OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-IV

सीमाशुल्कआयुक्तकाकार्यालय, एनएस-IV

CENTRALIZED ADJUDICATION CELL, JAWAHARLAL NEHRU CUSTOM HOUSE,

केंद्रीकृतअधिनिर्णयनप्रकोष्ठ, जवाहरलालनेहरूसीमाशुल्कभवन,

NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA 400707

न्हावाशेवा, तालुका-उरण, जिला- रायगढ़, महाराष्ट्र -400 707

F. No. S/10-227/2023-24/Commr/NS-I/CAC/JNCH
SCN No. 2610/2023-24/Commr/NS-I/Gr.II(H-K)/CAC/JNCH

DIN: 20251178NY000000A135

Date of Order: 10.11.2025

Date of Issue: 10.11.2025

आदेश की तिथि: 10.11.2025

जारी किए जाने की तिथि: 10.11.2025

Passed by: Dr. Kundan Yadav

पारितकर्ता: डॉ. कुंदन यादव

Commissioner of Customs (NS-IV), JNCH, Nhava Sheva
आयुक्त, सीमाशुल्क (एनएस-IV), जेएनसीएच, न्हावाशेवा

Order No.: 262 / 2025-26 /Commr /NS-IV /CAC /JNCH

आदेश स.: 262 /2025-26/ आयुक्त/एनएस-IV/ सीएसी/जेएनसीएच

Name of Party/Noticee : (1) M/s. S & J Granulate Solutions Pvt. Ltd.
(2) M/s. SKVA Rubber Solutions Pvt. Ltd.

पक्षकार (पार्टी)/ नोटिसी का नाम: (1) मेसर्स एस एंड जे ग्रैन्यूलेट सॉल्यूशंस प्राइवेट लिमिटेड
(2) मेसर्स एसकेवीए रबर सॉल्यूशंस प्राइवेट लिमिटेड

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 नि:शुल्क दी जाती है।

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

2. इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम १९६२ की धारा १२९(ए) के तहत इस आदेश के विरुद्ध सीईएसटीएटी, पश्चिमी प्रादेशिक न्यायपीठ (वेस्टरीज़नलबेंच), ३४, पी. डी. मेलोरोड, मस्जिद (पूर्व), मुंबई– ४०००००९ 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 - फार्मन. सीए३, 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 ३ महीने के भीतर

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

फीस- (क(एक हजार रुपये–जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५ लाख रुपये या उससे 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 ५ लाख रुपये से अधिक परंतु ५० 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 ५० लाख रुपये से अधिक है।

Mode of Payment - A crossed Bank draft, in favour 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, सीईएसटीएटी, 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, सीमा शुल्क अधिनियम, १९९२, सीमाशुल्क (अपील) नियम, १९८२ सीमाशुल्क, उत्पादन शुल्क एवं सेवाकर अपील अधिकरण (प्रक्रिया) नियम, १९८२ 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 129 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 ७.५ % जमा करेगा और ऐसे भुगतान का प्रमाण प्रस्तुत करेगा, ऐसा न किये जाने पर अपील सीमा शुल्क अधिनियम, १९६२ की धारा १२८ के उपबंधों की अनुपालना न किये जाने के लिए नामंजूर किये जाने की दायी होगी।

1. BRIEF FACTS OF THE CASE

Specific intelligence was received that M/s. S&J Granulate Solutions Pvt. Ltd. (IEC: 0310043662) was engaged in mis-declaring the value of the goods being imported for item namely "old and used rubber tyre scrap in press and multiple cut" (hereinafter referred to as 'the goods') under CTH 4004 0000. Further, it was also learnt that other interrelated importing firm of M/s S&J Granulate Solutions Pvt. Ltd namely M/s. SKVA Rubber Solutions Pvt. Ltd. (IEC: AAYCS5660F) M/s S&J Granulate Solutions Pvt. Ltd. (hereinafter also collectively to be referred as 'the Importers') was also engaged in mis-declaration of similar goods in terms of value being imported by them. Intelligence also suggested that all the above said firms are controlled by same person namely Shri Amit Aggarwal.

1.2. M/s S&J Granulate Solutions Pvt. Ltd was incorporated in 2011 by Shri Amit Aggarwal and Shri Kunal Jiwarajka as Directors. M/s. SKVA Rubber Solutions Pvt. Ltd., incorporated in 2018, whereas, Ms. Vaishali Aggarwal and Sakshi Jiwarajka were the initial Directors but later resigned and replaced by Shri Amit Aggarwal and Shri. Govind Sharma in 2019. The companies imported Old and Used Rubber Tyres under DGFT License for conversion of Old and Used Tyres into Rubber Crumb/Granulate, Steel and Fibres. The separated steel wires were sold to steel ingot and stainless-steel manufacturers, while the cotton/fibre was used as fuel in the cement industry. The major buyer of the recycled/processed goods was M/s. Home Zone Rubber Solutions Pvt. Ltd. with Shri Jitender Agarwal (brother of Shri Amit Aggarwal) and Shri Navneet Krishnan Konar as Directors, a related company incorporated in 2020. M/s. Home Zone Rubber Solutions Pvt. Ltd. primarily engaged in trading Rubber Crumb/Granulate. They typically traded goods manufactured or imported by Importers. M/s. Metplast Trading FZC, Dubai was one of the overseas suppliers of Importers. M/s. Metplast Trading FZC was managing their business through agent M/s. Mayflower Exports Pvt. Ltd. located in India. Whereas, M/s. Mayflower Exports Pvt. Ltd. acted as a Commission Agent for the sale and purchase of rubber products, papers, and other products for their overseas client, M/s. Metplast Trading FZC, Dubai.

1.3. Acting upon specific intelligence DRI, HQ initiated searches under Sec 105 of Customs Act 1962 at factory/office/residential premises related to the importers and entities concerned:

Table A: Details of Searches and Panchnama Recorded therein

Sr. No.	Description of documents	Date
1	Panchnama Dated 10.02.2022 recorded at office premises of M/s S&J Granulate Solutions Pvt. Ltd.situated at 403-405, Sumer Kendra behind Mahindra Towers, Pandurang Budhkar Marg, Worli, MUMBAI – 400 018.	10-02-2022
2	Panchanama Dated 10.02.2022 Recorded At Residential Premises of Shri Kunal Jiwarajka Situated At C-161, Grand Paradi, Kemps Corner, August Kranti Marg, Mumbai – 400 026	10-02-2022
3	Panchnama dated 10.02.2022 drawn at the office-cum-factory premises of M/s S&J Granulate Solutions Pvt. Ltd. located at Survey No. 208/A/P in Village Lavachha, Vapi, Silvasa Road, Taluka-Pardi, District Valsad, Gujrat 396193 and SKVA Rubber Solutions Pvt. Ltd. located at Survey No. 208/4/A respectively in Village Lavachha, Vapi, Silvasa Road, Taluka-Pardi, District Valsad, Gujrat – 396 193.	10-02-2022

4	Panchnama dated 10-11/02/2022 drawn at the office-cum residential premises of Shri Amit Aggarwal, Director of M/s S & J Granulate Solutions Private Limited situated at The View Building, 2/3rd Floor, 165 DR. Annie Basant Road, Opp. Tata Show Room, Worli, Mumbai.	10-02-2022 & 11-02-2022
5	Panchnama dated 25-07-2022 drawn at office of M/s Premier Info Assist Pvt. Ltd. / M/s Mayflower Export Pvt.(commission agent of Importers Supplier M/s Metplast Trading FZC) Ltd. at Plot no. 47-50, Bhakrasni Road, Pali Highway, Jodhpur-342013	25-07-2022

1.3.1. Further, statements of following persons are recorded under Sec 108 of Customs Act, 1962:

Table B: Details of Statements Recorded

Sr. No.	Name of Person and belonging firm	Date of Statement Recorded
1	Shri Amit Aggarwal, Director of M/s S&J Granulate Solutions Pvt. Ltd and M/s. SKVA Rubber Solutions Pvt. Ltd.	11.02.2022
2	Shri Kunal Jiwarajka, Ex-Director of M/s. S&J GRANULATE SOLUTIONS PVT. LTD.	11.02.2022
3	Shri Umesh Prajapati, Purchase Manager of M/s S&J Granulate Solutions Pvt. Ltd and M/s SKVA Rubber Solutions Pvt. Ltd	11.02.2022
4	Shri Kiran Shripad Jadhav, Sales Manager of M/s Homezone Rubber Solutions Pvt. Ltd	11.02.2022
5	Shri Damodar Vyas, Account Manager of M/s. S&J GRANULATE SOLUTIONS PVT. LTD.	11.02.2022
6	Shri Jitendra Ramesh Agarwal, Director of M/s. Homezone Rubber Solutions Pvt. Ltd.	21.03.2022
7	Shri Amit Aggarwal, Director of M/s S&J Granulate Solutions Pvt. Ltd and M/s. SKVA Rubber Solutions Pvt. Ltd.	29.04.2022
8	Shri Jitendra Ramesh Agarwal, Director of M/s Homezone Rubber Solutions Pvt. Ltd	29.04.2022
9	Shri Amritpal Singh Popli, Director, M/s. Dashmesh Rubber Industries Private Limited (buyer of M/s S&J Granulate Solutions Pvt. Ltd and M/s SKVA under	30.06.2022

	High Sea Sale)	
10	Shri Amritpal Singh Popli, Director, M/s Dashmesh Rubber Industries Private Limited	11.07.2022
11	Shri Abhay Saxena, Commercial Co-ordinator of M/s. Mayflower Exports Pvt. Ltd.	25.07.2022
12	Shri Amritpal Singh Popli, Director, M/s. Dashmesh Rubber Industries Private Limited	03.08.2022
13	Shri Amit Aggarwal, Director, M/s S&J Granulate Solutions Pvt. Ltd and M/s SKVA Rubber Solutions Pvt. Ltd.	04.08.2022
14	Shri Kunal Jiwarajka, Ex-Director of M/s S&J Granulate Solutions Pvt. Ltd & M/s SKVA Rubber Solutions Pvt. Ltd.	04.08.2022
15	Shri Sandeep Patawari, Director of M/s. Mayflower Exports Pvt. Ltd.	18.08.2022
16	Shri Sandeep Patawari, Director of M/s. Mayflower Exports Pvt. Ltd.	25.08.2022
17	Shri Amit Aggarwal, Director, M/s S&J Granulate Solutions Pvt. Ltd and M/s. SKVA Rubber Solutions Pvt. Ltd.	11.11.2022
18	Shri Amit Aggarwal, Director, M/s S&J Granulate Solutions Pvt. Ltd and M/s. SKVA Rubber Solutions Pvt. Ltd.	01.12.2022
19	Shri Amit Aggarwal, Director, M/s S&J Granulate Solutions Pvt. Ltd and M/s. SKVA Rubber Solutions Pvt. Ltd.	17.04.2023

1.3.2. During the course of investigation following documents are submitted or retrieved:

Table C: Details of Document/Evidences retrieved during Investigation

Sr. No.	Description of documents/evidence
1	Email dated 16/11/2022
2	M/s MAERSK India Private Limited submitted details of the charges charged by them vide email dated 06/12/2022, 08/12/2022, and 23/01/2023

1.4. <u>Non-Declaration of proceeds of disposal of imported goods that accrued to seller indirectly:</u>

1.4.1. Thorough verification of Panchnama recorded during course of searches, assessment of statements recorded, and examination of evidences retrieved, suggests as follows:

Rubber Cut tyres are environmentally hazardous products and disposal of these items are matter of concern for most of the countries. Therefore, many countries provide monetary incentives to Public Institutions or Private Firms for disposal of these environmentally sensitive goods. Exporting countries get rid of these goods by exporting them to other countries for further processing and extraction of by-products like Rubber Scrum, Granulates etc. as permitted in respective importing country. Therefore, these Exporters utilise such incentives which are *proceeds for disposal of rubber cut tyres* against adjustment of freight charges in excess of CIF value borne by them. Therefore, such *proceeds of for disposal of imported goods* shall be liable for inclusion in determination of transaction value as prescribed in Rule 10 (1)(d) of the Customs Valuation Rules (Import), 2007. Rule 10 (1)(d) of Customs Valuation Rules. 2007 is appended below for easy reference:

"Rule 10: Cost and Services:

1. In determination the transaction value, there shall be added to the price actually paid or payable for the imported goods, -

....
....
....

*The value of any part of the proceeds of any subsequent resale, **disposal** or use of the imported goods that accrues, directly or indirectly, to the seller;"*

In the instant case, C&F value paid by the Importers, (i.e. M/s S&J Granulate Solutions Pvt. Ltd and SKVA) to exporter of Rubber Cut Tyres was found to be lower than the actual value of Freight charges. This fact that importer is compensated by the exporter of Rubber Cut Tyre who was passing on the differential of value and freight as incentive for disposal of Rubber Cut Tyre has come to the fore on multiple occasion during investigation as discussed below:

(i) Shri Amit Aggarwal, Director of M/s S&J Granulate Solutions Pvt. Ltd and M/s SKVA Rubber Solutions Pvt. Ltd., in his statement dated 11.02.2022, had acknowledged this and explained that it was a common practice in the competitive scrap tyre market to declare lower invoice amounts to survive. The overseas suppliers compensated this by adjusting the amount against the differential ocean freight charges. He further stated that the imported goods are low-value items purchased at low prices & disposal of such items is expensive due to environmental concerns at developed countries. He submitted that difference in declaration and Freight value is because overseas suppliers usually passed on a portion of compensation received for disposal of such items from the exporting country.

(ii) Shri Amit Aggarwal in his statement dated 29.04.2022, on being shown discrepancies between the declared values of goods at the Ports of Origin and the values declared in India for certain import consignments obtained through overseas customs enquiry, explained that the shipper quoted them lower rate than amount actually paid to Shipping Lines as shipper used to adjust/discount the same through his remuneration (was being paid to dispose of scrap from exporting countries). He further acknowledged that CNF rate quoted by the shipper to them as importers was always lower than the shipping freight. In relation to the import data of M/s S&J Granulate Solutions Pvt. Ltd and M/s SKVA Rubber Solutions Pvt. Ltd., where the invoice term was mentioned as CF (Cost and Freight), Amit Aggarwal stated that as CF value was mentioned, the overseas suppliers were responsible for paying the ocean freight charges. The Shipping

Lines' Ocean Freight Charges and the Gate Fee received by the overseas suppliers were not disclosed to them. On being asked about the price negotiation with overseas suppliers Amit Aggarwal mentioned that he requested Proforma Invoices from suppliers through mobile phone, and in some cases, the prices were received telephonically and he used to only negotiate prices for the import of used Rubber Cut Tyres on behalf of M/s S&J Granulate Solutions Pvt. Ltd and M/s SKVA Rubber Solutions Pvt. Ltd.

(iii) Shri Amritpal Singh Popli, Director, M/s. Dashmesh Rubber Industries Private Limited (buyer of imported goods from M/s S&J Granulate Solutions Pvt. Ltd and M/s SKVA under High Sea Sale), in his statement dated 11.07.2022, provided the following information: Freight charges were paid by the respective overseas suppliers. They are unaware of the consignment-wise ocean freight charges paid by the suppliers. Shri Amritpal Singh Popli provided information about current ocean freight charges being charged by Shipping Lines for transporting goods from specific locations to Nhava Sheva Port. Shri Amritpal Singh Popli acknowledged that in many Bills of Entry, the unit price of imported goods has been re-assessed at a higher value than the declared price. He is aware that Customs Officials have re-assessed the unit price at different prices based on their knowledge.

(iv) Shri Abhay Saxena, Commercial Co-ordinator of M/s. Mayflower Exports Pvt. Ltd, in his statement dated 25.07.2022 stated that M/s S&J Granulate Solutions Pvt. Ltd and M/s SKVA Rubber Solutions Pvt. Ltd. had imported old and used Rubber Tyres from M/s. Metplast Trading FZT, Ajman, through M/s. Mayflower Exports Pvt. Ltd. Shri Amit Agarwal was the contact person for both companies. Freight charges for transporting the goods are paid by the overseas suppliers.

(v) Shri Kunal Jiwarajka, Ex-Director of M/s S&J Granulate Solutions Pvt. Ltd & M/s SKVA Rubber Solutions Pvt. Ltd, in his statement dated 04.08.2022, stated that usually M/s S&J Granulate Solutions Pvt. Ltd and M/s. SKVA Rubber Solutions Pvt. Ltd. import the goods of CIF terms, in which FOB Value, freight including ocean freight charged by Shipping Lines, and insurance amount were included.

(vi) Shri Sandeep Patawari, Director of M/s. Mayflower Exports Pvt. Ltd., in his statement dated 18.08.2022, stated that regarding freight charges the respective overseas suppliers pay the same and provided current ocean freight charges for certain shipping routes.

(vii) Shri Amit Aggarwal, Director of M/s S&J Granulate Solutions Pvt. Ltd and M/s. SKVA Rubber Solutions Pvt. Ltd., in his statement dated 01.12.2022, on being shown a comparison table of certain Bills of Entry, where the declared invoice (of terms CIF/CF) amounts of importers were lower than the actual freight charged by the Shipping Lines (as supplied by Shipping Lines), explained that they did not have to pay the freight since the prices were CIF/CF and stated that additional incentives were provided by the origin country's Government for waste disposal to exporters/suppliers and same is incentivized to the importers by reducing prices to assist in waste removal.

