

	सीमाशुल्कआयुक्तकाकार्यालय, एनएस-III OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-III केंद्रीकृतअधिनिर्णयनप्रकोष्ठ, जवाहरलालनेहरूसीमाशुल्कभवन CENTRALIZED ADJUDICATION CELL, JAWAHARLAL NEHRU CUSTOM HOUSE, न्हावाशेवा, तालुका-उरण, जिला- रायगढ़, महाराष्ट्र -400 707 NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA-400707
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File No: S/10-182/2024-25/CC/Gr.III/NS-III/CAC/JNCH

Date :01.09.2025

SCN No: 1633/2024-25/Commr./Gr.III/NS-III/CAC/JNCH dated 20.01.2025

DIN	:	20250978NX0000924612
	आदेशकीतिथि	: 30.08.2025
	Date of Order	
	जारीकिएजानेकीतिथि	: 01.09.2025
	Date of Issue	
आदेशसं.	:	185/2025-26/आयुक्त/एनएस-III/ सीएसी/जेएनसीएच
Order No.	:	185/2025-26 /Commr./NS-III /CAC/JNCH
पारितकर्ता	:	श्री विजय रिशी
Passed by	:	SH. VIJAY RISI
	:	आयुक्त, सीमाशुल्क (एनएस-3), जेएनसीएच, न्हावाशेवा
	:	Commissioner of Customs (NS-III), JNCH, Nhava Sheva
पक्षकार (पार्टी)/ नोटिसीकानाम	:	मेसर्स गोराडिया प्रिंटर्स
Name of Party/Noticee	:	M/s. Goradia Printers

मूलआदेश
ORDER-IN-ORIGINAL

1. इस आदेश की मूल प्रतिका प्रतिलिपि जिस व्यक्तिको जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।

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

2. इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम १९६२ की धारा १२९(ए) (के तहत इस आदेश के विरुद्ध सी ई एस टी ए टी, पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट रीज़नल बेंच, ३४, पी .डी .मेलोरोड, मस्जिद (पूर्व), मुंबई- ४००००९को अपील कर सकता है, जो उक्तअधिकरण के सहायकरजिस्ट्रार को संबोधित होगी।

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

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

Main points in relation to filing an appeal:-

फार्म	:	फार्मन .सीए३, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके
Form	:	खिलाफ अपील की गयी है (इन चार प्रतियों में से कमसे कम एक प्रति प्रमाणित होनी चाहिए)

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

समय सीमा	:	इस आदेश की सूचना की तारीख से ३ महीने के भीतर
Time Limit		Within 3 months from the date of communication of this order.
फीस	:	(क) एक हजार रुपये-जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५ लाख रुपये या उस से कम है।
Fee		(a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less. (ख) पाँच हजार रुपये-जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५ लाख रुपये से अधिक परंतु ५० लाख रुपये से कम है। (b) Rs. Five Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 lakh (ग) दस हजार रुपये-जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५० लाख रुपये से अधिक है। (c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.
भुगतान की रीति	:	क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीयकृत बैंक द्वारा सहायक रजिस्ट्रार, सी ई एस टी ए टी, मुंबई के पक्षमें जारी किया गया हो तथा मुंबई में देय हो।
Mode of Payment		A crossed Bank draft, in favour of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.
सामान्य	:	विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क अधिनियम, १९९२, सीमाशुल्क (अपील) नियम, १९८२ सीमाशुल्क, उत्पादन शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, १९८२ का संदर्भ लिया जाए।
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.

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

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

F.No. S/10-182/2024-25/CC/Gr.III/NS-III/CAC/JNCH
SCN no. 1633/2024-25/Commr./Gr.III/NS-III/CAC/JNCH dated 20.01.2025

BRIEF FACTS

A Show Cause Notice no. **1633/2024-25/Commr./Gr.III/NS-III/CAC/JNCH dated 20.01.2025** was issued to M/s. Goradia Printers (IEC No. 0316504971) (*hereinafter referred to as the importer/noticee*) for Bill of Entry No. 9989693 dated 17.12.2020 (*herein after referred to as the said B/E*) containing goods covered under CTH '5903' filed by Custom Broker (*herein after referred to as CB*) M/s Xpress Interlink Logistics. The consignment was kept on hold by SIIB (I) for examining mis-declaration & duty evasion. Further, Bill of Entry No. 2071340 dated 22.12.2020 and 2071288 dtd. 22.12.2020 filed by CB on behalf of the importer were also put on hold by SIIB (I) for examining mis-declaration & duty evasion.

2. DETAILED EXAMINATION OF B/E NO. 9989693 DATED 17.12.2020

The said B/E was filed for Home Consumption. The goods imported vide the said B/E were examined 100% under the Panchnama dtd. 24.12.2020 by SIIB (I). The representative samples were drawn and sent to the Textile Committee for testing purpose and test reports No. 0253102021-1747 & 1748 both dated 12.01.2021 were received from the Textile Committee. As per the examination Panchnama and test reports received the following observations were made:

- i) The item no. 11 of BE i.e "PU coated fabric" was found in excess quantity.
- ii) Total quantity of PU coated fabric was found to be 10523 meter however the same was declared as 4975 meter,
- iii) Declared thickness in documents uploaded was 1.28 mm whereas the thickness was found as per test reports 2.09 mm and 2.30 mm respectively.

2.2 DETAILED EXAMINATION OF B/E NO. 2071288 DATED 22.12.2020

The above said B/E was filed on first check basis. The goods imported vide the said B/E were examined 100% under the Panchnama dtd. 07.01.2021 by SIIB (I). The representative samples were drawn and sent to the Textile Committee for testing purpose and test reports No. 0253032021-1907, 1908 & 1909 all dated 22.01.2021 were received from the Textile Committee. As per the examination Panchnama and test reports received the following observations were made:

- i. The item no. 12 of BE i.e "PU coated fabric" was found in excess quantity.
- ii. Total quantity of PU coated fabric was found to be 6451 meter however the same was declared as 4030 meter,
- iii. There were 03 types of fabric rolls in the consignments and as per the test reports, the thickness was found to be 2.03 mm, 2.18 mm and 2.52 mm.

2.3 DETAILED EXAMINATION OF B/E NO. 2071340 DATED 22.12.2020

The above said B/E was filed on first check basis. The goods imported vide the said B/E were examined 100% under the Panchnama dtd. 08.01.2021 by SIIB (I). The representative samples were drawn and sent to the Textile Committee for testing purpose and test reports No. 0253032021-1904, 1905 & 1906 all dated 22.01.2021 were received from the Textile Committee. As per the examination Panchnama and test reports received the following observations were made:

- i. The item no. 12 of BE i.e "PU coated fabric" was found in excess quantity.
- ii. Total quantity of PU coated fabric was found to be 12765 meter however the same was declared as 8190 meter,
- iii. There were 03 types of fabric rolls in the consignments and as per the test reports, the thickness was found to be 2.15 mm, 2.13 mm and 2.13 mm.

3. Based on reasonable belief that the goods have been mis-declared in terms of Quantity and thickness with the intent to evade Customs duty. Therefore, the goods appeared to be liable for confiscation under the Customs Act, 1962 and hence the same were seized under the seizure memo dated 19.01.2021.

4. **Valuation of Goods & Calculation of Differential Duty for live B/E-** On the basis of the specification of the goods obtained in Test report, the matter was taken up for valuation of the

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goods. Since, the goods were mis-declared in terms of quantity, thickness and therefore value also. Valuation of the coated fabric is done on thickness & GSM basis. And the thickness of the subject goods was found higher than the declared thickness as mentioned in para 2 above, hence, the declared transaction value of the goods appeared to be liable for rejection under Rule 12 of CVR, 2007 and the assessable value of the goods and duty difference thereon was re-determined/calculated as per group practice vide file no. vide F.No S/26-Misc-1283/2012 Gr. III dated 20.11.2012 on which the same arrived at (i) BE No. 9989693 dtd. 17.12.2020 Rs. 41,80,479/- (Rupees Forty-One Lakh Eighty Thousand Four Hundred Seventy-Nine Only) and Rs. 8,36,515/- (Rupees Eight Lakh Thirty-Six Thousand Five Hundred Fifteen Only), (ii) BE No. 2071288 dtd. 22.12.2020 Rs. 35,39,365/- (Rupees Thirty-Five Lakh Thirty-Nine Thousand Three Hundred Sixty-Five Only) and Rs. 4,91,463/- (Rupees Four Lakh Ninty-One Thousand Four Hundred Sixty-Three Only), (iii) BE No. 2071340 dtd. 22.12.2020 Rs. 46,39,506/- (Rupees Forty-Six Lakh Thirty-Nine Thousand Five Hundred Six Only) and Rs. 9,43,460/- (Rupees Nine Lakh Forty-Three Thousand Four Hundred Sixty Only) respectively. Calculation sheet as Annexure -I and gist of the same is shown in the Table-I below :-

Table-I

<i>B/E No. & Date</i>	<i>Description of the goods</i>	<i>Declared Assessabl e Value</i>	<i>Duty declared</i>	<i>Re- determined assessable value</i>	<i>Re- determine d duty</i>	<i>Differenti al duty (Payable)</i>
9989693 dtd. 17.12.2020	Mix items and PU Coated Fabrics	18,97,414 /-	5,98,395 /-	41,80,479/-	14,34,910 /-	8,36,515/-
2071288 dtd. 22.12.2020	Mix items and PU Coated Fabrics	21,94,261 /-	7,09,103 /-	35,39,365/-	11,00,566 /-	4,91,463/-
2071340 dtd. 22.12.2020	Mix items and PU Coated Fabrics	20,65,742 /-	6,53,477 /-	46,39,679/-	15,97,002 /-	9,43,525/-
	Total	61,57,417 /-	19,60,97 5/-	1,23,59,523/ -	41,32,478 /-	22,71,503 /-

ANNEXURE A

F.No. S/10-182/2024-25/CC/Gr.III/NS-III/CAC/JNCH
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Sl No	Items	Decl CTH	Item Found	Proper CTH	No. of pkg decl	No. of pkg found	qty decl in kgs	qty. found in kgs	Assesd as p/kg	rdrr price/kg	redr ass value	bcd	sws	lgst	duty payable
1	Ring(Fire Extinguisher Part)	84249000	Ring	84249000	100	100	1250	1250	119.52	119.52	149400	11205	1120.5	29110.59	41436.09
2	Valve (Fire Extinguisher Part)	84249000	Valve	84249000	500	500	4000	4000	93.375	93.375	373500	28012.5	2801.25	72776.475	103590.225
3	Gauge(Fire Extinguisher Part)	84249000	Gauge	84249000	25	25	398	398	159.535	159.535	63494.93	4762.12	476.212	12371.98711	17610.31884
4	Fire Hose 10*30M	40091100	Fire Hose 10*30M	40091100	200	200	2240	2240	90.04	90.04	201689.6	20168.96	2016.896	40297.58208	62483.43808
5	Fire Hose 13*30M	40091100	Fire Hose 13*30M	40091100	200	200	3560	3560	89.808	89.808	319716.5	31971.65	3197.165	63879.3527	99048.1655
6	Water Bottle	39233010	Water Bottle	39233010	50	50	725	725	92.73	92.73	67229.25	10084.39	1008.439	14097.97373	25190.79998
7	Plastic Button(garment acc.)	96062100	Plastic Button(garment acc.)	96062100	50	50	1089	1089	90.15	90.15	98173.35	9817.335	981.7335	19615.03533	30414.10383
8	Die Casting Button(garment acc.)	96062200	Die Casting Button(garment acc.)	96062200	6	6	189	189	97.11	97.11	18353.79	1835.379	183.5379	3667.087242	5686.004142
9	Die Casting Rivet(garment acc.)	96061010	Die Casting Rivet(garment acc.)	96061010	2	2	77	77	97.11	97.11	7477.47	747.747	74.7747	1493.998506	2316.520206
10	Metal Id(garment acc.)	83089099	Metal Id	83089099	1	1	16	16	97.11	97.11	1553.76	155.376	15.5376	310.441248	481.354848
12	PU label(with metal id(garment acc.))	83089099	label with metal id(garment acc.)	83089099	59	59	1663	1663	89.64	89.64	149071.3	14907.13	1490.713	29784.44974	46182.29494
13	Wooden Button(garment acc.)	96062910	Wooden Button(garment acc.)	96062910	1	1	20	20	89.64	89.64	1792.8	179.28	17.928	358.20144	555.40944
11	Pu Coated Fabric	59032090	Pu Coated Fabric	59032090	199	199	4975	4975	89.64	259.3	2461276	492255.1	49225.51	360330.7478	901811.3798
								1031	89.64	259.7	267750.7	53550.14	5355.014	39198.70248	98103.85648
										Re determined ass. Value	4180479			Duty Payable	1434909.961
														Duty assessed	598395
														Diff duty	836514.9611

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No	Item	Desc CTH	Item Found	Proper CTH	No. of pkg decl.	No. of pkg found	Qty decl. in kgs	Qty found in kgs	Assesd /kg	Indr price/kg	redr ass. value	bsc	swt	gst	duty payable
1	Aluminum Nail (Garment Acc.)	76169200	Aluminum Nail	76169200	3	3	167	167	111.67	111.67	18648.89	1864.889	186.4889	1726.048	5777.426
2	Decorative Ribbon (Garment Acc.)	58063990	Decorative Ribbon	58063990	49	49	1280	1280	89.34	89.34	114355.2	11435.52	1143.552	6346.714	18925.78
3	Metal Buckle (Garment Acc.)	83089019	Metal Buckle	83089019	10	10	430	430	89.34	89.34	38416.2	3841.62	384.162	7679.557	11901.34
4	Metal Button & Rivet (Garment Acc.)	96062200	Metal Button & Rivet	96062200	124	124	3462	3462	89.34	89.34	309295.1	30929.51	3092.951	41797.16	95614.62
5	Metal Coat Pin (Garment Acc.)	83089099	Metal Coat Pin	83089099	2	2	50	50	89.34	89.34	4467	446.7	44.67	891.5066	1383.877
6	Metal Hanging (Garment Acc.)	83089099	Metal Hanging	83089099	1	1	53	53	89.34	89.34	4735.02	473.502	47.3502	946.057	1466.909
7	Metal ID (Garment Acc.)	83089099	Metal ID	83089099	5	5	88	88	89.34	89.34	7861.92	786.192	78.6192	1570.812	2435.623
8	Metal keychain (Garment Acc.)	83089099	Metal chain	83089099	14	14	598	598	89.34	89.34	53425.32	5342.532	534.2532	10674.38	16531.16
9	Metal Puller (Garment Acc.)	96072000	Metal Puller	96072000	21	21	743	743	89.34	89.34	66379.62	6637.962	663.7962	8841.785	16143.52
10	Plastic Button (Garment Acc.)	96062100	Plastic Button	96062100	3	3	121	121	89.34	89.34	10899.48	1089.948	108.9948	1177.716	3376.659
11	Plastic Stopper (Garment Acc.)	96072000	plastic Stopper	96072000	1	1	27	27	89.34	89.34	2412.18	241.218	24.1218	321.3024	586.6422
13	PU Label with Metal ID (Garment Acc.)	83089099	Label with Metal ID	83089099	56	56	1011	1011	89.34	89.34	90322.74	9032.274	903.2274	18046.48	27081.08
14	PU Label (Garment Acc.)	58079090	Label	58079090	1	1	64	64	89.34	89.34	5717.36	571.736	57.1736	761.6056	1390.559
15	Pvc Label (Garment Acc.)	58079090	Label	58079090	2	2	63	63	89.34	89.34	5628.42	562.842	56.2842	749.7055	1368.832
16	Pvc Label with metal ID (Garment Acc.)	83089099	Label with metal ID	83089099	2	2	70	70	89.34	89.34	6253.8	625.38	62.538	1249.509	2097.427
17	Ribbon With metal ID (Garment Acc.)	58063990	Ribbon With metal ID	58063990	21	21	930	930	89.34	89.34	83086.1	8308.62	830.862	4611.264	13756.77
18	Rope (Garment Acc.)	56079090	Rope	56079090	43	43	1224	1224	89.34	89.34	109352.2	10935.22	1093.522	14565.71	26594.45
19	Rubber Label (Garment Acc.)	40169930	Rubber Label	40169930	34	34	1223	1223	89.34	89.34	109262.8	10926.28	1092.628	21830.71	33848.62
20	S.S. Button & Rivet (Garment Acc.)	96062100	Metal Button & Rivet	96062100	1	1	16	16	96.78	96.78	1548.48	154.848	15.4848	309.3863	479.7191

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Item No.	Item Name	Item Code	Item Description	Item Unit	Item Qty	Item Price	Item Value	Item Weight	Item Volume	Item Density	Item Length	Item Width	Item Height	Item Depth	
1	Steel Bolt	75189100	Steel Bolt	75189100	55	55	2234	2234	96.78	111.6	249314.4	24931.44	2493.144	49813.02	77237.6211
2	Steel Bolt	75189100	Steel Bolt	75189100	1	1	96	96	96.78	111.6	4352.4	435.24	43.524	888.6095	1348.37352
3	Steel Bolt	75189100	Steel Bolt	75189100	1	1	23	23	96.34	96.34	1876.14	187.614	18.7614	349.9018	456.277248
4	Steel Bolt	75189100	Steel Bolt	75189100	8	8	243	243	96.34	96.34	21705.62	2170.562	217.0562	3891.721	5279.77958
5	Steel Bolt	75189100	Steel Bolt	75189100	2	2	64	64	96.34	96.34	5717.76	571.776	57.1776	1142.408	1771.38205
6	Steel Bolt	75189100	Steel Bolt	75189100	232	232	6113	6113	74.43	74.43	455112.9	45511.29	4551.129	9091.55	140993.961
7	Steel Bolt	75189100	Steel Bolt	75189100	47	47	1417	1417	96.34	96.34	126994.8	12699.48	1269.948	25293.64	39218.0628
8	Steel Bolt	75189100	Steel Bolt	75189100	1	1	38	38	96.34	96.34	8994.52	899.452	89.9452	678.905	1051.74822
9	Steel Bolt	75189100	Steel Bolt	75189100	2	2	30	30	96.34	96.34	4467	446.7	44.67	595.0044	1086.3744
10	Steel Bolt	75189100	Steel Bolt	75189100	13	13	494	494	96.34	96.34	44133.96	4413.396	441.3396	2448.435	7304.17038
11	Steel Bolt	75189100	Steel Bolt	75189100	5	5	115	115	96.34	96.34	10274.1	1027.41	102.741	1368.51	2498.80112
12	Steel Bolt	75189100	Steel Bolt	75189100	12	12	457	457	96.34	96.34	40828.38	4082.838	408.2838	5438.34	9929.40291
13	Steel Bolt	75189100	Steel Bolt	75189100	88	88	2305	2305	96.34	96.34	205828.7	20582.87	2058.287	41144.33	63796.7118
14	Steel Bolt	75189100	Steel Bolt	75189100	70	70	2145	2145	96.34	96.34	191684.3	19168.43	1916.843	25325.69	44405.4628
15	Steel Bolt	75189100	Steel Bolt	75189100	42	42	1763	1763	96.34	96.34	157506.4	15750.64	1575.064	34588.41	68136.8212
16	Steel Bolt	75189100	Steel Bolt	75189100	28	28	991	991	96.34	96.34	88335.94	8833.594	883.3594	17488.48	27428.4342
17	Steel Bolt	75189100	Steel Bolt	75189100	14	14	488	488	96.34	96.34	43587.92	4358.792	435.8792	8733.864	13506.6358
18	Steel Bolt	75189100	Steel Bolt	75189100	5	5	292	292	96.34	96.34	28087.28	2808.728	280.8728	5211.238	8081.8334
19	Steel Bolt	75189100	Steel Bolt	75189100	4	4	113	113	96.34	96.34	10695.42	1069.542	106.9542	2017.085	3127.54112
20	Steel Bolt	75189100	Steel Bolt	75189100	40	40	1584	1584	96.34	96.34	148186.32	14818.632	1481.8632	3836.72	58766.7063
21	Steel Bolt	75189100	Steel Bolt	75189100	5	5	80	80	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
22	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
23	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
24	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
25	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
26	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
27	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
28	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
29	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
30	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
31	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
32	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
33	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
34	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
35	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
36	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
37	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
38	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
39	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
40	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
41	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
42	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
43	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
44	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
45	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
46	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
47	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
48	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
49	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044
50	Steel Bolt	75189100	Steel Bolt	75189100	10	10	180	180	96.34	96.34	17848	1784.8	178.48	3370.224	5335.5044

