

OFFICE OF THE COMMISSIONER OF CUSTOMS (NS-V)

सीमाशुल्कआयुक्त (एनएस - V) काकार्यालय

JAWAHARLAL NEHRU CUSTOM HOUSE, NAVA SHEVA,

जवाहरलालनेहरुसीमाशुल्कभवन, न्हावाशेवा,

TALUKA - URAN, DISTRICT - RAIGAD, MAHARASHTRA -400707

तालुका - उरण, जिला - रायगढ़, महाराष्ट्र 400707

DIN – 20251278NX000000BB4A

Date of Order: 12.12.2025

F. No. S/10-064/2024-25/COMM/R/GR-V/NS-V/CAC/JNCH

Date of Issue: 12.12.2025

SCN No.: 511/2024-25/COMM/R/GR-V/NS-V/CAC/JNCH

SCN Date: 13.06.2024

Passed by: Sh. Anil Ramteke

Commissioner of Customs, NS-V, JNCH

Order No: 296 /2025-26/COMM/R/NS-V/CAC/JNCH

Name of Noticees: M/s. WHIRLPOOL OF INDIA (P) LTD.(IEC-0588089893) &

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 व्यक्ति 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 रीजनल बैंच), 34, पी. डी.मेलो रोड, मस्जिद (पूर्व), मुंबई - 400009 को अपील कर सकता है, जो उक्त अधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।

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

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

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

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

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

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

Fee - फीस-

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

(क) एक हजार रुपये जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये

या उस से कम है।

(b) Rs. Five Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 Lakh.

(ख) पाँच हजार रुपये – जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 5 लाख रुपये से अधिक परंतु 50 लाख रुपये से कम है।

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

(ग) दस हजार रुपये – जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम 50 लाख रुपये से अधिक है।

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

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

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

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

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

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

Subject: Adjudication of Show Cause Notice No. 511/2024-25/COMM.R./GR-V/NS-V/CAC/JNCH
dated 13.06.2024 issued to (i) M/s Whirlpool of India Ltd. (IEC-0588089893) (ii) Sh. M S Prakash, Director, Supply Chain (Impex & Spares), M/s WOIL (iii) Sh. Raju Kumar Gupta, Deputy Manager, Import Supply Chain Management, M/s WOIL (iv) Sh. Jawahar Lal Sharma, Senior Manager, Import Supply Chain Management, M/s WOIL (v) Sh. Pratik Taneja, Manager- Procurement, M/s WOIL (vi) M/s HTL Logistics India (P) Ltd., (vii) M/s Tianxin Logistics Pvt Ltd / M/s TXM Logistics Pvt Ltd., and (viii) M/s LF Logistics India Pvt Ltd. – reg.

BRIEF FACTS OF THE CASE

1. It is stated in the Show Cause Notice (SCN) No. 511/2024-25/COMM.R./GR-V/NS-V/CAC/JNCH dated 13.06.2024 that specific information received in Directorate of Revenue Intelligence, Delhi, suggested huge quantum of Customs duty was being evaded by M/s Whirlpool of India Ltd., IEC 0588089893 (hereinafter referred to as M/s WOIL) in respect of imports made by them. Intelligence suggested that M/s WOIL was mis-declaring the value of Freight with respect to the goods imported by them. The importer was not declaring the actual payment made with respect to the freight portion in C&F/ CIF before Indian Customs thereby mis-declaring the value of imported goods by manipulating payment terms. Also, in respect of goods imported under payment terms- FOB, the importer was not declaring the actual freight value before the Customs authorities.
2. Preliminary examination of import related data in respect of the imports made by M/s WOIL was done and it transpired that the importer was not declaring the actual payment made with respect to the freight portion before Indian Customs thereby causing huge loss of revenue to the government exchequer.
3. Accordingly, investigation was initiated by this Directorate in this respect and simultaneous searches were conducted on 22.09.2022 by various teams of this Directorate.
3.1 Search was conducted at office premises of M/s Whirlpool of India Ltd. situated at Plot No. 40, Whirlpool House, Sector 44, Gurugram-121002 and the search proceedings were recorded under Panchnama dated 22/23.09.2022 (**RUD-1**). During the search, following documents on being found relevant for further investigation were resumed under Panchnama dated 22.09.2022:-
 - (a) Made up box file containing (page nos. from 1 to 83).
 - (b) Copies of agreement with foreign suppliers (Page nos. from 1 to 849).
 - (c) Copies of agreement with foreign suppliers (Page nos. from 1 to 1021).

Also, backup of emails of following email ids was copied for investigation purpose:

- Abhinav_gupta@whirlpool.com
- Aditya_jain@whirlpool.com
- Keshav_gupta@whirlpool.com

- Pallavi_kadam@whirlpool.com
- Pratik_taneja@whirlpool.com
- Sanajay_mukherjee@whirlpool.com
- Somali_jaiswal@whirlpool.com

3.1.1 Further, import books (Total 596 in numbers) (**RUD-2**) containing Bill of Entry, Commercial Invoice, Packing List, Bill of Lading, Payment raised by CHA on account of various charges etc. pertaining to plant wise import of goods were found relevant to the investigation as their contents appear that M/s WOIL mis-declared the actual freight value and the payment terms and hence mis-declared the value of goods before Indian Customs. It can be understood by the illustration of one set of documents from the bill book having marks 'FRO-135 to 149-20-21-10' for Bill of Entry No. 9085489 dated 07.10.2020 filed by M/s WOIL, wherein the Invoice No. is JXWPF20009-13 dated 09.09.2020; BL No. is YCSE20090444; and Terms of Invoice is CF. On going through the corresponding invoice, it is observed that the Terms of Delivery mentioned therein, is CFR (Cost and Freight). Further on perusal of the corresponding BL, 'Freight prepaid' is mentioned on it and at last, freight forwarder's invoice corresponding to the said BL No. is also attached wherein Ocean freight has been charged to M/s WOIL.

1162-
HW 3300

Indian Customs EDI System - Imports VI.19001
DSCW, BHOVA SHEVA, TALCHIKAR, GUDI-PAIGAO-RODHOI
BILL OF ENTRY FOR HOME CONSUMPTION

Customs Area: INDIA1..... CNA : KARNATAKACOMPOUND LTD. SOUTHERN INDIA PVT LTD. 3
BL No. 01/2020/EDC/2020/07/10/2020/0001
Importor Details : 10936009493 PAN : KAAKHN1941L001 AD Code : 0510005
WHIRLPOOL OF INDIA LTD
225, NEW INDUSTRIAL TOWN.,

MANIPUR, KARNATAKA

121001 Payment Method : Transaction

Port Of Loading : Shanghai
Ctry Of Origin : CHINA
HS No : 870220000444
Date : 22/09/2020
No. Of Pages : 86 Pkt
MARKET TAX SL : 4 Nos

Inv No & Cr. : JXWPP20009-13 09/09/2020 JIAXINPEA COMPRESSOR CO., LTD.
Inv Val : 165463.20 USD TOL: CF NO. 49 BAILE ROAD,
Freight : 0.00 WANGJIANG, JIANGXI
Insurance : 123.35 INR ZIPCODE:
BWD Loading/Dis : Crnt. Roomer : CF
BWD Loading/Dis : BWD Loading Mater : 0.00 Amount : 0.00
WHS. Charges : 0.00
ECD : 0.00 Discount Rate: 0.00 Discount Amount: 0.00
THIRD Party: XSE Duty RG Int.: 0.00

Material Gate
Vehicle No: HESCY-7526
Date/Time: 12/11/2020 6:00
Drivers Name: T. S. Singh
Whirlpool of India

Item Details - BuyerSeller RefId : NO
Exchange rate: 1.00 USD = 74.5000 INR

Line	RTG	Description	Unit	Price	CTN	C.Memo	R.E.	Lead	PROV
City	Ass Val	Ass Val	CTNS	E.Memo			Exc Duty	Exc Duty	Exc Duty
Unit							Exc	Exc	Exc
1	4614000	COMPRESSOR W/155W1741 MIBILITY WITH ACCESSORIES/REF							
ICE CONSUMPTION:100 NOT CONTAIN AND COLOR EXISTING SOLUBANCE: X10700 PC									
10700	12227131.75	12227131.75					12.50 %	1540891.50	
SCD							0.00 %	0.00	
ADTD							0.00 %	0.00	
CVD							0.00 %	0.00	
CEDE							0.00 %	0.00	
TTR							0.00 %	0.00	
Exc. Cess CVD	Rs.	0.00					Customs Edu. Cess	Rs.	0.00
Health CVD	Rs.	0.00					Addl Duty + Importer	Rs.	0.00
HS	Rs.	0.00					HS Cess Edu. Cess	Rs.	0.00
Duty Payable:	Rs.							Rs.	4218560.00
Rs. Forty Two Lakh Eighteen Thousand Nine Hundred and Sixty	only								

12227131.75 Page Total Rs. 4218560.00
SCD Rs. 1540891.50 SCD Gross Total Rs. 4218560.00
ADTD Rs. SCD Duty Rs. 0.00
CVD Rs. 0.00 SAFEGUARD Duty Rs. 0.00
CEDE Rs. 0.00 Sch 2 Spcl Excise Duty Rs. 0.00
TTR Rs. 0.00 GEDR Rs. 0.00
Exc. Cess CVD Rs. 0.00 Customs Edu. Cess Rs. 0.00
Health CVD Rs. 0.00 Addl Duty + Importer Rs. 0.00
HS Cess CVD Rs. 0.00 HS Cess Edu. Cess Rs. 0.00

Duty Payable: Rs. 4218560.00

Rs. Forty Two Lakh Eighteen Thousand Nine Hundred and Sixty

Material Gate
Whirlpool of India Ltd.
Plot No. 1097, Industrial Estate, 12100142, MCT00533743
Material Gate, 12100142, MCT00533743

GSTN Details:

Document No: TSP Date Of Name: 19 OCT-2020
SEARCHED/SEARCHED
C 06 KARNATAKA 14022122 100% AND
Entry No: 50976 Time: 14:00:00
Security Sign. Clerk:

H. T. L. Logistics India (Pvt) Ltd.						
INTERNATIONAL FREIGHT FORWARDERS AND CUSTOM HOUSE AGENT						
PAN NO : AABCH1588E						
Plot No. 5, 3rd Floor, Unit No - 314-319, City Centre, Dots Approved Commercial Mall, District Center, Sector - 32, Mohali, Punjab, India - 160076. India.						
E-mail : service@htllogistics.com WebSite : http://www.HTLLogistics.com						
Customer Service Number : +91-9868229294						
GSTIN : 9ANH1588ZD, HTL LOGISTICS INDIA PVT LTD						
ATTENTION: THE ACCOUNTS PAYABLE MANAGER						
25-N.I.T.						
FARIDABAD HR 121001						
INVOICE DATE 14-Oct-20						
CUSTOMER ID WHICHPDF						
SHIPMENT ID HTL105010500822349						
CLIENT GSTIN # 00AAACWV1350L12G						
CLIENT PAN # AACWV738L						
STATE OF SUPPLY Madhya						
DUE DATE 25-Nov-20						
TERMS 45 days from Inv. Date						
CONSO NUMBER CHTUN000001645						
PRINTED BY: Arshita Sharma						
SHIPMENT DETAILS						
CONSIGNEE						
WHIRLPOOL OF INDIA LTD						
ORDER NUMBERS / OWNER'S REFERENCE						
GOODS DESCRIPTION						
COMPRESSOR						
IMPORT CUSTOMS BROKER						
WEIGHT	VOLUME	CHARGEABLE	PACKAGES			
DOLAN BILL OF LADING						
HOUSE BILL OF LADING						
COM/2019090303						
YCC/20190444						
VESSEL / VOYAGE / IMDG/LLOYDS	DESTINATION	ETA				
XIN HONG KONG / 042/PT	INDIA + Ahmedabad, India	08-01-20				
ORIGIN	ETD	CHARGES IN INR				
CHINA + Shanghai, China	22-Sep-20	GST IN INR				
CHARGES		GST IN INR				
DESCRIPTION		GST IN INR				
SAC: 99615211 OCEAN FREIGHT IMPORT CHARGES USD 1,21,70,000	74,70000	11,43,67,88				
SAC: 99671351 LINER CHARGES		2,33,57,81				
SAC: 99671311 DELIVERY ORDER+DESTINATION		1,14,00,00				
SAC: 99671331 CHARGES COLLECT FEES USD 62,40 #		2,50,00,00				
Total		5,65,11,17				
SAC	TAXABLE AMOUNT	TOTAL GST	COST	GST	IGST	
99615211	9,25,157.60	3.00	0.00	0.00	11,657.88	
99671351	1,21,163.55	3.00	0.00	0.00	21,404.37	
99671311	3,94,320.73	3.00	0.00	0.00	33,461.25	

3.1.2 The 596 import books were resumed under the Panchnama dated 22/23.09.2022 and were handed over to Sh. Neeraj Gupta, Senior Manager (Finance) vide Supurdaginama dated 23.09.2022 (**RUD-3**) for safe custody. Out of the total 596 books, 10 books in respect of Faridabad Plant were kept in custody of DRI officers.

3.2 Search was also conducted at the factory premises of M/s Whirlpool of India Ltd situated at 28, New Industrial Town, Sector 20, Faridabad, Haryana-121001 and following documents and electronic devices were resumed under Panchnama dated 22.09.2022 (**RUD-4**):-

- (a) Documents in Page no. 1 to 11 (Email communications).
- (b) Inventory of stock (Annexure-1 from page no.1 to 22).
- (b) Purchase entry ledger in pen drive (32 GB SA 12632).
- (c) HP Probook 640 G4 (SN#5CG9156ZVK).
- (d) HP Probook 640 G4 (SN#5CG915711T).
- (e) Vivo x60 Model V2045, IMEI: 861914058263195 and 861914058263187.
- (f) Oneplus 7, Model GM1901, IMEI: 869430042629971 and 869430042629963.
- (g) Email backup of mails: guptaraju17@gmail.com and rajureetu@gmail.com (belong to Sh. Raju Kumar Gupta, Deputy Manager (Supply Chain), M/s WOIL.

3.2.1 During the search, excerpts of email communications (beginning from 24.03.2020) between the staff of M/s WOIL and Overseas suppliers (**RUD-5**) were resumed under Panchnama dated 22.09.2022. In the said email communications, it was clearly mentioned that the minimum ocean freight rate for the year to be fixed in respect of all future CIF consignments and freight in excess of the fixed rate will be paid by M/s WOIL directly to the freight forwarder at destination. Further, it has also been mentioned by one of the employees of M/s WOIL in the said email that following such practice would result into less administrative work and would also result into small savings on Custom duty. The said email was found relevant to the investigation and resumed under the Panchnama dated 22.09.2022. The relevant portion of the said email communication is reproduced below:

 Raju K Gupta <raju_k_gupta@whirlpool.com>

Re: Delivery Term
26 messages

Pratik Taneja <pratik_taneja@whirlpool.com> To: "daisy@jiaxipera.com" <daisy@jiaxipera.com>
Cc: 梅笑雪 <meixiaoxue@jiaxipera.com>, xiongxing <xiongxing@jiaxipera.com>, Palvi Attri <palvi_attri@whirlpool.com>, Ishwinder Singh <ishwinder_singh@whirlpool.com>, Ajaysingh M Chavan <ajaysingh_m_chavan@whirlpool.com>, Rahu Raja <rahu_raja@whirlpool.com>, Raju K Gupta <raju_k_gupta@whirlpool.com>, Dharam V Saini <dharam_v_saini@whirlpool.com>, Jawahar Sharma <jawahar_sharma@whirlpool.com>
Tue, Mar 24, 2020 at 9:04 PM

Hi Daisy,

This has been a discussion topic multiple times in the past but could not go through internally since it impacts inventory in our financial books .
But I have an alternate proposal as below :

- Terms shall remain CIF , but we will fix the sea freight cost once every year , example : 300 USD/Container .
- If there is a sea freight cost change , you still need to pay the fixed sea freight i.e. 300USD to our agent . Example : if the sea freight changes to 400 USD .
Whirlpool will directly pay our forwarder the differential amount i.e. 400-300 USD = 100 USD . Jiaxipera still pays 300USD to our agent .

Benefits of above proposal are :

1. No more administrative work each month for new compressor PO , new freight cost asking etc . One PO for one part number for the entire year unless the fob buying price changes
2. We don't suffer issues inventory impact in our financial books
3. We are free to change sea freight any time , for each shipment or each month etc ...

What is your opinion on the above proposal , if ok then let me align this internally at whirlpool and then lets implement this straight away .

Thanks & Regards
Pratik Taneja
Deputy Manager, Global Strategic Sourcing
M : +91 9899526502 | Email : pratik_taneja@whirlpool.com

Raju K Gupta <raju_k_gupta@whirlpool.com>
To: M S Prakash <m_s_prakash@whirlpool.com>
Cc: Dharam V Saini <dharam_v_saini@whirlpool.com>, Jawahar Sharma <jawahar_sharma@whirlpool.com>, Pratik Taneja <pratik_taneja@whirlpool.com>, Palvi Attri <Palvi_Attri@whirlpool.com>

Mon, Apr 13, 2020 at 11:48 AM

Dear Sir,

This is to inform you that as discussed with GSS they are going to fix the minimum ocean freight rate for the year. and if any more than fix ocean freight rate extra ocean freight rate will be paid. WOIL will be paid to forwarder. Please let us know if you have any concern.

Terms shall remain CIF, but we will fix the sea freight cost once every year, example : 300 USD/Container.
- If there is a sea freight cost change, you still need to pay the fixed sea freight i.e. 300USD to our agent. Example : If the sea freight changes to 400 USD.
Whirlpool will directly pay our forwarder the differential amount i.e. 400-300 USD = 100 USD. Jiaxipera still pays 300USD to our agent.

Benefits of the above proposal are :

1. No more administrative work each month for new compressor PO, new freight cost asking etc. One PO for one part number for the entire year unless the fob buying price changes
2. We don't suffer issues inventory impact in our financial books
3. We are free to change sea freight any time, for each shipment or each month etc ...

Best Regards.

Raju Kumar Gupta

Deputy Manager : Import-Supply Chain Management

Telephone No. +91 129-6612203

M: +91 8527377933 |Email Raju_K_Gupta@whirlpool.com
Plot No. 28 N.I.T , Faridabad -121001 (Haryana), India Whirlpool of India Ltd |www.whirlpoolindia.com

[Quoted text hidden]

Ajaysingh M Chavan <ajaysingh_m_chavan@whirlpool.com>, Rahu Raja <rahu_raja@whirlpool.com>, Dharam V Saini <dharam_v_saini@whirlpool.com>, Jawahar Sharma <jawahar_sharma@whirlpool.com>, Pratik Taneja <p_atik_taneja@whirlpool.com>

Dear Pawan Ji,

This is to inform you that we are going to fix the minimum ocean freight rate, for smooth supply and if any extra ocean freight rate Whirlpool will pay the same. Please refer to the below mail and please advise us if you have any concerns.

Also Please note that we are trying to change the terms of Nidec Compressors (Beijing) from FOB to CIF due to the WIP Inventory benefit point of view. please please advise us if you have any concerns.

Best Regards.

Raju Kumar Gupta

Deputy Manager : Import-Supply Chain Management

Telephone No. +91 129-6612203

M: +91 8527377933 |Email Raju_K_Gupta@whirlpool.com
Plot No. 28 N.I.T , Faridabad -121001 (Haryana), India Whirlpool of India Ltd |www.whirlpoolindia.com

Pratik Taneja <pratik_taneja@whirlpool.com>

Mon, Jun 15, 2020 at 10:09 AM

To: Ajaysingh M Chavan <ajaysingh_m_chavan@whirlpool.com>
Cc: Sarika Shukla <sarika_shukla@whirlpool.com>, Palvi Attri <palvi_attri@whirlpool.com>, Ishwinder Singh <ishwinder_singh@whirlpool.com>, Rahu Raja <rahu_raja@whirlpool.com>, Dharam V Saini <dharam_v_saini@whirlpool.com>, Jawahar Sharma <jawahar_sharma@whirlpool.com>, Pawan Kumar <pawan_kumar@whirlpool.com>, Raju K Gupta <raju_k_gupta@whirlpool.com>

Hi Ajay,

I think we can go ahead with this. Please confirm your concurrence so that Raju can arrange PI's and you can release PO for July dispatches.

We should get some small savings also due to this since import price will be reduced and we will save on Custom duty of around Rs 0.30 to Rs 0.40 per compressor.

Thanks & Regards

Pratik Taneja

Deputy Manager, Global Strategic Sourcing

M : +91 9899526502 | Email : pratik_taneja@whirlpool.com

[Quoted text hidden]

21/09/2022
22/09/2022

22/09/22
22/09/22

Nancy Chauhan
22-9-22

22/09/22

Pratik Taneja <pratik_taneja@whirlpool.com>

To: Raju K Gupta <raju_k_gupta@whirlpool.com>, Jawahar Sharma <jawahar_sharma@whirlpool.com>
Cc: Palvi Attri <palvi_attri@whirlpool.com>, Singh <ishwinder_singh@whirlpool.com>, Ajaysingh M Chavan
<ajaysingh_m_chavan@whirlpool.com>, Rahu Raja <rahu_raja@whirlpool.com>, Dharam V Saini
<dharma_v_saini@whirlpool.com>

Tue, Apr 7, 2020 at 3:24 PM

Hi Raju & Jawahar sir ,

Refer trailing mail for Jiaxipera alignment , please confirm your formal alignment for this proposal . Basis same we will send out communication to all 3 compressor suppliers : Jiaxipera, Donper and GMCC ; and implement this way of working with immediate effect.

In the second phase we can do the same for remaining import parts as well and for all Whirlpool India plants.

Thanks & Regards
Pratik Taneja
Deputy Manager, Global Strategic Sourcing
M : +91 9899526502 | Email : pratik_taneja@whirlpool.com

On Tue, Apr 7, 2020 at 2:28 PM daisy@jaxipera.com <daisy@jaxipera.com> wrote:
| Dear Pratik,

Thanks for your email and hope everything is fine with you.

Your proposal is appreciated and to fix the sea freight cost, will help improve the efficiency and reduce some administrative work.

We can follow this solution and will see. Please inform the starting time and we will manage accordingly.

Thanks again for your always valuable support!

B.R.
Daisy
Sales and Marketing
Tel: +86 15157310698
Email: daisy@jiaxiper.com
www.jiaxiper.com.cn

jiaxipta

From: Pratik Taneja

रामकृष्णपैशु 22/09/22 22/09/22

3.3 Further, one more search was conducted at the office premise of CHAM/s HTL Logistics India Pvt. Ltd. (CHA office) situated at Bandh Road, Behind Rajasthan Petrol Pump, N.H.8 Rajokari, New Delhi – 110038, and the search proceedings were recorded under Panchnama dated 22.09.2022 (**RUD-6**). During the search, following documents and devices on being found relevant for further investigation were resumed under Panchnama dated 22.09.2022:-

- (a) 10 box files containing relevant documents such as Bills of Entry, Invoices, packing Lists, Bills of Lading, etc.
- (b) One Apple Iphone 13 pro (256 GB), S/N Y93X09XQ55, IMEI 359664928032606 and 359664928897693 (belonging to Sh. Sita Ram Kothari, General Manager, M/s HTL Logistics India Pvt. Ltd.)
- (c) Backup of HDD NVMe (SSD, 256GB), S/N TW0TN2CC9DH0005I0JJT TAKEN OUT FROM Dell Latitude 3301 Laptop bearing S/N H370003 (found at the office premises).

3.4 One more search was conducted at the office premise of the freight forwarder M/s HTL Logistics India Pvt. Ltd. situated at 4H & J, 4th floor, Uppals Plaza, M6, Jasola District Centre, New Delhi-110025, and the search proceedings were recorded under Panchnama dated 22.09.2022 (RUD-7). During the search, following documents and devices on being found relevant for further investigation were resumed under Panchnama dated 22.09.2022:-

- (a) 2 Box files containing tax invoices pertaining to M/s Whirlpool of India Ltd.
- (b) Hard disk (500 GB) bearing Serial No. Z6ECP78E (removed from the desktop of Sh. Parveen Kumar, Sr. Executive, Finance, M/s HTL Logistics India Pvt Ltd).
- (c) Email backup of vijay.kumar@htllogistics.com; bhupendra@htllogistics.com; rohit@htllogistics.com; and rameshwar@htllogistics.com.
- (d) HONOR Mobile No. 7X- Blue Color, IMEI 867344036913568/867344037093568 (belonging to Sh. Vijay Kumar, Assistant Manager, Ocean Imports, M/s HTL Logistics India Pvt Ltd).
- (e) One HP Laptop, silver colored, bearing Sl. No. 5CG7380ZXV (belonging to Sh. Vijay Kumar, Assistant Manager, Ocean Imports, M/s HTL Logistics India Pvt Ltd).

