

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

DIN – 20250778NX000000E013

Date of Order: 14.07.2025

F. No. S/10-78/2024-25/COMMR/GR.VA/NS-V/CAC/JNCH

Date of Issue: 14.07.2025

SCN No.:769/2024-25/COMMR/GR.VA/CAC/JNCH

SCN Date: 16.07.2024

Passed by: Sh. Anil Ramteke

Commissioner of Customs, NS-V, JNCH

Order No: 122/2025-26/COMMR/NS-V/CAC/JNCH

Name of Noticees: M/s. Raj Traders & Others



ORDER-IN-ORIGINAL

मूल - आदेश

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

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

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

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

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

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

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

फार्म - सीए3, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कम से कम एक प्रति प्रमाणित होनी चाहिए).

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

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

**Fee -फ़ीस-**

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

- (क) एक हजार रुपये जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये या उस से कम है।
- (b) Rs. Five Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 Lakh.
- (ख) पाँच हजार रुपये – जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये से अधिक परंतु 50 लाख रुपये से कम है।
- (c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.
- (ग) दस हजार रुपये – जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 50 लाख रुपये से अधिक है।

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

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

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

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

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

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

**Subject: Adjudication of Show Cause Notice No.769/2024-25/COMMR/GR.VA/ CAC/JNCH dated 16.07.2024 issued to by M/s Raj Traders (IEC - 0316949132)– reg.**

**1. BRIEF FACTS OF THE CASE**

**1.1** Whereas, M/s Raj Traders (IEC: 0316949132) having registered address at MB7/A, Mezz Floor, 10/21, Flox Chamber, Tata Road No.-1, Opera House, Girgaon, Mumbai-400004 (hereinafter referred to as 'the importer/noticee') through their authorized customs broker (CB), M/s Prakhar Gupta (ASLPG5339H) filed Bills of Entry No. as mentioned in Table-I (hereinafter referred to as 'subject bills of entry') for import of "LED TV Panel of different sizes" during the year 2019 and 2020. Details of said bills of entry are tabulated as below: -

**Table-I**

Sr. No.	BE No.	BE Date	Type of Goods found	Declared Brand	Qty (in Pcs)	UQ C	Declared Value (in USD)	Declared Unit Value in RS
1	5075763	27.09.2019	LED TV PANEL 43"	Sony	150	Pcs	90	6498
			LED TV PANEL 48"	Sony	20	Pcs	100	7220
			LED TV PANEL 49"	Sony	35	Pcs	103	7436.6
			LED TV PANEL 55"	Sony	35	Pcs	120	8664
2	5481421	30.10.2019	LED TV PANEL 49"	Sony	8	Pcs	103	7446.9
			LED TV PANEL 55"	Samsung	113	Pcs	120	8676
			LED TV PANEL 65"	Samsung	74	Pcs	140	10122
			LED TV PANEL 75"	Samsung	21	Pcs	266	19231.8
			LED TV PANEL 82"	Samsung	18	Pcs	310	22413
3	5921215	03.12.2019	LED TV PANEL 55"	Samsung	92	Pcs	120	8730
			LED TV PANEL 65"	Samsung	122	Pcs	140	10185
			LED TV PANEL 75"	Sony	8	Pcs	266	19351.5
			LED TV PANEL 82"	Samsung	15	Pcs	310	22552.5
			LED TV PANEL 85"	Sony	2	Pcs	320	23280
4	6284652	30.12.2019	LED TV PANEL 55"	Samsung	210	Pcs	120	8628
			LED TV PANEL 65"	Samsung	76	Pcs	140	10066
			LED TV PANEL 75"	Sony	12	Pcs	266	19125.4
			LED TV PANEL 82"	Sony	6	Pcs	310	22289
5	7074946	02.03.2020	LED TV PANEL 55"	Samsung	214	Pcs	120	8718
			LED TV PANEL 65"	Samsung	52	Pcs	140	10171
			LED TV PANEL 75"	Sony	22	Pcs	266	19324.9
6	9602410	17.11.2020	LED TV PANEL 55"	Samsung	180	Pcs	120	9018
			LED TV PANEL 65"	Samsung	88	Pcs	140	10521
			LED TV PANEL 75"	Samsung	15	Pcs	160	12024
			LED TV PANEL 82"	Sony	5	Pcs	180	13527
7	9821365	04.12.2020	LED TV PANEL 43"	Sony	75	Pcs	86.75	6480.22
			LED TV PANEL 55"	Sony	240	Pcs	120	8964
			LED TV PANEL 65"	Sony	50	Pcs	140	10458
8	2136618	28.12.2022	LED TV PANEL 55"	Samsung	89	Pcs	120	8934
			LED TV PANEL 65"	Samsung	128	Pcs	140	10423
			LED TV PANEL 70"	Sony	1	Pcs	150	11167.5
			LED TV PANEL 75"	Samsung	26	Pcs	160	11912
			LED TV PANEL 82"	Sony	3	Pcs	180	13401
			LED TV PANEL 85"	Samsung	3	Pcs	200	14890

**1.2** During the course of investigation by SIIB(I), JNCH, in a case vide F. No. SG/Inv-65/2020-21/C-cell/SIIB (I)/JNCH, it was observed that importer did not declare the brand name with the description and also undervalued the subject imported goods. It was checked in ICES system and found that M/s. Raj Traders imported the same items i.e., LED TV PANEL of different sizes with generic description in past also as mentioned above in Table-I by way of willful misdeclaration in terms of generic description and undervaluation during the year 2019 and 2020 to evade applicable customs duty.



**1.3** During the course of investigation, statement of Shri. Bimal Shah, Proprietor of M/s Raj traders was recorded under Section 108 of Customs Act, 1962, on 13.02.2023, wherein, he inter alia stated that: -

- i) They are engaged in trading of LED spare parts, oil and auto parts mainly; that only 10% of overall volume of their business is being imported and remaining 90% they purchased from local market; that they are not into exports and hardly exported one or two shipments; that he looked after the purchase and sale in case of both domestic and foreign for M/s. Raj Traders being the proprietor; that he looked after almost every work or in its management.
- ii) They came in contact with the custom broker through some reference and paid Rs. 5,000/- plus GST per container to their custom broker for the services like assessment, examination, loading and unloading of cargo, etc.; that M/s. Prakhar Gupta, their authorized custom broker filed bill of entry no. 9602410 dated 17.11.2020, 7074946 dated 02.03.2020, 9201553 dated 16.10.2020, 9064120 dated 05.10.2020, 9010687 dated 30.09.2020, 5075763 dated 27.09.2019, 5481421 dated 30.10.2019 and 5921215 dated 03.12.2019 on their behalf.
- iii) On being asked about the content of the goods ordered with foreign supplier and imported vide subject Bills of Entry, he replied that they ordered for Samsung and Sony brand LED TV panel of different sizes and the same were declared in the bill of entry.
- iv) He confirmed that M/s. Quality Export House Pte Limited is one of the regular suppliers to their firm; that they came in contact with the supplier through some local reference and then they visited Dubai to supplier's go-down and after seeing the goods, they placed the order; that the said order was documented via sales contract and accordingly, the supplier delivered the goods as per the said sales contract; that the said goods were stock lot goods and were imported on 90 days DA.
- v) On being asked when they were getting the goods from four different countries how come rates were same even including freight, as freight from different country must be different, he replied that it is correct that the freight from different country/port is different, however, they always imported on cost and freight basis and invoice was always generated on cost and freight basis. As the freight from different countries is different, supplier must have adjusted in their profit margin to sell the goods.
- vi) On being asked whether the payment for the above said bills of entry had been made to which he replied that he had to check and submit the same within one week's time.
- vii) On being asked why he didn't declare the brand in the bill of entry, he replied that they declared the brand in respective column of the bill of entry, however, they didn't declare brand in description column.
- viii) On being asked why he didn't declare the brand in description column of the bill of entry, he replied that they mentioned the item description as per the invoice and packing list in description column, brand and model no. is mentioned in their respective column and not in description box.
- ix) On being asked that on examination of Bills of Entry filed by him, it had been noticed that he didn't mention item wise brand but against every item he mentioned Sony/Samsung and also asked to explain, he replied that in some bill of entry where single brand goods were imported, they mentioned the brand name in the specific column, however, wherever both Sony/Samsung brands good were imported, they mentioned Sony/Samsung as value for both the brands were same.
- x) On being asked that he is also partner in firm namely M/s. Global International and also asked to explain when they are importing similar goods, why two different IECs are required he replied actually, he had two firms. One is proprietorship firm in his name and



other is partnership firm with his wife; that he had done the same to make his wife taxpayer as she didn't have any other income and also splits the income with his wife.