Name Declared	Duty CTS	Item Found	Proper CTS	No. of pkg decl	No. of pkg found	decl quantity in pairs	found quantity in pairs	assd /pair	net price/pair	netr ass. Value	local	ass.		
MD BULB (Car Acc.)	8512000	MD BULB (Car Acc.)	8512000	1	1	50	50	98.07	98.07	2903.5	435.525	43.5525	608.864	1087.94145
Lens (Car Acc.)	85129000	Lens (Car Acc.)	85129000	2	2	50	50	362.3	362.3	81.25	1217.25	121.725	1701.716	3040.6903
MD Bulbs (Car Acc.)	85129000	MD Bulbs (Car Acc.)	85129000	14	14	430	430	89.34	89.34	40203	4020.3	402.03	6012.938	12454.8894
						decl spm	found spm	assd. Price/SQ M	netr price/SQM	netr ass. Value	local	ass.	HST	
Pt. coated Falsing	29032090	Pt. coated Falsing		136	136	4030	2474	89.34	258.71	640048.5	118009.7	11800.97	93703.11	
							1434	89.34	258.83	266127	73225.4	7322.54	10900	234513.780
							2543	89.34	258.8	640354.8	118071	11807.1	93407.94	134188.94
									As determined ass. Value	35.09340			Duty payable	1300568.62
													Duty self pay.	709.003
													Gst duty	450440.623

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5. Statements:-

5.1 Summons were issued to the importer on dated 04.02.2021. Shri Prashant Kanaiyalal Goradia proprietor of M/s Goradia Printers appeared in compliance of Summons and his statement was recorded under section 108 of the Customs Act, 1962 on 04.02.2021 wherein he *inter alia* stated that:

- *he started the firm Goradia Printers in 1998 about and he started with printing business. In 2017-18, he started import of garment accessories mostly, like buttons, labels, label with metal, PU fabric for making jeans labels, etc.;*
- *he is proprietor of Goradia Printers. He handle purchase, sale, and all finance related work in Goradia Printers;*
- *he import garment accessories like metal buttons, plastic buttons, PU labels, PU coated fabric from China. His supplier name is Foshan Zhengli Yiwu Boho import export ltd., AT & T trading Co., Yiwu Changvri;*
- *orders are placed by personally going to China and some time by calls and sometimes by courier he get samples and place orders. When he get samples by courier he send those samples by courier again to China by placing order. His orders are blank quantity means it is open order whatever they get ready every week they send him goods whichever design he has selected. He is getting samples by courier and he can submit samples and related packing list;*

5.2 Summons were issued to the importer on dated 04.02.2021. Shri Prashant Goradia proprietor of M/s Goradia Printers appeared in compliance of Summons and his statement was recorded under section 108 of the Customs Act, 1962 on 05.02.2021 wherein he *inter alia* stated that:

- ***During the time of examination he was not present and his CHA was present at the time of examination and he informed him that the goods found excess (PU coated fabric). He enquired with his suppliers in China and he called him on his mobile no. 9820883276 that it is a mistake from their side and he had submitted apology letter to the department;***
- ***He accepted that the goods were mis-declared in terms of quantity;***
- ***he is ready to pay the applicable duty, fine penalty;***
- ***he is ready to pay any duty liabilities arises during course of investigation in respect of past consignments and ready to pay the duty liability and fine penalty;***

5.3 Summons were issued to the importer on dated 11.02.2021. Shri Prashant Goradia proprietor of M/s Goradia Printers appeared in compliance of Summons and his statement was recorded under section 108 of the Customs Act, 1962 on 11.02.2021 wherein he *inter alia* stated that:

- *On asking about the mis-declaration in the goods he stated that he had ordered the goods as declared in the import invoice and packing list forwarded by the supplier, accordingly, the same was declared in the Bill of Entry. But, on examination, the PU coated fabric quantity was found in excess and two different type of rolls. He enquired about the same discrepancy with his supplier import manager through telephone in China. During the telephone conversation, the supplier replied that it was the mistake of their staff i.e miscommunication shipping clerk and loading dept. the wrong goods loaded for India as both the goods were kept in the same warehouse;*
- ***On seeing the test reports the importer stated that he accepts the contents of the test reports;***
- ***On asking about the mis-declaration in BE No. 9989693 dtd. 17.12.2020 the importer stated that he accepts the mis-declaration in respect of thickness and value however as he already mentioned in his answer that it was mistake from supplier end;***
- ***he is ready to pay the applicable duty arises with fine/ penalty;***
- ***on asking about mis-declaration in "HID bulb" quantity the importer stated that this was also the mistake from his supplier side and he is ready to pay whatever duty applicable of the excess qty.***

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- *on asking about the GSM based calculation i.e $A.S.M = \text{Declared wt. in kg} \times 100 / \text{GSM}$ the importer stated that he understands the said GSM based calculation and agreed with the formula applied;*
- *he is ready to pay the duty liabilities arises if any in respect of his past imports;*
- *he requests for provisional release of his consignments.*

6. Provisional Release-

6.1 Meanwhile, the Importer requested for provisional release of the goods covered under Bills of Entry No. 9989693 dated 17.12.2020, 2071288 dated 22.12.2020 and 2071340 dated 22.12.2020. Acting upon the request of the importer, the SIIB (I) JNCH on dated 25.03.2021 had granted NOC for Provisional Release of the impugned goods as per provisions of Circular No. 35/2017-Customs dtd 16.08.2017 i.e., on deposit of Bond and deposit of Security to cover duty, fine and penalty as deemed by Adjudicating Authority.

6.2 The importer had paid Rs. 10,00,000/- (Rupees Ten lakhs only) for duty liability in relation to past consignments vide manual challan no. HC327 dtd. 17.03.2021.

7. Past Imports:

7.1 From EDI System, it was observed that the importer had imported multiple Bs/E in the past under CTH 5903. Efforts were made to find out the B/E in system where similar goods were imported and Test reports were also uploaded in system showing GSM so that GSM based reverse calculation could be done as prescribed in **Alert Circular NO. 02/2019 dt 16.10.2019**. And on scrutiny, total 20 B/Es were found where similar items were imported under CTH 5903 and GSM is also available in system/PTR. Based on data available, after following the procedure prescribed in above said alert Circular, differential SQM was calculated as Annexure-I and based on that differential SQM, the assessable value and duty, thereon, had been calculated in relation to above said 20 B/Es as Annexure-II. Details of the same are shown in the table-II below-

ANNEXURE II

F.No. S/10-182/2024-25/CC/Gr.III/NS-III/CAC/JNCH
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Post Imports.

sr No.	BE No.	Date	weight	decl sqm	gsm	Test Report no.	BCD paid	SWS paid	GST paid	total paid	actual sqm	Ex rate	re det. unit price (Rs)	re det. value	re det. duty bcd	re det. sws	re det. gst	Duty Payable	Diff Duty
1	9750709	28/11/2020	8372	4875	533.5	1386/04.11.2020	95316	9531.6	69771.3	174618.9	15692.6	75.2	182.45776	2863235.93	572647.2	57264.72	419177.7	1049090	874470.74
2	7528682	26/04/2020	8600	5200	505.9	5317/06.12.2019	135670	13567.01	99310.5	248547.61	16999.41	77.8	188.402195	3202725.59	640545.1	64054.51	468879	1173479	924931.05
3	7528606	26/04/2020	6730	4000	505.9	5317/06.12.2019	104362	10436.16	76392.7	191190.46	13303.02	77.8	188.402195	2506318.98	501263.8	50126.38	366925.1	918315.3	727124.81
4	6606076	23/01/2020	4487	2580	505.9	5317/06.12.2019	62112	6211.2	45466	113789.2	8869.342	71.8	173.844395	1541885.35	308377.1	30837.71	225732	564946.8	451157.59
5	9660103	21/11/2020	9820	6575	533.5	1386/04.11.2020	118666	11866.56	86863.2	217395.36	18406.75	75.2	182.45776	3358453.99	671690.8	67169.08	491677.7	1230538	1013142.2
6	6961302	20/02/2020	1830	2563	505.9	5317/06.12.2019	64723	6472.3	47377	118572.3	3617.316	72.15	175.057545	633238.402	126647.7	12664.77	92706.1	232018.6	113446.25
7	9613881	18/11/2020	3550	3000	533.5	1386/04.11.2020	58617	5861.7	42907.6	107386.3	6654.171	75.15	181.336445	1213297.81	242659.6	24265.96	177626.8	444552.3	337166.02
8	7267938	17/03/2020	7510	4820	505.9	5317/06.12.2019	120249	12024.94	88022.5	220296.84	14844.83	74.25	181.152775	2674337.5	534867.5	53486.75	391523	979877.3	759580.42
9	9586878	16/11/2020	4270	2750	533.5	1386/04.11.2020	53732.2	5373.22	39332	98437.42	8003.749	75.15	181.336445	1459375.11	291875	29187.5	213652.5	534715	436277.62
10	9962372	15/12/2020	12285	8775	533.5	1386/04.11.2020	170428	17042.8	124753.3	312224.1	23027.18	74.7	181.24461	4173552.08	834710.4	83471.04	611008	1529189	1216965.4
11	6479322	15/01/2020	6144	3740	505.9	5317/06.12.2019	90666.6	9066.66	66367.9	166101.16	12144.69	72.15	175.057545	2126020.08	425204	42520.4	311249.3	778973.8	612872.6
12	6479317	15/01/2020	1120	720	505.9	5317/06.12.2019	17454.5	1745.45	12776.7	31976.65	2213.876	72.15	175.057545	387555.743	77511.5	7751.15	56738.16	142000.4	110023.77
13	6479316	15/01/2020	6268	3440	505.9	5317/06.12.2019	83393.9	8339.39	61044.3	152777.59	12389.8	72.15	175.057545	2168928.03	433785.6	43378.56	317531.1	794695.2	641317.54
14	6887980	14/02/2020	6371	8396	505.9	5317/06.12.2019	203539	20353.92	148990.7	372883.82	12593.4	72.15	175.057545	2204569.32	440913.9	44091.39	322748.9	807754.2	434870.38
15	9927106	12/12/2020	9178	6150	533.5	1386/04.11.2020	110257	11025.7	80708.3	201991	17203.37	74.7	181.24461	3118018.8	623603.8	62360.38	456478	1142442	940451.09
16	7197646	11/03/2020	4875	3000	505.9	5317/06.12.2019	74844	7484.4	54785.8	137114.2	9636.292	74.25	180.152775	1736004.7	347200.9	34720.09	254151.1	636072.1	498957.92
17	7405007	07/04/2020	2157	1280	505.9	5317/06.12.2019	32836.6	3283.66	24036.4	60156.66	4263.688	76.35	185.248005	789839.784	157968	15796.8	115632.5	289397.3	229240.54
18	7842729	06/06/2020	1620	1040	505.9	5317/06.12.2019	26714.7	2671.47	19555.2	48941.37	3202.214	76.45	185.490635	593980.685	118796.1	11879.61	86958.77	217634.5	168693.15
19	9798000	02/12/2020	4392	2280	533.5	1386/04.11.2020	41149.4	4114.94	30121.4	75385.74	8232.427	75.2	182.45776	1502070.26	300414.1	30041.41	219903.1	550358.5	474972.8
20	6722429	01/02/2020	6600	4000	505.9	5317/06.12.2019	96297.6	9629.76	70489.8	176417.16	13046.06	71.65	173.844395	2267983.81	453596.8	45359.68	332032.8	830989.3	654572.11
21	6722423	01/02/2020	5660	3400	505.9	5317/06.12.2019	81853	8185.3	59916.4	149954.7	11187.98	71.65	173.844395	1944967.93	388993.6	38899.36	284743.3	712636.2	562581.55
22	6722365	01/02/2020	6147	3680	505.9	5317/06.12.2019	88593.8	8859.38	64850.7	162303.88	12150.62	71.65	173.844395	2112317.64	422463.5	42246.35	309243.3	773953.2	611549.3
23	6179594	21.12.2019	4991	2620	505.9	5317/06.12.2019	63295	6329.5	46332	115956.5	9865.586	71.9	174.45097	1721061.06	344212.2	34421.22	251963.3	530596.8	514640.27
24	6178454	21.12.2019	4200	2240	505.9	5317/06.12.2019	54114.8	5411.48	39612.1	99138.38	8302.036	71.9	174.45097	1448298.23	289659.6	28965.96	212030.9	530656.5	431518.09
25	6063858	13.12.2019	7578	3840	505.9	5317/06.12.2019	93413.4	9341.34	68378.6	171133.34	14979.24	72.4	175.66412	2631315.88	526263.2	52626.32	385224.6	964114.1	792580.8
													Re determined value					Diff Duty	14534304

Table-II

SN	BE NO.	Date	Total re-determined AV (Rs.)	Total Diff Duty payable (Rs.)
1	9750709	28.11.2020	2863235.93	874470.74
2	7528682	26.04.2020	3202725.59	924931.05
3	7528606	26.04.2020	2506318.98	727124.81
4	6606076	23.01.2020	1541885.35	451157.59
5	9660103	21.11.2020	3358453.99	1013142.2
6	6961302	20.02.2020	633238.402	113446.25
7	9613881	18.11.2020	1213297.81	337166.02
8	7267938	17.03.2020	2674337.5	759580.42
9	9586878	16.11.2020	1459375.11	436277.62
10	9962372	15.12.2020	4173552.08	1216965.4
11	6479317	15.01.2020	387555.743	110023.77
12	6887980	14.02.2020	2204569.32	434870.38
13	9927106	12.12.2020	3118018.8	940451.09
14	7197646	11.03.2020	1736004.7	498957.92
15	7405007	07.04.2020	789839.784	229240.64
16	7842729	06.06.2020	593980.685	168693.15
17	9798000	02.12.2020	1502070.26	474972.8

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18	6722429	01.02.2020	2267983.81	654572.11
19	6722423	01.02.2020	1944967.93	562681.55
20	6722365	01.02.2020	2112317.64	611649.3
		Total	4,02,83,729/-	1,15,40,375/-

7.2 From the above table, the total differential duty on past imports arrived at Rs. 1,15,40,375/- (Rupees One Crore Fifteen Lakh Forty Thousand Three Hundred and Seventy-Five Only). The Importer had already paid Rs. 10,00,000 vide Challan no. HC327 dt. 17.03.2021 against the duty liability for past imports.

7.3 Hence, taking GSM into account, actual square meters of each consignment can be correctly arrived at in the following manner:

$$\text{GSM} = \frac{\text{Weight in Grams}}{\text{Square Meter}}$$

$$\text{Hence, Actual Square meter} = \frac{\text{Net Weight in Kg.} \times 1000}{\text{GSM}}$$

* Considering the weight of supporting rod of Rolls 2.0 Kg, Net weight of the consignments was calculated.

7.4 It is noticed from the above-mentioned calculation (Table II) that the goods imported vide the above said past B/Es were mis-declared in respect of quantity and therefore the goods do not correspond in respect of value too. Hence, the goods imported vide the said 20 Bills of entry appeared to be liable to confiscation under Section 111(l) and 111(m) of the Customs Act, 1962.

7.5 Shri Prashant Kanaiyalal Goradia proprietor of M/s Goradia Printer in his statement dated 04.02.2021, 05.02.2021 and 11.02.2021 recorded under Section 108 of the Customs Act, 1962, stated that he was in the fabric business since 2017 and well aware about GSM. **He agreed with the calculation made by the department. He has accepted his mistake of mis declaration of the goods and showed his willingness to take any responsibility arises in future with respect to the live as well as past imports.** Further, he inter alia stated that he understand the formula for GSM based reverse calculation with regard to his past import; Further he has already paid Rs. 10,00,000/- towards past import.

8. RELEVANT PROVISIONS OF THE LAW IN SO FAR AS THEY APPLY TO THIS CASE ARE AS BELOW:

The relevant legal provisions, in so far as they relate to the facts and circumstances of the subject imports, are as under;

The Customs Act, 1962:

Section 12. Dutiable goods. - *Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may bespecified under the Customs Tariff Act, 1975 (51 of 1975)], or any other law for the time being in force, on goods imported into, or exported from India.*

SECTION 28. Recovery of duties not levied or short-levied or erroneously refunded. —

Section 28(4): *Where any duty has not been levied or has been short-levied or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of, —*

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

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

Section 28AA: Interest on delayed payment of duty:

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(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.

SECTION 46 : Entry of goods on importation. –

(1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically on the Customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed:

Provided.....prescribed”

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

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

- a. The accuracy and completeness of the information given therein:
- b. The authenticity and validity of any document supporting it; and
- c. Compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

SECTION 111. Confiscation of improperly imported goods, etc.

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under Section 77;

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

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, -

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

PROVIDED.....determined.

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

Where the duty has not been levied or has not 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:

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[Provided total amount due from such person.]

SETION 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.

9. FINDINGS OF THE INVESTIGATION:

9.1. It appeared from the investigation carried out and the statements recorded under section 108 of the Customs Act, 1962, that Shri Prashant Kanaiyalal Goradia proprietor of M/s Goradia Printer was already in fabric business and knew the fabric business very well. The goods imported vide live B/E was found grossly mis declared in terms of description, quantity, thickness and therefore of value as well.

Further, in his statement, Shri Prashant Kanaiyalal Goradia proprietor of M/s Goradia Printer had admitted his mistake of above mis-declaration. It appeared that he had full knowledge of content of the goods which he intentionally mis declared in terms of thickness, description and therefore value also. It shows his mens rea to evade Customs duty by suppressing the true content of the fabric.

9.2. Keeping in knowledge of the above, it seems that Shri Prashant Kanaiyalal Goradia had filed the subject B/E through his Customs Broker and mis declared the subject goods in terms of description, quantity, thickness and therefore of value as well with full knowledge by wilful suppression of the facts to evade Customs Duty. The importer had declared less quantity and less thickness so as to mislead Customs Officials in order to evade Customs duty.

9.3. The above details of the investigation proved the malafide intention of the importer and establish his *mens rea* to evade Customs duties and other charges leviable on the goods. Because of the said mis-declaration of quantity and thickness, the impugned goods, imported by the importer M/s Goradia Printers, covered under the said Bill of Entry appeared to be liable for confiscation under Section 111(l) and 111(m) of the Customs Act, 1962. Thus, the total differential duty of Rs. 22,71,503/- (Rupees Twenty-Two Lakh Seventy-One Thousand Five Hundred Three Only) in respect of the live Bs/E as tabulated above, appeared to be payable by the importer M/s Goradia Printers on account of mis-declaration of Composition and thickness of the goods. Detailed of calculation is as per Annexure-I.

9.4. Since, the goods imported vide the said Bs/E were found misdeclared, past imports made by the importer were analysed and it was noticed that the importer had mis declared the goods of the past in respect of the quantity. It appeared that importer had been following the same modus operandi in all the past consignments cleared as was adopted in live Bs/E that has caused a huge revenue loss to the Government exchequer. Therefore, the differential duty was calculated against past import on the basis of GSM formula prescribed by Alert Circular No. 02/2019 dated 16.10.2019 and it was noticed that importer has evaded Customs duty of Rs. 1,15,40,375/- (Rupees One Crore Fifteen Lakh Forty Thousand Three Hundred and Seventy-Five) (as stated in Table II above) and Annexure-II which is also recoverable under section 28(4) with applicable interest under section 28AA of Customs Act 1962. Total re-determined assessable value, and total differential duty in relation to past import arrived at Rs. 4,02,83,729/- (Four Crore Two Lakh Eighty-Three Thousand Seven Hundred and Twenty-Nine only) and Rs. 1,15,40,375/- (Rupees One Crore Fifteen Lakh Forty Thousand Three Hundred and Seventy Five Only) respectively. The detailed calculation in respect of past consignments is as per Annexure –II as reproduced at Table-II at para 7.1 above.