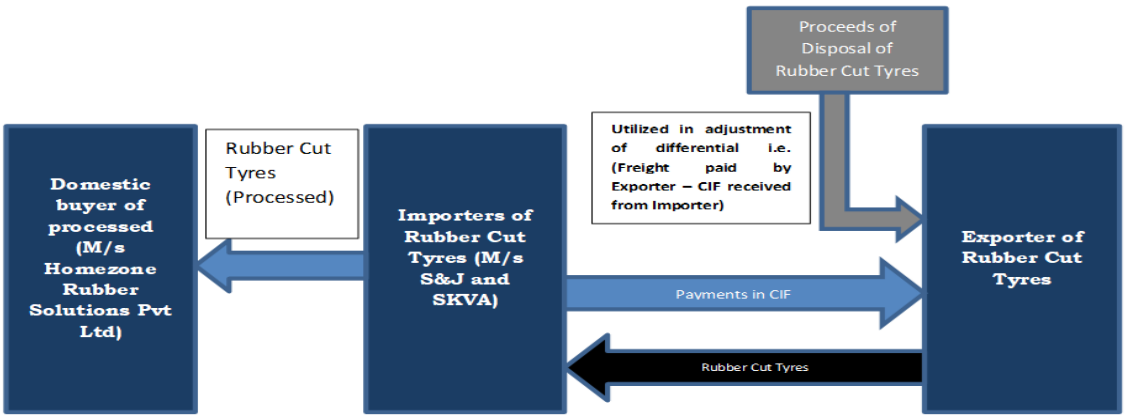
1.4.2. During the investigation, concerned Shipping Line of the importers were requested for providing the details of freight charges, miscellaneous charges etc. charged by them for providing freight services. Shipping Line, M/s. MAERSK India Private Limited have submitted the details of the charges charged by them vide E-mail dated 06/12/2022, 08/12/2022 & 23/01/2023. The details provided above by the Shipping Line were analysed and it was observed that in several cases, the declared CF value by importers is less than the freight amount paid against the said consignment to Shipping Lines by Exporter. Details are as under:

Table D: Higher Freight price paid to Shipping Line in comparison to CIF/CF value declared

in BE by the Importer

MAWB/MBL No	Unit Price as declared in the BE (per MT)	Currency	BE Number	BE Date	Invoice Terms	Weight (in MT)	Assessable Value (INR)	Name of the Importer	Supplier Name	Freight as declared in the invoices issued by Shipping Lines (in USD)	Freight per MT calculated from the total freight amount declared (per MT)
583472489	**12**	USD	4613139	23-08-2019	CF	251.4	219195.6	SKVA RUBBER SOLUTIONS PRIVATE LIMITED	METPLAST TRADING FZC	13150	**52.3**
585507918	**15**	USD	5202229	07-10-2019	CF	282.64	309328.4	SKVA RUBBER SOLUTIONS PRIVATE LIMITED	BASE S.P.A.	4250	**15**
587353835	**8**	USD	6236512	26-12-2019	CF	205.24	119382.2	SKVA RUBBER SOLUTIONS PRIVATE LIMITED	BASE S.P.A.	4920	**24**
587478921	**8**	USD	6193635	23-12-2019	CF	325.74	189473.5	SKVA RUBBER SOLUTIONS PRIVATE LIMITED	BASE S.P.A.	5100	**15.7**
969205320	**15**	USD	4170631	22-07-2019	CF	277.78	293475.5	SKVA RUBBER SOLUTIONS PRIVATE LIMITED	ALSECO SRL	4700	**16.9**
969224461	**15**	USD	4303877	31-07-2019	CF	273.54	288996	SKVA RUBBER SOLUTIONS PRIVATE LIMITED	ALSECO SRL	4250	**15.5**

1.5. This international transaction against movement of Rubber Cut Tyres is depicted pictographically in below schematic diagram below:



As depicted above, Importers, i.e. M/s S&J Granulate Solutions Pvt. Ltd and M/s. SKVA are importing Rubber Cut Tyres from Exporters at CIF value which is lower than the Freight Value itself. The Importers admitted that this is resulting from an adjustment of incentives or proceeds for disposal passed on or given by the exporter to the importer by way of reduction in C&F value of the goods. Whereas, as per Rule 10 (1)(d) of the Customs Valuation Rules, 2017 such amounts are to be added to the price paid or payable for imported goods.

1.5.1. Further, Shri Amit Aggarwal on behalf of M/s S&J Granulate Solutions Pvt. Ltd accepted the non-disclosure of the cost and voluntarily deposited amounts towards partial discharge of their duty liability arising out of non-inclusion of proceeds of disposal accrued by Seller/Exporter directly or indirectly in respect of the old and used rubber tyres imported by them. Demand Draft of total amounting to Rs. 60 Lakhs was submitted by Shri Amit Aggarwal vide letters dated 11.02.2022 and 29.04.2022 **(RUD-27)**

towards partial discharge of Customs Duty including IGST arising due to alleged non-inclusion of proceeds of disposal accrued by Seller while filing of Bills of Entry by M/s. S&J GRANULATE SOLUTIONS PVT. LTD. Details of Demand Drafts submitted by Shri Amit Aggarwal are as under:

Table E: Details of demand draft submitted by Shri Amit Aggarwal

S. No.	Party Name	Draft made in favour of	Demand Draft No.	Demand Draft Date	Amount (in Rs.)	TR-6 Challan No.	TR-6 challan date
1	M/s S&J Granulate Solutions Pvt. Ltd.	Commissioner of Customs, Nhava Sheva	1636	11-02-2022	30,00,000	266	24-02-2022
			1637	11-02-2022	20,00,000		
2			1680	28-04-2022	5,00,000	162	13-05-2022
			1681	28-04-2022	5,00,000		

1.6. **Legal Provisions**: The relevant provisions of law relating to the issue being dealt in this show cause notice are as under:

i. ***Section 17 of the Customs Act,1962-*** *Assessment of duty. – (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.*

(2) The proper officer may verify the [the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1)] and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

[Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.]

(3) For [the purposes of verification] under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information].

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter [***] and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

ii. ***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 [71][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.

iii. Section 28AA of the Customs Act, 1962-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.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,-

(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and

(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.]

iv. Section 46 of the Customs Act, 1962-Entry of goods on importation. -*(1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting 5[electronically] 6[on the customs automated system] to the proper officer a bill of entry for home consumption or warehousing 7[in such form and manner as may be prescribed]:*

[8][Provided that the [1][Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to make entry by presenting electronically [6][on the customs automated system], allow an entry to be presented in any other manner:

Provided further that] if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

[9][(3) The importer shall present the bill of entry under sub-section (1) [36][before the end of the day (including holidays) preceding the day] on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:

[37][Provided that the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival:] a bill of entry may be presented [10][at any time not exceeding thirty days prior to] the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:

[38][Provided also that] where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.]

(4) The importer while presenting a bill of entry shall [11][* *] make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, [12][and such other documents relating to the imported goods as may be prescribed].*

[12][(4A) The importer who presents a bill of entry shall ensure the following, namely:

(a) the accuracy and completeness of the information given therein;

(b) the authenticity and validity of any document supporting it; and

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

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

v. Section 111 (d) in the Customs Act, 1962- *(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*

vi. Section 111 (m) of the Customs Act, 1962-Confiscation of improperly imported goods, etc. - *(m) [2][any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 [3][in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54];*

vii. Section 112 of Customs Act 1962-Penalty for improper importation of goods, etc.-

Any person, -

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

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

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty [1] [not exceeding the value of the goods or five thousand rupees], whichever is the greater;

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

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

[3] [(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty [4] [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;]

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty [5] [not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty [6] [not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]

viii. Section 114A of the Customs Act, 1962-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 [2] [****]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 [3] [sub-section (8) of section 28] shall also be liable to pay a penalty equal to the duty or interest so determined:

ix. Section 114AA of the Customs Act, 1962- 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.]

x. Section 124 of the Customs Act, 1962- Issue of show cause notice before confiscation of goods, etc. -

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in [1] [writing with the prior approval of the officer of Customs not below the rank of [2] [an Assistant Commissioner of Customs], informing] him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter :

***Provided** that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.*

*[3][**Provided** further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.]*

xi. Customs (Valuation (Determination of Value of Imported Good) Rules, 2007 (also referred hereinafter as 'CVR, 2007')-

(a) Rule 3. Determination of the method of valuation. -

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

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

***Provided** that -*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Rule 10. Cost and services:

(1) In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods, -

(a) the following to the extent they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods, namely:-

(i) commissions and brokerage, except buying commissions;
(ii) the cost of containers which are treated as being one for customs purposes with the goods in question;

(iii) the cost of packing whether for labor or materials;

(b) The value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of imported goods, to the extent that such value has not been included in the price actually paid or payable, namely:-
(i) materials, components, parts and similar items incorporated in the imported goods; (ii) tools, dies, molds and similar items used in the production of the Imported goods
(iii) materials consumed in the production of the imported goods;

(iv) engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods;

(c) royalties and license fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

(d) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;

(e) all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.

1.7. <u>Addition of certain Cost and Services as per Rule 10 (1)(d) in Transaction Value:</u>

1.7.1. 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, the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller 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 **'CVR, 2007').** Rule 3 (1) of the CVR, 2007 lays down that the value of the imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10 *ibid*. It is evident that, part of the proceeds out of any disposal or use of the imported goods that accrues, directly or indirectly, to the seller or exporter in this case 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 (d) of sub-rule 1 of Rule 10 of CVR, 2007 and explanation to Rule 10 (1)(d) to arrive at transaction value. Such proceeds of disposal of Rubber Cut Tyres indirectly accrued to Seller is the incentive received by Seller on the condition of export of Rubber Cut Tyres. This incentive received by seller was shared with the importer as compensation which is equal to

"Freight borne by Seller/Exporter – Value paid by Buyer/Importer = Cost borne by Seller/Exporter"

1**.7.2.** As explained in Para 1.4, the value of Freight borne by Exporter is higher than the CNF value received from Importer. Therefore, this difference in value of Freight paid and CNF received is the cost borne by Exporter. Further, this cost borne by Exporter is the minimum value of incentive/compensation shared with the importer for disposal of Rubber Cut Tyres.

1.7.3. In this scenario, the value of the goods must at least meet or exceed the freight borne by the exporter. Hence, there appears to be a compensation shared with the importer (equal to the differential between Freight and the C&F value) by the exporter. The compensation offered by the exporter to importer are the proceeds of disposal that accrue to the exporter. This amount is to be added to the declared value to arrive at the correct assessable value.

1.8. **<u>Calculation of Value of Imported Goods with adjustment as per Rule 10 (1)(d):</u>**

1.8.1. The difference in value of Freight paid and CNF received is the cost borne by Exporter. Further, this cost borne by the Exporter is the minimum value of incentive/compensation received by Exporter for disposal of Rubber Cut Tyre. Thus, this indirect incentive/compensation has to be added in Assessable Value as per Rule 10 (1)(d) will be:

Assessable Value = Declared Assessable Value + Addition in Assessable Value as per Rule 10(1)(d)

1.8.2. To Ascertain the Addition in Assessable Value as per Rule 10 (1)(d), the declared Assessable Value has been loaded by the 'Loading Factor Average'. The 'Loading Factor Average' is determined by calculating the average of difference between freight paid and CNF (which is the minimum indirect incentive/compensation received by the Seller/exporter) over CNF. The 'Loading Factor Average' is calculated for the shipments (detailed in Table below) where freight paid to Shipping Lines is higher than CNF value declared in Bills of Entry by importer.

Table F: Higher Freight price paid to Shipping Line in comparison to CIF/CF value declared in BE by Importer

MAWB/MBL No	Unit Price as declared in the BE (per MT)	Currency	BE Number	BE Date	Invoice Terms	Weight (in MT)	Assessable Value (INR)	Name of the Importer	Supplier Name	Freight as declared in the invoices issued by Shipping Lines (in USD)	Freight per MT calculated from the total freight amount declared (per MT)	Proceeds of Disposal (per MT)	Loading Factor = Proceeds of Disposal / Unit Price declared
583472489	12	USD	4613139	23-08-2019	CF	251.4	219195.6	SKVA RUBBER SOLUTIONS PRIVATE LIMITED	METPLAST TRADING FZC	13150	52.3	40.3	3.36
585507918	15	USD	5202229	07-10-2019	CF	282.64	309328.4	SKVA RUBBER SOLUTIONS PRIVATE LIMITED	BASE S.P.A.	4250	15	0	0.00
587353835	8	USD	6236512	26-12-2019	CF	205.24	119382.2	SKVA RUBBER SOLUTIONS PRIVATE LIMITED	BASE S.P.A.	4920	24	16	2.00
587478921	8	USD	6193635	23-12-2019	CF	325.74	189473.5	SKVA RUBBER SOLUTIONS PRIVATE LIMITED	BASE S.P.A.	5100	15.7	7.7	0.96
969205320	15	USD	4170631	22-07-2019	CF	277.78	293475.5	SKVA RUBBER SOLUTIONS PRIVATE LIMITED	ALSECO SRL	4700	16.9	1.9	0.13
969224461	15	USD	4303877	31-07-2019	CF	273.54	288996	SKVA RUBBER SOLUTIONS PRIVATE LIMITED	ALSECO SRL	4250	15.5	0.5	0.03
												Average	1.08

1.8.3. The 'Loading Factor Average' from the above table is calculated to be 1.08. The declared Assessable Value is loaded with the said 'Loading Factor Average' to derive the Addition in Assessable Value as per Rule 10 (1)(d) as per the below formula.

Addition in Assessable Value as per Rule 10(1)(d)=Declared Assessable Value * Loading Factor Average

1.8.4. Here it is worthwhile to mention that the analysis of the import data / C&F value declared by M/s. SKVA and M/s S&J Granulate Solutions Pvt. Ltd revealed that both the importers were declaring similar C&F value before the Customs during the relevant period for investigation, the weighted average of Unit Price/ MT of imports are given below:

Table G

Year Wise	SKVA Unit price per MT (INR)	S&J Unit price per MT (INR)
2019	3731	2857
2020	2319	1065
2021	5335	6160
2022	9024	8678

1.8.5. Furthermore, as evident above, M/s S&J Granulate Solutions Pvt. Ltd was declaring C&F even less than that of M/s. SKVA during the relevant period. Furthermore, the analysis of the Suppliers of both the Importers revealed that more than 90% of the total imports are supplied by the same set of suppliers. In view of the above and the admission made by Shri Amit Aggarwal in his statement dated 11.02.2022 stated that he is the Director of M/s. S&J Granulate Solutions Pvt. Ltd., but also look after the purchase, production and sales of M/s. SKVA Rubber Solutions Pvt. Ltd. since its inception in 2018. It is amply evident that during the relevant period all the acts of omissions and commissions were done by the same set of persons controlling the imports from the same set of suppliers and declaring similar Assessable Value of the consignments for both M/s. M/S S&J Granulate Solutions Pvt. Ltd. and M/s. SKVA. Thus, it can be inferred that addition in Assessable Value as per Rule 10 (1)(d) arrived on the basis of the shipments of M/s. SKVA, as mentioned above is also applicable on the imports of M/s. S&J Granulate

Solutions Pvt. Ltd. Hence, the Assessable Value of all the imports of both the Importers for the relevant period needs to be re-determined.

1.8.6. It is also observed that there is a substantial increment in the declared CIF Value by the Importers for their post search imports (after 10.02.2022**)** as evidenced from their online import data available for the relevant period thereby substantiating our assertion of undervaluation of Imports by the Importers (prior to the date of search i.e. 10.02.2022). The analysis of the C&F declared by the Importers (pre and post search), based on the Online data is as follows:

Table H

Year Wise	Unit Price per MT (INR)
2019	3027
2020	1074
2021	5429
Before Search	3639
After Search	9431
2022	8863
2023	9751

1.8.7. From the above it is evidently clear that Importers have substantially increased their declared (CF)/ assessable value during the post search period, it also substantiates the assertion that the Importers were indulged in undervaluation of the imports prior to date of search.

1.8.8. **Computation of Assessable Value**: As detailed in **Annexure-A** enclosed to the SCN, the value of goods (Old and Used Rubber Cut Tyres) imported by M/s S&J Granulate Solutions Pvt. Ltd vide 250 Bills of Entry and with a combined Assessable Value of Rs. 18,44,62,080/- and as detailed in **Annexure –B** enclosed to the SCN, the value of goods imported by M/s. SKVA Rubber Solutions Private Limited vide 210 Bills of Entry with a combined assessable value of Rs. 13,53,09,066/-. Adjusted Assessable Value for them are computed below as per the Loading Factor Average value of 1.08.

Table I

Sr. No.	**IEC**	**Name of the Importer (M/s.)**	**Declared Assessable Value (Rs)**	**Re-determined Assessable Value (Rs)**
1	310043662	S & J GRANULATE SOLUTIONS PVT. LTD.	18,44,62,080	38,36,81,127
2	AAYCS5660F	SKVA RUBBER SOLUTIONS PVT. LTD.	13,53,09,066	28,14,42,858
Total			**31,97,71,147**	**66,51,23,985**

1.8.9. **Port wise Adjusted Assessable Value**:

(i) M/s S&J Granulate Solutions Pvt. Ltd.:

Table J

Custom House Code	IEC	Name of the Importer	Sum of Bill of Entry Number	Declared Assessable Value (INR)	Redetermined Assessable Value (INR)	Sum of Duty Difference (inr)
INBNG6	3100436662	S & J GRANULATE SOLUTIONS PVT. LTD.	12	1,60,53,006	3,33,90,252	53,71,079
INNSA1			125	7,86,92,288	16,36,79,958	2,61,33,480
INSAJ6			113	8,97,16,787	18,66,10,917	3,00,17,800
Total			**250**	**18,44,62,080**	**38,36,81,127**	**6,15,22,358**

(ii) M/s. SKVA Rubber Solutions Pvt Ltd:

Table K

Custom House Code	IEC	Name of the Importer	Sum of Bill of Entry Number	Declared Assessable Value	Redetermined Assessable Value	Sum of Duty Difference
INNSA1	AAYCS5660F	SKVA RUBBER SOLUTIONS PVT. LTD.	109	8,43,88,602	17,55,28,293	2,78,12,223
INSAJ6			101	5,09,20,464	10,59,14,565	1,61,41,457
Total			**210**	**13,53,09,066**	**28,14,42,858**	**4,39,53,680**

1.9. Reasons for evoking Sec 28 (4) of Customs Act:

(i) The importers through Shri Amit Aggarwal have accepted their act of mis-declaration and deposited certain amounts against the differential duty in respect of the partial discharge of duty liability arising out of past imports.

(ii) The Importers had not declared correct values of the imported goods with intent to evade payment of Customs duty and had declared value lesser than actual freight of the consignments despite having full knowledge with sole intent to evade duty.

(iii) The importers have wilfully mis-declared the value of the goods, made mis-statement in the documents filed before Customs Authorities and suppressed the facts of actual value of the goods with intent to evade payment of Customs duty on import. In terms of Section 46 (4), the importer, while presenting the Bill of Entry shall make and subscribe to a declaration as to the truth of the contents of such a Bill of Entry and shall, in support of such declaration, produce to the Proper Officer, the invoice, if any, relating to the imported goods. In view of the above, it appears that the Importers have violated the provisions of Section 46 of the Customs Act, 1962 by mis-declaring the value of the goods.

(iv) The goods imported vide Bs/E as mentioned in Annexures – A & B which were mis-declared in terms of their value in the Bs/E, therefore appear liable to be confiscated in terms of Section 111 (d) & (m) of the Customs Act,1962; by the above act of omission and commission M/s. SKVA Rubber Solutions Pvt. Ltd. have rendered themselves liable for penal action u/s, Section112 (a) of the Customs Act, 1962.

(v) Due to the mis-declaration of value as discussed above, correct duty has not been levied on the impugned goods and therefore, the differential duty on account of such mis-declaration as per Annexures – A & B is liable to be demanded from the Importers u/s. 28 (4) of the Customs Act, 1962. It further appears from the above that the act of undervaluation and mis-declaration of value was a deliberate attempt to hoodwink the Customs Authorities with intent to evade duty by way of wilful mis-statement and suppression of facts. Thus, the instant case appears to fall squarely within the ambit of Section 28 (4) of the Customs Act 1962, and the differential duty appears liable to be demanded as per the extended period clause contained therein, and accordingly the Importers i.e. M/s M/S S&J GRANULATE SOLUTIONS PVT. LTD. and M/s. SKVA Rubber Solutions Pvt. Ltd. have rendered themselves liable for penal action u/s. Section 114A of the Customs Act 1962.