3.5 Search was conducted at the factory premises of M/s Whirlpool of India Ltd. situated at A4, Ranjangaon MIDC, Pune Maharashtra- 412220 and search proceedings were recorded under Panchnama dated 22.09.2022 (RUD-8). The officers on reasonable belief that documents are important with respect to the investigation retrieved certain documents and took printouts of the same. The same was put into two separate files whose details are as under:

- (a) Data retrieved from emails of Sh. Mayur Kulkarni, Sr. Manager, Supply Chain and his staff in one file no. 1, from page no. 1 to 185. Amongst other things, it transpires from the email communications (RUD-9) between Whirlpool Pune plant, overseas supplier and shipping lines that they had arranged a setup in which only 350 USD were collected at origin and rest was billed locally in India.
- (b) Data retrieved from the email of Sh. Tushar Choudhary, Sr. Manager, Finance in file no. 2, from page no. 1 to 199.

3.6 In addition to above, search was also conducted at office premises (CHA office) of M/s HTL Logistics India Pvt. Ltd. situated at Office No. 1007, 10th Floor, V Time Square, Plot No. 3, Sector - 15, C. B. D. Belapur, Navi Mumbai – 400614 and search proceedings were recorded under Panchnama dated 22.09.2022 (RUD-10). During the search following documents were resumed under Panchnama dated 22.09.2022:

- (a) Email backup of email ids kamlakar@htllogistics.com; pankaj@htllogistics.com; sanjay.katam@htllogistics.com; Deepak.kokne@htllogistics.com; umesh@htllogistics.com; keraba@htllogistics.com; mumcha@htllogistics.com; visha@htllogistics.com; vishal.shirke@htllogistics.com.

(b) Excel file containing HTL invoices from April 2018 to 21st September, 2022.

(c) Sample invoices (10 in nos.) issued by M/s HTL logistics India Pvt Ltd. to M/s Whirlpool of India Ltd.

3.7 Further, during search conducted at office premises of M/s HTL Logistics India Pvt. Ltd. situated at 205/206/207, K P Aurum, K P Engineering Compound, Marol Maroshi Road, Marol, Andheri (E), Mumbai - 400059, and search proceedings were recorded under Panchnama dated 22.09.2022 (RUD-11). Further, following documents relevant to the investigation were resumed under Panchnama dated 22.09.2022:

(a) Email backup of email ids venkat@htllogistics.com; sandeep.pingle@htllogistics.com; chetan@htllogistics.com; and chetanphatak@gmail.com.

(b) List of Clients of M/s HTL Logistics India Pvt. Ltd.

(c) Invoices and Credit Notes related to freight forwarding services from April 2018 to September 2022, in respect of M/s Whirlpool of India Ltd, from 'Cargowise' server.

(d) Records pertaining to payments made to M/s HTL Logistics India Pvt. Ltd. by M/s Whirlpool of India Ltd in respect of freight forwarding services provided.

(e) Printout of whatsapp chat and search proceedings were recorded under Panchnama dated 22.09.2022 (RUD-12) of Sh. Chetan Phatak and Sh. Shubham Gajabhiye.

4. Further, M/s Whirlpool of India Ltd., in view of the acceptance of the duty evasion, voluntarily submitted 7 Demand drafts total amounting to Rs. 7 Crores vide letter dated 23.09.2022 (RUD-13). The said Demand Drafts amounting to Rs. 7 Crores were deposited in the government account vide TR-6 Challan No. 'HC-42' dated 06.10.2022 (RUD-14) at JNCH, Nhava Sheva.

5. Statement of Sh. Aditya Jain, Chief Financial Officer of M/s Whirlpool of India Ltd was recorded on 22.09.2022 (RUD-15) at the office premises of M/s Whirlpool of India Ltd wherein, among other things, he stated, *inter-alia*, that the purchase of goods imported by M/s WOIL was being handled by the Purchase (Procurement) department/ GSS (Global Strategic Sourcing) Team which was headed by one Sh. Sarang Gupta who had already resigned by then. Further, in the absence of the Head of the Procurement department, the purchase and vendor negotiation were being handled by the respective Purchase/ Commodity Managers who used to report to Sh. Sarang Gupta. After the import of goods, the clearance is handled by the Supply Chain Department and subsequently the imported goods are received in the factory or warehouses of M/s WOIL. Thereafter, the import related documents such as Vendor Invoice, Freight Forwarder Invoice, CHA Invoice, Bill of Entry, etc. are submitted to the Accounts Payable Team. The Accounts Payable Team checks the respective documents and processes the same by posting into respective Vendor Accounts. The Accounts Payable Team

is handled by Sh. Neeraj Gupta. The foreign remittances are handled by Sh. Prince Soni, Director, Tax and Treasury.

5.1 On being asked about the process of finalizing a foreign supplier, he stated that the GSS (Global Strategic Sourcing) Team of M/s WOIL is responsible for appointment and finalization of foreign suppliers. In addition, a few of the foreign suppliers are also appointed in consultation with their Global Commodity Manager as well. He further stated that as Whirlpool is a multinational organization, and supplies are made across all the factories in the various parts of the world, the foreign vendors (suppliers) are dealt and negotiated based on the overall supply to various factories across the world and based on the assessment of Supplier capacity, quality, pricing, due diligence and such other factors as decided by the GSS team.

6. Statement of Sh. Aditya Jain, Chief Financial Officer of M/s Whirlpool of India Ltd was recorded on 23.09.2022 (RUD-16) at the office premises of M/s Whirlpool of India Ltd wherein, he stated, *inter-alia*, that after the resignation of Sh. Sarang Gupta, the GSS Team was reporting directly to Mr. Stefano, Asia GSS Head and administratively to Sh. Vishal Bhola, Managing Director, M/s WOIL. On being asked about the process of making remittances to the overseas suppliers in lieu of the imported goods, he stated that the payments pertaining to remittances is handled by the Accounts Payable Team in association with the Treasury Team. The GRN (Goods Received Note) prepared by the respective plant is checked by the Accounts Payable Team by matching it with supplier's invoice and in case of no mismatch or discrepancy, the same is processed in the SAP software and further forwarded to the Treasury Team for processing the remittances.

6.1 On being confronted with documents such as Bill of Entry No. 7588216 dated 04.05.2020, wherein the Invoice Terms were declared as C&F (Cost & Freight) under Section 17 of the Customs Act, 1962; Commercial Invoice No. JXWPF20003-7 dated 02.04.2020 bearing the same Invoice Terms i.e., C&F; Bill of lading No. WSHA0040458 wherein 'Freight Prepaid' has also been mentioned; and freight forwarder's invoice bearing Tax Invoice No. HTLDEL000023313 dated 28.04.2020 which clearly indicated that an additional freight of USD 6030 was paid which was not declared before the Indian Customs, he signed on the documents as a token of having seen and read the same. He accepted that as per the rules of Payment Terms C&F, no additional freight required to be paid and since the same had been paid by M/s WOIL to the freight forwarder, it should have been added in the assessable value of the imported goods and appropriate customs duty also required to be paid on the additional freight component.

7. Statement of Sh. Sitaram Kothari alias Vilesh Kothari, General Manager, M/s HTL Logistics India Pvt Ltd. was recorded on 22.09.2022 (RUD-17) wherein, he stated, *inter alia*, that the freight amount included in price of the goods imported by M/s WOIL under INCO terms - C&F/ CIF was USD 345-350 only, whereas the actual freight was much higher and the differential freight amount had been paid at the destination by the importer to the freight

forwarder. He accepted that the differential freight amount as mentioned above should also had been included in the assessable value of the goods and the importer had not been declaring the actual payment made with respect to the freight portion before Indian Customs thereby causing huge loss to the government exchequer.

8. Statement of Sh. Raju Kumar Gupta, Deputy Manager (Supply Chain), M/s WOIL, Faridabad Manufacturing Plant, was recorded on 23.09.2022 (**RUD-18**) at office of DRI Hqrs, New Delhi. Sh. Raju Kumar Gupta in his statement dated 22.09.2022 had stated, *inter alia*, that M/s WOIL is a USA-based Multinational Company which manufactures single door refrigerators and washing machines and for the purpose of manufacturing refrigerators and washing machines, M/s WOIL is engaged in importing raw materials such as compressors, thermostat, CFM steel sheets, bulbs for usage in refrigerators, motors, etc. majorly from China and Korea. He stated that his responsibilities are providing order to overseas suppliers for imported items such as compressors, thermostat, CFM steel sheets, motors, etc. He explained that for purchase of imported goods, Overseas Supplier issues Proforma Invoice and he forwards the Proforma Invoice to Finance Team for approval and opening Letter of Credit and once the approval is done from the finance team, he requests Treasury (Finance) to open Letter of Credit, thereafter, the Letter of Credit is forwarded to Overseas Supplier for dispatching materials on their end and afterwards, the goods are dispatched as per delivery schedule and after arrival of shipment at Indian Customs port, he gets the Bill of Entry filed through CHA. Further, the custom duties are paid by the finance team of M/s Whirlpool of India Ltd. and goods are cleared from the port.
- 8.1 He stated that the GSS (Global Strategy Sourcing) department has the authority to decide the terms of delivery (CIF/C&F/FOB). The GSS department deals with the commercials related to imports and domestic supply of raw materials and as per the best of his knowledge, GSS department is the final authority to decide the terms of delivery which is headed by Sh. Ishwinder Singh, who monitors the overall communication with suppliers regarding quality and costing of raw materials. He further stated that Sh. Ajay Singh Chavan, Manager, GSS used to communicate with suppliers in respect of deciding terms of delivery. The purchase order is generated by GSS, Corporate office of M/s Whirlpool of India Ltd and handed over to Plant GSS and Plant Supply Chain. He also stated that he, along with Sh. Shubham Gajabhiye in Pune Plant, Sh. S. Murugappan in Puducherry Plant and Ms Jyoti Nagpal in Head office, are directly involved in customs clearance and freight forwarding on behalf of M/s WOIL.
- 8.2 On being confronted with the documents resumed (11 pages) consisting of email conversation during Panchnama dated 22.09.2023 drawn at the Faridabad Plant of M/s WOIL, he signed the documents as a token of having seen and read the same. He stated that that **M/s WOIL was paying partial freight while importing the goods from overseas suppliers under INCO terms – C&F/ CIF and the remaining freight was being paid by it to the freight forwarders in India and this practice was being followed on the explicit directions of Sh. Pratik Taneja, Deputy Manager, (GSS Department) and Sh. Ajay Singh Chavan,**

Manager (GSS). He further accepted that the differential freight amount should also have been included in the assessable value of the goods by M/s WOIL although the same was not being included in the assessable value and M/s WOIL was not declaring the actual payment made with respect to the freight portion before Indian Customs and the management of M/s WOIL is aware of the freight amount being not included in the assessable value of the imported goods. He stated that in the management of M/s WOIL, Sh. Jawahar Sharma, Senior Manager, Import-Supply Chain Management, Sh. Mayur Kulkarni, Senior Manager, Supply Chain (Pune Plant) and he were aware of this malpractice along with Sh. Pawan Kumar, Senior Manager (Factory Finance) who deals with Head office (Gurugram) authorities regarding payments of bills.

9. Statement of Sh. Jawahar Lal Sharma, Senior Manager (Supply Chain), M/s WOIL, Faridabad Manufacturing Plant, was recorded on 23.09.2022 (RUD-19) at office of DRI Hqrs, New Delhi wherein he inter alia stated that the GSS (Global Strategy Sourcing) department has the authority to decide the terms of delivery (CIF/C&F/FOB) which is headed by Sh. Ishwinder Singh, who monitors the overall communication with suppliers regarding quality and costing of raw materials; that Sh. Ajay Singh Chavan, Manager, GSS used to communicate with suppliers in respect of deciding terms of delivery; that purchase order is generated by GSS, Corporate office of M/s Whirlpool Of India Ltd and handed over to Plant GSS and Plant Supply Chain. He also stated that Sh. Raju Kumar Gupta along with Sh. ShubhamGajabhiye in Pune Plant, Sh. S. Murugappan in Puducherry Plant and Ms Jyoti Nagpal in Head office, are directly involved in customs clearance and freight forwarding on behalf of M/s WOIL.
- 9.1 On being confronted with the documents resumed (11 pages) consisting of email conversation during Panchnama dated 22.09.2023 drawn at the Faridabad Plant of M/s WOIL, he signed the documents as a token of having seen and read the same. He stated that that the contents of the email conversations (found during search at Faridabad plant of M/s WOIL) show that M/s WOIL was paying partial freight while importing the goods from overseas suppliers under INCO terms – C&F/ CIF and the remaining freight is being paid to the freight forwarders in India and the said practice was being followed on the explicit directions of **Sh. Ajay Singh Chavan, Manager, GSS and Sh. Pratik Taneja, Deputy Manager, GSS department.** He further accepted that the differential freight amount should also have been included in the assessable value of the goods by M/s WOIL although the same was not being included in the assessable value and M/s WOIL was not declaring the actual payment made with respect to the freight portion before Indian Customs and the management of M/s WOIL is aware of the freight amount being not included in the assessable value of the imported goods. He stated that in the management of M/s WOIL, Sh. Raju Kumar Gupta, Deputy Manager, Import-Supply Chain Management, Sh. Mayur Kulkarni, Senior Manager, Supply Chain (Pune Plant) and he were aware of this malpractice along with Sh. Pawan Kumar, Senior Manager (Factory Finance) who deals with Head office (Gurugram) authorities regarding payments of bills.

10. Statement of Sh. Vijay Kumar, Assistant Manager, Ocean Import department, M/s HTL Logistics India Pvt Ltd was recorded on 23.09.2022 (RUD-20), wherein, among other things, he stated, inter alia, that after receiving booking from M/s WOIL, M/s HTL Logistics India Pvt Ltd. ask its overseas counterparts to provide freight forwarding services to foreign supplier at its behest. Once the shipment of imported goods reach India, Delivery Order (DO) is collected from the Shipping Lines and the same is handed over to the Customs Clearance department of M/s HTL Logistics India Pvt Ltd. Meanwhile, invoice is raised to M/s WOIL for providing freight forwarding services. Afterwards, Customs Clearance department gets the consignment cleared through Indian Customs and goods are delivered to M/s WOIL. Subsequently, Customs Clearance department also raises invoice to M/s WOIL in lieu of the clearance service provided to them.

10.2 He stated that **M/s WOIL was mis-declaring the amount of freight portion while importing the goods and the freight amount included in price of the imported goods was USD 345-350 only whereas the actual freight was much higher** and the differential freight amount had been paid at the destination by the importer to the freight forwarder. He stated that the goods had been purchased under partial freight payment terms and the differential freight amount was paid by M/s HTL Logistics India Pvt. Ltd. to shipping lines and the same had been collected at destination port by the forwarders from the importer. He further stated that the differential freight amount should have been included in the assessable value of the goods by M/s WOIL, although the same was not being included in the assessable value. He also stated that ShRaju Kumar Gupta of M/s Whirlpool of India Ltd. and himself and ShSatyendra from M/s HTL Logistics India (P) Ltd were aware of the freight amount being not included in the assessable value of the imported goods and when he and ShSatyendra informed M/s WOIL of this practice leading to customs duty evasion in August 2021, M/s WOIL stopped the practice and started importing on FOB payment terms only.

11. Statement of Sh. Sitaram Kothari alias Vilesh Kothari, General Manager, M/s HTL Logistics India Pvt Ltd. was recorded on 26.09.2022 (RUD-21) at DRI Hqrs wherein, among other things, he stated that the components of ocean transportation cost are Basic Ocean Freight, General Rate Increase (GRI), Currency Adjustment Factor (CAF), Bunker Adjustment Factor (BAF), CC Fees, Port Congestion Surcharge (PCS), Covid-19 Surcharge, EBS, EIS, LSS, or others as applied by carriers and these are required to be added in the assessable value of imported goods and if the said charges other than Basic Ocean Freight are mentioned in the invoice issued by the freight forwarder to the importer in respect of CIF/C&F/FOB shipments, these are also required to be added in the assessable value of the imported goods.

12. Statement of Sh. Prince Soni, Director (Treasury and Direct Taxes), M/s WOIL was recorded on 10.10.2022 (RUD-22) at DRI Hqrs wherein, among other things, he inter alia stated that in M/s WOIL, all the commercial terms with the foreign suppliers are negotiated by GSS (Global Strategic Sourcing) including pricing, payment terms (CIF/C&F/FOB), delivery mode etc. and the GSS department was headed by Sh. Sarang Gupta till May, 2022 and it was then being headed by Sh. M S Prakash, Director. He stated that it is the Accounts Payable Team who

does the accounting and verification in respect of the expenses under various heads viz. all transportation, import duties, etc. and subsequently the treasury team is provided with the total amount of all the domestic vendors on weekly basis by Accounts Payable team and afterwards the Treasury team provides funds in the bank account and Accounts payable team uploads the weekly payment batch on bank portal to all domestic vendors including all such payments.

13. Statement of Sh. M S Prakash, Director, Supply Chain (Impex & Spares), M/s WOIL was recorded on 19.10.2022 (**RUD-23**) at DRI Hqrs wherein, among other things, he inter alia stated that he joined M/s WOIL in the year 1998. In response to a specific question, he stated that from April 2018 onwards, he was holding the charge of General Manager, Supply Chain and was in charge of exports and imports of finished goods and November 2021 onwards, he started working as Director, Supply Chain holding responsibilities of exports and imports of finished goods and spares (after sale service). He further stated that he was also handling Global Ocean Bids for finalising Ocean freight till May, 2020.
- 13.1 On being shown print out of email dated 13.04.2022 downloaded from his email id which was sent to him by Sh. Raju Kumar Gupta, wherein it is mentioned that the minimum ocean freight rate for the year had been fixed in respect of CIF consignments and freight in excess of the fixed rate will be paid by M/s WOIL directly to the forwarder, he put his dated signatures in a token of having seen the same and being downloaded from his official email id i.e., m_s_prakash@whirlpool.com. He further stated that it was during the peak of the COVID-19 outbreak and all employees were working from home and due to the Covid-19 outbreak, all imports of M/s WOIL were undergoing detention due to the unavoidable delays in clearance and congestion at various ports throughout the world. He further stated that during the said time period, his objective was to know the whereabouts of import consignments already left the origin port and also to get the containers cleared at the earliest avoiding detention at ports. He stated that he was not part of the said decision and was only later apprised by Sh. Raju Kumar Gupta through the said mail and INCO terms/terms of payment were under the purview of the GSS and plant supply chain team only.
- 13.2 He further stated that he was part of Global Ocean Team till May 2020 wherein, all global regions of M/s Whirlpool Corporation used to yearly consolidate containers volume and approach major ocean service providers for ocean freight rates. With respect to M/s WOIL, he used to provide global ocean freight rates to the plant supply chain teams and, at times also used to approve if the plant supply chain teams came with alternative quotes due to space unavailability or sailing schedule not matching as per supplier's information to them.
14. Statement of Sh. Amit Sharma, Senior Manager, LSS, M/s TXM Logistics Private Ltd. and M/s Tianxin Logistics Private Ltd., was recorded on 15.11.2022 (**RUD-24**) wherein he stated, inter alia, that M/s TXM Logistics Pvt Ltd merged with M/s Tianxin Logistics Pvt Ltd. in 2020 and after the merger into M/s Tianxin Logistics Pvt Ltd., major business is being handled by M/s Tianxin Logistics Pvt Ltd and M/s TXM Logistics Pvt Ltd currently only handles local transportation for M/s Hero Motocorp Ltd.

14.1 Further, he stated that the liaising person in his company is Sh. AsheeshYadav, (Manager- Procurement and Customer Services) and the liaising persons in M/s WOIL are Sh. Jawahar Sharma and Sh. Raju Kumar Gupta (for Faridabad Plant); Sh. MS Prakash and Ms. Jyoti Nagpal (for Pune plant); Sh. Vivek and Sh. M Murugappan (for Puducherry plant).

14.2 In response to a specific question, Sh. Amit Sharma stated that the components of ocean transportation cost are Basic Ocean Freight, General Rate Increase (GRI), Currency Adjustment Factor (CAF), Bunker Adjustment Factor (BAF), CC Fees, Port Congestion Surcharge (PCS), Covid-19 Surcharge, EBS, EIS, LSS, or others as applied by carriers in foreign currency are the components of Ocean transportation and if the above said charges other than Basic Ocean Freight are mentioned in the invoice issued by the freight forwarder to the importer, those are also required to be added in the assessable value of the imported goods.

14.3 On being confronted with the BL No. INSHA21010108 wherein 'Freight Prepaid' was clearly mentioned along with Invoice No. 1118205401005096 dated 02.03.2021 issued by M/s Tianxin Logistics Pvt Ltd to M/s WOIL, he put his dated signatures as a token of having seen the same and stated that M/s WOIL had mis-declared the payment terms as C&F/CIF before Indian Customs whereas the freight had been collected at destination port. He further stated that the freight amount mentioned in the above said invoice should also have been included in the assessable value of the goods by M/s WOIL, although the same was not included in the assessable value and hence M/s WOIL had evaded customs duty.

15. Statement of Ms Tarannum Shaikh, Manager, Customer Services, M/s Cargosol Logistics Ltd. was recorded on 16.11.2022 (**RUD-25**) at DRI Hqrs wherein, among other things she stated, *inter alia*, that the components of ocean transportation cost are Basic Ocean Freight, General Rate Increase (GRI), Currency Adjustment Factor (CAF), Bunker Adjustment Factor (BAF), CC Fees, Port Congestion Surcharge (PCS), Covid-19 Surcharge, EBS, EIS, LSS, or others as applied by carriers in foreign currency and at the time of loading of container at port of Origin, the importer is made aware of these charges which are required to be paid before Delivery Order is issued. She further stated that if the above-mentioned charges other than Basic Ocean Freight are mentioned in the invoice issued by the freight forwarder to the importer, these are also required to be added in the assessable value of the imported goods.

16. Statement of Sh Rohin Bhuwan, Divisional Manager, Global Freight management, M/s LF Logistics (India) Pvt. Ltd. was recorded on 21.11.2022 (**RUD-26**) at DRI Hqrs wherein, he stated, *inter alia*, that M/s LF Logistics (India) Private Ltd has been associated with M/s WOIL since the year 2016 and the services provided by M/s LF Logistics limited is only to provide the services of freight forwarding.

16.1 He also stated that the components of ocean transportation cost are Basic Ocean Freight, General Rate Increase (GRI), Currency Adjustment Factor (CAF), Bunker Adjustment Factor (BAF), CC Fees, Port Congestion Surcharge (PCS), Covid-19 Surcharge, EBS, EIS, LSS, or

others as applied by carriers in foreign currency and at the time of loading of container at port of Origin, the importer is made aware of these charges which are required to be paid by him before Delivery Order is issued. He stated that all the particulars charged in foreign currency shall be considered as part of ocean transport and if the above said charges (incurred in foreign currency) other than Basic Ocean Freight are mentioned in the invoice issued by the freight forwarder to the importer, these are also required to be added in the assessable value of the imported goods.

16.2 On being confronted with copy of Bill of lading bearing BL No. CETGD2003743 wherein, 'Freight prepaid' had clearly been mentioned along with invoice issued by M/s LF Logistics (India) Pvt Ltd to M/s WOIL bearing Invoice No. DELF20000397 dated 13.07.2020, corresponding to the said BL no. which clearly indicated that M/s LF Logistics India Pvt Ltd had charged M/s Whirlpool of India for freight forwarding charges through Invoices and had collected payments for the consignments, wherein 'Freight Prepaid' was mentioned on the Bill of Lading, he signed the documents as a token of having seen the same.

He accepted that they had collected sea freight (transportation) charges to the place of importation from M/s Whirlpool of India Ltd. and the same had been wrongly mentioned as 'Freight Prepaid'. He further stated that the differential freight amount should also have been included in the assessable value of the goods but was not included in the assessable value and M/s WOIL evaded customs duty by not including the freight amount paid at destination in the assessable value of goods before the customs.