10. LIABILITY TO CONFISCATION OF THE GOODS:

10.1. Shri Prashant Kanaiyalal Goradia proprietor of M/s Goradia Printer, imported the goods vide the said B/E, by doing gross mis-declaration in respect of the composition, quantity and thickness of the goods as stated above. The importer appeared to have violated the provisions of the Customs Act, 1962 in order to evade Customs duty as mentioned above. Due to all these

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violations, under reasonable belief, goods are liable to confiscation under Section 111 (l) & 111(m) of the Customs Act, 1962.

10.2. Further, it is also noticed that the Goods imported vide the various past Bs/E (as detailed in Annexure II to this SCN) were mis-declared in respect of quantity and therefore the goods do not correspond in respect of value too. Hence, the same goods also appear liable to confiscation under Section 111(l) and 111(m) of the Customs Act, 1962.

11. LIABILITY OF PENALTY ON IMPORTER AND CHA:

As described in foregoing paras Shri Prashant Kanaiyalal Goradia, the importer of the subject goods in terms of Section 2 (26) of the Customs Act, 1962, is responsible for this planned duty evasion trick by resorting to mis-declaration of composition and thickness. It seems that it was well thought plan, which he executed with the clear intention to defraud the revenue with the help of CHA. In his statements, he had admitted his mistake of mis-declaration of the goods and also admitted that he was ready to pay any duty liability against live B/E as well as past import, if arises. In terms of Section 46 (4) of the Customs Act, 1962, the importer while presenting a bill of Entry, at the foot thereof, is required to 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 document, of any, relating to the imported goods. In the instant case, importer submitted substantially mis-declared Bill of Entry, invoice and packing list to the Customs. The thickness of the goods in Bs/E was declared very less and the goods in the invoice and packing list were also found mis declared in quantity and value. Hence, suppressing the true identity of the goods imported vide live Bs/E as well as vide past Bs/E (detailed in Annexure II), rendered the subject goods liable to confiscation under section 111 (l) and 111(m) of the Customs Act, 1962 and thereby importer M/s Goradia Printres through its proprietor Shri Prashant Kanaiyalal Goradia appeared to have rendered himself liable for penal action under Section 112(a) and 114AA and 114A of the Customs Act, 1962 and his CHA is liable to penal action under section 112(b) of Customs Act 1962 for filing the documents without mentioning the GSM thereon at the time of clearance.

12. Now, therefore, M/s. Goradia Printers, First Floor, Plot 119, C Ranjit Studio, Dadsaheb Phalke Road, Dadar East, Mumbai, Maharashtra – 400014, were hereby called upon to show cause, in writing to the **Adjudicating Authority**, i.e., the Commissioner of Customs, NS-III, Jawaharlal Nehru Custom House, Nhava Sheva, Tal. Uran, Distt- Raigad, Maharashtra- 400707, within 30 (Thirty) days from the receipt of this notice, as to why:

- a) Declared quantity and thickness of the impugned goods imported vide three provisionally assessed Bills of Entry and 20 past Bills of Entry (as mentioned in Table-I and II above) should not be rejected and the correct quantity should not be taken for valuation purpose;
- b) Declared assessed value of the goods in respect of three provisionally assessed Bills of Entry (9989693 dated 17.12.2020, 2071288 dated 22.12.2020 and 2071340 dated 22.12.2020) should not be rejected and re-determined to **Rs. 1,23,59,523/- (One Crore Twenty Three Lakh Fifty Nine Thousand Five Hundred and Twenty Three)** as shown in the **Table I** above.
- c) The above Bills of Entry No. 9989693 dated 17.12.2020, 2071288 dated 22.12.2020 and 2071340 dated 22.12.2020 which were provisionally assessed should not be finalized with re-determined value and differential duty amounting to **Rs. 22,71,503/- (Twenty Two Lakh Seventy One Thousand Five Hundred and Three)** and the same should not be paid/recovered under Section 18 of the Customs Act, 1962.
- d) The said goods imported under three provisionally assessed Bills of Entry, totally valued at **Rs. 1,23,59,523/- (One Crore Twenty Three Lakh Fifty Nine Thousand Five Hundred and Twenty Three)**, as detailed in **Table-I** of this Notice, should not be held

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liable to confiscation as per provisions of Section 111(l) & 111(m) of the Customs Act, 1962, as applicable;

- e) Declared assessed value of the goods in respect of 20 past Bills of Entry (as mentioned in Table-II above) should not be rejected and re-determined **Rs. 4,02,83,729/- (Four Crore Two Lakh Eighty Three Thousand Seven Hundred and Twenty Nine)**, as shown in the **Table-II** above.
- f) The differential Customs duty amounting to **Rs. 1,15,40,375/- (Rupees One Crore Fifteen Lakh Forty Thousand Three Hundred and Seventy Five)** short levied on the said goods covered under bills of entry, as detailed in **Table-II above**, should not be demanded and recovered from importer under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962.
- g) The said goods imported under past 20 Bills of Entry, totally valued at **Rs. 4,02,83,729/- (Four Crore Two Lakh Eighty Three Thousand Seven Hundred and Twenty Nine)**, as detailed in **Table-II** of this Notice, should not be held liable to confiscation as per provisions of Section 111(l) & 111(m) of the Customs Act, 1962.
- h) Penalty should not be imposed on the Importer under Section 112(a)/114A and 114AA of the Customs, Act, 1962;

13. Now, therefore, CB, **M/s Xpress Interlink Logistics**, were hereby called upon to show cause, in writing to the **Adjudicating Authority**, i.e., the Commissioner of Customs, NS-III, Jawaharlal Nehru Custom House, Nhava Sheva, Tal. Uran, Distt- Raigad, Maharashtra- 400707, within 30 (Thirty) days from the receipt of this notice, as to why:

- a) Penalty should not be imposed on the Customs Broker under Section 112(b) & 114AA of the Customs, Act, 1962.

WRITTEN SUBMISSION

14. Written Submission of the Noticees.

14.1 Noticee no. 01 vide his written Submission dated 18.08.2025 submitted the following:-

- Bill of Entry no. No. 9989693 dated 17/12/ 2020, & 2071340 and 2071288, both dated 22/12/ 2020.

A.1 Discrepancy in Quantity

The SCN alleges a significant discrepancy in the quantity of the imported goods. However, the basis for this allegation is Imprecise. The examination of the goods was conducted under a Panchnama dated December 24, 2020 (for B/E No. 9989693), January 7, 2021 (for B/E No. 2071288), and January 8, 2021 (for B/E No. 2071340). Crucially, no inventory or detailed list of the rolls, their individual measurements, or any other specific data was annexed to any of these Panchnamas. The examination with respect to the measurement of the PU coated fabric was done randomly by selecting only a few rolls, not a comprehensive measurement of the entire consignment. This methodology, without a complete inventory and measurement of all rolls, is fundamentally unreliable and cannot be the basis for a 100% examination finding.

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Furthermore, there was no physical verification of the thickness of the fabric rolls during the examination. The weight of the PU coated fabric was not independently measured. Instead, the SIIB relied on the container weight slip, which represents the overall gross weight of the entire cargo covered in the container. This gross weight includes the weight of all mixed items in the consignment, packaging materials, and the container itself, and does not accurately reflect the net weight of the PU coated fabric alone. The reliance on this gross weight data to calculate the net weight of a specific item, and subsequently its quantity, is an unscientific and incorrect approach.

A.2 Redetermination of Value.

A.2.1 Para 4v of the SCN reads as under :

“4. Valuation Of Goods & Calculation Of Differential Duty for live B/E-

On the basis of the specification of the goods obtained in Test report, the matter was taken up for valuation of the goods. Since, the goods were mis- declared in terms of quantity, thickness and therefore value also. Valuation of the coated fabric is done on thickness & GSM basis. And the thickness of the subject goods was found higher than the declared thickness as mentioned in para 2 above, hence, the declared transaction value of the goods appeared to be liable for rejection under Rule 12 of CVR,2007 and the assessable value of the goods and duty difference thereon was re- determined/calculated as per group practice vide file no. vide F.No S/26-Misc-1283/2012 Gr. III dated 20.11.2012 on which the same arrived at (1) BE No. 9989693 dtd. 17.12.2020 Rs. 41,80,479/- (Rupees Forty-One Lak Eighty Thousand Four Hundred Seventy-Nine Only) and Rs. 8,36,515/- (Rupees Eight Lakh Thirty-Six Thousand Five Hundred Fifteen Only), (ii) BE No. 2071288 dtd. 22.12.2020 Rs. 35,39,365/- (Rupees Thirty-Five Lakh Thirty-Nine Thousand Three Hundred Sixty-Five Only) and Rs. 4,91,463/- (Rupees Four Lakh Ninty-One Thousand Four Hundred Sixty Three Only), (iii) BF No. 2071340 dtd. 22.12.2020 Rs. 46,39,506/- (Rupees Forty-Six Lakh Thirty-Nine Thousand Five Hundred Six Only) and Rs. 9,43,460/- (Rupees Nine Lakh Forty-Three Thousand Four Hundred Sixty Only) respectively. Calculation sheet is attached as Annexure -I and shown in the Table-I below (RUD-3).”

Therefore, the redetermination of value is solely on the basis of group practice vide file no. vide F.No S/26-Misc-1283/2012 Gr. III dated 20.11.2012.

At the outset, the contents of the said file were neither disclosed in the SCN nor were they included as a relied-upon document. In any event, the assessable value qua section 14 of the Customs Act 1962 can only be redetermined in accordance with the law, and there is no legal provision that permits a redetermination of value based solely on "Group Practice."

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A.2.2 The law governing valuation for customs purposes is as per Section 14 of the Customs Act, 1962 and the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR 2007). These legal frameworks work together to establish the correct assessable value of goods for duty calculation.

When the customs authorities are not satisfied with the declared transaction value—that is, the price actually paid or payable for the goods—they can reject it under Rule 12 of the CVR 2007. This rule acts as a gateway for the Department to move away from the declared price and proceed with a re-evaluation.

Once the transaction value is rejected, the law mandates a sequential application of the following valuation rules to re-determine the value. This means the authorities must attempt to apply the rules in the order presented below, only moving to the next rule if the previous one is inapplicable or unsuitable for the specific case.

Rule 4: Transaction Value of Identical Goods

The customs value is determined by looking at the transaction value of "identical goods" sold for export to India at or about the same time as the goods being valued. "Identical goods" are defined as those that are the same in all respects, including physical characteristics, quality, and reputation, and were produced in the same country by the same person.

Rule 5: Transaction Value of Similar Goods

If a value cannot be determined under Rule 4, the authorities move to Rule 5. This rule allows for the valuation based on the transaction value of "similar goods." "Similar goods" are not identical but have comparable characteristics and component materials, perform the same functions, and are commercially interchangeable. They must also have been produced in the same country and by the same person as the imported goods.

Rule 7: Deductive Value

If a value still cannot be determined, Rule 7 is applied. This is a "deductive" method that starts with the selling price of the imported goods in India and then deducts various costs to arrive at an approximate customs value. The deductions typically include:

- Commissions, profits, and general expenses related to the sale.
- Customs duties and other taxes payable in India.
- Costs for transportation and insurance within India.

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Rule 8: Computed Value

This method is used if a value cannot be determined under any of the preceding rules. The "computed value" is calculated by adding up the costs and expenses incurred to produce the imported goods. This includes:

- The cost of materials and fabrication.
- Profits and general expenses typically incurred by producers in the country of export.
- The cost of freight, insurance, and handling up to the port of importation.

Rule 9: Residual Method

This is the final and most flexible method, to be used only if all other rules fail. Rule 9 allows the value to be determined using "reasonable means consistent with the principles and general provisions" of the other rules. While it offers flexibility, the valuation must be based on objective and quantifiable data. This rule is often used in complex cases where a direct comparison or calculation is not possible.

The Customs Valuation Rules, 2007 (CVR 2007) do not contain any provision for determining value based on "group practice". The Department's redetermination is based on a "group practice" that has no legal foundation under the Customs Valuation Rules, 2007 (CVR 2007). This completely invalidates the redetermination, and as such, it is entirely baseless and must be rejected.

In AGARWAL METALS & ALLOYS Versus COMMISSIONER OF CUSTOMS, KANDLA IN THE CESTAT, WEST ZONAL BENCH, AHMEDABAD reported in 2021 (378) E.L.T. 155 (Tri. - Ahmd.), it was held:

11.2 We note that in the above case, prices declared by Baheti Metal (supra) reported as Pushpak Metal (supra) has been accepted by the department and the same was relied upon to reject the redetermination of Value in the case of Sunland Metal (supra). The order of Pushpak Metal has been accepted by the department and the C.B.E. & C. and the same goes on to show that the price declared by them has been found to be correct. Once the said price has been accepted to be true and having found that prices of the AMA, the appellant herein, are identical to the prices declared by both Sunland Metal and Baheti Metal [reported as Pushpak Metal (supra)], we have no hesitation in holding that the impugned order redetermining the value of imported scrap on the basis of DGOV circular and by overlooking the contemporaneous data is required to be set aside. In any event as held the case of Sunland Metal (supra), the value of imported Aluminium scrap

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could not be redetermined on the basis of the DGOV Circular as the said circular takes the price of LME as the basis which deal with prime metal and the imported goods in dispute are admittedly Aluminium scrap and not prime metal. In view of the above, we hold that the impugned order redetermining the value of imported aluminium scrap on the basis of DGOV Circular cannot be upheld and the value declared by the AMA, being similar to the contemporaneous import data mentioned above has to be upheld.

The Noticee further rely upon following decisions:

(2023) 11 Centax 122 (Tri.-Ahmd) / 2024 (387) E.L.T. 334 (Tri. - Ahmd.)

Cestat, west zonal bench, Ahmedabad;Panchagni Energies Pvt. Ltd. Versus Commissioner of Customs

Commissioner Of Customs, New Delhi versus Nath International2013 (289) E.L.T. 305 (Tri. - Del.)In The CESTAT , Principal Bench, New Delhi

A.3 Confiscation.

The Noticee submits that they have requested for the first check in all the three bills of entry. Therefore the parameters declared were subject to check and examination by the officers of Customs . Since there was first check ,duty not paid before final assessment as it was not ascertainable , there is no case of misdeclaration and hence goods not liable for confiscation.

- Past Consignments covered under 20 Bills of Entry

B.1 Quantity

The Notice incorrectly quantified the square meter solely on the basis of GSM . The Noticee submits that the RSS forwarded to textiles committee mainly to ascertain the presence of azo dyes in the fabric. The previous test report is relied upon for the similar fabrics. Therefore, the calculation of square meter solely on the basis GSM of Previous test report is incorrect.

The Notice relies upon Alert circular 02/2019. The relevant part of the alert circular is reproduced as under

3. The issue of mis-declaration in description (composition & thickness) can only be ascertained by the Test Report given by the accredited laboratory.

4. Mis-declaration in quantity (Square Meters) in the past consignments can be ascertained using the mathematical formula given below:

*Actual Square Meters = {**Net weight** (in KGs) * 1000}/GSM*

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*(Where GSM is obtained from Test Report/Previous Test Report **and net weight from the packing list submitted by the Importer**).*

Even in light of the aforementioned circular, the net weight of the fabric must still be accurately determined. A calculation of the quantity in square meters cannot be based solely on the Grams per Square Meter (GSM) when using either the gross weight or an "approximate" net weight. There is no provision for approximation when a precise method of calculation is employed.

Furthermore, the quantity, expressed in square meters, was explicitly declared in every Bill of Entry and was subject to a physical examination by Customs officers. The square meter quantity for each and every consignment was physically verified and certified by the officers of the Department themselves. Any attempt to deviate from this official departmental certification based on a mere assumption is incorrect and must be disregarded.

B.2 Value

The SCN fails to say under which provision of law there is the value is redetermined. The Noticee submits that they have given detailed submissions in para A above which may be considered here.

B.3 No demand under section 28(4) of the Customs Act 1962 by invoking extended period of limitation.

B.3.1 In paragraph 9.4 of the Show Cause Notice (SCN), which deals with the invocation of Section 28(4) of the Customs Act, 1962, it is stated that an analysis of 20 past import consignments showed that the importer, consistently mis-declared the quantity of goods. It was found that the importer used the same method, or modus operandi, as was adopted for the live Bills of Entry (B/E). The department's analysis concluded that this mis-declaration caused a significant loss of revenue to the government. Based on the GSM formula, the differential duty for these past imports was calculated to be Rs. 1,15,40,375/-. This amount is recoverable under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA.

The Noticee asserts that there has been no misdeclaration. The calculation of the square meter is based purely on assumption and is therefore without merit.

B.3.2 Section 28 (4) of Customs Act 1962 reads as:

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

(a) collusion; or

(b) any wilful mis-statement; or

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(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.

A plain reading of Section 28(4) of the Customs Act, 1962, reveals a clear distinction between the circumstances under which an extended period for demanding duty can be invoked and those applicable to ordinary demands. Subsection (1) allows for the demand of duty for any short payment or non-payment for the reasons other than collusion or willful misstatement or suppression of facts. However, subsection (4), which pertains to the extended period, imposes specific conditions for its application. It explicitly states that the extended period can only be invoked if the short payment or non-levy is attributable to collusion, willful misstatement, or suppression of facts. Thus, while a demand under subsection (1) can be made for any reason related to short or non-payment excluding reasons other than collusion or willful misstatement or suppression of facts, subsection (4) requires the presence of one of the specified conditions: collusion, willful misstatement, or suppression of facts. This distinction highlights the legislature's intent to limit the application of the extended period to situations involving a higher degree of culpability on the part of the importers. The department has failed to discover any such components in the present matter.

All the declarations were before the officers of the customs who assessed/verified the assessments, examined the goods thoroughly and allowed the goods for home consumption. All the declarations i.e Quantity, square meter etc. were available before the department. When facts are known to the department the ingredients of section 28(4) cannot be invoked. All the details were available before department before clearance of goods under home consumption by virtue of giving out of charge by proper officer under section 47 of the Customs act 1962. There is nothing which was hidden by Noticee and each and every fact was known to the department. In this background there cannot be any charge of suppression and/or wilful misstatement and the extended period of limitation under section 28(4) of Customs Act 1962 cannot be invoked. The Noticee relies on the decision of Hon'ble Gujrat High Court in case of **COMMISSIONER OF CENTRAL EXCISE & CUSTOMS Versus RIVAA TEXTILES INDS. LTD reported in 2015 (322) E.L.T. 90 (Guj.)**. In DR. RAI MEMORIAL CANCER INSTITUTE VERSUS COMMISSIONER OF CUSTOMS (CHENNAI-VIII) 2022 (2) TMI 153 - CESTAT CHENNAI, it was held :

12. Ongoing through the above factual position in the case, we find that the argument of the department that this is a case of self-assessment is factually incorrect. We find that though the appellant-importer has filed the Bill of Entry in the EDI system goods were subjected to open examination and the proper officer has examined the goods and forwarded it to the concerned group for assessment. Under such circumstances, it

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cannot be said that the Bills of Entry were subjected to self-assessment. This being the case, it is not open for the department to issue show cause notice invoking longer period and that too alleging suppression, misdeclaration etc. with intent to evade payment of duty.