**1.4** Statement of Shri. Bimal Shah, Proprietor of M/s Raj traders was recorded under Section 108 of Customs Act, 1962, on 06.10.2023, wherein, he inter alia stated that:

- i) On being asked that as per his IEC certificate his registered address is different from his earlier address and further asked had he changed his office address, he stated that he changed his office address to Ground Floor, Shop no. 07, Aman Chambers, Mama Parmanand Marg, Opera House, Mumbai- 400004.
- ii) On being asked how many brands of LED TV PANEL had he imported in last five years, he replied that he imported only LED TV PANEL of Sony and Samsung brand in past.
- iii) On being asked that he had the sale invoices of all imported LED TV PANEL or otherwise, he replied that he had sales invoices of all imported LED TV PANELS and he submitted the signed copies of the same.
- iv) On being asked that brand name is not mentioned in sale invoices, he replied that he mentioned the same description which was mentioned in invoices.
- v) On being asked did he sale all imported LED TV PANEL of Samsung/Sony brands in the same price he replied that Sony/Samsung both are treated as branded goods in India, hence, they are sold at same price in India.
- vi) On being asked it was his modus operandi to hide the actual brand name by not mentioning brand name in description of Bill of Entry and sales invoice, he stated i that he mentioned the brand name in respective brand column of Bill of Entry during filing the same and in sales invoices did not understand necessary to mention the brand name in invoices because both brands are similar in price.
- vii) On being asked about any records of imported LED TV PANEL, he replied that on receiving the cargo at Bhiwandi Godown, he prepared a list of all items with brand name.
- viii) On being asked has he had the B/E wise list of LED TV PANEL with brand name, he stated that he had the list and he submitted the same, wherein B/E no., date, invoice no, & date, quantity and product name with brand name is mentioned.
- ix) On being asked it assumed that he mentioned the brand name in invoice and packing list not with description but as per NIDB contemporary data his declared value is very low and further asked what he had to say in this regard, he replied that he purchased all the goods in stock- lot on negotiate price and the same is transaction value which was declared by him in invoices.

During scrutiny of the documents which were uploaded on e-Sanchit such as invoice and packing list, it was noticed that both brand name mentioned in seven bills of entry in respective brand column. It was checked in ICES system also but importer declared both brand in respective brand column in above mentioned seven bills of entry. During statement importer submitted an annexure enclosed as RUD-3 to the SCN (BE-wise list wherein specific brand mentioned with item-wise).

**1.5** Statement of Shri Toushif Ibrahim Shaikh, H-Card Holder of M/s Prakhar Gupta was recorded under Section 108 of Customs Act, 1962, on 26.12.2022, wherein, he inter alia stated that:

- i) On being asked to specify what kinds of goods did he clear, were there any specific category of goods or he cleared goods in general he replied they did not work in any specific category. Actually, they work in general category which means any kind of work which comes to them and allowed under Customs Act and other Allied Act.

- ii) On being asked how they acquired clients, he stated that they generally tried to acquire clients through their references in the industry and these 04 clients namely M/s. Electronic Stock Exchange, M/s. Global International, M/s. Ideal Impex and M/s. Raj Traders, were brought to them by Shri Hakim Shaikh who was worked in their CB, M/s. Prakhar Gupta.
- iii) On being asked who filed Bill of Entry in their office in Mumbai, he replied that only he filed bill of entry after the checklist was verified by the importer.
- iv) On being asked about all the bills of entry for M/s. Electronic Stock Exchange, M/s. Global International, M/s. Ideal Impex and M/s. Raj Traders, he stated that he filed all the bills of entry in respect of these importers through CB, M/s. Prakhar Gupta.
- v) On being asked why he did not mention the brand as per the invoice and packing list, he replied that they did not write brand name in description column, however, there is specific column for the brand and model no. in bill of entry and he always mentioned brand and model no. in the respective column as per the details available in invoice, packing list or any other import documents.
- vi) On being asked did he mention the brand like Sony and Samsung in the respective column of the bill of entry, he replied that he mentioned Samsung/ Sony or any other brand as per the invoice and packing list; that in case of LED TV panel there have been instances where the IPR NOC was also taken from IPR cell, when the docks or assessing group raised such query.
- vii) On being asked did he visit the address of all the four importers, he replied that Shri Hakim Shaikh had visited the address situated in Delhi and he verified the address situated in Mumbai; that out of these four importers, M/s. Global International and M/s. Raj Traders are based in Mumbai and remaining two are based in Delhi.
- viii) On being asked what Shri Hakim Shaikh was doing those days, he replied since 2021, Shri Hakim Shaikh was working with their firm but from 2022 he had joined new custom broker firm and he did not know where he had joined.
- ix) On being shown the copy of summons issued to M/s. Electronic Stock Exchange, M/s. Global International, M/s. Ideal Impex and M/s. Raj Traders vide Summons No. KS/410/2022-23, KS/411/2022-23, KS/413/2022-23 and KS/412/2022-23, respectively all dated 23.11.2022, which were sent vide speed post and he was given the hard copy for the same but none of the importer has turned up and further asked did he has any communication with the importer, he replied that he had forwarded the said summons to Shri Hakim Shaikh and followed up with him and one similar matter of M/s. Narayan Industries was pending in assessing group for adjudication, so, they would come and attend the same after adjudication.
- x) On being asked has he had any knowledge about the remittance made by importer against the imported goods (LED TV Panel) by M/s. Electronic Stock Exchange, M/s. Global International, M/s. Ideal Impex and M/s. Raj Traders, he replied that as per the invoice payment was 90 days after delivery so he couldn't confirm whether the payment had been made or not.
- xi) On being asked how he received invoice and packing list and other import related document from importer M/s. Electronic Stock Exchange, M/s. Global International, M/s. Ideal Impex and M/s. Raj Traders, he replied that the document was given to them in the office by the importer based in Mumbai, however, for the importer situated in Delhi the document was given to them in office by the office boys of Shri Gurvinder Singh Kocher, who was authorized by the importer for giving them the document.
- xii) On being asked as he said the document was given to their office in hard copy, so did he ever receive the original copy of documents or their office always received the scanned copy of the documents, he replied that the documents other than BL was given in colored

copy to them and the said documents were not in original; that they always received original BL, sometimes the BL was surrendered before it reaches to them.

- xiii) On being asked did he present during the examination of Samsung/Sony LED TV Panel imported by M/s. Electronic Stock Exchange, M/s. Global International, M/s. Ideal Impex and M/s. Raj Traders, he stated that he was present in many examinations of the said goods and the goods were always found as declared in terms of quantity, description, brand and any other declaration by the importer.
- xiv) He stated that they always mentioned the brand, model no. or any other details as per the invoice, packing list and other import documents in respective columns of the bills of entry and these goods, when subjected to the IPR verification, were accorded IPR NOC.

**1.6** With the introduction of the self-assessment scheme, the onus is on the importer to comply with the various laws, determine his tax liability correctly and discharge the same. The importers are required to declare the correct description, value, classification, notification number, if any, on the imported goods. Self-assessment is supported by Section 17, 18 and 46 of the Customs Act, 1962 and the bill of entry (Electronic Declaration) Regulation, 2011. The importer is squarely responsible for self-assessment of duty on imported goods and filing all declaration and related documents and confirming these are true, correct and complete. Self-assessment can result in assured facilitation for compliant importers. However, delinquent importers would face penal action on account of wrong self-assessment made with intent to evade duty or avoid compliance of conditions of notifications, Foreign Trade Policy or any other provisions under the Customs Act, 1962 or the Allied Acts. The relevant provisions of law relating to import, assessment of duty, and the liability of the goods to confiscation and imposition of penalty are as per the provisions of the Customs Act, 1962 as amended from time to time.

**1.7** During the course of the investigation, it was observed that importer M/s. Raj Traders has intentionally omitted declaring the brand name of the LED TV panels in the description column during importation of the goods, "LED TV panels". Furthermore, they undervalued the goods, which mean they deliberately misrepresented the value of the imported LED TV panels to pay lesser customs duties. Additionally, they engaged in a scheme where they sold the imported items to each other (M/s. Raj Traders, M/s. Electronics Stock Exchange, M/s. Ideal Impex, and M/s. Global International) under GST invoices and all these importers intentionally omitted mentioning the brand name of the LED TV panels in both import documents (bill of entry) and sales documents (sales invoices). This omission further facilitated the deception regarding the actual value of the imported goods. This convoluted exchange was designed by above mentioned importers to obscure the true market value of branded LED TV panels and circumvent the customs duty payment.