16.3 On being confronted with another Bill of lading bearing BL No. LFLSHA00240089 wherein, 'Freight Collect' was mentioned along with 'Trade Term- CIF-Nhava Sheva Port' and copy of invoice issued by M/s LF Logistics (India) Pvt Ltd to M/s WOIL bearing Invoice No. DELF20000024 dated 06.04.2020, corresponding to the said BL no. and it could be seen that though in the BL, the trade INCO terms is CIF, invoice for sea freight had been raised against M/s WOIL, he signed the documents as a token of having seen the same. Further, he stated that as 'Freight Collect' was mentioned on the BL, hence they raised an invoice on M/s WOIL for the sea transportation charges. He further stated that in case of a CIF consignment, freight needs to be included in the invoice value and needs to be paid by the shipper. Therefore, it appears that this consignment was not a CIF consignment as the freight was collected by us from M/s WOIL and the same had been mis declared by M/s WOIL as CIF.

17. Statement of Sh. Pratik Taneja, Manager-Procurement, M/s WOIL was recorded on 10.01.2023 (**RUD-27**) at DRI Hqrs wherein, among other things, he *interalia* stated that during the time period from April 2018 to Sep 2020, he was working as Deputy Manager and was handling new parts development for refrigerator components where his key responsibility was to develop new parts for new Refrigerator Project introductions and also new parts for any existing refrigerator design changes. He further stated that October 2020 onwards, he transitioned to a new role as Buyer for Resin and Chemical Commodity.

17.1 On being confronted with print out of email trail beginning from 24.03.2022 till 22.09.2020 wherein reply was sent by him to mail id daisy@jaxipera.com pertaining to one Ms. Daisy from Jaxipera, wherein it was mentioned that the minimum ocean freight rate for the year to be fixed in respect of all future CIF consignments and freight in excess of the fixed rate would be paid by M/s WOIL directly to the forwarder, he went through the same and put his dated signatures on each page as a token of having seen the same. He stated that there were regular operational issues being faced by M/s WOIL in Import shipments which even lead to delays in several import consignments arrival which mainly were happening due to delay in confirming revised monthly ocean freights, delay in Proforma Invoice issuance by compressor supplier, delay in revised Purchase order price approvals, delay in PO release, delay in Letter of Credit release and eventually delay in date of departure of consignments from import country and those issues became even more important to address during that time i.e. Mar'2020 onwards, since due to onset of COVID-19 the imports were even delayed due to delayed vessel arrivals and delayed clearances of these shipments at origin and destination ports. To overcome this issue, there were discussions done in the past as well between Whirlpool Supply chain team (Sh. Raju Gupta) and Whirlpool GSS team (himself and Ajaysingh M Chavan) and overseas suppliers but conclusion could not be reached. The solution proposed in the past by overseas suppliers was to move to FOB terms (as could be seen in trailing email from M/s Daisy as well) and this proposal was not accepted mainly since it impacted inventory in Whirlpool financial books. He further stated that before this email response to supplier, there was due verbal discussion that happened between Whirlpool Supply chain team and Whirlpool GSS team and they jointly came out of this proposal and the proposal email was sent by him to the supplier since he had slightly better writing English communication skills and it was very important to pass on the right intent to overseas supplier. He further stated here that at that time he had no expertise in Indian Customs act rules, compliances etc. and the Intent shown and written was to resolve an operational issue and not go beyond the defined laws. Afterwards, the overseas supplier confirmed this proposal vide mail dated April 7 2020. After the receipt of in principle confirmation from supplier, he requested a formal go- ahead approval from the concerned department i.e., Supply chain Management since Supply chain management team was the only team accountable and responsible for day-to-day shipments. Subsequently, Mr Raju Gupta consulted on the matter with Whirlpool Plant Finance (Mr Pawan Kumar) and Mr MS Prakash and gave a formal go ahead to GSS team mentioning "Start your process for PO releasing" to which he responded mentioning that they consider this a formal go ahead from his side for Proposed way of working for sea freight and CIF terms. Further, vide email dated June 15, 2020, he requested Ajay for his formal alignment as well and based on his limited knowledge of customs and basic arithmetic calculation the intent of mentioning the small inconsiderable savings here was not price savings or tax evasion but was resolving an operational issue. On Email dated 23rd June 2020, Ajay confirmed his formal alignment on the matter and confirmed to change CIF Pricing from August dispatches onwards for which Ajay would have followed the internal Approval process and taken relevant approvals before releasing purchase orders with this

revised way of working. Generally, any changes in pricing used to get approved by Vice President- GSS (Mr Sarang O Gupta).

18. Statement of Sh. Suresh Kumar, Senior Manager- Indirect Taxes, M/s WOIL was recorded on 19.01.2023 (**RUD-28**) at DRI Hqrs wherein, among other things, he *inter alia* stated that the various charges such as GRI, PCS, BAF, CAF, Covid-19 Charges, CC Fees, LSS, etc. should have been added in the actual transportation cost as these charges are part of transportation only. He further stated that charges remitted by the forwarder to its overseas agent in foreign currency (USD mainly) are part of transportation cost only. Sh. Suresh Kumar also submitted the calculation of duty liability in an excel sheet on behalf of M/s WOIL. Sh. Suresh Kumar also submitted the data for the purpose of calculation of duty liability vide Letter dated 19.01.2023 (**RUD-29**) on behalf of M/s WOIL.
19. Statement of Sh. Ishwinder Singh, Director- Procurement, M/s WOIL was recorded on 02.02.2023 (**RUD-30**) at DRI Hqrs wherein, among other things, he stated, *inter alia*, that in 2018, he took responsibility of Faridabad plant operations and in the end of 2018 he got shifted to the Pune Plant as Pune plant procurement Lead and subsequently in May 2019, he was made lead for all 3 plants Procurement lead wherein his key responsibilities were to manage execution of New Projects, Business continuity & execution of cost & quality projects procurement operations for all 3 plants (Faridabad, Pune and Pondicherry) and further, he got promoted as Director, Procurement in March, 2021.
- 19.1 On being confronted with print out of email trail beginning from 24.03.2020 till 22.09.2020 wherein he was also kept in CC, wherein it is mentioned that the minimum ocean freight rate for the year to be fixed in respect of all future CIF consignments and freight in excess of the fixed rate would be paid by M/s WOIL directly to the forwarder, he went through the above said mail trail and put his dated signatures on each page as a token of having seen the same. He further stated that there were operational issues due to frequent changes in PO (Purchase Order) triggered by frequent freight changes, delays in getting timely PI (Performa Invoices) from suppliers and these frequent PO changes were leading to late LC (Letter of credit) release to suppliers which used to impact dispatches and arrivals from overseas compressor suppliers. Such type of operational issue was still manageable before Covid however after Covid, Freight changes became more frequent leading to Business continuity issues and line stoppages. Further, in order to resolve the problem, solution came from Faridabad supply chain (Raju Gupta) to fix freight portion in PO for longer period of time to avoid frequent changes in PO, PI & LC. Thereafter, the Procurement team got involved to align above mentioned proposal with compressor overseas suppliers which was accepted by the suppliers and after getting supplier confirmation, the Procurement team requested supply chain to take relevant approvals from Finance etc for proposed solution. The Supply chain team took approval in written from Faridabad Plant Finance (Pawan Kumar) and requested Procurement team to release PO based on finance approval. He further added that the whole intent was to resolve an operational issue and with limited knowledge of customs, the Procurement team agreed to align supplier for

subject proposal however requested internally to take all appropriate approvals before proceeding further.

20. Further, M/s WOIL voluntarily submitted Demand Draft No. 613744 dated 10.03.2023, amounting to Rs. 3,10,44,453/- (Three Crores Ten Lakh Forty-Four Thousand and Four Hundred Fifty-Three only) vide letter dated 13.03.2023 (**RUD-31**). The said Demand Draft was deposited in the government account vide TR-6 Challan No. 'HC-257' dated 21.03.2023 (**RUD-32**) at JNCH, Nhava Sheva.

21. M/s WOIL vide their letter dated 07.06.2023 (**RUD-33**) requested for closure of proceedings initiated by DRI Hqrs under Section 28(5) and 28(6) of the Customs Act, 1962. M/s WOIL also voluntarily submitted the duty chart in form of an excel sheet containing details of their total duty liability vide email dated 07.06.2023 (**RUD-34**). Further, M/s WOIL also enclosed two Demand Drafts bearing Demand Draft No. 740387 and 740386 both dated 06.06.2023 (**RUD-35**) amounting to Rs.1,82,82,858/- and Rs.1,40,62,551/- (total amounting to Rs.3,23,45,409/-) respectively towards their remaining interest liability and 15% penalty.

Vide the said letter, M/s WOIL also requested for waiver of its right for issuance of any Show Cause Notice or Personal Hearing. The said Demand Draft was deposited in the government account vide TR-6 Challan No. 'HC-136' dated 13.06.2023 (**RUD-36**) at JNCH, Nhava Sheva.

22. During the investigation, the importer M/s WOIL admitted the duty liability and voluntarily submitted the differential duty calculation chart by declaring actual value of the freight with respect to goods imported by them and deposited the following Demand Drafts towards differential duty along with applicable interest and penalty @15% of the differential duty (w.e.f. 02.07.2018 to 15.06.2022) in order to conclude the proceeding in terms of Section 28 of the Customs Act, 1962 which were further deposited in the Govt. account (copies enclosed)

—

Sl. No	Demand Draft No. & Date	Amount	Payment made towards	TR-6 No. & Date
1	213296 dated 22.09.2022	1,00,00,000	Differential Duty	HC 42 dated 06.10.2022
2	213297 dated 22.09.2022	1,00,00,000	Differential Duty	
3	213321 dated 23.09.2022	1,00,00,000	Differential Duty	

4	213322 dated 23.09.2022	1,00,00,000	Differential Duty	
5	213323 dated 23.09.2022	1,00,00,000	Differential Duty	
6	213324 dated 23.09.2022	1,00,00,000	Differential Duty	
7	213325 dated 23.09.2022	1,00,00,000	Differential Duty	
8	613744 dated 10.03.2023	3,10,44,453	Differential duty and Interest	HC 257 dated 21.03.2023
9	740387 dated 07.06.2023	1,82,82,858	Interest	HC 136 dated 13.06.2023
10	740386 dated 07.06.2023	1,40,62,551	Penalty@15 %	
TOTAL		13,33,89,862		

22.1 The importer vide letter dated 19.01.2023 and E-mail 07.06.2023 (**RUD-29 and RUD 34**) has voluntarily submitted the differential duty calculation chart for the goods imported starting from 02.07.2018. Further, vide letters dated 23.09.2022, 19.01.2023 and 07.06.2023, the importer voluntarily deposited the differential duty along with interest and penalty. The total differential duty including interest and penalty for the above mentioned period comes to **Rs.13,33,89,862/-** (Rs.9,37,50,340/- towards Differential Customs Duty, Rs.2,55,76,971/- towards Interest and Rs.1,40,62,551/- towards Penalty). The importer vide their letter dated 07.06.2023 submitted that the management of the company, in its commercial wisdom and to avoid protracted litigation, has decided to deposit the full liability including Duty, Interest and Penalty of 15% in terms of Section 28 (5) of the Customs Act, 1962 with a view to bring closure to the present proceedings. The importer has also requested for waiver for issuance of Show Cause Notice and Personal hearing to them and has requested for conclusion of investigation being conducted by the DRI in terms of Section 28(6) of the Customs Act, 1962.

23. From the investigation conducted by this Directorate, it appears that M/s WOIL orchestrated an elaborate scheme by resorting to mis-declaration of the payment terms as CIF/C&F before the Indian Customs, wherein, partial freight of around 250-350 USD was only borne by the overseas suppliers and freight in excess of that was paid by M/s WOIL to the freight forwarder

at the destination. However, the same was not added in the assessable value of the imported goods as a means to evade payment of applicable customs duty. During the course of investigation, several incriminating evidences, mainly in the form of 596 Bill Books were recovered from the corporate office of M/s WOIL, Gurugram containing details of bills raised by freight forwarders against Bills of entry which were mis-declared as CIF/C&F before the Customs and it has been established that M/s WOIL mis-declared the payment terms before Indian Customs, thereby causing revenue loss to the government exchequer. The same has been established through the statements recorded of employees of M/s WOIL, freight forwarders and CHA during the course of investigation.

24. Further, incriminating evidence in the form of email communication beginning from 24.03.2020 till 22.09.2020, was recovered from the Faridabad manufacturing plant of M/s WOIL wherein, it was clearly mentioned that the minimum ocean freight rate for the year to be fixed in respect of all future CIF consignments and freight in excess of the fixed rate will be paid by M/s WOIL directly to the freight forwarder at destination and it was also mentioned by one of the employees of M/s WOIL in the said excerpt that following such practice would result into less administrative work and would also result into small savings on Custom duty. It is evident from the email communications and further established through the statements recorded during the course of investigation that the GSS (Procurement) Team, Supply Chain Team and Finance Team of M/s WOIL adopted this scheme which resulted in evasion of Customs duty.
25. Furthermore, it has also been revealed during the course of investigation that in respect of the imports made under payment terms- FOB, M/s WOIL only declared the ocean freight value before the Indian Customs, wherein, other surcharges such as PCS (Port Congestion Surcharge), GRI (General Rate Increase), LSS (Low Sulphur Surcharge), Covid-19 Surcharge, BAF (Bunker Adjustment Factor) etc. which are the components of ocean freight only, were not being added by the importer. However, the freight forwarder has mentioned the particulars of the said surcharges in the invoices raised by them to M/s WOIL. It has also been established through the statements recorded of employees of M/s WOIL, freight forwarders and CHA during the course of investigation. Therefore, it becomes evident that the importer has been evading customs duty by suppressing the facts about the real cost of ocean transportation in respect of any INCO terms-CIF/C&F/FOB.
26. By its acts of omission and commission, M/s WOIL was able to evade Customs Duty by not adding the exact freight amount in the assessable value of imported goods and thus mis-declaring the value of imported goods before Indian Customs.

LEGAL PROVISIONS

27. It appears that the following provisions of the Customs Act, 1962 and various related Rules and Regulations have been violated in the instant case:

(I) CUSTOMS ACT, 1962 – The following provisions of the Customs Act, 1962 have been violated in the instant case:

(A) SECTION 2: Definitions– In this Act, unless the context otherwise requires,

(26) "importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes [any owner, beneficial owner] or any person holding himself out to be the importer;

(B) SECTION 14. Valuation of goods. - (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

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

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

(i) the circumstances in which the buyer and the seller shall be deemed to be related;
(ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;

(iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:

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

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

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

Explanation . - For the purposes of this section -

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

(i) determined by the Board, or

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

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

(C) **SECTION 28.** [Recovery of [duties not levied or not paid or short-levied or short- paid] or erroneously refunded. -

.....
(4) Where any duty has not been ¹⁰[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 ¹¹[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.

.....
(5) Where any duty has not been levied or has been short-levied or the interest has not been charged 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 by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub- section (4) by the proper officer, such person may pay the duty in

full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent. of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

.....

(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion-

(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or

(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then, the proper officer shall proceed to issue the notice as provided for in clause (a) of sub-section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of¹⁴ [two years] shall be computed from the date of receipt of information under sub-section (5).

.....

(D) SECTION 28AA: Interest on delayed payment of duty

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made there under, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(E) Section 46 of the Customs Act provides entry of goods on importation –

(1) *The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically to the proper officer a bill of entry for home consumption or warehousing in the prescribed form :*

(2)---

(3)

(4) *The importer while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in*

support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.

(F) Section 111: Confiscation of Improperly Imported Goods, etc. -

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

(a) --

(b) --

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

(m) any goods, which do not correspond in respect of value or in any other particular with the entry made under this Act, shall be liable to confiscation;

(G) SECTION 112 : Penalty for improper importation of goods, etc. — Any person,

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

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

shall be liable, -

(i) ---

[ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher :

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

[(iii) ----

(iv) ----

(v) ----

(H) **SECTION 114A** of the Customs Act 1962 stipulates that "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"

(I) **SECTION 114AA** of the Customs Act 1962 stipulates that "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".

(II) **CUSTOMS VALUATION (DETERMINATION OF VALUE OF IMPORTED GOODS) RULES, 2007-** The following Customs Valuation Rules are relevant in the instant case:

10. COST AND SERVICES. -

(2) For the purposes of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) and these rules, the value of the imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include –

- (a) the cost of transport of the imported goods to the place of importation;
- (b) loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation; and
- (c) the cost of insurance :

Provided that –

(i) where the cost of transport referred to in clause (a) is not ascertainable, such cost shall be twenty per cent of the free on board value of the goods;

(ii) the charges referred to in clause (b) shall be one per cent of the free on board value of the goods plus the cost of transport referred to in clause (a) plus the cost of insurance referred to in clause (c);

(iii) where the cost referred to in clause (c) is not ascertainable, such cost shall be 1.125% of free on board value of the goods; Provided further that in the case of goods imported by air, where the cost referred to in clause (a) is ascertainable, such cost shall not exceed twenty per cent of free on board value of the goods: Provided also that where the free on board value of

the goods is not ascertainable, the costs referred to in clause (a) shall be twenty per cent of the free on board value of the goods plus cost of insurance for clause (i) above and the cost referred to in clause (c) shall be 1.125% of the free on board value of the goods plus cost of transport for clause (iii).

Provided also that in case of goods imported by sea stuffed in a container for clearance at an Inland Container Depot or Container Freight Station, the cost of freight incurred in the movement of container from the port of entry to the Inland Container Depot or Container Freight Station shall not be included in the cost of transport referred to in clause (a).

Explanation.- The cost of transport of the imported goods referred to in clause (a) includes the ship demurrage charges on charted vessels, lighterage or barge charges.

(3) Additions to the price actually paid or payable shall be made under this rule on the basis of objective and quantifiable data. (4) No addition shall be made to the price actually paid or payable in determining the value of the imported goods except as provided for in this rule.

28. Role of M/s WOIL and demand of differential duty:-

M/s WOIL is a USA-based Multinational Company which manufactures refrigerators and washing machines and for the purpose of manufacturing, M/s WOIL is engaged in importing raw materials. The import of goods is under the purview of three departments viz. the GSS (Global Strategic Sourcing) / Procurement Team, the Plant Supply Chain Team and the Finance team. The GSS department deals with the commercials related to imports of raw materials such as purchase and vendor negotiation, deciding terms of delivery (CIF/C&F/FOB), finalizing an overseas supplier, generating PO (purchase order), etc. The Plant Supply Chain team supervises the clearance of imported goods, negotiation with overseas suppliers regarding timely arrival of imported goods, etc. The Finance team undertakes accounting and verification in respect of the expenses under various heads viz. all transportation, import duties, etc. and eventually making payments to different vendors. The investigation reveals that since freight is subject to fluctuation, such fluctuation triggered frequent changes in Purchase Orders which were leading to delay in issuance of Performa Invoices and LC (Letter of credit) release eventually resulting into delayed supply of raw materials. From the evidences gathered during the investigation, it appears that the Supply Chain and the GSS Team came up with the proposal of fixing freight portion in PO in order to avoid frequent changes in PO, PI & LC. The GSS team aligned the overseas suppliers with respect to the said proposal and the Supply Chain got the relevant approvals from the Finance. Thus, the GSS (Global Strategic Sourcing) / Procurement Team, the Plant Supply Chain Team and the Finance team of M/s WOIL resorted to mis-declaration of the payment terms wherein, partial freight of around 250-350 USD was only borne by the overseas suppliers and freight in excess of that was paid by M/s WOIL to the freight forwarder at the destination. However, the same was not added in the assessable value of the imported goods as a means to evade payment of applicable customs duty. The names of employees from the GSS team and the

Supply Chain team have emerged in the email communications as discussed in para 3.2.1 above, however, during the course of investigation, it has emerged that many employees of M/s WOIL were moved from one role to another or left the organisation during this time period. Whereas it appears that the said practice was within the knowledge of multiple employees of the GSS, Plant Supply Chain and Finance teams, it was the duty of the senior officials of the GSS and Supply Chain teams to ensure necessary compliances and check for malpractices, if any. Further, it appears that the practice of fixing freight which eventually resulted in evasion of customs duty would not have been adopted without their approval. The fact that the practice of fixing freight will also result in "saving" Customs duty per compressor was also well within the knowledge of M/s WOIL is clear from the e-mail conversation mentioned above.

28.2 In terms of Section 14 of the Customs Act, 1962, the value of the imported goods shall be the transaction value subject to such other conditions as may be specified in this behalf by the rules made in this regard. It has been further provided that such transaction value shall include, in addition to the price, any amount paid or payable for cost and services including *inter-alia commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules Made in this behalf*. Further, in accordance with such provisions, Central Government has made Customs Valuation (Determination of value of imported goods) Rules, 2007 (herein after referred to as 'the valuation rules'). Rule 3 (1) of the valuation rules lays down that the value of the imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10.

28.3 With effect from 08.04.2011, Self-Assessment has become the norm of assessment of Customs duty in respect of imported/export goods, whichever applicable. This is a measure aimed at facilitating trust-based compliance management in respect of goods which are imported into or exported from India. With introduction of the concept of self-assessment, Government expected to usher a new era of trust-based Customs-Trade partnership. The focus of self-assessment is reliance on declarations made by importers/exporters for facilitating the clearance of imported/export consignment. The basic postulates of Self-Assessment are covered under Board's Circular No.17/2011- Custom dated 08.04.2011. As per the Self-assessment Scheme, the responsibility for assessment has shifted to the importer/exporter, therefore, importers/exporters are required to declare the correct description, value, classification, notification number, if any, and themselves assess the Customs duty leviable, if any, on the imported / export goods. Section 17 of the Customs Act, 1962 provides for self-assessment of duty on imported and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill, as the case may be, in the electronic form (Section 46 or 50). Self-Assessment is covered under Section 17, and also supported by Sections 18, 46 and 50 of the Customs Act, 1962. Therefore, to avail of the benefit of the facility, trade need to put in place robust systems and processes to ensure that accurate information is submitted to the Customs as the onus would lie solely on the importer/ exporter.

28.4 From the above, it is evident that, *cost of transport of the imported goods to the place of importation* not included in the price actually paid or payable, is required to be added to the price actually paid or payable for the imported goods as per Section 14 of the Customs Act, 1962 read with clause (a) of sub-rule 2 of Rule of Customs Valuation Rules, 2007 and explanation to Rule 10 (2) (a) to arrive at transaction value. Therefore, *cost of transport of the imported goods* was required to be included in the assessable value of the goods imported by M/s WOIL, for the purpose of assessment of Customs duty. However, it appears that M/s WOIL has failed to include the same in the value declared by them.

28.5 It, therefore, appears that the value declared by M/s WOIL at the time of import of the impugned goods, was not in accordance with the provisions of the CVR, 2007. In view of the facts mentioned above, it appears that M/s WOIL has indulged in deliberate suppression by way of mis-statement and has not declared the actual *cost of transport* which has led to short levy of duty at the time of import. By indulging into such activities of wilful mis-statement, the importer has rendered itself liable for invocation of extended period of limitation of five years, as envisaged under Section 28(4) of the Customs Act, 1962 and therefore, the differential duty arising on this account also appears liable to be demanded in terms of the provisions of Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA ibid.

29. The differential duty has been calculated on the basis of the re-determined Assessable Value and the total Bill of Entry wise liability has also been mentioned in **Annexure-A** to this Investigation Report. The total differential Customs Duty liability liable to be paid by M/s WOIL in respect of goods imported by them comes out to be Rs.9,37,50,340/- (duly rounded off). The total liability of differential Customs duty in respect of M/s WOIL has been summarized as under:-

Table-A (M/s WOIL)

Declared Total A.V.	Total Duty Paid	Total Re-determined A.V.	Total Duty Payable	Differential Duty
2584,03,62,786	799,17,72,265	2612,08,55,051	808,55,22,605	9,37,50,340

The calculation charts submitted by the importer have duly been checked, verified & found in order.

30. In view of the investigation, it appears that the correct value of imported goods was not declared by M/s WOIL, rendering the subject imported goods held liable to confiscation under Section 111(m) of Customs Act, 1962. For its acts and omissions M/s WOIL appears to have rendered itself liable to penalty under Section 114A of Customs Act, 1962. As M/s WOIL suppressed the fact related to the non- inclusion of transportation cost and submitted false/incorrect information for assessment of the imported goods to duty, they also appear liable to penalty under Section 114AA of Customs Act, 1962.