1.10. <u>ROLE PLAYED</u>:

1.10.1. Role of Shri Amit Aggarwal – Shri Amit Aggarwal, Director of M/s S&J Granulate Solutions Pvt. Ltd and the person responsible for overall supervision of M/s. SKVA Rubber Solutions Pvt. Ltd. has indulged in such acts and omission as discussed above and concerned himself in carrying, removing, keeping, purchasing and dealing with the imported goods which he knew and had reasons to believe that these were liable to confiscation. It has also emerged as a result of investigation that he was well aware of the prices of the imported goods, was fully aware of the type of transaction and the fact that compensation was shared with them by the overseas supplier equal to the amount of proceeds of disposal accrued to exporter and yet intentionally used false and incorrect material, i.e. invoices (which needed to cover both the service as well as goods prices) and made false and incorrect declaration in the Bs/E. Shri Amit Aggarwal was well aware of the freight prices and was well aware of the extant Customs provisions which mandated them to declare true values. Accordingly, the Importers, i.e. M/s M/S S&J GRANULATE SOLUTIONS PVT. LTD. and M/s. SKVA Rubber Solutions Pvt. Ltd. appear to have rendered themselves liable for penalty u/s. 114A of the Customs Act, 1962 and their controller/active Director, Shri Amit Aggarwal appear to have rendered himself liable for penalty u/s. 112 (a) & (b) and Section 114AA of the Customs Act, 1962.

1.10.2. Role of Shri Kunal Jiwarajka – Shri Kunal Jiwarajka, Shareholder and Ex-Director of M/s S&J Granulate Solutions Pvt. Ltd and the person responsible for supervision of accounts, finance and sales of M/s. SKVA Rubber Solutions Pvt. Ltd. has indulged in such acts and omission as discussed above and involved in finance, accounts and sales associated with the imported goods which he knew and was well aware of the actual prices of the imported goods, was fully aware of the type of transaction and the fact that compensation was shared with them by the overseas supplier equal to the amount of proceeds of disposal accrued to exporter and yet intentionally used false and incorrect material, i.e. invoices (which needed to cover both the service as well as goods prices) and made false and incorrect declaration in the Bs/E. Shri Kunal Jiwarajka was well aware of the freight prices and was well aware of the extant Customs provisions which mandated them to declare true values. Accordingly, the Importers i.e. M/s S&J Granulate Solutions Pvt. Ltd & M/s. SKVA Rubber Solutions Pvt. Ltd. appear to have rendered themselves liable for penalty u/s. 112 (a) & (b) of the Customs Act, 1962 and their controller/ active

partner Shri Kunal Jiwarajka appears to have rendered himself liable for penalty u/s. 112 (a) & (b) and Section 114AA of the Customs Act, 1962.

1.10.3. Roles of Directors Ms. Vaishali Aggarwal, Sakshi Jiwarajka & Govind Sharma – On the basis of the evidences brought on record, it appears that Ms. Vaishali Aggarwal, Director of M/s. SKVA Rubber Solutions Pvt. Ltd.; Ms. Sakshi Jiwarajka, Director of M/s. SKVA Rubber Solutions Pvt. Ltd. and Shri Govind Sharma, Director of M/s S&J Granulate Solutions Pvt. Ltd & M/s. SKVA Rubber Solutions Pvt. Ltd. being Directors were completely responsible for oversight on the part of M/s. SKVA Rubber Solutions Pvt. Ltd./ M/s. S&J GRANULATE SOLUTIONS PVT. LTD.. Although, the operations of the companies were majorly controlled by Shri Amit Aggarwal and Shri Kunal Jiwarajka, the statutory liability of a Director of the company make him responsible towards contravention of the provisions of Section 46 (4) of the Customs Act, 1962 by M/s. SKVA Rubber Solutions Pvt. Ltd./ M/s S&J Granulate Solutions Pvt. Ltd rendering themselves liable for penal action. Hence, on account of the omission and commission, as set out herein, it appears that Ms. Vaishali Aggarwal, Director of M/s. SKVA Rubber Solutions Pvt. Ltd; Ms. Sakshi Jiwarajka, Director of M/s. SKVA Rubber Solutions Pvt. Ltd. and Shri Govind Sharma, Director of M/s S&J Granulate Solutions Pvt. Ltd & M/s. SKVA Rubber Solutions Pvt. Ltd. are liable for penalty u/s. 112 (a) and 117 of the Customs Act, 1962.

1.11. During investigations, the Importer M/s S&J Granulate Solutions Pvt. Ltd has voluntarily deposited an amount of **Rs. 60 Lakhs** towards discharge of his duty liability under different heads and the same appears liable to be appropriated towards his differential duty liabilities. The details of the duty deposited voluntarily during the course of the investigation is mentioned in Table-E at Para 1.5.1 *supra*.

1.12. Based on aforesaid findings Show Cause Notice SCN No. 2610/2023-24/Commr (NS-I)/Gr.II(HK)/CAC/JNCH dated 07.02.2024 was issued to:

1.13 M/s S&J Granulate Solutions Pvt. Ltd., was called upon to subject show cause in writing to the Principal Commissioner of Customs, Nhava Sheva-I (INNSA1) as to why:

(a) The declared Assessable Value of **Rs. 18,44,62,080/-** of the imported goods with respect to the Bs/E cleared at respective ports as depicted in above, the details of which are available Bill of Entry wise in **Annexure –A** should not be rejected and re-determined as **Rs. 38,36,81,127/-** (Rupees Thirty Eight Crores Thirty Six Lakhs Eighty One Thousand One Hundred Twenty Seven only) as per Rule 3 (1) and Rule 10 (1)(d) of the CVR, 2007 read with Section 14 of the Customs Act, 1962.

(b) The above goods as at (a) above should not be held liable for confiscation u/s, 111 (d) & (m) of the Customs Act 1962 for mis-declaration of value;

(c) Penalty should not be imposed upon them u/s. 112 (a) of the Customs Act 1962.

(d) The differential duty as detailed in **Annexure: A** totally amounting to **Rs. 6,15,22,358/-** (Rupees Six Crores Fifteen Lakhs Twenty-Two Thousand Three Hundred Fifty-Eight only) arising out of the mis-declaration of value should not be demanded and recovered from them u/s. 28 (4) of the Customs Act, 1962.

(e) Interest u/s, 28AA of the Customs Act, 1962, as applicable, should not be demanded and recovered from them.

(f) An amount of **Rs. 60,00,000/-** (Rupees Sixty Lakhs only) deposited during the investigation should not be appropriated and adjusted towards the duty/ interest/ other adjudication levies.

(g) Penalty should not be imposed upon them u/s. 114A of the Customs Act 1962.

1.14. **M/s. SKVA Rubber Solutions Pvt. Ltd., Valsad** was also called upon to show cause in writing to the Principal Commissioner of Customs, Nhava Sheva-I (INNSA1), within 30 (thirty) days of receipt of SCN as to why :

(a) The declared assessable value of **Rs. 13,53,09,066/-** of the imported goods with respect to the Bs/E cleared at respective ports as depicted in above, the details of which are available Bill of Entry wise in **Annexure –B** should not be rejected and redetermined as **Rs. 28,14,42,858/-** (Rupees Twenty Eight Crores Fourteen Lakhs Forty Two Thousand Eight Hundred Fifty Eight only) as per Rule 3(1) and Rule 10 (1)(d) of the CVR, 2007, read with Section 14 of the Customs Act, 1962.

(b) The above goods as at (a) above should not be held liable for confiscation u/s. 111 (d) & (m) of Customs Act 1962 for mis-declaration of value;

(c) Penalty should not be imposed upon them u/s. 112 (a) of the Customs Act 1962.

(d) The differential duty as detailed in **Annexure-B** totally amounting to **Rs. 4,39,53,680/-** (Rupees Four Crores Thirty Nine Lakhs Fifty Three Thousand Six Hundred Eight only) arising out of the mis-declaration of value should not be demanded and recovered from them u/s. 28 (4) of the Customs Act, 1962.

(e) Interest u/s. 28AA of the Customs Act, 1962, as applicable, should not be demanded and recovered from them.

(f) Penalty should not be imposed upon them under Section 114A of Customs Act 1962.

1.15 **Shri Amit Aggarwal**, resident of The View Building, 2/3rd Floor, 165 DR. Annie Basant Road, Opp. Tata Show Room, Worli, Mumbai, Director and controller of M/s S&J Granulate Solutions Pvt. Ltd. & M/s SKVA Rubber Solutions Pvt. Ltd, was called upon to subject show cause in writing to the Principal Commissioner of Customs, Nhava Sheva-I (INNSA1) as to why penalty should not be imposed upon him under Section 112 (a) & (b) and Section 114AA of the Customs Act, 1962 for his various acts of commission and omission as detailed above.

1.16. **Shri Kunal Jiwarajka**, resident of C-161, Grand Paradi, Kemps Corner, August Kranti Marg, Mumbai-400 026, Ex-Director/controller/shareholder of M/s. S&J Granulate Solutions Pvt. Ltd. & M/s. SKVA Rubber Solutions Pvt. Ltd. was called upon to show cause in writing to the Principal Commissioner of Customs, Nhava Sheva-I (INNSA1), within 30 (thirty) days of receipt of SCN, as to why penalty should not be imposed upon him u/s. 112 (a) & (b) and Section 114AA of the Customs Act, 1962 for his various acts of commission and omission as detailed above.

1.17 **Ms. Vaishali Aggarwal, E**x-Director M/s SKVA Rubber Solutions Pvt. Ltd., was called upon to show cause in writing to the Principal Commissioner of Customs, Nhava Sheva-I (INNSA1), within 30 (thirty) days of receipt of the SCN, as to why penalty should not be imposed upon her u/s. 112 (a) and Section 117 of the Customs Act, 1962 for her various acts of commission and omission as detailed above.

1.18 **Ms. Sakshi Jiwarajka**, W/o Shri Kunal Jiwarajka, resident of C-161, Grand Paradi, Kemps Corner, August Kranti Marg, Mumbai-400026, Ex-Director M/s SKVA Rubber Solutions Pvt. Ltd. was called upon to show cause in writing to the Principal Commissioner of Customs, Nhava Sheva-I (INNSA1), within 30 (thirty) days of receipt of SCN, as to why penalty should not be imposed upon her u/s. 112 (a) and Section 117 of the Customs Act, 1962 for her various acts of commission and omission as detailed above.

1.19 **Shri Govind Sharma,** Director M/s S&J Granulate Solutions Pvt. Ltd. & M/s SKVA Rubber Solutions Pvt. Ltd. was called upon to show cause in writing to the Principal Commissioner of Customs, Nhava Sheva-I (INNSA1), within 30 (thirty) days of receipt of SCN, as to why penalty should not be imposed upon him u/s. 112 (a) and Section 117 of the Customs Act, 1962 for his various acts of commission and omission as detailed above.

2. WRITTEN SUBMISSIONS

2.1. M/s Sun Elegant Consultants has submitted written submission dated 10.07.2024 on behalf of all the Noticees. They stated that, the entire case rests upon the alleged application of rule 3 and rule 10(l)(d) read with rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and referred the same.

2.2 Absence of rejection of value under rule 12 negates the proposed proceedings under rules 3 read with rule 10(1)(d) of the CVR, 2007. That, at the outset and before going into the merit of the Department's allegations with reference to the application of the aforementioned Rules, it is important to note that the said Rule 3 (1) categorically provides that the value of imported goods shall be the transaction value adjusted in accordance with provisions of the said Rule 10. This is, however, subject to Rule 12 which provides for rejection of declared value, if there is a reasonable doubt. A plain reading of the said Rule 12 makes it evident that the words "*doubt*" and "*reasonable doubt*" used therein must be based on cogent reasons and evidences. No cogent evidence or reason has been put forth in the present case to justify the "doubt" especially when the declared values have been accepted by the Assessing Officer at the time of granting Customs clearance. No evidence is brought on record to establish misdeclaration of value and how the alleged differential value was remitted to the foreign supplier. There is a catena of decisions holding that when there is no evidence to show that there was any additional flow back of money to the foreign supplier or any underhand dealing was done, the transaction value would reflect the correct Assessable Value of the imported items and has to be accepted. Reliance in this regard is placed on a case law in the matter of Aquastrides V/s. CC reported in [2001 (133) ELT 411 (CEGAT)]. In the factual matrix of the present case, there is no evidence on record to reject the transaction value declared by the noticee firms, therefore, the declared value has to be adopted as the correct transaction value. Thus, in view of the non-adherence to the said Rule 12, proceedings under the said Rule 10 (1)(d) on the strength of the said Rule 3 (1) are not legally sustainable. The said SCN merits to be dropped on this ground alone.

2.3 The subject SCN is invalid as the original assessment is not challenged by the Department: That, it is pertinent to mention the imports made by the noticee firms were assessed to Customs duty by the Proper Officer of Customs. There is no dispute on the factual position that the goods imported were cleared for Home Consumption on the strength of duly assessed Bs/E and the Out of Charge orders issued by the Proper Officer u/s. 17 read with Section 47 of the Customs Act, 1962. The declared values were not rejected nor the assessment so made challenged by the Department. These assessment/clearance orders were passed on the satisfaction of the Proper Officer of Customs confirming the imported goods were properly assessed before clearance for Home Consumption. The Assessment Orders being quasi-judicial orders can only be set aside by an order of the Competent Appellate Authority in appellate proceedings. The quasi-judicial Assessment Orders cannot be sought to be set aside by mere issuance of a SCN, which proposes to modify the assessment orders in the instant case. This view is supported by the following judgments:

(a) Hon'ble Supreme Court in the case of ITC Limited vs. Commissioner of Central Excise [2019 (368) ELT 216 (SC)]

(b) Hon'ble Punjab and Haryana High Court in Jairath International vs. Union of India [2019 (10) TMI 642]

(c) Hon'ble Tribunal in the case of Vittesse Export Import vs. Commissioner of Customs (EP), Mumbai [2008 (224) ELT 241 (Tri.-Mumbai)]

(d) Hon'ble Tribunal in the case of Ashok Khetrapal vs. Commissioner of Customs, Jamnagar [2014 (304) ELT 408 (Tri.-Ahmd.)]

The ratio of the aforesaid judgments is fully applicable to the present case, wherein also, the Department has proposed to confirm duty demand without challenging the impugned assessments of the subject Bs/E and the resultant Out of Charge orders. In the absence of any appeal against the said assessments by the Proper Officer of Customs, the legally correct position is that these assessments have gained finality, which cannot be challenged or negated by issuance of the impugned SCN. Hence, the subject SCN dated 07.02.2024 is invalid in the absence of Department's challenge/ appeal against the Out of Charge / Bills of Entry and is liable to be dropped on this singular ground.

2.4 Wrong application of Rule 3 (1) and Rule 10 (1)(d) of the CVR, 2007: That, the entire case of the Department is that the said Rule 3 (1) and Rule 10 (1)(d) apply to the present case but this is both factually and legally incorrect, as explained below:

(a) The said Rules have their origins in the WTO's Agreement on Implementation of Article VII of the GATT 1994, which has been adopted by almost all countries in framing their respective domestic Customs Valuation Rules. They further referred to the relevant provisions of the WTO's Article VII. Thus, any addition to the declared value is warranted when *post import*, the imported goods are dealt with in a manner that results in a direct or indirect flowback of the resultant proceeds to the foreign supplier.

(b) Memorandum D13-4-13 - Ottawa, March 31, 2015 of the Canada Border Services Agency (CBSA) helps to better understand the aforementioned WTO provisions and, in turn, the said Rule 3 (1) and Rule 10 (1)(d) of the CVR, 2007 (which are based on the said WTO provisions). This reference is made simply because the Customs Valuation Rules based on the said WTO Article VII are common to all countries and as there is no similar Circular issued by the CBIC. They further referred to the relevant portions of the said CBSA.

Thus, the said Rule 10 (1)(d) applies only if there is an accrual of proceeds to the supplier with reference to the said goods *subsequent* to the imports.

(c) Based upon above, invocation of the said rule 10(1)(d) must necessarily satisfy certain requirements, as follows:

(i) Requirement 1: The value of any part of the proceeds must relate to subsequent resale of the imported goods; or

(ii) Requirement 2: The value of any part of the proceeds must relate to subsequent disposal of the imported goods; or

(iii) Requirement 3: The value of any part of the proceeds must relate to subsequent use of the imported goods; or

(iv) Requirement 4: The value of any part of the proceeds relating to subsequent resale, disposal or use of the imported goods must accrue directly or indirectly to the foreign seller.

(d) Testing the above-mentioned requirements of the said Rule 10(1)(d) against the facts of the present case, the following conclusions can be drawn:

(i) The value of any part of the proceeds must relate to subsequent resale of the imported goods – The subject SCN DOES NOT allege that the imported goods were resold as such. It also DOES NOT allege that any proceeds of such resale accrued to the foreign supplier either directly from the noticee importing firms or from a third party. Indeed, the fact on record is that the noticee importing firms are engaged in and these directly utilized the imported goods without any subsequent proceeds thereof accruing to the foreign supplier in any manner. Thus, this requirement is not met.

(ii) The value of any part of the proceeds must relate to subsequent disposal of the imported goods - The subject SCN DOES NOT allege that the imported goods were subsequently disposed and that any consequential proceeds accrued to the foreign supplier either directly from the noticee importing firms or from a third party. Indeed, the fact on record is that the noticee importing firms directly utilized the imported goods without any subsequent proceeds thereof accruing to the foreign supplier in any manner. Thus, this requirement is not met.

(iii) The value of any part of the proceeds must relate to subsequent use of the imported goods - The subject SCN DOES NOT allege that any proceeds arising from the post importation use of the imported goods proceeds accrued to the foreign supplier either directly from the noticee importing firms or from a third party. Indeed, the fact on record is that the noticee importing firms directly used the imported goods in further manufacture and no proceeds of such post importation use accrued to the foreign supplier in any manner. Thus, this requirement is not met.

(iv) The value of any part of the proceeds relating to subsequent resale, disposal or use of the imported goods must accrue directly or indirectly to the foreign seller – As already seen, the subject Show Cause Notice DOES NOT allege that post import any proceeds arising on whatsoever account were remitted by the notice importer firms to the foreign suppliers. It is also a matter of fact and record that no such remittance was made. Indeed, any such post import remittance could not have been made without permission of the RBI and through proper banking channels. Also, it a matter of record that subsequent to the imports no certificate was issued by the noticee importing firms to the foreign supplier or any third party to enable the availment of the so called incentive scheme. Indeed, the subject SCN itself evidences that both pre import and post import the noticee importing firms had no correspondence with the foreign supplier regarding any post import payment/incentive scheme nor was any amount remitted to the foreign supplier post import (other than for the declared value of the imported goods). Hence, as the subject SCN correctly does not allege that on account of post importation resale, disposal etc. any proceeds accrued directly or indirectly to the foreign suppliers, this requirement of the said Rule 10 (1)(d) is not met. Thus, this requirement is not met.