**1.8** Show Cause Notice relied upon various legal provisions viz. Section 17(1), 28(4), 46(4), 111(m), 112, 114A and 114AA of the Customs Act, 1962.

### **1.9. Valuation of the goods**

**1.9.1** The importer had not declared the brand name of the items with description in the bill of entry. It is pertinent to mention that in case of electronic goods valuation of the items are decided as per the brand, model no and size of the goods.

**1.9.2** Since there was apparent hiding of information with regard to brand of goods being imported and apparent undervaluation of the goods in the subject consignment, the declared value of the goods of all the bills of entry mentioned in Table-I is liable to be rejected, in terms of Rule 12 of the Customs valuation(Determination of Price of Imported Goods) Rules, 2007 (here-in-after referred to as 'CVR 2007'), read along with Section 14(1) of the Customs Act, 1962 and the value needs to be re-determined in accordance with the CVR, 2007.

**1.9.3** Valuation of goods for the purpose of assessment of customs duties is governed by the provisions of Section 14 of the Customs Act, 1962, which provides that the value of imported goods shall be the transaction value of such goods, when sold for export to India for delivery at the time and place of importation, where the buyer and seller of the goods are not related and price



is the sole consideration for the sale, subject to such other conditions as may be specified in the rules made in this behalf. Further, the Custom Valuation Rules (Determination of Price of imported goods), 2007, having been framed under the provisions of Section 14, provides for determination of value in a variety of situations. More specifically, Rule 3 of the CVR, 2007 provides that subject to Rule 12, value of the goods shall be the transaction value adjusted in accordance with Rule 10.

**1.9.4** However, in the instant case, the brand and model numbers of imported goods were not declared with description in the respective bills of entry filed for their clearance. Accordingly, value declared to the customs in the respective bills of entry did not represent the true transaction value of the goods actually imported. It, therefore, appeared that the value declared is liable to be rejected under the provisions of Rule 12 of the CVR, 2007.

**1.9.5** Further, Shri Bimal P. Shah, Proprietor, of M/s. Raj Traders, did not provide any documentary evidence of the true transaction value of the imported goods, therefore, it cannot be determined under Rule 3 of the CVR, 2007.

**1.9.6** Rule 3(4) of the CVR 2007 prescribe that, "If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rules 4 to 9. As the value of impugned goods could not be determined under the provisions of sub-rule (1) of Rule 3 of the Customs Valuation Rules (CVR), 2007, the same was required to be determined sequentially under rule 4 to 9 of CVR 2007. As per Rule 4 of CVR, 2007, 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; Further, as per Rule 5 of CVR, 2007 the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued: To determine the value of the imported goods as per Rule 4 or Rule 5 of CVR 2007, contemporaneous data of import of identical or similar goods was required, however, no concrete data of identical or similar items in terms of description, quantity and country of origin was found in customs database, therefore, value of the goods cannot be determined as per Rule 4 and 5 of the Customs Valuation Rules (CVR), 2007. As per Rule 6 of the CVR, 2007 if the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, then under rule 8. Further, due to non-availability of the actual profit, transportation, general expenses in each transaction and cost of production & profit percentage of the supplier, it appears that determination of value under Rule 7 and Rule 8 of the CVR 2007 is not a feasible option. Therefore, the valuation of impugned goods was to be done under Rule 9 of the CVR, 2007 using reasonable means consistent with the principles and general provisions of these Rules and on the basis of data available in India. The data of assessable value of similar goods, which are available in India, are as under:

**TABLE-II**

Sr. No.	Description	B/E No. & date	Port of import	Size	Value declared in B.E.(USD)	Value as per NIDB data (IN Rs.)
1	Samsung LED TV Panel	8471636 dated 14.08.2020	INCCU1	55"	250	18937.5
2	Samsung LED TV Panel	9003346 dated 30.09.2020	INCCU1	65"	300	22380
3	Samsung LED TV Panel	9003346 dated 30.09.2020	INCCU1	75"	350	26110
4	Samsung LED TV Panel	9003346 dated 30.09.2020	INCCU1	82"	380	28348
5	Samsung LED TV Panel	3748530 dated 21.06.2019	INCCU4	55"	430	30272
6	Samsung LED TV Panel	3748530 dated 21.06.2019	INCCU4	65"	520	36608

7	Samsung LED TV Panel	3748530 dated 21.06.2019	INCCU4	75"	550	38720
8	Samsung LED TV Panel	3748530 dated 21.06.2019	INCCU4	82"	850	59840
9	Samsung LED TV Panel	9770070 dated 01.12.2020	INCCU1	55"	250	18800
10	Samsung LED TV Panel	9770070 dated 01.12.2020	INCCU1	65"	300	22560
11	Samsung LED TV Panel	9770070 dated 01.12.2020	INCCU1	75"	350	26320
12	Samsung LED TV Panel	9770070 dated 01.12.2020	INCCU1	85"	400	30080
13	Sony LED TV Panel	9573760 dated 09/01/2019	INDEL4	43"	189.85	13099.31
14	Sony LED TV Panel	2706190 dated 04/04/2019	INDEL4	48"	245.44	17180.80
15	Sony LED TV Panel	2430337 dated 15.03.2019	INCCU4	49"	310	22010
16	Sony LED TV Panel	4050524 dated 12.07.2019	INCCU4	55"	375	26156.25
17	Sony LED TV Panel	2430337 dated 15.03.2019	INCCU4	75"	580	41180
18	Sony LED TV Panel	8471636 dated 14.08.2020	INCCU4	85"	400	30300
19	Sony LED TV Panel	9770070 dated 01.12.2020	INCCU1	55"	250	18800
20	Sony LED TV Panel	9770070 dated 01.12.2020	INCCU1	65"	300	22560
21	Samsung LED TV Panel	8471636 dated 14.08.2020	INCCU1	70"	325	24618.75
22	Samsung LED TV Panel	7311886 dated 20.03.2020	INCCU4	55"	295	22346.25
23	Samsung LED TV Panel	7311886 dated 20.03.2020	INCCU4	65"	480	36360

Since value of Sony LED TV Panel 70" & 82" is not available therefore value of another similar brand i.e. Samsung LED TV panel 70" & 82" is taken for duty calculation in respective bills of entry.

**1.10** Further, the total Re-determined value on the basis of NIDB data is Rs. 6,33,83,648/- (Rupees Six Crore Thirty-Three Lakh Eighty-Three Thousand Six Hundred and Forty Eight only) and re-determined duty is Rs. 2,37,49,853/- (Rupees Two Crore Thirty-Seven Lakh Forty-Nine Thousand Eight Hundred and Fifty-Three only). Based on the re-determined assessable value, the duty differential duty worked out to be Rs. 1,57,38,020/- (Rupees One Crore Fifty-Seven Lakh Thirty-Eight Thousand and Twenty Only) (rounded-off to nearest decimal number) (as per Annexure-A to the SCN).

**1.11** From the above, it appears that:

- a. M/s. Raj Traders and CB, M/s. Prakhar Gupta have indulged in misdeclaration in terms of generic description, i.e. brand name did not mentioned with description and undervalued the impugned goods thereby, rendering the goods liable for confiscation under Section 111(m) of the customs act, 1962.
- b. Consequent to the said mis-declaration and undervaluation in respect of subject impugned goods, the Redetermined value on the basis of NIDB data is Rs. 6,33,83,648/- (Rupees Six Crore Thirty-Three Lakh Eighty-Three Thousand Six Hundred and Forty-

Eight only) and re-determined duty is Rs. 2,37,49,853/- (Rupees Two Crore Thirty-Seven Lakh Forty-Nine Thousand Eight Hundred Fifty-Three only). Based on the re-determined assessable value, the differential duty worked out to be Rs. 1,57,38,020/- (Rupees One Crore Fifty-Seven Lakh Thirty-Eight Thousand and Twenty Only) (rounded-off to nearest decimal number) (as per Annexure-A to the SCN).