Role of employees of M/s WOIL

31. Sh. M S Prakash, Director, Supply Chain (Impex & Spares), M/s WOIL:

On the basis of the evidences brought on record, it appears that Sh. M S Prakash was responsible for handling Global Ocean Bids for finalising Ocean freight till May, 2020 the company including imports. Being the Director of Supply Chain, he is completely responsible for each and every lapse done on the part of M/s WOIL. Further, he himself stated in his statement dated that he used to provide global ocean freight rates to the plant supply chain teams and at times also used to approve if the plant supply chain teams came with alternative quotes due to space unavailability. Also, in the mail dated April 13, 2020 which is part of the excerpt of email communications as discussed in para 3.2.1 above, Sh. Raju Kumar Gupta mentioned that the minimum ocean freight rate for the year had been fixed in respect of CIF consignments and freight in excess of the fixed rate will be paid by M/s WOIL directly to the forwarder. However, on being confronted with the said email, he was evasive in his replies and stated that the said mail might have been overlooked whereas he was the approving authority with respect to alternative quotes of Ocean freight. Therefore, it appears that Sh. M S Prakash was aware of this practice which eventually led to customs duty evasion. Further, on the basis of the investigation conducted, it appears that there has been a case of non-inclusion of freight portion in the assessable value as mentioned above. The appropriate customs duty leviable on the goods as brought out herein could not be levied at that time of import due to reason of wilful misstatement and suppression of facts and hence, on account of the omission and commission, as set out herein, it appears that Sh. M S Prakash is liable for penalty under section 112(a) and 114AA of the Customs Act, 1962.

31.1. Sh. Raju Kumar Gupta, Deputy Manager, Import Supply Chain Management, M/s WOIL:

On the basis of the evidences brought on record, it appears that Sh. Raju Kumar Gupta was responsible for getting the Bill of Entry filed through CHA with respect to import shipments. Being the Deputy Manager of Supply Chain, he is completely responsible for each and every lapse done on the part of M/s WOIL. It appears from the excerpt of email communication as mentioned in para 3.2.1 above, specifically with reference to e-mail dated 13.04.2020, that he aligned local finance (Pawan Kumar) and M S Prakash with respect to fixing minimum ocean freight rate for CIF/CF consignments and the remaining freight to be paid at destination by M/s WOIL citing inventory and smooth supply point of view. It also appears that he gave the go ahead to Sh Pratik Taneja to start PO releasing and changing payment terms from FOB to CIF. Therefore, it appears that Sh. Raju Kumar Gupta was aware of this practice which eventually led to custom duty evasion. Also, he himself stated in his statement dated 23.09.2022 that he was aware of the malpractice of non-inclusion of exact freight amount in the assessable value of the goods. Further, on the basis of the investigation conducted, it appears that there has been a case of non-inclusion of freight portion in the assessable value as mentioned above. The appropriate customs duty leviable on the goods as brought out herein could not be levied at that time of import due to reason of wilful misstatement and suppression

of facts and hence, on account of the omission and commission, as set out herein, it appears that Sh. Raju Kumar Gupta is liable for penalty under section 112(a) and 114AA of the Customs Act, 1962.

31.2. Sh. Jawahar Lal Sharma, Senior Manager, Import Supply Chain Management, M/s WOIL:

On the basis of the evidences brought on record, it appears that Sh. Jawahar Lal Sharma was responsible for buying raw materials from overseas suppliers i.e. imports. Being the Senior Manager of Supply Chain, he is completely responsible for each and every lapse done on the part of M/s WOIL. It appears from the excerpt of email communication as mentioned in para 3.2.1 above that he was aware of this practice which eventually led to custom duty evasion. In fact, being senior in the hierarchy to Sh. Raju Kumar Gupta, his concurrence was specifically sought vide mail dated 07.04.2020 wherein it was also mentioned that in the second phase, the practice can be extended to the import of other parts as well as for all Whirlpool plants in India. Therefore, it appears that the said malpractice originated out of the Faridabad plant and was well within the knowledge and also approved by the concerned Head Office team. Also, he himself stated in his statement dated 23.09.2022 that he was aware of the malpractice of non-inclusion of exact freight amount in the assessable value of the goods. Further, on the basis of the investigation conducted, it appears that there has been a case of non-inclusion of freight portion in the assessable value as mentioned above. The appropriate customs duty leviable on the goods as brought out herein could not be levied at that time of import due to reason of wilful misstatement and suppression of facts and hence, on account of the omission and commission, as set out herein, it appears that Sh. Jawahar Lal Sharma is liable for penalty under section 112(a) and 114AA of the Customs Act, 1962.

31.3 Sh. Pratik Taneja, Manager-Procurement, M/s WOIL:

On the basis of the evidences brought on record, it appears that Sh. Pratik Taneja proposed the idea of changing payment terms from FOB to CIF to overseas suppliers keeping the minimum ocean freight fixed and the remaining to be paid at destination by M/s WOIL to freight forwarders and he is completely responsible for each and every lapse done on the part of M/s WOIL. It appears from the email communications as mentioned in para 3.2.1 above that he himself mentioned that by following the practice, they would be able to make small savings of around Rs 0.30- Rs 0.40 per compressor. Therefore, it appears that Sh. Pratik Taneja was aware of this practice which eventually led to custom duty evasion. Further, on the basis of the investigation conducted, it appears that there has been a case of non-inclusion of freight portion in the assessable value as mentioned above. The appropriate customs duty leviable on the goods as brought out herein could not be levied at that time of import due to reason of wilful misstatement and suppression of facts and hence, on account of the omission and commission, as set out herein, it appears that Sh. Pratik Taneja is liable for penalty under section 112(a) and 114AA of the Customs Act, 1962.

Role of Freight forwarders:

32. M/s HTL Logistics India (P) Ltd.:

On the basis of the evidences brought on record, it appears that the freight forwarder M/s HTL Logistics India (P) Ltd was responsible for issuing the Bill of Lading with the correct and true particulars. However, M/s HTL Logistics India (P) Ltd issued Bills of Lading mentioning 'Freight Prepaid' and raised invoices for 'Ocean/Sea freight' to the importer M/s WOIL thereby aiding the importer in declaring lesser freight value before the Indian Customs. Therefore, it appears that M/s HTL Logistics India (P) Ltd was aware of this practice which eventually led to customs duty evasion. Further, on the basis of the investigation conducted, it appears that there has been a case of non-inclusion of freight portion in the assessable value as mentioned above. The appropriate customs duty leviable on the goods with an assessable value of around Rs. 682.13 Crores as brought out herein could not be levied at that time of import due to reason of wilful misstatement and suppression of facts and hence, on account of the omission and commission, as set out herein, it appears that M/s HTL Logistics India (P) Ltd is liable for penalty under section 112(a) & 112(b) and 114AA of the Customs Act, 1962.

32.1 M/s Tianxin Logistics Pvt Ltd / M/s TXM Logistics Pvt Ltd:

On the basis of the evidences brought on record, it appears that the freight forwarder M/s Tianxin Logistics Pvt Ltd / M/s TXM Logistics Pvt Ltd was responsible for issuing the Bill of Lading with the correct and true particulars. However, M/s Tianxin Logistics Pvt Ltd / M/s TXM Logistics Pvt Ltd issued Bills of Lading mentioning 'Freight Prepaid' and raised invoices for 'Ocean/Sea freight' to the importer M/s WOIL thereby aiding the importer in declaring lesser freight value before the Indian Customs. Therefore, it appears that M/s Tianxin Logistics Pvt Ltd / M/s TXM Logistics Pvt Ltd was aware of this practice which eventually led to customs duty evasion. Further, on the basis of the investigation conducted, it appears that there has been a case of non-inclusion of freight portion in the assessable value as mentioned above. The appropriate customs duty leviable on the goods with an assessable value of 555.85 Crores as brought out herein could not be levied at that time of import due to reason of wilful misstatement and suppression of facts and hence, on account of the omission and commission, as set out herein, it appears that M/s Tianxin Logistics Pvt Ltd / M/s TXM Logistics Pvt Ltd is liable for penalty under section 112(a) & 112(b) and 114AA of the Customs Act, 1962.

32.2 M/s LF Logistics India Pvt Ltd:

On the basis of the evidences brought on record, it appears that the freight forwarder M/s LF Logistics India Pvt Ltd was responsible for issuing the Bill of Lading with the correct and true particulars. However, M/s LF Logistics India Pvt Ltd issued Bills of Lading mentioning 'Freight Prepaid' and raised invoices for 'Ocean/Sea freight' to the importer M/s WOIL thereby aiding the importer in declaring lesser freight value before the Indian Customs. Therefore, it appears that M/s LF Logistics India Pvt Ltd was aware of this practice which eventually led to customs duty evasion. Further, on the basis of the investigation conducted,

it appears that there has been a case of non-inclusion of freight portion in the assessable value as mentioned above. The appropriate customs duty leviable on the goods with an assessable value of Rs. 65.24 Crores as brought out herein could not be levied at that time of import due to reason of wilful misstatement and suppression of facts and hence, on account of the omission and commission, as set out herein, it appears that M/s LF Logistics India Pvt Ltd is liable for penalty under section 112(a) & 112(b) and 114AA of the Customs Act, 1962.

33. Port-wise demand of total differential duty from M/s WOIL is as under:

Table-B

S.No.	Port of Import	Duty Paid	Actual Duty Payable	Differential Duty (Rs.)
1	INNSA1	6,25,00,43,326	6,33,54,55,362	8,54,12,036
2	INBOM4	3,17,14,132	3,21,41,788	4,27,656
3	INCCU1	6,74,28,304	6,76,79,698	2,51,394
4	INDEL4	86,03,591	88,91,822	2,88,231
5	INENR1	7,65,48,813	7,71,00,691	5,51,878
6	INFBD6	53,51,72,626	53,77,49,609	25,76,983
7	INGHR6	5,40,98,064	5,41,24,386	26,322
8	INKAT1	2,55,84,565	2,56,42,040	57,475
9	INMAA1	77,77,70,909	78,10,14,013	32,43,104
10	INMAA4	82,59,583	83,54,915	95,333
11	INBFR6	75,41,782	75,52,773	10,991
12	INPNY6	4,20,32,269	4,20,97,567	65,299
13	INPPG6	1,15,06,820	1,17,93,400	2,86,580
14	INTKD6	9,48,73,552	9,53,28,834	4,55,282
15	INTLG6	5,93,930	5,95,706	1,776
Grand Total		7,99,17,72,265	8,08,55,22,605	9,37,50,340

33.1 Section 110AA of the Customs Act, 1962 provides that consequent to an investigation, powers under Section 28 shall be exercised in multiple jurisdictions by an officer of Customs to whom such matter is assigned by the Board, in exercise of the powers conferred under section 5 of the Customs Act, 1962.

33.2 Accordingly, CBIC vide Notification No. 28/2022-Customs (N.T.) dated 31.03.2022 had held that in cases of multiple jurisdictions as referred in Section 110 AA of the Customs Act, 1962, the report in writing, after causing the enquiry, investigation or audit as the case may be along with the relevant documents, shall be transferred to officers described in Column (2) of the said Notification. **Since, the present case involves multiple jurisdictions, hence, Nhava Sheva-V, JNCH, Taluka Uran, District Raigad, Maharashtra-400707 being the Port involved in highest revenue, this Show Cause Notice is answerable to Principal Commissioner/ Commissioner of Customs, Nhava Sheva-V, JNCH, Taluka Uran, District Raigad, Maharashtra-400707.**

34. Further, the Investigation Report was received from the DRI for issuance of Show Cause Notice. Meanwhile, M/s WOIL vide letter dated 30.06.2023, 18.07.2023 and 21.09.2023 wherein they stated, *inter alia*, as under-

34.1 The company has decided, in order to avoid prolonged legal battles, to fully settle the alleged liability by depositing the differential Basic Customs Duty, Integrated Goods and Services Tax, along with applicable interest and penalty @ 15% under Section 28(5) of the Customs Act and request the closure of the proceedings under Section 28(5) / (6) of the Customs Act.

34.2 The Company prayed that the proceedings pursuant to the DRI Investigation may kindly be closed by passing appropriate order under Section 28(5)/ (6) of the Customs Act, 1962; that for the purpose of passing an appropriate adjudication order under Section 28(6), if necessary, the Company hereby voluntarily relinquishes its right for issuance of any Show Cause Notice or Personal Hearing, for the aforesaid purpose.

34.3 Section 28(6)(i) of the Customs Act specifically provides that if the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under subsection (1) or subsection (4), shall, without prejudice to the provisions of sections 135, 135A, and 140, be deemed to be conclusive as to the matters stated therein.

34.4 Therefore, they understand that the only exception contemplated under Section 28(6) of the Customs Act with respect to the closure of proceedings under Section 28(5) & (6) of the Customs Act is regarding proceedings under Sections 135, 135A, and 140 of the Customs Act, which have not been invoked in the present case, to the best of the knowledge of the Company.

34.5 The Company has humbly prayed that the proceedings may kindly be closed by passing an appropriate order under Section 28(5) & (6) of the Customs Act against the Company and all employees of the Company who may be part of the investigation report. They reserve the right to contest any duty demand or proposed penalty, including on grounds of limitation, should a show cause notice be issued to the Company or its employees.

35. As per the provisions of the Section 124 of the Act that issuance of Show Cause Notice, is mandatory and by way of a pre-condition to making of any order of confiscation or imposing any penalty on any person under chapter XIV. The contents of the show cause notice contemplated under the said provisions are separately enumerated in clauses (a), (b) and (c) thereof.

(i) Clause (a) of Section 124 speaks of informing the owner of the goods or the concerned person of the grounds on which it is proposed to confiscate the goods or to impose the penalty.

(ii) Clause (b) of Section 124 points out the nature of the opportunity by stating that a representation in writing could be made, within such reasonable time as may be specified in the notice, against the grounds which are informed in writing under clause (a).

(iii) Clause (c) of Section 124 provides for a reasonable opportunity being heard to be given to the owner, or the concerned person. Under the proviso it is laid down that notice referred to clause (a), that is, of informing the owner or concerned person of the grounds, and the representation referred to in clause (b) made at the request of the concerned person may be oral if so desired. Accordingly, M/s WOIL and other Co-noticees were given opportunity for being heard and go through the charges made by DRI against them before issuance of Show Cause Notice.

36. On behalf of M/s WOIL and four (04) other co-noticees i.e. (i) Sh. M S Prakash, Director, Supply Chain (Impex & Spares), WOIL, (ii) Sh. Pratik Taneja, Manager - Procurement, WOIL, (iii) Sh. Raju Kumar Gupta, Deputy Manager, Import Supply Chain Management, WOIL and (iv) Sh. JawarLal Sharma, Senior Manager, Import Supply Chain Management, WOIL, Sh. Sandeep Chilana, Managing Partner, Chilana & Chilana Law Offices on their behalf, did go through the charges made out against them. In response, the Chilana & Chilana law firm vide letter dated 27.12.2023 submitted that the company, to avoid protracted litigation, decided to deposit the full liability with respect to differential BCD, IGST and applicable interest along with applicable penalty of 15 % in terms of section 28 (5) of the Customs Act 1962. They further requested for closure of proceedings against the WOIL and 04 other noticees (employees of WOIL) in terms of 28 (5) and (6) of the Customs Act 1962.

37. However, other co-noticees i.e. (i) M/s. HTL Logistics India (P) Ltd., Custom Broker, (ii) M/s. Tianxin Logistics Pvt. Ltd./ M/s. TXM Logistics Pvt. Ltd., Custom Broker and (iii) M/s. LF Logistics Pvt. Ltd., Custom Broker engaged WOIL for clearance of goods, did not appear for the proceedings and requested to give another date.

38. Thereafter, following natural justice, final chance to appear and go through the Charges made by the Investigating agency against all noticees in terms of provision stipulated in section 124 of the Customs act was given on 27.12.2023.

39. In response, Sh. Sandeep Chilana, Managing Partner, M/s. Chilana&Chilana Law Offices on behalf of Noticees at Sr. No. 1 to 5 has submitted reply vide letter dated 24.04.2024 wherein they stated, inter alia, that: -

39.1 M/s WOIL did request for closure of proceedings and waiver of the issuance of a show cause notice before the adjudicating authority or proper officer, contrary to any assertions. The

Company submitted request letters dated 04.07.2023, 18.07.2023, 21.09.2023, and 27.12.2023, which serves as the adjudicating authority or proper officer under Section 28(5) and (6) of the Customs Act. In these letters, the Company and its employees respectfully prayed for the closure of proceedings against them, having deposited the disputed customs duty, interest, and penalties as calculated by DRI. The Company explicitly waived the right to receive a show cause notice.

- 39.2. It is reiterated that the proceedings against the Company and its employees should be closed by passing appropriate orders under Section 28(5) and (6) of the Customs Act. For this purpose, the Company waives its right to receive a show cause notice or personal hearing. However, the department decided not to close the proceedings under Section 28(5) and (6) of the Customs Act, it is requested that no adjudication proceedings or precipitative action be taken against the Company and its employees without the issuance of an appropriate show cause notice. This notice should detail the allegations against the Company and its employees, accompanied by all relevant documents, statements, and records. Sufficient time should be granted for the Company and its employees to prepare a comprehensive reply and present their case through a personal hearing.
- 39.3. It is reiterated that the Company, in a bid to avoid prolonged litigation and in its commercial judgment, opted to deposit the full liability concerning differential BCD, IGST, interest, and penalty under Section 28(5) of the Customs Act, with the aim of concluding the ongoing proceedings. For this specific purpose, the Company waived its right to receive a show cause notice or personal hearing. If the department is disinclined to close the proceedings under Section 28(5) and (6) of the Customs Act, it is legally imperative that before initiating any adversarial adjudication proceedings, a show cause notice accompanied by all relevant documents is issued to the Company and its employees. Only after this issuance should any reply on the merits be solicited from the Company or its employees.
- 39.4. It does not constitute an admission of guilt or a waiver of the right to challenge any duty demands or penalties. It states that all concerns raised in the prior communication, including the request to waive the issuance of a show cause notice and personal hearing under Section 28(5) and (6) of the Customs Act, have been thoroughly addressed. It is respectfully urged to formally acknowledge the pending request for the closure of proceedings and to issue the necessary orders accordingly. Furthermore, it underscores the importance of adhering to due process if proceedings are not terminated, emphasizing the requirement for a comprehensive show cause notice outlining allegations and providing all relied-upon documents."
40. The other co-noticees from Sr. No. 06 to 08 neither submitted any clarification in their defense nor appeared to go through the charges made against them.
41. In this regard, the relevant provisions of Section 28 (5) & (6) of Custom Act 1962 is reproduced as under for reference.

Section 28 (5) of the Customs Act, 1962 (after amendment) is as under:

"Where any duty has not been levied or has been short-levied or the interest has not been charged 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 by the importer or the exporter or the agent or he employee of the importer or the exporter to whom a notice has been served under :sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen percent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing."

Clauses (i) of sub-Section (6) of section 28 of the Customs Act, 1962 provides that:

(6) *Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion—*

(i) *that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is employed under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein;*

42. In this regard, the Circular No. 11/2016 dated 15.03.2016 provides for clarification regarding scope/interpretation of other persons (co-noticees) used in sub section (2) and subsection (6) of the section 28 of the Customs Act 1962 and the relevant para (5) and (6) of the said Board's Circular are as under-

(5) The provision of deemed conclusion is contingent upon the person to whom a SCN has been issued under sub-section (1) or sub-section (4) paying up all the dues of duty, interest and penalty as the case may be. Only in such a circumstance of compliance, shall closure of proceedings against other persons come into effect. Therefore, as a corollary, other persons implies person(s) to whom no demand of duty is envisaged with notice served under sub-section (1) or sub-section (4) as the case may be. Other persons who happen to be co-noticees in the SCN for their acts of commission or omission other than demand of duty would be benefitted by the deemed closure in cases where the compliance of conditions mentioned in proviso to sub-section (2) or clause i) of sub-section 6), as the case may be, by the main noticee to whom inter-alia a demand of duty has been issued has been fulfilled. Further, all such cases where proceedings reach closure stage under the provisions of Section 28, an order to the effect must be invariably issued by the concerned adjudicating authority.

(6) Section 28 primarily deals with the recovery of duty or erroneous refund. While introducing the facility of deemed conclusion, enabling provision was made for payment of interest and/or penalty. Therefore, all such SCNs or cases which involve duty, interest and/or payment of penalty shall be covered by the above clarification. Further, it may be noted that the cases involving seizure of goods under Section 110 of the Customs Act, or cases where confiscation

provisions under Sections 111, 113, 115, 118, 119, 120 and 121 are invoked, would be out of purview of this Circular.

43. Reference is drawn towards Order passed by Hon'ble High Court of Delhi in case of Commissioner of Customs V/s M/s Evergreen Shipping Agency India Pvt Ltd. (CUSAA 85/2023) [12-02-2024] wherein at para 6,7, and 8 it has been held that:

6. Reference may be had to the judgment of a Coordinate Bench of this Court dated 18.05.2023 in CUSAA No. 88/2022 titled M/s Seville Products Ltd. Vs. Commissioner of Customs & Exports = 2023-TIOL-606-HC-DEL-CUS, wherein the Division Bench has held that discharge of liability of one of the noticees either by making a payment without contest or by settlement before the Settlement Commissioner would not absolve other noticees from their liability.

7. We are informed that a Special Leave Petition impugning the said judgment in M/s. Seville Products being SLP (C) (Diary) No. 45245/2023 has been dismissed by the Hon'ble Supreme Court on 12.01.2024.

8. In view of the judgment of the Coordinate Bench in M/s. Seville Products. (supra) as upheld by the Hon'ble Supreme Court the reasoning of the Tribunal extending immunity granted to the other co-noticees to the respondent is not sustainable.

In view of the Circular and judgment of Hon'ble High Court of Delhi, it appears that if the duty, interest, and 15% penalty equal to the differential duty has been paid by the main noticee, the case is concluded under section 28(6) of the Customs Act, 1962 proceedings only in respect of main noticee. The said conclusion does not absolve other noticees from their respective penal action.

In the instant case, after accepting the Department's investigations and findings on mis-declaring the value of imported goods by manipulating payment terms, the main Noticee, i.e., M/s. WOIL has paid the differential duty along with applicable interest and penalty @15% (as detailed in Table – A, Para 22 of this Notice). Hence, it appears that for the other four (04) co-noticees, who are also the employees of M/s. WOIL, namely (i) Sh. M S Prakash, Director, Supply Chain (Impex & Spares), WOIL, (ii) Sh. Pratik Taneja, Manager - Procurement, WOIL, (iii) Sh. Raju Kumar Gupta, Deputy Manager, Import Supply Chain Management, WOIL and (iv) Sh. JawarLal Sharma, Senior Manager, Import Supply Chain Management, WOIL, no such conclusive benefit under Section 28(5) or 28(6) is available and they are liable for penal action under relevant provision of Customs Act, 1962. Hence, it becomes obligatory to issued Show Cause Notice in respect of all five Noticees.

For the remaining three co-noticees i.e. (i) M/s. HTL Logistics India (P) Ltd., Custom Broker, (ii) M/s. Tianxin Logistics Pvt. Ltd./ M/s. TXM Logistics Pvt. Ltd., Custom Broker

and (iii) M/s. LF Logistics Pvt. Ltd., Custom Broker who were engaged by M/s. WOIL for clearance of goods, they are also consequentially appear liable for penal action under relevant provision of Customs Act, 1962, and no benefit under Section 28(5) or 28(6) can be extended to them.

