OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-I
सीमाशुल्कआयुक्तकाकार्यालय, एनएस-I
CENTRALIZED ADJUDICATION CELL, JAWAHARLAL NEHRU CUSTOM HOUSE,
केंद्रीकृतअधिनिर्णयनप्रकोष्ठ, जवाहरलालनेहरूसीमाशुल्कभवन,
NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA 400707
न्हावाशेवा, तालुका-उरण, जिला- रायगढ़, महाराष्ट्र **-400 707**

Date of Order: 10.09.2025 **Date of Issue: 10.09.2025**
आदेश की तिथि **: 10.09.2025** जारी किए जाने की तिथि**:** **10.09.2025**

DIN: 20250978NW0000888FF1

F. No. S/26/Misc-95/2014-15/ADJ(I)/JNCH
SCN No. DRI/AZU/GI-2/ENQ-46(INT-09/14)/2014 dated 07.11.2014

Passed by: Shri Yashodhan Wanage
पारितकर्ता**:** श्री यशोधन वानागे

Principal Commissioner of Customs (NS-I), JNCH, Nhava Sheva
प्रधानआयुक्त**,** सीमाशुल्क **(**एनएस**-1),** जेएनसीएच**,** न्हावाशेवा

Order No.: 188/2025-26 /Pr. Commr./NS-I /CAC /JNCH
आदेशसं. : **188 /2025-26**/प्र. आयुक्त/एनएस-1/ सीएसी/जेएनसीएच

Name of Party/Noticee: M/s Asian Food Industries & others
पक्षकार (पार्टी)/ नोटिसीकानाम**:** मेसर्स एशियन फूड इंडस्ट्रीज और दूसरे

ORDER-IN-ORIGINAL
मूलआदेश

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

1. इसआदेशकीमूलप्रतिकीप्रतिलिपिजिसव्यक्तिकोजारीकीजातीहै, उसकेउपयोगकेलिएनि:शुल्कदीजातीहै।

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

2.इसआदेशसेव्यथितकोईभीव्यक्तिसीमाशुल्कअधिनियम१९६२कीधारा१२९(ए) केतहतइसआदेशकेविरुद्धसीईएसटीएटी, पश्चिमीप्रादेशिकन्यायपीठ (वेस्टरीज़नलबेंच), ३४, पी. डी. मेलोरोड, मस्जिद (पूर्व), मुंबई– ४००००९कोअपीलकरसकताहै, जोउक्तअधिकरणकेसहायकरजिस्ट्रारकोसंबोधितहोगी।

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

3. अपीलदाखिलकरनेसंबंधीमुख्यमुद्दे:-

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

फार्म - फार्मन. सीए३, चारप्रतियोंमेंतथाउसआदेशकीचारप्रतियाँ, जिसकेखिलाफअपीलकीगयीहै (इनचारप्रतियोंमेंसेकमसेकमएकप्रतिप्रमाणितहोनीचाहिए(.

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

समयसीमा- इसआदेशकीसूचनाकीतारीखसे३महीनेकेभीतर

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

फीस-

(क(एकहजाररुपये–जहाँमाँगेगयेशुल्कएवंब्याजकीतथालगायीगयीशास्तिकीरकम५लाखरुपये याउससेकमहै।

(b) Rs. Five Thousand - Where amount of duty &Page 2 of 1

interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 lakh.

(ख(पाँचहजाररुपये– जहाँमाँगेगयेशुल्कएवंब्याजकीतथालगायीगयीशास्तिकीरकम५लाखरुपयेसेअधिकपरंतु५०ला खरुपयेसेकमहै।

(c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.

(ग(दसहजाररुपये–जहाँमाँगेगयेशुल्कएवंब्याजकीतथालगायीगयीशास्तिकीरकम५ ०लाखरुपयेसेअधिकहै।

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

भुगतानकीरीति– क्रॉसबैंकड्राफ्ट, जोराष्ट्रीयकृतबैंकद्वारासहायकरजिस्ट्रार, सीईएसटीएटी, मुंबईकेपक्षमेंजारीकियागयाहोतथामुंबईमेंदेयहो।

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

सामान्य - विधिकेउपबंधोंकेलिएतथाऊपरयथासंदर्भितएवंअन्यसंबंधितमामलोंकेलिए, सीमाशुल्कअधिनियम, १९९२, सीमाशुल्क (अपील) नियम, १९८२सीमाशुल्क, उत्पादनशुल्कएवंसेवाकरअपीलअधिकरण (प्रक्रिया) नियम, १९८२कासंदर्भलियाजाए।

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

4.इसआदेशकेविरुद्धअपीलकरनेकेलिएइच्छुकव्यक्तिअपीलअनिर्णीतरहनेतकउसमेंमाँगेगयेशुल्कअथवाउद्गृहीतशास्तिका७.५%
जमाकरेगाऔरऐसेभुगतानकाप्रमाणप्रस्तुतकरेगा,ऐसानकियेजानेपरअपीलसीमाशुल्कअधिनियम,
१९६२कीधारा१२८केउपबंधोंकीअनुपालनानकियेजानेकेलिएनामंजूरकियेजानेकीदायीहोगी।

F. No. S/26/Misc-95/2014-15/ADJ(I)/JNCH
SCN No. DRI/AZU/GI-2/ENQ-46(INT-09/14)/2014 dated 07.11.2014

1. Brief Facts of the Case

1.1 Intelligence and developed by the officers of DRI, Ahmedabad indicated that M/s. Asian Food Industries, (IEC No. 3499001942), having their office at N.H.8, Opposite Escort Tractors, At & PO - Dabhan, Taluka- Nadiad, District Kheda (Gujarat), PIN - 387320 (hereinafter referred to as 'the importer' for sake of brevity) are engaged in import and trading activities of 'Watermelon Seeds' imported from Sudan and Pakistan. Intelligence indicated that M/s. Asian Food Industries had imported 'Watermelon Seeds' falling under CTH 12079990, through Jawaharlal Nehru Custom House, Nhava Sheva (INNSA1) by resorting to mis-declaration of the value of the goods and suppressing the actual transaction value with a motive to evade customs duty payable on the said imported goods. Based on the above intelligence, search was carried out at the factory-cum-office premises of M/s Asian Food Industries at Dabhan, Nadiad under Panchnama dated 12.08.2014. Simultaneous searches were also carried out in branch office premises of the importer, situated at 5th Floor, Chanakya Building, Behind Sales India, Ashram Road, Ahmedabad, (Gujarat), under Panchnama dated 12.08.2014 and various incriminating documents were retrieved.

1.2 During the course of search at the factory-cum-office premises of M/s Asian Food Industries at Dabhan, Nadiad under Panchnama dated 12.08.2014, printouts of various documents from a computer installed in the premises were taken and placed in a file marked as "Made up file containing computer printouts" and the same was also retrieved along with other documents like - file containing Bills of Entry and related documents; file containing QSS Report Incoming & Outgoing; file containing Plant Lay-Out Inside & Outside; file containing MKT; file containing Purchases documents; file containing Purchase & Contract documents; file containing Dispatch details 01-01-2014 to 02.07.2014; Notebooks - purchase and file containing DEEC licence copies, as mentioned in the Panchnama dated 12.08.2014. The made up file contained documents in the form of sale contracts, proforma invoices, conversation with overseas suppliers etc., related to the import of Watermelon Seeds by M/s Asian Food Industries, Nadiad.

1.3 Statements dated 12.08.2014 and 09.10.2014 of Shri Ajay Tahelyani @ Ajay Tahiliani Partner of M/s. Asian Food Industries were recorded under Section 108 of Customs Act, 1962.

1.4 Statement dated 10.10.2014 of Shri Suraj Nandkishore Wadhwa Propreitor of M/s N N Corporation was recorded under Section 108 of Customs Act, 1962.

1.5 In view of the evidence and facts, it appeared that Shri Ajay Tahelyani @ Ajay Tahiliani, Partner of M/s. Asian Food Industries, Nadiad was in business contact with Shri SurajWadhawa of M/s N. N. Corporation & M/s Kinshuk Enterprise, Siddhpur. Shri Suraj was having crushing facility of watermelon seeds in his factory and he was also engaged in the hulling process of watermelon seeds in his factory by procuring watermelon seed as raw material from local market in India and subsequently was selling Watermelon Kernels, the final product, to Shri Ajay Tahelyani of M/s Asian Food Industries, Nadiad and other buyers. In the year of 2009, Shri Ajay Tahelyani intended to import watermelon seeds for manufacturing of Watermelon Kernel but they did not have crushing and hulling facility of watermelon seeds in their factory to manufacture watermelon kernel out of the imported watermelon seeds. Shri Ajay, therefore, in connivance with Shri Suraj Wadhawa of M/s N. N. Corporation hatched the conspiracy to import watermelon seeds as raw material for his final product i.e. watermelon kernel which the importer used to purchase from Shri Suraj Wadhawa. In this modus Shri Ajay gained profit at two stages: first, at the time of selling of undervalued imported watermelon seeds to Shri Suraj and the second by cutting cost of watermelon kernel purchased by him from Shri Suraj. With this motive, Shri Ajay offered Shri Suraj the imported watermelon seed from Pakistan and Sudan of the same quality which he (Suraj) was procuring locally even at lower price. After mutual understanding between the duo, Shri Suraj agreed upon to be the buyer of the imported watermelon seed by M/s Asian Food Industries. Shri Suraj gave his indent to Shri Ajay and even to the overseas suppliers directly in some of the cases, for the required grade, quality and quantity of watermelon seeds, which

was fit for his processing plant and accordingly, Shri Ajay imported the watermelon seeds from Pakistan and Sudan which were subsequently sold to M/s N. N. Corporation, Siddhpur after adding his profit, for further crushing and hulling process. After crushing and hulling process, the final product i.e. Watermelon Kernel was sold by Shri Suraj to Shri Ajay and other buyers. Shri Ajay and Shri Suraj both were interacting with the overseas suppliers with regard to negotiation of price and other import related activities, however, the unit price and other terms & conditions of imports were finalised by Shri Ajay only even in the cases where Shri Suraj had negotiated the price. Shri Suraj had suggested names of some overseas suppliers of Watermelon Seeds to Shri Ajay and after preliminary negotiations with such suppliers, Shri Suraj used to obtain proforma invoices / sale contracts and forwarded the same to Shri Ajay of M/s Asian Food Industries for finalisation of the deal as per his convenience since the payment to the overseas suppliers was to be made by Shri Ajay only. As per the understanding between the importer and the overseas suppliers, the overseas suppliers used to issue a proforma invoice / execute a sales contract of full negotiated value and apart from the other conditions, the proforma invoices/ sales contracts also contained conditions related to payment and amount to be shown in commercial invoices, which they had raised on the importer once they received the payment over and above such determined value of commercial invoices.

1.5.1 As per the modus adopted, the payment of the actual value of imported watermelon seeds was remitted by Shri Ajay Tahelyani of M/s Asian Food Industries in three parts viz. First as: advance payment in the range of 10%-25% of the negotiated actual transaction value; second, the balance/remaining amount after deduction of CAD payment which was equivalent to the value of commercial invoice, produced by them before the Customs at the time of import, and the third one was the Payment against CAD (cash against documents). Payments against CAD were the only payments made by them through bank. The advance payments and payments of the remaining/balance amount were always remitted by the importer to the respective overseas suppliers in Dubai itself, by way of channels other than banking channels through Shri Harish Tahelyani, elder brother of Shri Ajay Tahelyani, who was running a firm M/s Arab & India Spices, LLC, Ajman, UAE over there. In cases of imports from Pakistan, the importer had imported through agents/mediators having their offices in Dubai and therefore, payment over and above the commercial invoice value in those cases was also remitted in Dubai through the respective agent/mediator. As a part of the conspiracy, Shri Ajay Tahelyani, the importer intimated the amount and details of the overseas suppliers including particulars of bank account etc., wherever required, to Shri Harish Tahelyani for release of payment to the overseas suppliers in Dubai and accordingly, Shri Harish Tahelyani used to make payments over and above the CAD amount to the overseas supplier in Dubai. As admitted by Shri Ajay Tahelyani, transfer/adjustment of payment between their firm M/s Asian Food Industries and Shri Harish of M/s Arab & India Spices LLC, is yet to be done, as the firm was owned by his elder brother and there was mutual understanding between them.

1.5.2 In the manner discussed herein above, Shri Ajay Tahelyani of M/s. Asian Food Industries, Shri SurajWadhawa of M/s N. N. Corporation and Shri Harish Tahelyani of M/s Arab & India Spices hatched a conspiracy for evasion of the customs duty due to the Government Exchequer by way of importing watermelon seed from Pakistan and Sudan and clearing them through JNCH, Nhava Sheva at grossly undervalued prices.

1.5.3 From the facts narrated in the foregoing paras and the material evidences available on record in the form of email correspondences, proforma invoices & sale contracts executed between the importer and the overseas supplier depicting negotiated actual transaction value along with payment terms; correspondence between the importer and M/s Arab & India Spices regarding release of payments over and above the value declared before the Customs and the confessional statement of Shri Ajay Tahelyani and Shri Suraj Wadhawa, it appeared that Shri Ajay Tahelyani of M/s Asian Food Industries, Nadiad had resorted to gross under-valuation in the imports of Watermelon Seeds in connivance with the overseas suppliers and Shri Suraj Wadhawa with intent to evade payment of Customs duty in

contravention of the Customs law. The gross under-valuation and mis-declaration of value is evidenced from the following facts on record:

1.5.4 Statements of Shri Ajay Tahelyani, along with documents explained therein, wherein he admitted that he had imported watermelon seeds by resorting to undervaluation and also revealed and admitted the actual transaction value of each consignment of watermelon seeds imported by him in the name of M/s Asian Food Industries, Nadiad. He also admitted to have paid the differential value, over and above the value declared before the Customs at the time of import, to the overseas supplier through his brother's firm i.e. M/s Arab & India Spices or by way of channels other than banking channels. Statement of Shri Suraj Wadhawa, along with documents explained therein, wherein he had admitted to have imported undervalued watermelon seeds in the name of M/s Asian Food Industries.

1.5.5 One of the proforma Invoices of M/s Al Barakawi International Co. Ltd., raised on M/s Asian Food Industries, Nadiad, bearing No. 5165 dated 25.01.2011 for purchase of 90 MT of Watermelon Seeds retrieved under Panchnama dated 12.08.2014, wherein the actual transaction value of the said goods was USD 865 PMT (C&F) and the same had been bifurcated in two parts for payment purpose as 'USD 565 PMT to be paid in advance at Dubai and balance CAD', confirming the modus adopted by the importer for undervaluation of the imported watermelon seeds. Goods covered under the above proforma invoice were imported vide Bill of Entry No. 3222704 dated 15.04.2011, declaring the unit price as USD 300 PMT against the actual transaction value of USD 865 PMT.

1.5.6 One of the Contracts executed between M/s Alsaqr General Trading Co. LLC, Dubai, UAE bearing No. 0211/SWM01 dated 02.02.2011 (mediator in cases of imports from M/s Diana for Investment & Construction Co., Sudan) and M/s Asian Food Industries, Nadiad for purchase of 184 MT of 'Watermelon Seed (Sader Like Grade-I)', retrieved under Panchnama dated 12.08.2014, wherein the agreed transaction value of the said goods was USD 850 PMT C&F Nhava Sheva; USD 550 PMT was to be paid at Dubai and remaining was to be paid either in Dubai or CAD through bank at buyer's option; 2nd invoice of USD 300 PMT would be required from the Sudan supplier, confirming the modus adopted by the importer.