In *Pushpam Pharmaceuticals Co. v. Commissioner of Central Excise, Bombay* [1995 (78) E.L.T. 401 (S.C.)], the Hon'ble Supreme Court examined whether the Department was justified in initiating proceedings for short levy after the expiry of the normal period. Supreme Court observed that since "suppression of fact" had been used in the company of strong words such as fraud, collusion, or wilful default, suppression of facts must be deliberate and with an intent to escape payment of duty. The observations are as follows;

"4. Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of Court the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."

This decision was referred to by the Supreme Court in *Anand Nishikawa Company Ltd. v. Commissioner of Central Excise* [2005 (188) E.L.T. 149 (S.C.)] and the observations are as follows:

"26..... This Court in the case of Pushpam Pharmaceutical Company v. Collector of Central Excise, Bombay, while dealing with the meaning of the expression "suppression of facts" in proviso to Section 11A of the Act held that the term must be construed strictly. It does not mean any omission and the act must be deliberate and wilful to evade payment of duty.

The Court, further, held: -

27. Relying on the aforesaid observations of this Court in the case of Pushpam Pharmaceutical Co. v. Collector of Central Excise, Bombay [1995 Suppl. (3) SCC 462], we find that "suppression of facts" can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty. When facts were

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known to both the parties, the omission by one to do what he might have done not that he must have done would not render it suppression. It is settled law that mere failure to declare does not amount to wilful suppression. There must be some positive act from the side of the assessee to find wilful suppression. Therefore, in view of our findings made hereinabove that there was no deliberate intention on the part of the appellant not to disclose the correct information or to evade payment of duty, it was not open to the Central Excise Officer to proceed to recover duties in the manner indicated in proviso to Section 11A of the Act.”

These two decisions of the Supreme Court in *Pushpam Pharmaceuticals* and *Anand Nishikawa Company Ltd.* were followed by the Supreme Court in a subsequent decision rendered in *Uniworth Textile Limited v. Commissioner of Central Excise, Raipur* [2013 (288) E.L.T. 161 (S.C.)] and the observation is :

“18. We are in complete agreement with the principal enunciated in the above decisions, in light of the proviso to section 11A of the Central Excise Act, 1944.”

Therefore, no demand under Section 28(4) of Customs Act invoking extended period can be made.

B.4 Confiscation.

We have already submitted that there is no misdeclaration in the goods covered under the above bills of entry thus the goods are not liable for confiscation .

Further if the goods are not physically available they cannot be confiscated. It is a settled law that goods which are not physically available cannot be confiscated. In case of COMMISSIONER OF CUSTOMS (IMPORT), MUMBAI Versus FINESSE CREATION INC.as reported in 2009 (248) E.L.T. 122 (Bom.), the Tribunal held

“The question of confiscating the goods would not arise if there are no goods available for confiscation nor consequently redemption. Once goods cannot be redeemed no fine can be imposed. The fine is in the nature of computation to the state for the wrong done by the importer/exporter.”

Special leave petition was filed by the department under article 136 of Constitution of India. The Supreme Court after condoning the delay dismissed the Petition for Special Leave to Appeal (Civil) No. CC 7373 of 2010 filed by Commissioner of Customs (Import) against the Judgment and Order dated 25-8-2009 in C.A No. 66 of 2009 of the High Court of Bombay as reported in 2009 (248) E.L.T. 122 (Bom.) (Commissioner v. Finesse Creation Inc.).

Hon'ble CESTAT SHASHI DHAWAL HYDRAULICS PVT LTD VERSUS COMMISSIONER OF CUSTOMS (IMPORT) MUMBAI 2018 (11) TMI 500 - CESTAT MUMBAI, held:

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"It is clear from the decision of the Hon'ble High Court of Bombay in re Finesse Creation Inc that redemption fine cannot be imposed on goods that are not available for taking possession of upon confiscation under section 111 of Customs Act, 1962. There is no dispute that the impugned goods are not available. The decision of the Hon'ble High Court of Madras in re Visteon Automotive Systems India Ltd, relied upon by Learned Authorised Representative, has merely observed that the decision of the Hon'ble High Court of Bombay did not apply to the case of the appellant before them. Hence, we are bound by the decision in re Finesse Creation Inc. The imposition of redemption fine under section 125 of Customs Act, 1962 fails"

(Underline supplied)

Hon'ble CESTAT in 2023 (5) TMI 1311 - CESTAT MUMBAI, it was held :

"11. Before resolving that in the factual matrix of the dispute, two issues merit specific consideration at this stage. The appeals of importer and individuals arise from the order of confiscation along with direction for destroying the seized goods and imposition of penalties of varying amounts under section 112 and section 114AA of Customs Act, 1962. Consequent to direction issued under section 129D of Customs Act, 1962 by the competent Committee of Chief Commissioners, the Commissioner of Customs is also before us seeking confiscation of 2925 nos. of allegedly offending goods that, though recalled from the market by the importer upon commencement of investigations and seized under section 110 of Customs Act, 1962 on 16th November 2021 upon intimation by the importer, was inadvertently left unattended in the impugned order and also seeking imposition of fine in lieu of confiscating, under section 125 of Customs Act, 1962, goods unavailable for seizure. In our view, disposal of appeal of Revenue is automatically determined upon the outcome of appeal of the importer though we may be permitted at this stage to observe that the decision of the Hon'ble High Court of Bombay in Commissioner of Customs (Import), Mumbai v. Finesse Creation Inc. [2009 (249) ELT 122 (Bom)] which prompted the adjudicating authority to bypass section 125 of Customs Act, 1962, being that of the jurisdictional High Court, is of more persuasive imperative than that cited on behalf of the appellant-Commissioner, viz., the decision of the Hon'ble High Court of Madras in Visteon Automotive Systems v. Commissioner of Customs (Import), Chennai [2018 (9) GSTL 142]. We may also note that, with the show cause notice having proposed confiscation of all 31,000 nos., imported against seven bills of entry, the claim of the importer that the appeal lacks merit for proposing detriments at stage of appeal does not stand on firm ground. The reliefs sought in appeal of Commissioner of Customs are parked for the nonce"

(underline supplied)

Therefore, if the goods are no longer available, they cannot be confiscated.

C. Penalty.

C.1 Penalty under section 112(a) of Customs Act 1962.

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The noticee submits that they have made detailed submissions to the effect that the goods are not liable for confiscation. The confiscation is a sine qua non for any penalty under 112 of the customs act 1962. Therefore no penalty imposable under section 112 of Customs Act 1962 .

C.2 Penalty under 114A.

This section imposes a penalty equal to the duty determined under Section 28(8) where the duty short-levied is a result of collusion, willful mis-statement, or suppression of facts. As argued above, these elements are not present in this case. The facts point to a genuine error and full cooperation, not a willful evasion. Therefore, the penalty under this section should not be imposed.

The noticee submits that all the details were furnished in the bill of entry and goods were thoroughly examined by the officer of Customs . In an almost identical case SHRI JOSHY M.J., SHRI DEV NARAYAN & SHRI RAJESH M.P. VERSUS COMMISSIONER OF CUSTOMS, NOIDA 2018 (11) TMI 580 - CESTAT ALLAHABAD, the Hon'ble Tribunal held:

5. Having considered the submission from both the sides and on perusal of record we find that the allegations against the appellants were that they did not show due diligence which was requirement of Customs Brokers Licensing Regulations, 2013. We have carefully gone through the said Regulations, 2013. We note that the obligations of Customs Broker are provided in Regulation 11. Ongoing through the said obligations we find that the Customs Brokers are temporarily engaged by the companies or firms for assisting them in processing of documents and assessments of goods for clearance after import or for clearance for the purpose of export. We find from the said regulations and other provisions of the Customs Act that the obligations and responsibility of the Customs Brokers end once the goods are examined by Customs Authorities and orders for "out of charge" are issued and the goods are cleared from the control of Customs on importation. We find that in the present case the goods were duly cleared after completing customs formalities from the control of customs from ICD Dadri. The proceedings are not throwing any light as to how the Customs Authorities did not come to know about the mis-declaration of the goods when the goods were examined when they were in the custody of customs. It is, therefore, not free from doubt that when the goods were cleared from customs control they were not Velvet Fabric but they were Knitted Polyester Fabric as declared by the importer. We do not find any statement recorded by the Customs Authorities from the officers in charge who were responsible for examination of goods before issuing order of out of charge. We, therefore, do not find that there was any case for imposition of any penalty under Customs Act on the present appellants. We, therefore set aside the impugned order in so far as the same is concerned about the present appellants.

C.3 Penalty under 114AA.

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Section 114AA addresses specific legal offenses, the fundamental elements of which concern forgery or fraud. This means that to prove a violation under this section, it must establish that the accused committed acts that meet the definitions of forgery or fraud. The provisions of section 114AA was brought in on the basis of Twenty Seventh Report Standing Committee on Finance (2005-2006) (Fourteenth Lok Sabha) The Taxation Laws (Amendment) Bill, 2005. The relevant paras read as:

62. Clause 24 of the Bill reads as follows: After section 114A of the Customs Act, the following section shall be inserted, namely: — “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.”

63. The information furnished by the Ministry states as follows on the proposed provision: “Section 114 provides for penalty for improper exportation of goods. However, there have been instances where export was on paper only and no goods had ever crossed the border. Such serious manipulators could escape penal action even when no goods were actually exported. The lacuna has an added dimension because of various export incentive schemes. To provide for penalty in such cases of false and incorrect declaration of material particulars and for giving false statements, declarations, etc. for the purpose of transaction of business under the Customs Act, it is proposed to provide expressly the power to levy penalty up to 5 times the value of goods. A new section 114 AA is proposed to be inserted after section 114A.” 25

64. It was inter-alia expressed before the Committee by the representatives of trade that the proposed provisions were very harsh, which might lead to harassment of industries, by way of summoning an importer to give a ‘false statement’ etc. Questioned on these concerns, the Ministry in their reply stated as under: “The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported but papers are being created for availing the benefits under various export promotion schemes. The apprehension that an importer can be summoned under section 108 to give a statement that the declaration of value made at the time of import was false etc., is misplaced because person summoned under Section 108 are required to state the truth upon any subject respecting which they are being examined and to produce such documents and other things as may be required in the inquiry. No person summoned under Section 108 can be coerced into stating that which is not corroborated by the documentary and other evidence in an offence case.”

65. The Ministry also informed as under: “The new Section 114AA has been proposed consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods

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are being exported, but papers are being created for availing the number of benefits under various export promotion schemes.”

66. The Committee observe that owing to the increased instances of wilful fraudulent usage of export promotion schemes, the provision for levying of penalty up to five times the value of goods has been proposed. The proposal appears to be in the right direction as the offences involve criminal intent which cannot be treated at par with other instances of evasion of duty. The Committee, however, advise the Government to monitor the implementation of the provision with due diligence and care so as to ensure that it does not result in undue harassment.”

From this it is abundantly clear that the purpose for which section 114AA was introduced is to curb the serious offences due to forgery. The present case is completely different and thus does not even fall under the ambit of 114AA of the Customs Act 1962.

The Noticee emphatically asserts that it is a fundamental principle of law that a notice must unequivocally specify the precise legal transgression allegedly committed. The Show Cause Notice is fatally deficient in that it entirely fails to articulate with clarity the nature of the purported violation justifying the imposition of a penalty under Section 114AA. The bald allegation without having any reason will have no value at all. In case of Akbar Badruddin Jiwani V/s. Collector of Customs reported in 1990 (47) ELT 161 (S.C) , the hon’ble Supreme Court in Para 57 held s that

“. Before we conclude it is relevant to mention in this connection that even if it is taken for arguments sake that the imported article is marble falling within Entry 62 of Appendix 2, the burden lies on the Customs Department to show that the appellant has acted dishonestly or contumaciously or with the deliberate or distinct object of breaching the law”

The above submissions are supported by the decision of Hon’ble Tribunal in Suresh Kumar Aggarwal versus commissioner of customs -iii, Raigad, Maharashtra reported in 2024 (6) TMI 779 - CESTAT MUMBAI

From the above made submissions it is clear that the no penalty under 114AA can be imposed on the Noticee.

- In light of the submissions made above, we most humbly pray that your good office may be pleased to drop all charges levelled against us in the Show Cause Notice.

14.2 Noticee no. 02 vide his written submission submitted the following:-

- No Causal Link or Specific Allegations against the Customs Broker

It is most humbly submitted that the entire Show Cause Notice, from paragraphs 1 to 10, extensively details the investigation, findings, and alleged mis-declarations on the part of the importer, M/s. Goradia Printers. The statements of the proprietor, Shri Prashant Kanaiyalal

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Goradia, are repeatedly cited, wherein he admits to the mis-declaration, accepts responsibility, and expresses willingness to pay the differential duty, fine, and penalty.

However, the SCN is conspicuously silent on any specific role, act, or omission on our part that would render us liable for penal action. There is no evidence or material fact mentioned in the notice that establishes any involvement, knowledge, or abetment from M/s. Xpress Interlink Logistics in the alleged mis-declaration. The SCN fails to establish a direct or even indirect causal link between our actions as the Customs Broker and the alleged mis-declaration of goods.

The only mention of the Customs Broker in the entire SCN is in paragraph 11, which states: "his CHA is liable to penal action under section 112(b) of Customs Act 1962 for filing the documents without mentioning the GSM thereon at the time of clearance." This solitary statement, without any preceding analysis or evidence, appears to be an unfounded and unsubstantiated conclusion.

A Customs Broker relies on the information and documents provided by the importer for the purpose of filing the Bill of Entry. It is the importer who makes the declaration as to the truth of the contents under Section 46(4) of the Customs Act, 1962. We, as the Customs Broker, are merely the facilitators of the process based on the documents presented to us. In the absence of any evidence to the contrary, we had no reason to believe that the documents provided by the importer were false or that the goods were liable to confiscation.

Therefore, the imposition of a penalty on the Customs Broker without any specific charges, evidence, or discussion of our role in the body of the notice is contrary to the principles of natural justice.

- Contradiction between Para 11 and Para 13 of the SCN

We respectfully draw your attention to a significant contradiction within the SCN itself concerning the penal provisions invoked against us.

- Paragraph 11 concludes that our CHA "is liable to penal action under section 112(b) of Customs Act 1962 for filing the documents without mentioning the GSM thereon at the time of clearance." This paragraph clearly and specifically mentions only Section 112(b).
- Paragraph 13(a), which is the final charge and operative part of the SCN directed at M/s. Xpress Interlink Logistics, states: "Penalty should not be imposed on the Customs Broker under Section 112(b) & 114AA of the Customs, Act, 1962."

The inclusion of Section 114AA in the final charge without any preceding discussion or allegation in the body of the notice is a major discrepancy. Section 114AA deals with the knowing or intentional use of false or incorrect documents. There is no finding or even an allegation in the entire SCN that we knowingly or intentionally used false documents. In fact, all the findings point to the importer's statements where he admits the mistake was from his supplier's end.

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This discrepancy highlights the lack of a coherent and legally sound basis for the charges against us. The SCN fails to demonstrate how we, a professional customs broker, could have known that the documents were false or incorrect.

- Mens Rea as a Prerequisite for Penalty under Section 112

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,-

It is a well-established principle of law that the imposition of a penalty on an alleged abettor necessitates the affirmative establishment of "mens rea," or a culpable state of mind, signifying conscious knowledge of the illicit activity. Mere facilitation of an act, absent such conscious knowledge, does not rise to the level of abetment of an offense.

The SCN, in the instant case, has demonstrably failed to adduce any cogent evidence establishing an active role or conscious knowledge on the part of Noticee that would legitimately warrant the imposition of a personal penalty.

The full Bench of Hon'ble Bombay High Court in case of - AMRITLAKSHMI MACHINE WORK Vs. COMM (Import), 2016 (335) ELT 225 (Bom.), held that for imposition of penalty in respect of the cases falling under Section 112 of the Act, 'mens-rea' may not be required to be proved as condition precedent, however when it comes to imposition of the penalty on an abettor, it is necessary to show that the said essential element/ingredient is present therefore no penalty can be imposed on Noticee under Section 112(a) of the Customs Act, 1962. Therefore, a motive or mens-rea is sine qua non for imposition of penalty under section 112 of the Customs 1962 when such penalty is imposed on Co notice. The larger Bench decision of Amritlakshmi Machine Works Versus Supra observed:

"...This is so as the requirement of knowledge is found only in case of abetment and not in other cases listed in Section 112(a) of the Act. The word abetment is not defined in the Act, therefore, the meaning assigned to it in Section 3(1) of the General Clauses Act, 1897 which is as given under Section 107 of the Indian Penal Code. An abetment would include by definition intentional aiding when covered by Explanation 2 read with third

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category listed in Section 107 of the Indian Penal Code. (See Supreme Court decision in Shree Ram v. State of U.P. - AIR 1975 SC 175). Mere facilitation without knowledge would not amount to abetting an offence. Parliament has specifically included abetment in Section 112(a) of the Act, to include acts done with knowledge, otherwise the first portion thereof “Any person - (a) who in relation to any goods does or omits to do any act” would cover acts done or omitted to be done on account of instigation and/or encouragement without knowledge. However, the first portion of Section 112(a) of the Act is only to make person of first degree in relation to the act or omission strictly liable. Persons who are not directly involved in the act or omission to act, which has led the goods becoming liable for confiscation cannot be made liable unless some knowledge is attributed to them. Therefore, it is to cover such cases that Section 112(a) of the Act also includes a person who abets the act or omission to act which has rendered the goods liable to confiscation. Imposing penalty upon an abettor without any mens rea on his part would bring all business to a halt as even innocent facilitation provided by a person which has made possible the act or omission to act possible could result in imposing of penalty. To illustrate innocent transferee of a license which enabled the purchaser of the license to misuse the license could be imposed with penalty. This could never be the intent or objective of Section 112(a) of the Act.”

(underline supplied)

Further, in the matter of COMMISSIONER OF CUSTOMS (IMPORT) Versus TRINETRA IMPEX PVT. LTD. 2020 (372) E.L.T. 332 (Del.) Hon’ble High Court held:

“10. Now coming to the facts of the present case. The facts noted above are not disputed before us, however, the Customs Department is aggrieved by the deletion of the penalties imposed on the CHA. In respect of the show cause notice dated 6-3-2013, penalty has been imposed under Section 112(b) as well as 114AA of the Act. A perusal of the said provisions clearly reveals that the penalty under the said provisions can be imposed wherever there is an element of mens rea or conscious knowledge, which is a sine qua non for imposition of the penalty. This is evident from a plain reading of Sections 112 and 114AA of the Act, which uses the expressions “does or omits to do” , “or abets the doing or omission of such act”, “which he knows or has reason to believe are liable to confiscation under Section 111”- in Section 112 and “knowingly or intentionally” in Section 114AA. The facts of the case in hand do not reveal any such element of mens rea or conscious knowledge qua the importer. There is no active role attributed to the respondent, which justifies the imposition of the penalty under Section 112(b) and Section 114AA of the Act. Nothing has emerged even in the criminal investigation.

- In respect of the show cause notice dated 8-7-2011, the imposition of the penalty has been made under Section 112(a) of the Act in respect of the goods which have been held to be liable to be confiscated under Section 111 of the Act. Here, the imposition of the

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penalty on the CHA is founded on the ground that he has abetted the offence. Though, for imposition of penalty in respect of the cases falling under Section 112(a) of the Act, mens rea may not be required to be proved as condition precedent, however, when it comes to imposition of the penalty on an abettor, it is necessary to show that the said essential element/ingredient is present. [Ref.: Amritlakshmi Machine Works v. The Commissioner of Customs (Import), [2016 SCC OnLine Bom 66 = 2016 (335) E.L.T. 225 (Bom.)].

- In the present case, there is no element of mens rea or conscious knowledge which can be attributed to the CHA. The investigation carried out by the CBI and other facts reveal that the CHA acted bona fide and merely facilitated the imports on the strength of the documents which were handed over to him by the importer. There is no sufficient material on record to show that the CHA was actively involved in the fraudulent availment of the exemption by the importer, warranting levy of personal penalty. Therefore, we do not find any ground to interfere with the findings of the Tribunal vis-à-vis the respondent.”