44. The Investigation Report proposes confiscation under Section 111(m) of the Customs Act, 1962 of the impugned goods, and a few co-Noticees who were charged with actions which led to goods being proposed for confiscation, have neither provided letters waiving the Show Cause Notice nor Personal Hearing. Consequently, this Office is constrained to proceed to issue a written Show Cause Notice. This constraint has been furthered by the fact that while initially the Importer (through his representative Ms/. Chilana & Chilana Law Offices) had sought waiver of Show Cause Notice, but at a later date they sent a letter dated 24.04.2024 after they had gone through the Investigation Report and charges against the Importer and the co-noticees they represent. Their fresh contention, as per this letter, was that “No adjudication proceeding or any precipitative action may please be initiated against the Company and its employees without issuance of any appropriate SCN detailing out the allegations against the Company and its employees along with all RUDs, Statements, Records, etc. and granting time to file a consolidated reply and present its case by way of Personal Hearing.”
45. It is undisputed that the M/s WOIL has paid all the dues i.e. differential duty +Interest+ 15% Penalty as detailed in Table-A as per provisions of section 28 (5) of the Customs Act 1962 and requested for closure for the proceedings for all noticees under section 28 (6) of the said Act. As the M/s WOIL has paid all the dues, the differential duty becomes an admitted liability. It is pertinent to note that ‘Mensrea’ in this case has been established by the Investigating Agency in para 28 to 32 as above. It has discussed the roles of all the noticees and proposed penalty under 112 (a), (b), 114A &114 AA of the Customs Act 1962 for their acts of commission and omission. The employees of the M/s WOIL and other noticees planned the evasion of duty by not incorporating total freight in the Assessable value. Had the investigating agency not investigated the case, M/s WOIL and all other noticees would have continued the malpractice and incurred a further huge loss to the exchequer.
46. However, the closure of the proceedings in terms of section 28(5)/(6) of the Customs Act 1962 and applicability of Circular 11/2016 to the Co-noticees will be decided by the Competent Authority at the stage of Adjudication.
- 47.1 Now, therefore, **M/s WOIL** having its registered address Plot No. 40, Whirlpool House, Sector 44, Gurugram, Haryana-121002 India is hereby called upon to show cause in writing to **Commissioner of Customs, NhavaSheva-V, JNCH, Taluka-Uran, District Raigad, Maharashtra-400707** within 30 days from date of receipt of this notice, as to why:
 - a. The declared value of **Rs.2584,03,62,786/- (Rupees Two Thousand Five Hundred Eighty Four Crores Three Lakh Sixty Two Thousand Seven Hundred and Eighty Six only)**, in respect of the goods imported by them in the past, as summarized in Table - B in Para 29 above and detailed in Annexure-A of this Show Cause Notice, should not be rejected under Rule 12

of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determined at **Rs.2612,08,55,051/- (Rupees Two Thousand Six hundred Twelve Crores Eight Lakh Fifty Five Thousand and Fifty One Only)**, duly rounded off, in terms of Rule 10 of the said Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.

- b. The goods imported by M/s WOIL (as summarized in Table-B, and detailed in Annexure-A, having a total re-determined Assessable Value of **Rs.2612,08,55,051/- (Rupees Two Thousand Six hundred Twelve Crores Eight Lakh Fifty Five Thousand and Fifty One Only)**) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.
- c. The differential duty for the goods valued at **Rs.2612,08,55,051/-** amounting to **Rs.9,37,50,340/- (Rupees Nine Crores Thirty Seven Lakh Fifty Thousand Three Hundred and Forty Only)**, duly rounded off, as summarized in Table-B of Para 29 above and detailed in Annexure-A of this Notice along with applicable interest under Section 28AA of the Customs Act, 1962, should not be demanded.
- d. Penalty under Sections 112(a) and / or 114(A) of the Customs Act, 1962 should not be imposed on them for their acts of omissions and commissions.
- e. Penalty under Section 114AA of the Customs Act, 1962 should not be imposed on them for their acts of omissions and commissions.
- f. The differential duty, along with interest and penalty @ 15%, already paid by M/s. WOIL during the investigation, as per Para 22 of this Notice, should not be appropriated.

47.2 Further, **Sh. M S Prakash, Director, Supply Chain (Impex & Spares), M/s WOIL**, is also hereby called upon to show cause in writing to the **Commissioner of Customs, Nhava Sheva-V, JNCH, Taluka-Uran, District Raigad, Maharashtra-400707** within 30 days from date of receipt of this notice, as to why penalty should not be imposed on him under Section 112(a) and 114AA of the Customs Act, 1962 for the acts of omission and commission committed by him as discussed above in respect of the goods imported by M/s WOIL, as summarized in Table-B in Para 29 above.

47.3 Further, **Sh. Raju Kumar Gupta, Deputy Manager, Import Supply Chain Management, M/s WOIL**, is also hereby called upon to show cause in writing to the **Commissioner of Customs, NhavaSheva-V, JNCH, Taluka-Uran, District Raigad, Maharashtra-400707** within 30 days from date of receipt of this notice, as to why penalty should not be imposed on him under Section 112(a) and 114AA of the Customs Act, 1962 for the acts of omission and commission committed by him as discussed above in respect of the goods imported by M/s WOIL, as summarized in Table-B in Para 29 above.

47.4 Further, **Sh. Jawahar Lal Sharma, Senior Manager, Import Supply Chain Management, M/s WOIL**, is hereby called upon to show cause in writing to the **Commissioner of Customs, NhavaSheva-V, JNCH, Taluka-Uran, District Raigad, Maharashtra-400707** within 30 days from date of receipt of this notice, as to why penalty should not be imposed on him under Section 112(a) and 114AA of the Customs Act, 1962 for the acts of omission and commission

committed by him as discussed above in respect of the goods imported by M/s WOIL, as summarized in Table-B in Para 29 above.

47.5 Further, **Sh. Pratik Taneja, Manager- Procurement, M/s WOIL**, is also hereby called upon to show cause in writing to the **Commissioner of Customs, NhavaSheva-V, JNCH, Taluka-Uran, District Raigad, Maharashtra-400707** within 30 days from date of receipt of this notice, as to why penalty should not be imposed on him under Section 112(a) and 114AA of the Customs Act, 1962 for the acts of omission and commission committed by him as discussed above in respect of the goods imported by M/s WOIL, as summarized in Table-B in Para 29 above.

48. Now, therefore, **M/s HTL Logistics India (P) Ltd**, is hereby called upon to show cause in writing to the **Commissioner of Customs, NhavaSheva-V, JNCH, Taluka-Uran, District Raigad, Maharashtra-400707** within 30 days from date of receipt of this notice, as to why penalty should not be imposed on them under Section 112(a) & 112(b) and 114AA of the Customs Act, 1962 for the acts of omission and commission committed by them as discussed above in respect of the goods imported by M/s WOIL, as summarized in Table-B in Para 29 above.

49. Now, therefore, **M/s Tianxin Logistics Pvt Ltd / M/s TXM Logistics Pvt Ltd**, is hereby called upon to show cause in writing to the **Commissioner of Customs, NhavaSheva-V, JNCH, Taluka-Uran, District Raigad, Maharashtra-400707** within 30 days from date of receipt of this notice, as to why penalty should not be imposed on them under Section 112(a) & 112(b) and 114AA of the Customs Act, 1962 for the acts of omission and commission committed by him as discussed above in respect of the goods imported by M/s WOIL, as summarized in Table-A in Para 29 above.

50. Now, therefore, **M/s LF Logistics India Pvt Ltd**, is hereby called upon to show cause in writing to the **Commissioner of Customs, NhavaSheva-V, JNCH, Taluka-Uran, District Raigad, Maharashtra-400707** within 30 days from date of receipt of this notice, as to why penalty should not be imposed on them under Section 112(a) & 112(b) and 114AA of the Customs Act, 1962 for the acts of omission and commission committed by him as discussed above in respect of the goods imported by M/s WOIL, as summarized in Table-B in Para 29 above.

51. In respect of the subject Show Cause Notice, the competent authority granted extension on 30.05.2025 for 6 months, i.e., till 12.12.2025, for completion of proceedings, as per the first proviso to section 28(9) of the Customs Act, 1962.

WRITTEN SUBMISSIONS OF THE NOTICEES

52. The Noticee No.1, M/s. Whirpool of India Ltd., vide their letter dated 10.11.2025 has given written submission to the subject SCN through their authorised representative. M/s. WOIL in the said letter dated 10.11.2025 submitted, inter alia, as under:

52.1. During the course of the investigation, the Company deposited Rs. 13,33,89,862/- towards differential duty, applicable interest, and penalty equivalent to 15% of the differential duty (Rs. 9,37,50,340/-). This fact has also been recorded at Para 22 of the subject SCN.

52.2. Further, subsequent to the receipt of the subject SCN, the Company vide Letter dated 02.08.2024 intimated this office regarding the above payment and requested for closure of proceedings in view of Section 28(5) and (6) of the Customs Act. Copy of the Letter dated 02.08.2024 is enclosed as Annexure-1.

52.3. It is humbly submitted that in terms of Section 28(6) of the Customs Act, if the differential duty along with interest and 15% penalty is paid by the Noticee within 30 days of receipt of show cause notice, then the proceedings in respect of the Noticee or other persons to whom the notice is served shall be deemed to be conclusive as to the matters stated therein. Relevant portion of the provision is extracted below for ready reference:

(5) Where any duty has not been levied or not paid or has been short-levied or short-paid or the interest has not been charged 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 by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent. of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion-

(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or subsection (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or

(ii) that the duty with interest and penalty that has been paid falls short of the amount actually payable, then the proper officer shall proceed to issue the notice as provided for in clause (a) of sub section (1) in respect of such amount which falls short of the amount actually payable in the manner specified under that sub-section and the period of 15[two years] shall be computed from the date of receipt of information under sub-section (5). "

52.4. In the present case, as submitted supra, the differential duty along with interest and penalty equivalent to 15% of the differential duty proposed in the subject SCN has been deposited even prior to the issuance of the subject SCN.

52.5. In view of the above, it is humbly requested that the proceedings initiated in the subject SCN shall be deemed to be concluded as per Section 28(5) and (6) of the Customs Act.

52.6. The above legal position is supported by the following judicial precedents:

- NS Mahesh vs. Commissioner of Customs, Cochin 2018 (363) E.L.T. 644 (Tri. - Bang.).
- Orbit Jewellers vs. Commissioner of Customs, Air Cargo (Exports), New Delhi 2016 (338) E.L.T. 620 (Tri. - Del.).

52.7. From the above cases, it can be understood that proceedings initiated *inter alia* against the Noticee are deemed to have concluded pursuant to deposit of duty, interest and applicable penalty, as provided under Section 28(5) and 28(6) of the Customs Act.

52.8. Thus, it is requested that these submissions may be taken on record and the proceedings initiated vide the subject SCN against the Company may be dropped.

53. The notice No. 2, Shri M S Prakash, Director, Supply Chain (Impex & Spares), vide his letter dated 10.11.2025 has given written submission to the subject SCN through their authorised representative. He submitted, in the said letter dated 10.11.2025, *inter alia*, as under:

53.1. Without prejudice, during the course of the investigation, the Company deposited Rs. 13,33,89,862/- towards differential duty, applicable interest, and penalty equivalent to 15% of the differential duty (Rs. 9,37,50,340/-). This fact has also been recorded at Para 22 of the subject SCN.

53.2. Further, subsequent to the receipt of the subject SCN, the Company vide Letter dated 02.08.2024 intimated your good office regarding the above payment and requested for closure of proceedings in view of Section 28(5) and (6) of the Customs Act. Copy of the Letter dated 02.08.2024 is enclosed as Annexure-1.

53.3. It is humbly submitted that in terms of Section 28(6) of the Customs Act, if the differential duty along with interest and 15% penalty is paid by the Noticee within 30 days of receipt of show cause notice, then the proceedings in respect of the Noticee or other persons to whom the notice is served shall be deemed to be conclusive as to the matters stated therein, as discussed *supra*.

53.4. In the present case, as submitted *supra*, the differential duty along with interest and penalty equivalent to 15% of the differential duty proposed in the subject SCN has been deposited even prior to the issuance of the subject SCN.

53.5. In view of the above, it is humbly requested that the proceedings initiated in the subject SCN shall be deemed to be concluded as per Section 28(5) and (6) of the Customs Act.

53.6. The above legal position is supported by the following judicial precedents:

- NS Mahesh vs. Commissioner of Customs, Cochin 2018 (363) E.L.T. 644 (Tri. - Bang.).
- Orbit Jewellers vs. Commissioner of Customs, Air Cargo (Exports), New Delhi 2016 (338) E.L.T. 620 (Tri. - Del.).

53.7. From the above cases, it can be understood that proceedings initiated against the Company and the Noticee are deemed to have concluded pursuant to deposit of duty, interest and applicable penalty, as provided under Section 28(5) and 28(6) of the Customs Act, by the Company.

53.8. Further, reliance is also placed on clarification issued by the Central Board of Excise & Customs ('CBIC') vide Circular No. 11/2016-Cus. dated 15.03.2016 ('Circular dated 15.03.2016') regarding the term "other persons" used in Section 28(6) of the Customs Act.

53.9. Vide the above-mentioned circular, the Board clarified as follows:

- Provision under Section 28(6) of the Customs Act has been introduced to bring about closure to cases where the dues to the Government could be realized without going through the process of adjudication and also to cut the protracted litigation.
- The provision of deemed conclusion is contingent upon payment of duty, interest and penalty (as the case may be) by the person to whom a show cause notice has been issued inter alia under Section 28(4) of the Customs Act. Upon such compliance, the proceedings against other persons shall be closed.
- "Other persons" refer to those from whom no demand of duty is envisaged. They happen to be co-noticees in the show cause notice for their acts of commission or omission and there is no demand of duty from them.

53.10. Therefore, the Noticee is an 'other person' as envisaged under Section 28(6) of the Customs Act since there is no demand of duty leviable from the Noticee under the subject SCN.

53.11. The Noticee submits that the clarification issued by the CBIC is binding on the Department and ought to be followed. Reliance in this regard is placed on the decision of the Apex Court in **Paper Products vs. Commissioner of Central Excise, 1999 (112) E.L.T. 765 (S.C.)**

53.12. The subject SCN, at Para 43, has referred to the decision of the Hon'ble Delhi High Court in **Commissioner of Customs vs. M/s. Evergreen Shipping Agency India Pvt Ltd (CUSAA 85/2023) dated 12.02.2024** to allege that the payment of duty, interest and 15% penalty by the Company does not result in closure of proceedings initiated against the Noticee since the subject SCN has been individually and separately issued to the Company and the Noticee.

53.13. For this purpose, the above decision relied on the judgement of the Hon'ble Delhi High Court in **M/s. Seville Products Ltd. vs. Commissioner of Customs & Exports (CUSAA 88/2022) dated 18.05.2023.**

53.14. In the case of M/s. Seville (Supra) it was that immunity granted to one of the noticees in a proceeding before the Settlement Commission does not extend the benefit of immunity to other parties who did not approach the Settlement Commission despite having a chance to do so.

53.15. The Noticee submits that both the above decisions are distinguishable and not applicable to the facts of the present case for the reasons stated below:

- Both the above decisions were rendered in the context of settlement before Settlement Commission and not in the context of deemed closure under Section 28(6) of the Customs Act.
- The case in M/s. Evergreen (*Supra*) and M/s. Seville (*Supra*) pertained to granting immunity to other co-noticees pursuant to granting immunity to one of the noticees by the Settlement Commission. However, the present case is one under the Customs Act only.
- There is no express provision for automatic grant of immunity to other parties pursuant to settlement by one of the parties before the Settlement Commission. However, Section 28(5) and 28(6) of the Customs Act expressly provide for deemed conclusion of all proceedings initiated against the noticee and all other persons.
- The above-mentioned cases do not consider the clarification issued by CBIC vide Circular dated 15.03.2016 wherein the term “Other persons” has been clarified to include co-noticees on whom there is no demand of duty. Further, it has been clarified that proceedings initiated against such other persons shall be deemed to be concluded (under Section 28(6) of the Customs Act) upon necessary payment by the main noticee.
- The above-mentioned cases do not discuss regarding the legislative intent of Section 28(5) and (6) of the Customs Act read in view of Circular No. 831/8/2006-CX dated 26.07.2006 issued in the context of Central Excise, which is to reduce the number of litigations.

53.16. In view of the above, it is humbly submitted that the case of *M/s. Evergreen (Supra)* and *M/s. Seville (Supra)* are not applicable in the present case.

53.17. Further, in view of the submissions made above, it is humbly prayed that the proceedings initiated vide the subject SCN be deemed concluded pursuant to deposit of duty, interest and 15% penalty made by the Company *inter alia* insofar as the Noticee is concerned.

54. The Noticee No. 3, Sh. Raju Kumar Gupta, Deputy Manager, Import Supply Chain Management, M/s. WOIL; Noticee No. 4, Sh. JawarLal Sharma, Senior Manager, Import Supply Chain Management, M/s. WOIL; and Noticee No. 5, Sh. Pratik Taneja, Manager - Procurement, M/s. WOIL, vide their letters, all dated 10.11.2025, have given written submission to the subject SCN through their authorised representative. The said submissions are identical to the submission as discussed in Para 53 *supra*. The aforesaid submissions are taken on record and are not reproduced for the sake of brevity.

55. Written submission of M/s HTL Logistics India (P) Ltd.

The notice no. 6, M/s HTL Logistics India Pvt. Ltd, has made the submission vide their letter dated 29.08.2024. They submitted, *inter alia*, as under:

55.1. M/s HTL Logistics India Pvt. Ltd (co-noticee), is a freight forwarder & the subject show cause notice dated 13.06.2024 has been issued to them on the premise that they are allegedly

involved in willful misstatement and suppression of facts and hence, on account of the omission and commission and is liable for penalty under section 112(a), 112(b), and 114AA of the Customs Act, 1962. In this regard, it is submitted that the allegations made in the Show Cause Notice are denied to the extent of the role of the co-noticee, M/s HTL Logistics India Pvt. Ltd, it is submitted that the said SCN issued to the co-noticee, M/s HTL Logistics India Pvt. Ltd is legally unsustainable. However, since the duty, interest and penalty have been already deposited, the SCN merits to be concluded under section 28(6) Customs Act, 1962 based on the following submissions:

55.2. That the importer i.e. M/s WOIL (Main Noticee) had already deposited the differential duty along with interest and 15% Penalty in terms of Section 28(5) of CA, 1962, hence the entire proceedings under the subject SCN are to be treated as concluded as provided under Section 28(6) of CA, 1962.

55.2.1. As per Para 22.1 of SCN, it has been intimated that the importer i.e. M/s WOIL (Main Noticee) has discharged the full liability by depositing differential Duty along with applicable Interest and 15% Penalty in terms of section 28(5) of the Customs Act, 1962 and requested for closure of the present proceedings in terms of section 28 (6) of the Act (Annexure-A). The relevant Section 28(6) is reproduced below:

"28(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion-

(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein;"

55.2.2. From the foregoing, it is submitted that since, the differential duty along with applicable Interest and 15% Penalty has been paid by the importer i.e. M/s WOIL (Main Noticee) in terms of section 28(5) of the Customs Act, 1962, therefore, the proceedings initiated vide subject SCN in respect of "such person (importer) and other persons (Including Co-Noticee i.e. M/s HTL Logistics India (P) Ltd.)" to whom the notice is served shall be deemed to be conclusive as provided under Section 28 (6) of the Act. Hence, the subject SCN merits to be dropped in respect of M/s HTL Logistics India Pvt. Ltd. also.

55.2.3. It is also submitted that in respect of 'Deemed Conclusion of Proceedings against other persons (co-noticees)' under section 28(5) & (6) of the CA, 1962, the CBEC has issued Circular No. 11/2016-Cus. dated 15/03/2016, (Annexure-B) wherein, in Para 5, it has been stipulated that "Other persons who happen to be co-noticees in the SCN for their acts of commission or omission other than demand of duty would be benefitted by the deemed closure in cases where the compliance of conditions mentioned in proviso to sub-section (2) or clause (i) of sub-section (6), as the case may be, by the main noticee to whom inter alia a demand of duty has been issued has been fulfilled".

55.2.4. Further, the said Circular dated 15/03/2016 vide Para 6 stipulated that "all such SCNs or cases which involve duty, interest and/or payment of penalty shall be covered by the above clarification". Hence, the proceedings under subject SCN in respect of "other persons (Including Co-Noticee i.e. M/s HTL Logistics India (P) Ltd.)" shall be deemed to be conclusive as provided under Section 28 (6) of the Act.

55.2.5. However, the said Circular vide Para 6 further states that "it may be noted that the cases involving seizure of goods under Section 110 of the Customs Act, or cases where confiscation provisions under sections 111, 113, 115, 118, 119, 120 and 121 are invoked, would be out of purview of this Circular'. In this regard, it is submitted that the Circular is merely clarificatory in nature in respect of the provisions of Section 28 (6) and cannot be used to widen the scope of the said section in the Customs Act, 1962 since, as per the said section, the proceeding in respect of Co-Noticees shall deemed to be conclusive as to the matters stated therein and the said section specifically excludes only the provisions of sections 135, 135A and 140.

55.2.6. It is also settled principle of law that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. Hence, the benefit of deemed conclusion under section 28(6) is available to the Co-Noticee since, the subject SCN has not invoked provisions of sections 135, 135A and 140, as excluded in the said section. Reliance in this regard is placed on the decision of Hon'ble Tribunal in the case of **Krishna Capital vs. Commissioner of Cus., New Delhi (Icd Tkd) (2019 (370) E.L.T. 1021 (Tri.-Del))**.

55.2.7. Reliance in this regard is also placed on the decision of Hon'ble CESTAT, New Delhi in the case of **Orbit Jewellers Versus Commr. Of Cus., Air Cargo (Exports), New Delhi (2016 (338) E.L.T. 620 (Tri. - Del.))**, wherein in similar circumstances, the subsequent proceedings initiated by the department against the co-noticees had been concluded under section 28(6).

55.2.8. In light of the above settled position of law, it is submitted that the proceedings under subject SCN in respect of "other persons (Including Co-Noticee i.e. M/s HTL Logistics India (P) Ltd.)" shall be deemed to be conclusive as provided under Section 28 (6) of the Act

55.3. The decision of Hon'ble Delhi Court in case of **Commissioner of Customs vs. Evergreen Shipping Agency India Pvt. Ltd.(2024) 17 Centax 112 (Del.)/2024 (388) E.L.T. 690 (Del.)**, referred in the subject SCN is not applicable to the present case since, it pertains to proceedings under Settlement Commission and not related to Section 28 (6) of CA, 1962.

55.3.1. It is submitted that the department has wrongly relied upon the decision of Hon'ble Delhi Court in case of **Commissioner of Customs v/s Evergreen Shipping Agency India Pvt. Ltd.** referred in Para 43 of the subject SCN, which is not applicable to the present case since, it pertains to proceedings under Settlement Commission and not related to Section 28 (6) of CA, 1962. In this regard, relevant Section 127(B) (Annexure-E) of the CA, 1962 is reproduced below:

"127B Application for settlement of cases -

(5) Any person, other than an applicant referred to in sub-section (1), may also make an application to the Settlement Commission in respect of a show-cause notice issued to him in a case relating to the applicant which has been settled or is pending before the Settlement Commission and such notice is pending before an adjudicating authority, in such manner and subject to such conditions, as may be specified by rules."

55.3.2. It is submitted that while opting for proceedings under the Settlement Commission under section 127 (B), the case is settled or concluded only in respect of the person making the Application before the Settlement Commission and the other persons in the SCN (Co-Noticees) may also make an application in respect of the same SCN. However, that is not the same case as provided under Section 28 (6) of the CA, 1962, wherein, when the differential duty along with applicable Interest and 15% Penalty has been paid by the importer (Main Noticee) in terms of section 28(5) of the Customs Act, 1962, the proceedings initiated vide SCN in respect of "such person (importer) and other persons (Co-Noticees)" to whom the notice is served shall be deemed to be conclusive.

55.3.3. It is pertinent to note that in the present case, the importer i.e. M/s WOIL (Main Noticee) has discharged the full liability by depositing differential Duty along with applicable Interest and 15% Penalty in terms of section 28(5) of the Customs Act, 1962 and requested for closure of the present proceedings in terms of section 28 (6) of the Act. Hence, the proceedings under subject SCN in respect of "other persons (Including Co-Noticee i.e. M/s HTL Logistics India (P) Ltd.)" shall be deemed to be conclusive as provided under Section 28 (6) of the Act.

55.4. Hence, in view of above, it is requested that the entire proceedings initiated vide the subject SCN shall deemed to be concluded in respect of M/s HTL Logistics India (P) Ltd. in terms of section 28(6) of the Customs Act, 1962.

56. RECORD OF PERSONAL HEARINGS

56.1. There are 8 Noticees in the subject SCN viz. (i) M/s Whirpool of India Ltd. (IEC-0588089893) (ii) Sh. M S Prakash, Director, Supply Chain (Impex& Spares), M/s WOIL (iii) Sh. Raju Kumar Gupta, Deputy Manager, Import Supply Chain Management, M/s WOIL (iv) Sh. Jawahar Lal Sharma, Senior Manager, Import Supply Chain Management, M/s WOIL (v) Sh. Pratik Taneja, Manager- Procurement, M/s WOIL (vi) M/s HTL Logistics India (P) Ltd., (vii) M/s Tianxin Logistics Pvt Ltd / M/s TXM Logistics Pvt Ltd., and (viii) M/s LF Logistics India Pvt Ltd.