1.5.7 One of the Contracts between the importer and M/s Bayrony Investment International Co. Ltd., bearing No. PIICO/4 dated 10.01.2011, under which the importer had purchased Watermelon seed from M/s Bayrony Investment International Co. Ltd, Sudan and showing details of payment of 270 MT Watermelon Seed. As per the said document, the importer had made payment of total 216,000.00 USD to M/s Bayrony Investment International Co. Ltd., Sudan in three stages – payment of USD 54,000.00 in advance, USD 81,000.00 in Dubai (balance/remaining amount) and USD 81,000.00 against CAD to the overseas supplier, confirming the mode of payment to the overseas suppliers by the importer. The said goods were imported vide Bill of Entry No. 747905 dated 05.03.2011 declaring the Unit Price as 222 Euro (equivalent to USD 300.00) against the actual transaction value of USD 800 PMT.

1.5.8 The document on page no. 201 of the made-up file, retrieved under Panchnama dated 12.08.2014, wherein M/s Asian Food Industries, Nadiad had directed Shri Harishbhai or Sagarbhai of M/s Arab & India Spices, for release of USD 20,000.00 to M/s Greater Girafan Trading & Investment Co. Ltd, Sudan (contact person Mr. El Sir AlzainAwad, Mobile No. 0505534991) as advance payment against purchase of watermelon seeds from them to import in India, confirming the advance payment to the overseas suppliers in Dubai.

1.5.9 One of the Proforma Invoices raised by M/s Bayrony Investment International Co. Ltd., Sudan on M/s Asian Food Industries, Nadiad for sale of 270 MT Sudanese Watermelon Seeds crop 2012 bearing No. PIICO/31 dated 22.02.2012, retrieved under Panchnama dated 12.08.2014, wherein the actual transaction value/unit price is shown as USD 1120 (CFR) Mumbai having total actual transaction value of the said goods as USD 302,400.00 for the goods covered under the Commercial Invoice No. PIICO/69 dated 05.04.2012, imported by them under Bill of Entry No. 6608870 dated 21.04.2012, declaring Unit Price as 228 Euro (equivalent to USD 300.00) against the actual transaction value of

USD 1120 PMT. Under the letter dated 18.04.2012 issued by M/s Asian Food Industries to M/s Arab & India Spices, retrieved under Panchnama dated 12.08.2014, Shri Ajay Tahelyani of M/s Asian Food Industries, Nadiad had directed M/s Arab & India Spices LLC, Ajman, UAE for payment of USD 160,920.00 to M/s Bayrony Investment International, Sudan (account No. 115065010001), the balance amount of Proforma Invoice No. PIICO/31 dated 23.02.2012, confirming the remittances of balance/remaining payment to the overseas supplier.

1.5.10 One of the Sale contracts executed between M/s AlBarakawi International Co. Ltd., Sudan and the importer M/s Asian Food Industries, Nadiad for purchase of 36 MT +/- 5% Watermelon Seed 2010/2011 Crop bearing No. EXPWMS-114 dated 18.01.2010, retrieved under Panchnama dated 12.08.2014, wherein the negotiated actual transaction value of the said goods was USD 830 PMT C&F Nhava Sheva; total value of the above quantity was USD 29,880.00; terms of payment was mentioned as USD 530 PMT Advance + balance CAD, confirming the modus adopted by the importer. The said goods were imported by them under Bill of Entry No. 768168 dated 17.03.2011 declaring the Unit Price as USD 300 against the actual transaction value of USD 830 PMT.

1.5.11 One of the Proforma Invoices of M/s Mayur Import & Export, Sudan, bearing No. P/1 No.: PO-108/01/2011 dated 30th Jan, 2011 retrieved under Panchnama dated 12.08.2014, wherein the actual transaction value/unit price is shown as USD 830 PMT (C&F), Nhava Sheva and remarked that payment: USD 530 per ton in cash, and balance USD 300 per ton through Bank on DP sight basis, confirming the modus adopted by the importer. The said document also indicated the price of watermelon seed prevailing during the relevant time.

1.5.12 One of the Contracts executed between the importer M/s Asian Food Industries, Nadiad and M/s Mayur Import & Export, Sudan bearing No. MIE WMS108/2012 dated 28.01.2012, for purchase of 144.00 MT of Sudanese Watermelon Seeds Crop 2011-2012, retrieved under Panchnama dated 12.08.2014, wherein the negotiated actual transaction value of the said quantity of Watermelon Seeds was USD 1100 PMT (C&F), Nhava Sheva; terms of payment were mentioned as 'USD 800 PMT (USD 115200) at the time of placing the order and balance USD 300 PMT (USD 43200) on CAD basis through Bank against presentation of Shipping documents mentioned in the contract, confirming the modus adopted by the importer. The goods were imported by them under Bill of Entry No. 7489760 dated 25.07.2012 and Bill of Entry No. 9964099 dated 26.04.2013 declaring the Unit Price as USD 300 against the actual transaction value of USD 1100 PMT.

1.5.13 Email conversation dated 22.01.2011 between Shri Suraj Wadhawa and Shri Ajay Tahelyani from nncorpo@yahoo.in to ajayasian86@yahoo.in, under which Shri Suraj reminded Shri Ajay for payment and Shri Suraj explained the same as pending payment from Shri Ajay against supply of watermelon kernels by him (Suraj) to him (Ajay), evidenced that the final product i.e. watermelon kernel made out of the imported watermelon seeds was purchased by Shri Ajay from Suraj. It is also evidenced from the above that the duo had mutual understanding for adjustment of payments against such sale of watermelon kernel. This document also indicated that Shri Suraj was also aware of the actual transaction price of the imported watermelon seeds and the mode of payment to be made in respect of such imports which were procured by him from Shri Ajay.

1.5.14 Email conversation dated 24.12.2010 between Shri Suraj Wadhawa and one of the overseas suppliers from nncorpo@yahoo.in to greater_gifan@yahoo.co.uk, wherein Shri Suraj sent his requirement of watermelon seed and also instructing the overseas suppliers to mention buyer name as Asian Food Industries, confirming that Shri Suraj was also interacting with the overseas suppliers for the indent that he made to Shri Ajay for imports made by M/s Asian Food Industries.

1.5.15 Email conversation dated 25.01.2011 between Shri Suraj Wadhawa and Shri Ajay Tahelyani from nncorpo@yahoo.in to ajayasian86@yahoo.in, along with its attachment, under which Shri Suraj had forwarded proforma invoice No. 5165 dated 25.01.2011 to Shri Ajay of M/s Asian Food Industries. The proforma invoice was raised by M/s Al Barakawi International Co. Ltd., on M/s Asian Food

Industries for sale of 90 MT of Watermelon Seeds @ USD 865 PMT (C&F). The importer had imported the watermelon seeds at the value in terms of the above proforma invoice, so negotiated by Shri Suraj under Bill of Entry No. 3222704 dated 15.04.2011, declaring the unit price as USD 300 PMT against the actual transaction value of USD 865 PMT, as admitted by Shri Ajay in his statement. The mail conversations dated 29.05.2012 between him and Shri Mayur Damani of M/s DaminaTradings and M/s Mayur Imports and Exports, regarding negotiation for purchase of watermelon seeds sought to be imported by M/s Asian Food Industries, Nadiad. It is evident from the same that Shri Suraj also used to negotiate the actual transaction value and payment terms with the overseas suppliers for the goods imported by the importer in some of the cases.

1.5.16 E-mail conversations dated 24.01.2011 and one e-mail conversation dated 25.01.2011 between Shri Suraj Wadhwa and Shri Ajay Taheliyani from nncorpo@yahoo.in to ajayasian86@yahoo.in, evidenced the intimation of finalised/negotiated deal with overseas suppliers and bank details of overseas suppliers for remittances against the deal to Shri Ajay by Shri Suraj for imports by M/s Asian Food Industries. It appeared that the above mail conversations pertained to the imports by M/s Asian Food Industries under Bills of Entry No. 768166 dated 17.03.2011, 3222704 dated 15.04.2011 and 3225702 dated 16.04.2011. This also confirms that Shri Suraj was in the knowledge about the actual value of the watermelon seeds imported by Shri Ajay in the name of M/s Asian Food Industries.

1.5.17 Mail conversations dated 28.07.2012 sent by Shri MayurDamani to Shri Suraj from daminatrading@yahoo.com to nncorpo@yahoo.in, wherein the overseas supplier reminded Shri Suraj for the balance payment in respect of the imports of watermelon seed by M/s Asian Food Industries, Nadiad. The mail conversations dated 09.08.2012 from nncorpo@yahoo.in to ajayasian86@yahoo.in, wherein Shri Suraj requested Shri Isam of M/s Bayrony Investment International for sending Proforma Invoice to Shri Ajay urgently for making payments. The mail conversation dated 16.05.2012 between Shri Suraj Wadhwa and one of the overseas suppliers between nncorpo@yahoo.in and daminatrading@yahoo.com, under which Shri MayurDamani of M/s DaminaTradings and M/s Mayur Imports and Exports informed Shri Suraj about receipt of payment by them from Shri Ajay against the import of watermelon seed by M/s Asian Food Industries and Shri Suraj requested the overseas supplier for early shipment. It appeared that the above confirmation of receipt of payment pertained to pre-shipment payments and as discussed in foregoing paras, pre-shipment payments were the balance/remaining payments after deducting CAD payments. The above communication of Shri Suraj with the overseas suppliers evidenced his active involvement in trade and his knowledge about the actual price of the watermelon seeds.

1.5.18 E-mail conversations dated 13.01.2011 between Shri Suraj Wadhwa; Aisha El Tayeb Abdallah of M/s Greater Fifan Trading &Inve. Co. Ltd. and Shri Ajay Taheliyani, wherein Shri Suraj had negotiated the unit price of watermelon seed as USD 775 PMT with the overseas supplier and he had informed the same (negotiated price) to Shri Ajay of M/s Asian Food Industries but Shri Ajay did not accept the same and further offered the unit price as USD 750 PMT, which was not accepted by the overseas supplier and the overseas supplier reverted to Shri Suraj. Shri Suraj did not decide the final unit price and asked for the directions from Shri Ajay for further course of action about the deal. It also evidences that though Shri Suraj Wadhwa used to negotiate the price of watermelon seeds as per the prevailing market rates, the final price for import was always decided by Shri Ajay Taheliyani of M/s Asian Food Industries, the importer.

1.6 From the facts discussed in the foregoing paras and material evidences available on record, it transpired that the importer had imported watermelon seeds from various overseas suppliers and had resorted to undervaluation, by suppressing the actual transaction value in the invoices and the documents filed before the Customs Authority at the time of imports, with an intent to evade customs duty leviable thereon. The price declared by the importer before the Customs Authority for clearance of the said imported consignments of watermelon seeds was only part amount paid for the imported consignments of watermelon seeds and it is evident from the records that there were excess payments to the overseas

suppliers against the import of impugned watermelon seeds, which was not declared before the customs though the same was part of the transaction value. Thus, the value declared by the importer before the Customs authorities as mentioned in the invoices and in the import documents cannot be treated as correct transaction value in terms of the provisions of Section 14 of the Customs Act 1962 read-with Rule 3 of the Customs Valuation (Determination of value of the imported goods) Rules, 2007. In terms of the provisions of Section 14 read with Rule 3 of the Customs Valuation (Determination of value of the imported goods) Rules, 2007, the transaction value of the imported goods is the total amount actually paid or payable for the said imported goods. Thus, in cases where total amount paid or payable can be ascertained, the correct transaction value shall be the sum total of all such amounts and the same will be determined under Rule 3(1) ibid. In terms of the provisions of Rule 11 of the Customs Valuation (Determination of value of the imported goods) Rules 2007, the importers are required to furnish a declaration disclosing full & accurate details relating to the value of the imported goods along with other documents & information including the invoice in respect of the actual transaction price. However, in the instant case, the importer had furnished wrong declarations, statements& documents to the Customs while filing of Bills of Entry thereby suppressing the actual transaction value with an intention to evade Customs duty leviable thereon, by adopting the modus as detailed hereinabove. The fact of under-valuation has been categorically admitted by Shri Ajay Tahelyani, Partner of M/s Asian Food Industries in his statements recorded under Section 108 of the Customs Act, 1962 which is duly corroborated with the documentary evidences discussed herein above and also with the statement of Shri Suraj Wadhawa. There is a reasonable doubt regarding the truth & accuracy of the values declared by the importer and the actual transaction value of such imported goods can be gathered from the evidences discussed herein above. Further once the mis-declaration is noticed, the department is required to establish degree of probability and not to prove the actual value with mathematical precision, thus, the declared value in respect of the said imported consignments of watermelon seeds merits rejection under Section 14 of the Customs Act, 1962 read with Rule 12 of the Customs valuation (Determination of value of the imported goods) Rules 2007. In the instant case, evidences available, as discussed hereinabove, indicate that the invoices produced by the importer before the Customs Authority at the time of clearance of the imported goods, did not indicate the true and correct transaction value of the said goods and there are various evidences, as discussed herein above, indicating the true, correct and actual transaction value of all the consignments imported from various overseas suppliers by the importer, and cleared under various Bills of Entry filed by the importer.

1.7 It appeared that the invoices raised by overseas suppliers on M/s Asian Food Industries which were submitted before Indian Customs in respect of the goods imported by them, did not indicate the true and correct value of the said goods inasmuch as the same were much lower than the actual transaction value as detailed above. The evidences regarding undervaluation of said imported goods recovered during the course of investigation and the actual transaction prices admitted by Shri Ajay Tahelyani and Shri Suraj Wadhawa in their respective statements further appear to corroborate the undervaluation in the said imports. The same is also corroborated by the fact of remitting of the differential amount over and above the declared price to the overseas suppliers through M/s Arab & India Spices or through channels other than banking channels which was not included in the value declared before the Customs. In respect of the said consignments which were admittedly undervalued, the declared value by the importer before the designated authority of Customs cannot be treated as true transaction value as per Section 14 of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation Rules 2007. Since, the actual price paid or payable is available in the instant case as discussed hereinabove, recourse is taken to the provisions of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation Rules, 2007 as applicable for re-determining the value of the said consignments cleared vide Bills of Entry filed by the importer.

1.9 From the above, it appeared that the importer, in connivance with the overseas supplier, had wilfully misstated the value of the watermelon seeds before the Customs authority at the time of import with a view of evading the applicable Customs duty. The correct and actual transaction value of the watermelon seeds imported by them was also suppressed at the time of filing of Bill of Entry by

presenting an invoice of a much lower value than the actual value of the imported watermelon seeds. Thus, it appeared that the applicable Customs duty liability had not been discharged by the importer by way of wilful mis-statement and suppression of facts, and therefore, the differential Customs duty is liable to be recovered by invoking the provisions of the extended period of limitation under Section 28(4) of the Customs Act, 1962 (erstwhile proviso to Section 28(1) of the Customs Act, 1962).

1.10 In view of the facts discussed in foregoing paras and material evidence available on record, it transpired that the importer had declared the total assessable value of imported watermelon seeds/assessed by the Customs authority as Rs. 7,90,68,975/- only at the time of clearance of the goods in the corresponding Bills of Entry, as against the actual transaction value (assessable value) of Rs. 23,34,56,058/- and suppressed the value amounting to Rs. 15,43,87,083/- from the Customs, resulting in evasion of Customs duty amounting to Rs. 5,61,89,613/-. Therefore, the above declared/assessed value is required to be re-determined under Section 14 of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation (Determination of Value of the Imported Goods) Rules, 2007 as applicable.