- c. M/s. Raj Traders had tried to evade applicable customs duty by way of declared generic description i.e. brand name did not mentioned with description and undervalued the impugned goods imported vide above BE's mentioned Table-I. The importer, M/s. Raj traders had attempted to evade duty to the tune of Rs. 1,57,38,020/- by providing incorrect data in bills of entry in terms of generic description of goods and value of the impugned goods. By the above acts of omission & commission on the part of the importer, he rendered the goods liable for confiscation under Section 111(m) of the customs act, 1962 and consequently rendered himself liable for penal action under Section 112(a)/114A of the Customs Act, 1962.
- d. Shri. Bimal Shah, Proprietor of M/s. Raj Traders had knowingly mis-declared the impugned goods in terms of generic description & undervalued the subject impugned goods with intent to fraud the government exchequer. By the above acts of omission & commission on the part of the importer, he rendered the goods liable for confiscation under Section 111(m) of the customs act, 1962 and consequently rendered himself liable for penal action under Section 112(a) & 114AA of the Customs Act, 1962.
- e. The Customs Broker, M/s. Prakhar Gupta was also indulged to misguide the department as he also did not advise the importer to make the correct description of goods in respect of brand name, model no. and value also. By the above acts of omission & commission on the part of CB, he rendered the goods liable for confiscation under section 111(m) and consequently rendered himself liable for penal action under section 112(a) & 114AA of the Customs Act, 1962.

**1.12.** In view of the above, vide Show Cause Notice No. 769/2024-25/COMMR/Gr.VA/NS-V/JNCH dated 16.07.2024, (i) M/s. Raj Traders (IEC – 0316949132), (ii) Shri. Bimal Shah, Proprietor of M/s Raj Traders and (iii) M/s. Prakhar Gupta, were called upon to show cause to the Commissioner of Customs, Mumbai Customs Zone-II, NS-V, JNCH, Nhava Sheva (the Adjudicating Authority), as to why-

- (i) The Declared assessable value of Rs. 2,14,04,601/- (Rupees Two Crores Fourteen Lakhs Four Thousand Six Hundred and One only) for the goods imported under B.E.s as mentioned in Table-I above should not be rejected and should be re-determined to Rs. 6,33,83,648/- (Rupees Six Crore Thirty-Three Lakh Eighty-Three Thousand Six Hundred and Forty-Eight only);
- (ii) The goods imported vide Bills of Entry as mentioned in Table-I having assessable value of ₹ 2,14,04,601/- (Rs. Two Crores Fourteen Lakhs Four Thousand Six Hundred and One only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962 for contravention of the provisions of Section 46(4) by mis-classification of the goods;
- (iii) The differential duty amounting to Rs. 1,57,38,020/- (Rupees One Crore Fifty-Seven Lakh Thirty-Eight Thousand and Twenty Only), evaded by M/s. Raj Traders should not be demanded and recovered under Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA ibid;
- (iv) Penalty under Section 112(a)/114A of the Customs Act, 1962, should not be imposed on M/s Raj Traders for the acts of omission and commission which have rendered the imported goods of Bills of Entry as mentioned in Table-I above liable to confiscation under Section 111(m) of the Customs Act, 1962;



- (v) Penalty under Section 112(a) of the Customs Act, 1962, should not be imposed on Shri Bimal Shah, Proprietor of M/s Raj Traders for the acts of omission and commission which have rendered the imported goods of Bills of Entry as mentioned in Table-I above, liable to confiscation under Section 111(m) of the Customs Act, 1962;
- (vi) Penalty under Section 114AA of the Customs Act, 1962, should not be imposed on Shri. Bimal Shah, Proprietor of M/s Raj Traders for the acts of omission and commission which have rendered the imported goods of Bills of Entry as mentioned in Table-I above, liable to confiscation under Section 111(m) of the Customs Act, 1962;
- (vii) Penalty under Section 112(a) of the Customs Act, 1962, should not be imposed on CB, M/s. Prakhar Gupta for the acts of omission and commission which have rendered the imported goods of Bills of Entry as mentioned in Table-I above, liable to confiscation under Section 111(m) of the Customs Act, 1962;
- (viii) Penalty under Section 114AA of the Customs Act, 1962, should not be imposed on CB, M/s. Prakhar Gupta for the acts of omission and commission which have rendered the imported goods of Bills of Entry as mentioned in Table-I above, liable to confiscation under Section 111(m) of the Customs Act, 1962.

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

Shri Gurvinder Singh Kochhar, consultant on behalf of M/s. Raj Traders (Noticee No. 1) and Shri Bimal Shah, proprietor of M/s. Raj Traders (Noticee No. 2) vide letter dated 01.07.2025 submitted written reply during the Personal Hearing on 01.07.2025. In the written submissions, noticee interalia stated as under:

**2.1** Noticee submitted that the basic allegation in the SCN is mis-declaration of brand name and hence, the department proposed to reject the transaction value on the basis of mis-declaration of brand name. Noticee submitted that they want to point out that the goods assessed by the Customs Department and also examined and thereafter given out of charge after proper assessment and examination. Further, the brand name was declared in the brand column of the Bill of Entry and also it is clearly stated in the statement of the proprietor, Shri Bimal Shah and also the CB, also it was mentioned in the commercial invoice, packing list and sales contract and the same was e-Sanchit during filing of Bill of Entry. The officers who had assessed the Bills of Entry and who had examined them were well aware of the brand name, description and valuation declared in the commercial invoice, packing list and sales contract.

**2.2** Noticee submitted that from the above submissions, it is apparent that the department is only putting an allegation that the importer has not declared the brand name of the item with description in the Bill of Entry. They are not disputing the brand name is declared in the invoice, packing list and the brand column in Bill of Entry and there is no rule in the Customs Act 1962, where they have to declare brand name in the description column. The EDI system has already given separate brand column which they have declared and the department has not disputed the same. Further, Noticee submitted that department went forward to reject the transaction value based on this assumed mis-declaration which is against law because the mis-declaration has not been established.

**2.3** Noticee submitted that even otherwise without admitting anything on their part still for the sake of argument if the adjudicating authority holds the rejection of transaction value justified, then in para 9.6 at page no. 12 & 13 of the SCN, where the department has agreed that the valuation rule should be applied sequentially under rule 4 to 9 of CVR, 2007. Noticee further submitted that in the SCN, it is further mentioned that there is no transaction value under rule 4 and 5 of the CVR, 2007, in respect of those, noticee submitted 2 Bills of Entry of identical goods of different importers having No. 2845397 dated 20.02.2021 and No. 4588890 dated 07.07.2021.

**2.4** Noticee submitted that even otherwise without admitting anything on their part still for the sake of argument adjudicating authority holds that rule 4 and 5 of CVR 2007 should not be applied

and if the adjudicating authority feels that the re-determination of value based on NIDB data as proposed by the department should be considered, then they are submitting 3 laws where the order has been passed that the enhancement of value only on the basis of NIDB data does not survive:

- (i) Principal Commissioner, Customs. Vs. Arihant Enterprises dated 18.04.2023, CESTAT New Delhi
- (ii) Gypsie Impex vs Commissioner of Customs, Tuticorin dated 05.02.2024, CESTAT Chennai
- (iii) Sedna Impex India Pvt Ltd vs Commissioner of Customs, Mundra dated 06.03.2023, CESTAT, Ahmedabad.

2.5 Referring the Board Circular F. No. 201/01/2014-CX.6 dated 26.06.2014 stated that in the said circular it is clearly mentioned "Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs" which means that the higher authority decision must be followed by the adjudicating authority. Noticee further requested to drop the SCN.

### 3. RECORD OF PERSONAL HEARINGS

Following the principle of natural justice, the Noticee was granted opportunities for personal hearing (PH) in terms of Section 28(8) read with Section 122A of the Customs Act, 1962. Shri Gurvinder Singh Kochhar, consultant on behalf of M/s. Raj Traders (Noticee No. 1) and Shri Bimal Shah, proprietor of M/s. Raj Traders (Noticee No. 2) attended the personal hearing on 01.07.2025 and reiterated the written submission dated 01.07.2025. He further stated that in the SCN it has been alleged that they have not mentioned the brand name in the description of goods, however, they have declared the brand name in the brand column of the bill of entry and same is also mentioned in respective invoice and packing list. Further, he added that in the SCN highest value of NIDB data has taken for valuation, however, there are catena of judgements which prescribes that lowest value should be taken for valuation. Further, he requested to drop the proceeding initiated under the said SCN.