56.2. In compliance of provisions of Section 28(8) read with Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, the Noticees were granted opportunities of Personal Hearing (PH) on 22.10.2025, 30.10.2025 and 19.11.2025 and, for the same reasons, PH intimation letters were issued by speedpost. On 30.10.2025, Mr Sanathana Gopalan D, Advocate, on behalf of the Noticees No. 1, 2, 3, 4, and 5, attended the personal hearing before the Adjudicating Authority. During the PH, he submitted, on behalf of the Noticee No. 1 to 5, that they have paid the differential duty along with interest and 15% penalty and requested for closure of proceedings under Section 28(6) of the Customs Act,

1962 and the same has been included in the SCN also. Also, he submitted that SCN proposes penalty on noticee no. 2, 3, 4, and 5 stating that closure of proceedings on them cannot be concluded u/s 28(6). In this regard he has submitted copy of Circular No. 11/2016 along with two judgements which states that other persons who happen to be co-noticee in the SCN for their acts of commission or omission other than demand of duty would also be benefitted by the deemed closure in cases where the compliance of conditions, mentioned in proviso to sub-section (2) or clause (i) of sub-section (6), as the case may be, by the main notice to whom inter alia a demand of duty has been issued, has been fulfilled. He also requested for closure of proceedings u/s 28(6) of the Customs Act, 1962 for Noticee No. 1, 2, 3, 4, and 5.

- 56.3. On 30.10.2025, Mr. Sitaram Kothari, Authorised Representative, on behalf of Noticee no. 6, attended the personal hearing before the Adjudicating Authority. During the PH, he reiterated the written submissions dated 29.08.2024 and requested to conclude the proceedings against the notice under Section 28(6) of the Customs Act, 1962.
- 56.3. The Noticees NO. 7 and 8, viz., M/s Tianxin Logistics Pvt Ltd / M/s TXM Logistics Pvt Ltd., and M/s LF Logistics India Pvt Ltd. respectively, did not attend any of the Personal Hearing opportunity provided to them.

57. DISCUSSION AND FINDINGS

- 57.1. I have carefully gone through the subject Show Cause Notice (SCN) and its enclosures, material on record and facts of the case, as well as oral submissions made during the PH and written submission made by the Noticees. Accordingly, I proceed to decide the case on merit.
- 57.2. Section 122A of the Customs Act, 1962, stipulates that the Adjudicating Authority shall give an opportunity of being heard to a party in a proceeding, if the party so desires. The adjudicating authority may, if sufficient cause is shown, at any stage of proceeding, grant time, from time to time, to the parties or any of them and adjourn the hearing, provided that no such adjournment shall be granted more than three times to a party during the proceeding.
- 57.3. In compliance of provisions of Section 28(8) read with Section 122A of the Customs Act, 1962 and in terms of the principle of natural justice, opportunities for Personal Hearing (PH) on 22.10.2025, 30.10.2025 and 19.11.2025 were provided by the Adjudicating Authority to all the Noticees. It is observed that PH letters were sent on the address given in the SCN via speedpost. The Noticee No. 1 to 6 attended the PH, however, the Noticee No. 7, M/s Tianxin Logistics Pvt Ltd / M/s TXM Logistics Pvt Ltd., and Noticee No. 8, M/s LF Logistics India Pvt Ltd., both, did not appear before the Adjudicating Authority in the Personal Hearings granted to them nor submitted any letter or email in response to the Personal Hearing intimation letters. From the aforesaid facts, it is observed that sufficient opportunities have been given to all the Noticees but Noticee No. 7, M/s Tianxin Logistics Pvt Ltd / M/s TXM Logistics Pvt Ltd., and Noticee No. 8, M/s LF Logistics India Pvt Ltd., chose not to join the adjudication proceedings.

57.4. The Noticee No. 7, M/s Tianxin Logistics Pvt Ltd / M/s TXM Logistics Pvt Ltd., and Noticee No. 8, M/s LF Logistics India Pvt Ltd, both, did not participate in the adjudication proceedings inspite of the fact of service of letters for personal hearings in terms of Section 153 of Customs Act, 1962. Section 153 of the Customs Act, 1962 reads as under:

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

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

Therefore, in terms of Section 153 of the Customs Act, 1962, it is observed that PH letters were duly served to the said Noticees, but they did not respond. From the aforesaid facts, it is observed that sufficient opportunities have been given to the said Noticees but they chose not to join the adjudication proceedings. As the matter pertains to recovery of government dues, so even in absence of the said Noticees from adjudication proceedings, I am compelled to decide the matter in the interest of revenue in time bound and logical manner.

57.5. In this regard, it is pertinent to refer to the case of *Sumit Wool Processors Vs. CC, Nhava Sheva [2014(312) E.L.T. 401 (Tri.-Mumbai)]* wherein 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." 2014 (312) E.L.T. 401 (Tri. - Mumbai)"

57.6. Considering the aforesaid scenario and the fact that the Noticee has not participated in the adjudication proceedings, I take up this SCN for discussion on the merit of the case. With regard to proceeding to decide the case following the principle of natural justice, reliance is placed on the decision of the Hon'ble High Court of Allahabad in the case of *Modipon Ltd. Vs. CCE, Meerut [reported in 2002(144) ELT 267 (All.)]* effectively dealing 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 - Adjournment - 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].

In view of the above, it is observed that sufficient opportunities have been given to all the Noticees but Noticee No. 7, M/s Tianxin Logistics Pvt Ltd / M/s TXM Logistics Pvt Ltd., and Noticee No. 8, M/s LF Logistics India Pvt Ltd, both, chose not to join the adjudication proceedings. Having complied with the requirement of the principle of natural justice and having granted Personal Hearings, I proceed to decide the matter on merits, being time bound in terms of Section 28(9) of the Customs Act, 1962, bearing in mind submissions / contentions made by all the notices.

57.7. The Noticees has placed reliance on various judgments of Tribunals on various issues, however, I find that the facts and circumstances involved in these judgements are not similar to facts and circumstances of the case in hand. Further, I find that the Hon'ble Supreme Court of India in case of Ambica Quarry Works Vs. State of Gujarat & Others [1987(I) S.C. C. 213] observed that "the ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides and not what logically follows from it." Further in the case of Bhavnagar University Vs. Palitana Sugar Mills (P) Ltd. 2003 (2) SCC 111, the Hon'ble Apex Court observed "It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

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

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

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

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

57.7. I find that the investigation was initiated by DRI, Delhi, in respect of import made by M/s Whirlpool of India Ltd., IEC 0588089893 (hereinafter referred to as "M/s WOIL" or "the importer"). M/s WOIL was mis-declaring the value of Freight with respect to the goods imported by them. The importer was not declaring the actual payment made with respect to the freight portion in C&F/ CIF before Indian Customs thereby mis-declaring the value of imported goods by manipulating payment terms. Also, in respect of goods imported under payment terms- FOB, the importer was not declaring the actual freight value before the Customs authorities.

57.8. I find that the investigation conducted by DRI, Delhi, revealed M/s WOIL orchestrated an elaborate scheme by resorting to mis-declaration of the payment terms as CIF/C&F before the Indian Customs, wherein, partial freight of around 250-350 USD was only borne by the overseas suppliers and freight in excess of that was paid by M/s WOIL to the freight forwarder at the destination. However, the same was not added in the assessable value of the imported goods as a means to evade payment of applicable customs duty. During the course of investigation, several incriminating evidences, mainly in the form of 596 Bill Books were recovered from the corporate office of M/s WOIL, Gurugram containing details of bills raised by freight forwarders against Bills of entry which were mis-declared as CIF/C&F before the Customs and it has been established that M/s WOIL mis-declared the payment terms before Indian Customs, thereby causing revenue loss to the government exchequer. The same has been established through the statements recorded of employees of M/s WOIL, freight forwarders and CHA during the course of investigation.

57.9. I find that during the course of investigation incriminating evidence in the form of email communication beginning from 24.03.2020 till 22.09.2020, was recovered from the Faridabad manufacturing plant of M/s WOIL wherein, it was clearly mentioned that the minimum ocean freight rate for the year to be fixed in respect of all future CIF consignments and freight in excess of the fixed rate will be paid by M/s WOIL directly to the freight forwarder at destination and it was also mentioned by one of the employees of M/s WOIL in the said excerpt that following such practice would result into less administrative work and would also result into small savings on Custom duty. It is evident from the email communications and further established through the statements recorded during the course of investigation that the GSS (Procurement) Team, Supply Chain Team and Finance Team of M/s WOIL adopted this scheme which resulted in evasion of Customs duty.

57.10. I note that during the course of investigation it was also revealed that that in respect of the imports made under payment terms- FOB, M/s WOIL only declared the ocean freight value before the Indian Customs, wherein, other surcharges such as PCS (Port Congestion Surcharge), GRI (General Rate Increase), LSS (Low Sulphur Surcharge), Covid-19 Surcharge, BAF (Bunker Adjustment Factor) etc. which are the components of ocean freight only, were not being added by the importer. However, the freight forwarder has mentioned the particulars of the said surcharges in the invoices raised by them to M/s WOIL. It has also been established through the statements recorded of employees of M/s WOIL, freight

forwarders and CHA during the course of investigation. Therefore, it becomes evident that the importer has been evading customs duty by suppressing the facts about the real cost of ocean transportation in respect of any INCO terms-CIF/C&F/FOB.

57.11. I find that the investigation revealed that since freight is subject to fluctuation, such fluctuation triggered frequent changes in Purchase Orders which were leading to delay in issuance of Performa Invoices and LC (Letter of credit) release eventually resulting into delayed supply of raw materials. From the evidences gathered during the investigation, it was brought to notice that the Supply Chain and the GSS Team came up with the proposal of fixing freight portion in PO in order to avoid frequent changes in PO, PI & LC. The GSS team aligned the overseas suppliers with respect to the said proposal and the Supply Chain got the relevant approvals from the Finance. Thus, the GSS (Global Strategic Sourcing) / Procurement Team, the Plant Supply Chain Team and the Finance team of M/s WOIL resorted to mis-declaration of the payment terms wherein, partial freight of around 250-350 USD was only borne by the overseas suppliers and freight in excess of that was paid by M/s WOIL to the freight forwarder at the destination. However, the same was not added in the assessable value of the imported goods as a means to evade payment of applicable customs duty. The names of employees from the GSS team and the Supply Chain team have emerged in the email communications as discussed in para 3.2.1 above, however, during the course of investigation, it was uncovered that many employees of M/s WOIL were moved from one role to another or left the organisation during this time period. Whereas it appeared that the said practice was within the knowledge of multiple employees of the GSS, Plant Supply Chain and Finance teams, it was the duty of the senior officials of the GSS and Supply Chain teams to ensure necessary compliances and check for malpractices, if any. Further, it appears that the practice of fixing freight which eventually resulted in evasion of customs duty would not have been adopted without their approval. The fact that the practice of fixing freight will also result in "saving" Customs duty per compressor was also well within the knowledge of M/s WOIL is clear from the e-mail conversations as discussed *supra*.

57.12. I find that Sh. M S Prakash, Director, Supply Chain (Impex & Spares), M/s WOIL, M S Prakash was responsible for handling Global Ocean Bids for finalising Ocean freight till May, 2020 the company including imports. Being the Director of Supply Chain, he is completely responsible for each and every lapse done on the part of M/s WOIL. Further, he himself stated in his statement dated that he used to provide global ocean freight rates to the plant supply chain teams and at times also used to approve if the plant supply chain teams came with alternative quotes due to space unavailability. The investigation revealed that Sh. M S Prakash was aware of this practice which eventually led to customs duty evasion. Further, on the basis of the investigation conducted, it was uncovered that there has been a case of non-inclusion of freight portion in the assessable value as mentioned above.

57.13. I find that during the investigation it was revealed that Sh. Raju Kumar Gupta, Deputy Manager, Import Supply Chain Management, M/s WOIL he was completely responsible for each and every lapse done on the part of M/s WOIL. It came to light from the excerpt of email

communication as mentioned in para 3.2.1 above, specifically with reference to e-mail dated 13.04.2020, that he aligned local finance (Pawan Kumar) and M S Prakash with respect to fixing minimum ocean freight rate for CIF/CF consignments and the remaining freight to be paid at destination by M/s WOIL citing inventory and smooth supply point of view. It also appears that he gave the go ahead to Sh. Pratik Taneja to start PO releasing and changing payment terms from FOB to CIF. Therefore, investigation established that Sh. Raju Kumar Gupta was aware of this practice which eventually led to custom duty evasion. Also, he himself stated in his statement dated 23.09.2022 that he was aware of the malpractice of non-inclusion of exact freight amount in the assessable value of the goods.

57.14. I find that during the investigation revealed, in respect of Sh. Jawahar Lal Sharma, Senior Manager, Import Supply Chain Management, M/s WOIL, from the excerpt of email communication as mentioned in para 3.2.1 of the subject SCN that he was aware of this practice which eventually led to custom duty evasion. In fact, being senior in the hierarchy to Sh. Raju Kumar Gupta, his concurrence was specifically sought vide mail dated 07.04.2020 wherein it was also mentioned that in the second phase, the practice can be extended to the import of other parts as well as for all Whirlpool plants in India. Therefore, it appears that the said malpractice originated out of the Faridabad plant and was well within the knowledge and also approved by the concerned Head Office team. Also, he himself stated in his statement dated 23.09.2022 that he was aware of the malpractice of non-inclusion of exact freight amount in the assessable value of the goods.

57.15. I find that during the investigation it was revealed that Sh. Pratik Taneja, Manager-Procurement, M/s WOIL, proposed the idea of changing payment terms from FOB to CIF to overseas suppliers keeping the minimum ocean freight fixed and the remaining to be paid at destination by M/s WOIL to freight forwarders. Further, from the email communications as mentioned in para 3.2.1 above that he himself mentioned that by following the practice, they would be able to make small savings of around Rs 0.30- Rs 0.40 per compressor. Therefore, I find that Sh. Pratik Taneja was aware of this practice which eventually led to custom duty evasion.

57.18. I find that it is undisputed during the investigation that M/s HTL Logistics India (P) Ltd, the freight forwarder, was responsible for issuing the Bill of Lading with the correct and true particulars. However, M/s HTL Logistics India (P) Ltd issued Bills of Lading mentioning 'Freight Prepaid' and raised invoices for 'Ocean/Sea freight' to the importer M/s WOIL thereby aiding the importer in declaring lesser freight value before the Indian Customs. Therefore, it appears that M/s HTL Logistics India (P) Ltd was aware of this practice which eventually led to customs duty evasion.

57.19. I find that M/s Tianxin Logistics Pvt Ltd / M/s TXM Logistics Pvt Ltd, the freight forwarder, was responsible for issuing the Bill of Lading with the correct and true particulars. However, M/s Tianxin Logistics Pvt Ltd issued Bills of Lading mentioning 'Freight Prepaid' and raised invoices for 'Ocean/Sea freight' to the importer M/s WOIL thereby aiding the

importer in declaring lesser freight value before the Indian Customs. Therefore, it appears that M/s HTL Logistics India (P) Ltd was aware of this practice which eventually led to customs duty evasion.

57.20. I find that M/s LF Logistics India Pvt Ltd, the freight forwarder, was responsible for issuing the Bill of Lading with the correct and true particulars. However, M/s LF Logistics India Pvt Ltd issued Bills of Lading mentioning 'Freight Prepaid' and raised invoices for 'Ocean/Sea freight' to the importer M/s WOIL thereby aiding the importer in declaring lesser freight value before the Indian Customs. Therefore, it appears that M/s HTL Logistics India (P) Ltd was aware of this practice which eventually led to customs duty evasion.

57.21. I find that the subject SCN alleges that M/s. WOIL in collusion with freight forwarders and their foreign based suppliers have indulged in deliberate suppression by way of mis-statement and has not declared the actual cost of transport which has led to short levy of duty at the time of import. By indulging into such activities of wilful mis-statement, the importer has rendered itself liable for invocation of extended period of limitation of five years, as envisaged under Section 28(4) of the Customs Act, 1962 and therefore, the differential duty the differential duty arising on this account also appears liable to be demanded in terms of the provisions of Section 28(4) of the Customs Act, 1962 along with interest under Section 28AA ibid. Further, I find that investigation revealed that since the correct value of imported goods was not declared by M/s WOIL, rendering the subject imported goods held liable to confiscation under Section 111(m) of Customs Act, 1962. For its acts and omissions M/s WOIL appears to have rendered itself liable to penalty under Section 114A of Customs Act, 1962. As M/s WOIL suppressed the fact related to the non- inclusion of transportation cost and submitted false/incorrect information for assessment of the imported goods to duty, they also appear liable to penalty under Section 114AA of Customs Act, 1962. Further, the SCN has also proposed appropriation of payment of duty, confiscation of goods and imposition of penalty on the importer, Sh. M S Prakash, Director, Supply Chain (Impex & Spares), M/s WOIL, Sh. Raju Kumar Gupta, Deputy Manager, Import Supply Chain Management, M/s WOIL, Sh. Jawahar Lal Sharma, Senior Manager, Import Supply Chain Management, M/s WOIL, Sh. Pratik Taneja, Manager-Procurement, M/s WOIL, M/s HTL Logistics India (P) Ltd, freight forwarder, M/s Tianxin Logistics Pvt Ltd / M/s TXM Logistics Pvt Ltd, the freight forwarder, and that M/s LF Logistics India Pvt Ltd, the freight forwarder.

57.22. From the brief of the statements of the key persons involved and the documentary/digital evidences available in the import of the goods covered in the instant SCN as outlined above, it can be seen that the admissions/confessions made therein are in coherence with each other and the same have been recorded voluntarily without the use of any force or threat. Moreover, none of the statements have negated any facts adduced in the other statements. Thus, I find that the statements tendered during the investigation under the provisions of Customs Act 1962, are fully corroborated with cogent and tangible evidences. Further, from the records available, the DRI, Delhi had recorded the statement under Section 108 of the Customs Act, 1962 without any duress and coercion. I find from the facts on record, that none of the noticees

had made any allegation during investigation and retracted their statements. In this regard, I place reliance in the decision of Hon'ble Supreme Court in the case of *K.I. Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin, (1997) 3 SCC 721* wherein the Apex Court has held that there is no law which forbids acceptance of voluntary and true admissional statement if the same is later retracted on bald assertion of threat and coercion. In the light of the above discussed judgements, **I find that the statements recorded under Section 108 of the Customs Act, 1962 have legal evidentiary value in the present matter.**

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

- i *Asst. Collector of Central Excise, Rajamundry v. M/s. Duncan Agro India Ltd.* reported in 2000 (120) E.L.T. 280 (S.C.) : Statement recorded by a Customs Officer under Section 108 is a valid evidence
- ii In 1996 (83) E.L.T. 258 (S.C.) in the case of *Shri Naresh J. Sukawani v. Union of India* : “ *4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act.*”
- iii It was held that statement recorded by the Customs officials can certainly be used against a co-noticee when a person giving a statement is also tarnishing his image by making admission of guilt. Similar view was taken in the case of *In Gulam Hussain Shaikh Chougule v. S. Reynolds* (2002) 1 SCC 155 = 2001 (134) E.L.T. 3 (S.C.)
- iv State (NCT) Delhi Vs Navjot Sandhu @ Afsan Guru, 2005 (122) DLT 194 (SC): Confessions are considered highly reliable because no rational person would make admission against his interest unless prompted by his conscience to tell the truth. “Deliberate and voluntary confessions of guilt, if clearly proved are among the most effectual proofs in law.” (Vide Taylors’s Treatise on the Law of Evidence, VI. I).
- v There is no law which forbids acceptance of voluntary and true admissional statement if the same is later retracted on bald assertion of threat and coercion as held by Hon'ble Supreme Court in the case of *K.I. Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin, (1997) 3 SCC 721*.
- vi Hon'ble Supreme Court in the case of *Kanhailal Vs. UOI*, 2008 (1) Scale 165 observed:

“The law involved in deciding this appeal has been considered by this court from as far back as in 1963 in Pyare Lal Bhargava’s case (1963) Supp. 1 SCR 689. The consistent view which has been taken with regard to confessions made under provisions of section 67 of the NDPS Act and other criminal enactments, such as the Customs Act, 1962, has

been that such statements may be treated as confessions for the purpose of Section 27 of the Indian Evidence Act.

vii Hon'ble High Court of Mumbai in FERA Appeal No 44 OF 2007 in the case of KANTILAL M JHALA Vs UNION OF INDIA vide judgment dated: October 5, 2007 (reported in 2007-TIOL-613-HC-MUM-FEMA) held that “*Confessional statement corroborated by the seized documents, admissible even if retracted*”.

viii The Apex Court in the case Hazari Singh V/s. Union of India reported in 110 E.L.T. 406, and case of Surjeet Singh Chhabra V/s. Union of India & Others reported in 1997 (1) S.C.C. 508 has held that the confessional statement made before the Customs Officer even though retracted, is an admission and binding on the person. - ”.

ix The Hon'ble Supreme Court in the case of Badaku Joti Savant Vs. State of Mysore [1966 AIR 1746 = 1978 (2) ELT J 323 (SC 5-member bench)] laid down that statement to a Customs officer is not hit by section 25 of Indian Evidence Act, 1872 and would be admissible in evidence and in conviction based on it is correct.

x In the case of BhanaKhalpa Bhai Patel Vs. Asstt. Collr. of Customs, Bulsar [1997 (96) E.L.T. 211 (SC)], the Hon'ble Apex Court at Para 7 of the judgment held that :–“ *It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence vide Romesh Chandra v. State of West Bengal, AIR 1970 S.C. 940 and K.I. Pavunny v. Assistant Collector (H.Q.), Central Excise Collectorate, Cochin, 1997 (90) E.L.T. 241 (S.C.) = (1997) 3 S.C.C. 721.* ”

xi In the case of Raj Kumar Karwal Vs. UOI & Others (1990) 2 SCC 409, the Court held that *officers of the Department of Revenue Intelligence who have been vested with the powers of an Officer-in-Charge of a police station under Section 53 of the NDPS Act, 1985, are not police officers within the meaning of Section 25 of the Evidence Act. Therefore, a confessional statement recorded by such officer in the course of investigation of a person accused of an offence under the Act is admissible in evidence against him.*

xii The Hon'ble Supreme Court's decisions in the case of Romesh Chandra Mehta Vs. the State of West Bengal (1969) 2 S.C.R. 461, A.I.R. 1970 S.C. 940. The provisions of Section 108 are judicial provisions within statement has been read, correctly recorded and has been made without force or coercion. In these circumstances there is not an iota of doubt that the statement is voluntary and truthful. The provisions of Section 108 also enjoin that the statement has to be recorded by a Gazetted Officer of Customs and this has been done in the present case. The statement is thus made before a responsible officer and it has to be accepted as a piece of valid evidence.

xiii Jagjit Singh vs State of Punjab And Another, Hon'ble Punjab and Haryana High Court in Crl. Appeal No. S-2482-SB of 2009 Date of Decision: October 03, 2013 held that:

The statements under Section 108 of the Customs Act were admissible in evidence as has been held by the Hon'ble Supreme Court in Ram Singh vs. Central Bureau of Narcotics, 2011 (2) RCR (Criminal) 850.

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

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

- A. The declared value of Rs.2584,03,62,786/- (Rupees Two Thousand Five Hundred Eighty Four Crores Three Lakh Sixty Two Thousand Seven Hundred and Eighty Six only), in respect of the goods imported by them in the past, as summarized in Table - B in Para 29 above and detailed in Annexure-A of the subject Show Cause Notice, should not be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determined at Rs.2612,08,55,051/- (Rupees Two Thousand Six hundred Twelve Crores Eight Lakh Fifty Five Thousand and Fifty One Only), duly rounded off, in terms of Rule 10 of the said Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.
- B. The differential duty for the goods valued at Rs.2612,08,55,051/- amounting to Rs.9,37,50,340/- (Rupees Nine Crores Thirty Seven Lakh Fifty Thousand Three Hundred and Forty Only), duly rounded off, as summarized in Table-B of Para 29 of the Show Cause Notice and detailed in Annexure-A of the SCN along with applicable interest under Section 28AA of the Customs Act, 1962, should not be demanded.
- C. The goods imported by M/s WOIL (as summarized in Table-B, and detailed in Annexure-A of the Show Cause Notice), having a total re-determined Assessable Value of Rs.2612,08,55,051/- (Rupees Two Thousand Six Hundred Twelve Crores Eight Lakh Fifty Five Thousand and Fifty One Only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.
- D. Whether or not the penalty should be imposed upon M/s. WOIL under section 112(a), 114A and 114AA of the Customs Act, 1962.
- E. Whether or not the penalty under section 112(a) and 114AA of the Customs Act, 1962 should be imposed upon the co-noticees viz. Sh. M S Prakash, Director, Supply Chain (Impex & Spares), M/s WOIL, Sh. Raju Kumar Gupta, Deputy Manager, Import Supply Chain Management, M/s WOIL, Sh. Jawahar Lal Sharma, Senior Manager, Import Supply Chain Management, M/s WOIL, Sh. Pratik Taneja, Manager- Procurement, M/s WOIL, and penalty under Section 112(a) & 112(b) and 114AA of the Customs Act, 1962 should be imposed upon M/s HTL Logistics India (P) Ltd, M/s Tianxin Logistics Pvt Ltd / M/s TXM Logistics Pvt Ltd, and M/s LF Logistics India Pvt Ltd.