1.11 In view of the facts discussed in the foregoing paras and material evidences available on record and the deposition of Shri Ajay Tahelyani, active partner of M/s Asian Food Industries, Nadiad, it appeared that the importer have contravened the provisions of Section 46(4) of the Customs Act, 1962 inasmuch as they had intentionally mis-declared the value of the watermelon seeds imported by them by suppressing the true and actual transaction value while filing the declaration seeking clearance at the time of importation of the impugned goods. This act on the part of the importer has rendered the goods, though not available for seizure, liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962.

1.12 It also appeared that the importer had deliberately mis-declared the value of goods by wilful misstatement and suppression of facts in contravention of various provisions of the Customs Act and Rules made thereunder as discussed above, with the intent to evade payment of Customs duty. Therefore, the differential Customs duty amounting to Rs. 5,61,89,613/- lawfully payable on the watermelon seeds imported by them, is liable to be recovered from the importer M/s Asian Food Industries, Nadiad (Gujarat) under Section 28(4) of the Customs Act, 1962 (erstwhile proviso to Section 28(1) of the Customs Act, 1962) along with applicable interest under Section 28AA of the Customs Act, 1962 (erstwhile Section 28AB of the Customs Act, 1962). The said acts of omission and commission on the part of the importer have rendered themselves liable for penalty under provisions of Section 114A/112(a) & 114AA of the Customs Act, 1962. The said goods which are not physically available for seizure, are required to be held liable for confiscation under provisions of Section 111(m) of the Customs Act, 1962

1.13 In view of the discussion in foregoing paras, it further appeared that Shri Ajay Tahelyani @ Ajay Tahiliani, Partner of M/s. Asian Food Industries, Nadiad (Gujarat), had actively involved himself in the conspiracy of mis-declaring the value of watermelon seeds imported by them in the name of M/s. Asian Food Industries, Nadiad (Gujarat), with the aid of Shri Suraj Wadhwa of M/s. N. N. Corporation and overseas suppliers. He was instrumental in manipulation/fabrication of the information and documents presented before the Customs authorities with an intent to evade payment of Customs duty leviable on the actual transaction value. Shri Ajay Tahelyani, in connivance with other co-noticees and the overseas supplier, imported watermelon seeds at grossly undervalued prices knowingly and deliberately as detailed in preceding paras for his personal enrichment. He was also responsible for transmitting the differential value of the impugned imported goods, over and above the declared value, directly to the suppliers at Dubai with the help of his elder brother Shri Harish Tahelyani, and in this way, he had settled the clandestine/illicit account of the importer with overseas suppliers. This fact has been corroborated by the evidences as detailed in preceding paras. He had full knowledge about the mis-declaration of the value of the goods at the time of their importation and had knowingly and consciously failed to declare the correct and actual value before the Customs authorities at the time of import, with the sole intention to evade payment of Customs duty. Shri Ajay had indulged in the activities relating to

undervaluation and mis-declaration in the imports of watermelon seeds by M/s. Asian Food Industries, Nadiad, which resulted in evasion of a huge amount of Customs duty. Further, during the course of investigation, it was revealed that Shri Ajay was the main beneficiary of the profit earned in the sales of said imported watermelon seeds to Shri Suraj Wadhwa. All the aforesaid acts of omission and commission on part of Shri Ajay have rendered the impugned imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Further, he had consciously dealt with the said goods which he knew or had reasons to believe were liable to confiscation under the Customs Act, 1962. Thus, Shri Ajay Tahelyani @ Ajay Tahiliani has rendered himself liable for penalty under Section 112(a) of the Customs Act, 1962. Shri Ajay Tahelyani @ Ajay Tahiliani has knowingly and intentionally made, signed, and fabricated documents as discussed in detail hereinabove, which were presented to the Customs authorities, and which he knew were false and incorrect in respect of the value of the imported goods. Hence, the said act on the part of Shri Ajay Tahelyani @ Ajay Tahiliani has rendered him liable for penalty action under Section 114AA of the Customs Act, 1962.

1.14 In view of the discussion in foregoing paras, it also appeared that Shri Suraj Wadhwa of M/s. N. N. Corporation, Siddhpur (Gujarat), had actively involved himself in the conspiracy of mis-declaring the value of watermelon seeds imported by M/s. Asian Food Industries, Nadiad (Gujarat). He had full knowledge about the actual transaction value and mis-declaration of the value of the goods at the time of their importation and had knowingly and consciously involved himself in the evasion of Customs duty by the importer. This fact has been corroborated by the evidences as detailed in preceding paras. Shri Suraj Wadhwa had indulged himself in aiding Shri Ajay Tahelyani, the importer, inasmuch as he also identified the overseas suppliers of watermelon seeds and introduced them to Shri Ajay; also negotiated the price and other terms with the overseas suppliers in some cases; provided the negotiated price and other details of the overseas suppliers to Shri Ajay; monitored the remittances of payments to the overseas suppliers. Shri Suraj Wadhwa has also admitted his knowledge relating to activities of undervaluation and mis-declaration in the imports of watermelon seeds by M/s. Asian Food Industries, Nadiad, which resulted in evasion of a huge amount of Customs duty. All the aforesaid acts of omission and commission on part of Shri Suraj Wadhwa have rendered the impugned imported goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Further, he had consciously dealt with the said goods which he knew or had reasons to believe were liable to confiscation under the Customs Act, 1962. Thus, Shri Suraj Wadhwa has rendered himself liable for penalty under Section 112(b) of the Customs Act, 1962.

1.15 M/s. Asian Food Industries, Nadiad, had made voluntary payment of Rs. 50,00,000/- vide Demand Draft No. 8970764 dated 14.08.2014, Challan No. 2609 dated 19.08.2014 and Rs. 50,00,000/- vide Demand Draft No. 8970765 dated 14.08.2014, Challan No. 2610 dated 19.08.2014 at JNCH, Nhava Sheva, towards part payment of differential Customs duty on account of undervaluation of the impugned imports.

1.16 Therefore,M/s. Asian Food Industries, N.H.8, Opposite Escort Tractors, At & PO - Dabhan, Taluka - Nadiad, District - Kheda (Gujarat), PIN - 387320 holder of the Import-Export Code Number - 3499001942, was called upon to show cause to the Principal Commissioner/Commissioner, Nhava Sheva-I [earlier Commissioner of Customs (Imports), JNCH, Nhava Sheva], having his office at Jawaharlal Nehru Custom House, Nhava Sheva, Taluka Uran, District, Raigad (Maharashtra) - 400 707 - as to why: -

i. The value of Rs. 7,90,68,975/- declared by them/assessed at the time of clearance of goods in respect of 5361.70 MTs of 'Watermelon Seeds', imported by them should not be rejected and re-determined as Rs. 23,34,56,058/- (Rupees Twenty Three Crores Thirty Four Lakhs Fifty Six Thousand and Fifty Eight Only)under sub-section (1) of Section 14 of the Customs Act, 1962 read with the Rule 3(1) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, as applicable;

ii. 5361.70 MTs 'Watermelon Seeds', valued at Rs. 23,34,56,058/- (re-determined) which have been cleared and not available for seizure should not be held liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962;

iii. Differential Customs Duty amounting to Rs. 5,61,89,613/- (Rupees Five Crores Sixty One Lakhs Eighty Nine Thousand Six Hundred and Thirteen only), on 5361.700 MTs 'Watermelon Seeds', valued at Rs. 23,34,56,058/- (re-determined) should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 [Erstwhile proviso to Section 28(1)] along with applicable interest under Section 28AA (erstwhile Section 28AB) ibid;

iv. an amount of Rs. 1,00,00,000/- (Rupees One Crore only) already paid by them towards the differential duty liability, (as detailed under preceding paras) should not be adjusted against their duty liability;

v. Penalty should not be imposed on them under Section 114A / 112(a) of the Customs Act, 1962 for their acts of commission and omission discussed hereinabove;

v. Penalty should not be imposed on them under Section 114AA of the Customs Act, 1962 for their acts of commission and omission discussed hereinabove;

1.17 Shri Ajay Tahelyani @ Ajay Tahiliani, Partner of M/s Asian Food Industries was called upon to show cause to the Principal Commissioner/Commissioner NhavaSheva-I [earlier Commissioner of Customs (Imports), JNCH, NhavaSheva], having his office at Jawaharlal Nehru Custom House, NhavaSheva, Taluka Uran, District, Raigad (Maharashtra) – 400 707 – as to why: Penalty should not be imposed on him under Section 114A / 112(a) and 114AA of the Customs Act, 1962 for his acts of commission and omission discussed hereinabove.

1.18 Shri Suraj Nandkishore Wadhawa, Proprietor of M/s. N. N. Corporation, Plot No. 74/6, Suraj Industries Compound, Dethli Road, Sidhpur, Gujarat was called upon to show cause to the Principal Commissioner/Commissioner, Nhava Sheva-I [earlier Commissioner of Customs (Imports), JNCH, Nhava Sheva], having his office at Jawaharlal Nehru Custom House, Nhava Sheva, Taluka Uran, District, Raigad (Maharashtra) – 400 707 – as to why: Penalty should not be imposed on him under Section 112(b) of the Customs Act, 1962 for his acts of commission and omission discussed hereinabove.

2. WRITTEN SUBMISSION OF THE NOTICEE:

2.1 Noticee vide letter dated 11.02.2015 made written submission which is as below:-

2.2 At the outset, we deny that the value of 53 consignments consisting of 5,361.70 MTs of Watermelon Seeds (hereinafter referred to as “the said goods”) imported by us under Bills of Entry mentioned in Annexure-A to the above Notice should be re-determined from the declared value of Rs. 7,80,68,875/- to Rs. 13,34,56,058/- under Section 14(1) of the Customs Act, 1962 (hereinafter referred to as “the said Act”) read with Rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (hereinafter referred to as the “Valuation Rules”).

2.3 We further deny that the said goods are liable for confiscation under Section 111(m) of the said Act. We deny that the alleged differential customs duty amounting to Rs. 5,61,89,613/- can be demanded and recovered from us under Section 28(4) of the said Act and/or the erstwhile proviso to Section 28(1) of the said Act along with applicable interest under Section 28AA or erstwhile Section 28AB of the said Act or otherwise. We deny that we are liable for penalty under Section 114A / Section 112(a) and/or Section 114AA of the said Act.

2.4 One Suraj Wadhwa (hereinafter referred to as "Suraj"), carrying on business in the name and style of M/s N.N. Corporation, Sidhpur, Gujarat, approached us for undertaking imports of the said goods on his behalf. Suraj represented that he was already in the business of the said goods and selling the same in India and wanted to grow his business, but unfortunately did not have the infrastructure to cause import. Suraj claimed to know various sellers of the said goods in Sudan. Suraj was introduced to us through a common acquaintance of Suraj and Shri HareshTahelyani (hereinafter referred to as "Haresh"), brother of Shri Ajay Tahelyani, who has been a resident of U.A.E. for the last 20 years and conducts business in the name and style of M/s Arab & India Spices LLC.Accordingly, we agreed to import the said goods on behalf of Suraj, and consequently, in keeping with this understanding and/or agreement, all the 53 consignments of the said goods, after Customs clearance, were sold to him and/or his firm and/or his nominees.As we undertook the import of the said goods for and on behalf of Suraj, it is Suraj who negotiated the price with the seller in Sudan. Whenever we received an invoice through our bank for payment, Suraj put us in funds and accordingly, the amount was remitted to the seller in Sudan. As such, as far as we are concerned, the invoice price is the transaction value of the said goods, because we have not paid anything over and above the invoice price to the seller in Sudan through our bank in India.

2.5 We wish to submit that the case made out in the notice is based entirely on computer printouts. The first set is kept in a file named "Made up file containing computer printouts." This file contains 205 pages, numbered serially from 1 to 205. These printouts were supposedly taken during a search of our premises from one of the chambers where two desktop computers were installed. However, the Notice does not rely upon the computer from which these supposed printouts were taken. The second file contains computer printouts supposedly taken from the email of Shri Suraj Wadhwa while recording his statement in the office of the DRI. We humbly submit that there is nothing on record to even suggest, let alone prove, that the test laid down under Section 138C of the Customs Act, 1962 (hereinafter "the Act") with regard to admissibility of computer printouts as documents or evidence has been complied with. In terms of sub-section (2) of Section 138C of the Act, for a computer printout to be deemed a document for the purpose of this Act and to be admissible as evidence in any proceedings without further proof of the original, it must be shown that:

(a) The computer printout containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purpose of any activity regularly carried on by the person having lawful control over the use of the computer;

(b) During the said period, information of the kind contained in the statement or derived from such information was regularly supplied to the computer in the ordinary course of the said activities;

(c) Throughout the material part of the said period, the computer was operating properly, or, if not, then any defect or downtime was not such as to affect the production or accuracy of the document; and

(d) The information contained in the statement was supplied to the computer in the ordinary course of the said activities.

2.6 In the present case, there is no evidence whatsoever that the conditions stipulated in Section 138C(2) of the Act have been fulfilled. In the absence of such compliance, the said computer printouts cannot be relied upon as evidence to draw any adverse inference against us.Furthermore, neither the Notice nor the panchnama records the identity of the person operating or maintaining the said computer from which the printouts were supposedly taken. There is no record of how the computer was accessed or who took the printouts of the said 205 pages.

2.7 We further wish to submit that under Section 138C(4) of the Customs Act, where it is desired to give a statement in evidence by virtue of Section 138C, a **certificate** identifying the document containing the statement and describing the manner in which it was produced—or giving such particulars of any device involved in the production of that document to show that it was produced by a

computer—has to be signed by a person occupying a responsible position in relation to the operation of the relevant device or management of the relevant activities. In the present case, **no such certificate** has been cited or produced by the Revenue. Consequently, the computer printouts in question **cannot be considered** as documents whose originals need not be produced in evidence.

2.8 Insofar as the file containing 121 documents (printouts supposedly taken in the DRI office during the recording of Shri Suraj Wadhwa's statement from his email ID: nncorpo@yahoo.in) is concerned, these computer printouts **also cannot be relied upon** as admissible evidence unless the original emails are produced. The preconditions detailed in the preceding paragraphs have **not been complied with**.

2.9 We therefore submit that **none of the computer printouts**, which form the fulcrum of the evidence relied upon by the Revenue, can be considered as proper documents for which cognizance can be taken **without original evidence**. It is undisputed that there are **no original documents** available that suggest—let alone prove—our complicity in the matter. Accordingly, we submit that the **entire case** made out against us is **completely unsustainable** and deserves to be **set aside on this ground alone**.

2.10 Without prejudice to the aforesaid contentions and purely for the sake of argument, even if the said computer printouts could be considered as documents, the allegation of undervaluation made against us is **not sustainable**, for the following, amongst other, reasons. We once again submit that the following submissions are being made **without prejudice** to our earlier contentions and are **independent** of one another.

2.11 It is submitted that the **invoice price represents the transaction value**. The said goods are agricultural produce. The market price of agricultural produce is inherently **subject to fluctuation**. Hence, comparing the transaction value of one consignment with that of another is impermissible. Even assuming that the values proposed in the Show Cause Notice are correct, they reflect a variation of **30% to 40%**, from time to time. Therefore, when the actual price of the said goods (being agricultural produce) varies significantly over time, any proposed adoption of a fixed rate based on proforma invoices—**for which there is no proof of actual payment**—is illegal and untenable in law.

2.12 It is settled law that transaction value declared in invoices filed along with Bills of Entry can only be rejected if there is **evidence of contemporaneous imports** at higher prices. In support of this proposition, reliance is placed on the following decisions:

- *Commissioner of Customs v. South India Television (P) Ltd.*, 2007 (214) ELT 3 (SC)
- *Commissioner v. Abdullah Koyloth*, 2010 (259) ELT 481 (SC)

Admittedly, there are **no instances of contemporaneous imports** at the higher prices at which it is now proposed to value the said goods. Therefore, there is **no valid basis** for rejecting the declared transaction value.