The Noticee also relies on following case laws;

- (i) M.S. EXIM SERVICES Versus C.C., LUDHIANA reported in 2021 (377) E.L.T. 615
- (ii) HIM LOGISTICS PVT. LTD. Versus COMMISSIONER OF CUSTOMS, NEW DELHI (T2016 (340) E.L.T. 388 (Tri. - Del.)

In SHRI SATYENDER SINGH, M/S VKL CARGO MOVERS LLP, (EARLIER KNOWN AS M/S ON TIME LOGISTICS) AND SHRI JAYANT VIKRAM VERSUS COMMISSIONER OF CUSTOMS (EXPORT), NEW DELHI 2023 (5) TMI 453 - CESTAT NEW DELHI, it was held:

9. I further observe that M/s National Enterprises had tried to export 10 consignments by committing mis-declaration of description as well as the value of the goods to be exported and that the allegations have been confirmed, goods have been confiscated and the penalties have been imposed upon the exporters and their representatives. None of them have come forward to challenge the orders against them. As such the orders qua them have attained finality. But the said fact cannot be read as a ground for holding that the present appellants i.e. the CHA firm its G-card holder and its employee would have abated with the exporter. Abatement has nowhere been defined under Customs Act, however, Section 107 of Indian Penal Code defines abatement as follows :-

“107 – Abatement of a thing: A person abets the doing of a thing who

First – Instigates any person to do that thing; or

Secondly – engages with one or more other person or person in any conspiracy for the doing of that thing, if any act or illegal omission takes place in pursuance of that conspiracy for the doing of that thing; or

Thirdly – Internationally aids, by any act or illegal omission, the doing of that thing.

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Explanation 2 – whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that and thereby facilitates the commission thereof, is said to aid the doing of that act”.

- The CHA are merely but processing agent on documents of clearance of goods through Customs House. They are not the Inspector to inspect the genuineness of transactions nor they have any allegation to look into the information receive from the exporter/importer. Though it is onus to expect CHA to enquire into and verify of import-export code given by each client for each transaction but when such code is presented there is a prima facie presumption about it to be correct because while issuing the code necessary background check should definitely has been done by the Customs Authorities. However, CHA is not the person who is supposed to check physically that the goods mentioned in the shipping bills reflect truth of the consignment sought to be exported. The CHA or its Proprietor or the employees cannot be attributed with mens-rea, for the alleged act of mis-declaration unless and until there is a cogent evidence against them

- From the entire above discussion, it is clear that there is no such evidence on record which may prove knowledge with the appellants about the alleged mis-declaration. In such circumstances, the order imposing penalties upon the appellants is now sustainable. The said is order is therefore set aside. Consequent, thereto all the three appeals are allowed.
- The Noticee submits that, they in the discharge of their Company in professional duties as a licensed customs broker, exercised the utmost due diligence and adhered scrupulously to all applicable legal and regulatory requirements. They undertook all necessary and reasonable actions expected of a competent customs broker in facilitating the customs clearance of the goods. A custom Broker cannot be made a scapegoat for each and every eventuality. Taking a cognizance of such practice prevailing, the CBIC issued Instruction No. 20/2024-Customs Dated: 03-09-2024 directing the field formations:
- Accordingly, implicating Customs Brokers as co-noticee in a routine manner, in matters involving interpretation of statute, must be avoided unless the element of abetment of the Customs Brokers in the investigation is established by the investigating authority. Further, the element of abetment should be clearly elaborated in the Show Cause Notice issued for the offence case under the provisions of the Customs Act, 1962. Further, as regard the suspension of licenses of Customs Brokers, Instruction No. 24/2023 dated 18/07/2023 shall continue to be followed.

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Based on the directions of CBIC JNCH Customs issued an ADVISORY No. 02/ 2024 JNCH Date: 23.10.2024 to its officers. The relevant parts of this advisory are reproduced as under.

In the last two (02) years also, a number of judgments have been passed by the higher judicial forums re-iterating that in cases where there is no evidence of complicity in the illegal importation of goods or wrong intent or prior knowledge about the violation, penalty cannot be imposed on the Customs Brokers.

In the above background, the Orders-in-Original passed by various Adjudicating Authorities of JNCH in recent months were scrutinized, and it was noticed that despite the Advisory No. 01/2022 dated 02.12.2022 of JNCH and the binding judicial pronouncements, in a number of cases, penalties have routinely been imposed on the Customs Brokers. Accordingly, it is once again impressed upon the Adjudicating Authorities of JNCH and the proper officers under Section 28 and Section 124 of the Customs Act, 1962, that routinely making Customs Brokers co-noticees in the Show Cause Notices or imposing penalty on them, in cases involving interpretation of statute regarding classification or availment of exemption notification, or even in cases where valuation of goods is disputed, is in violation of CBIC Instructions quoted above.

6. An illustrative list of situations; wherein making the Customs Brokers as co- noticees in the Show Cause Notices or imposing penalty on them by the Adjudicating Authorities, is not in line with CBIC Instruction No. 20/2024 dated 03.09.2024, is as under:

- If the goods have been described accurately in the Bill of Entry, and the said description of goods has been accepted as correct by the proper officer of Customs, viz. assessing officer of Group or examining officer of Docks, then there is no ground to allege any lapse on the part of the Customs Broker even if there is a dispute about availability of the benefit of notification or classification
- The proper officers issuing the Show Cause Notices as well as the Adjudicating Authorities are advised to take guidance from this Advisory and follow the CBIC Instructions referred above. They need to maintain judicial discipline by following the ratio of the decisions of the higher judicial forums and refrain from penalizing Customs Brokers in a routine manner in matters involving the interpretation of statute, when no evidence of wrongdoing on the part of Customs Brokers is unearthed during investigation by any investigation Unit (SIIB, CIU, Preventive Commissionerate or DRI).

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In the present case, it is an established fact that the bills of entry were thoroughly verified and assessed. Therefore, the noticee cannot be held liable for any discrepancies (if any) that may have been discovered at a later time.

- Non-Application of Section 114AA

Section 114AA imposes a penalty 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 present case there was neither any knowledge nor intention regarding submission of any incorrect document. The noticee submits that they have not submitted any false or incorrect information at all. The goods were declared as per the description given in the manufacturer's invoice.

The ingredients of section 114AA are more inclined towards forgery and fraud, which is not even alleged in the Show Cause Notice. The provision was introduced to curb serious offenses due to forgery, as per the Twenty-Seventh Report Standing Committee on Finance (2005-2006). The present case is completely different and thus does not fall under the ambit of 114AA of the Customs Act 1962.

Furthermore, there is a contention that a penalty under Section 114AA may not be imposed on a firm, as it can only be imposed on a "person" capable of the acts envisaged in this section. The entire notice is silent upon any mens rea of the noticee CHA/CB. As held in Akbar Badruddin Jiwani v. Collector of Customs 1990 (47) ELT 161 (S.C), the burden lies on the department to prove a dishonest or deliberate act.

- Procedural Fairness and Evidentiary Basis

The investigation failed to uncover any involvement by the Noticee that would warrant the confiscation of goods. There is a complete dearth of credible evidence linking the Noticee to the alleged infractions. The SCN fails to adequately address the lack of direct involvement of the Noticee in the investigative process.

- In light of the above submissions, we most humbly pray that your good office may be pleased to:

a. Drop the charges and proceedings initiated against M/s. Xpress Interlink Logistics, as no case has been made out against us in the Show Cause Notice.

b. Exempt us from any penalty under Sections 112(b) and 114AA of the Customs Act, 1962, as the SCN fails to provide any evidence of our involvement or mala fide intention.

c. Grant us an opportunity for a personal hearing to further elaborate on our submissions.

PERSONAL HEARING

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15. Advocate Shri Rajkumar Maji appeared before me on 19.08.2025 on behalf of both the noticees and reiterated the written submission submitted on behalf of the noticee.

DISCUSSIONS AND FINDINGS

16. I have carefully gone through the Show Cause Notice (SCN) and its Relied Upon Documents (RUDs), Defence submissions, material on record and facts of the case. Before going into the merits of the case, I would like to discuss whether the case has reached finality for adjudication.

Principles of natural justice

17. In compliance of the provisions of Section 28(8) the Customs Act, 1962 and in terms of the principle of natural justice, personal hearing opportunity was granted to the Noticee and Personal Hearing was attended by the authorized representative of the Noticee on 19.08.2025. The Authorized Representatives of Noticee reiterated their written submissions and confirmed that nothing more they want to add to their submissions. I thus find that the principle of natural justice has been followed and I can proceed ahead with the adjudication process. I also refer to the following case laws on this aspect-

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

18. Framing of issues

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

- a) As to whether declared quantity and thickness of the impugned goods imported vide three provisionally assessed Bills of Entry on account of misdeclaration of GSM, Quantity and Value and 20 past Bills of Entry (as mentioned in Table-I at page 2 and Table II above) should be rejected and the correct quantity should be taken for valuation purpose.
- b) As to whether declared assessed value of the goods in respect of three provisionally assessed Bills of Entry on account of misdeclaration of GSM, Quantity and Value (9989693 dated 17.12.2020, 2071288 dated 22.12.2020 and 2071340 dated 22.12.2020) should be rejected and re-determined to **Rs. 1,23,59,523/- (One Crore Twenty-Three Lakh Fifty-Nine Thousand Five Hundred and Twenty-Three only)** as shown in the **Table I** above and whether declared assessed value of the goods in respect of 20 past Bills of Entry (as mentioned in Table-II above) should be rejected and re-determined **Rs. 4,02,83,729/- (Four Crore Two Lakh Eighty-Three Thousand Seven Hundred and Twenty-Nine)**, as shown in the **Table-II**.
- c) As to whether the above 03 live Bills of Entry No. 9989693 dated 17.12.2020, 2071288 dated 22.12.2020 and 2071340 dated 22.12.2020 which were provisionally assessed on account of misdeclaration of GSM, Quantity and Value should be finalized with re-determined value and differential duty amounting to **Rs. 22,71,503/- (Twenty-Two Lakh Seventy-One Thousand Five Hundred and Three)** and the same should be paid/recovered under Section 18 of the Customs Act, 1962.
- d) As to whether the said goods imported under three provisionally assessed Bills of Entry on account of misdeclaration of Value, GSM and Quantity, totally valued at **Rs. 1,23,59,523/- (One Crore Twenty-Three Lakh Fifty-Nine Thousand Five Hundred and Twenty-Three only)**, as detailed in **Table-I**, should be held liable to confiscation as per provisions of Section 111(l) & 111(m) of the Customs Act, 1962, as applicable;

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- e) As to whether the differential Customs duty amounting to **Rs. 1,15,40,375/- (Rupees One Crore Fifteen Lakh Forty Thousand Three Hundred and Seventy-Five)** short levied on the said goods covered under past 20 bills of entry, as detailed in **Table-II above**, should be demanded and recovered from importer under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962.
- f) As to whether the said goods imported under past 20 Bills of Entry, totally valued at **Rs. 4,02,83,729/- (Four Crore Two Lakh Eighty-Three Thousand Seven Hundred and Twenty-Nine only)**, as detailed in **Table-II**, should be held liable to confiscation as per provisions of Section 111(l) & 111(m) of the Customs Act, 1962.
- g) As to whether Penalty should be imposed on the Importer under Section 112(a)/114A and 114AA of the Customs, Act, 1962.
- h) As to whether Penalty should not be imposed on the Customs Broker M/s Xpress Interlink Logistics under Section 112(b) & 114AA of the Customs, Act, 1962.

A. NOW I TAKE UP THE FIRT QUESTION AS TO WHETHER DECLARED QUANTITY AND THICKNESS OF THE IMPUGNED GOODS IMPORTED VIDE THREE PROVISIONALLY ASSESSED BILLS OF ENTRY ON ACCOUNT OF MIS DECLARATION OF GSM, QUANTITY AND VALUE AND 20 PAST BILLS OF ENTRY (AS MENTIONED IN TABLE-I AND II ABOVE) SHOULD BE REJECTED AND THE CORRECT QUANTITY SHOULD BE TAKEN FOR VALUATION PURPOSE.

19. I observe that on the basis of alert circular no. 02/2019 dated 16.10.2019 issued by Commissioner of Customs, SIIB(I), NS-V, JNCH, Bill of Entry No. 9989693 dated 17.12.2020, Bill of Entry No. 2071340 dated 22.12.2020 and 2071288 dtd. 22.12.2020 filed by M/s Garodia Printers was put on hold for detailed examination. The findings of the examination are as follows: -

19.1 DETAILED EXAMINATION OF BILL OF ENTRY NO. 9989693 DATED 17.12.2020

The goods imported under the aforementioned Bill of Entry were subjected to 100% Examination by the officers of SIIB(I) on 24.12.2020, as recorded in the Panchanama drawn on the same date. Representative samples were drawn during the examination and forwarded to the Textile Committee for testing. Subsequently, Test Reports No. 0253102021-1747 and 0253102021-1748, both dated 12.01.2021, were received.

I observe the following discrepancies on the basis of findings of the Panchnama and the test reports:-

- Misdeclaration in Quantity:
The declared quantity of item no. 11 'PU Coated Fabric' was 4,975 meters. However, upon physical examination, the actual quantity was found to be 10,523 meters, resulting in a significant excess of 5,548 meters.
- Misdeclaration in Thickness:
The declared thickness of the PU Coated Fabric was 1.28 mm. The test reports from the Textile Committee reveal that the actual thickness of the samples was 2.09 mm and 2.30 mm, which is substantially higher than declared.

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19.2 DETAILED EXAMINATION OF B/E NO. 2071288 DATED 22.12.2020

The goods imported under the aforementioned Bill of Entry were subjected to 100% Examination by the officers of SIIB(I) on 07.01.2021, as recorded in the Panchanama drawn on the same date. Representative samples were drawn during the examination and forwarded to the Textile Committee for testing. Subsequently, Test Reports No. 0253032021-1907, 1908 & 1909 all dated 22.01.2021, were received.

I observe the following discrepancies on the basis of findings of the Panchnama and the test reports:-

- Misdeclaration in Quantity:
The declared quantity of item no. 12 'PU Coated Fabric' was 4,030 meters. However, upon physical examination, the actual quantity was found to be 6451 meters, resulting in a significant excess of 2421 meters.
- Misdeclaration in Thickness:
The test reports from the Textile Committee reveal that the actual thickness of the samples was 2.03 mm, 2.18 mm and 2.52 mm.

19.3 DETAILED EXAMINATION OF B/E NO. 2071340 DATED 22.12.2020

The goods imported under the aforementioned Bill of Entry were subjected to 100% Examination by the officers of SIIB(I) on 08.01.2021, as recorded in the Panchanama drawn on the same date. Representative samples were drawn during the examination and forwarded to the Textile Committee for testing. Subsequently, Test Reports No. 0253032021-1904, 1905 & 1906 all dated 22.01.2021, were received.

I observe the following discrepancies on the basis of findings of the Panchnama and the test reports:-

- Misdeclaration in Quantity:
The declared quantity of item no. 12 'PU Coated Fabric' was 8190 meters. However, upon physical examination, the actual quantity was found to be 12765 meters, resulting in a significant excess of 4575 meters.
- Misdeclaration in Thickness:
The test reports from the Textile Committee reveal that the actual thickness of the samples was 2.15 mm, 2.13 mm and 2.13 mm.

19.4 I observe that based on the findings recorded in the panchnama at paragraphs 19.1 to 19.3 above, it is evident that the noticee has mis-declared the thickness of the PU coated fabrics, which fall under Tariff Heading 5903, in respect of Bill of Entry No. 9989693 dated 17.12.2020, Bill of Entry No. 2071340 dated 22.12.2020, and Bill of Entry No. 2071288 dated 22.12.2020.

19.5 I observe that upon perusal of the data from the EDI system, it was found that the importer had previously filed multiple Bills of Entry for goods classified under Customs Tariff Heading (CTH) 5903. To trace similar imports and ascertain the actual quantity and value of these goods, a detailed examination of past Bills of Entry was undertaken. Particular focus was placed on identifying entries where the product descriptions matched and corresponding test reports, including GSM (grams per square meter) data, were available in the system. This exercise was carried out to enable reverse calculation of the square meter (SQM) quantity, as prescribed under the procedure outlined in Alert Circular No. 02/2019 dated 16.10.2019. The mis-declaration in quantity (SQM) in past consignments was determined using the following mathematical formula:

$$\text{Actual Square Meters} = \{\text{Net weight (in KGs)} * 1000\} / \text{GSM}$$

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(Where GSM is obtained from Test Report/Previous Test Report and net weight from the packing list submitted by the Importer).

Further, in case of multiple items in consignments the actual square meters can be derived using the below mentioned formula:

Item 1 : $SQM(Declared) * GSM(As\ per\ PTR) = Weight\ (WT1)\ Item$

2 : $SQM(Declared) * GSM(As\ per\ PTR) = Weight\ (WT2)$

Item n : $SQM(Declared) * GSM(As\ per\ PTR) = Weight\ (WTn)$

Total derived weight of the consignments will be the sum of WT1, WT2.....WTn assumed as WTt.

If $WTt < Net\ Weight\ (gross\ weight - No.\ of\ Rolls\ of\ fabric * weight\ of\ one\ supporting\ rod)$ of the consignments declared in the Bill of Entry then it means difference of weight [Net weight of the Consignment - WTt] is undeclared.

19.6 I observe that the importer has imported the similar goods in past, and accordingly, 20 Bills of Entry of past imports were identified wherein similar PU coated fabric was imported under Customs Tariff Heading (CTH) 5903, and the GSM details were available either in the EDI system and/or through Previous Test Reports (PTRs). Based on the available data and by applying the methodology prescribed in the aforementioned Alert Circular, the differential square meter (SQM) quantity was computed and is appended as Annexure-I. Subsequently, using the recalculated SQM, the revised assessable value and the corresponding duty liability were determined for these 20 Bills of Entry, as detailed in Annexure-II of the SCN. The calculations differential duty, of those 20 Bill for which the instant SCN was issued, are provided in Table II below.

Table-II

SN	BE NO.	Date	Total re-determined AV (Rs.)	Total Diff Duty payable (Rs.)
1	9750709	28.11.2020	2863235.93	874470.74
2	7528682	26.04.2020	3202725.59	924931.05
3	7528606	26.04.2020	2506318.98	727124.81
4	6606076	23.01.2020	1541885.35	451157.59
5	9660103	21.11.2020	3358453.99	1013142.2
6	6961302	20.02.2020	633238.402	113446.25
7	9613881	18.11.2020	1213297.81	337166.02
8	7267938	17.03.2020	2674337.5	759580.42
9	9586878	16.11.2020	1459375.11	436277.62
10	9962372	15.12.2020	4173552.08	1216965.4
11	6479317	15.01.2020	387555.743	110023.77
12	6887980	14.02.2020	2204569.32	434870.38

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13	9927106	12.12.2020	3118018.8	940451.09
14	7197646	11.03.2020	1736004.7	498957.92
15	7405007	07.04.2020	789839.784	229240.64
16	7842729	06.06.2020	593980.685	168693.15
17	9798000	02.12.2020	1502070.26	474972.8
18	6722429	01.02.2020	2267983.81	654572.11
19	6722423	01.02.2020	1944967.93	562681.55
20	6722365	01.02.2020	2112317.64	611649.3
		Total	4,02,83,729/-	1,15,40,375/-

19.7 From the above table, it is evident that the total differential duty payable on past imports amounts to Rs. 1,15,40,375/- (Rupees One Crore Fifteen Lakh Forty Thousand Three Hundred and Seventy-Five Only).

