,000/- (Rs. Ten thousand only)** on Custom M/s Micro Clearing Agency (AAIPP7083QCH002) who filed the bill of entry on behalf of importer M/s KC Impex under Section 112 of the Customs Act, 1962.
- XI.** I impose a penalty of **Rs.10,00,000/- (Rs.Ten Lakhs only)** on Custom M/s S. Parthasarathy (AFXPP8270KCH002) who filed the bill of entry on behalf of importer M/s KC Impex under Section 112 of the Customs Act, 1962.

Digitally signed by
Vijay Risi
Date: 25-07-2025
20:18:10 (Vijay Risi)
Commissioner of Customs
Gr.3, NS-III, JNCH, Nhava Sheva

To
M/s KC Impex (IEC AVHPC0142R)
A 402 Sai Pooja Apartment,
Hissa No. 18A H. No. 342,
Kalamboli, Raigad, Maharashtra-410208

Shri Khurshid Alam Choudhary,
Proprietor of M/s KC Impex
A 402 Sai Pooja Apartment,
Hissa No. 18A H. No. 342,
Kalamboli, Raigad, Maharashtra-410208

Premier Shipping Agencies
15, 1st Floor, Tulsi Terrace, 275, SBS Road,
Ballard Estate, Fort, Mumbai 400001

OPMS (C&F) Forwarding Agencies Pvt Ltd.
7/2, Rapid House, Opp ATS Gate,
Near to Sai Hanuman Mandir,
Sahar Intl. Cargo Complex, Andheri East, Mumbai-99

Micro Clearing Agency
36 Lal Bldg, 4th Floor, R. No. 61 FOA

Street, Fort, Mumbai-400001

S Parthasarathy

Gala No. 5, Nakshatra CHS Ltd,
Plot 2 & 3, Sector 20, Kamothe,
Navi Mumbai- 410209

Copy To:

1. Deputy Commissioner of Customs, SIIB(I), JNCH
2. Deputy Commissioner of Customs, CAC, JNCH, Nhava Sheva (for adjudication).
3. Notice Board.
4. Office copy.