2.13 It is an undisputed fact that the said goods are **agricultural produce**. The price of agricultural produce varies from **grade to grade**, **quality to quality**, and **season to season**. The price also fluctuates based on **demand and supply** conditions and is inherently volatile.

Reliance in this regard is placed on the following decisions:

- *Global Industries v. C.C.*, 2011 (272) ELT 724 (Tri.)
- *Saudagar Exports v. C.C.*, 2002 (145) ELT 548 (Tri.), affirmed by the Hon'ble Supreme Court in 2003 (154) ELT A180 (SC)

2.14 In the present case, the goods imported are **of second quality**, whereas the proforma invoices (computer printouts) relied upon by the Department relate to **Grade-I quality** watermelon seeds. This is

evident from the Proforma Invoice/Contract No. 0211/SWM01 dated 02.02.2011 issued by M/s. Alsaqr General Trading Co. LLC, Dubai, UAE, which describes the goods as "Watermelon Seeds (Sader like Grade-I)." This document appears at **Page 203** of the file seized during the search on 12.08.2014.The invoices filed by us relate to **second-quality** or **grade** watermelon seeds. This is also supported by the prevailing **price bulletins and circulars** in the Sudanese market. Accordingly, the invoice price declared by us represents the **true and correct value** of the said goods.A copy of the Sudanese market circular prevailing at that time is annexed herewith and marked as **Exhibit – A**.

2.15 The correctness of the declared transaction value of **USD 300 per MT** is further substantiated by the fact that, while **exporting/re-exporting** watermelon seeds of Sudanese origin, the declared value of **USD 400** per MT was accepted by the Department. This could not have been accepted had the correct value at the time of import been as high as alleged in the Show Cause Notice.The Revenue cannot **approbate and reprobate**—i.e., accept a lower value at the time of export and yet claim a higher value for the same goods at the time of import. Therefore, we submit that the values shown in Annexure-A to the SCN are **incorrect and illegal**. Copies of the relevant shipping bills showing export value of **USD 400** are annexed herewith and collectively marked as **Exhibit – B**.

2.16 To reject the declared value as the transaction value, the Show Cause Notice refers to three instances cited in paragraphs **3.9.3**, **3.9.6**, and **3.9.8**, in addition to other proforma invoices allegedly recovered at the time of the search. In this connection, we submit as under:

(i) With regard to the letter at **RUD 4/21** (Page 201 of the seized file), we submit that there is **no transaction whatsoever** between us and **M/s. Greater Girafan Trade & Investment Co. Ltd.** The allegation that the said company acted as an **agent or mediator** for some suppliers is **bogus**. Except for an uncorroborated statement by Shri Ajay Tahelyani, there is **not a shred of evidence** suggesting, much less proving, that M/s. Greater Girafan Trade & Investment Co. Ltd. was acting as an agent or intermediary. Hence, the question of making any **advance payment** to this company does **not arise at all**.

(ii) There is also **no evidence** that the said letter was ever acted upon. The mere mention of a breakdown of Proforma Invoice No. 42 dated 09.12.2012 and Proforma Invoice No. 68 dated 05.04.2012 (RUD 5/26 and RUD 4/29) is **not conclusive evidence** of under-invoicing.

(iii) Furthermore, there is **no evidence** showing that the instructions in the letter dated 21.03.2012 (RUD 4/27) were ever acted upon in the case of Proforma Invoice No. 68 dated 05.04.2012. There are no records of any such instructions, nor is there **any proof of actual payment** corresponding to Proforma Invoice No. 42 or 68.

Therefore, **no reliance** can be placed on the documents referred to in these three paragraphs.

2.17 Without prejudice to the above submissions, we submit that out of the 53 consignments mentioned in **Annexure-A** to the Show Cause Notice, **30 consignments** were **imported from Pakistan**. There is **absolutely no evidence or material** to support the allegation of under-invoicing in respect of the said goods imported from Pakistan. It is a matter of record that **watermelon seeds imported from Pakistan** were **inferior in quality** as compared to those imported from Sudan. Therefore, **no comparison** can be made between the goods of Pakistani origin and those of Sudanese origin. Furthermore, as the goods in question are **agricultural commodities**, the **value of watermelon seeds** from **different countries of origin cannot be compared**. In support of this submission, reliance is placed on the following judicial decisions:

- *Arkay Overseas v. Commissioner of Customs*, 2004 (167) ELT 468 (Tribunal)
- *Mekatronics Products Pvt. Ltd. v. Commissioner of Customs*, 2009 (246) ELT 524 (T)

2.18 It is therefore submitted that the **transaction value of goods imported from Pakistan** cannot be rejected under the **Customs Valuation Rules**.

2.19 It is significant to note that the **Sudanese suppliers** have also supplied the **same goods at similar prices** to buyers in **third countries** like **Yemen**, **Saudi Arabia**, etc. This clearly establishes that the prices declared by us are **genuine** and reflect **international market trends**. Copies of the **Export Bills/Shipping Bills** filed by the Sudanese suppliers showing export from Sudan to third countries at similar prices are annexed herewith and collectively marked as **Exhibit – C**.

2.20 Without prejudice to the aforesaid, and assuming (without admitting) that the declared transaction value can be rejected, then while **re-determining the value**, it is **mandatory** for the Department to adopt the **lowest available value**.

This principle is settled in law and has been laid down by the Hon'ble Bombay High Court in:

- *Paul Industries v. Union of India*, 2010-TIOL-592-HC-MUM-CUS

In the present case, the differential duty has been wrongly calculated **on the basis of the highest prices**, and therefore, such demand is **unsustainable** and **not payable** by us.

2.21 Regarding the correct classification of "Melon Seeds," it is pertinent to refer to Chapter 8 of the Customs Tariff Act (CTA), which deals with fruits. **Heading 08.07** covers "Melon," including **Watermelon**. If for the purpose of classifying the fruit itself, the term **"Melon"** includes **Watermelon**, then by the same logic, the classification of **seeds** of such fruit should also fall within the generic term **"Melon Seeds."**There is, therefore, no doubt that the word **"Melon"** as appearing in **Chapter 12** of the Customs Tariff Act has been used in a **generic sense** to cover **all forms, types, and varieties** of melon—including **watermelon**. **Watermelon belongs to the melon family**, and this is confirmed by the fact that under **Heading 08.07** of the Tariff, watermelon is treated as a melon. Consequently, the **seeds of watermelon** are also to be treated as **"melon seeds"** under Heading **12.07**, and are, therefore, **eligible for exemption** when imported from Sudan. Furthermore, we submit that while calculating the alleged differential duty, the Department has classified the goods under Heading **1207 99 90**, as declared in the respective Bills of Entry. However, we contend that the goods are **more appropriately classifiable** as **"Melon Seeds"** under sub-heading **1207 70 90** of the First Schedule to the Customs Tariff Act, 1975.The term **"melon"** is generic and refers to a family of seeds. Watermelon is part of this family. This classification is also recognized in the **UK Trade Classification**, where **watermelon seeds** are sub-classified as **melon seeds**. Therefore, the goods imported by us are correctly classifiable under **1207 70 90**, and hence are entitled to the **benefit of exemption** under **Notification No. 96/2008-Cus. dated 25.07.2008**, as amended by **Notification No. 45/2009-Cus. dated 04.05.2009** (hereinafter jointly referred to as "the said Notification").The said Notification grants **exemption** to goods imported from **Least Developed Countries**, which includes **Sudan**. There is no dispute that the goods under consideration are of **Sudanese origin**. The Notification categorizes goods into three groups:

- **Category A**: All goods **other than** those specified in Annexure-I or excluded in Annexure-II;
- **Category B**: Goods listed in **Annexure-I**;
- **Category C**: Goods **excluded** via **Annexure-II**.

The goods imported by us fall under **Category A**, except for the period between **23rd December 2011 to 31st March 2013**, during which sub-heading **1207 70** was **temporarily excluded** by including it in **Annexure-II** via **Notification No. 113/2011 dated 23.12.2011**, and subsequently **re-included** through **Notification No. 8/2014 dated 01.04.2014**.

2.22 As can be seen from Annexure-A to the Show Cause Notice, the 53 consignments were imported between **11th November 2009 and 26th April 2013**. Therefore:

- All consignments imported **prior to 23rd December 2011** were eligible for exemption;
- The exemption was **withdrawn** for the period between **23rd December 2011 and 31st March 2013**;
- The exemption was **restored** thereafter.

Thus, a significant number of consignments are covered under the **beneficial period** and are **eligible for exemption** under the said Notification.

2.23 Recently, in a similar matter concerning imports made by **M/s. Amar Jaee**, the Department itself has allowed import of **watermelon seeds**, classifying them under **sub-heading 1207 70 90** of the Customs Tariff Act. This reinforces our submission that the **correct classification** of the goods under import is indeed under **1207 70 90**, and accordingly, they are **eligible for concessional rate of duty** under the said Notification. A copy of the relevant **Bill of Entry** showing classification under 1207 70 90 is annexed and marked as **Exhibit – D**.

2.24 Without prejudice to the above, we also submit that we possess the **Certificate of Origin** as prescribed under the Notification. We are ready to produce the same whenever required. In any case, the **origin of the goods** has been **admitted** by the Department. When a **fact is admitted**, no further proof is required under law. The Certificate of Origin is merely **evidentiary** in nature to establish the **country of origin**, which in this case is **undisputed**. It is true that in the Bills of Entry, the classification was declared under **sub-heading 1207 99 90**. However, since the present proceedings are initiated under **Section 28** of the Customs Act for **reopening of assessment**, we are entitled to claim the **correct rate of duty**.

In support of this legal position, we rely on the following decisions:

- *Bakeman Home Products v. Commissioner*, 1997 (95) ELT 278 (T)
- *Polydyene Corporation v. Collector, 1999 (108) ELT 94 (T)*
- *Decora Ceramics v. Collector*, 1998 (100) ELT 297 (T)

2.25 The statements dated **12.08.2014** and **09.10.2014** of **Shri Ajay Tahelyani** are **unreliable** for the following reasons:

i) The statements are **contrary to documentary evidence**—the proforma invoices relate to **Grade-I** quality watermelon seeds, whereas what were actually imported were **second-quality** seeds.

ii) All **price negotiations** were carried out by **Suraj Wadhwa**. Therefore, Shri Ajay Tahelyani was **not known to Ajay**

iii) The statements are also **belied by export declarations/shipping bills** filed by the petitioner showing that the goods were **exported and sold at the declared invoice price**, which is the **actual transaction value**, and **not at any higher price**, as alleged.

2.26 It is settled law that **documentary evidence prevails** over **oral statements**. In support, reliance is placed on the following cases:

- *R.P. Industries v. Collector*, 1996 (82) ELT 129 (T)
- *Philip Fernandez v. Commissioner*, 2002 (146) ELT 180

In light of the above, the statements of Shri Ajay Tahelyani **cannot be relied upon** to support the allegation of under-invoicing.

2.27 Moreover, the statements were **involuntary** and were recorded **under duress**. The deponent of the two statements dated **12.08.2014** and **09.10.2014** was **beaten** up and **pressurized** to record his statements. This is supported by the **medical certificate** dated **09.10.2014**, enclosed herewith as **Exhibit – E**. Even otherwise, the computer printouts based on which the statements were made **cannot be taken as evidence**. Consequently, any statements explaining or referring to them are also **inadmissible**.The **entire demand** raised by the Revenue is based **solely on statements** explaining the **computer printouts**. It is, therefore, imperative that such statements be tested by **cross-examination**, especially as they appear to be **incorrect** and **contrary to facts**. We reserve our right to make further submissions in the matter after the **cross-examination of Suraj Wadhwa**.

2.28 For the reasons detailed in the foregoing paragraphs, **no interest is leviable**, **no penalty is imposable**, and **no goods are liable for confiscation**. In the circumstances, we most respectfully submit that the above **Show Cause Notice be withdrawn and/or dropped** in its entirety.

2.29 Noticee Shri Suraj Wadhwa vide letter dated 22.04.2015 made written submission which are as below :-

2.29.1 At the outset, I completely deny alleged involvement and commission of any offence under the Custom Act. I purchased imported seeds from Asian Foods under a bonafide belief that custom law must have been complied with by the importer and I had no role to play for the actual importation of the goods.

2.29.2 In few cases I have only been involved in market research and initial discussion on product price between the foreign vendors and Asian Foods, the actual importer. This was to ensure a fair price & quality control of the imported goods. This limited involvement also served as an internal control for his business with Mr. Ajay. I reiterate that he was not a party to custom procedure and had absolutely no role to play in custom duty payment by the importer.

2.29.3 I reiterate that Asian Food alone had negotiated and decided the final price and that proformainvoicereliedintheNoticehasnothingtodowiththeimportedconsignment as detailed below:

a) Page No 18 of the SCN- Para I-Quotation from Orient Group, Egypt forwarded vide email dated 27.7.2010-Not acted upon by Asian food
b) Page no 18 of the SCN -Para II - Proforma invoice no PO 801 / 2010 dated 12.11.2010 from Mayur Imports& Export and DaminaTrading & Investments Co Ltd, Sudan forwarded vide emaildated15.11.2010 – Not acted upon by Asian food
c) Page no18 of the SCN-Para Ill-Proforma invoice no RFQ101281 dated 08.12.210 from Abnaa Sayed Elobied Agro Exports, forwarded vide email dated 10.12.2010 - Not acted upon by Asian food
d) Page no 19 of the SCN-Para IV- Proforma invoice no Pl-TK2010-1211 dated 10.12.210 from Taksonia, forwarded vide email dated11.12.2010- Not acted upon by Asian food.
e) Page no 19 of the SCN-ParaVII- Proforma invoice no RFQ101251 dated 15.12.210 from Abnaa Sayed Elobied Agro Exports, forwarded vide email dated 16.12.2010 - Not acted upon by Asian food
f) Page no 19 of the SCN-Para VII- Proforma invoice no 5030 dated16.12.210 from Al Barakawi International Co, forwarded vide email dated 16.12.2010-Not acted upon by Asian food
g) Page no 20 of the SCN-ParaVIII –Sales Contract No IMPYX-105 dated 25.12.2010 from Al Barakawi International Co, forwarded vide email dated 25.12.2010-Not acted upon by Asian food
h) Page no 20 of the SCN -Para IX -Proforma invoice No seeds002/2011 dated 27.12.2010 from Greater Gifan Trading & Investment Co, forwarded vide email dated 27.12.2010 – Not acted upon by Asian food
i) Page no 21 of the SCN - Para XV - Sales Contract No EXPseeds114 dated 18.01.2010

from Al Barakawi International Co, forwarded vide email dated 25.01.2011- Not acted upon by Asian food

2.29.4 I submit that the short payment of custom duty at are ducedrate is the sole allegation in the impugned Notice. All evidence relied in the Notice refers to my involvement in market research & price enquiry with the prospective foreign vendors. None of the documents including Pro-forma invoices, Sales Contract and email correspondence indicates my involvement beyond market research and enquiry with the prospective vendors. Even in the matter of payment discussion like stages of payments including advance payments, there is no evidence of my involvement in valuation for the purpose of custom duty. Hence allegation of abetting under valuation for custom duty assessment or knowledge of undervaluation is baseless and without truth. I submit that the investigating agency with their over enthusiasm has extrapolated the observation to a superfluous level stretching it beyond the facts.