19.8 I find that on the basis of the alert circular No. 02/2019 dated 16.10.2019 issued by the Commissioner of Customs, SIIB(I), NS-V, JNCH, and subsequent targeted action, three Bills of Entry—No. 9989693 dated 17.12.2020, 2071288 dated 22.12.2020, and 2071340 dated 22.12.2020—filed by M/s Garodia Printers were subjected to 100% examination. The examination revealed substantial discrepancies in both the quantity and thickness of PU coated fabric declared by the importer. Specifically, in all three consignments, the actual quantities were significantly higher than declared, with excess quantities ranging from 2,421 meters to 5,548 meters. Furthermore, test reports from the Textile Committee confirmed that the actual thickness of the fabrics was considerably higher than what had been declared, indicating misdeclaration under Customs Tariff Heading 5903. Further I find that, on detailed review of past imports by the same importer under the same heading was also undertaken using the procedure outlined in the said alert circular. By applying the formula based on actual GSM and net weight, misdeclarations in square meter quantities were identified across 20 previous Bills of Entry as mentioned in Table II above. As the GSM is higher than the declared quantity, the value of the product was redetermined and was reassessed as ₹4,02,83,729/-, resulting in a total differential customs duty liability of ₹1,15,40,375/- (Rupees One Crore Fifteen Lakh Forty Thousand Three Hundred and Seventy-Five only).

19.9 Further I observe that statement of Shri Prashant Kanaiyalal Goradia proprietor M/s Goradia Printers was recorded under section 108 of the Customs Act, 1962. The relevant part of the statements is reproduced below:-

19.9.1 Statement of Shri Prashant Kanaiyalal Goradia proprietor of M/s Goradia Printers was recorded under section 108 of the Customs Act, 1962 on 04.02.2021 wherein he *inter alia* stated that:

- *he started the firm Goradia Printers in 1998 about and he started with printing business. In 2017-18, he started import of garment accessories mostly, like buttons, labels, label with metal, PU fabric for making jeans labels, etc.;*
- *he is proprietor of Goradia Printers. He handle purchase, sale, and all finance related work in Goradia Printers;*
- *he import garment accessories like metal buttons, plastic buttons, PU labels, PU coated fabric from China. His supplier name is Foshan Zhengli Yiwu Boho import export ltd., AT & T trading Co., Yiwu Changvri;*
- *orders are placed by personally going to China and some time by calls and sometimes by courier he get samples and place orders. When he get samples by courier he send those samples by courier again to China by placing order. His orders are blank quantity means it is open order whatever they get ready every week they send him*

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goods whichever design he has selected. He is getting samples by courier and he can submit samples and related packing list;

19.9.2 Statement of Shri Prashant Goradia proprietor of M/s Goradia Printers recorded under section 108 of the Customs Act, 1962 on 05.02.2021 wherein he *inter alia* stated that:

- *During the time of examination, he was not present and his CHA was present at the time of examination and he informed him that the goods found excess (PU coated fabric). He enquired with his suppliers in China and he called him on his mobile no. 9820883276 that it is a mistake from their side and he had submitted apology letter to the department;*
- *He accepted that the goods were mis-declared in terms of quantity;*
- *he is ready to pay the applicable duty, fine penalty;*
- *he is ready to pay any duty liabilities arises during course of investigation in respect of past consignments and ready to pay the duty liability and fine penalty;*

19.9.3 Statement of Shri Prashant Goradia proprietor of M/s Goradia Printers recorded under section 108 of the Customs Act, 1962 on 11.02.2021 wherein he *inter alia* stated that:

- *On asking about the mis-declaration in the goods he stated that he had ordered the goods as declared in the import invoice and packing list forwarded by the supplier, accordingly, the same was declared in the Bill of Entry. But, on examination, the PU coated fabric quantity was found in excess and two different type of rolls. He enquired about the same discrepancy with his supplier import manager through telephone in China. During the telephone conversation, the supplier replied that it was the mistake of their staff i.e miscommunication shipping clerk and loading dept. the wrong goods loaded for India as both the goods were kept in the same warehouse;*
- *On seeing the test reports the importer stated that he accepts the contents of the test reports;*
- *On asking about the mis-declaration in BE No. 9989693 dtd. 17.12.2020 the importer stated that he accepts the mis-declaration in respect of thickness and value however as he already mentioned in his answer that it was mistake from supplier end;*
- *he is ready to pay the applicable duty arises with fine/ penalty;*
- *on asking about mis-declaration in "HID bulb" quantity the importer stated that this was also the mistake from his supplier side and he is ready to pay whatever duty applicable of the excess qty.*
- *on asking about the GSM based calculation i.e $A.S.M = \text{Declared wt. in kg} \times 100 / \text{GSM}$ the importer stated that he understands the said GSM based calculation and agreed with the formula applied;*
- *he is ready to pay the duty liabilities arises if any in respect of his past imports;*
- *he requests for provisional release of his consignments.*

19.10 I find that Shri Prashant Kanaiyalal Goradia the importer has admitted to the mis-declaration of goods in terms of quantity, thickness, and value, particularly in respect of PU-coated fabric, attributing the discrepancies to mistakes by the overseas supplier due to miscommunication. I find that importer has acknowledged the examination findings, accepted the test reports, and expressed full willingness to pay the applicable customs duty, fine, and penalty, including any liabilities arising from past consignments. He has also understood and agreed to the GSM-based calculation method used by Customs.

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

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- 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.

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- 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.*

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

19.13 On the basis of the observation made above I find that, pursuant to Alert Circular No. 02/2019 dated 16.10.2019 issued by the Commissioner of Customs, SIIB(I), NS-V, JNCH, and the ensuing targeted examination, three Bills of Entry—No. 9989693 dated 17.12.2020, 2071288 dated 22.12.2020, and 2071340 dated 22.12.2020—filed by M/s Garodia Printers were subjected to 100% examination. The examination revealed substantial discrepancies in both the declared quantity and thickness of PU-coated fabric, with excess quantities ranging from 2,421 meters to 5,548 meters. Test reports issued by the Textile Committee confirmed that the actual thickness of the fabric was significantly greater than declared, thereby establishing misdeclaration under Customs Tariff Heading 5903.

Further, a detailed analysis of 20 past consignments imported under the same tariff heading was carried out using the methodology prescribed in the said alert circular. By applying the formula based on actual GSM (grams per square meter) from test reports and net weight from packing lists, significant misdeclarations in square meter quantities were detected. This reassessment resulted in a redetermined assessable value of ₹4,02,83,729/- and a corresponding differential duty liability of ₹1,15,40,375/- (Rupees One Crore Fifteen Lakh Forty Thousand Three Hundred and Seventy-Five only).

I also find that Shri Prashant Kanaiyalal Goradia, the importer, has admitted to the misdeclaration of the goods with respect to quantity, thickness, and value, attributing the discrepancies to errors by the overseas supplier due to miscommunication. He has acknowledged and accepted the findings of the physical examination and the test reports, and has expressed full willingness to pay the applicable customs duty, along with any fine and penalty imposed. He has also confirmed his understanding and acceptance of the GSM-based calculation methodology adopted by Customs for determining the accurate quantity and value of the imported goods, including past consignments.

19.14 I find that Noticee has contended that the quantity was finalized by selecting few rolls, not on the basis of comprehensive measurement of the entire consignment.

I find no merit in the contention of the noticee because of the following reasons: -

- The noticee, in his voluntary statements dated 05.02.2021 and 11.02.2021 recorded under Section 108 of the Customs Act, 1962, has clearly admitted and confessed to the mis-declaration in quantity, thickness and accepted that the quantity found during the course of examination was correct.
- He attributed the discrepancy to a miscommunication from the supplier's side and further stated his willingness to pay the applicable duty along with fine and penalty.
- It is pertinent to note that no retraction of these statements has been filed by the noticee, which confirms and establishes that the admission was made voluntarily and without

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coercion. In any case, it has never been the case or contention of the notice that subject statements were made under any duress, temptation, treat, coercion or any other influence.

- The excess quantity was ascertained using the mathematical formula prescribed under Alert Circular No. 02/2019 dated 16.09.2021, thereby confirming the accuracy of the quantity detected. In fact, this formula is based on mathematical reality that quantity in meter is determined on the basis of total weight and weight in one meter of fabric.
- Moreover, weight per meter of GSM has been duly examined through a test report by competent lab. Moreover, there is no dispute about the total weight. Therefore, the determination of the quantity on the basis of total weight, GSM and mathematical formula cannot be questioned on logical, legal, mathematical or any other ground. The contention about non-verification of thickness is unfounded in light of a clear test report in this regard.
- The Importer himself has accepted the misdeclaration in quantity and submitted that the quantity found during the examination was correct and what they declared in the subject Bills of Entry was mis declared.
- The outcome of the findings of the panchnama were corroborated by test reports from the Textile Committee — an independent and technically competent authority — which further confirmed discrepancies in declared parameters such as thickness. The noticee has, in fact, already admitted to the discrepancies and has expressed willingness to accept the findings and discharge the applicable duty and penalties.

In view of the above, I find that contention of the noticee is unsustainable.

19.15. In view of the above, declared quantity and thickness of the impugned goods imported vide three provisionally assessed bills of entry and 20 past bills of entry (as mentioned in Table-I and II above) should be rejected and the correct quantity should be taken for valuation purpose.

B. NOW I TAKE UP THE NEXT QUESTION AS TO WHETHER DECLARED ASSESSED VALUE OF THE GOODS IN RESPECT OF THREE PROVISIONALLY ASSESSED BILLS OF ENTRY ON ACCOUNT OF MISDECLARATION OF GSM, QUANTITY AND VALUE (9989693 DATED 17.12.2020, 2071288 DATED 22.12.2020 AND 2071340 DATED 22.12.2020) SHOULD BE REJECTED AND RE-DETERMINED TO RS. 1,23,59,523/- (ONE CRORE TWENTY-THREE LAKH FIFTY-NINE THOUSAND FIVE HUNDRED AND TWENTY-THREE ONLY) AS SHOWN IN THE TABLE I AND WHETHER DECLARED ASSESSED VALUE OF THE GOODS IN RESPECT OF 20 PAST BILLS OF ENTRY (AS MENTIONED IN TABLE-II ABOVE) SHOULD BE REJECTED AND RE-DETERMINED RS. 4,02,83,729/- (FOUR CRORE TWO LAKH EIGHTY-THREE THOUSAND SEVEN HUNDRED AND TWENTY-NINE), AS SHOWN IN THE TABLE-II.

20. I reiterate my findings at para 19 above, after going through the case records, test report, and relevant documents, I observe the following facts:

20.1 Nature of Goods and Basis of Valuation

I observe that the imported goods in question are *coated fabrics*, declared under various Bills of Entry. As per standard departmental practice, the valuation of coated fabric is determined based on its **thickness and GSM (grams per square meter)**.

20.2 Discrepancy in Declaration

I observe that as per test report the actual thickness of the imported goods was higher than the thickness declared in the Bills of Entry. This discrepancy directly affects the GSM and therefore the assessable value of the goods. There was misdeclaration in terms of **quantity and thickness**, leading to a misstatement of the transactional value.

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20.3 Applicability of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

I observe that the declared transaction value was found to be unreliable and unacceptable under the provisions of Rule 12 of the CVR, 2007, therefore which empowers the proper officer to reject declared value when there are reasonable doubts about its truth or accuracy. The importer failed to provide any satisfactory evidence to rebut these doubts or to justify the declared values.

20.4 Redetermination of Value:

I find that Assessable value of the goods was redetermined in line with established group practice as per File No. S/26-Misc-1283/2012 Gr. III dated 20.11.2012. The redetermined assessable values and corresponding duty differentials for each relevant Bill of Entry are summarized below:

Bill of Entry No.	Date	Revised Assessable Value	Duty Difference Payable
9989693	17.12.2020	₹41,80,479/-	₹8,36,515/-
2071288	22.12.2020	₹35,39,365/-	₹4,91,463/-
2071340	22.12.2020	₹46,39,506/-	₹9,43,460/-

20.5 The facts on record were corroborated by the test report and supported by precedent valuation methodology, establish that the importer mis declared the goods in terms of thickness and quantity, resulting in undervaluation. The transaction value was rightfully rejected, and the revised assessable value has been correctly determined as per law and departmental practice.

20.6 In view of the above, I reject the declared assessable value of three provisionally assessed Bills of Entry on account of misdeclaration of GSM, Quantity and Value (9989693 dated 17.12.2020, 2071288 dated 22.12.2020 and 2071340 dated 22.12.2020) and re-determined the assessable value to Rs. 1,23,59,523/- (One Crore Twenty-Three Lakh Fifty-Nine Thousand Five Hundred and Twenty-Three only).

20.7. I further observe that the importer has filed multiple Bills of Entry in the past under Customs Tariff Heading (CTH) 5903. Efforts were made to identify those Bills of Entry in the system where similar goods were imported and corresponding Test Reports, showing GSM, were uploaded, to enable GSM-based reverse calculation as prescribed in Alert Circular No. 02/2019 dated 16.10.2019. Upon scrutiny, a total of 20 such Bills of Entry were found where similar items were imported under CTH 5903 and GSM details were available either in the system or through Physical Test Reports (PTRs). Based on the data available, and following the procedure prescribed in the aforesaid Alert Circular, the differential square meter (SQM) quantity was calculated and appended as Annexure-I. Using this differential SQM, the revised assessable value and the duty payable thereon were computed for the said 20 Bills of Entry, details of which are attached as Annexure-II. The summary of these calculations is presented in Table-II below.

Table-II

SN	BE NO.	Date	Total re-determined AV (Rs.)	Total Diff Duty payable (Rs.)
1	9750709	28.11.2020	2863235.93	874470.74
2	7528682	26.04.2020	3202725.59	924931.05
3	7528606	26.04.2020	2506318.98	727124.81
4	6606076	23.01.2020	1541885.35	451157.59
5	9660103	21.11.2020	3358453.99	1013142.2
6	6961302	20.02.2020	633238.402	113446.25

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7	9613881	18.11.2020	1213297.81	337166.02
8	7267938	17.03.2020	2674337.5	759580.42
9	9586878	16.11.2020	1459375.11	436277.62
10	9962372	15.12.2020	4173552.08	1216965.4
11	6479317	15.01.2020	387555.743	110023.77
12	6887980	14.02.2020	2204569.32	434870.38
13	9927106	12.12.2020	3118018.8	940451.09
14	7197646	11.03.2020	1736004.7	498957.92
15	7405007	07.04.2020	789839.784	229240.64
16	7842729	06.06.2020	593980.685	168693.15
17	9798000	02.12.2020	1502070.26	474972.8
18	6722429	01.02.2020	2267983.81	654572.11
19	6722423	01.02.2020	1944967.93	562681.55
20	6722365	01.02.2020	2112317.64	611649.3
		Total	4,02,83,729/-	1,15,40,375/-

20.8 From the above table, the redetermined assessable value is Rs. 4,02,83,729/- (Four Crore Two Lakh Eighty-Three Thousand Seven Hundred and Twenty-Nine) and total differential duty on past imports arrived at Rs. 1,15,40,375/- (Rupees One Crore Fifteen Lakh Forty Thousand Three Hundred and Seventy-Five Only). The Importer had already paid Rs. 10,00,000 vide Challan no. HC327 dt. 17.03.2021 against the duty liability for past imports.

20.9 Hence, taking GSM into account, actual square meters of each consignment can be correctly arrived at in the following manner:

$$\text{GSM} = \frac{\text{Weight in Grams}}{\text{Square Meter}}$$

$$\text{Hence, Actual Square meter} = \frac{\text{Net Weight in Kg.} \times 1000}{\text{GSM}}$$

* Considering the weight of supporting rod of Rolls 2.0 Kg, Net weight of the consignments was calculated.

20.10 I observe that from the above-mentioned calculation (Table II) that the goods imported vide the above said past B/Es were mis-declared in respect of quantity and therefore the goods do not correspond in respect of value too. Hence, the goods imported vide the said 20 Bills of entry appeared to be liable to confiscation under Section 111(l) and 111(m) of the Customs Act, 1962.

20.11 Shri Prashant Kanaiyalal Goradia proprietor of M/s Goradia Printer in his statement dated 04.02.2021, 05.02.2021 and 11.02.2021 recorded under Section 108 of the Customs Act, 1962, stated that he was in the fabric business since 2017 and well aware about GSM. He agreed with the calculation made by the department. He has accepted his mistake of mis declaration of the goods and showed his willingness to take any responsibility arises in future with respect to the live as well as past imports. Further, he inter alia stated that he understands the formula for GSM based reverse calculation with regard to his past import; Further he has already paid Rs. 10,00,000/- towards past import.

20.12 I find that Noticee has contended that valuation cannot be done on the basis of group practice. In this regard, I observe that Group Practice means the valuation of imported goods as prevailing in relations of other such imports declared by various importers. In this regard, I observe that an Adjudicating Authority is a fact finding authority. Fact-finding is the job of a person or group of persons in a judicial or administrative proceeding that has or have the responsibility of determining the facts relevant to decide a controversy. Fact finders often have

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the job of determining what facts are available and their relevancy. The position of fact finder is determined by the type of proceeding. In a jury trial, it is the role of a jury in a jury trial. In a non-jury trial, the judge sits both as a fact-finder and as the trier of law. In administrative proceedings it may be a hearing officer or a hearing body. Further, fact-finding should be comprehensive, objective, impartial and timely. In this situation, I find that this authority, who is an original fact-finding authority, has to decide the case on the basis of all available documents and their relevancy

In view of the above, I examine such contemporaneous data of goods imported by other Importer as per the following Table:-

Sr.No	Bill of Entry	Date	Description	Value Declared by other Importers (USD in Sq Mtr)
1	9925834	12/11/2020	SYNTHETIC LEATHER (PU COATED FABRIC) (THICKNESS 1.4MM WIDTH 54 INCHES) (15276 METER)SYNTHETIC LEATHER (PU COATED FABRIC) (THICKNESS 1.4MM WIDTH	2.613007
2	6424397	1/10/2020	PU COATED FABRIC THICKNESS 1.4 MM WIDTH 54"/58" PTR NO:0253031920-5804 DT:01.01.2020 (2526 METER)PU COATED FABRIC THICKNESS 1.4 MM WIDTH 54"/58" PTR NO:02530	2.613007
3	9736108	11/27/2020	SYNTHETIC LEATHER (PU COATED FABRIC) (THICKNESS 1.4MM WIDTH 54") METER 6199SYNTHETIC LEATHER (PU COATED FABRIC) (THICKNESS 1.4MM WIDTH	2.613
4	2043711	12/21/2020	SYNTHETIC LEATHER (PU COATED FABRIC) (THICKNESS 1.4MM WIDTH 54 INCHES) (550 METER)SYNTHETIC LEATHER	2.613
5	9567905	11/13/2020	SYNTHETIC LEATHER PU COATED FABRIC THICKNESS 1.40MM WIDTH 54" (2338 METER)SYNTHETIC LEATHER PU COATED FABRIC THICKNESS 1.40MM WIDTH 54	2.613
6	2168530	12/30/2020	SYNTHETIC LEATHER (PU COATED FABRIC)	2.613

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			THICKNESS 1.4MM WIDTH 54" INCHES (3159 METRE) (ACUAL USER,MANUFACTURER EXPORTER)SYNTHETIC LEATHER	
7	9193595	10/16/2020	SYNTHETIC LEATHER(PU COATED FABRIC) THICKNESS 1.4MM WIDTH 54" 4303.5 METER (ACTUAL USER MANUFACTURER EXPORTER)SYNTHETIC LEATHER(PU COATED FABRIC) THICKNESS 1.4MM WIDTH 54	2.613
8	6647452	1/27/2020	PU COATED FABRIC THICKNESS 1.4 MM WIDTH 54"/58" PTR NO:0253061920-6094 DT:15.01.2020 (1240 METER)PU COATED FABRIC THICKNESS 1.4 MM WIDTH 54"/58"(985 METER)	2.613

In view of the above, I find that as per the group practice the valuation of imported goods by the Noticee is lower than the price declared by other various importers. In this regard, I quote the provisions of Rule 4 and 5 of the Customs Valuation Rule, 2007.