### DISCUSSION AND FINDINGS

4. The fact of the matter is that a Show Cause Notice (SCN) No. 769/2024-25/COMMR/GR.VA/NS-V/JNCH dated 16.07.2024 was issued to (i) M/s. Raj Traders (IEC – 0316949132), (ii) Shri. Bimal Shah, Proprietor of M/s Raj Traders and (iii) M/s. Prakhar Gupta, Customs Broker, alleging that the goods imported by them have been cleared undervaluing the goods and without mentioning brand name in description column of the Bills of Entry. The SCN was served for re-assessing the value of impugned goods to re-determined assessable value amounting to Rs. 6,33,83,648/- (Rupees Six Crore Thirty-Three Lakh Eighty-Three Thousand Six Hundred Forty-Eight only) and consequential non-payment of applicable differential duty of Rs. 1,57,38,020/- (Rupees One Crore Fifty-Seven Lakh Thirty-Eight Thousand and Twenty Only) against the bills of entry as detailed in above Table-I, invoking extended period under Section 28(4) of the Customs Act, 1962 along with interest in terms of section 28AA of the Customs Act, 1962 and consequential penalties under section 112(a) and/or 114A and/or 114AA of the Customs Act, 1962 on the noticees. Show Cause Notice also proposed liability to confiscation of imported goods under Section 111(m) of the Customs Act, 1962.

4.1 I find that in the subject SCN, in terms of principle of natural justice, opportunity for Personal Hearings (PHs) were granted to all the Noticees (i) M/s. Raj Traders (IEC – 0316949132), (ii) Shri. Bimal Shah, Proprietor of M/s Raj Traders and (iii) M/s. Prakhar Gupta, Customs Broker on 02.06.2025, 16.06.2025 and 01.07.2025. The PH intimation letters were issued vide speed-post at their registered address. As mentioned above, Shri Gurvinder Singh Kochhar, consultant on behalf of the M/s. Raj Traders (Noticee No. 1) and Shri Bimal Shah, Proprietor of M/s Raj Traders (Noticee No. 2), attended the personal hearing, however, no one on behalf of M/s. Prakhar Gupta, Customs Broker (Noticee No. 3) attended the personal hearing.

4.2 I find that in the instant case, in compliance of the provisions of Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, three Personal Hearings (PHs)

were granted to the Noticee No. 3 also and PH intimation letters were issued at the registered address mentioned in the show cause notice via speed-post. However, the noticee neither appeared before me in the three PH granted to them nor gave any written submission in defence to the allegations made in the SCN till date. From the aforesaid facts, it is observed that sufficient opportunity has been given to the Noticee but they chose not to join the adjudication proceedings. As I am bound by the time limit prescribed under Section 28(9) of the Customs Act, 1962, so even in absence of the Noticee from adjudication proceedings, I am compelled to decide the matter in time bound and logical manner. It is observed that the PH letters were sent on the address given in the SCN. If there was any change of address, the Noticee should have informed the Department, so that said PH letters could have been served to them on that address. Considering the aforesaid scenario, there is no option left for me but to proceed with the adjudication proceedings ex-parte in respect of the noticee M/s. Prakhar Gupta, Customs Broker, in terms of merit of the case. With regard to proceeding to decide the case ex-parte, support is drawn from the following case law-

Hon'ble High Court of Allahabad in its decision in the case of Modipon Ltd. vs CCE, Meerut reported in 2002 (144) ELT 267 (All.) effectively dealt with the issue of natural justice and personal hearing. The extract of the observations of Hon'ble Court is reproduced herein below for reference.

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

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

**4.2.1** It is further observed that the Noticee did not participate in the adjudication proceedings in spite of the fact of service of letters for personal hearings in terms of Section 153 of Customs Act. Section 153 of the Customs Act reads as under -

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

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

Therefore, in terms of Section 153 of the Customs Act, 1962, it is observed that PH letters were duly served to the Noticee, but they did not respond as they did not have anything to submit in their defence.

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

*"8.3 We do not accept the plea of Mr. Sanjay Kumar Agarwal and Mr. Parmanand Joshi that they were not heard before passing of the impugned orders and principles of natural justice has been violated. The records show that notices were sent to the addresses given and sufficient opportunities were given. If they failed in not availing of the opportunity, the*



*mistake lies on them. When all others who were party to the notices were heard, there is no reason why these two appellants would not have been heard by the adjudicating authority. Thus, the argument taken is only an alibi to escape the consequences of law. Accordingly, we reject the plea made by them in this regard."*

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

**4.4** I now proceed to frame the issues to be decided in the instant SCN before me. On a careful perusal of the subject show Cause Notice and case records, I find that following main issues are involved in this case, which are required to be decided: -

- (i) Whether the declared assessable value of Rs. 2,14,04,601/- (Rupees Two Crores Fourteen Lakhs Four Thousand Six Hundred and One only) for the goods imported under Bills of Entry as mentioned in Table-I above should be rejected and should be re-determined to Rs. 6,33,83,648/- (Rupees Six Crore Thirty-Three Lakh Eighty-Three Thousand Six Hundred and Forty-Eight only) or otherwise;
- (ii) Whether the differential duty of Rs. 1,57,38,020/- (Rupees One Crore Fifty-Seven Lakh Thirty-Eight Thousand Twenty Only) for the Bills of Entry as detailed in above Table-I should be demanded and recovered under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 otherwise;
- (iii) Whether the said goods as detailed in above Table-I, should be confiscated under Section 111(m) of the Customs Act, 1962 or otherwise;
- (iv) Whether penalty should be imposed under Section 112(a) /114A of Customs Act, 1962 on importer M/s. Raj Traders, under Section 112(a) and 114AA of Customs Act, 1962 on Shri. Bimal Shah, Proprietor of M/s Raj Traders & under Section 112(a) and 114AA of Customs Act, 1962 on Customs Broker, M/s. Prakhar Gupta or otherwise;

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

**5. Whether the declared assessable value of Rs. 2,14,04,601/- (Rupees Two Crores Fourteen Lakhs Four Thousand Six Hundred and One only) for the goods imported under Bills of Entry as mentioned in Table-I above, should be rejected and should be re-determined to Rs. 6,33,83,648/- (Rupees Six Crore Thirty-Three Lakh Eighty-Three Thousand Six Hundred and Forty-Eight only) or otherwise.**

**5.1** Based on the case records, I observe that the impugned goods, namely LED TV panels of various sizes of Sony/Samsung brand as listed in Table-I above, were cleared without the brand name being stated in the goods description column of the Bills of Entry. However, the brand name was indicated in the brand column of the Bills of Entry and also reflected in the respective Packing Lists/Invoices. The Show Cause Notice also alleges that the goods namely LED TV panels of various sizes were cleared using generic descriptions and were undervalued by not mentioning the brand name from the description field of the Bills of Entry.

**5.2** During the investigation conducted by SIIB, JNCH, Shri Bimal Shah, Proprietor of M/s. Raj Traders in his statement recorded under Section 108 of the Customs Act, 1962 confirmed importing LED TV panels of Sony and Samsung brands through multiple Bills of Entry filed by their authorized customs broker, M/s. Prakhar Gupta. He stated that brand names were indicated in designated columns but not in the item description field. He acknowledged regular dealings with M/s. Quality Export House Pte Ltd, a supplier from Dubai, and explained that the price uniformity across shipments from different countries was due to suppliers adjusting freight differences within their profit margins. He submitted the list wherein B/E no., date, invoice no, & date, quantity and product name with brand name is mentioned. On enquiring about the low price of the impugned

goods he stated that he purchased all the goods in stock- lot on negotiated price and the same is transaction value.

**5.3** Further, during the investigation, Shri Touseef Ibrahim Shaikh, H-card holder of M/s. Prakhar Gupta, in his statement recorded under Section 108 of the Customs Act, 1962 confirmed filing Bills of Entry for four importers, M/s. Electronic Stock Exchange, M/s. Global International, M/s. Ideal Impex, and M/s. Raj Traders based on documents supplied either directly by Mumbai-based importers or via representatives. He stated that although brand names like Sony and Samsung were not mentioned in the description column of Bills of Entry, they were mentioned in specific brand/model columns.