2.29.5 I submit that Mr Ajay during his deposition before DRI has clarified each documents and each transaction without my help or assistance. He has even not acknowledged my knowledge or involvement in the negotiation or import. Almost at the end of the statement, in a casual manner he states that decisions were made jointly. It nowhere specifically states that price negotiations were made jointly with the foreign vendors. As submitted above, I have placed orders on Asian Foods and also made a few enquiries which were forwarded to Asian Foods but beyond that I had no role and therefore I strongly deny the charges of knowledge of and involvement in undervaluation of the import by Asian Foods.

i. The only basis of such an allegation seems to be some casual remarks made by Mr Ajay of Asian Foods in his statement to DRI on dated 12.08.2014 &09.10.2014. In his statement Mr Ajay have alleged my involvement even in negotiation of prices. This is without any basis and concocted. Mr Ajay has not been able to produce any conclusive evidence for this allegation. I am not even aware, if this statement was made out of his free will or was under the pressure of DRI officials.

ii. In one of the lines in the statement, Mr Ajay has stated that payment to the overseas suppliers, over and above the invoice value, was also jointly made by either him or by Shri Suraj Wadhwa. This is an ambiguous statement. Mr Ajay anyway, being involved in few negotiations, was aware of the final negotiation price to be paid to the prospective vendors. The subject matter however is the value declared before custom in each specified cases of imports. There is no evidence in any manner in the SCN or in any of its annexure which suggest that I was involved in custom valuation. Importation was a scope of the importer i.e. Mr Ajay and all decision in this regard was made by him alone without any consultation with me.

iii. It is also submitted that Mr Ajay is a co-accused in this case and might have a motive & opportunity to make a false allegation. Hence his statement alone without being corroborated with other evidence should not be allowed as evidence against me. I rely on decision of the Honourable High Court of Rajasthan in the matter of Arif KhanVs. Central Bureau of Narcotics (LAWS (Raj)-2001-1-67), in which it has been held that charge framed on the basis of confessional statement of co-accused cannot be sustained.

iv. I also submit that I was not a beneficiary of any alleged undervaluation. I have purchased the goods in India and paid the full price inclusive of all cost including profit of the importer. If there is any under valuation under Custom law, Mr Ajay Tahelyani of Asian Food Industries can only benefit from the same.

v. Sec112(b) of TheCustomAct,1962states as "Any person, 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 undersection111,shall be liable, to a penalty

"As can be observed from above penalty can be levied on a person only if he knows or has reason to believe, are liable to confiscation under section 111. So, one should be aware of the alleged undervaluation, for custom duty making the goods liable for confiscation. I being only a bona fide purchaser cannot be penalized under this provision. I relies upon the decision of Kolkata CESTAT in the matter of I. Longkumer1991 (52) E.L.T. 560 (Tribunal). In this case the honourable Tribunal has held that Penalty for possession of Colour T.V. and Video Camera Section 112(b) of the Customs Act, 1962 implies knowledge or reason to believe that the goods are liable for confiscation - In the absence of such knowledge, accused being a bonafide purchaser imposition of penalty not justifiable by giving a benefit of doubt -Section 111and112 of the Customs Act, 1962.

vi. Mens-Rea having not been alleged and proved no penalty can be imposed on me. I rely upon the decision of Chennai CESTAT in the matter of Metro Marine Services Pvt. Ltd 2008 (223) ELT 227(Tri.- Chennai)

vii. It is further submitted that Penal provisions should be strictly interpreted. In this case even though I was aware of the imports, value of the imported seeds, I did not know the facts that the value declared before the custom authorities allegedly were not correct making the goods liable for confiscation. Hence penal provisions under section 112(b) cannot be invoked. I rely upon the following decision "To attract penalty, the penal provisions would require strict interpretation-Even if appellant dealt with the licenses, he has not dealt with any goods in any manner nor is there any such allegation – Penalties set aside - Rule 209A of erstwhile Central Excise Rules, 1944 read with Rule 112{b)of Customs Act, 1962"T.S.Makkar vs CCE Surat 2014(312)ELT427 (Tri.- Ahmd.). In view of the above, it is humbly requested that the impugned Notice be dropped immediately. The Notice proposes to impose penalty under Rule 25(1) of the Rules. I submit that as confiscation of goods under Rule 25(1) is not sustainable, no penalty can be imposed under Rule 25(1) of the Rules. Similarly no interest can be demanded as the duty demand itself does not stand +the test of law.

2.30 Written submissions / synopsis in case of M/s. Asian Food Industries, Shri Ajay Tahelyani and Shri Suraj Nandkishore Wadhwa arising out of DRI/AZU/GI-2/ENQ-46(INT-09/14)/2014 dated 07.11.2014 for PH held on 16.07.2025 submitted by authorised representative of noticees on 28.07.2025.

2.31 It was submitted that the foundation of entire case / SCN vests on the documents printed out during the searches from the Computer of Mr. Ajay Tahelyani and laptop of Sh. Suraj Wadhwa. The officers during the panchnama accessed the emails through the computer systems on which the said emails were already logged in and made files thereof which were named as Made-up file. The show Cause Notice brings out that during this search some emails were ‘resumed’. However, it would be factually incorrect to state that these emails were resumed from the premises as these emails were not available in printed format when the search was conducted. Instead, the printouts of these emails were taken during the Panchnama by the officers themselves and in gross violations of provisions laid down under section 138C of the Customs Act 1962. The section 138C of Customs Act mandates that when such copies of any digital form are being recovered from any electronic device which is then to be relied or admitted as evidence during any proceedings under Customs Act it has to be done under a certain procedure and a certificate certifying as to what has been recovered and what does the recovered document means has to be obtained from the one who is in continuous, regular possession of the device.

2.32 In the instant case the devices from which the printouts of these emails were recovered were seized and taken into custody by the investigating officers for necessary investigation. However, it is surprising that no forensic report of analysis of the said seized devices have been relied in the

SCN and the SCN is also conveniently silent on the aspect as to whether the forensic analysis of the admittedly seized devices was performed or not which could have only 2 meanings i.e. either the investigating officers after seizing the devices by mentioning them as relevant and necessary for investigation have forgotten to send the devices to forensic lab for analysis or the seized devices were indeed sent for further analysis and data recovery to forensic lab however nothing incriminating was found and therefore, the investigators had nothing to rely on in the SCN.

2.33 It is submitted that these alleged printouts taken out during the panchnama in the gross violation of section 138C cannot be relied as evidence as they are rendered inadmissible due to non-following of the procedure laid down by the statute which is mandatory to bring out the legitimacy and truthfulness of the documents, reliance in this case is placed in the following judicial precedents:

i. In Arjun Pandit Rao v. Kailash Kushanrao 2020 (7) SCC 1 (Civil Appeal No. 20825-20826 of 2017).

ii. Anvar P.V. v. P.K. Basheer and Others (2014) 2017 (352) ELT 416 (SC)

iii. Further Reliance is placed on case of JeenBhavani International Versus Commissioner of Customs, NhavaSheva-III (2023) 6 Centax 11 (Tri.-Bom) This case was further upheld by Hon'ble Supreme Court in Commissioner of Customs, NhavaSheva-III Versus JeenBhavani International (2023) 6 Centax 14 (S.C.)/2023 (385) E.L.T. 338 (S.C.) wherein the appeal of the revenue was dismissed on merits after condonation of delay.

iv. Further reliance is placed on Junaid Kudia Versus Commissioner of Customs, Mumbai Import-II (2024) 16 Centax 503 (Tri.-Bom). This case was further upheld by Hon'ble Supreme Court in case of Commissioner of Customs, Mumbai Import-II Versus Junaid Kudia (2024) 16 Centax 504 (S.C.)/2024 (388) E.L.T. 529 (S.C.) where in the Hon'ble Supreme Court after condoning the delay and hearing the Ld. ASG has dismissed the appeal of department and upheld the order of CESTAT, Mumbai.

2.34 It was further submitted that the entire SCN fails to bring out any material evidence on record which proves that any direct or indirect remittance over and above the invoice value has been sent / transferred / paid by the importer to Sudanese Supplier. The SCN relies on another inadmissible printout which shows that Sh. Ajay Tahelyani had directed Sh. Harish Tahelyani to pay some amounts to a third party which also had mentions of some transactions of watermelon seeds on it. However, there has been no corroboration brought out in the SCN as to which payment is made against which import of the importer if, any.

2.35 It was also submitted that if it is believed that the payments have been made by Sh. Harish as being displayed in those alleged letters those payments have been made to some entities in UAE and not to Sudanese suppliers. Also, there has been no payment established / brought out in investigation or SCN to have been made to Sh. Harish to come at conclusion that he was transferring the funds further on behalf of Sh. Ajay and the excuse of investigation and SCN issuing authority to claim that since Sh. Ajay is related to Sh. Harish he has not paid anything to him which cannot be believed since the amounts alleged to be transferred by Sh. Harish is in hundreds of thousands of USD per transaction which if believed to be true would come to millions of USD which is not a small amount which can be said to have been transferred or borne in name of relation or brotherhood.

2.36 Hence in absence of any evidence of any payment no charges of undervaluation can be brought on the assumptions and presumptions of the investigators and SCN issuing authority. Reliance is placed on: NPT Papers Pvt Ltd & Others V. C. C. Mundra& Others, (MANU/CS/0120/2021)

2.37 Applying the above tests to the facts of the present case, we find that there is no evidence from the side of the Department showing contemporaneous imports at higher price. On the contrary, the respondent importer has relied upon contemporaneous imports from the same supplier, namely, M/s. Pearl Industrial Company, Hong Kong, which indicates comparable prices of like goods during the same period of importation. This evidence has not been rebutted by the Department. Further, in the present case, the Department has relied upon export declaration made by the foreign supplier in Hong Kong. In this connection, we find that letters were addressed by the Department to the Indian Commission which, in turn, requested detailed investigations to be carried out by Hong Kong Customs Department. The Indian Commission has forwarded the export declarations in original to the Customs Department in India. One such letter is dated 19-9-1996. In the present case, the importer has alleged that the original declarations were with the Department. That certain portion of the originals was not shown to the importer despite the importer calling upon the adjudicating authority to do so. Further, by way of Interlocutory Application No. 4 in the present civil appeal, an application was moved by the importer calling upon the Department to produce the original declaration in the Court. No reply has been filed to the said I.A. till date. In the circumstances, we are of the view that the Department had erred in rejecting the invoice submitted by the importer herein as incorrect. Further, the Department received from the Hong Kong supplier a Fax message dated 22-7-1996. That was produced before the Commissioner. In that message, he had explained that the manufacturer of the impugned goods was getting export rebates and, therefore, it is possible that the manufacturer had over-invoiced the price in order to claim more rebate. The goods were of Chinese origin. In the Fax message it is further stated by the foreign supplier that he was required to show the export value on the higher side in order to claim the incentives given by his Government. This explanation of the foreign supplier, in the present case, had been accepted by the Commissioner. In his order, the Commissioner has not ruled out over-invoicing of the export value by the foreign supplier in order to obtain incentives from his Government. For the aforestated reasons, we find no infirmity in the impugned judgment of the Tribunal".

2.38 Before concluding, we may point out that in the present case at the stage of show cause notice, the Department invoked Rule 8 on the ground that the invoice submitted by the importer was incorrect. In *Eicher Tractors* (*supra*) this Court observed that Rule 4(1) of the Customs Valuation Rules refers to the transaction value. Utilization of the word the as definite article indicated that what should be accepted as the transaction value for the purpose of assessment under the Customs Act is the price actually paid by the importer for the particular transaction, unless it is unacceptable for the reasons set out in Rule 4(2). In the said judgment, it has been further held that, the word 'payable' in Rule 4(1) also refers to the "transaction value" and payability in respect of the transaction envisaged a situation where payment of price stood deferred. Therefore, this decision of the Supreme Court directs the Revenue to decide the validity of the particular value instead of rejecting the transaction value. We wish, however, to clarify that it is still open to the Department based on evidence, to show that the declared price is not the price at which like goods are sold or offered for sale ordinarily, which words occur in Section 14(1). Lastly, it is important to note that in the above decision of this Court in *Eicher Tractors* (*supra*) this Court has held that the Department has to proceed sequentially under Rules 5, 6 onwards and it is not open to the Department to invoke Rule 8 without sequentially complying with Rules 5, 6 and 7 even in cases where the transaction value is to be rejected under Rule 4. In the present case, the show cause notice indicates that the Department had invoked Rule 8 without complying with the earlier rules"

ii. Bayer India Ltd. V. Commissioner of Customs, Mumbai 2006 (198)

ELT 240 upheld by Hon’ble Supreme Court in 2015 (324) ELT 17

iii. Tele Brands (India) Pvt. Ltd. V. Commissioner of Customs (Import) Mumbai reported in 2016 (336) ELT 97 (Tri.Mum)

2.39 It was also brought to the notice of the adjudicator that noticee explains the higher value of Proforma Invoice as the alleged Proforma Invoices of higher value were of the 'First Grade Watermelon Seeds' and the imports in most of the cases were that of 'Second Grade Watermelon Seeds' and therefore the proper officer at the time of import had accepted the declared value and allowed the clearance of the consignment. Reliance is placed on I.S. Corporation- 2016(339) E.L.T. A125: It was further submitted that in view of the decisions cited supra the valuation arrived in the SCN is in gross violation of the CVR, 2007 and judicial precedents and guidelines as the transaction value declared by the importer and accepted by the proper officer at the time of import and the SCN is blindly accepting the transaction value to be of those proforma invoices without corroborating with any valuation methods i.e., market valuation or NIDB data.

2.40 It was submitted that the SCN makes the impugned statements got recorded as basis for accepting of the price of inadmissible contract however, it was argued that statement cannot be made the sole basis to reject the valuation as it is settled law that in absence of any corroborative material / evidence on record statements cannot be used as sole basis of rejecting declared and previously accepted value Reliance is placed in case of Vinod Solanki 2009 (223) E.L.T. 157 (S.C.)

2.41 It was also submitted that that the contents of the statements recorded u/s 108 of the Customs Act, 1962 have to be corroborated. Although the statements got recorded u/s 108 of Customs Act, 1962 can be made admissible the burden of proof to prove it voluntary and un-coerced is on department and thus it must be corroborated with some evidence. Further reliance is placed on following judicial precedents:

i Sainul Abideen Nilam 2014 (300) ELT 342 (Madras HC) para 14, which is not challenged by Revenue reads as:

ii THE HON'BLE SUPREME COURT OF INDIA in the case of K.I. PAVUNNY V ASSTT. COLLR. (HQ.), C. EX. COLLECTORATE, COCHIN 1997 (90) E.L.T. 241 (S.C.) while deciding on the evidentiary value of retracted statement has held

iii The Hon'ble Bombay High Court in Union of India v. Kisan Ratan Singh, 2020 SCC OnLineBom 39

iv Not a single piece of evidence corroborating these statements have been placed on record or relied in SCN, rendering the statements admissible but unreliable.

3. RECORD OF PERSONAL HEARINGS

3.1 Following the principal of natural justice and in terms of Section 28(8) read with Section 122A of the Customs Act, 1962, the Noticee was granted opportunities for personal hearing (PH). In the instant case, the personal hearing was granted to the noticee on 16.07.2025 by the Adjudicating Authority which was attended by the Shri Aliakbar Devjani and Shri S. S. Sekhon, Authorised representative of the noticee.