Rule 4. Transaction value of identical goods -

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

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

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

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

Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

Rule 5: Transaction Value of Similar Goods

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If a value cannot be determined under Rule 4, the authorities move to Rule 5. This rule allows for the valuation based on the transaction value of "similar goods." "Similar goods" are not identical but have comparable characteristics and component materials, perform the same functions, and are commercially interchangeable. They must also have been produced in the same country and by the same person as the imported goods.

In view of the, above I find that valuation of goods cannot be re-determined on the basis of Rule 4 of the CVR,2007 as the quality, reputation/brand, colour, brand is not matching with the description of the goods. I further find that valuation of the goods imported was done on the basis of Rule 5 of the CVR, 2007. The value of the goods imported by the Importer in past Bills of Entry was done at par with the price of the identical goods imported by various other importers.

I further observe that noticee relied on the Case law of Agarwal Metals & Alloys Vs. Commissioner of Customs, Kandla in the CESTAT, Western Zonal Bench, Ahmedabad, wherein valuation of metal scrap done on the basis of DGOV circular on basis of LME prices fresh goods was rejected by the Hon'ble Court. I find that the above-mentioned case law is not applicable in this case, as in the instant case the valuation was done on the basis of value of similar imported goods by various other importers in terms of Rule 5 of the Customs Valuation Rule, 2007 instead of any COMMODITY INDEX.

I rely on the judgement of (2025) 28 Centax 187 (Tri.-Del)/2025 (392) E.L.T. 467 (Tri.-Del) *Mittal Appliances Ltd. Versus Commissioner of Customs, Indore, Final Order No. 50295/2025 in Appeal No. C/51888/2021, decided on 10-2-2025 where in it is clearly upheld that*

11. As per Valuation Rule 3, assessment must be done as per the transaction value subject to Valuation Rule 12. In other words, if the transaction value is rejected under Valuation Rule 12, then assessment cannot be done as per transaction value. If it is not rejected under Valuation Rule 12, then assessment must be done as per the transaction value. If the transaction value is rejected under Valuation Rule 12, valuation must be done as per Valuation Rules 4 to 9 sequentially.

12. Rule 4 provides for valuation as per the value of identical goods. If value cannot be determined as per Rule 4 because there are no contemporaneous imports of identical goods then the valuation must be done as per contemporaneous goods of similar case under rule 5.

13. In this case, the Deputy Commissioner recorded that there were no imports of identical goods during the relevant period. There is no evidence contrary to this finding. The Deputy Commissioner, therefore, determined the value based on the value of similar goods. Here also listed 15 Bills of Entry under which similar goods for imported goods during the relevant period. Therefore, this clearly meets the requirement of Valuation Rule 5.

20.13 I find that noticee has contended that calculation of Square meter solely on the basis of GSM of previous report is incorrect.

I find no merit on the contention of the Noticee because of the following reasons:-

- The mathematical formula for calculation of the actual square meter is
Actual Sq mtrs. = (Net weight(in kg)*1000)/GSM
- When a mathematical formula is applied the outcome is accurate not approximate.
- The GSM is obtained from the Test reports and Net weight is taken from the packing list submitted by the importer.

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- When GSM and Net weight is specifically available, accordingly the square meter was calculated accurately.

20.14. On perusal of above, I find that the duty demand of past Bills of Entries has to be confirmed under Section 28 of the Customs Act, 1962. Hence, I find that the declared assessable value may be rejected and should be redetermined to Rs. 4,02,83,729/- (Four Crore Two Lakh Eighty-Three Thousand Seven Hundred and Twenty-Nine) for the past 20 Bills of Entry.

C. NOW I TAKE UP THE NEXT QUESTION AS TO WHETHER THE BILLS OF ENTRY NO. 9989693 DATED 17.12.2020, 2071288 DATED 22.12.2020 AND 2071340 DATED 22.12.2020 WHICH WERE PROVISIONALLY ASSESSED ON ACCOUNT OF MISDECLARATION OF GSM, QUANTITY AND VALUE SHOULD BE FINALIZED WITH RE-DETERMINED VALUE AND DIFFERENTIAL DUTY AMOUNTING TO RS. 22,71,503/- (TWENTY-TWO LAKH SEVENTY-ONE THOUSAND FIVE HUNDRED AND THREE) AND THE SAME SHOULD BE PAID/RECOVERED UNDER SECTION 18 OF THE CUSTOMS ACT, 1962.

21. I observe that on the basis of alert circular no. 02/2019 dated 16.10.2019 issued by Commissioner of Customs, SIIB(I), NS-V, JNCH, Bill of Entry No. 9989693 dated 17.12.2020, Bill of Entry No. 2071340 dated 22.12.2020 and 2071288 dtd. 22.12.2020 filed by M/s Garodia Printers was put on hold for detailed examination. The findings of the examination are as follows: -

DETAILED EXAMINATION OF BILL OF ENTRY NO. 9989693 DATED 17.12.2020

The goods imported under the aforementioned Bill of Entry were subjected to 100% Examination by the officers of SIIB(I) on 24.12.2020, as recorded in the Panchanama drawn on the same date. Representative samples were drawn during the examination and forwarded to the Textile Committee for testing. Subsequently, Test Reports No. 0253102021-1747 and 0253102021-1748, both dated 12.01.2021, were received.

I observe the following discrepancies on the basis of findings of the Panchnama and the test reports:-

- Misdeclaration in Quantity:
The declared quantity of item no. 11 'PU Coated Fabric' was 4,975 meters. However, upon physical examination, the actual quantity was found to be 10,523 meters, resulting in a significant excess of 5,548 meters.
- Misdeclaration in Thickness:
The declared thickness of the PU Coated Fabric was 1.28 mm. The test reports from the Textile Committee reveal that the actual thickness of the samples was 2.09 mm and 2.30 mm, which is substantially higher than declared.
- The excess quantity was ascertained using the mathematical formula prescribed under Alert Circular No. 02/2019 dated 16.09.2021, thereby confirming the accuracy of the quantity detected. In fact, this formula is based on mathematical reality that quantity in meter is determined on the basis of total weight and weight in one meter of fabric.
- I further reiterate my findings at para 19.14 above in this regard.

DETAILED EXAMINATION OF B/E NO. 2071288 DATED 22.12.2020

The goods imported under the aforementioned Bill of Entry were subjected to 100% Examination by the officers of SIIB(I) on 07.01.2021, as recorded in the Panchanama drawn on the same date. Representative samples were drawn during the examination and forwarded to the Textile Committee for testing. Subsequently, Test Reports No. 0253032021-1907, 1908 & 1909 all dated 22.01.2021, were received.

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I observe the following discrepancies on the basis of findings of the Panchnama and the test reports:-

- Misdeclaration in Quantity:
The declared quantity of item no. 12 'PU Coated Fabric' was 4,030 meters. However, upon physical examination, the actual quantity was found to be 6451 meters, resulting in a significant excess of 2421 meters.
- Misdeclaration in Thickness:
The test reports from the Textile Committee reveal that the actual thickness of the samples was 2.03 mm, 2.18 mm and 2.52 mm.

DETAILED EXAMINATION OF B/E NO. 2071340 DATED 22.12.2020

The goods imported under the aforementioned Bill of Entry were subjected to 100% Examination by the officers of SIIB(I) on 08.01.2021, as recorded in the Panchnama drawn on the same date. Representative samples were drawn during the examination and forwarded to the Textile Committee for testing. Subsequently, Test Reports No. 0253032021-1904, 1905 & 1906 all dated 22.01.2021, were received.

I observe the following discrepancies on the basis of findings of the Panchnama and the test reports:-

- Misdeclaration in Quantity:
The declared quantity of item no. 12 'PU Coated Fabric' was 8190 meters. However, upon physical examination, the actual quantity was found to be 12765 meters, resulting in a significant excess of 4575 meters.
- Misdeclaration in Thickness:
The test reports from the Textile Committee reveal that the actual thickness of the samples was 2.15 mm, 2.13 mm and 2.13 mm.

21.1 I observe that based on the findings recorded in the panchnama at paragraphs 19.1 to 19.3 above, it is evident that the noticee has mis-declared the thickness of the PU coated fabrics, which fall under Tariff Heading 5903, in respect of Bill of Entry No. 9989693 dated 17.12.2020, Bill of Entry No. 2071340 dated 22.12.2020, and Bill of Entry No. 2071288 dated 22.12.2020.

21.2 Further I observe that statement of Shri Prashant Kanaiyalal Goradia proprietor M/s Goradia Printers was recorded under section 108 of the Customs Act, 1962. The relevant part of the statements is reproduced below:-

21.2.1 Statement of Shri Prashant Kanaiyalal Goradia proprietor of M/s Goradia Printers was recorded under section 108 of the Customs Act, 1962 on 04.02.2021 wherein he *inter alia* stated that:

- *he started the firm Goradia Printers in 1998 about and he started with printing business. In 2017-18, he started import of garment accessories mostly, like buttons, labels, label with metal, PU fabric for making jeans labels, etc.;*
- *he is proprietor of Goradia Printers. He handle purchase, sale, and all finance related work in Goradia Printers;*
- *he import garment accessories like metal buttons, plastic buttons, PU labels, PU coated fabric from China. His supplier name is Foshan Zhengli Yiwu Boho import export ltd., AT & T trading Co., Yiwu Changvri;*
- *orders are placed by personally going to China and some time by calls and sometimes by courier he get samples and place orders. When he get samples by courier he send those samples by courier again to China by placing order. His orders are blank quantity means it is open order whatever they get ready every week they send him*

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goods whichever design he has selected. He is getting samples by courier and he can submit samples and related packing list;

21.2.2 Statement of Shri Prashant Goradia proprietor of M/s Goradia Printers recorded under section 108 of the Customs Act, 1962 on 05.02.2021 wherein he *inter alia* stated that:

- *During the time of examination, he was not present and his CHA was present at the time of examination and he informed him that the goods found excess (PU coated fabric). He enquired with his suppliers in China and he called him on his mobile no. 9820883276 that it is a mistake from their side and he had submitted apology letter to the department;*
- *He accepted that the goods were mis-declared in terms of quantity;*
- *he is ready to pay the applicable duty, fine penalty;*
- *he is ready to pay any duty liabilities arises during course of investigation in respect of past consignments and ready to pay the duty liability and fine penalty;*

21.2.3 Statement of Shri Prashant Goradia proprietor of M/s Goradia Printers recorded under section 108 of the Customs Act, 1962 on 11.02.2021 wherein he *inter alia* stated that:

- *On asking about the mis-declaration in the goods he stated that he had ordered the goods as declared in the import invoice and packing list forwarded by the supplier, accordingly, the same was declared in the Bill of Entry. But, on examination, the PU coated fabric quantity was found in excess and two different type of rolls. He enquired about the same discrepancy with his supplier import manager through telephone in China. During the telephone conversation, the supplier replied that it was the mistake of their staff i.e miscommunication shipping clerk and loading dept. the wrong goods loaded for India as both the goods were kept in the same warehouse;*
- *On seeing the test reports the importer stated that he accepts the contents of the test reports;*
- *On asking about the mis-declaration in BE No. 9989693 dtd. 17.12.2020 the importer stated that he accepts the mis-declaration in respect of thickness and value however as he already mentioned in his answer that it was mistake from supplier end;*
- *he is ready to pay the applicable duty arises with fine/ penalty;*
- *on asking about mis-declaration in "HID bulb" quantity the importer stated that this was also the mistake from his supplier side and he is ready to pay whatever duty applicable of the excess qty.*
- *on asking about the GSM based calculation i.e $A.S.M = \text{Declared wt. in kg} \times 100 / \text{GSM}$ the importer stated that he understands the said GSM based calculation and agreed with the formula applied;*
- *he is ready to pay the duty liabilities arises if any in respect of his past imports;*
- *he requests for provisional release of his consignments.*

21.3 I find that Shri Prashant Kanaiyalal Goradia the importer has admitted to the mis-declaration of goods in terms of quantity, thickness, and value, particularly in respect of PU-coated fabric, attributing the discrepancies to mistakes by the overseas supplier due to miscommunication. I find that importer has acknowledged the examination findings, accepted the test reports, and expressed full willingness to pay the applicable customs duty, fine, and penalty, including any liabilities arising from past consignments. He has also understood and agreed to the GSM-based calculation method used by Customs.

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

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- 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.

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- 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.*

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

21.6 On the basis of the observation made above I find that, pursuant to Alert Circular No. 02/2019 dated 16.10.2019 issued by the Commissioner of Customs, SIIB(I), NS-V, JNCH, and the ensuing targeted examination, three Bills of Entry—No. 9989693 dated 17.12.2020, 2071288 dated 22.12.2020, and 2071340 dated 22.12.2020—filed by M/s Garodia Printers were subjected to 100% examination. The examination revealed substantial discrepancies in both the declared quantity and thickness of PU-coated fabric, with excess quantities ranging from 2,421 meters to 5,548 meters. Test reports issued by the Textile Committee confirmed that the actual thickness of the fabric was significantly greater than declared, thereby establishing misdeclaration under Customs Tariff Heading 5903.

I also find that Shri Prashant Kanaiyalal Goradia, the importer, has admitted to the misdeclaration of the goods with respect to quantity, thickness, and value, attributing the discrepancies to errors by the overseas supplier due to miscommunication. He has acknowledged and accepted the findings of the physical examination and the test reports, and has expressed full willingness to pay the applicable customs duty, along with any fine and penalty imposed. He has also confirmed his understanding and acceptance of the GSM-based calculation methodology adopted by Customs for determining the accurate quantity and value of the imported goods, including past consignments.

21.7. In view of the above, declared quantity and thickness of the impugned goods imported vide three provisionally assessed bills of entry should be rejected and the correct quantity should be taken for valuation purpose

I reiterate my findings at para 19 & 20 above, wherein it has been evidently established that the product under consideration has been wilfully mis declared by the Noticee in terms of thickness and quantity, and accordingly the value of the imported goods was redetermined. In the instant case, 03 Bills of entries were provisionally assessed as per section 18 of the Customs Act, 1962.

Section 18 of Customs Act, 1962 is reproduced below:-

“Section 18. Provisional assessment of duty.

(1)Notwithstanding anything contained in this Act but without prejudice to the provisions contained in Section 46 [and Section 50] [Inserted by Finance Act, 2018 (Act No. 13 of 2018), dated 29.3.2018.] -(1-A) Where, pursuant to the provisional assessment under sub-section (1), if any document or information is required by the proper officer for final assessment, the importer or exporter, as the case may be, shall submit such document or information within such time, and the proper officer shall finalise the provisional assessment

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within such time and in such manner, as may be prescribed.] [Inserted by Finance Act, 2018 (Act No. 13 of 2018), dated 29.3.2018.

](a)where the proper officer is satisfied that an importer or exporter is unable to produce any document or furnish any information necessary for the assessment of duty on the imported goods or the export goods, as the case may be; or

(b)where the proper officer deems it necessary to subject any imported goods or export goods to any chemical or other test for the purpose of assessment of duty thereon; or

(c)where the importer or the exporter has produced all the necessary documents and furnished full information for the assessment of duty but the proper officer deems it necessary to make further enquiry for assessing the duty, the proper officer may direct that the duty leviable on such goods may, pending the production of such documents or furnishing of such information or completion of such test or enquiry, be assessed provisionally if the importer or the exporter, as the case may be, furnishes such security as the proper officer deems fit for the payment of the deficiency, if any, between the duty finally assessed and the duty provisionally assessed.

(2)When the duty leviable on such goods is assessed finally in accordance with the provisions of this Act, then-

(a)in the case of goods cleared for home consumption or exportation, the amount paid shall be adjusted against the duty finally assessed and if the amount so paid falls short of, or is in excess of [the duty finally assessed] [Substituted by Act 56 of 1974, Section 3 and Schedule II, for " the finally assessed" (w.e.f. 20.12.1974).], the importer or the exporter of the goods shall pay the deficiency or be entitled to a refund, as the case may be;

(b)in the case of warehoused goods, the proper officer may, where the duty finally assessed is in excess of the duty provisionally assessed, require the importer to execute a bond, binding himself in a sum equal to twice the amount of the excess duty.

(3)The importer or exporter shall be liable to pay interest, on any amount payable to the Central Government, consequent to the final assessment order under sub-section (2), at the rate fixed by the Central Government under section [28-AA] [Substituted '28-AB' by Finance Act, 2018 (Act No. 13 of 2018), dated 29.3.2018.] from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

(4)Subject to sub-section (5), if any refundable amount referred to in clause (a) of sub-section (2) is not refunded under that sub-section within three months from the date of assessment of duty finally, there shall be paid an interest on such unrefunded amount at such rate fixed by the Central Government under section 27-A till the date of refund of such amount.

(5)The amount of duty refundable under sub-section (2) and the interest under sub-section (4), if any, shall, instead of being credited to the Fund, be paid to the importer or the exporter, as the case may be, if such amount is relatable to-

(a)the duty and interest, if any, paid on such duty paid by the importer, or the exporter, as the case may be, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(b)the duty and interest, if any, paid on such duty on imports made by an individual for his personal use;

(c)the duty and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(d)the export duty as specified in section 26;

(e)drawback of duty payable under sections 74 and 75. ”

21.8 Further relevant excerpt of Section 28(4) of the Customs Act, 1962 is reproduced hereinbelow for the sake of immediate reference:

“28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.

.....

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

(a) collusion; or

(b) any wilful mis-statement; or

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(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.*

.....

Explanation 1.—For the purposes of this section, relevant date means, -

(a) in a case where duty is [not levied or not paid or short-levied or short-paid], or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;

(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;

(c) in a case where duty or interest has been erroneously refunded, the date of refund;

(d) in any other case, the date of payment of duty or interest.”

21.9 In view of above, I find that the duty demand of provisionally assessed Bills of Entry on account of GSM, Quantity and Value etc has to be confirmed under Section 28 of the Customs Act, 1962 as these bills of entries were not filed on the provisional basis by the importer under section 17(5) but were assessed provisionally due to ongoing investigation by SIIB(I), JNCH. For the duty recovery of these BE's same needs to be finalised. Hence, I find that the duty demand of Rs. 22,71,503/- (Rupees Twenty-Two Lakh Seventy-One Thousand Five Hundred and Three only) in respect of provisionally assessed BE's should be finalized and should be recovered under section 28 (4) of Customs Act, 1962.

D. AS TO WHETHER THE SAID GOODS IMPORTED UNDER THREE PROVISIONALLY ASSESSED BILLS OF ENTRY ON ACCOUNT OF MIS DECLARATION OF GSM, QUANTITY AND VALUE, TOTALLY VALUED AT RS. 1,23,59,523/- (ONE CRORE TWENTY-THREE LAKH FIFTY-NINE THOUSAND FIVE HUNDRED AND TWENTY-THREE), AS DETAILED IN TABLE-I, SHOULD BE HELD LIABLE TO CONFISCATION AS PER PROVISIONS OF SECTION 111(l) & 111(m) OF THE CUSTOMS ACT, 1962.

22. I observe that from the discussions above in para 19 and 20, it is an undisputed fact that the importer Shri Prashant Kanaiyalal Goradia proprietor of M/s Goradia Printer in his statement dated 04.02.2021, 05.02.2021 and 11.02.2021 recorded under Section 108 of the Customs Act, 1962, has accepted his mistake of mis declaration of the goods and showed his willingness to take any responsibility arises in future with respect to the live as well as past imports.

22.1. 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.

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22.2 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. Bhavna Steel 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 description, country of origin and assessable value while being presented to the Customs.