**5.4** The valuation of electronic goods hinges on attributes like brand, model number and size and the brand names of the impugned goods which were not mentioned in the description column of Bills of Entry. As per prevailing customs clearance practices, it is customary to indicate the brand identity or unbranded nature of goods in both the description column and the designated brand column of the Bill of Entry. This dual-entry approach ensures transparency in declaration, aids in precise assessment of the goods' value, and facilitates accurate duty calculation, especially in the case of electronic items, where valuation is heavily dependent on brand, model, and specifications. In line with this established protocol, Customs Broker M/s. Prakhar Gupta also, consistently adhered to this practice in many Bills of Entry handled by them, thereby supporting accurate classification and compliance with valuation norms under the Customs Act, 1962 and related rules. However, in the specific instance of the impugned Bills of Entry, this standard practice was notably disregarded. The omission of brand details from the description column, despite being a consistent part of their earlier documentation strategy, raises questions about the intent and accuracy of declarations made in these cases. The deviation from general norms may have contributed to underreporting of the transactional value and a lack of clarity during customs assessment.

**5.5** I find that during the course of the investigation, it was observed that importer M/s. Raj Traders has intentionally omitted declaring the brand name of the LED TV panels in the description column during importation of the goods. Furthermore, they undervalued the goods, which means they deliberately misrepresented the value of the imported LED TV panels to pay lesser customs duties. Additionally, they engaged in a scheme where they sold the imported items to each other (M/s. Raj Traders, M/s. Electronics Stock Exchange, M/s. Ideal Impex, and M/s. Global International) under GST invoices and all these importers intentionally omitted mentioning the brand name of the LED TV panels in both import documents (bill of entry) and sales documents (sales invoices). This omission further facilitated the deception regarding the actual value of the imported goods. This convoluted exchange was designed by above mentioned importers to obscure the true market value of branded LED TV panels and circumvent the customs duty payment.

**5.6** It is highly unusual and potentially suspicious that an importer is able to consistently declare identical pricing for goods that are being sourced from four different countries, each with inherently varying freight charges, taxation regimes, and supply-chain dynamics. Given that international shipping costs fluctuate considerably across regions, achieving a uniform cost across such diverse sources raises legitimate questions about the veracity of the declared transaction values. Moreover, the fact that the brand names have been mentioned in a uniform or generic manner across these consignments suggests a deliberate pattern of reporting aimed at masking distinctions in product quality, brand premium, or country-specific valuation, all of which are critical in determining accurate customs duty. This practice indicates an intent to circumvent valuation norms and standard assessment procedures.

**5.7** The importer's submission that the branded goods were procured on stock-lot basis is not tenable, as there is no reference to such a procurement method in the relevant import declarations or Bills of Entry. Additionally, it is commercially recognized that such discounts on branded goods, especially in the electronics sector, are typically extended by the manufacturer under documented sales arrangements such as clearance sales, end-of-line offers, or bulk consignment agreements. Traders or intermediaries ordinarily do not possess the margin to offer substantial price reductions on branded goods. In the absence of such evidence, the claim lacks commercial credibility and fails to align with standard valuation principals.

**5.8** In the present case, there is evident suppression of critical information pertaining to the brand identity of the imported goods, as observed in the Bills of Entry referenced in Table-I. The brand name, which significantly influences the valuation of electronic items such as LED TV panels, was omitted from the description column, a departure from standard declaration practices. This omission, coupled with the undervalued pricing of the goods, strongly suggests an intentional attempt to misrepresent the true nature and value of the consignment. In light of this, the declared transaction values for all Bills of Entry listed in Table-I cannot be accepted at face value. Accordingly, in accordance with the legal provisions outlined in Rule 12 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 (CVR, 2007), read in conjunction with Section 14(1) of the Customs Act, 1962, the declared values are liable for rejection. Consequently, the assessable value must be re-established through the appropriate valuation methodologies prescribed under the CVR, 2007, to ensure accuracy, fairness, and compliance with customs regulations.

**5.9** Further, valuation of goods for the purpose of assessment of customs duties is governed by the provisions of Section 14 of the Customs Act, 1962, which provides that the value of imported goods shall be the transaction value of such goods, when sold for export to India for delivery at the time and place of importation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale, subject to such other conditions as may be specified in the rules made in this behalf. Further, the Custom Valuation Rules (Determination of Price of imported goods) 2007 (here-in-after referred to as 'CVR 2007'), having been framed under the provisions of Section 14, provides for determination of value in a variety of situations. More specifically, Rule 3 of the CVR, 2007 provides that subject to Rule 12, value of the goods shall be the transaction value adjusted in accordance with Rule 10.

**5.10** The imported goods were cleared through Bills of Entry wherein integral identifiers for accurate valuation namely the brand and model numbers, were not disclosed within the item description fields. Although such details may have been indicated elsewhere, their omission from the primary description column is significant, as it undermines transparency and impairs proper customs assessment. For valuation purposes, particularly in the context of electronic goods, brand name and model specifications play a critical role in determining value and duty liability. As a result, the declared values in the Bills of Entry fail to represent the true transaction value of the goods actually imported, as required under Section 14 of the Customs Act, 1962. Given this apparent lack of disclosure and the resulting undervaluation, the declared transaction values are liable for rejection under Rule 12 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 (CVR, 2007).

**5.11** Rule 3(4) of the CVR 2007 prescribe that, "If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rules 4 to 9". As the value of impugned goods could not be determined under the provisions of sub-rule (1) of Rule 3 of the Customs Valuation Rules (CVR), 2007, the same was required to be determined sequentially under rule 4 to 9 of CVR 2007. As per Rule 4 of CVR, 2007, 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; Further, as per Rule 5 of CVR, 2007 the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued. To determine the value of the imported goods as per Rule 4 or Rule 5 of CVR 2007, contemporaneous data of import of identical or similar goods was required, however, no concrete data of identical or similar items in terms of description, quantity and country of origin was found in customs database, therefore, value of the goods cannot be determined as per Rule 4 and 5 of the Customs Valuation Rules (CVR), 2007. As per Rule 6 of the CVR, 2007 if the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, then under rule 8. Further, due to non-availability of the actual profit, transportation, general expenses in each transaction and cost of production & profit percentage of the supplier, it appears that determination of value under Rule 7 and Rule 8 of the CVR 2007 is not a feasible option. Therefore, the valuation of impugned goods has been done



under Rule 9 of the CVR, 2007 using reasonable means consistent with the principles and general provisions of these Rules and on the basis of data available in India. The data of assessable value of similar goods, which are available in India, is detailed in above Table-II.

**5.12** Furthermore, for the purpose of valuing the goods, reference was made to the import data detailed in Table-II above. As the declared values for Sony LED TV Panels of 70-inch and 82-inch sizes were not available in the said table, comparable data for similar products namely Samsung LED TV Panels of the same dimensions was utilized to determine the assessable value in the corresponding Bills of Entry. Accordingly, based on the reference values adopted, the aggregate re-determined assessable value amounts to Rs. 6,33,83,648/- (Rupees Six Crore Thirty-Three Lakh Eighty-Three Thousand Six Hundred and Forty-Eight only), with the resultant re-calculated customs duty standing at Rs. 2,37,49,853/- (Rupees Two Crore Thirty-Seven Lakh Forty-Nine Thousand Eight Hundred and Fifty-Three only).

**5.13** Further, I find that the noticee has contended that although the Show Cause Notice stated the non-availability of comparable transaction values under Rules 4 and 5 of the Customs Valuation Rules, 2007 (CVR 2007), two Bills of Entry No. 2845397 dated 20.02.2021 and No. 4588890 dated 07.07.2021 claiming identical goods imported by other importers were submitted by noticee. Based on these documents, the noticee argued that the Department's allegation of under-valuation does not hold merit. However, ongoing through these bills of entry, I find that the description of the goods mentioned in these bills of entry does not mentions any brand name, so the same cannot be taken for valuation for branded goods.

**5.14** In view of the above, declared value of imported goods covered under Bills of Entry as detailed in above Table-I could not be considered as true transaction value and the same is rejected in terms of Rule 12 of the Customs Valuation. The re-determined assessable value of the impugned goods had been calculated and re-determined to Rs. 6,33,83,648/- (Rupees Six Crore Thirty-Three Lakh Eighty-Three Thousand Six Hundred and Forty-Eight only) as mentioned in Annexure-A to the SCN, for the reasons as above.