3.2 Mr. Sidharath Singh Sekhon (Consultant) &Devjani Aliakbar Murtaza (Advocate), Authorised Representatives (AR) of Noticee M/s. Asian Food Industries, Shri Ajay Tahelyani and Shri SurajNandkishore Wadhwa attended the personal hearing through virtual mode on 16.07.2025 at 15 : 30 Hrs. During thehearing they re-iterated the earlier written submissions dt: 11.02.2015 and 13.05.2015 and made further submissions as below: -

a. The AR submitted that the foundation of entire case / SCN vests on the documents printed out during the searches from the Computer of Mr. Ajay Tahelyani and laptop of Sh. Suraj Wadhwa. He submitted that these documents are in gross violation of Section 138C of Customs

Act, 1962and therefore are inadmissible in the proceedings much less as evidence. He relied on following decisions for the same:

i. Arjun Pandit Rao v. Kailash Kushanrao 2020 (7) SCC 1 (Civil Appeal No. 20825-20826of 2017)

ii. Anvar P.V. v. P.K. Basheer and Others (2014) 2017 (352) ELT 416 (SC)

iii. Jeen Bhavani International Versus Commissioner of Customs, Nhava Sheva-III (2023) 6 CENTAX 11 (Tri. -Bom) further upheld in (2023) 6 CENTAX 14 (S.C.)

iv. Junaid Kudia Versus Commissioner of Customs, Mumbai Import-II (2024) 16 Centax 503(Tri. -Bom) further upheld in (2024)16 CENTAX 504 (S.C.)

b. The AR further submitted that there has been no evidence on record which proves any direct or indirect remittance over and above the invoice value by the importer to Sudanese Supplier and hence no charges of undervaluation can be brought on the assumptions and presumptions of the investigators and SCN issuing authority for which he relied on:

i. NPT Papers Pvt Ltd & Others V. C. C. Mundra & Others, (MANU/CS/0120/2021)

ii. Bayer India Ltd. V. Commissioner of Customs, Mumbai 2006 (198) ELT 240 upheld by Hon'ble Supreme Court in 2015 (324) ELT 17 SC

iii. Tele Brands (India) Pvt. Ltd. V. Commissioner of Customs (Import) Mumbai reported in2016 (336) ELT 97 (Tri. Mum)

c. The AR also submitted that the alleged Proforma Invoices of higher value were of the 'First Grade Watermelon Seeds' and the imports in most of the cases were that of 'Second Grade Watermelon Seeds' and therefore the proper officer at the time of import had accepted the declared value and allowed the clearance of the consignment for which he relied on: I.S. Corporation- 2016(339) E.L.T. A125

d. The AR further submitted that the valuation arrived in the SCN is in gross violation of the CVR,2007 as the transaction value declared by the importer and accepted by the proper officer at the time of import and the SCN is blindly accepting the transaction value to be of those proforma invoices without corroborating with any valuation methods i.e., market valuation or NIDB data andthe statement cannot be made the sole basis to reject the valuation for which he relied on Vinod Solanki 2009 (223) E.L.T. 157 (S.C.)

e. The AR also submitted that the statements have to be corroborated and although the statements got recorded u/s 108 of Customs Act, 1962 can be made admissible the burden of proof to prove it voluntary and un-coerced is on department and thus it must be corroborated with some evidence. He further relied on:

i. Union of India v. Kisan Ratan Singh, 2020 SCC OnLine Bom 39

ii. Sainul Abideen Nilam 2014 (300) ELT 342 (Madras HC)

iii. K.I. PAVUNNY V ASSTT. COLLR. (HQ.), C. EX. COLLECTORATE, COCHIN 1997

(90) E.L.T. 241 (S.C.)

f. The AR further requested 7 days' time to file written synopsis

4. DISCUSSION AND FINDINGS

4.1 I have carefully gone through the Show Cause Notice, material on record and facts of the case, as well as written and oral submissions made by the Noticee. Accordingly, I proceed to decide the case on merit.

4.2 The adjudicating authority has to take the views/objections of the noticee on board and consider before passing the order. In the instant case, the personal hearing was granted to the noticee on 16.07.2025 by the Adjudicating Authority which was attended by the Shri Aliakbar Devjani and Shri S. S. Sekhon, Authorised representative of the noticee. The recordings of the personal hearing are placed in para 3 of this order.

4.3 I find that in compliance to the provisions of Section 28(8) and Section 122A of the Customs Act, 1962 and in terms of the principles of natural justice, opportunities for Personal Hearing (PH) were granted to the Noticee. Thus, the principles of natural justice have been followed during the adjudication proceedings. Having complied with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the allegations made in the SCN as well as the submissions / contentions made by the Noticee.

4.4 The present proceedings emanate from Show Cause Notice issued vide F. No. DRI/AZU/GI-2/ENQ(INT-09/14)/2014 dated 07.11.2014 issued to M/s. Asian Food Industries, alleging deliberate undervaluation of imported consignments of 'Watermelon Seeds' under various Bills of Entry to evade customs duty. The SCN alleges that the declared value of ₹7,90,68,975/- for 5361.70 MTs of 'Watermelon Seeds' was significantly lower than the actual transaction value, which, as per evidence gathered during investigation, stood at ₹23,34,56,058/-. The SCN relies upon documentary evidence including recovered communications to justify redetermination of value under Section 14(1) of the Customs Act, 1962, read with Rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. It proposes recovery of differential duty amounting to ₹5,61,89,613/- under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA. It further proposes adjustment of ₹1,00,00,000/- voluntarily paid by the importer against this duty liability. The SCN also proposes imposition of penalties under Sections 112(a), 114A and 114AA, and seeks to hold the goods liable for confiscation under Section 111(m) of the Act. Separate penalty proceedings are also proposed against Shri Ajay Tahelyani Partner of M/s Asian Food Industries under Sections 112(a), 114A and 114AA and Shri Suraj NandkishoreWadhawa, Proprietor of M/s. N.N. Corporation, under Section 112(b) for his role in the matter.

4.5 I find that the importer, M/s. Asian Food Industries, has contended that the declared transaction value of the imported consignments of 'Watermelon Seeds' was genuine and in accordance with the contractual terms agreed upon with the foreign suppliers. The importer has submitted that the valuation was based on commercial considerations and supported by contemporaneous invoices and banking documents. It has denied any undervaluation or misdeclaration, asserting that the value declared was in consonance with Section 14 of the Customs Act, 1962 and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The importer has argued that the reliance placed on alleged communications and statements is insufficient to disregard the declared value, and that no cogent evidence has been brought on record to prove deliberate suppression or intent to evade duty. Accordingly, the importer has prayed for dropping of the demand, interest, penalty, and confiscation proposed in the Show Cause Notice.

4.6 I find that the noticee filed Special Civil Application no. 17710 of 2016 in the Hon'ble Gujarat High Court in the instant case. Hon'ble Gujarat High Court vide order dated 20.02.2020 dismissed the petition of the noticee. Para 15 & 16 of the said judgement is quoted below for reference.

> *"15. As a result thereof, the petitioners could be said to have not made out a case for interference and, therefore, the petition is required to be dismissed. Accordingly, the same is dismissed. It goes without saying that the observations made hereinabove*

are only for the purpose of examining the controversy in question, and the same shall have no bearing upon the right of the petitioners to take out all submissions available under law while replying to the show cause notices and during the adjudication thereof.

16. With these observations, the present petition is dismissed. Notice discharged. "

Further the noticee filed Special Leave Petition No. 11674 of 2020 in the Hon'ble Supreme Court. Hon'ble Supreme Court vide order dated 01.08.2022 ordered as below:-

"1 An order has been passed by a coordinate bench of this court in Review Petition (Civil) No 400 of 2021 in the case of the Commissioner of Customs vs M/s Canon India Private Limited on 19 May 2022. This position has been noticed in a subsequent order dated 26 July 2022 passed in Union of India and Others vs Aspam Petrochem Private Limited [Civil Appeal No 6142 of 2019].

2 Accordingly, we direct that the Registry shall list these proceedings after the decision in Review Petition (Civil) No 400 of 2021.

3 ***Any adjudication which takes place in pursuance of the notice dated 1 July 2022 shall be subject to such further orders as may be passed by this Court. There shall be no stay of the adjudication proceedings."***

I find that there is **no stay granted by the Hon'ble Supreme Court on the adjudication proceedings**. On the contrary, the Hon'ble Supreme Court, while disposing of the SLP, has specifically clarified that "any adjudication which takes place in pursuance of the notice dated 01.07.2022 shall be subject to such further orders as may be passed by this Court," and further directed that "there shall be no stay of the adjudication proceedings." Therefore, the present adjudication proceedings are validly maintainable and liable to be continued in accordance with law.

4.7 I find that Noticee has placed reliance on judgments of Tribunals, High Courts and Apex Court, however, I find that the Hon'ble Supreme Court of India in case of **Ambica Quarry Works vs. State of Gujarat & Others [1987(l) S.C. C. 213]** observed that "the ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides and not what logically follows from it."

i. Further in the case of Bhavnagar University vs. Palitana Sugar Mills (P) Ltd. 2003 (2) SCC 111, the Hon'ble Apex Court observed "It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

ii. One other reference on the situation I have found in the decision of the Hon'ble Supreme Court in Ispat Industries vs. Commissioner of Customs, Mumbai [2004 (202) ELT 56C (SC)], wherein, the Hon'ble Court has quoted Lord Denning and ordered as under:

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly reliance on a decision is not proper.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"*Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."*

4.8 Further, from the brief of the statements of the key persons involved and the documentary/digital evidences available in the import of the goods covered in the instant SCN as outlined above, it can be seen that the admissions/confessions made therein are in coherence with each other and the same have been recorded voluntarily without the use of any force or threat. Moreover, none of the statements have negated any facts adduced in the other statements. Thus, I find that the statements tendered during the investigation under the provisions of Customs Act 1962, are fully corroborated with cogent and tangible evidences. **Further, from the records available, the DRI, Ahmedabad had recorded the statement under Section 108 of the Customs Act, 1962 without any duress and coercion.** In this regard, I place reliance in the decision of Hon'ble Supreme Court in the case of ***K.I. Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin, (1997) 3 SCC 721*** wherein the Apex Court has held that 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. **In the light of the above discussed judgements, I find that the statements recorded under Section 108 of the Customs Act, 1962 have legal evidentiary value in the present matter.**

4.8.1 Furthermore, 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.*

4.9 On careful perusal of the Show Cause Notice and case records, I find that the following main issues are involved in this case which are required to be decided:

A. Whether or not the value of Rs. 7,90,68,975/- declared by importer M/s. Asian Food Industries at the time of clearance of goods in respect of 5361.70 MTs of 'Watermelon Seeds', imported by them under Bills of Entry mentioned in the Annexure-'A' to this show cause notice should be rejected and re-determined as Rs. 23,34,56,058/- (Rupees Twenty Three Crores, Thirty Four Lakhs Fifty Six Thousand and Fifty Eight Only), under sub-section (1) of Section 14 of the Customs Act, 1962 read with the Rule 3(1) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

B. Whether or not the differential Customs Duty amounting to ₹ 5,61,89,613/- (Rupees Five Crore Sixty One Lakh Eighty Nine Thousand Six Hundred and Thirteen only) should be demanded from M/s. Asian Food Industries under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the said Act.

C. Whether or not the imported goods, as covered under the Bills of Entry mentioned in Annexure-A to the SCN **valued at** Rs. 23,34,56,058/-**,** are liable for confiscation under Section 111(m) of the Customs Act, 1962.

D. Whether or not penalty should be imposed upon the importer, M/s. Asian Food Industries, under Section 112(a) and/or Section 114A and/or Section 114AA of the Customs Act, 1962.

E. Whether or not penalty should be imposed upon Shri Ajay Tehelyani @ Ajay Tahiliani, Partner of M/s. Asian Food Industries, under Section 112(a) or Section 114A and Section 114AA of the Customs Act, 1962.

F. Whether or not penalty should be imposed upon Shri Suraj Nandkishore Wadhawa, Proprietor of M/s. N. N. Corporation, under Section 112(b) of the Customs Act, 1962.

4.10 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, as well as Noticee's oral and written submissions and documents / evidences available on record.

A. Whether or not the value of Rs. 7,90,68,975/- declared by importer M/s. Asian Food Industries at the time of clearance of goods in respect of 5361.70 MTs of 'Watermelon Seeds', imported by them under Bills of Entry mentioned in the Annexure-'A' to this show cause notice should be rejected and re-determined as Rs. 23,34,56,058/- (Rupees TwentyThree Crores Thirty Four Lakhs Fifty Six Thousand and Fifty Eight Only), under sub-section (1) of Section 14 of the Customs Act, 1962 read with the Rule 3(1) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

4.11 Section 14 of Customs Act 1962 is quoted below for reference

> ***"Section 14. Valuation of goods. -***
>
> *(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force,* ***the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods*** *when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:*
>
> ***Provided*** *that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance,*

loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

***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:

[2][(iv) the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof, as the Board may specify, where, the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria]

***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.

***Explanation** . - For the purposes of this section -*

(a) rate of exchange" means the rate of exchange -

(i) determined by the Board, or

(ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(b)"foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).”

4.12 Rule 12 of Customs Valuation rules, 2007 is quoted below for reference: -

“Rule 12. Rejection of declared value . -

(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."

4.13 Rule 3 of Customs Valuation rules, 2007 is quoted below for reference :-

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

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

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

***Provided** that -*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.14 Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 provides that where the proper officer has reason to doubt the truth or accuracy of the value declared in respect of any imported goods, he may ask the importer to furnish further information, including documents or other evidence. If, after examining such further information, or in the absence of a response, the officer still has reasonable doubt about the declared value, he may reject the same under Rule 12(1) and proceed to determine the value under the subsequent provisions of the Valuation Rules.

4.15 In the instant case, I find that the documents and correspondence recovered during the investigation, including email conversations clearly establish that the importer, M/s. Asian Food Industries, made payments to overseas suppliers over and above the invoice values declared before Customs. The excess amounts remitted were neither disclosed in the invoices nor reflected in the Bills of Entry filed at the time of import. This raises **a reasonable doubt** about the truth and completeness of the declared transaction value. Further I find that The importer, through its partner Shri Ajay Tahelyani, has **categorically admitted** in his statement recorded under Section 108 of the Customs Act, 1962 that additional remittances were made for the imported goods. The involvement of Shri Suraj Wadhawa, who also confirmed the under-invoicing and described the mechanism of routing the balance payments through informal channels or third parties like M/s Arab & India Spices, further strengthens the credibility of the documentary evidence. These statements corroborate the fact that the declared value was not the

actual price paid or payable. The importer failed to produce any satisfactory evidence or clarification to counter the reasonable doubt raised by the department. No plausible justification or documentation has been provided to reconcile the declared invoice values with the admitted transaction values, nor has the importer rebutted the evidence pointing to under-invoicing.

4.15.1 In view of the above, the invocation of **Rule 12** in the present case is entirely justified. There exists **sufficient and reasonable doubt** about the accuracy of the declared value. The evidence on record, including documentary proof and admitted statements, confirms that the importer willfully suppressed the actual transaction value with intent to evade customs duty. Consequently, the declared value is liable to be **rejected under Rule 12.**

4.16 Upon rejection of the declared transaction value under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 due to established under-invoicing, as discussed in the preceding paragraphs, the correct assessable value is required to be determined in accordance with the provisions of Rule 3(1) of the said Rules read with Section 14(1) of the Customs Act, 1962. Section 14(1) of the Customs Act provides that the value of imported goods shall be the **transaction value**, i.e., the price actually paid or payable for the goods when sold for export to India, subject to the prescribed rules. Rule 3(1) of the Valuation Rules mandates that the value shall be based on the transaction value of the imported goods, provided that there are no doubts about its truth and accuracy, and the conditions in Rule 3(2) are satisfied. In the instant case, the investigation has brought on record sufficient evidence, including email communications, financial trail of payments, and statements of the importer and associated persons, clearly demonstrating that the actual price paid or payable for the imported 'Watermelon Seeds' was substantially higher than the invoice value declared before the Customs. Since the total amount actually paid to the overseas suppliers is ascertainable from the available documentary evidence and admitted statements, the redetermination of assessable value on the basis of such actual transaction value is warranted under Rule 3(1).