To sum up, none of the identified prerequisites/requirements for invoking the said Rule 10 (1)(d) are present in the present case.

(e) The Department has itself asserted that incentives accrued to the foreign suppliers at the time of export of the said goods (and not subsequent to the import of the goods into India). They further submitted that it is borne out from the Para 4A, Para 4A (vii) and Para 7 of the subject SCN.

Therefore, even though no incentive scheme is either revealed or evidenced, the Department has itself conceded that the alleged incentive was available at the time of export of the goods from the foreign countries. This categorically rules out the application of the said Rule 10 (1)(d).

(f) Para 5 of the subject SCN contains a pictograph indicating the flow of proceeds of disposal of the Rubber Cut Tyres to the foreign supplier/exporter. This pictograph seeks to justify the applicability of the said Rule 10 (1)(d) of the CVR, 2007. This pictograph clearly shows that the noticee firms (importers) are concerned only with making payments in CIF for the value of the imported goods to their foreign suppliers/exporters and DID NOT make any other payments after the imported goods were used/disposed post importation. The indicated "Proceeds of disposal of Rubber Cut Tyres" is clearly shown as a pre-import receipt by the foreign supplier/exporter. It is also a fact that if at all the foreign supplier/ exporter received any incentive amount from their government, the same was attributable to export. As already seen, the said Rule 10 (1)(d) of the CVR, 2007 comes into play, if any, only if post importation proceeds of disposal/use of the imported goods flow to the foreign supplier/exporter. As already stated, the pictograph DOES NOT indicate such a flow of proceeds. Thus, the Department has through its own pictograph negated the applicability of the said Rule 10 (1)(d) of the CVR, 2007 in the present case.

(g) The subject SCN has not only accepted the alleged incentive is linked to export it has further corroborated this by stating the imagined incentive was used to pay freight amount by the foreign exporters. Payment of freight is an activity that is linked to the booking of the vessel which again makes it abundantly clear that the alleged incentive was received prior by suppliers/exporters prior to imports into India (export from a foreign country naturally precedes import into India). Thus, the Department is itself conceding that the alleged incentive amount DID NOT accrue to the foreign supplier subsequent to the import of the goods into India. This means that the Department has itself established that the said Rule 10(1)(d), which comes into place only if proceeds accrue to the foreign supplier *post* import into India, would not apply in the present case.

(h) It is a common trade practice for exporters to pass on or share export incentives with the importers in other countries as this enables them to offer competitive prices. Even Indian exporters share the export incentives (including Customs Drawback) available under the DGFT's Foreign Trade Policy with their foreign buyers. The central point here is that such incentives are received for the purposes of export and at the time of export and do not have any link with the post import activities of the foreign buyers. This eliminates the application of the said Rule 10(1)(d) as this would apply only if subsequent to import some proceeds accrue to the exporter. In the circumstance, without admitting that any incentive accrued to the foreign supplier (the SCN is itself silent on what this alleged incentive scheme is about) it is submitted that the said rule 10(1)(d) is not attracted in the present case.

Submissions at (a) to (h) above make it clear that the subject Show Cause Notice itself: (a) does not evidence the existence of any incentive scheme, (b) states that the alleged incentives were received by the foreign supplier at time of export (and not post import); and (c) confirms that no proceeds accrued to the foreign supplier post the goods being put to use etc. after import into India. Thus, the said rule 3(1) and rule 10(1)(d) are incorrectly invoked which means the subject Show Cause Notice must be set aside.

2.5 Foundation of subject Show Cause Notice viz., an incentive scheme is unsubstantiated:

That, as earlier mentioned, the Department's case is entirely based upon the alleged existence of an incentive scheme in the countries of export. Importantly, the subject SCN nowhere mentions or discloses or evidences any such incentive scheme of any country of export. Thus, the entire case is based on conjectures, surmises and presumptions. It appears that in his statement dated 11.02.2022 the

notice, Shri Amit Agarwal mentioned that "*overseas suppliers usually passed on a portion of compensation received for disposal of such items from the exporting country*". This was a loose and unsubstantiated statement based on hearsay and is completely denied. The noticee is not in the knowledge that the exporters in the foreign countries derived any benefit from any incentive scheme which they passed on to the importing firms. No document evidencing such a scheme was recovered from any of the noticees nor was it brought out during the investigation. It is pertinent to mention that the Department could have very well obtained the details of such scheme from the foreign counterpart but the fact that they did not do so means that there is no such scheme in the first place. As stated, the subject SCN is silent on evidencing this very vital fact. It is accordingly hereby categorically stated that the noticees unsubstantiated statement cannot be the basis of a Duty Demand Notice. As the existence of an incentive scheme is completely unsupported and there is also no evidence of any flowback to the foreign supplier post the importation into India, the attempt to invoke the said Rule l0 (l)(d) is entirely misplaced. Hence, in the absence of any incentive scheme, the subject SCN which is based only upon the said Rule 10 (1)(d) is liable to be dropped.

2.6. Emails/electronic documents are not evidence to prove undervaluation in absence of a certificate, in terms of Section 138C of the Customs Act, 1962: Without prejudice to above, it is submitted that in the present case, for the purpose of demonstrating higher freight price paid to Shipping Line, reliance is placed upon E-mails dated 16.11.2022 (RUD-23) and E-mail of M/s. Maersk India Private Limited dated 06.12.2022, 08.12.2022 and 23.01.2023 (RUD-26). However, the reliance on these electronic documents, firstly in terms of their evidentiary value and secondly in terms of their use in quantifying the alleged short paid Customs duty is entirely misplaced for the following reasons:

(a) The subject E-mails being electronic in nature are inadmissible evidences in absence of a certificate, in terms of Section 138C of the Customs Act, 1962 and can therefore not form the basis for proving the charge of undervaluation against the noticees. The said Section 138C provides for admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence and they further referred to the section 138C of the Customs Act, 1962.

(b) The said Section 138C makes it evident that for any proceedings under the Customs Act, 1962, a statement in evidence of electronic devices shall be evidenced as per the certificate. In the factual matrix of the present case, the provisions of the said Section 138C were not complied with by the Department. Although the entire case against the Noticee proceeds on the basis of computer printouts of invoice taken from said E-mails as evidence, no effort was made to comply with the statutory requirement to establish the truthfulness of the documents. Hence, the evidence of electronic devices relied upon by the Department cannot be accepted; the said section 138C *ibid* is *pari materia* to section 65B of the then existing Evidence Act, 1872 and evidence in the form of computer printouts etc. recovered during course of investigation may be admitted only subject to satisfaction of Sub-section (4) of the said Section 138C *ibid* but no such certificate is produced which means that electronic documents, i.e. printout of Commercial Invoice/E-mails cannot be relied upon for confirmation of undervaluation.

Reliance in this regard is placed on the following decisions:

(i) Hon'ble Supreme Court in S.N. Agrotech vs. Commissioner of Customs, New Delhi [2018 (361) E.L.T. 761 (Tri. - Del.)],

(ii) HS Chadha vs. Commissioner of Customs (Preventive) [Customs Appeal No. 51768 of 2016]

(iii) Tele Brands (India) Pvt. Ltd. vs. CC. (Import), Mumbai [2016 (1) TMI 551- CESTAT Mumbai]

Thus, the said E-mails that are relied upon to make out a case of short payment of Customs duty and to quantify the same are not legally recognized in the absence of the said certificate required under the said Section 138C (4) and this renders their evidentiary value null and void. Further, and notwithstanding the absence of their evidentiary value, these few E-mails cannot be used to determine the freight for hundreds of other imports spread over a long period of time, of the firm to which the E-mails directly relate and especially of another unrelated firm. To do so is simply illogical and not sustainable in law. Hence, the subject SCN merits to be dropped.

2.7 Quantification of duty allegedly short paid is incorrect: Without prejudice to the submission that Rule 10 (1)(d) of the CVR, 2007 is incorrectly invoked in the present case, it is submitted that even the quantification of the Customs duty allegedly short paid is incorrect. As shown in Paras 4B and 8 of the subject SCN, the Customs duty quantification is based on freight details of only six imports made in just four months in the year 2019 (w.r.t. 6 Bs/E dated 22.07.2019, 31.07.2019, 23.08.2019, 07.10.2019, 23.12.2019 and 26.12.2019), obtained from Shipping Line, M/s. Maersk in respect of just one noticee namely, M/s. SKVA Rubber Solutions Pvt. Ltd.; no evidence is presented for even a single import by the other noticee M/s. S&J Granulate Solutions Pvt. Ltd. The Department has used this very limited data to arrive at a "Average Loading Factor" and then applied it to derive the addition in declared Assessable Value as per the said Rule 10 (1)(d) of the CVR, 2007 for the balance hundreds of imports by M/s. SKVA Rubber Solutions Pvt. Ltd. The same loading factor has also been applied to all imports by the independent importer namely, M/s. S&J Granulate Solutions Pvt. Ltd. This methodology to firstly arrive at a "Average Loading Factor" from six solitary imports in four months in one year and then extrapolate it to numerous imports made over a four year time period (beginning from 2019 and ending in 2023) is without any scientific basis more so when it becomes the basis for a Customs duty demand. Its further generalization and application to the imports by the second noticee, an entirely separate entity, is also highly arbitrary. The reasons justifying the rejection of the methodology and resultant quantification of Customs duty allegedly short paid are summed up, as follows:

(i) The two noticee firms imported goods from many suppliers through more than one Shipping Line and there exists no scientific method to arrive at a formula to calculate a uniform (or average) freight paid across a time duration of four years (2019 to 2023) based on merely six entries pertaining to four months of one year (2019) and one shipping line.

(ii) Freight amount is uniquely determined and while generally being based on the nature of item and quantity, it is influenced *inter alia* by the nature of contract, long term or short term. Geopolitical risks and supply and demand of Shipping Lines at a point of time also influence freight. There may be many other reasons as well. This explains why even the freight for the six shipments of M/s. SKVA Rubber Solutions Pvt. Ltd. varies widely from a high of USD 52.3 per MT to a low of USD 15 per MT (extract of Table in para 4B is given below). This by itself confirms the impossibility of quantifying the average freight and, in turn, the incentive in terms of an "Average Loading Factor", as has been done. .

BE No.	BE Date	Weight	Freight as declared in invoices issued by Shipping Lines (in USD)	Freight per MT calculated from the total freight amount declared (per MT)
4613139	23.08.2019	251.4	13150	52.3
5202229	07.10.2019	282.64	4250	15
6236512	26.12.2019	205.24	4920	24
6193635	23.12.2019	325.74	5100	15.7
4170631	22.07.2019	277.78	4700	16.9
4303877	31.07.2019	273.54	4250	15.5

(iii) It is pertinent to reiterate that no direct evidence of freight paid has been presented against M/s. S&J Granulate Solutions Pvt. Ltd. The two noticee firms are completely independent and even though one person (Shri Amit Aggarwal) can look after the work of the other, as is alleged, this cannot be the basis for asserting that the freight charged by M/s. Maersk and other Shipping Lines was the same for the two independent importers. Moreover, the Department has stated that the freight is negotiated by the foreign supplier/exporter and it is incredulous that each and every independent foreign supplier of the two noticee firms negotiated a particular freight with each and every Shipping Line. Also, applying a formula based on freight paid by another importer for only six shipments to hundreds of imports by an independent importer (M/s. S&J Granulate Solutions Pvt. Ltd.) is not sustainable either on logic or on legality. The Department's case is clearly based entirely on presumptions and suppositions, which cannot be the basis for quantifying a Customs duty demand.

Thus, whereas no quantification is called for in the first place since the said Rule 10 (1)(d) of the CVR, 2007 the basis for the quantification is completely wrong which, in turn, negates the Customs duty demand.

2.8 Quantification of duty allegedly short paid is incorrect: It is submitted that in the present case, the quantification the duty allegedly short paid is incorrect since the same is based on unreasonable, unscientific, and irrational methods and is an outcome of wild and ill-conceived conjecturing, presumptions and surmises. The quantification is based only on a six entries obtained from the Shipping Line, M/s. Maersk, pertaining to freight price paid to it by just one of the noticees namely, M/s. SKVA Rubber in just four months of the Year 2019. It is pertinent to mention that no such entry or any other evidence has been presented against the other noticee M/s. S&J Granulate Solutions Pvt. Ltd. Moreover, the period in consideration spans a duration of roughly four years beginning from 2019 and ending in 2023. For the Department to extrapolate data pertaining to four months to a time period of four years based on an average calculated from the said six entries is ill-considered and impractical and to further generalize the same for the second noticee which is an entirely separate entity is highly hap d and arbitrary. It is submitted that, the noticees have imported goods from a vast number of suppliers and carriers based in various countries with vastly different laws, trade relations, trade goods and trade requirements. There exists no scientific method to draw some sort of formula to calculate the freight paid across a time duration of four years based on merely six entries pertaining to four months of one year and that too relating to just one supplier. Moreover, to extrapolate the same for a different exporter exceeds the limits of rationality and borders on absurdity. Thus, the aforementioned quantification is incorrect and bad in law because the same is ill-conceived and arbitrary.

2.9 Demand of differential Customs duty by invoking extended period u/s. 28 (4) of the Customs Act, 1962 is legally unsustainable: As aforementioned, the demand of differential Customs duty u/s. 28 of the Customs Act, 1962 on the said imported goods based upon incorrect application of the said Rule 10 (1) (d) is legally unsustainable. Thus, the question of invoking the extended period would not arise. Moreover, there is no collusion, wilful mis-statement or suppression of any fact by the noticees as the said imported goods were correctly declared in the Bs/E, these were duly examined by Customs, and after due assessment these were cleared for home consumption by the Customs. Thus, all the facts were in knowledge of the Department. Reliance in this regard is placed on the following decisions of the Hon'ble Supreme Court:

(a) Northern Plastic Ltd. vs. Collector of Customs & Central Excise [1998 (101) E.L.T. 549 (S.C.)]

(b) Pahwa Chemicals Private Limited vs. Commissioner of C. Ex., Delhi [2005 (189) E.L.T. 257 (S.C.)]

2.10 Interest is not leviable u/s. 28AA of the Customs Act, 1962: It is submitted that where the duty itself is not liable to be paid, then the levy of interest cannot be sustained in the eyes of law. Reliance in this regard is placed on the judgment of the Hon'ble Supreme Court in the case of Prathibha Processors vs. Union of India [1996 (88) ELT 12 (SC)], wherein the has held that interest is a mere accessory of the principal amount and therefore, if the principal amount is not payable, so is the interest on it.

2.11 Goods not physically available cannot be confiscated u/s. 111 (m) of Customs Act, 1962: It is settled position in law that where the goods are not available for confiscation, they cannot be confiscated u/s. 111 (m) of Customs Act, 1962. The Hon'ble Bombay High Court held in case of M/s. Finesse Creation Inc. [2009–TIOL-655-HC-MUM-CUS] that the concept of Redemption Fine arises in the event the goods are available and are to be redeemed. If the goods are not available, there is no question of redemption of the goods. The matter was carried forward by the revenue by way of filling of SLP (Civil) No. CC 7373 of 2010 and the same has been dismissed by the Hon'ble Supreme Court on 12.05.2010 [2010 (255) ELT A120)].

2.12. Penalty not imposable under the Customs Act, 1962: As afore stated, there has been no short payment of Customs duty and the noticees have neither colluded, mis-stated nor suppressed any facts in order to evade Customs duty, therefore proposed penal action u/s. 112 (a)/112 (b)/114A/114AA of the Customs Act, 1962, as applicable, is not sustainable. In this regard reliance is placed on pronouncement of the Hon'ble Supreme Court of India in the case of M/s. Hindustan Steel Ltd. V/s. State of Orissa [1978(2)E.L.T(J159)S.C.],

Thus, in the absence of any mis-declaration or short payment of duty rendering the imported goods liable to confiscation u/s. 111 of the Customs Act, 1962, no case is made out for levy of penalty against any of the noticees. Also, the following additional submissions are made to established that the proposed penalty against any of the notices is not supported by law or facts and merits to be dropped. These additional submissions are, as follows:

(a) Penalty proposed on M/s. S&J Granulate Solutions Pvt. Ltd. and M/s. SKVA Rubber Solutions Pvt. Ltd. under sections 112(a) and 114A of the Customs Act, 1962: The essential ingredient for applying these provisions is that in the case of Section 112 (a) the goods in question must be liable to confiscation u/s, 111 *ibid* and in the case of the latter there must have been a short payment of Customs duty on account of suppression etc. As already submitted above, the entire case is not one of incorrect declaration of value or any other material fact relating to the imported goods but one of legal interpretation as the Department feels (incorrectly) that Rule 10(1)(d) of the CVR, 2007 should have been applied. As established this Rule does not in fact apply to the facts of the present case, as no proceeds flew to the foreign supplier post the imports into India. Also, the imported goods were assessed and cleared by Customs after accepting the declaration. For this reason, there is also no short payment of Customs duty. Hence, no penalty is imposable under the Sections 112(a) and 114A of the Customs Act, 1962.

(b) Penalty proposed on Shri Amit Aggarwal and Shri Kunal Jiwarajka u/s. 112 (a) & (b) and 114AA of the Customs Act, 1962: As mentioned at (a) above in regards to proposed penal action against the noticee firms, the imported goods are not liable to confiscation and there is no short payment of Customs duty. Thus, without reiterating the reasons advanced in defense of the noticee firms it is submitted that the same reasons hold good for Shri Amit Aggarwal and Shri Kunal Jiwarajka and no penalty is imposable on them, as is proposed.

(c) Penalty proposed on Ms. Vaishali Aggarwal, Ms. Sakshi Jiwarajka and Shri Govind Sharma u/s. 112 (a) and 117 of the Customs Act, 1962: As already aforementioned, penalty under section 112 (a) is not leviable since the imported goods are not liable to confiscation. Moreover, penalty u/s. 117 is applied when "*where no express penalty is elsewhere provided for such contravention or failure…*" Thus, penalty hereinunder is attracted only when there is an infringement of yet no specific penalty is provided in the statute for that infringement. In other words, this is a miscellaneous provision for levy of penalty. As the subject SCN proposes penalty u/s. 112 (a) against these noticees (which is an express penalty provision) there cannot also be a generic penalty. Thus, even though the proposed penal action u/s, 112 (a) is contested, the Department cannot also propose penalty u/s. 117. Thus, no penalty is imposable on Ms. Vaishali Aggarwal, Ms. Sakshi Jiwarajka and Shri Govind Sharma. Few additional submissions are being made for each of these noticees, as follows:

(i) Ms. Vaishali Aggarwal resigned as Director of M/s. SKVA Rubber Solutions Pvt. Ltd. on 20.01.2020, i.e., prior to the alleged offence. For this reason, Section 140 of the Customs Act, 1962 does not apply. The evidence of her resignation is at Annexure-I. Further, she was never made a part of this investigation and even her statement was not recorded. No evidence is also brought out that post her resignation as Director she had any role in the said firms. In fact, she was only a sleeping partner and that too for a limited period of time before the alleged offence took place. Therefore, on account of not having been a Director at the material time as well as having played no role in the activities of the said firm no penalty is imposable. Nothing concrete is brought out on record to show any act of commission and omission by her in the alleged undervaluation and short payment of Customs duty. It is relevant to mention that Ms. Vaishali Agarwal has been residing abroad since 2021 till date. Therefore, no penalty is imposable on Ms. Vaishali Agarwal.