22.3 I find that the SCN proposes confiscation of goods under the provisions of Section 111(l) and 111(m) of the Customs Act, 1962. Provisions of these Sections 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:

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

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

22.4 I have already held in foregoing paras that the importer had wilfully misrepresented the facts and had evaded correct Customs duty by intentionally misdeclaration of quantity and GSM. By resorting to this deliberate suppression of facts and wilful mis-declaration, the importer has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. Thus, this wilful and deliberate act was done with the fraudulent intention to claim ineligible rate of duty. Therefore, on account of the aforesaid mis-declaration / mis-statement in the aforementioned Bills of Entry, the impugned goods having a total Assessable Value of Rs. 1,23,59,523/- (One Crore Twenty-Three Lakh Fifty-Nine Thousand Five Hundred And Twenty-Three) are liable for confiscation under Section 111. I find that Show Cause Notice has proposed confiscation under section 111(l) and section 111(m) of the Customs Act, 1962. I find that acts of omission and commission on part of the importer has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Therefore, I find the goods are liable for confiscation under section 111(m) of the Customs Act, 1962.

22.5 I therefore hold that the said imported goods are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962, as proposed in the Show Cause Notice. The subject goods imported are not available for confiscation, but I rely upon the order of Hon’ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.) wherein the Hon’ble Madras High Court held in para 23 of the judgment as below:

“23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, “Whenever

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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).”

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

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

22.5.3 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.”

22.5.4 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.

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22.6 In view of above facts, findings and legal provisions, I find that it is an admitted fact that the noticee has mis declared the goods. Therefore, I hold that the acts and omissions of the importer, by way of collusion and wilful mis-statement of the imported goods, have rendered the goods liable to confiscation under section 111(i) and 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.**

E. As to whether the differential Customs duty amounting to Rs. 1,15,40,375/- (Rupees One Crore Fifteen Lakh Forty Thousand Three Hundred and Seventy-Five) short levied on the said goods covered under past 20 bills of entry, as detailed in Table-II above, should be demanded and recovered from importer under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962.

23. I reiterate my findings at para 20 above, wherein the declared assessable value has been rejected and re-determined to Rs. Rs. 4,02,83,729/- (Four Crore Two Lakh Eighty-Three Thousand Seven Hundred and Twenty-Nine). Upon redetermination of the assessable value for the past 20 Bills of Entry, the importer is liable for payment of differential duty of Rs. 1,15,40,375/- (Rupees One Crore Fifteen Lakh Forty Thousand Three Hundred and Seventy-Five only) under section 28(4) of the Customs Act, 1962 along with the applicable interest under section 28 AA of the Customs Act, 1962 as detailed in table II above.

23.1 I find The Noticee has also contended that extended that Limitation: *Extended period not invokable*

I do not find any merit in the noticee's contention as, due to deliberate misdeclaration and valuation 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;

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23.1 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 wilful 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.

23.3 I observe that the importer has voluntarily paid the amount Rs.10,00,000/-(Ten lakhs) paid vide challan no. Hc327 dated 17.03.2021 with respect to duty obligation on redetermination of the assessable value with respect to the past 20 Bills of entry. I find that the same may be appropriated against the total demand against the Importer.

23.4 In view of the above, I find that the noticee had wilfully misdeclared the correct value and quantity of the goods to evade the legitimate customs duty on account of collusion, wilful mis-statement and suppression of facts. Therefore, I confirm the demand of differential duty of Rs. 1,15,40,375/- (Rupees One Crore Fifteen Lakh Forty Thousand Three Hundred and Seventy-Five) in respect of 20 Past Bills of Entry along with the applicable interest under section 28AA of the Customs Act, 1962.

F. As to whether the said goods imported under past 20 Bills of Entry, totally valued at Rs. 4,02,83,729/- (Four Crore Two Lakh Eighty-Three Thousand Seven Hundred and Twenty-Nine only), as detailed in Table-II, should be held liable to confiscation as per provisions of Section 111(l) & 111(m) of the Customs Act, 1962.

24. I observe that from the discussions above in para 19 and 20, it is an undisputed fact that the importer Shri Prashant Kanaiyalal Goradia proprietor of M/s Goradia Printer in his statement dated 04.02.2021, 05.02.2021 and 11.02.2021 recorded under Section 108 of the Customs Act, 1962, has accepted his mistake of mis declaration of the goods and showed his willingness to take any responsibility arises in future with respect to the live as well as past imports.

24.1. 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

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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.

24.2 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. Garodia Printers 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 description, country of origin and assessable value while being presented to the Customs.

24.3 I find that the SCN proposes confiscation of goods under the provisions of Section 111(l) and 111(m) of the Customs Act, 1962. Provisions of these Sections 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:

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

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

24.4 I have already held in foregoing paras that the importer had wilfully misrepresented the facts and had evaded correct Customs duty by intentionally misdeclaration of quantity and GSM. By resorting to this deliberate suppression of facts and wilful mis-declaration, the importer has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. Thus, this wilful and deliberate act was done with the fraudulent intention to claim ineligible rate of duty. Therefore, on account of the aforesaid mis-declaration / mis-statement in the aforementioned Bills of Entry, the impugned goods having a total Assessable Value of Rs. 4,02,83,729/- (Four Crore Two Lakh Eighty-Three Thousand Seven Hundred and Twenty-Nine only) are liable for confiscation under Section 111. I find that Show Cause Notice has proposed confiscation under section 111(l) and section 111(m) of the Customs Act, 1962. I find that acts of omission and commission on part of the importer has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962. Therefore, I find the goods are liable for confiscation under section 111(m) of the Customs Act, 1962.

24.5 I therefore hold that the said imported goods are liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962, as proposed in the Show Cause Notice. The subject goods imported are not available for confiscation, but I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported

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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).”

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

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

24.5.3 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

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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."

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

24.6 In view of above facts, findings and legal provisions, I find that it is an admitted fact that the noticee has misdeclared the goods. Therefore, I hold that the acts and omissions of the importer, by way of collusion and wilful mis-statement of the imported goods, have rendered the goods liable to confiscation under section 111 (i) and 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.**

G. AS TO WHETHER PENALTY SHOULD BE IMPOSED ON THE IMPORTER UNDER SECTION 112(A)/114A AND 114AA OF THE CUSTOMS, ACT, 1962.

25. As per my detailed findings in paras 19 and 20 above, I find that with the introduction of self-assessment by amendments to Section 17, since 8th April, 2011, it is the added and enhanced responsibility of the importer to declare the correct description, value, quantity, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods.

25.1. I reiterate my findings from paras 19 and 20 above for the question of penalty also as the same are mutatis mutandis applicable to this issue also. The provisions of Section 114 A / 112 (a) of the Customs Act, 1962 are reproduced as under: -

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

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:

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

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

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

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

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penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect :

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

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

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

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

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

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

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

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

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

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

Undue advantage obtained by the deceiver will almost always cause loss or detriment to the deceived. Similarly a “fraud” is an act of deliberate deception with the design of securing

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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. Chengalvaraya Naidu v. Jagannath [1994 (1) SCC 1: AIR 1994 S.C. 853]. It is said to be made when it appears that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly and carelessly whether it be true or false [Ref :RoshanDeenv. PreetiLal [(2002) 1 SCC 100], Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education [(2003) 8 SCC 311], Ram Chandra Singh's case (supra) and Ashok Leyland Ltd. v. State of T.N. and Another [(2004) 3 SCC 1].

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

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

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

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

25.3 As explained above, it is conclusively established that the importer M/s. Garodia Printers has mis declared the goods in terms of quantity and value to evade appropriate Customs Duty. Thus, the importing firm has deliberately mis declared the goods and evaded the duty of Rs. Rs. 22,71,503/- (Twenty-Two Lakh Seventy-One Thousand Five Hundred and Three only) in respect of 03 live bills of entry and of Rs. 1,15,40,375/- (Rupees One Crore Fifteen Lakh Forty Thousand Three Hundred and Seventy-Five only) in respect of 20 past bills of entry which should be demanded and recovered from the importing firm under Section 28 (4) of the Customs Act, 1962. Consequently, the importing firm is liable for penalty under Section 114A of the Customs Act, 1962.

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

25.5 Further I observe that Penal Action under Section 114 AA of the Customs Act has also been proposed against M/s. Garodia Printers.

The relevant provision of the Section 114AA of the Custom Act, 1962 is as under: -

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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.

I reiterate my findings from paras 19 and 20 for the question of penalty also as the same appears mutatis mutandis to this also.

25.6 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 misdeclared 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.

25.7 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)

25.8 As observed in paras above, in the instant case, there is clear evidence of fraud and suppression of facts. The M/s. Garodia Printers has cleared the imported goods by mis declaration to enrich themselves by paying less legitimate Customs Duty. Therefore, I hold that M/s. Garodia Printers is liable for imposition of penalty under Section 114AA *ibid*.

H. AS TO WHETHER PENALTY SHOULD NOT BE IMPOSED ON THE CUSTOMS BROKER M/S XPRESS INTERLINK LOGISTICS UNDER SECTION 112(B) & 114AA OF THE CUSTOMS, ACT, 1962.

26. 1 Relevant provision of Section 112 of the Customs Act, 1962 is as under:-

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

(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 ¹⁷[not exceeding the value of the goods or five thousand rupees], whichever is the greater;*
- ¹⁸*[(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

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the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the penalty so determined;]

- (iii) *in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty ¹⁹[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 ²⁰[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 ²¹[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.*

26.2 I reiterate my findings at para 19 and 20 above. I observe that in the instant case, the Importer has filed total 23 Bills of entries including live and past bills of entry through same Customs Broker i.e. M/S Xpress Interlink Logistics._

I observe that the provision of regulation 10 (d) and 10 (e) of the Customs Broker Licensing regulation, 2018 are also important and have binding on all Customs Broker's including M/S Xpress Interlink Logistics. The said binding provision are reproduced below :-

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

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

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

Further I observe that investigation has brought on the following evidences on the record:-

Sr. No.	Particulars	RUD
1	Panchnama dtd. 24.12.2020, 07.01.2021 & 08.01.2021	RUD-1
2.	seizure memo dated 19.01.2021	RUD-2
3.	Calculation sheet Annexure -I	RUD-3
4.	Copy of Test Reports	RUD-TR
5.	Copy of statement of Shri Prashant Kanaiyalal Goradia proprietor of M/s Goradia Printers	RUD-4
6.	Payment of Rs. 10,00,000 vide Challan no. HC327 dtd 17.03.2021 and Provisional Release letter	RUD-5
7.	Alert Circular No. 02/2019 dt 16.10.2019	RUD-6
8.	Calculation sheet Annexure -I & II	

26.3 It is on record that the CB was aware that the importing firm M/s. Garodia Printers has mis declared the value and quantity of the PU coated fabrics. It was the duty of the CHA to guide the importer to declare the goods correctly, as in the instant case the goods were filed with declaring/ mentioning the GSM of the imported PU Fabrics. I observe that it was the CHA was aware of the

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actual quantity and value of the goods that is why he filed the documents on behalf of the importer without mentioning the GSM. It was CHA who has played the master role in this episode by clearing the goods without declaring proper GSM and thereafter declaring the wrong value and the quantity.

26.4 Further, the evidence conclusively establishes the Customs Broker's culpability, leaving no doubt about their involvement in the fraud. It is thus clear that the CB was aware of the importer's fraudulent activities and actively participated in clearing the goods. The CB's role was not merely passive, but rather, they facilitated the fraud by providing incomplete information at the time of filing of documents, making them a willing participant in the illicit scheme.

26.5 I find that in this case, the Customs Broker failed to fulfil his obligations by not advising his client to adhere to the truthfulness of the products imported. Furthermore, he neglected to report the non-compliance to the Deputy Commissioner as required under Regulation 10(d) of CBLR, 2018. I further find that the Customs Broker breached his obligations under Regulation 10(m) of the Customs Brokers Licensing Regulations (CBLR) 2018, as he failed to discharge his duties with utmost efficiency. For which separate proceeding under CBLR 2018 may be initiated.

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

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

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

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

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

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

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

"A Custom Broker occupies a very important position in the customs House and was supposed to safeguard the interests of both the importers and the Customs department. A lot of trust is kept in CB by the Government Agencies and to ensure made under CBLR, 2013 and therefore rendered themselves liable for penal action under CBLR, 2013 (now CBLR, 2018)".

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

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

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

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

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

7. The moot question for deciding in this Appeal is whether in the facts of the case, the Appellant viz., Shri ShakellyVenkat Chand was acting in good faith, exercising due diligence or there was any malafide intent in tacitly helping the importer to clear the consignment, which was found to be grossly misdeclared. The role of the Customs Broker

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is very crucial in the process of clearance of goods as they are required to do due diligence before facilitating filing of relevant documents for clearance of goods. As a regular Customs Broker, it is not expected that he would accept any document including KYC in a mechanical manner. He is expected to exercise due diligence to satisfy about the bonafide of the importer and the documents submitted by him. The employee of the Customs Broker in the instant case has in fact noted and admitted that there was some kind of impersonation and that should have alerted him and he should have brought to the notice of the Customs Authority immediately, instead he remained silent. This is the admitted position in the statement given by the Appellant and the Appellant is also not denying this fact nor giving any substantive reason about him being silent about the impersonation in the first place. He is responsible for the act of his employee also who is misrepresenting the CHB before the Customs Authorities.....

26.12 I find that Noticee has contended that Mens Rea is prerequisite for penalty under section 112(b).

I find no merit in the contention of the Noticee because of the following reasons:-

- It is the duty of the Customs Broker to guide the importer regarding the classification, declaration, quantity, valuation of the goods.
- In the instant case the Bill of entry was filed and description was found incomplete.
- The CB has failed to mention the GSM in the description of the goods, which is important in the case of PU coated fabrics.
- Filing the documents without proper description shows the culpability of the CB.

26.13 In the nutshell, in view of the negligence rendered by M/s Xpress Interlink Logistics have failed in discharging their duties and despite knowing or having reason to believe that the impugned goods imported are liable to confiscation under section 111(m) of the Customs Act, 1962 and aided the importer M/s. Garodia Printers in clearing the impugned goods. Therefore, I find that the CHA M/s Xpress Interlink Logistics is liable for penalty under Section 112 (b) of the Customs Act, 1962.

26.14 Further I observe that Penal Action under Section 114 AA of the Customs Act has also been proposed against M/s Xpress Interlink Logistics.

The relevant provision of the Section 114AA of the Custom Act, 1962 is as under: -

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.

I reiterate my findings from paras 19 and 20 for the question of penalty also as the same appears mutatis mutandis to this also.

26.15 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,

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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 misdeclared 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.

26.16 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)

26.17 As observed in paras above, in the instant case, there is clear evidence of fraud and suppression of facts. The M/s Xpress Interlink Logistics has helped the importer in clearing the imported goods by mis declaration to enrich themselves by paying less legitimate Customs Duty. Therefore, I hold that M/s Xpress Interlink Logistics is liable for imposition of penalty under Section 114AA ibid.

27. In view of the above facts of the case and findings on record, I pass the following order;

ORDER

- i. I order to reject the declared quantity and thickness of the goods imported vide three provisionally assessed Bills of Entry and past 20 Bills of Entry (as mentioned in Table-I and II above) and I order to redetermine the quantity as per proposed in the SCN in Annexure -I and Annexure -II and same shall be taken for valuation purpose.
- ii. I order to reject the declared assessed value of the goods in respect of three provisionally assessed Bills of Entry (9989693 dated 17.12.2020, 2071288 dated 22.12.2020 and 2071340 dated 22.12.2020) and I order to re-determine the value to **Rs. 1,23,59,523/- (One Crore Twenty-Three Lakh Fifty-Nine Thousand Five Hundred and Twenty-Three)** as shown in the **Table I** above.
- iii. I order to finalize the Bills of Entry No. 9989693 dated 17.12.2020, 2071288 dated 22.12.2020 and 2071340 dated 22.12.2020 with re-determined value and differential duty amounting to **Rs. 22,71,503/- (Twenty-Two Lakh Seventy-One Thousand Five Hundred and Three)** and I order to recover the same under Section 18 of the Customs Act, 1962.
- iv. I order confiscation of the said goods imported under three live Bills of Entry, totally valued at **Rs. 1,23,59,523/- (One Crore Twenty-Three Lakh Fifty-Nine Thousand Five Hundred and Twenty-Three)**, as detailed in **Table-I** under section 111 (i) and section 111(m) of the Customs Act, 1962, and impose redemption fine of **Rs. 30,00,000(Thirty Lakhs)** on M/s Goradia Printers in respect of these goods for their redemption u/s 125 of the Customs Act, 1962.
- v. I order to reject the declared assessed value of the goods in respect of 20 past Bills of Entry (as mentioned in Table-II above) and re-determine the same to **Rs. 4,02,83,729/- (Four Crore Two Lakh Eighty-Three Thousand Seven Hundred and Twenty-Nine)**, as shown in the **Table-II** above.
- vi. I order confiscation of the said goods imported under past 20 Bills of Entry, totally valued at **Rs. 4,02,83,729/- (Four Crore Two Lakh Eighty-Three Thousand Seven Hundred and Twenty-Nine)**, as detailed in **Table-II** under 111 (i) and 111(m) of the Customs Act, 1962 and impose redemption fine of **Rs. 1,00,00,000/- (One Crore)** on M/s Goradia Printers in respect of these goods for their redemption u/s 125 of the Customs Act, 1962.
- vii. I order confirm the demand of differential Customs duty amounting to **Rs. 1,15,40,375/- (Rupees One Crore Fifteen Lakh Forty Thousand Three Hundred**

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- and Seventy-Five)** short levied on the said goods covered under bills of entry, as detailed in **Table-II above**, and I order to recover the same from importer under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962.
- viii. I order to appropriate the amount of **Rs.10,00,000/-(Rupees Ten Lakhs) deposited by M/s Garodia Printers**, against the aforesaid demand of duty, fine, penalty and interest.
- ix. I impose a penalty equivalent to differential duty of to **Rs. 1,15,40,375/- (Rupees One Crore Fifteen Lakh Forty Thousand Three Hundred and Seventy-Five)** and interest accrued there upon on the importing firm **M/s Garodia Printers** under section 114A of the Customs Act, 1962.
In terms of the first and second proviso to Section 114A ibid, if duty and interest is paid within thirty days from the date of the communication of this order, the amount of penalty liable to be paid shall be twenty-five per cent of the duty and interest, subject to the condition that the amount of penalty is also paid within the period of thirty days of communication of this order.
- x. I impose penalty of Rs.50,00,000/- (Fifty Lakhs) on the M/s Goradia Printers under Section 114AA of the Customs, Act, 1962;
- xi. I impose penalty of Rs. 10,00,000/-(Ten Lakhs) on the Customs Broker M/s Xpress Interlink Logistics under Section 112(b) of the Customs, Act, 1962;
- xii. I impose penalty of Rs. 10,00,000/- (Ten Lakhs) on the Customs Broker M/s Xpress Interlink Logistics under Section 114AA of the Customs, Act, 1962;

Digitally signed by
Vijay Risi
Date: 30-08-2025
20:05:59
(VJAY RISI)
COMMISSIONER OF CUSTOMS
NS-III, JNCH

To

1. **M/s. Goradia Printers,
First Floor, Plot 119,
C Ranjit Studio, Dadsaheb Phalke Road,
Dadar East, Mumbai, Maharashtra – 400 014.**
2. **M/s. Xpress Interlink Logistics, Customs Broker,
Shop No. 20A, Mesanine Floor, Old Bhardan Lane VAdgadi,
Opp. Somaiya Transport, Masjid, Transport, Masjid West,
Mumbai- 400003**

Copy To:

1. The Pr. Commissioner of Customs (General), Customs Broker Section, New Custom House, Ballard Estate, Mumbai.
2. AC/DC Group – III, JNCH.
3. The Asstt / Dy. Commissioner of Customs, SIIB (Import), JNCH, Nhava Sheva - to upload the OIO in DIGIT.
4. AC/DC, Chief Commissioner's Office, JNCH
5. AC/DC, Centralized Revenue Recovery Cell, JNCH
6. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
7. Office Copy.