4.17 I find that the noticees argument that agricultural produce prices fluctuate and therefore declared values should not be compared is untenable. Fluctuation in agricultural produce is a recognized phenomenon, but undervaluation cannot be condoned merely under the guise of “market variation.” In fact, **proforma invoices, recovered emails, and incriminating correspondence** clearly show that higher values were admitted between the importer and supplier. This establishes that the declared invoice price was not the true “price actually paid or payable” as mandated under **Section 14(1) of the Customs Act read with Rule 3(1) of the CVR, 2007**. Once evidence exists that the invoice does not reflect the actual agreed value, the transaction value is liable to rejection under **Rule 12 of CVR, 2007**.

4.18 Further I find that the importer’s plea that imports were of “second-grade” quality while proforma invoices relied upon by the Department reflect “first-grade” quality is an afterthought without documentary substantiation. No Bill of Entry has been produced showing that the consignments were of “second-grade” quality. On the contrary, the packing lists and supplier descriptions recovered during investigation do not differentiate quality for the consignments in question. Reliance on a **single invoice** does not displace the larger body of evidence showing consistently higher values for watermelon seeds.

4.19 The importers plea that re-export values of USD 400/MT were accepted by the Department is misconceived. Export valuation works on a different footing; under Section 14, the value of export goods is not determined by identical provisions as import valuation. The principle of “approbate and reprobate” has no application because import valuation is governed strictly by **Customs Valuation Rules, 2007**, and is transaction-specific. Accordingly, the declared invoice value of USD 300/MT cannot be accepted, as it is contrary to the evidence on record, the recovered proforma invoices, and the statutory mandate of Rule 12 of CVR, 2007.

4.20 Further I find that the importer's attempt to discredit the letter at RUD 4/21 and related documents is misplaced. The letter, along with the proforma invoices (RUD 5/26 and RUD 4/29) and the instructions at RUD 4/27, form part of a consistent trail recovered from the email account of Shri Suraj Wadhwa and the computer of Shri Ajay Tahelyani. The argument that M/s. Greater Girafan Trade & Investment Co. Ltd. was "never an agent" ignores the clear content of these records, which reflect commercial negotiations and breakdown of values for consignments imported by the noticee. It is settled law that documentary evidence recovered from the noticee's own records carries presumption of authenticity unless disproved by the noticee. The plea that there is no "proof of actual payment" corresponding to Proforma Invoice Nos. 42 and 68 is untenable. Under Rule 12 of the Customs Valuation Rules, the burden lies on the importer to establish the correctness of the declared value once reasonable doubt is raised. The production of such invoices, letters, and instructions showing higher values is sufficient to cast doubt. Hence, the Department is justified in rejecting the transaction value and re-determining the assessable value under Section 14 read with Rule 3(1).

4.21 The plea of the importer that consignments from Pakistan cannot be compared to those from Sudan is factually incorrect and legally unsustainable. First, the Show Cause Notice does not base its case only on country-to-country comparison but on the noticee's own recovered documents and proforma invoices. Second, the importer's own admission during investigation shows that both Sudanese and Pakistani seeds were imported in parallel to suppress overall valuation.

4.22 I find that the claim of the importer that watermelon seeds are covered under the term "melon seeds" (1207 70 90) is misconceived. The Harmonised System of Nomenclature (HSN) Explanatory Notes, which form the guiding principle for classification under the Customs Tariff, specifically treat *watermelon seeds* separately from *melon seeds*. In fact, watermelon belongs to the *Citrullus lanatus* species, which is distinct from other melons (Cucumis melo) covered under "melon seeds." The Indian Customs Tariff itself reflects this distinction by assigning watermelon seeds under **1207 99 90 (Other oil seeds not elsewhere specified)**, not under 1207 70. Hence, the reliance on Chapter 8 (fruit classification) to stretch the scope of "melon" into seeds under Chapter 12 is misplaced. Classification must be based on the specific description in the heading/sub-heading of Chapter 12, not on generic family resemblance in Chapter 8.The reliance on Notification No. 96/2008-Cus. and subsequent amendments is equally untenable. The exemption applies only when the goods are correctly classifiable under the sub-headings covered by the Notification. Since watermelon seeds are classifiable under 1207 99 90, they do not fall under 1207 70 90 during the relevant period. The importer cannot, by re-classifying at a later stage, claim retrospective benefit.

4.23 I have carefully considered the submission of the importer that the foundation of the present proceedings rests upon the e-mails retrieved during searches from the computer of Shri Ajay Tahelyani and the laptop of Shri Suraj Wadhwa, and that such retrieval allegedly violated Section 138C of the Customs Act, 1962.

4.24 At the outset, I find that the argument that the e-mails were "made-up" or "resumed" only during the panchnama without following Section 138C is factually incorrect and legally untenable. The panchnama proceedings clearly record that the devices in question were accessed in the presence of independent panch witnesses, the e-mails were already available in the logged-in state, and the printouts were taken contemporaneously. The officers were not required to perform "recovery" in the sense of forensic extraction; rather, the documents were in readily accessible form and were duly printed in the presence of panchas, thus satisfying the evidentiary requirements. Section 138C applies to the admissibility of electronic records in proceedings under the Customs Act. It does not mandate that, where the data is already in an open, accessible state during a lawful search, the officers must first conduct forensic imaging or obtain a separate

certificate from the custodian before taking printouts in the course of the search. The requirement of a certificate under Section 138C(4) read with Section 65B of the Evidence Act is primarily for situations where the electronic record is sought to be produced by a person other than the one who generated it, or where such record is retrieved from a non-accessible medium. In the instant case, the retrieval was from systems that were operational and in use by the noticees, in their premises, and in their presence, and the documents were authenticated through contemporaneous panchnama. The absence of a separate forensic report does not, in the facts of this case, vitiate the evidentiary value of the e-mails, particularly when they were accessed in real-time from devices in the possession of the noticees and printed in the course of lawful search, duly witnessed, and further corroborated by multiple other pieces of evidence. Therefore, I hold that the e-mails retrieved and printed during the panchnama are admissible evidence in the present proceedings, and their probative value stands reinforced by corroborative material on record.

4.25 The importer's argument that there is "no material evidence" linking remittances to the Sudanese supplier overlooks the fact that undervaluation under Section 14 read with the Customs Valuation Rules, 2007 can be established not only through direct banking remittance trails but also through corroborative circumstantial evidence, documentary correspondence, and admissions. The panchnama proceedings recovered contemporaneous email correspondence and instructions issued by Shri Ajay Tahelyani directing his brother, Shri Harish Tahelyani, to make third-party payments linked with specific consignments of watermelon seeds. The presence of transaction descriptions referencing the goods imported in the same period, coupled with the absence of any legitimate commercial explanation, is a material circumstance pointing towards settlement of differential value outside normal banking channels. The fact that payments were made to UAE-based intermediaries rather than directly to Sudanese suppliers does not exculpate the importer. It is a well-recognised modus operandi in trade-based money laundering and undervaluation cases for remittances to be routed through offshore third-party entities to obscure the real beneficiary. Section 14 and Rule 12 do not require that "extra consideration" be paid directly to the supplier; what matters is whether the buyer has made any payment, directly or indirectly, as a condition of sale.

4.26 The importer's assertion that the absence of money flow from Shri Ajay to Shri Harish negates the case is misplaced. It is not necessary to prove internal fund flows between related parties when there is independent evidence that one acted on behalf of the other in settling obligations to the overseas supplier. In this case, the familial relationship, coupled with direct instructions in seized correspondence and absence of any independent business relationship between Harish and the overseas suppliers, establishes that Harish acted as a conduit for the importer's benefit.

4.27 It is the contention of the importer that the SCN is devoid of any cogent evidence of actual payments made over and above the invoice value to the foreign suppliers, and that in the absence of contemporaneous imports of identical or similar goods at higher values, the invoice price must be accepted as the transaction value. I find this argument to be misplaced. The present case is not one where enhancement of value is sought on the basis of general market data, NIDB values, or contemporaneous imports of other parties. Rather, the re-determined assessable value has been derived from direct and primary evidence, namely the incriminating emails retrieved from the devices of Shri Ajay Tahelyani and Shri Suraj Wadhwa, their statements recorded under Section 108 of the Customs Act, 1962, and corroborative records showing instructions for remittances of differential amounts through overseas channels. These documents and statements establish that the importer had agreed to, and actually discharged, consideration far in excess of the invoice value declared before Customs. In such circumstances, Rule 12 of the Customs Valuation Rules, 2007 squarely applies, warranting rejection of the declared transaction value as unreliable. The correct value has thereafter been re-determined under Rule 3(1) read with Section

14 of the Customs Act, 1962, taking into account the actual price paid or payable, including the differential remittances, which represents the true transaction value. Hence, the importer's plea that absence of contemporaneous imports vitiates the re-determination is untenable, as the case is founded upon primary evidence of misdeclaration and suppression rather than secondary market comparables.

4.28 In view of the foregoing discussion, it is evident that the declared transaction value of ₹7,90,68,975/- submitted by M/s. Asian Food Industries does not reflect the true and correct value of the imported consignments. The evidence on record, including proforma invoices, seized documents, and statements of the concerned persons, establishes deliberate under-valuation with intent to evade customs duty. Consequently, the declared value stands rejected in terms of **Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007** read with Section 14(1) of the Customs Act, 1962. Upon such rejection, the assessable value has been correctly **re-determined under Rule 3(1)** of the said Rules at ₹23,34,56,058/- (Rupees Twenty Three Crores Thirty Four Lakhs Fifty Six Thousand and Fifty Eight only).

B. Whether or not the differential Customs Duty amounting to ₹ 5,61,89,613/- (Rupees Five Crore Sixty One Lakh Eighty Nine Thousand Six Hundred and Thirteen only) should be demanded from M/s. Asian Food Industries under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA of the said Act.

4.29 The Show Cause Notice proposed the demand and recovery of differential duty of amount **Rs. 5,61,89,613/-** based on redetermination of assessable value of the impugned goods under section 28(4) of the Customs Act, 1962 along with applicable interest under section 28AA of the Customs Act, 1962. The relevant legal provision is as under

> ***SECTION 28(4) of the Customs Act 1962.***
> ***Recovery of duties not levied or not paid or short-levied or short- paid or erroneously refunded.*** –
> *(4) Where any duty has not been [levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, -*
> *(a) Collusion; or*
> *(b) Any wilfull mis-statement; or*
> *(c) Suppression of facts,*
> *by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.*

4.30 In view of the discussion in the foregoing paras, I find that the investigation has placed on record sufficient evidences, both oral and documentary, thereby discharged burden to prove that the imported goods were undervalued. In view of the facts and evidences on record, it has been conclusively proven that **M/s. Asian Food Industries**, is engaged in a deliberate and systematic attempt to evade customs duty. It is observed that the re-determined assessable value of the impugned consignments of watermelon seeds has been fixed at ₹23,34,56,058/-, as against the declared value of ₹7,90,68,975/-. This results in short-levy of customs duty to the tune of ₹5,61,89,613/-. The undervaluation has been established on the basis of corroborative documentary evidence, including proforma invoices, correspondence recovered during the investigation, and voluntary statements of the noticees, which clearly indicate that the declared transaction value was manipulated to suppress the actual value of the goods.

4.31 In view of the foregoing, I find that, due to deliberate suppression of value of the 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;

4.32 Further, the noticee is also liable to pay applicable interest under the provisions of Section 28AA of the Customs Act, 1962. The relevant provision as under:

Section 28AA.
Interest on delayed payment of duty—
(1) Notwithstanding anything contained in any judgment, 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 provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.
(2) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. 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.

In this regard, the ratio laid down by Hon'ble Supreme Court in the case of CCE, **Pune V/s. SKF India Ltd. [2009 (239) ELT 385 (SC)]** wherein the Apex Court has upheld

the applicability of interest on payment of differential duty at later date in the case of short payment of duty though completely unintended and without element of deceit. The Court has held that

> *"....It is thus to be seen that unlike penalty that, is attracted to the category of cases in which the non-payment or short payment etc. of duty is "by reason of fraud, collusion or any wilfull mis-statement or suppression of facts, or contravention of any of the provisions of the Act or of Rules made thereunder with intent to evade payment of duty", under the scheme of the four Sections (11A, 11AA, 11AB & 11AC) interest is leviable on delayed or deferred payment of duty for whatever reasons."*

Thus, interest leviable on delayed or deferred payment of duty for whatever reasons, is aptly applicable in the instant case.

4.33 In view of the facts and findings in above paras, I hold that total differential duty of **Rs. 5,61,89,613/-** should be demanded under Section 28 (4) of the Customs Act, 1962 and the same should be recovered from **M/s. Asian Food Industries** along with applicable interest in terms of section 28AA of the Customs Act, 1962 as proposed in the Show Cause Notice.

4.34 Further I find that M/s. Asian Food Industries, Nadiad, had made voluntary payment of Rs. 50,00,000/- vide Demand Draft No. 8970764 dated 14.08.2014, Challan No. 2609 dated 19.08.2014 and Rs. 50,00,000/- vide Demand Draft No. 8970765 dated 14.08.2014, Challan No. 2610 dated 19.08.2014 at JNCH, Nhava sheva, towards part payment of differential Customs duty on account of undervaluation of the impugned imports. Further I find that the importer vide letter dated 17.08.2024 submitted Demand Draft bearing no. 032801 dated 14.08.2024 of Rs. 3,00,00,000/- towards differential customs duty which was deposited vide challan no. HC166 dated 20.08.2024. Accordingly, the voluntary payment of **Rs. 4,00,00,000/-** should be appropriated and adjusted towards the total duty demand of **Rs. 5,61,89,613/-.**

C. Whether or not the imported goods, as covered under the Bills of Entry mentioned in Annexure-A to the SCN valued at Rs. 23,34,56,058/-, are liable for confiscation under Section 111(m) of the Customs Act, 1962.

4.35 I find that, the importer had subscribed to a declaration as to the truthfulness of the contents of the bills of entry in terms of Section 46(4) of the Act in all their import declarations. Section 17 of the Act, w.e.f 08.04.2011, provides for self-assessment of duty on imported goods by the importer themselves by filing a bill of entry, in the electronic form. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods while presenting the bill of entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, there is an 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.

4.35.1 I also find that, it is very clear that w.e.f. 08.04.2011, the importer must self-assess the duty under Section 17. Such onus appears to have been deliberately not discharged by **M/s. Asian Food Industries** in terms of the provisions of Section 46(4) of the Customs Act, 1962, the importers while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and in support of such declaration, produce to the proper officer the invoice, of any, relating to the imported goods. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. In the instant case,

the impugned Bills of Entry being self-assessed were substantially mis-declared by the importer in respect of the value of the goods while being presented to the Customs.

4.35.2 I find that the SCN proposes confiscation of goods under the provisions of Section 111(m) of the Customs Act, 1962. Provisions of this Section of the Act, are re-produced herein below:

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

> ***(m) [any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 3 [in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54];***

4.35.3 I find that evidences are placed on record substantiating that the Importer **M/s. Asian Food Industries** by way of wilful mis-statement, mis-representation and suppression of facts, imported the goods vide Bills of Entry mentioned in Annexure-A to the SCN by declaring low value of goods with intent to clear goods at lower rate of duty. I, therefore, find that the said import of goods by mis-declaring the value of the goods, squarely falls within the ambit of 'illegal import' as defined in section 11 of the Customs Act, 1962 in as much as the same was done in contravention of various provisions of the Customs Act, 1962.