(ii) Ms. Sakshi Jiwarajka resigned as Director of M/s. SKVA Rubber Solutions Pvt. Ltd. on 31.03.2019, i.e. prior to the alleged offence. For this reason, Section 140 of the Customs Act, 1962 does not apply. The evidence of her resignation is at Annexure J. She was never made part of present investigation. Her statement was not recorded nor any evidence unearthed to show her active role in the firm. Also, nothing concrete is brought out on record to show any act of commission and omission by her in the alleged undervaluation and short payment of Customs duty. Additionally, Section 140 of the Customs Act, 1962 has not been expressly invoked but notwithstanding this fact, Ms. Sakshi Jiwarajka had no involvement with the company as Director or otherwise during the material period. Therefore, no penalty is imposable on Ms. Sakshi Jiwarajka.

(iii) Shri Govind Sharma was not made a party to the investigation and his statement was not recorded. He also had no active role in regard to the subject imports. Also, Section 140 of the Customs Act, 1962 has not been invoked against him. Notwithstanding this fact, nothing concrete is brought out on record to show any act of commission and omission in the alleged undervaluation and short payment of Customs duty. Thus, no penalty is imposable on Shri Govind Sharma. Thus, it is submitted that the proposed penal action against all the noticees merits to be dropped.

2.13 In regard to the Department's ill-founded case alleging short payment pf Customs duty by applying the said Rule 10 (1)d) of the CVR, 2007 when in fact the same is not applicable at all, the noticee firm was compelled to pay Rs. 60 lakhs alleged differential duty during the course of investigation. This payment was not "voluntary" and was only made to seek peace. Nevertheless, as it is well established by the aforementioned submissions that no case of short payment of Customs duty is made out, the said payment merits to be returned. Hence, it is requested that while dropping the proceedings it may be ordered that the amount of Rs. 60 Lakhs paid vide TR-6 Challans No. 266 dated 24.02.2022 and No. 162 dated 13.05.2022 be returned/refunded to the noticee firm along with due interest thereon.

2.14 To sum up, it is submitted that for the reasons detailed above the subject SCN merits to be dropped in entirety against all the noticees. The most important submissions that strike at the root of the said SCN are briefly reiterated as follows:

(a) Issue of a SCN without first challenging the original assessment is bad in law.

(b) Rule 3(1) and Rule 10 (1)(d) of the CVR, 2007 are incorrectly applied. This means that the demand for Customs duty and consequential proposals to levy penalty, interest etc. on its basis must fail.

(c) No evidence is produced regarding any incentive scheme, which is the basis for quantifying the Customs duty demand.

(d) So called evidence to quantify the freight amount is inadmissible; it is incorrect to base a duty demand on an average freight; and in any case, the quantification is not warranted as the said Rule 10 (1)d) of the CVR, 2007 does not apply to the present case.

2.15 Further, M/s. Sun Elegant Consultants on behalf of all the noticees vide E-mail dated 29.07.2025 sought further 15 days' time to make further detailed submission. Subsequently vide mail dated 11.08.2025 on behalf of all the Noticees, M/s. Sun Elegant Consultants Law Firm submitted their arguments/ Synopsis in continuation of their reply dated 10.07.2024 as permitted during the course of hearing held on 22.07.2025.

2.16 M/s Sun Elegant Consultants vide written submission dated 11.08.2025 on behalf of all the Noticees. On perusal of said submission it appeared that the same contentions have been re-iterated in the said submission, therefore, the same is not re-produced again to avoid duplication.

3. RECORD OF PERSONAL HEARINGS

3.1. The Personal Hearings were granted on 12.12.2024, 20.12.2024 and 03.01.2025 by the then Adjudicating Authority to all the Noticees to uphold the Principles of Natural Justice. Subsequently, the Show Cause Notice (SCN) was reassigned to the current Adjudicating Authority. Following this, additional personal hearings were scheduled for 01.07.2025, 10.07.2025 and 22.07.2025 and all the noticees were requested to attend.

3.2. In order to comply the Principle of Natural Justice, opportunities to appear before the undersigned was granted to noticee's for personal hearings on 01.07.2025, 10.07.2025 and 22.07.2025. In response, Shri Mayank Choudhary of M/s. Sun Elegant Consultants Law Firm attended the personal hearing on 22.07.2025 on behalf of all the noticees. During hearing, he stated that the primary issue pertains to the fundamental point raised by the counsel, who contended that Rule 10 (1)(d) of the CVR, 2007, is not applicable to the present case. It was further submitted that no payment has been made to the supplier subsequent to the import. Additionally, a period of seven days was sought to place on record certain relevant and additional documents in the interest of justice.

3.3. An E-mail dated 29.07.2025 was received from M/s. Sun Elegant Consultants Law Firm seeking 15 days' time to make further detailed submission. Subsequently vide mail dated 11.08.2025 M/s. Sun Elegant Consultants Law Firm submitting arguments/Synopsis on behalf of all the Noticees. On perusal of said submission it appeared that the same contentions have been re-iterated in the said submission, therefore, the same is not re-produced again to avoid duplication.

4. DISCUSSION AND FINDINGS

4.1. I have carefully gone through Show Cause Notice, material on record, written/oral submissions of all the Noticees. Both the Importers and their Directors have submitted written reply to the Show Cause Notice as well as presented themselves for Personal Hearing through their authorized representative. Accordingly, I proceed to decide the case on merit.

4.2. The Commissioner of Customs, NS-IV, JNCH has been assigned the adjudication of the subject Show Cause Notice as per the Office Order No. 42/2024 dated 27.05.2024, issued by the Chief Commissioner of Customs. I find that the Show Cause Notice was issued on 07.02.2024 under Section 28(4) of the Customs Act 1962 and the Chief Commissioner of Customs, vide order dated 14.01.2025, has extended the period of adjudication of the said Show Cause Notice up to 05.02.2026 under the proviso to Section 28(9) of the Customs Act,1962.

4.3. I find that in compliance to the provisions of the Section 28 (8) and Section 122A of the Customs Act,1962 and in terms of the Principles of Natural Justice, opportunities for Personal Hearings were granted to all the Noticees. Thus, the Principles of Natural Justice have been followed during adjudication proceedings. Having compiled with the requirement of the Principle of Natural Justice, I proceed to decide the case on merits, bearing in mind the allegation made in the SCN as well as the Submission/Contention made by the Noticees.

4.4 The Noticee has placed reliance on various judgments of Tribunals, High Courts and Apex Court 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(l) S.C. C. 213] observed that "the ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides and not what logically follows from it." 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."*

4.5 I find that in the instant case, investigation was initiated by DRI, HQ, New Delhi in respect of the imports made by M/s S&J Granulate Solutions Pvt. Ltd. of "Old and Used Rubber Tyre Scrap in Press and Multiple Cut". As per the Investigation, M/s S&J Granulate Solutions Pvt. Ltd was engaged in mis-declaring the value of the goods being imported for item namely "Old and Used Rubber Tyre Scrap in

Press and Multiple Cut" under CTH 4004 0000. Further, as per investigation, other interrelated importing firm of M/s S&J Granulate Solutions Pvt. Ltd., namely M/s. SKVA Rubber Solutions Pvt. Ltd. (hereinafter also collectively to be referred as 'Importers') was also engaged in mis-declaration of similar goods in terms of value being imported by them. Intelligence also suggested that both the said firms are controlled by same person namely Shri Amit Aggarwal.

4.6 I find that, as per investigation, M/s S&J Granulate Solutions Pvt. Ltd. was incorporated in 2011 by Shri Amit Aggarwal and Shri Kunal Jiwarajka as directors. M/s SKVA Rubber Solutions Pvt. Ltd., incorporated in 2018, whereas Ms. Vaishali Aggarwal and Sakshi Jiwarajka were the initial directors but later resigned and replaced by Shri Amit Aggarwal and Shri. Govind Sharma in 2019. The companies imported old and used rubber tyres under DGFT license for conversion of old and used tyres into rubber crumb/granulate, steel, and fibres. The separated steel wires were sold to steel ingot and stainless-steel manufacturers, while the cotton/fibre was used as fuel in the cement industry. The major buyer of the recycled/processed goods was M/s Home zone Rubber Solutions Pvt. Ltd. with Shri Jitender Agarwal (brother of Shri Amit Aggarwal) and Shri Navneet Krishnan Konar as Directors, a related company incorporated in 2020. M/s Home zone Rubber Solutions Pvt. Ltd. primarily engaged in trading rubber crumb/granulate. They typically traded goods manufactured or imported by Importers. M/s Metplast Trading FZC, Dubai was one of the overseas suppliers of Importers. M/s Metplast Trading FZC was managing their business through agent M/s. Mayflower Exports Pvt. Ltd. located in India. Whereas, M/s. Mayflower Exports Pvt. Ltd. acted as a commission agent for the sale and purchase of rubber products, papers, and other products for their overseas client M/s Metplast Trading FZC, Dubai.

4.7 I find that, investigating unit has conducted searches u/s. 105 of Customs Act 1962 at factory/office/residential premises related to the importers and entities concerned and further recorded statements of the persons as mentioned in Tables – A & B above, u/s. 108 *ibid*.

4.8 Further, I find that investigating unit has retrieved Document/Evidences like E-mail dated 16/11/2022 and M/s. MAERSK India Private Limited submitted details of the actual freight charges charged by them vide E-mail dated 06/12/2022, 08/12/2022, and 23/01/2023 during the course of investigation.

4.9 I find that, the evidences emerged during the course of investigation revealed that there is a non-Declaration of proceeds of disposal of imported goods that accrued to seller indirectly. As per investigation, the imported goods, i.e., Rubber Cut Tyres are environmentally hazardous products and disposal of these items are matter of concern for most of the countries. Therefore, many countries provide monetary incentives to Public Institutions or Private Firms for disposal of these environmentally sensitive goods. Exporting countries get rid of these goods by exporting them to other countries for further processing and extraction of by-products like Rubber Scrum, Granulates etc. as permitted in respective importing country. Therefore, these Exporters utilise such incentives which are proceeds for disposal of Rubber Cut Tyres against adjustment of freight charges in excess of CIF value borne by them. Therefore, the investigating agency concluded that such proceeds of for disposal of imported goods shall be liable for inclusion in determination of transaction value as prescribed in Rule 10(1)(d) of CVR, 2007.

4.10 I find that, as per investigation, C&F value paid by the Importers (i.e. M/s S&J Granulate Solutions Pvt. Ltd and M/s SKVA Rubber Solutions Pvt. Ltd) to exporter of Rubber Cut Tyres was found to be lower than the actual value of Freight charges and that importer is compensated by the exporter of Rubber Cut Tyre who was passing on the differential of value and freight as incentive for disposal of Rubber Cut Tyres.

4.11 Further, I find that Shri Amit Aggarwal, Director of M/s S&J Granulate Solutions Pvt. Ltd and M/s. SKVA Rubber Solutions Pvt. Ltd., in his voluntary statement recorded on 11.02.2022 u/s. 108 of the

Customs Act, 1962, had acknowledged this and explained that it was a common practice in the competitive scrap tyre market to declare lower invoice amounts to survive. The overseas suppliers compensated this by adjusting the amount against the differential Ocean Freight Charges. He further stated that the imported goods are low-value items purchased at low prices & disposal of such items is expensive due to environmental concerns at developed countries. He submitted that difference in declaration and Freight Value is because overseas suppliers usually passed on a portion of compensation received for disposal of such items from the exporting country. Further I find that Shri Amit Aggarwal in his voluntary statement dated 29.04.2022, on being shown discrepancies between the declared values of goods at the Ports of Origin and the values declared in India for certain import consignments obtained through overseas Customs enquiry, explained that the shipper quoted them lower rate than amount actually paid to Shipping Lines as shipper used to adjust/discount the same through his remuneration (was being paid to dispose of scrap from exporting countries). He further acknowledged that CNF rate quoted by the shipper to them as importers was always lower than the Shipping Freight. In relation to the import data of M/s S&J Granulate Solutions Pvt. Ltd and M/s. SKVA Rubber Solutions Pvt. Ltd., where the invoice term was mentioned as CF (Cost and Freight), Amit Aggarwal stated that as CF value was mentioned, the overseas suppliers were responsible for paying the Ocean Freight Charges. The Shipping Lines' Ocean Freight Charges and the Gate Fee received by the overseas suppliers were not disclosed to them. On being asked about the price negotiation with overseas suppliers, Shri Amit Aggarwal mentioned that he requested Proforma Invoices from suppliers through mobile phone, and in some cases, the prices were received telephonically and he used to only negotiate prices for the import of Used Rubber Cut Tyres on behalf of M/s S&J Granulate Solutions Pvt. Ltd. and M/s. SKVA Rubber Solutions Pvt. Ltd.

4.12 Further I find that Shri Amritpal Singh Popli, Director, M/s. Dashmesh Rubber Industries Private Limited (buyer of imported goods from M/s S&J Granulate Solutions Pvt. Ltd and M/s SKVA under High Sea Sale), in his statement dated 11.07.2022 provided the following information: Freight charges were paid by the respective overseas suppliers. They are unaware of the consignment-wise ocean freight charges paid by the suppliers. Shri Amritpal Singh Popli provided information about current Ocean Freight Charges being charged by Shipping Lines for transporting goods from specific locations to Nhava Sheva Port. Shri Amritpal Singh Popli acknowledged that in many Bs/E, the unit price of imported goods has been reassessed at a higher value than the declared price. He is aware that Customs Officials have reassessed the unit price at different prices based on their knowledge.

4.13 Further, I find that Shri Abhay Saxena, Commercial Co-ordinator of M/s. Mayflower Exports Pvt. Ltd. in his voluntary statement dated 25.07.2022 stated that M/s S&J Granulate Solutions Pvt. Ltd and M/s. SKVA Rubber Solutions Pvt. Ltd. had imported Old and Used Rubber Tyres from M/s. Metplast Trading FZE, Ajman, through M/s. Mayflower Exports Pvt. Ltd. Shri Amit Agarwal was the contact person for both companies. Freight Charges for transporting the goods are paid by the overseas suppliers.

4.14 Further, I find that Shri Kunal Jiwarajka, Ex-Director of M/s S&J Granulate Solutions Pvt. Ltd & M/s. SKVA Rubber Solutions Pvt. Ltd., in his voluntary statement dated 04.08.2022 stated that usually M/s S&J Granulate Solutions Pvt. Ltd and M/s. SKVA Rubber Solutions Pvt. Ltd. import the goods of CIF terms, in which FOB value, freight including ocean freight charged by Shipping Lines, and insurance amount were included.

4.15 Further I find that Shri Sandeep Patawari, Director of M/s. Mayflower Exports Pvt. Ltd. in his voluntary statement dated 18.08.2022 stated that regarding freight charges the respective overseas suppliers pay the same and provided current ocean freight charges for certain shipping routes.

4.16 Further, I find that, Shri Amit Aggarwal, Director of M/s S&J Granulate Solutions Pvt. Ltd and M/s. SKVA Rubber Solutions Pvt. Ltd., in his voluntary statement dated 01.12.2022 on being shown a

comparison table of certain Bs/E, where the declared invoice (of terms CIF/CF) amounts of importers were lower than the actual freight charged by the Shipping Lines (as supplied by Shipping Lines), explained that they did not have to pay the freight since the prices were CIF/CF and stated that additional incentives were provided by the origin country's government for waste disposal to exporters/suppliers and same is incentivized to the importers by reducing prices to assist in waste removal.

4.17 Further, I find from the case records that, during the investigation, Investigating Unit has requested concerned shipping line of the importers for providing the details of freight charges, miscellaneous charges etc. charged by them for providing freight services. Further, Shipping Line, M/s. MAERSK India Private limited have submitted the details of the charges charged by them vide E-mail dated 06.12.2022, 08.12.2022 & 23.01.2023. The details provided above by the Shipping Line were analysed and it was observed that in several cases, **the declared CF value by importers is less than the actual freight amount paid against the said consignment to Shipping Lines by Exporter**. Details are as under:

Table: Higher Freight price paid to Shipping Line in comparison to CIF/CF value declared in BE by Importer

MAWB/MBL No	Unit Price as declared in the BE (per MT)	Currency	BE Number	BE Date	Invoice Terms	Weight (in MT)	Assessable Value (INR)	Name of the Importer	Supplier Name	Freight as declared in the invoices issued by Shipping Lines (in USD)	Freight per MT calculated from the total freight amount declared (per MT)
583472489	**12**	USD	4613139	23-08-2019	CF	251.4	219195.6	SKVA RUBBER SOLUTIONS PRIVATE LIMITED	METPLAST TRADING FZC	13150	**52.3**
585507918	**15**	USD	5202229	07-10-2019	CF	282.64	309328.4	SKVA RUBBER SOLUTIONS PRIVATE LIMITED	BASE S.P.A.	4250	**15**
587353835	**8**	USD	6236512	26-12-2019	CF	205.24	119382.2	SKVA RUBBER SOLUTIONS PRIVATE LIMITED	BASE S.P.A.	4920	**24**
587478921	**8**	USD	6193635	23-12-2019	CF	325.74	189473.5	SKVA RUBBER SOLUTIONS PRIVATE LIMITED	BASE S.P.A.	5100	**15.7**
969205320	**15**	USD	4170631	22-07-2019	CF	277.78	293475.5	SKVA RUBBER SOLUTIONS PRIVATE LIMITED	ALSECO SRL	4700	**16.9**
969224461	**15**	USD	4303877	31-07-2019	CF	273.54	288996	SKVA RUBBER SOLUTIONS PRIVATE LIMITED	ALSECO SRL	4250	**15.5**

4.18 The investigation revealed that Importers. i.e., M/s S&J Granulate Solutions Pvt. Ltd and M/s. SKVA are importing Rubber Cut Tyres from Exporters at CIF value which is lower than the Freight Value itself. The importers admitted that this is resulting from an adjustment of incentives or proceeds for disposal passed on or given by the exporter to the importer by way of reduction in C&F value of the goods. Whereas, as per Rule 10(1)(d) of the CVR, 2017 such amounts are to be added to the price paid or payable for imported goods and should be subjected to Customs Duty leviable.

4.19. Further, Shri Amit Aggarwal on behalf of M/s S&J Granulate Solutions Pvt. Ltd. accepted the non-disclosure of the cost and voluntarily deposited amounts towards partial discharge of their duty liability arising out of non-inclusion of proceeds of disposal accrued by Seller/Exporter directly or indirectly in respect of the Old and Used Rubber Tyres imported by them. Demand Drafts of total amounting to Rs.