**6. Whether the differential duty of Rs. 1,57,38,020/- (Rupees One Crore Fifty-Seven Lakh Thirty-Eight Thousand Twenty Only) for the Bills of Entry as detailed in above Table-I should be demanded and recovered under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 otherwise.**

**6.1** After having determined the correct valuation of the impugned imported goods against Bills of Entry as detailed in above Table-I, it is imperative to determine whether the demand of differential Customs duty as per the provisions of Section 28(4) of the Customs Act, 1962, in the subject SCN is sustainable or otherwise. The relevant legal provision is as under:

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

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

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

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

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

**6.2** The subject Bills of Entry as mentioned at Table-I above, filed by M/s. Raj Traders, wherein they had not mentioned the Brand name and model No. in the description column of the Bills of entry and undervalued the imported goods, were self-assessed by them. In terms of Section 46(4) of the Customs Act, 1962, the importer is required to make a true and correct declaration in

the Bills of Entry submitted for assessment of Customs duty. In the instant case, I find that the importer has not declared correct brand name, model No. and value of the goods imported against the Bills of Entry mentioned in Table-I above, by wilfully and deliberately indulging in mis-declaration of goods in terms of brand name, model No. and value, only with the clear intention to evade duty.

**6.3** In view of the above, I find that the Noticee had evaded correct Customs duty by intentionally not declaring brand name, model No. and value for the imported product at the time of filing of the Bills of Entry. By resorting to this deliberate and wilful mis-classification of the goods, the Noticee has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. Thus, this wilful and deliberate act was done with the clear intention to evade from applicable duty.

**6.4** Consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in Customs clearance. Under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendments to Section 17, it is the added and enhanced responsibility of the importer, to declare the correct description, value, CTI, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. In the instant case, as explained in paras supra, the importer has wilfully not declared correct brand name, model No. and value of the goods, thereby evading payment of applicable duty resulting in a loss of Government revenue and in turn accruing monetary benefit to the importer. Since the importer has wilfully mis-declare, mis-classified and suppressed the facts with an intention to evade applicable duty, provisions of Section 28(4) are invokable in this case and the duty, so evaded, is recoverable under Section 28(4) of the Customs Act, 1962.

**6.5** I find that in the instant case, as elaborated in the foregoing paras, the Noticee had wilfully not declared correct brand name, model No. and value of the goods for the imported goods. Further, to evade payment of correctly leviable duty, they mis-declared and suppressed the correct value for the impugned goods, and also fraudulently paid lower duty. Therefore, I find that in the instant case there is an element of 'mens rea' involved. The instant case is not a simple case of bona fide mis-declaration. Instead, in the instant case, the Noticee deliberately not declared correct brand name, model No. and value, being fully aware of the same for the imported goods. Once the 'mens rea' is established on the part of the Noticee, the extended period of limitation, automatically get attracted.

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

**6.7** In view of the foregoing, I find that the duty demand against the importer has been correctly proposed under Section 28(4) of the Customs Act, 1962 by invoking the extended period of limitation. In support of my stand of invoking extended period, I rely upon the decision of the Tribunal:-

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

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

**6.8** I find that as calculated in “Annexure-A” to the Show Cause Notice, total re-determined duty against the Bills of Entry as mentioned in above Table-I, is Rs. 2,37,49,853/- (Rupees Two Crore Thirty-Seven Lakh Forty-Nine Thousand Eight Hundred Fifty-Three only), however, after subtracting the duty already paid during clearance of the subject Bills of Entry, the differential duty amounting to Rs. 1,57,38,020/- (Rupees One Crore Fifty-Seven Lakh Thirty-Eight Thousand Twenty Only) against the impugned bills of entry is recoverable from the Noticee under extended period in terms of the provisions of Section 28(4) of the Customs Act, 1962.

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

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

*“This proposition may be derived from the above: interest can be levied and charged on delayed payment of tax only if the statute that levies and charges the tax makes a substantive provision in this behalf”.*

Therefore, once it is held that duty is due, interest on the unpaid amount of duty becomes payable by operation of law under section 28AA.

**6.11** In Directorate of Revenue Intelligence, Mumbai vs Valecha Engineering Limited, Hon’ble Bombay High Court observed that, in view of section 28AA, interest is automatically payable on failure by the assessee to pay duty as assessed within the time as set out therein.

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

**6.13** In view of the above discussions, I find that the differential duty of Rs. 1,57,38,020/- (Rupees One Crore Fifty-Seven Lakh Thirty-Eight Thousand Twenty Only) is recoverable from M/s. Raj Traders under section 28(4) of the Customs Act, 1962 along with applicable interest under section 28AA of the Customs Act, 1962 in relation to Bills of Entry as mentioned in Table-I above.

**7. Whether the said goods as detailed in above Table-I, should be confiscated under Section 111(m) of the Customs Act, 1962 or otherwise.**

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

**7.2** I find that the importer while filing the Bill of Entry for the clearance of the subject goods had subscribed to a declaration as to the truthfulness of the contents of the Bill of Entry in terms of Section 46(4) of the Act and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2011 in all their import declarations. Section 17 of the Act, w.e.f. 08.04.2011, provides for self-assessment of duty on imported goods by the importer themselves by filing a Bill of Entry, in the electronic form. Section 46 of the Act makes it mandatory for the importer to make an entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulation, 2011



(issued under Section 157 read with Section 46 of the Act), the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic integrated declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares all the particulars of the imported goods correctly e.g., the correct description of the imported goods, its correct classification, the applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods when presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8<sup>th</sup> April, 2011, the complete onus and responsibility is on the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and claim correct exemption notification and pay the applicable duty in respect of the imported goods.

**7.3** The SCN proposes confiscation of impugned goods under section 111(m) of the Customs Act, 1962. Provisions of Section 111(m) of the Customs Act, 1962 states as under:

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

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

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

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

**7.5** From the discussions above, I find that that the importer had failed to assess and discharge the customs duty correctly by way of undervaluation of goods, imported by them vide Bills of Entry as mentioned in Table-I above, by willful mis-declaration of facts and suppressing the true transaction value of goods and thereby contravened the provisions of Section 46 the Customs Act, 1962. Thus, I hold that the subject goods are liable for confiscation under Section 111(m) of the Customs Act, 1962.

**7.6** I find that Section 111(m) provides for confiscation of goods in cases where any goods do not correspond in respect of value or any other particular with the entry made under the Customs Act, 1962. I have already held in foregoing paras that the impugned goods have been mis-declared by way of undervaluation of goods imported vide Bills of Entry as mentioned in Table-I above. Further, the declared value of the imported goods was Rs. 2,14,04,601/- (Rupees Two Crores Fourteen Lakhs Four Thousand Six Hundred and One only) and re-determined value of the impugned goods is 6,33,83,648/- (Rupees Six Crore Thirty-Three Lakh Eighty-Three Thousand Six Hundred and Forty-Eight only). This wilful mis-declaration and short-payment of duty by under-valuing the goods resorted by the Noticee, renders the impugned goods having re-determined value of Rs. 6,33,83,648/- (Rupees Six Crore Thirty-Three Lakh Eighty-Three Thousand Six Hundred and Forty-Eight only) are liable for confiscation under Section 111(m) of the Customs Act, 1962.

**7.7** However, I find that the goods imported are not available for confiscation, but I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited

[reported in 2018 (9) G.S.T.L. 142 (Mad.)] wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

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

**7.7.1** 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.).

**7.7.2** 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.

**7.8** In view of above, I find that any goods improperly imported as provided in any sub-section of the Section 111 of the Customs Act, 1962, the impugned goods become liable for confiscation. I opine that merely because the importer was not caught at the time of clearance of past Bills of Entry, cannot be given different treatment. Accordingly, I observe that the present case also merits imposition of Redemption Fine having held that the impugned goods having re-determined assessable value of Rs. 6,33,83,648/- (Rupees Six Crore Thirty-Three Lakh Eighty-Three Thousand Six Hundred and Forty-Eight only) imported against Bills of Entry as mentioned in Table-I above, are liable for confiscation under Section 111(m) of the Customs Act, 1962. However, since the said goods are not prohibited goods and the same are not available, said seized goods are allowed for redemption by the importer on payment of fine in lieu of confiscation under section 125 (1) of the Customs act, 1962.