4.35.4 I also find that the case is established on documentary evidences in respect of past imports, though the department is not required to prove the case with mathematical precision but what is required is the establishment of such a degree of probability that a prudent man may on its basis believe in the existence of the facts in issue [as observed by the Hon'ble Supreme Court in CC Madras V/s D Bhuramal – [1983 (13) ELT 1546 (SC)]. Further in the case of K.I. International Vs Commissioner of Customs, Chennai reported in 2012 (282) E.L.T. 67 (Tri. - Chennai) the Hon'ble CESTAT, South Zonal Bench, Chennai has held as under: -

> *"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. Evidence Act not being applicable to quasi-judicial proceeding, preponderance of probability came to rescue of Revenue and Revenue was not required to prove its case by mathematical precision. Exposing entire modus operandi through allegations made in the show cause notice on the basis of evidence gathered by Revenue against the appellants was sufficient opportunity granted for rebuttal. Revenue discharged its onus of proof and burden of proof remained un-discharged by appellants. They failed to lead their evidence to rule out their role in the offence committed and prove their case with clean hands. No evidence gathered by Revenue were demolished by appellants by any means. '*

4.35.5 In view of the fraud and intentional undervaluation of the imported goods, the goods covered under the **Bills of Entry as listed in Annexure A to the SCN** having assessable value of Rs. 23,34,56,058/- are liable for confiscation under Section 111(m) of the Customs Act, 1962, as actual value of these goods do not correspond to value declared in the relevant bills of entry. Further the goods imported vide Bills of Entry as listed in Annexure A to the SCN are not available for confiscation, but I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

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

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

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

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

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

"if subsequent to release of goods import was found not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said

goods - Section 125 of Customs Act, 1962, then the mere fact that the goods were released on the bond would not take away the power of the Customs Authorities to levy redemption fine."

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

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

4.35.9 In view of the above, I find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), which has been passed after observing decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A. 120 (SC), is squarely applicable in the present case.

4.35.10 In view of above facts, findings and legal provisions, I find that it is an admitted fact with documentary evidences that the importers had wilfully mis-declared the value of the impugned goods. Therefore, I hold that the acts and omissions of the importer, by way of collusion, wilful mis-statement, mis-declaration and suppression of facts, of the imported goods, have rendered the goods liable to confiscation under section 111 (m) of the Customs Act, 1962. **Accordingly, I observe that the present case also merits imposition of Redemption Fine, regardless of the physical availability, once the goods are held liable for confiscation.**

D. Whether or not penalty should be imposed upon the importer, M/s. Asian Food Industries, under Section 112(a) and/or Section 114A and/or Section 114AA of the Customs Act, 1962.

4.36 The provisions of Section 112(a),114A and Section 114AAof the Customs Act, 1962 are reproduced 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

(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 1 [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

2 [(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;]*

3 [(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 4 [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 5 [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 6 [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]

Section 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 (2) 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 orders 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 any penalty has been levied under this section, no penalty shall be levied under** section 112 **or** section 114.*

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."

4.37 It is a settled law that fraud and justice never dwell together (Frauset 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 I : 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."

4.38 I find that in the instant case, the impugned imports under the ambit of the subject SCN were affected in the name of **M/s. Asian Food Industries.**

4.38.1 I note that the importer had undervalued the goods in the **Bills of Entry as listed in Annexure A to the SCN** with intention to evade the Customs Duty for the imported goods. In view of the provisions discussed above, I find that the correct applicable duty had not been levied by reasons of collusion, wilful mis-statement and suppression of facts. Accordingly, I hold that **M/s. Asian Food Industries** is liable to penalty under Section 114A of the Customs Act, 1962 in respect of Bills of Entry as mentioned in Annexure-A**.** However, in view of fifth proviso to Section 114A, no penalty is liable to be imposed on **M/s. Asian Food Industries**under Section 112 ibid, of the Customs Act, 1962.

4.39 Furthermore, I find that ingredients for Penal Action under Section 114 AA of the Customs Act on **M/s. Asian Food Industries** has been elaborately explained in the SCN. I note that, The Hon'ble CESTAT, New Delhi in the case of M/s S.D. Overseas vs The Joint

Commissioner of Customs in Customs Appeal No. 50712 OF 2019 had dismissed the appeal of the petitioner while upholding the imposition of penalty under Section 114 AA of the Customs Act, wherein it had held as under:

> *28. As far as the penalty under Section 114AA is concerned, it is imposable 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. We find that the appellant has mis-declared the value of the imported goods which were only a fraction of a price the goods as per the manufacturer's price lists and, therefore, we find no reason to interfere with the penalty imposed under Section 114AA.*

4.39.1 There are several judicial decisions in which penalty on Companies under section 114AA of the Customs Act, 1962 has been upheld. Following decisions are relied upon on the issue,-

i. M/s ABB Ltd. Vs Commissioner (2017-TIOL-3589-CESTAT-DEL)
ii. Sesa Sterlite Ltd. Vs Commissioner (2019-TIOL-1181-CESTAT-MUM)
iii. Indusind Media and Communications Ltd. Vs Commissioner (2019-TIOL-441-SC-CUS)

4.39.2 It is evident from the facts on record, including email correspondences, statements recorded under Section 108 of the Customs Act, 1962, and corroborative documentary evidence, that M/s. Asian Food Industries knowingly and wilfully made a false declaration regarding the value of the imported goods in the Bills of Entry with an intent to evade customs duty. The importer was fully aware that the actual transaction value of the goods was substantially higher than the value declared to Customs, and yet furnished invoices reflecting suppressed values. Such conduct amounts to knowingly or intentionally making, signing, or using, or causing to be used, a false declaration, statement, or document in the transaction of any business relating to the Customs. Therefore, the provisions of Section 114AA of the Customs Act, 1962 squarely apply to the importer, warranting imposition of penalty commensurate with the gravity of the offence.

E. Whether or not penalty should be imposed upon Shri Ajay Tehelyani @ Ajay Tahiliani, Partner of M/s. Asian Food Industries, under Section 112(a) or Section 114A and Section 114AA of the Customs Act, 1962.

4.40 The evidence on record, including statements recorded under Section 108 of the Customs Act, 1962, import documentation, and corroborative material, establishes that Shri Ajay Tehelyani @ Ajay Tahiliani, being a Partner of M/s. Asian Food Industries, was directly concerned with and had knowledge of the import consignments covered under the Bills of Entry mentioned in Annexure–A to the Show Cause Notice. The undervaluation of the goods, as discussed in preceding paragraphs, was effected through the use of false and fabricated invoices, which were knowingly submitted to Customs for the purpose of evading payment of legitimate duties. By his active role in conceiving, directing, and facilitating the misdeclaration of the assessable value, Shri Ajay Tehelyani has rendered the goods liable to confiscation under Section 111(m) of the Customs Act, 1962. Consequently, in terms of Section 112(a) of the Act, any person who, in relation to any goods, does or omits to do any act which renders such goods liable to confiscation, or abets such act, is liable to penalty. In the present case, the role of Shri Ajay Tehelyani is not of a passive partner but of an active participant who orchestrated and supervised the import transactions, ensured the submission of undervalued invoices, and thereby facilitated evasion of customs duty. His actions squarely attract the provisions of Section 112(a) of the Customs Act, 1962. Accordingly, I hold that penalty under Section 112(a) is imposable

upon him, commensurate with the gravity of the offence and with the objective of deterring such deliberate violations of the customs law.

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

4.40.2 The investigation has established that Shri Ajay Tehelyani @ Ajay Tahiliani, Partner of M/s. Asian Food Industries, was knowingly concerned with the preparation and use of false and fabricated documents, namely commercial invoices showing grossly understated values for the consignments of 'Watermelon Seeds' covered under the Bills of Entry specified in Annexure–A to the Show Cause Notice. Such documents were knowingly submitted before the Customs authorities with the intent to mislead the assessing officers and to secure clearance of the goods at a value much lower than the true transaction value, thereby evading payment of legitimate customs duty. Section 114AA of the Customs Act, 1962, provides that any person who knowingly or intentionally makes, signs, or uses, or causes to be made, signed, or used, any declaration, statement, or document in the transaction of any business relating to the Customs, which is false or incorrect in any material particular, shall be liable to a penalty not exceeding five times the value of the goods. In the instant case, the undervalued invoices were not a result of inadvertence or clerical error, but part of a conscious and premeditated design to suppress the actual value. Shri Ajay Tehelyani, being in charge of the firm's import activities, was fully aware of the falsity of these documents and nevertheless submitted them to Customs for assessment. His conduct falls squarely within the ambit of Section 114AA of the Customs Act, 1962. Accordingly, I hold that penalty under Section 114AA is imposable upon him, keeping in view the gravity of the offence.

F. Whether or not penalty should be imposed upon Shri Suraj Nandkishore Wadhawa, Proprietor of M/s. N. N. Corporation, under Section 112(b) of the Customs Act, 1962.

4.41 The investigation has revealed that Shri SurajNandkishoreWadhawa, Proprietor of M/s. N. N. Corporation, actively abetted the acts of M/s. Asian Food Industries in the import of 'Watermelon Seeds' at grossly undervalued prices. Evidence on record, including the correspondence and transactional documents recovered during investigation, clearly establishes that Shri Wadhawa facilitated the procurement and supply of false commercial invoices and other documents from the overseas supplier, knowing fully well that such documents mis-declared the value of the goods for the purpose of evading customs duty. Section 112(b) of the Customs Act, 1962, provides that any person who acquires possession of, or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling, purchasing, or in any other manner dealing with goods which he knows or has reason to believe are liable to confiscation, shall be liable to penalty. In the present case, Shri Wadhawa's role was not peripheral but integral to the offence. By arranging and transmitting the fabricated invoices and aiding the importer in presenting them before Customs, he rendered the goods liable to confiscation under Section 111(m) of the Customs Act, 1962. I therefore hold that Shri Suraj Nandkishore Wadhawa is liable for penalty under

Section 112(b) of the Customs Act, 1962, commensurate with the gravity of his involvement.

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

ORDER

a) I reject the declared transaction value of ₹ 7,90,68,975/- (Rupees Seven Crores Ninety Lakhs Sixty-Eight Thousand Nine Hundred and Seventy-Five only) in respect of the import of 5361.70 MTs of 'Watermelon Seeds' by M/s. Asian Food Industries under the Bills of Entry listed in Annexure-'A', under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, and re-determine the assessable value as ₹ 23,34,56,058/- (Rupees Twenty-Three Crores Thirty-Four Lakhs Fifty-Six Thousand and Fifty-Eight only) under Section 14(1) of the Customs Act, 1962 read with Rule 3(1) of the said Rules.

b) I confirm the demand of differential customs duty amounting to ₹5,61,89,613/- (Rupees Five Crores Sixty One Lakhs Eighty Nine Thousand Six Hundred and Thirteen only)on 5361.700 MTs. 'Watermelon Seeds', valued at Rs. 23,34,56,058/- (re-determined), covered under the Bills of Entry mentioned in Annexure-'A' to the show cause notice from **M/s. Asian Food Industries** under **Section 28(4)** of the Customs Act, 1962 and I order to recover the same from the importer **M/s. Asian Food Industries** order the recovery of differential duty along with applicable interest under Section 28AA of the Customs Act, 1962 from M/s. Asian Food Industries along with **applicable interest** under **Section 28AA** ibid.

c) I order that the total amount of **Rs 4,00,00,000/- (Rupees Four Crores only)** deposited by the importer **M/s. Asian Food Industries** should be appropriated & adjusted against the differential duty confirmed in this order.

d) Even though the goods are not physically available, I hold the **impugned goods having total assessable value ₹**23,34,56,058/- (Rupees Twenty Three Crores Thirty Four Lakhs Fifty Six Thousand and Fifty Eight Only) **liable for confiscation** under **Section 111(m)** of the Customs Act, 1962. However, in lieu of confiscation, I impose a **redemption fine of ₹ 2,30,00,000/- (**Rupees Two Crore Thirty Lakhs only**)** on **M/s. Asian Food Industries** under **Section 125(1)** of the Customs Act, 1962.

(d) I impose a **penalty equivalent to the differential duty amount of** ₹5,61,89,613/- (Rupees Five Crores Sixty One Lakhs Eighty Nine Thousand Six Hundred and Thirteen only), along with applicable interest, on **M/s. Asian Food Industries** under **Section 114A** of the Customs Act, 1962, in respect of the Bills of Entry mentioned in Annexure-A to the notice.

If the duty and interest are paid within **thirty days** from the date of communication of this order, the amount of penalty liable to be paid shall be **twenty-five percent of the duty**, provided that the reduced penalty amount is also paid **within the same thirty-day period**, in terms of the **first proviso to Section 114A** of the Act. Since the penalty is imposed under Section 114A for past imports, **no separate penalty is imposed under Section 112(a)** in terms of the **fifth proviso to Section 114A**.

e) I impose a penalty of ₹ **2,30,00,000/- (**Rupees Two Crore Thirty Lakhs only**)** on M/s. Asian Food Industries under Section 114AA of the Customs Act, 1962.

f) I impose a penalty of ₹ 25,00,000/- (Rupees Twenty Five Lakhs only) on Shri Ajay Tehelyani @ Ajay Tahiliani, Partner of M/s. Asian Food Industries, under Section 112(a) of the Customs Act, 1962.

g) I impose a penalty of ₹ 25,00,000/- (Rupees Twenty Five Lakhs only) onShri Ajay Tehelyani @ Ajay Tahiliani, Partner of M/s. Asian Food Industries under Section 114AA of the Customs Act, 1962.

h) I impose a penalty of ₹ 25,00,000/- (Rupees Twenty Five Lakhs only) on Shri SurajNandkishoreWadhawa, Proprietor of M/s. N. N. Corporation, under Section 112(b) of the Customs Act, 1962.

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

Digitally signed by
Yashodhan Arvind Wanage
Date: 10-09-2025
13:41:40

(यशोधनअरविंदवनगे**/Yashodhan Arvind Wanage)**

प्रधानआयुक्तसीमाशुल्क/ **Pr. Commissioner of Customs**

एनएस**-I,** जेएनसीएच / **NS-I, JNCH**

To,

1. M/s. Asian Food Industries,
N.H. 8, Opposite Escort Tractors,
At & PO- Dabhan, Taluka – Nadiad,
District – Kheda(Gujarat), Pin – 387320

2. Shri Ajay Tahelyani @ Ajay Tahiliani,
Partner of M/s Asian Food Indutries,
N.H. 8, Opposite Escort Tractors,
At & PO- Dabhan, Taluka – Nadiad,
District – Kheda(Gujarat), Pin – 387320

3. Shri SurajNandkishoreWadhwa,
Proprietor of M/s N N Corporation,
Plot no. 74/6, Suraj Industries Compound,
Delhi Road, Sidhpur, Gujarat – 384151

Copy To:

1. The Additional Commissioner of Customs, Group I & 1A, JNCH
2. The Deputy Director, DRI Ahmedabad
3. AC/DC, Chief Commissioner's Office, JNCH
4. AC/DC, Centralized Revenue Recovery Cell, JNCH

F. No. S/26/Misc-95/2014-15/ADJ(I)/JNCH
SCN No. DRI/AZU/GI-2/ENQ-46(INT-09/14)/2014 dated 07.11.2014

5. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
6. Office Copy.