60 Lakhs was submitted by Shri Amit Aggarwal vide letters dated 11.02.2022 and 29.04.2022 towards partial discharge of Customs Duty including IGST arising due to alleged non-inclusion of proceeds of disposal accrued by Seller while filing of Bills of Entries by M/s S&J. Details of Demand Drafts submitted by Shri Amit Aggarwal are tabulated in Table E above.

4.20 I find that to Ascertain the Addition in Assessable Value as per Rule 10 (1)(d) in transaction value, the Investigating Agency has proposed that the declared Assessable Value is required to be loaded by the 'Loading Factor Average'. The 'Loading Factor Average' is determined by calculating the average of difference between freight paid and CNF (which is the minimum indirect incentive/compensation received by the Seller/exporter) over CNF. The 'Loading Factor Average' is calculated for the shipments (detailed in Table-F above) where freight paid to Shipping Lines is higher than CNF value declared in Bs/E by Importer.

4.21 I find that during investigation it was found that there **was substantial increment in the declared CIF Value by the Importers for their post search imports (after 10.02.2022)** as evidenced from their online import data available for the relevant period thereby substantiating assertion of undervaluation of Imports by the Importers (prior to the date of search i.e., 10.02.2022). The analysis of the C&F declared by the Importers (pre and post search), based on the Online data is detailed below:

Year Wise	Unit Price per MT (INR)
2019	3027
2020	1074
2021	5429
Before Search	3639
After Search	9431
2022	8863
2023	9751

4.22 I find that the declared value of goods (Old and Used Rubber Cut Tyres) imported by M/s S&J Granulate Solutions Pvt. Ltd vide 250 Bills of Entry and with a combined Assessable Value of Rs. 18,44,62,080/- (as detailed in **Annexure-A** to the subject SCN) and the value of goods imported by M/s. SKVA Rubber Solutions Private Limited vide 210 Bills of Entry with a combined assessable value of Rs. 13,53,09,066/- (As detailed in **Annexure-B** to the subject SCN). I also find that adjusted Assessable Value for them were computed as below as per the Loading Factor Average value of 1.08.

Sr. No.	**IEC**	**Name of the Importer (M/s.)**	**Declared Assessable Value (Rs)**	**Re-determined Assessable Value (Rs)**
1	310043662	S & J GRANULATE SOLUTIONS PVT. LTD.	18,44,62,080	38,36,81,127
2	AAYCS5660F	SKVA RUBBER SOLUTIONS PVT. LTD.	13,53,09,066	28,14,42,858
Total			**31,97,71,147**	**66,51,23,985**

4.23. I find that on re-determination of Assessable Value of the goods, the duty difference quantified is to the extent of **Rs.6,15,22,358/-** (as detailed in Table J above for **Annexure A** to the subject SCN) pertaining to 250 Bs/E filed by M/s S&J Granulate Solutions Pvt. Ltd and **Rs. 4,39,53,680/-** (as detailed in Table K

above for **Annexure B** enclosed to the subject SCN) pertaining to 210 Bills of Entries filed by M/s. SKVA Rubber Solutions Pvt. Ltd., and the Investigating Agency proposed that the said short paid Customs Duty is required to be recovered from both the Importers under the provisions of Section 28 (4) of the Customs Act, 1962 along with applicable interest u/s. 28AA *ibid*.

4.24 I find that the Investigating Agency has proposed penal action on both the Importers and their Directors under the provisions of Section 112 (a) & (b), 114A, 114AA & 117 of the Customs Act, 1962 for their acts of omission and commission resulted in short levy of legitimate Customs Duty at the time of importation.

4.25 I find that on the basis of above facts, a SCN No. 2610/2023-24/Commr. /NS-I/Gr. II (H-K)/CAC/JNCH dated 07.02.2024 was issued to both the Importers and its Directors under the provisions of Section 28 (4) of the Customs Act, 1962, whereby, it is proposed to re-determine the declared value of the imported goods, proposed to demand and recover the Customs Duty short levied at the time of clearance of the goods along with applicable interest; proposed to confiscate the goods u/s. 111 (d) & (m) *ibid* and imposition of penalty on the Importers and other Noticees u/s. 112 (a) & (b), 114A, 114AA and 117 *ibid*.

4.3 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. Whether or not the declared Assessable Value of the goods imported by M/s S&J Granulate Solutions Pvt. Ltd and M/s. SKVA Rubber Solutions Pvt. Ltd. are liable to be rejected and re-determined as per the provisions of CVR, 2007 or otherwise;

B. Whether the differential duty arise due to mis-declaration of value as detailed in Annexure A & B to the subject Show Cause Notice should be demanded and recovered from both importers in terms of Section 28 (4) of the Customs Act, 1962 along with applicable interest under Section 28AA *ibid* or otherwise;

C. Whether an amount of Rs. 60 Lakhs deposited during the investigation on behalf M/s S&J Granulate Solutions Pvt. Ltd is liable for appropriation against the said demand of differential duty/ interest and other adjudication levies or otherwise;

D. Whether the goods are liable for confiscation u/s. 111 (d) & (m) of the Customs Act, 1962 or otherwise;

E. Whether the Importer M/s S&J Granulate Solutions Pvt. Ltd. and M/s. SKVA Rubber Solutions Pvt. Ltd. are liable for penalty under Section 112(a) and/or 114A of the Customs Act, 1962 or otherwise;

F. Whether, penalty should be imposed on Shri Amit Aggarwal, Director and Controller of M/s. S & J Granulate Solutions Pvt. Ltd. & M/s. SKVA Solutions Pvt. Ltd. and Shri Kunal Jiwarajka, Ex-Director/controller/shareholder of M/s S&J Granulate Solutions Pvt. Ltd & M/s. SKVA Rubber Solutions Pvt. Ltd. under Section 112(a) & (b) and Section 114 AA or otherwise;

G. Whether, Ms. Vaishali Aggarwal, Ex-Director, M/s. SKVA Rubber Solutions Pvt. Ltd.; Ms. Sakshi Jiwarajka, Ex-Director, M/s. SKVA Rubber Solutions Pvt. Ltd.; and Shri Govind Sharma, Director M/S S&J Granulate Solutions Pvt. Ltd. & M/s. SKVA Rubber Solutions Pvt. Ltd. are liable for penal action u/s. 112 (a) & (b) and 117 of the Customs Act, 1962 or otherwise.

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

A. <u>Whether the declared Assessable Value of the goods imported by M/s S&J Granulate Solutions Pvt. Ltd and M/s. SKVA Rubber Solutions Pvt. Ltd. are liable to be rejected and re-determined as per the provisions of CVR, 2007 or otherwise;</u>

5.1 Rejection and Redetermination of Value

I find that in the subject SCN rejection of assessable value is proposed for the goods imported by M/s. S&J Granulate Solutions Pvt. Ltd. and M/s. SKVA Rubber Solutions Pvt. Ltd for the goods detailed in Annexure A and B respectively attached to the subject SCN. The noticee has contended that absence of rejection of value under rule 12 negates the proposed proceedings under rules 3 read with rule 10(1)(d) of the CVR, 2007. I observe that it is a settled position of law that wrong mention or non-mention of a provision in the Show Cause Notice does not vitiate the proceedings. The Hon'ble Supreme Court in the case Fortune Impex vs Commissioner [2004(167) ELT A 134(SC)] has held that non-mention of the particular Section of Customs Act, 1962 would not vitiate the proceedings when the allegations and charges against all the appellants were mentioned in clear terms in the Show Cause Notice.

There are several judicial pronouncements which bolstered the fact that mention of wrong provision of law or non-mention of proper law is not of importance so long as the Show Cause Notice clearly reveals and brings out the substance of the allegations and the omissions and breaches of the person being charged. A few of these case laws are mentioned below-

(a) Five Judge Bench of the Supreme Court in the case of Union of India v. Tulsiram Patel, (1985) 3 SCC 398, in the decision dated 11.07.1985, held that, "*Further, even the mention of a wrong provision or the omission to mention the provision which contains the source of power will not invalidate an order where source of such power exists*."

(b) Hon'ble CESTAT, Principle Bench Delhi, in case of M/s. Jagson International Ltd Vs Commr. of Customs, reported in 2006 (199) E.L.T.553 (Tri. - Del.) held that "*Mere* n*on-mention of the provisions of law would not invalidate the action where the requisite ingredients of the provisions are set out in the Show Cause Notice" [para 10.3].* The decision of Hon'ble CESTAT has been upheld by Hon'ble Supreme Court in the same case reported in 2015 (323) E.L.T. 243 (S.C.)

(c) Hon'ble High Court of Delhi in case of M/s. Supercom India Ltd. Vs D.G.F.T., Ministry of Commerce reported in 2003 (160) E.L.T. 69 (Del.) held that, *"The Show Cause Notice clearly reveals and brings out the substance of the allegations and the omissions and breaches of the petitioner. The Non-mentioning of a provision or mention of a wrong provision are not fatal to the Show Cause Notice and cannot render the same otiose."*

5.1.1 I find that during the course of investigation it was revealed that the Importer has declared the value of the goods in C&F terms, which was found to be less than the actual Ocean Freight incurred for its importation and the Importer with connivance/ collusion with the foreign suppliers of Cut Rubber Tyres used to undervalue the goods as well as did not declare actual Ocean Freight incurred for its importation. I note that based on investigation initiated by DRI, HQ, that Rubber cut tyres are environmentally hazardous, the exporting countries provided monetary incentives to the exporters for their disposal by

way of export and then exporters utilized such incentives to bear the freight charges for export to the importing firm for their disposal. Shri Amit Aggarwal, Director of both the importing firms and Shri Kunal Jiwarajka, Ex-Director/controller/shareholder of M/s S&J Granulate Solutions Pvt. Ltd & M/s. SKVA Rubber Solutions Pvt. Ltd., who looked after the importation of the goods, in their respective voluntary statements recorded u/s. 108 of the Customs Act, 1962 admitted that the value declared before the Indian Customs is very less and the Ocean Freight which was stated to be incurred by the foreign suppliers is more than that the declared value before Indian Customs. This fact has been corroborated with the evidences collected by the Investigating Agency in the form of value declared by the foreign suppliers at the Port of Discharge and Invoices provided by Shipping Lines during the course of investigation.

5.1.2 I find that the Noticees in their defence reply contended that there is no undervaluation and the value declared by them were accepted by the Proper Officers of Customs and same cannot be re-assessed now. In this regard, I find that only due to specific intelligence developed by the Officers of DRI, New Delhi the said fraudulent acts on the part of subject two Importers and their Directors has been unearthed during the course of investigation conducted in the month of February, 2022. It is a matter of fact that after searches was conducted by DRI, New Delhi on office/residential premises of the Importing firms and its directors, the subsequent imports were found to be done at the higher value for the very same goods from the very same foreign suppliers, which made it pretty clear that the Importer has resorted to undervaluation.

5.1.3 I find that importers have resorted to undervaluation of the goods on the basis of voluntary statements of Shri Amit Aggarwal and Shri Kunal Jiwarajka, Directors of both the importing firms, recorded under section 108 ibid, wherein, both of them admitted the fact of undervaluation, which is further corroborated with the evidences in form of inquiry with Customs Authorities at foreign country and Shipping Lines. Moreover, the Importer, M/s S&J Granulate Solutions Pvt. Ltd. voluntarily deposited an amount of Rs. 60 Lakhs during the course of investigation towards possible duty demand and interest thereof. I find that now the Importer in their written submission contended that they were forced to make said payment, however, it appeared that it is nothing but an afterthought on the part of the Noticees. It is matter of fact that the Noticees, whose statements were recorded by the Officers of DRI never retracted their statements neither during investigation proceedings nor during present adjudication proceedings. Retraction after lapse of almost 3 years appears to be nothing but an afterthought on the part of the Noticees to divert the proceedings.

5.1.4 I find that 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 u/s. 108 of the Customs Act, 1962 without any duress and coercion and even voluntarily deposited the Rs. 60 Lakhs towards the partial discharge of their duty liability arising out of non-inclusion of proceeds of disposal accrued by Seller/ Exporter. I find from the facts on record, Noticees had neither made any allegation during investigation nor 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.

5.1.5 Furthermore, the Legal position about the importance and validity of statements rendered u/s. 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/s. 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/s. 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 Gulam Hussain Shaikh Chougule v. S. Reynolds (2002) 1 SCC 155 = 2001 (134) E.L.T. 3 (S.C.);

(iv) State (NCT) Delhi V/s. 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 V/s. Assistant Collector (HQ), Central Excise Cochin, (1997) 3 SCC 721;

(vi) Hon'ble Supreme Court in the case of Kanhailal V/s. 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 V/s. State of Mysore reported in [1966 AIR 1746 = 1978 (2) ELT J 323 (SC 5 member bench)] laid down that *statement to a Customs*

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

(x) In the case of Bhana Khalpa Bhai Patel V/s. Asstt. Collector of Customs, Bulsar reported in [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 V/s. UOI & Others reported in (1990) 2 SCC 409, the Court held that *officers of the Department of Revenue Intelligence who have been vested with the powers of an Officer-in-Charge of a police station under Section 53 of the NDPS Act, 1985, are not police officers within the meaning of Section 25 of the Evidence Act. Therefore, a confessional statement recorded by such officer in the course of investigation of a person accused of an offence under the Act is admissible in evidence against him*;

(xii) Hon. Supreme Court's decisions in the case of Romesh Chandra Mehta V/s. the State of West Bengal reported in (1969) 2 S.C.R. 461, A.I.R. 1970 S.C. 940 held that *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) In the case of Jagjit Singh V/s. State of Punjab and another**,** Hon'ble Punjab and Haryana High Court in Criminal 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.*

5.1.6. Going by the ratio of the above decisions, I am of the considered view that the oral evidences in the form of statements of noticees which were documented are acceptable and credible evidence to support the allegations levelled in the SCN against Noticees and constitutes a valid and sound proof. In view of the above pronouncements, I find that placing reliance upon statements is correct and legal and these evidences proved the offence of the Noticees and constitute material piece of evidence.

5.17. In view of the above discussions and ration of relevant judgments, I am of the firm opinion that the Investigating Agency on the basis of voluntary statements of the concerned Directors of these two importing firm and corroborating evidences in form of data received from overseas Customs Authorities and Shipping Lines has succeeded in proving the fact that the Importer resorted to undervalue the goods before Indian Customs which resulted in gross duty evasion at the time of importation.

5.18 In view of discussion above in the nutshell I find that the value of the impugned goods imported by M/s. S&J Granulate Solutions Pvt. Ltd. & M/s. SKVA Rubber Solutions Pvt. Ltd. as detailed in Annexure A and Annexure B of the subject SCN respectively were mis-declared in terms of value to defraud the Government of India of its legitimate revenue. I note that the value declared by the Importer while filing of Bills of Entry was very low and the imported goods were grossly undervalued. Therefore, the same had been imported into India in contravention of provisions of the Customs Act, 1962. Therefore, as per Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 2007), the declared transaction value of the goods covered under Bills of Entry of detailed in Annexure A and Annexure B of the subject SCN, cannot be considered as true transaction value and the same has to be rejected in terms of Rule 12 of the CVR, 2007 read with Section 14 of the Customs Act, 1962.

Accordingly, the transaction value needs to be re-determined under the provisions of Rule 3(1) of CVR, 2007 as it was not correctly declared. It is apparent that due to such deliberate and conscious gross undervaluation, the Importers has defrauded the Government Exchequer by evading legitimate Customs Duty at the time of importation of the goods. I find and hold that the said value is liable to be rejected under the provisions of Rule 12 of CVR, 2007 and same is required to be re-determined.

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

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

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

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

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

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

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) the non-declaration of parameters such as brand, grade, specifications that have relevance to value;

***(f) the fraudulent or manipulated documents.**"*

5.1.10 As discussed in preceding para, it is clear that the declared Assessable Value of the goods of Rs. 18,44,62,080/- of the goods that were imported vide 250 Bills of Entry (as detailed in Annexure A to the subject SCN and Table J *supra*) by M/s S&J Granulate Solutions Pvt. Ltd and assessable value of Rs. 13,53,09,066/- of the goods that imported vide 210 Bills of Entry imported (as detailed in Annexure B of the subject SCN and Table K *supra*) by the Importer, M/s. SKVA Rubber Solutions Pvt. Ltd. was not the true or actual transaction values of the said goods, in terms of the provisions of Section 14(1) of the Customs Act, 1962. Explanation 1(iii)(f) of Rule 12 of the Customs Valuation (Determination of the Value of Imported Goods) Rules, 2007 clearly mention that if the fraudulent or manipulated documents

are provided at the time of clearance of the goods, then the proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value. The actual value of the goods cannot be the declared value. Therefore, I hold that the declared assessable value of **Rs. 18,44,62,080/-** of the goods that were imported vide 250 Bills of Entry (as detailed in Annexure A to the subject SCN and Table J *supra*) by M/s S&J Granulate Solutions Pvt. Ltd and assessable value of **Rs. 13,53,09,066/-** of the goods that were imported vide 210 Bills of Entry imported (as detailed in Annexure B of the subject SCN and Table K *supra*) by the Importer, M/s**.** SKVA Rubber Solutions Pvt. Ltd., cannot be treated as the correct value and is, therefore, liable for rejection under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with explanation (1)(iii)(f) the said Rule 12.

5.1.11 I find that during investigation, details submitted by M/s. MAERSK India Private Limited showing the details of the charges charged by them vide E-mail dated 06/12/2022, 08/12/2022 & 23/01/2023. The details provided by the Shipping Line were analysed and it was observed that in several cases, the declared CF value by importers is less than the freight amount paid against the said consignment to Shipping Lines by Exporter. Further, importer was well aware of the prices of the imported goods, was fully aware of the type of the transaction and the fact that compensation was shared with them by the overseas supplier equal to the amount of proceeds of disposal accrued to exporter and yet intentionally used false and incorrect material i.e. invoices (which needed to cover both the service as well as good prices) and made false and incorrect declaration in the Bills of Entry.

5.1.12 Rule 3. Determination of the method of valuation. –

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

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

Provided that -

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

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

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

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

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

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

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

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

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.
(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;
(ii) the deductive value for identical goods or similar goods;
(iii) the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;
(c) substitute values shall not be established under the provisions of clause (b) of this sub- rule.
(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

Rule 10(1)(d) of Customs Valuation Rules. 2007 is appended below for reference:
"Rule 10: Cost and Services:

I. In determination the transaction value, there shall be added to the price actually paid or payable for the imported goods, -
a. ....
b. ....
c. ....
d. The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;"

5.1.13 Rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 prescribes that Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10. I find that the investigation revealed that the value of the impugned imported goods had been mis-declared by the importer to evade the legitimately payable Custom duty. Rubber Cut tyres are environmentally hazardous products and disposal of these items are matter of concern, therefore, many countries provide monetary incentives to Public Institutions or Private Firms for disposal of these environmentally sensitive goods. Exporting countries exporting them to other countries for further processing and extraction of by products like Rubber Scrum, Granulates, etc as permitted in respective importing country. Therefore, these Exporters utilise such incentives which are *proceeds for disposal of rubber cut tyres* against adjustment of freight charges in excess of CIF value borne by them. Therefore, such *proceeds of for disposal of imported goods* shall be liable for inclusion in determination of transaction value as per rule 3(1) and Rule 10(1)(d) of Customs Valuation Rules (Import), 2007.