57.26. After having framed the substantive issues raised in the SCN which are required to be decided, I now proceed to examine each of the issues individually for detailed analysis based on the facts and circumstances mentioned in the SCN; provision of the Customs Act, 1962; nuances of various judicial pronouncements, as well as Noticees' oral and written submissions and documents / evidences available on record.

A. **The declared value of Rs. 2584,03,62,786/- (Rupees Two Thousand Five Hundred Eighty Four Crores Three Lakh Sixty Two Thousand Seven Hundred and Eighty Six only), in respect of the goods imported by them in the past, as summarized in Table - B in Para 29 above and detailed in Annexure-A of the subject Show Cause Notice, should not be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determined at Rs. 2612,08,55,051/- (Rupees Two Thousand Six hundred Twelve Crores Eight Lakh Fifty Five Thousand and Fifty One Only), duly rounded off, in terms of Rule 10 of the said Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.**

57.27. I find that it is pertinent to refer to Section 14 of the Customs Act, 1962 and Customs Valuation (Determination of value of imported goods) Rules, 2007 as under:

SECTION 14. Valuation of goods. - (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

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

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

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

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

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

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

Explanation . - For the purposes of this section -

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

(i) determined by the Board, or

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

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

CUSTOMS VALUATION (DETERMINATION OF VALUE OF IMPORTED GOODS) RULES, 2007- The following Customs Valuation Rules are relevant in the instant case:

10. COST AND SERVICES . -

(2) For the purposes of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) and these rules, the value of the imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include –

(a) the cost of transport of the imported goods to the place of importation;

(b) loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation; and

(c) the cost of insurance :

Provided that –

(i) where the cost of transport referred to in clause (a) is not ascertainable, such cost shall be twenty per cent of the free on board value of the goods;

(ii) the charges referred to in clause (b) shall be one per cent of the free on board value of the goods plus the cost of transport referred to in clause (a) plus the cost of insurance referred to in clause (c);

(iii) where the cost referred to in clause (c) is not ascertainable, such cost shall be 1.125% of free on board value of the goods; Provided further that in the case of goods imported by air, where the cost referred to in clause (a) is ascertainable, such cost shall not exceed twenty per cent of free on board value of the goods: Provided also that where the free on board value of the goods is not ascertainable, the costs referred to in clause (a) shall be twenty per cent of the free on board value of the goods plus cost of insurance for clause (i) above and the cost referred to in clause (c) shall be 1.125% of the free on board value of the goods plus cost of transport for clause (iii).

Provided also that in case of goods imported by sea stuffed in a container for clearance at an Inland Container Depot or Container Freight Station, the cost of freight incurred in the movement of container from the port of entry to the Inland Container Depot or Container Freight Station shall not be included in the cost of transport referred to in clause (a).

Explanation.- The cost of transport of the imported goods referred to in clause (a) includes the ship demurrage charges on charted vessels, lighterage or barge charges.

(3) Additions to the price actually paid or payable shall be made under this rule on the basis of objective and quantifiable data. (4) No addition shall be made to the price actually paid or payable in determining the value of the imported goods except as provided for in this rule.

57.28. I find that, in terms of Section 14 of the Customs Act, 1962, the value of the imported goods shall be the transaction value subject to such other conditions as may be specified in this behalf by the rules made in this regard. It has been further provided that such transaction value shall include, in addition to the price, any amount paid or payable for cost and services including inter-alia *commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules Made in this behalf.* Further, in accordance with such provisions, Central Government has made Customs Valuation (Determination of value of imported goods) Rules, 2007 (herein after referred to as 'the valuation rules'). Rule 3 (1) of the valuation rules lays down that the value of the imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10.

57.29. Also, I find that with effect from 08.04.2011, Self-Assessment has become the norm of assessment of Customs duty in respect of imported/export goods, whichever applicable. This is a measure aimed at facilitating trust-based compliance management in respect of goods which are imported into or exported from India. With introduction of the concept of self-assessment, Government expected to usher a new era of trust-based Customs-Trade partnership. The focus of self-assessment is reliance on declarations made by importers/exporters for facilitating the clearance of imported/export consignment. The basic postulates of Self-Assessment are covered under Board's Circular No.17/2011- Custom dated 08.04.2011. As per the Self-assessment Scheme, the responsibility for assessment has shifted to the importer/exporter, therefore, importers/exporters are required to declare the correct description, value, classification, notification number, if any, and themselves assess the Customs duty leviable, if any, on the imported / export goods. Section 17 of the Customs Act, 1962 provides for self-assessment of duty on imported and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill, as the case may be, in the electronic form (Section 46 or 50). Self-Assessment is covered under Section 17, and also supported by Sections 18, 46 and 50 of the Customs Act, 1962. Therefore, to avail of the benefit of the facility, trade need to put in place robust systems and processes to ensure that accurate information is submitted to the Customs as the onus would lie solely on the importer/ exporter.

57.30. Based on the forgoing discussions, I find that cost of transport of the imported goods to the place of importation, not included in the price actually paid or payable, is required to be added to the price actually paid or payable for the imported goods as per Section 14 of the Customs Act, 1962 read with clause (a) of sub-rule 2 of Rule of Customs Valuation Rules, 2007 and explanation to Rule 10 (2) (a) to arrive at transaction value. Therefore, cost of transport of the

imported goods was required to be included in the assessable value of the goods imported by M/s WOIL, for the purpose of assessment of Customs duty. However, it appears that M/s WOIL has failed to include the same in the value declared by them. The same has been corroborated by the statements recorded under section 108 of the Customs Act, 1962, of employees of the importers and freight forwarders *supra*.

57.31. In view of above, I hold that the declared value of Rs.2584,03,62,786/- (Rupees Two Thousand Five Hundred Eighty Four Crores Three Lakh Sixty Two Thousand Seven Hundred and Eighty Six only), in respect of the goods imported by them in the past, as summarized in Table - B in Para 29 above and detailed in Annexure-A of the subject Show Cause Notice, is to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determined at Rs. 2612,08,55,051/- (Rupees Two Thousand Six hundred Twelve Crores Eight Lakh Fifty Five Thousand and Fifty One Only), duly rounded off, in terms of Rule 10 of the said Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.

B. **The differential duty for the goods valued at Rs. 2612,08,55,051/- amounting to Rs. 9,37,50,340/- (Rupees Nine Crores Thirty Seven Lakh Fifty Thousand Three Hundred and Forty Only), duly rounded off, as summarized in Table-B of Para 29 of the Show Cause Notice and detailed in Annexure-A of the SCN along with applicable interest under Section 28AA of the Customs Act, 1962, should not be demanded.**

57.32. The subject Show Cause Notice proposed demand and recovery of Rs.9,37,50,340/- (Rupees Nine Crores Thirty Seven Lakh Fifty Thousand Three Hundred and Forty Only), duly rounded off on account of not declaring correct value of the imported goods as detailed in Annexure-A of the subject SCN under section 28(4) of the Customs Act, 1962 along with applicable interest under section 28AA of the Customs Act, 1962.

The relevant legal provision is as under:

SECTION 28(4) of the Customs Act 1962.

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

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

- (a) Collusion; or*
- (b) Any 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.

57.33. I find that during the investigation, it was very well established by the investigating unit that in respect of all the imports having a total re-determined Assessable Value of Rs.2612,08,55,051/- as detailed under Annexure-A of the subject SCN, the importer has not declared the correct value of the imported goods. The value declared by M/s WOIL at the time of import of the impugned goods, was not in accordance with the provisions of the CVR, 2007. In view of the facts mentioned above, I find that M/s WOIL has indulged in deliberate suppression by way of mis-statement and has not declared the actual cost of transport which has led to short levy of duty at the time of import.

57.34. Relevant provisions of law is as under:

57.34.1. As per Rule 11 of the Foreign Trade (Regulation) Rules, 1993, owner of the imported goods shall in the Bill of Entry or any other documents prescribed under the Customs Act, 1962 state the value, quality and description of such goods to the best of his knowledge and belief and certify to its truthfulness which was not done by the importer.

57.34.2. Rule 14 of the Foreign Trade (Regulation) Rules 1993, provides inter-alia, that (i) no person shall make sign or use or cause to be made, signed or used any declaration, statement or document for the purpose of obtaining any license or importing or exporting any goods knowing or having reasons to believe that such declaration statement or document is false in any material particular (ii) no person shall employ any corrupt or fraudulent practice for the purposes of obtaining any license or importing or exporting any goods.

57.34.3 *Declaration by the importer. -*

(1) *The importer or his agent shall furnish -*

(a) a declaration disclosing full and accurate details relating to the value of imported goods; and

(b) any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer, as considered necessary by the proper officer for determination of the value of imported goods under these rules.

(2) Nothing contained in these rules shall be construed as restricting or calling into question the right of the proper officer of customs to satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes.

(3) The provisions of the Customs Act, 1962 (52 of 1962) relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished under these rules.

57.34.4. Sub-section 2 of Section 2 of the Customs Act, 1962, "assessment" means determination of the dubitability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) or under any other law for the time being in force, with reference to—

- (i) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;
- (ii) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;
- (iii) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefore under this Act or under the Customs Tariff Act or under any other law for the time being in force;
- (iv) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;
- (v) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made there under, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;
- (vi) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods, and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;"

57.34.5. Circular No.17/2011- Customs dated 8th April, 2011 issued by the Ministry of Finance, specifies that Section 17 of the Customs Act, 1962 provides for self-assessment of duty on import and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill, as the case may be. The importer or exporter at the time of self-assessment is required to ensure that he declares the correct classification, applicable rate of duty, value, and benefit of exemption notifications claimed, if any, in respect of the imported / export goods while presenting Bill of Entry or Shipping Bill. The Bill of Entry or Shipping Bill self-assessed by importer or exporter, as the case may be, can be subject to verification with regard to correctness of classification, value, rate of duty, exemption notification or any other relevant particular having bearing on correct assessment of duty on imported or export goods. For the purpose of verification, the proper officer may order for examination or testing of the imported or export goods, production of any relevant document or ask the importer or exporter to furnish any relevant information.

57.34.6. Section 17(1) of the Customs Act, 1962— (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

57.35. In view of the discussion in the foregoing paras, I find that investigation has placed on record sufficient evidences, both oral and documentary, thereby discharged burden to prove that the imported goods were deliberately mis-declared in terms of not declaring the correct value of the imported goods in the documents submitted to the India Customs Authorities with an intent to evade customs duty applicable on the imported goods. The importer manipulated and Finance team of M/s WOIL resorted to mis-declaration of the payment terms wherein, partial freight of around 250-350 USD was only borne by the overseas suppliers and freight in excess of that was paid by M/s WOIL to the freight forwarder at the destination. However, the same was not added in the assessable value of the imported goods as a means to evade payment of applicable customs duty. The names of employees from the GSS team and the Supply Chain team have emerged in the email communications as discussed in para 3.2.1 of the subject Notice, however, during the course of investigation, it was established that many employees of M/s WOIL were moved from one role to another or left the organisation during this time period. Whereas it appears that the said practice was within the knowledge of multiple employees of the GSS, Plant Supply Chain and Finance teams, it was the duty of the senior officials of the GSS and Supply Chain teams to ensure necessary compliances and check for malpractices, if any. Further, it appears that the practice of fixing freight which eventually resulted in evasion of customs duty would not have been adopted without their approval. The fact that the practice of fixing freight will also result in "saving" Customs duty per compressor was also well within the knowledge of M/s WOIL is clear from the e-mail conversation mentioned above.

57.36. I find that in the instant case, as elaborated in the foregoing paras, the Noticees had willfully suppressed the correct value of the imported goods as detailed in Annexure-A of the subject Notice by manipulating the value of freight in the Bills of Entry. The value declared by M/s WOIL at the time of import of the impugned goods, was not in accordance with the provisions of the CVR, 2007. In view of the facts discussed above, I find that M/s WOIL has indulged in deliberate suppression by way of mis-statement and has not declared the actual cost of transport which has led to short levy of duty at the time of import. Therefore, I find that in the instant case there is an element of 'mensrea' involved. The instant case is not a simple case of bonafide wrong declaration of the goods. Instead, in the instant case, the Noticees deliberately chose to not declare the correct value of the imported goods to evade the applicable customs duty, being fully aware about the correct value of the freight. This wilful and deliberate act clearly brings out their 'mens rea' in this case. Once the 'mens rea' is established on the part of the Noticee, the extended period of limitation, automatically get attracted.

57.37. In view of the provisions discussed above, I find that the true applicable duty had not been levied by reasons of collusion, wilful mis-statement and suppression of facts and therefore, the same is aptly proposed to be demanded and recovered from the M/s. WOIL, under Section 28(4) of the Customs Act, 1962.

57.38. In support of my stand of invoking extended period, I rely upon the following court decisions:

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

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

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

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

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

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

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

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

Further, the importer M/s. WOIL, is also liable to pay applicable interest under the provisions of Section 28AA of the Customs Act, 1962. The relevant provision as under:

Section 28AA.

Interest on delayed payment of duty—

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

In this regard, the ratio laid down by Hon'ble Supreme Court in the case of CCE, Pune V/s. SKF India Ltd. [2009 (239) ELT 385 (SC)] wherein the Apex Court has upheld the applicability of interest on payment of differential duty at later date in the case of short payment of duty though completely unintended and without element of deceit. The Court has held that

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

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

57.39. In view of the discussion in the foregoing paras, I hold that the total amount of duty of Rs. Rs.9,37,50,340/- (Rupees Nine Crores Thirty Seven Lakh Fifty Thousand Three Hundred and Forty Only), had not been paid due to collusion, willful mis-statement and suppression of facts, should be demanded and recovered from M/s. WOIL, under the provisions of Section 28 (4) of the Customs Act, 1962 by invoking the extended period of limitation, along with applicable interest under Section 28AA of the Customs Act, 1962.

57.40. Further, I find that during the course of investigation, M/s WOIL admitted the duty liability and voluntarily submitted the differential duty calculation chart by declaring actual value of the freight with respect to goods imported by them and deposited the following Demand Drafts towards differential duty along with applicable interest and penalty @15% of the differential duty (w.e.f. 02.07.2018 to 15.06.2022) in order to conclude the proceeding in terms of Section 28 of the Customs Act, 1962 which were further deposited in the Govt. account, as detailed under:

Table – A

Sl. No	Demand Draft No. & Date	Amount	Payment made towards	TR-6 No. & Date
1	213296 dated 22.09.2022	1,00,00,000	Differential Duty	HC 42 dated 06.10.2022
2	213297 dated 22.09.2022	1,00,00,000	Differential Duty	
3	213321 dated 23.09.2022	1,00,00,000	Differential Duty	
4	213322 dated 23.09.2022	1,00,00,000	Differential Duty	
5	213323 dated 23.09.2022	1,00,00,000	Differential Duty	
6	213324 dated 23.09.2022	1,00,00,000	Differential Duty	
7	213325 dated 23.09.2022	1,00,00,000	Differential Duty	
8	613744 dated 10.03.2023	3,10,44,453	Differential duty and Interest	HC 257 dated 21.03.2023
9	740387 dated 07.06.2023	1,82,82,858	Interest	HC 136 dated 13.06.2023
10	740386 dated 07.06.2023	1,40,62,551	Penalty@15%	
TOTAL		13,33,89,862		

57.41. I find that the importer vide letter dated 19.01.2023 and E-mail 07.06.2023 (**RUD-29 and RUD 34 of the SCN**) has voluntarily submitted the differential duty calculation chart for the goods imported starting from 02.07.2018. Further, vide letters dated 23.09.2022, 19.01.2023 and 07.06.2023, the importer voluntarily deposited the differential duty along with interest and penalty. The total differential duty including interest and penalty for the above-mentioned period comes to **Rs.13,33,89,862/-** (Rs.9,37,50,340/- towards Differential Customs Duty, Rs.2,55,76,971/- towards Interest and Rs.1,40,62,551/- towards Penalty). The importer vide

their letter dated 07.06.2023 submitted that the management of the company, in its commercial wisdom and to avoid protracted litigation, has decided to deposit the full liability including Duty, Interest and Penalty of 15% in terms of Section 28 (5) of the Customs Act, 1962 with a view to bring closure to the present proceedings. I find, from the case records, that the above-mentioned challans in Table-A have been verified from the Cash Section, JNCH, Nhava Sheva, on 12.12.2025. I find that the full payment towards duty, interest and penalty (@15%) has been made by the importer M/s. WOIL prior to the issuance of the subject Show Cause Notice.

57.42. I find that the full payment towards duty, interest and penalty has been made by the importer M/s. WOIL prior to the issuance of the subject Show Cause Notice. I note that Section 28(6) of the Customs Act, 1962 provides for closure of proceedings when certain conditions are met. It functions as a statutory dispute-closure and litigation-mitigation mechanism under the Customs Act. It enables an importer or other person chargeable with duty to settle a demand by paying the duty, applicable interest, and the prescribed reduced penalty within the stipulated time, upon which all proceedings relating to the show cause notice are deemed to be concluded. Accordingly, I hold that the instant case against the importer, M/s. WOIL, is fit for conclusion in terms of Section 28(6)(i) of the Customs Act, 1962.

C. The goods imported by M/s WOIL (as summarized in Table-B, and detailed in Annexure-A of the Show Cause Notice), having a total re-determined Assessable Value of Rs. 2612,08,55,051/- (Rupees Two Thousand Six Hundred Twelve Crores Eight Lakh Fifty Five Thousand and Fifty One Only) should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

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

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

of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. In the instant case, the impugned Bills of Entry being self-assessed were substantially mis-declared by the importer in accordance with the provisions of the CVR, 2007 while being presented to the Customs to evade Customs Duty applicable on the import effected by M/s WOIL.

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

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

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act, shall be liable to confiscation."

57.46. I find that evidences are placed on record substantiating that the importer, M/s. WOIL by way of collusion, willful mis-statement, mis-representation and suppression of facts, the Importer in collusion with foreign suppliers had deliberately not declared the actual cost of transport which has led to short levy of duty at the time of import with an intent to evade Customs Duty applicable on the import effected by them. Further, I find that the freight forwarders and employees of M/s WOIL who appeared before the investigating agency in their voluntary statements recorded under section 108 of the Customs Act, 1962 had accepted that they were aware of the malpractice of non-inclusion of exact freight amount in the assessable value of the goods. I therefore find that the said import of goods by not declaring correct value of the imported goods, squarely falls within the ambit of 'illegal import' as defined in section 11 of the Customs Act, 1962 in as much as the same was done in contravention of various provisions of the Customs Act, 1962.

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

"Enactments like Customs Act, 1962, and Customs Tariff Act, 1975, are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives. Evidence Act not being applicable to quasi-judicial proceeding, preponderance of probability came to rescue of Revenue and Revenue was not required to prove its case by mathematical precision. Exposing entire modus operandi through allegations made in the show cause notice on the basis of evidence gathered by Revenue against the appellants was sufficient opportunity granted for rebuttal. Revenue discharged its onus of proof and burden of proof remained un-discharged by appellants. They failed to lead their evidence to rule out their role in the offence committed and prove their case with clean hands. No evidence gathered by Revenue were demolished by appellants by any means."

57.48. In view of the fraud and intentional mis-declaration in terms of correct value of the imported goods in the documents submitted to the India Customs Authorities with an intent to evade Customs Duty applicable on the import, the goods having re-determined Assessable Value of Rs. 2612,08,55,051/- (Rupees Two Thousand Six hundred Twelve Crores Eight Lakh Fifty Five Thousand and Fifty One Only) imported and cleared under bills of entry, as detailed in Annexure-A of the subject Show Cause Notice are liable for confiscation under Section 111(m) of the Customs Act, 1962, as the actual value of the imported goods do not correspond to the declared value in the relevant bills of entry. Therefore, I held that the goods imported by M/s WOIL are liable for confiscation under section 111(m) of the Customs Act, 1962.

57.49. I find from the above findings and legal provisions that it is an admitted fact with documentary & digital evidences as well as statements of the Noticees, the importer had willfully mis-declared in terms of correct value of the imported goods. Therefore, I hold that the acts and omissions of the importer, by way of collusion, wilful mis-statement, mis-declaration and suppression of facts, of the imported goods, have rendered the goods liable to confiscation under section 111(m) of the Customs Act, 1962 and Redemption Fine is imposable on them under provisions of Section 125 of the Customs Act, 1962.

57.50. I find that the spirit of the legal statute enshrined in section 28(6) of the Customs Act, 1962 is also echoed in first proviso to section 125(1) of the Customs Act. The relevant portion of the Section 125 of the Customs Act, 1962 is reproduced as under:

Section 125. Option to pay fine in lieu of confiscation. -

(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods 1 [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit:

[Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, 3 [no such fine shall be imposed]:

.....

57.51. As I have already held, in para 57.42., that proceedings against the main noticee are deemed to be concluded under Section 28(6)(i) of the Customs Act, 1962. Accordingly, I held that redemption fine under Section 125 is unsustainable and cannot be levied.

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

57.52. The provisions of Section 112, 114A and 114AA of the Customs Act, 1962 are reproduced as under:

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

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

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

Shall be liable

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

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater:

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

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (2) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

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

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

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

114AA. Penalty for use of false and incorrect material. –

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

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

“31. ‘‘Fraud’’ as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or

authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (Ram Chandra Singh v. Savitri Devi and Ors. [2003] (8) SCC 319].

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

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

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

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

A person whose case is based on falsehood has no right to seek relief in equity [Ref: S.P. Chengalvaraya Naidu v. Jagannath, AIR 1994 S.C. 853]. It is a fraud in law if a party makes representations, which he knows to be false, and injury ensues there from although the motive from which the representations proceeded may not have been bad. [Ref:

Commissioner of Customs v. Essar Oil Ltd., (2004) 11 SCC 364 = 2004 (172) E.L.T. 433 (S.C.).

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

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

57.54. I find that in the instant case, I find that, in spite of the clear provisions under Customs Valuation (Determination of value of imported goods) Rules, 2007, M/s WOIL chose to mis-state and suppress the correct value of the freight paid on the imported goods so as to avoid payment of applicable customs duty. The said act was done by M/s WOIL in connivance with the foreign based suppliers and the freight forwarders. The mis-statement and the clearance of the goods in such a manner appears to be deliberate, violative of the provisions of Section 17 and Section 46 of the Customs Act, 1962, and indicative of the mala fide intention of the importer to evade the payment of the customs duty payable on the said goods. M/s. WOIL, in terms of Section 17(1) of the Customs Act, 1962 failed to self-assess the correct duty applicable on the imported goods in as much as they colluded with their foreign suppliers and their accomplices in foreign country, mis-declared the value of freight paid on the imported goods in the documents submitted to the Indian Customs Authorities which led to evasion of applicable customs duty. M/s WOIL, have done acts or have omitted to do acts, abetted the doing or omission of such acts which have rendered the goods imported vide the Bills of Entry detailed in Annexure-A of the subject Notice, liable to confiscation under Section 111(m) of the Customs Act, 1962, inasmuch as in collusion with their foreign based suppliers and their freight forwarders they have deliberately mis-declared freight paid on the imported goods with intent to evade payment of Customs duty. As per para 57.41 above, the said goods, though not physically available for confiscation, have been held liable for confiscation under Section 111(m) of the Customs Act, 1962. Consequently, M/s WOIL, have rendered themselves liable to penal action under the Customs Act, 1962 in relation to the impugned goods.

57.55. As I have already held, in para 57.42., that the proceedings against the main noticee are deemed to be concluded under Section 28(6)(i) of the Customs Act, 1962, Therefore, I hold that no separate penalty should be imposed on the main noticee in the spirit of Section 28(6)(i) of the Customs Act, 1962.