**8. Whether penalty should be imposed under Section 112(a) /114A of Customs Act, 1962 on importer M/s. Raj Traders, under Section 112(a) and 114AA of Customs Act, 1962 on Shri. Bimal Shah, Proprietor of M/s Raj Traders & under Section 112(a) and 114AA of Customs Act, 1962 on Customs Broker, M/s. Prakhar Gupta or otherwise.**

**8.1** I find that SCN proposes penalty under Section 112(a) /114A of Customs Act, 1962 on importer M/s. Raj Traders, under Section 112(a) and 114AA of Customs Act, 1962 on Shri. Bimal Shah, Proprietor of M/s Raj Traders & under Section 112(a) and 114AA of Customs Act, 1962 on Customs Broker, M/s. Prakhar Gupta. Regarding the issue of imposition of penalty, it is appropriate to reproduce the provisions of Section 112, 114A and 114AA as under:

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

*“Any person,-*

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

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

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

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

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

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

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

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

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

**8.2** In this regard, I observe that self-assessment has been introduced on 08.04.2011 vide Finance Act, 2011 wherein under Section 17(1) of the Customs Act, 1962 an importer is required to do self-assessment, thus placing more reliance on the importers. Further, as per the provisions of Section 46 (4) of the Customs Act, 1962, the importer of any goods is required to file a Bill of Entry before the proper officer mentioning therein the true and correct quality, quantity and value of the goods imported and subscribe to a declaration as to the truth and accuracy of the contents of such Bill of Entry. In the instant case, the importer has mis-declared the subject goods in terms of description, value and CTI. Consequently, the importer has paid less duty and cleared the goods without BIS compliances. By non-payment of applicable duty on the subject goods, which tantamount to suppression of material facts and willful mis-statement. The ‘mens rea’ can be deciphered clearly from ‘actus Reus’ and in the instant case, I find that the importer is an entity of repute and thus providing wrong information/declaration in the various documents filed with the Customs and thereby, claiming undue benefit by not paying the applicable duty thereon, amply points towards their ‘mens rea’ to evade the payment of duty. Thus, I find that the demand of differential IGST duty is rightly invoked in the present case by invoking Section 28(4) of the Customs Act, 1962. Taking all the issues relating to the subject imports into account and in view of my findings that goods were mis-declared in the fashion discussed above, I find that the importer by his acts of omission have rendered the goods liable for confiscation and thus made themselves liable for penalty under Section 114A of the Customs Act, 1962. Further in terms of proviso to 114A, once penalty under section 114A has been imposed, no penalty can be imposed under section 112. Thus, the penalty under Section 112 cannot be imposed.

**8.3** Further, in the instant case, the goods have been under-valued and Shri Bimal Shah being Proprietor of M/s. Raj Traders is responsible for the same, hence, there is mens rea on the part of the Shri Bimal Shah, Proprietor of M/s. Raj Traders to evade customs duty by suppressing correct



description and value of goods and clear the goods against the bills of entry as detailed in Table-I above, under false/incorrect invoice/packing list. The aforesaid acts of omission and commission of the importer resulted in use of false and incorrect declaration in the clearance of goods, hence, Shri Bimal Shah, Proprietor of M/s. Raj Traders, is liable for penal action under Section 114AA *ibid*.

**8.4** I find that in the SCN, it is proposed to impose penalty on M/s. Raj Traders and Shri Bimal Shah, Proprietor of M/s. Raj Traders under Section 112(a) of the Customs Act, 1962, however, being a proprietorship firm, M/s. Raj Traders and Shri Bimal Shah are to be considered as single entity, hence, penalty under any section can be imposed on either M/s. Raj Traders or Shri Bimal Shah, not on both. As held above, the penalty is imposable on M/s. Raj Traders under section 114A of the customs Act, 1962 and penalty under section 112 & 114A are mutually exclusive, hence, I refrain from imposing penalty on Shri Bimal Shah, Proprietor of M/s. Raj Traders under section 112 of the customs Act, 1962.

**8.5** Under standard customs practice, the brand (or “unbranded”) must be entered in both the description and brand columns of a Bill of Entry to ensure transparent declarations, precise valuation and correct duty calculation. M/s Prakhar Gupta, the Customs broker, regularly followed this dual-entry protocol in past filings. However, in the impugned Bills of Entry they omitted the brand from the description column. This departure from their own customary approach indicates the intent of the declarations which had led to underreporting of value and obscured the assessment process.

**8.6** I find that SCN also proposes penalty on the Customs Broker, M/s. Prakhar Gupta under section 112(a) and 114AA of the Customs Act, 1962. I note that to declare all the particulars relevant truthful to the assessment of the goods, ensuring their accuracy and authenticity is responsibility of importer as well as Customs Broker, which the importer and Customs Broker clearly failed to do with malafide intention. They suppressed the fact before the Customs Department regarding correct description (mentioning the generic description) of the goods and under-valued the goods to claim the undue duty benefit at the time of clearance of the said imported goods. Taking all the issues, relating to subject imports, into account and in view of my finding that goods were mis-declared by suppressing correct description of goods, I find that Customs Broker, M/s. Prakhar Gupta has by his acts of commission and omission, as discussed above, has rendered the impugned goods liable for confiscation under Section 111(m) of the Customs Act, 1962 and thereby made themselves liable for penalty under Section 112 *ibid*. Further, the aforesaid acts of omission and commission of the Customs Broker, M/s. Prakhar Gupta resulted in use of false and incorrect declaration in the clearance of goods, hence, Customs Broker, M/s. Prakhar Gupta, is liable for penal action under Section 114AA *ibid*.

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

#### **ORDER**

- i. I reject the declared value of the goods covered under the Bills of Entry as mentioned in Table-I above, under Rule 12 of CVR, 2007 and order to re-determine the assessable value amounting to Rs. 6,33,83,648/- (Rupees Six Crore Thirty-Three Lakh Eighty-Three Thousand Six Hundred and Forty-Eight only), as discussed above.
- ii. I confirm the demand of the differential duty amounting to **Rs. 1,57,38,020/- (Rupees One Crore Fifty-Seven Lakh Thirty-Eight Thousand Twenty Only)** under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 and order to recover the same from the importer M/s. Raj Traders.
- iii. I order to confiscate the impugned goods having total re-determined value at **6,33,83,648/- (Rupees Six Crore Thirty-Three Lakh Eighty-Three Thousand Six Hundred and Forty-Eight only)** under Section 111(m) of the Customs Act, 1962, even though the goods

are not available for confiscation. However, give an option to the importer to redeem the goods on payment of Redemption Fine of **Rs. 50,00,000/- (Rupees Fifty Lakhs only)** under the provisions of Section 125(1) of the Customs Act, 1962.

- iv. I impose penalty of differential duty of **Rs. 1,57,38,020/- (Rupees One Crore Fifty-Seven Lakh Thirty-Eight Thousand Twenty Only)** along with applicable interest under **Section 28AA of the Customs Act, 1962**, on M/s. Raj Traders, under section 114A of the Customs Act, 1962.
- v. I refrain from imposing any penalty under Section 112(a) of the Customs Act, 1962 on M/s. Raj Traders and Shri Bimal Shah, Proprietor of M/s. Raj Traders as discussed above.
- vi. I impose a penalty of **Rs. 50,00,000/- (Rupees Fifty Lakhs only)** under Section 114AA of Customs Act, 1962, on Shri Bimal Shah, Proprietor of M/s. Raj Traders, for the reason aforesaid.
- vii. I impose a penalty of **Rs. 10,00,000/- (Rupees Ten Lakhs only)** under Section 112(a) of Customs Act, 1962, on the Customs Broker, M/s. Prakhar Gupta, for the reason aforesaid.
- viii. I impose a penalty of **Rs. 50,00,000/- (Rupees Fifty Lakhs only)** under Section 114AA of Customs Act, 1962, on the Customs Broker, M/s. Prakhar Gupta, for the reason aforesaid.

**10.** This Order is issued without prejudice to any other action that may be taken in respect of the above goods and/or the persons/firms mentioned in the notice under the provisions of the Act and/or any other law for the time being in force, in the Republic of India.



**(ANIL RAMTEKE)**

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

To,

- (i) Raj Traders (IEC - 0316949132)  
MB7/A, Mezz Floor, 10/21, Flox Chamber,  
Tata Road No. -1, Opera house,  
Girgaon, Mumbai-400004
- (ii) Shri. Bimal Shah, Proprietor of M/s Raj Traders  
Ground Floor, Shop no. 07, Aman Chambers,  
Mama Parmanand Marg, Opera House,  
Mumbai- 400004
- (iii) M/s. Prakhar Gupta  
Office No. 310, 3<sup>rd</sup> floor, Anna Bhavan,  
Bharuch Street, Masjid Bunder(E), Mumbai - 400009

Copy to:

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