5.1.14 I find that for redetermination of the value of the imports viz. 250 consignments imported by M/s S&J Granulate Solutions Pvt. Ltd and 210 consignments imported by M/s.SKVA Rubber Solutions Pvt. Ltd. respectively (as detailed in Annexure A & B of the subject SCN) the

investigation has appropriately relied on rule 3(1) and Rule 10(1)(d) of the CVR 2007 for redetermination of the value. Further to ascertain the Addition in Assessable Value as per Rule 10(1)(d), the declared Assessable Value has been loaded by the 'Loading Factor Average, which is determined by calculating the average of difference between freight paid and CNF (which is the minimum indirect incentive/ compensation received by the seller/exporter). The 'Loading Factor Average' is calculated for the shipments where freight paid to shipping lines is higher than CNF value declared in Bills of Entry by importer and 'Loading Factor Average' which worked out to be 1.08.

The assessable value is computed below as per the Loading Factor Average value 1.08 in the subject SCN is as under:

Sr. No.	IEC	Name of the Importer	Declared Assessable Value (Rs)	Re-determined Assessable Value(Rs)
1	310043662	S & J GRANULATE SOLUTIONS PRIVATE LIMITED	18,44,62,080	38,36,81,127
2	AAYCS5660F	SKVA RUBBER SOLUTIONS PRIVATE LIMITED	13,53,09,066	28,14,42,858
Total			31,97,71,147	66,51,23,985

5.1.15 Accordingly, I find and hold that the declared Assessable Value of the goods, i.e., **Rs. 18,44,62,080/-** by the Importer, M/s S&J Granulate Solutions Pvt. Ltd. against 250 Bills of Entry imported (as detailed in **Annexure A** to the subject SCN and Table J *supra*) and **Rs. 13,53,09,066/-** by the Importer, M/s**.** SKVA Rubber Solutions Pvt. Ltd. against 210 Bs/E imported (as detailed in Annexure B of the subject SCN and Table K *supra*) is liable for rejection under Rule 12 of CVR, 2007, I hold that value declared by the importer for the clearance of the impugned imported goods could not be considered as true transaction value and the same is liable to be rejected in terms of Rule 12 of the Customs Valuation. Therefore, I hold that the declared assessable value of the goods imported as detailed in Annexure A and Annexure B of the subject SCN, should be rejected in terms of Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with explanation (1)(iii)(f) the said Rule 12 and has been appropriately re-determined as per Rule 3(1) and read with Rule 10(1)(d) of the CVR 2007 as tabulated above.

B. Whether the differential duty arise due to mis-declaration of value as detailed in Annexure A & B to the Notice should be demanded and recovered from both importers in terms of Section 28 (4) of the Customs Act, 1962 along with applicable interest under Section 28AA *ibid* or otherwise;

After having determined the correct valuation of the impugned imported goods, it is imperative to determine whether the demand of differential Customs duty as per the provisions of Section 28(4) of the Customs Act, 1962, along with applicable interest under Section 28AA ibid, in the subject SCN is sustainable or otherwise. The noticee contended that Demand of differential Customs duty by invoking extended period under section 28(4) of the Customs Act, 1962 is legally unsustainable.

5.2.1 Consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in Customs clearance. Under self-assessment, it is the importer who has to ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notification claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendments to Section 17, it is the added and enhanced responsibility of the importer, to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. In the instant case, as explained in paras supra, the Noticee/importer has undervalued the goods and thus, wilfully evaded payment of applicable duty resulting in a loss of Government revenue and in turn accruing monetary benefit. Since the Noticee/importer has wilfully mis-declared and suppressed the facts with an intention to evade applicable duty by undervaluation, hence, provisions of Section 28(4) are invokable in this case and the duty, so evaded, is recoverable under Section 28(4) of the Customs Act, 1962.

5.2.2 The scheme of RMS wherein the importers are given so many facilitations, also comes with responsibility of onus for truthful declaration. The Tariff classification and Description of the item and value are the first parameters that decides the rate of duty for the goods, which is the basis on which Customs duty is payable by any importer. However, if the importer does not declare the complete details and evades payment of correctly payable duty, it definitely amounts to mis-leading the Customs authorities, with an intent to evade payment of legitimate Customs duty leviable on the said imported goods.

5.2.3 In terms of Section 46(4) of the Customs Act, 1962, the importer is required to make a true and correct declaration in the Bill of Entry submitted for assessment of Customs duty. However, in the instant case, I find that the Noticee had evaded payment of applicable duty on the goods imported by them by way of undervaluation. I find that the Noticee evaded correctly payable duty and wilfully mis-declared the value of the goods, made mis-statement in the documents filed before Customs authorities such as Invoice and suppressed the facts of actual value of the goods with intent to evade payment of Customs duty on import by suppressing the correct value of the imported product by not declaring the same at the time of filing of the Bills of Entry. By resorting to this deliberate and wilful evasion of duty, the Noticee has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. Thus, I find that this wilful and deliberate act was done with the clear intention to evade payment of due duty. As the importer has wrongfully assessed the impugned goods and evaded the payment of the applicable duty thereon on the date of importation, the Noticee can only come clean of its liability by way of payment of duty not paid.

5.2.4 On perusal of the facts and evidences emerged during the course of investigation and as discussed supra, I find that the Importer has deliberately and consciously mis-declared the actual value and freight charges incurred for the said goods with an intent to evade legitimate Customs Duty and the noticee contention that Demand of differential Customs duty by invoking extended period under section 28(4) of the Customs Act, 1962 is legally unsustainable is not acceptable.

5.2.5 I find that the Importer had self-assessed the Bills of Entry and by mis-declaring the value of the impugned goods. Accordingly, the Importer, M/s S&J Granulate Solutions Pvt. Ltd. has short paid legitimate Customs Duty to the extent of **Rs. 6,15,22,358/-** (Rupees Six Crores Fifteen Lakhs Twenty Two Thousand Three Hundred Fifty Eight only) against 250 Bs/E filed at three Ports (as detailed in Annexure–A to the subject SCN and Table J *supra*) and M/s. SKVA Rubber Solutions Pvt. Ltd. has short paid legitimate Customs Duty to the extent of **Rs. 4,39,53,680/-** (Rupees Four Crores Thirty Nine Lakhs Fifty Three Thousand Six Hundred Eighty only) against 210 Bs/E filed at two Ports (as detailed in Annexure–B to the subject SCN and Table K *supra*). As the importer got monetary benefit due to the said act, it is apparent that the same was done deliberately by wilful mis-statement of the value of the

said goods. Thus, providing the wrong declaration w.r.t. value of the goods by the said Importers, taking a chance to clear the goods by undervaluing it, amply points towards their malafide intent to evade the payment of legitimate Customs duty.

5.2.6 I find in the instant case, as elaborated in the above paras, both the Importers through their Directors had wilfully suppressed the correct value of the imported goods by not declaring the actual value and freight charges at the time of filing of the Bills of Entry and evaded legitimate Customs Duty. It is a matter of fact that after searches conducted by DRI at the Office/Residential premises of the Importers and its Directors there was noticeable increase noticed in the declared value of the goods, which made it pretty clear that the Importer resorted to undervalue the goods in their past imports. Moreover, the Importer M/s S&J Granulate Solutions Pvt. Ltd during the course of investigation has voluntarily deposited part payment of duty so evaded to the extent of **Rs. 60,00,000/-** (Rupees Sixty Lakhs only) (as detailed in Table E *supra*)

5.2.7 The instant case is not a normal case of *bona fide* wrong declaration of value of the goods being almost 460 consignments were cleared by both the Importers during the period 2019 to 2023 (as detailed in Annexures – A & B attached to the subject SCN dated 07.02.2024). Instead, in the instant case, it is apparent that the Importer has deliberately chose to undervalue the imported goods. This wilful and deliberate act clearly brings out their '*mens rea*' in this case. Once the '*mens rea*' is established on the part of the Importer, the extended period of limitation, automatically get attracted.

5.2.8 In view of the foregoing, I find that, due to deliberate/wilful mis-statement w.r.t. value of the goods, duty demand against both the Importers has been correctly proposed u/s. 28 (4) of the Customs Act, 1962 by invoking the extended period of limitation. In support of my stand of invoking extended period, I rely upon the following court decisions:

(a) **2013 (294) E.L.T.222 (Tri.-LB): M/s. Union Quality Plastic Ltd. V/s. Commissioner of C.E. & S.T., Vapi [Misc. Order No. 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 willful omission was either admitted or demonstrated, invocation of extended period of limitation was justified.

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

Demand - Limitation - Fraud, collusion, willful 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, willful misstatement, etc., rejected as it would lead to strange and anomalous results;

(c) **2005 (191) E.L.T. 1051 (Tri. - Mumbai): M/s. Winner Systems V/s. 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 – M/s. Interscape V/s. 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;

5.2.9 Accordingly, I find and hold that the differential duty amounting to **Rs. 6,15,22,358/-** (Rupees Six Crores Fifteen Lakhs Twenty Two Thousand Three Hundred Fifty Eight only) against 250 Bills of Entry filed by M/s S&J Granulate Solutions Pvt. Ltd. (as detailed in Annexure-A to the subject SCN dated 07.02.2024 and Table J *supra*) as well as differential duty amounting to **Rs. 4,39,53,680/-** (Rupees Four Crores Thirty-Nine Lakhs Fifty-Three Thousand Six Hundred Eighty only) against 210 Bills of Entry filed by M/s. SKVA Rubber Solutions Pvt. Ltd. (as detailed in Annexure–B to the subject SCN and Table K *supra*), resulting in terms of re-determined value, as proposed in the subject SCN dated 07.02.2024 is recoverable from M/s S&J Granulate Solutions Pvt. Ltd. and M/s. SKVA Rubber Solutions Pvt. Ltd. under extended period in terms of the provisions of Section 28 (4) of the Customs Act, 1962.

5.2.10 Further, as per Section 28AA of the Customs Act, 1962, 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) of Section 28AA, whether such payment is made voluntarily or after determination of the duty under that section. From the above provisions, it is evident that regarding demand of interest, Section 28AA of the Customs Act, 1962 is unambiguous and mandates that where there is a short payment of duty, the same along with interest shall be recovered from the person who is liable to pay duty. The interest under the Customs Act, 1962 is payable once demand of duty is upheld and such liability arises automatically by operation of law. In an umpteen number of judicial pronouncements, it has been held that payment of interest is a civil liability and interest liability is automatically attracted under Section 28AA of the Customs Act, 1962. Interest is always accessory to the demand of duty as held in case of *Pratibha Processors Vs UOI [1996 (88) ELT 12 (SC)]*.

5.2.11 I have already held in the above paras that the differential duty amounting to **Rs. 6,15,22,358/- (**Rupees Six Crores Fifteen Lakhs Twenty-Two Thousand Three Hundred Fifty-Eight only) against 250 Bs/E filed by M/s S&J Granulate Solutions Pvt. Ltd at three Ports (as detailed in Annexure-A enclosed to the SCN dated 07.02.2024 and Table J *supra*) as well as differential duty amounting to **Rs. 4,39,53,680/-** (Rupees Four Crores Thirty Nine Lakhs Fifty Three Thousand Six Hundred Eighty only) against 210 Bs/E filed by M/s. SKVA Rubber Solutions Pvt. Ltd. at two Ports (as detailed in **Annexure–B** enclosed to the SCN and Table K *supra*), resulting in terms of re-determined value, as proposed in the subject SCN dated 07.02.2024 is recoverable from M/s S&J Granulate Solutions Pvt. Ltd and M/s. SKVA Rubber Solutions Pvt. Ltd. under extended period in terms of the provisions of Section 28 (4) of the Customs Act, 1962. Therefore, I hold that in terms of the provisions of Section 28AA of the Customs Act, 1962, interest on the aforesaid amount of differential duty is also liable to be recovered from the Noticees.

C. Whether an amount of Rs. 60 Lakhs deposited during the investigation on behalf of S & J Granulate Solutions is liable for appropriation against the said demand of differential duty/ interest and other adjudication levies or otherwise;

5.3.1 I find that during the course of investigation, on being pointed out the act of undervaluation of the impugned goods, viz. Cut Rubber Tyres, one of the Importer, M/s S&J Granulate Solutions Pvt. Ltd. voluntarily submitted 04 Demand Drafts for **Rs. 60,00,000/-** vide letters dated 11.02.2022 and 29.04.2022 (as detailed in Table E supra). The said amount has been deposited in the Customs Treasury vide Challan Nos. 266 dated 24.02.2022 and 162 dated 13.05.2022. As I am confirming the demand of short levied Customs Duty amounting to **Rs. 6,15,22,358/-** along with applicable interest, I am inclined to order for appropriation of the subject deposit towards the differential Customs Duty and interest

thereon recoverable from the Importer, M/s S&J Granulate Solutions Pvt. Ltd. under the provisions of Section 28 (4) and 28AA of the Customs Act, 1962.

D. Whether the goods are liable for confiscation u/s. 111 (d) & (m)of the Customs Act, 1962 or otherwise;

5.4.1 The SCN proposes confiscation of goods imported as detailed in Annexure A to the subject SCN, having re-determined Assessable Value of **Rs. 38,36,81,127/-** (Rupees Thirty Eight Crores Thirty Six Lakhs Eighty One Thousand One Hundred Twenty Seven only) pertaining to Importer, M/s S&J Granulate Solutions Pvt. Ltd. and goods covered under Annexure B to the subject SCN vide 210 Bs/E having re-determined Assessable Value of **Rs. 28,14,42,858/-** (Rupees Twenty-Eight Crores Fourteen Lakhs Forty Two Thousand Eight Hundred Fifty Eight only) pertaining to Importer, M/s. SKVA Rubber Solutions Pvt. Ltd. under the provisions of 111(d) & (m) of the Customs Act, 1962

5.4.2 I find that evidences are placed on record substantiating that the Importers have manipulated the invoices to hide the true value of the good and thus had imported the said goods by way of collusion, wilful mis-statement, mis-representation and suppression of facts, to evade payment of appropriate customs duty. I find that the importer had failed to assess and discharge the customs duty correctly by way of undervaluation of goods, imported by them vide Bills of Entry as detailed at Annexure A & B to the subject SCN, by wilful mis-declaration of facts and suppressing the true transaction value of goods and thereby contravened the provisions of Section 46 the Customs Act, 1962. It is a settled law position that, it is the responsibility of the importer to exercise reasonable care to the accuracy and truthfulness of the information supplied. Therefore, the burden of proof naturally falls on the importer to prove the value of the goods. Presence of handful of evidences discussed above clearly shows manipulation of value of goods imported. I therefore find that the said import of goods by mis-declaring the value of the goods, squarely falls within the ambit of 'illegal import' as defined in section 11 of the Customs Act, 1962 in as much as the same was done in contravention of various provisions of the Customs Act, 1962.

5.4.3 Thus, I also find that the case is established on documentary evidences in respect of said 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. '*

5.4.4 As discussed supra, I find that as proposed in subject SCN the subject goods are liable for confiscation under Section 111(d) & (m) of the Customs Act, 1962. Further, I find that Section 111(m) deals with

any and all types of mis-declaration regarding any particular of Bill of Entry. However, they deliberately suppressed correct value of the imported goods, and declared lower value to evade payment of legitimate duty. As discussed in the foregoing paras, it is evident that the Noticee deliberately suppressed the correct value of the goods and wilfully undervalued the imported goods, resulting in short levy of duty. This deliberate suppression of facts and willful mis-declaration resorted by the Noticee, therefore, renders the impugned goods liable for confiscation under Section 111 (d) & (m) of the Customs Act, 1962. Accordingly, I find that acts of omission and commission on part of the Noticee has rendered the goods liable for confiscation under Section 111 (d) &(m) of the Customs Act, 1962.

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

5.4.6 I find that the Importer while filing the Bills of Entry for the clearance of the subject product 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 Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2011 in all their import declarations. Section 17 of the Act, w.e.f. 08.04.2011, provides for self-assessment of duty on imported goods by the importer themselves by filing a Bill of Entry, in the electronic form. Section 46 of the Act makes it mandatory for the importer to make an entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. As per Regulation 4 of the Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulation, 2011 (issued under Section 157 read with Section 46 of the Act), the Bill of Entry shall be deemed to have been filed and self-assessment of duty completed when, after entry of the electronic integrated declaration (which is defined as particulars relating to the imported goods that are entered in the Indian Customs Electronic Data Interchange System) in the Indian Customs Electronic Data Interchange System either through ICEGATE or by way of data entry through the service centre, a Bill of Entry number is generated by the Indian Customs Electronic Data Interchange System for the said declaration. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares all the particulars of the imported goods correctly e.g., the correct description of the imported goods, its correct value, the applicable rate of duty, classification, benefit of exemption notification claimed, if any, in respect of the imported goods when presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, the complete onus and responsibility is on the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and claim correct exemption notification and pay the applicable duty in respect of the imported goods.

5.47 Besides, as indicated above, in terms of the provisions of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018, 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. 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. However, in the subject case, the importer while filing the Bill of Entry has resorted to deliberate suppression of correct value of the goods and wilful mis-declaration of value of the goods. Further, the above said under-valuation and mis-declaration was done with the sole intention to fraudulently evade the correctly payable duty. Thus, the Importer has failed to correctly assess and pay the appropriate duty payable on the imported goods before clearing the same for home consumption.

5.4.8 As the Importers, through wilful mis-statement and suppression of facts, had claimed lower rate of duty while filing Bills of Entry with an intent to evade the applicable Customs duty, resulting in short levy and short payment of duty, I find that the confiscation of the imported goods under Section 111(d) & (m) is justified & sustainable in law. However, I find that the goods imported are not available for confiscation, but I rely upon the order of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited [reported in 2018 (9) G.S.T.L. 142 (Mad.)] wherein the Hon'ble Madras High Court held in para 23 of the judgment as below:

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

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

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

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

M/s Dadha Pharma h/t. Ltd. Vs. Secretary to the Govt. of India, as in 2000 (126) ELT 535 (Chennai High Court);

M/s Sangeeta Metals (India) Vs. Commissioner of Customs (Import) Sheva, as reported in 2015 (315) ELT 74 (Tri-Mumbai);

M/s SacchaSaudhaPedhi Vs. Commissioner of Customs (Import), Mumbai reported in 2015 (328) ELT 609 (Tri-Mumbai);

M/s Unimark Remedies Ltd. Versus. Commissioner of Customs (Export Promotion), Mumbai reported in 2017(335) ELT (193) (Bom)

M/s Weston Components Ltd. Vs. Commissioner of Customs, New Delhi reported in 2000 (115) ELT 278 (S.C.) wherein it has been held that:

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

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

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

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

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

E. Whether penalty under Section 112(a) and/or 114A of the Customs Act, 1962 should be imposed on the Importers M/s S&J Granulate Solutions Pvt. Ltd and M/s SKVA Rubber Solutions Pvt. Ltd. or otherwise;

5.5.1 Legal Provisions:

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

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

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

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

(ii)in the case of dutiable goods, other than prohibited goods, subject to the provisions of Section 114A, to a penalty not exceeding ten percent of the duty sought to be evaded 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.