E. Whether or not the penalty under section 112(a) and 114AA of the Customs Act, 1962 should be imposed upon the co-noticees viz. Sh. M S Prakash, Director, Supply Chain (Impex & Spares), M/s WOIL, Sh. Raju Kumar Gupta, Deputy Manager, Import Supply

Chain Management, M/s WOIL, Sh. Jawahar Lal Sharma, Senior Manager, Import Supply Chain Management, M/s WOIL, Sh. Pratik Taneja, Manager- Procurement, M/s WOIL, and penalty under Section 112(a) & 112(b) and 114AA of the Customs Act, 1962 should be imposed upon M/s HTL Logistics India (P) Ltd, M/s Tianxin Logistics Pvt Ltd / M/s TXM Logistics Pvt Ltd, and M/s LF Logistics India Pvt Ltd.

57.56. I find that the penalty under section 112(a)/112(b) and 114AA of the Customs Act, 1962 has been proposed on all the co-noticees, viz., Sh. M S Prakash, Director, Supply Chain (Impex & Spares), M/s WOIL, Sh. Raju Kumar Gupta, Deputy Manager, Import Supply Chain Management, M/s WOIL, Sh. Jawahar Lal Sharma, Senior Manager, Import Supply Chain Management, M/s WOIL, Sh. Pratik Taneja, Manager- Procurement, M/s WOIL, and penalty under Section 112(a) & 112(b) and 114AA of the Customs Act, 1962 should be imposed upon M/s HTL Logistics India (P) Ltd, M/s Tianxin Logistics Pvt Ltd / M/s TXM Logistics Pvt Ltd, and M/s LF Logistics India Pvt Ltd., in the subject SCN. Further, role of each co-noticee has been discussed separately in the SCN. Therefore, I decide to assess and determine the liability of each co-noticee autonomously, uninfluenced by the actions or resolutions pertaining to other parties.

57.57. I have gone through the para 31 of the subject Show Cause notice wherein the role of Sh. M S Prakash, Director, Supply Chain (Impex & Spares), M/s WOIL, in the present case has been mentioned. I find that he himself stated in his statement that he used to provide global ocean freight rates to the plant supply chain teams and at times also used to approve if the plant supply chain teams came with alternative quotes due to space unavailability. Also, in the mail dated April 13, 2020 which is part of the excerpt of email communications as discussed in para 3.2.1 of the subject notice, Sh. Raju Kumar Gupta mentioned that the minimum ocean freight rate for the year had been fixed in respect of CIF consignments and freight in excess of the fixed rate will be paid by M/s WOIL directly to the forwarder. Sh. M S Prakash was aware of this practice which eventually led to customs duty evasion. Further, on the basis of the investigation conducted, it is established that there has been a case of non-inclusion of freight portion in the assessable value. The appropriate customs duty leviable on the goods could not be levied at that time of import due to reason of wilful misstatement and suppression of facts. In view of the foregoing, the acts of omission and commission on the part of Sh. M S Prakash, Director, Supply Chain (Impex & Spares), M/s WOIL, have rendered the imported goods liable to confiscation under Sections 111(m) of the Customs Act, 1962. Therefore, I hold that Sh. M S Prakash is liable for penal action under Section 112(a) of the Customs Act, 1962.

Further, as observed in above paras, in the instant case, there is clear evidence of conspiracy, fraud, collusion, wilful misstatement and suppression of facts. I find that Shri M S Prakash, in relation to the goods imported as detailed in Annexure-A of the subject notice, always knew or had reason to believe that the documents and the declarations submitted under the respective bills of entry were false or incorrect in their material particulars. Despite this position, Shri M S Prakash, has caused the import of the said goods, as detailed in Annexure-

A of the subject Notice, by non-inclusion of exact freight portion in the assessable value. Therefore, I hold that Shri M S Prakash is also liable for imposition of penalty under Section 114AA ibid.

57.58. I have gone through the para 31.1 of the subject Show Cause notice wherein the role of Sh. Raju Kumar Gupta, Deputy Manager, Import Supply Chain Management, M/s WOIL, in the present case has been mentioned. I find from the excerpt of email communication as mentioned in para 3.2.1 of the subject notice, specifically with reference to e-mail dated 13.04.2020, that he aligned with local finance (Pawan Kumar) and M S Prakash with respect to fixing minimum ocean freight rate for CIF/CF consignments and the remaining freight to be paid at destination by M/s WOIL citing inventory and smooth supply point of view. It also appears that he gave the go ahead to Sh. Pratik Taneja to start PO releasing and changing payment terms from FOB to CIF. Therefore, I find that Sh. Raju Kumar Gupta was aware of this practice which eventually led to custom duty evasion. Further, he himself stated in his statement dated 23.09.2022 that he was aware of the malpractice of non-inclusion of exact freight amount in the assessable value of the goods. Therefore, the appropriate customs duty leviable on the goods could not be levied at that time of import due to reason of wilful misstatement and suppression of facts. In view of the foregoing, the acts of omission and commission on the part of Sh. Raju Kumar Gupta, Deputy Manager, Import Supply Chain Management, M/s WOIL, have rendered the imported goods liable to confiscation under Sections 111(m) of the Customs Act, 1962. Therefore, I hold that Sh. Raju Kumar Gupta, Deputy Manager, Import Supply Chain Management, M/s WOIL is liable for penal action under Section 112(a) of the Customs Act, 1962.

Further, as observed in above paras, in the instant case, there is clear evidence of conspiracy, fraud, collusion, wilful misstatement and suppression of facts. I find that Shri Raju Kumar Gupta, in relation to the goods imported as detailed in Annexure-A of the subject notice, always knew or had reason to believe that the documents and the declarations submitted under the respective bills of entry were false or incorrect in their material particulars. Despite this position, Shri Raju Kumar Gupta, has caused the import of the said goods, as detailed in Annexure-A of the subject Notice, by non-inclusion of exact freight portion in the assessable value. Therefore, I hold that Shri Raju Kumar Gupta is also liable for imposition of penalty under Section 114AA ibid.

57.59. I have gone through the para 31.2 of the subject Show Cause notice wherein the role of Sh. Jawahar Lal Sharma, Senior Manager, Import Supply Chain Management, M/s WOIL, in the present case has been mentioned. It is clear from the excerpt of email communication as mentioned in para 3.2.1 of the subject Notice that he was aware of this practice which eventually led to custom duty evasion. In fact, being senior in the hierarchy to Sh. Raju Kumar Gupta, his concurrence was specifically sought vide mail dated 07.04.2020 wherein it was also mentioned that in the second phase, the practice can be extended to the import of other parts as well as for all Whirlpool plants in India. Therefore, I find that the said malpractice originated out of the Faridabad plant and was well within the knowledge and also approved

by the concerned Head Office team. Also, I find that he himself stated in his statement dated 23.09.2022 that he was aware of the malpractice of non-inclusion of exact freight amount in the assessable value of the goods. Therefore, the appropriate customs duty leviable on the goods could not be levied at that time of import due to reason of wilful misstatement and suppression of facts. In view of the foregoing, the acts of omission and commission on the part of Sh. Jawahar Lal Sharma, Senior Manager, Import Supply Chain Management, M/s WOIL, have rendered the imported goods liable to confiscation under Sections 111(m) of the Customs Act, 1962. Therefore, I hold that Sh. Jawahar Lal Sharma, Senior Manager, Import Supply Chain Management, M/s WOIL is liable for penal action under Section 112(a) of the Customs Act, 1962.

I find that Sh. Jawahar Lal Sharma, in relation to the goods imported as detailed in Annexure-A of the subject notice, always knew or had reason to believe that the documents and the declarations submitted under the respective bills of entry were false or incorrect in their material particulars. Despite this position Shri Jawahar Lal Sharma, has caused the import of the said goods, as detailed in Annexure-A of the subject Notice, by non-inclusion of exact freight portion in the assessable value. Therefore, I hold that Shri Jawahar Lal Sharma is also liable for imposition of penalty under Section 114AA ibid.

57.60. I have gone through the para 31.3 of the subject Show Cause notice wherein the role of Sh. Pratik Taneja, Manager-Procurement, M/s WOIL, in the present case has been mentioned. Based on the evidences brought on record, I find that Sh. Pratik Taneja proposed the idea of changing payment terms from FOB to CIF to overseas suppliers keeping the minimum ocean freight fixed and the remaining to be paid at destination by M/s WOIL to freight forwarders. He is completely responsible for each and every lapse done on the part of M/s WOIL. I find from the email communications as mentioned in para 3.2.1 of the subject notice that he himself mentioned that by following the practice, they would be able to make small savings of around Rs 0.30- Rs 0.40 per compressor. Therefore, I find that Sh. Pratik Taneja was aware of this practice which eventually led to custom duty evasion. Therefore, the appropriate customs duty leviable on the goods could not be levied at that time of import due to reason of wilful misstatement and suppression of facts. In view of the foregoing, the acts of omission and commission on the part of Sh. Pratik Taneja, Manager-Procurement, M/s WOIL, have rendered the imported goods liable to confiscation under Sections 111(m) of the Customs Act, 1962. Therefore, I hold that Sh. Pratik Taneja, Manager-Procurement, M/s WOIL, is liable for penal action under Section 112(a) of the Customs Act, 1962.

I find that Sh. Pratik Taneja, in relation to the goods imported as detailed in Annexure-A of the subject notice, always knew or had reason to believe that the documents and the declarations submitted under the respective bills of entry were false or incorrect in their material particulars. Despite this position Sh. Pratik Taneja, has caused the import of the said goods, as detailed in Annexure-A of the subject Notice, by non-inclusion of exact freight portion in the assessable value. Therefore, I hold that Sh. Pratik Taneja is also liable for imposition of penalty under Section 114AA ibid.

57.61. I have gone through the para 32 of the subject Show Cause notice wherein the role of M/s HTL Logistics India (P) Ltd. has been mentioned. I find that the freight forwarder M/s HTL Logistics India (P) Ltd was responsible for issuing the Bill of Lading with the correct and true particulars. However, M/s HTL Logistics India (P) Ltd. issued Bills of Lading mentioning 'Freight Prepaid' and raised invoices for 'Ocean/Sea freight' to the importer M/s WOIL thereby aiding the importer in declaring lesser freight value before the Indian Customs. It clearly shows his voluntary involvement in evasion of applicable customs duty by M/s WOIL. The appropriate customs duty leviable on the goods with an assessable value of around Rs. 682.13 Crores could not be levied at that time of import due to reason of wilful misstatement and suppression of facts. In view of the foregoing, the acts of omission and commission on the part of M/s HTL Logistics India (P) Ltd., have rendered the imported goods liable to confiscation under Sections 111(m) of the Customs Act, 1962. I find that clauses (a) and (b) of Section 112 provide for penalties "under completely different circumstances" and both provisions cannot be applied together to the same person for the same set of actions. Therefore, I hold that M/s HTL Logistics India (P) Ltd., is liable for penal action under Section 112(a) only and 114AA of the Customs Act, 1962.

57.62. I have gone through the para 32.1 of the subject Show Cause notice wherein the role of M/s Tianxin Logistics Pvt Ltd / M/s TXM Logistics Pvt Ltd, in the present case has been mentioned. I find that the freight forwarder, M/s Tianxin Logistics Pvt Ltd / M/s TXM Logistics Pvt Ltd was responsible for issuing the Bill of Lading with the correct and true particulars. However, M/s Tianxin Logistics Pvt Ltd / M/s TXM Logistics Pvt Ltd. issued Bills of Lading mentioning 'Freight Prepaid' and raised invoices for 'Ocean/Sea freight' to the importer M/s WOIL thereby aiding the importer in declaring lesser freight value before the Indian Customs. Therefore, I find that M/s Tianxin Logistics Pvt Ltd / M/s TXM Logistics Pvt Ltd was aware of this malpractice which eventually led to customs duty evasion due to non-inclusion of exact freight portion in the assessable value of the subject imported goods. It clearly shows their voluntary involvement in evasion of applicable customs duty by M/s WOIL. The appropriate customs duty leviable on the goods with an assessable value of around Rs. 555.85 Crores could not be levied at that time of import due to reason of wilful misstatement and suppression of facts. In view of the foregoing, the acts of omission and commission on the part of M/s Tianxin Logistics Pvt Ltd / M/s TXM Logistics Pvt Ltd., have rendered the imported goods liable to confiscation under Sections 111(m) of the Customs Act, 1962. I find that clauses (a) and (b) of Section 112 provide for penalties "under completely different circumstances" and both provisions cannot be applied together to the same person for the same set of actions. Therefore, I hold that M/s Tianxin Logistics Pvt Ltd / M/s TXM Logistics Pvt Ltd, is liable for penal action under Section 112(a) only and 114AA of the Customs Act, 1962.

57.63. I have gone through the para 32.2 of the subject Show Cause notice wherein the role of M/s LF Logistics India Pvt Ltd. has been mentioned. I find that the freight forwarder, M/s LF Logistics India Pvt Ltd. was responsible for issuing the Bill of Lading with the correct and

true particulars. However, M/s LF Logistics India Pvt Ltd. issued Bills of Lading mentioning 'Freight Prepaid' and raised invoices for 'Ocean/Sea freight' to the importer M/s WOIL thereby aiding the importer in declaring lesser freight value before the Indian Customs. Therefore, I find that M/s LF Logistics India Pvt Ltd. was aware of this malpractice which eventually led to customs duty evasion due to non-inclusion of exact freight portion in the assessable value of the subject imported goods. It clearly shows their voluntary involvement in evasion of applicable customs duty by M/s WOIL. The appropriate customs duty leviable on the goods with an assessable value of around Rs. 65.24 Crores could not be levied at that time of import due to reason of wilful misstatement and suppression of facts. In view of the foregoing, the acts of omission and commission on the part of M/s LF Logistics India Pvt Ltd., have rendered the imported goods liable to confiscation under Sections 111(m) of the Customs Act, 1962. I find that clauses (a) and (b) of Section 112 provide for penalties "under completely different circumstances" and both provisions cannot be applied together to the same person for the same set of actions. Therefore, I hold that M/s LF Logistics India Pvt Ltd., is liable for penal action under Section 112(a) only and 114AA of the Customs Act, 1962.

57.64. Further, as mentioned in para 57.58 above, I find that the importer M/s WOIL has made the payment of differential Custom duty, applicable interest and penalty equivalent to 15% of differential duty amount within the prescribed period of 30 days from the date of receipt of the SCN and has also intimated about the aforesaid payments and hence instant proceedings were found fit for closure for M/s WOIL in terms of Section 28(6)(i) of the Customs Act, 1962. However, to determine whether the proceedings are to be concluded for other notice or not in terms of Section 28(6)(i), I would like to refer to **Board Circular no.11/2016-Customs dated 15.03.2016**, wherein in the last para of the said Circular, it has been mentioned that, the proceedings are to be concluded for other noticee also if the duty, interest and penalty has been paid by the main noticee except in the cases where section 110,111,113,115,118,119,120 and 121 of Customs Act 1962 are invoked. Since, in the instant case, as per 57.41. above, the impugned goods having declared assessable value of Rs.2584,03,62,786/- has been held liable for confiscation under section 111(m) of the Customs act 1962, therefore, in this case the conclusion of proceedings against the main noticee does not automatically absolve the other noticees from their involvement or culpability. Accordingly, the benefit of the Circular No. 11/2016-Customs dated 15.03.2016 does not appear to be available to the co-noticees. Para 6 of the said Circular reads as under:

(6) Section 28 primarily deals with the recovery of duty or erroneous refund. While introducing the facility of deemed conclusion, enabling provision was made for payment of interest and/ or penalty. Therefore, all such SCNs or cases which involve duty, interest and/ or payment of penalty shall be covered by the above clarification. Further, it may be noted that the cases involving seizure of goods under Section 110 of the Customs Act, or cases where confiscation provisions under sections 111, 113, 115, 118, 119, 120 and 121 are invoked, would be out of purview of this Circular.

57.65. Also, the Hon'ble High Court of Delhi in case of Commissioner of Customs Vs M/s Evergreen Shipping Agency India Pvt Ltd. (CUSAA 85/2023)[12-02-2024] at para 6, 7, and 8 held that:

6. Reference may be had to the judgment of a Coordinate Bench of this Court dated 18.05.2023 in CUSAA No. 88/2022 titled M/s Seville Products Ltd. Vs. Commissioner of Customs & Exports = 2023-TIOL-606-HC-DEL-CUS, wherein the Division Bench has held that discharge of liability of one of the noticees either by making a payment without contest or by settlement before the Settlement Commissioner would not absolve other noticees from their liability.

7. We are informed that a Special Leave Petition impugning the said judgment in M/s. Seville Products being SLP (C) (Diary) No. 45245/2023 has been dismissed by the Hon'ble Supreme Court on 12.01.2024.

8. In view of the judgment of the Coordinate Bench in M/s. Seville Products. (supra) as upheld by the Hon'ble Supreme Court the reasoning of the Tribunal extending immunity granted to the other co-noticees to the respondent is not sustainable.

In view of above, the judgements in case of M/s Evergreen Shipping Agency India (P)Ltd. *Supra* and M/s. Seville Products Ltd. *supra* held that discharge of liability of one of the notices in both cases, i.e., (i) making payment without contest, and (ii) by settlement before the Settlement Commission, would not absolve other notices from their liability.

In view of the Circular and judgment of Hon'ble High Court of Delhi, it appears that if the duty, interest, and 15% penalty equal to the differential duty has been paid by the main noticee, the case is concluded under section 28(6) of the Customs Act, 1962 proceedings only in respect of main noticee. The said conclusion does not absolve other noticees from their respective penal action. Therefore, I hold that in the instant case, co-noticees are liable for penal action under provisions of Customs Act, 1962 as mentioned above.

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

ORDER

- (a). I reject the declared value of Rs.2584,03,62,786/- (Rupees Two Thousand Five Hundred Eighty Four Crores Three Lakh Sixty Two Thousand Seven Hundred and Eighty Six only), in respect of the goods imported by M/s. WOIL in the past, as detailed in Annexure-A of the subject Show Cause Notice under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and order to re-determine the same at Rs.2612,08,55,051/- (Rupees Two Thousand Six hundred Twelve Crores Eight Lakh Fifty Five Thousand and Fifty One Only), duly rounded off, in terms of Rule 10 of the said Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.
- (b). I confirm the demand of differential duty of Rs. 9,37,50,340/- (Rupees Nine Crores Thirty Seven Lakh Fifty Thousand Three Hundred and Forty Only), duly rounded off, as detailed in Annexure-A of the subject Notice, under the provisions of Section 28 (4) of the Customs Act, 1962 along with interest applicable in terms of Section 28AA of the Customs Act, 1962.
- (c). I order to conclude the proceedings with respect to M/s. WOIL in terms of Section 28(6)(i) of the Customs Act, 1962 and order to appropriate the differential duty, along with interest and penalty @ 15%, already paid by M/s. WOIL.

(d) I order that the goods imported vide Bills of Entry as detailed in Table-II, having a declared assessable value of Rs. 2584,03,62,786/- (Rupees Two Thousand Five Hundred Eighty-Four Crores Three Lakh Sixty-Two Thousand Seven Hundred and Eighty-Six only) shall be confiscated under Section 111(m) of the Customs Act, 1962. However, as the proceedings against the importer M/s WOIL have been closed in terms of provisions of section 28(6)(i) of the Customs Act, 1962, therefore, in terms of the first proviso to section 125 of the Customs Act, 1962. I order to redeem the said goods to M/s. WOIL without imposing any redemption fine.

(e) I impose a penalty of Rs. 5,00,000 (Rupees Five eight Lakhs Only), on Sh. M S Prakash, Director, Supply Chain (Impex & Spares), M/s WOIL, under Section 112(a) of the Customs Act, 1962.

(f) I impose a penalty of Rs. 5,00,000 (Rupees Five eight Lakhs Only), on Sh. M S Prakash, Director, Supply Chain (Impex & Spares), M/s WOIL under Section 114AA of the Customs Act, 1962.

(g) I impose a penalty of Rs. 5,00,000 (Rupees Five eight Lakhs Only), on Sh. Raju Kumar Gupta, Deputy Manager, Import Supply Chain Management, M/s WOIL, under Section 112(a) of the Customs Act, 1962.

(h) I impose a penalty of Rs. 5,00,000 (Rupees Five eight Lakhs Only), on Sh. Raju Kumar Gupta, Deputy Manager, Import Supply Chain Management, M/s WOIL under Section 114AA of the Customs Act, 1962.

(i) I impose a penalty of Rs. 5,00,000 (Rupees Five eight Lakhs Only), on Sh. Jawahar Lal Sharma, Senior Manager, Import Supply Chain Management, M/s WOIL, under Section 112(a) of the Customs Act, 1962.

(j) I impose a penalty of Rs. 5,00,000 (Rupees Five eight Lakhs Only), on Sh. Jawahar Lal Sharma, Senior Manager, Import Supply Chain Management, M/s WOIL, under Section 114AA of the Customs Act, 1962.

(k) I impose a penalty of Rs. 5,00,000 (Rupees Five eight Lakhs Only), on Sh. Pratik Taneja, Manager- Procurement, M/s WOIL, under Section 112(a) of the Customs Act, 1962.

(l) I impose a penalty of Rs. 5,00,000 (Rupees Five eight Lakhs Only), on Sh. Pratik Taneja, Manager- Procurement, M/s WOIL under Section 114AA of the Customs Act, 1962.

(m) I impose a penalty of Rs. 5,00,000 (Rupees Five eight Lakhs Only), on M/s HTL Logistics India (P) Ltd under Section 112(a) of the Customs Act, 1962.

(n) I impose a penalty of Rs. 5,00,000 (Rupees Five eight Lakhs Only), on M/s HTL Logistics India (P) Ltd under Section 114AA of the Customs Act, 1962.

(o) I impose a penalty of Rs. 5,00,000 (Rupees Five eight Lakhs Only), on M/s Tianxin Logistics Pvt Ltd / M/s TXM Logistics Pvt Ltd under Section 112(a) of the Customs Act, 1962.

(p) I impose a penalty of Rs. 5,00,000 (Rupees Five eight Lakhs Only), on M/s Tianxin Logistics Pvt Ltd / M/s TXM Logistics Pvt Ltd under Section 114AA of the Customs Act, 1962.

(q) I impose a penalty of Rs. 5,00,000 (Rupees Five eight Lakhs Only), on M/s LF Logistics India Pvt Ltd under Section 112(a) of the Customs Act, 1962.

(r) I impose a penalty of Rs. 5,00,000 (Rupees Five eight Lakhs Only), on M/s LF Logistics India Pvt Ltd under Section 114AA of the Customs Act, 1962.

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

RAMTEKE
12/12/25

(अनिल रामटेके / ANIL RAMTEKE)

सीमा शुल्क आयुक्त / Commissioner of Customs
एनएस-वी, जेएनसीएच / NS-V, JNCH

To:

(1) M/s. Whirlpool of India (P) Ltd. (IEC-0588089893),
Plot No. 40, Sector 44, Gurugram, Haryana – 122 002.

(2) Sh. M S Prakash,
Director, Supply Chain (Impex & Spares), M/s. WOIL,
Plot No. 40, Sector 44, Gurugram, Haryana – 122 002.

(3) Sh. Raju Kumar Gupta,
Deputy Manager, Import Supply Chain Management, M/s. WOIL,
28, New Industrial Town, Sector 20, Faridabad, Haryana – 121 001.

(4) Sh. JawarLal Sharma,
Senior Manager, Import Supply Chain Management, M/s. WOIL,

28, New Industrial Town, Sector 20, Faridabad, Haryana – 121 001.

(5) Sh. Pratik Taneja,
Manager - Procurement, M/s. WOIL,
Plot No. 40, Sector 44, Gurugram, Haryana – 122 002.

(6) M/s HTL Logistics India (P) Ltd.,
Sy. No.66/2, 67/1, Trifecta Adatto Building, 13th Floor, ITPL Main Road, Garudacharpalya,
Mahadevapura, Bengaluru-560048.

(7) M/s Tianxin Logistics Pvt Ltd / M/s TXM Logistics Pvt Ltd,
801, 8th Floor, AnsalBhawan, 16, KG Marg, New Delhi-110001.

(8) M/s LF Logistics India Pvt Ltd,
Tower B- SP Infocity, 243, UdyogVihar Phase-I, Gurgaon-122022.

Copy to:

1. The Additional Director,
Directorate of Revenue Intelligence, 7th Floor, D Block, Drum Shape Building, Indraprastha
Bhavan, Indraprastha Estate, New Delhi – 110 002. (for information)
2. The Addl. Commissioner of Customs, Group V, JNCH
3. AC/DC, Chief Commissioner's Office, JNCH
4. AC/DC, Centralized Revenue Recovery Cell, JNCH
5. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
6. EDI Section.
7. Office copy.