5.5.2 I find that in the era of self-assessment, the Noticee have wrongly self-assessed the Bills of Entry and evaded the payment of legitimate duty in respect of the impugned imported goods as detailed in Annexure A and Annexure B of the subject SCN. As the Noticee got monetary benefit due to their wilful mis-declaration and evasion of applicable duty on the aforesaid goods, I find that duty was correctly demanded under Section 28(4) of the Customs Act, 1962 by invoking extended period.

5.5.3 I find that as per Section 114A, imposition of penalty is mandatory once the elements for invocation of extended period is established. Hon'ble Supreme Court in *Grasim Industries Ltd. V. Collector of Customs, Bombay [(2002) 4 SCC 297=2002 (141) E.L.T.593 (S.C.)]* has followed the same principle and observed:

"*Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for Court to take upon itself the task of amending or altering the statutory provisions*." (para 10).

Hon'ble Supreme Court has again in *Union of India Vs. Ind-Swift Laboratories* has held: "*A taxing statute must be interpreted in the light of what is clearly expressed. It is not permissible to import provisions in a taxing statute so as to supply any assumed deficiency....*" [2011 (265) ELT 3 (SC)].

Thus, in view of the mandatory nature of penalty under Section 114A no other conclusion can be drawn in this regard.

5.5.4 I find that in the instant case, the impugned imports under the ambit of the subject SCN were affected in the name M/s S&J Granulate Solutions Pvt. Ltd and M/s SKVA Rubber Solutions Pvt. Ltd. I note that correct applicable duty had not been levied by reasons of wilful mis-statement and suppression of facts. As per provisions of Section 114A of the Customs Act, 1962, where duty has been short-levied by reason of wilful misstatement or suppression of facts, the person who is liable to pay duty, shall also be liable to pay a penalty under the said section. In the instant case, as discussed in paras *supra,* the duty has been short-levied for the reasons of mis-statement and suppression of facts at the end of the importer, therefore, the importer i.e. M/s S&J Granulate Solutions Pvt. Ltd and M/s SKVA Rubber Solutions Pvt. Ltd are also liable for penal action under Section 114A of the Customs Act, 1962. Accordingly, I hold that M/s S&J Granulate Solutions Pvt. Ltd and M/s SKVA Rubber Solutions Pvt. Ltd are liable to penalty under Section 114A of the Customs Act, 1962**.** However, in view of fifth proviso to Section 114A, no penalty is liable to be imposed on M/s S&J Granulate Solutions Pvt. Ltd and M/s SKVA Rubber Solutions Pvt. Ltd. under Section 112 ibid, of the Customs Act, 1962.

F. Whether, penalty should be imposed on Shri Amit Aggarwal, Director and Controller of M/s. S & J Granulate Solutions Pvt. Ltd. & M/s. SKVA Solutions Pvt. Ltd. and Shri Kunal Jiwarajka, Ex-Director/controller/shareholder of M/s S&J Granulate Solutions Pvt. Ltd & M/s. SKVA Rubber Solutions Pvt. Ltd. under Section 112(a) & (b) and Section 114 AA.

5.6 Penalty on Amit Aggarwal under Section 112(a) or112(b) of the Customs Act, 1962.

5.6.1 I find that the SCN proposed imposition of penalty on Shri Amit Aggarwal, Director of M/s S&J Granulate Solutions Pvt. Ltd and M/s. SKVA Rubber Solutions Pvt Ltd.

From the investigation by DRI and discussions made herein above, it is revealed that Shri Amit Aggarwal, Director of M/s S&J Granulate Solutions Pvt. Ltd and the person responsible for overall supervision of M/s. SKVA Rubber Solutions Pvt. Ltd. has indulged in such acts and omission as discussed above and concerned himself in carrying, removing, keeping, purchasing and dealing with the imported goods which he knew and had reasons to believe that these were liable to confiscation. His statements were recorded u/s. 108 of the Customs Act, 1962 on 11.02.2022 and 29.04.2022 wherein he admitted the fact that there is undervaluation in the imported goods. It has also emerged as a result of investigation that he was well aware of the prices of the imported goods and was fully aware of the type of transaction and the fact that compensation was shared with them by the overseas supplier equal to the amount of proceeds of disposal accrued to exporter and yet intentionally used false and incorrect material, i.e. invoices (which needed to cover both the service as well as goods prices) and made false and incorrect declaration in the Bills of Entry. Shri Amit Aggarwal was well aware of the freight prices and was well aware of the extant Customs provisions which mandated them to declare true values. He gained monetary benefits by evading payment of proper duties of Customs. I find that the acts and omission of Shri Amit Aggarwal, Director of M/s S&J Granulate Solutions Pvt. Ltd. and M/s. SKVA Rubber Solutions Pvt Ltd. regarding wilful mis-declaration of the value of goods has rendered the goods liable for confiscation under Section 111 as discussed supra made him liable for penal action under Section 112(a) of the Customs Act, 1962. I refrain from imposing penalty on 112(b) of the Customs Act, 1962.

5.6.2 Penalty on Shri Kunal Jiwarajka under Section 112(a) or112(b) of the Customs Act, 1962.

From the investigation by DRI and discussions made herein above, it is revealed that Shri Kunal Jiwarajka, Shareholder and Ex-Director of M/s S&J Granulate Solutions Pvt. Ltd and the person responsible for supervision of accounts, finance and sales of M/s. SKVA Rubber Solutions Pvt. Ltd. has indulged in such acts and omission as discussed supra and involved in finance, accounts and sales associated with

the imported goods which he knew and was well aware of the actual prices of the imported goods. His statement was recorded u/s. 108 of the Customs Act, 1962 on 04.08.2022 and 29.04.2022 wherein he also acknowledged the fact that there is undervaluation in the imported goods. I find the Shri Kunal Jiwarajka as discussed supra indulged in such acts and omission which has rendered the goods liable for confiscation under Section 111 as discussed above made him liable for penal action under Section 112(a) of the Customs Act, 1962. I refrain from imposing penalty on 112(b) of the Customs Act, 1962.

5.6.3 Penalty on Amit Aggarwal and Shri Kunal Jiwarajka under Section 114AA The provisions of Section 114AA of the Customs Act, 1962 are reproduced as under:

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

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

5.6.4 I find that investigation revealed that both these persons were well aware of the correct value of the goods. Both in their respective voluntary statements recorded u/s. 108 of the Customs Act, 1962 admitted the fact that there is undervaluation in the imported goods. In spite of being well aware of correct value of the goods, Shri Amit Aggarwal and Shri Kunal Jiwarajka had chosen to mis-declare the value of the imported goods. I find that investigation from statements of the Shri Amit Aggarwal, Director of both importing firm and corroborating evidences in form of data received from Shipping Lines has succeeded in proving the fact that the Importers resorted to undervalue the goods before Indian Customs which resulted in gross duty evasion at the time of importation. It has also emerged that they both were well aware of the prices of the imported goods and were fully aware of the type of transaction and the fact that compensation was shared with them by the overseas supplier equal to the amount of proceeds of disposal accrued to exporter and yet intentionally used false and incorrect material, i.e. invoices (which needed to cover both the service as well as goods prices) and made false and incorrect declaration in the Bills of Entry. During investigation, Shri Amit Agarwal accepted the non-disclosure of the cost and voluntarily deposited Rs. 60 lacs amount towards partial discharge of their duty liability arising out of non-inclusion of proceeds of disposal accrued by Seller/Exporter directly or indirectly in respect of the old and used rubber tyres imported. Further it was observed that they have substantially increased their declared (CF)/ assessable value during the post search period, it also substantiates the assertion that they were indulged in undervaluation of the imports prior to date of search. Accordingly, penalty is imposable on Shri Amit Aggarwal and Shri Kunal Jiwarajka under Section 114AA of the Customs Act, 1962. I also find that in the following cases, it is held that penalty under Section 114AA of the Customs Act is imposable for the circumstances mentioned therein related to imports. I note that, The Hon'ble CESTAT, New Delhi in the case of M/s S.D. Overseas vs The Joint Commissioner of Customs in Customs Appeal No. 50712 OF 2019 had dismissed the appeal of the petitioner while upholding the imposition of penalty under Section 114 AA of the Customs Act, wherein it had held as under:

28. As far as the penalty under Section 114AA is concerned, it is imposable if a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act. We find that the appellant has misdeclared the value of the imported goods which were only a fraction of a price the goods as

per the manufacturer's price lists and, therefore, we find no reason to interfere with the penalty imposed under Section 114AA.

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

(i) S. M. Taufeek vs Comm of Customs, Chennai-IV [2017(358) ELT 326 (Tri. Chennai)]

(ii) Brij Kishor Goel Vs Commissioner of Customs, Ahmedabad [2019(367) ELT 656(Tri-Ahmd)

(iii) Edelweiss Commodities Services Vs Pr. Commr of CT Hyderabad [2019(369) **4.16.**

G. Whether, Ms. Vaishali Aggarwal, Ex-Director, M/s. SKVA Rubber Solutions Pvt. Ltd.; Ms. Sakshi Jiwarajka, Ex-Director, M/s. SKVA Rubber Solutions Pvt. Ltd.; and Shri Govind Sharma, Director M/S S&J Granulate Solutions Pvt. Ltd. & M/s. SKVA Rubber Solutions Pvt. Ltd. are liable for penal action u/s. 112 (a) & (b) and 117 of the Customs Act, 1962 or otherwise.

5.7.1. <u>Imposition of penalty on Ms. Vaishali Aggarwal, ex-director m/s SKVA rubber solutions pvt. ltd.</u>:

I find that the SCN proposed imposition of penalty on Ms. Vaishali Aggarwal, Ex-Director of M/s. SKVA Rubber Solutions Pvt. Ltd. u/s. 112 (a) and 117 of the Customs Act, 1962. I find that being a director of the importing firm she was a beneficial owner of duty so saved by undervaluation of the goods. The acts of one Director of the company which resulted in monetary gain to the other Directors, then the said Directors also become liable for penal action under the provisions of the Customs Act, 1962. I find that in the written submission, it is contended that Ms. Vaishali Aggarwal has resigned from the post of Director on 20.01.2020, however copy of the resignation letter was not furnished. In this regard mail to the authorised consultant was forwarded on 22.09.2025 to submit the same urgently, in response vide mail dated 25.09.2025, duly filled Form DIR- 12 was submitted. As per website of Ministry of Corporate Affairs, MCA.gov.in, Form No.DIR-12 is; *" Particulars of appointment of directors and the key managerial personnel and the changes among them, Pursuant to sections 7(1) (c), 168 & 170 (2) of The Companies Act, 2013 and rule 17 of the Companies (Incorporation) Rules 2014 and 8, 15 & 18 of the Companies (Appointment and Qualification of Directors) Rules, 2014".* However, any acknowledgement or proof indicating uploading of same in the portal of Ministry of Corporate Affairs – MCA, or any other acknowledgement indicating the submission of the form to the competent authority is not submitted. Further, apart from this DIR-12 form noticee has failed to furnish any other document to substantiate their claim that Ms. Vaishali Aggarwal, ex-director m/s SKVA rubber solutions pvt. Ltd has resigned. In view of above, I find that being a Director of the importing firm, Ms. Vaishali Aggarwal was benefitted monetarily from the duty so saved by undervaluation of the goods and she is liable for penalty under section 112(a) of the Customs Act, 1962.

As far as proposal of imposition of penalty u/s. 117 of the Customs Act, 1962, I find that the provisions of Section 117 is residuary in nature and when there is relevant penal provision applicable a*gains*t the Noticee, I refrained from imposing penalty on Ms. Vaishali Aggarwal u/s. 117 *ibid*.

5.7.2. Imposition of penalty on Ms. Sakshi Jiwarajka, ex-director M/s SKVA Rubber Solutions pvt. ltd.:

I find that the SCN proposed imposition of penalty on Ms. Sakshi Jiwarajka, Ex-Director M/S Skva Rubber Solutions Pvt. Ltd. u/s. 112 (a) and 117 of the Customs Act, 1962. I find that being a director of the importing firm she was a beneficial owner of duty so saved by undervaluation of the goods. The acts of one Director of the company which resulted in monetary gain to the other Directors, then the said Directors also become liable for penal action under the provisions of the Customs Act, 1962. I find that in the written submission, it is contended that Ms. Sakshi Jiwarajka has resigned from the post of Director on 31.03.2019, however copy of the resignation letter is not furnished. In this regard mail to the authorised consultant was forwarded on 22.09.2025 to submit the same urgently, in response vide mail dated 25.09.2025, duly filled Form DIR- 12 was submitted. As per website Ministry of Corporate Affairs, MCA.gov.in, Form No.DIR-12 is; *" Particulars of appointment of directors and the key managerial personnel and the changes among them, Pursuant to sections 7(1) (c), 168 & 170 (2) of The Companies Act, 2013 and rule 17 of the Companies (Incorporation) Rules 2014 and 8, 15 & 18 of the Companies (Appointment and Qualification of Directors) Rules, 2014".* However, any acknowledgement or proof indicating uploading of same in the portal of Ministry of Corporate Affairs – MCA, or any other acknowledgement indicating the submission of the form to the competent authority is not submitted. Further, apart from this DIR-12 form noticee has failed to furnish any other document to substantiate their claim that Ms. Vaishali Aggarwal, ex-director m/s SKVA rubber solutions pvt. Ltd has resigned. In view of above, I find that being a Director of the importing firm **Sakshi** Jiwarajka was benefitted monetarily from the duty so saved by undervaluation of the goods and she is liable for penalty under section 112(a) of the Customs Act, 1962.

As far as proposal of imposition of penalty u/s. 117 of the Customs Act, 1962, I find that the provisions of Section 117 is residuary in nature and when there is relevant penal provision applicable a*gains*t the Noticee, I refrained from imposing penalty on Ms. Vaishali Aggarwal u/s. 117 *ibid*.

5.7.3. Imposition of penalty on Shri Govind Sharma, Director M/S S&J Granulate Solutions Pvt. Ltd. & M/S SKVA Rubber Solutions Pvt. Ltd.: I find that the SCN proposed imposition of penalty on Shri Govind Sharma, Director of M/s S&J Granulate Solutions Pvt. Ltd and M/s. SKVA Rubber Solutions Pvt. Ltd. u/s. 112 (a) and 117 of the Customs Act, 1962. I find that being a director of the importing firm, he was a beneficial owner of duty so saved by undervaluation of the goods. The acts of one Director of the company which resulted in monetary gain to the other Directors, then the said Directors also become liable for penal action under the provisions of the Customs Act, 1962. Therefore, I am of the firm view that Shri Govind Sharma is liable for penal action u/s. 112 (a) of the Customs Act, 1962.

As far as proposal of imposition of penalty u/s. 117 of the Customs Act, 1962, I find that the provisions of Section 117 are residuary in nature and when there is relevant penal provision applicable against the Noticee, I refrained from imposing penalty on Ms. Vaishali Aggarwal u/s. 117 *ibid*.

6. I find that the Noticees in their defence reply contended that subject Show Cause Notice is invalid as the original assessment is not challenged by the department. The instant SCN is issued under Section 28 of the Customs Act, 1962 and I find that Section 28 of the Customs Act, 1962 has an exclusive provision covering the aspect pertaining to non-levy, short levy and erroneous refund. There is no provision or requirement under the Customs Act, 1962 of review of an assessment order before raising demand under Section 28 of the Customs Act, 1962. Under Section 129D for review of an order by the department, the limitation is to an extent of a period of three month only, whereas Section 28 provides period of 2

years/5 years for raising demand of short paid or short levied duty. Under Section 129D, any decision or order can be examined and reviewed by the competent authority. But the provisions of Section 28 of the Act are for matters only pertaining to non-levy, short-levy and erroneous refund. The provisions of demand of non-levy, short-levy and for recovery of erroneous refund under Section 28 of the Act are independent provisions. Similarly, the provisions of Section 129D are independent of Section 28 of the Act. Provisions of Section 28 satisfy the principles of natural justice by making it mandatory for issuance of Show Cause Notice and to allow the party to have a full hearing on the charges that would be made against them. The proceedings under Section 28 are of exclusive nature, in as much as, independent proceedings are held by issue of Show Cause Notice by the Department by which it sets out the reason for claiming non-levy, short-levy relying on evidence. The noticee gets full opportunity to know the charges levelled against him as well as the evidence on which the charges are levelled and in turn place his case with supporting evidence in defence. Thus, Section 28 is to be considered independent of the provisions of Section 129D of the Act. The issue is well settled by the higher judicial fora wherein it is held that Section 28 can be invoked for short-levy or non-levy of customs duty even if assessment order is not appealed under Section 129 of the Act. The Hon'ble High Court of Madras in the case of M/s. Venus Enterprise V/s. CC, Chennai, reported as 2006 (199) ELT 405 (Mad.) and affirmed by the Hon'ble Supreme Court [2007 (209) ELT A61 (S.C.)], after considering the Apex Court's earlier judgment in the case of M/s. Priya Blue Ind [2004 (172) E.L.T. 145 (S.C.)] has held that in case of short levy, there is no lack of jurisdiction on the part of the adjudicating authority to issue Show Cause Notice under Section 28 of the Act after clearance of the goods.

6.1 I find that the Importer and its Directors in their written reply to the SCN has denied all the allegations levelled against them in the SCN and contended that they had correctly declared value of the goods on the basis of Invoices of foreign suppliers, the duty along with interest cannot be demanded by invoking extended period of limitation, the goods are not entitled for confiscation and they are not liable for any penal action. The Importer has kept reliance on various case laws in their defence. However, it is submitted that the Hon'ble Supreme Court of India in case of M/s. Ambica Quarry Works V/s. State of Gujarat & Others [1987 (1) S.C. C.213] observed that "*the ratio of any decision must be understood in the background of the facts of the case. It has been long time ago that a case is only an authority for what it actually decides and not what logically follows from it*".

6.2 The facts and circumstances in the instant case and the cited case laws are different. It is a settled position in law that a ratio of a decision would apply only when the facts are identical. Thus, the case laws relied upon by the noticees do not support in any manner. Accordingly, with regards to the subject case laws relied upon by the Importer in their written reply to the SCN, it is observed that each case is unique and is to be dealt independently taking into account the facts and circumstances of each case.

7. In view of the above discussion and findings, I pass the following order.

ORDER

7. 1 **As regards to the Importer, M/s. S & J Granulate Solutions Pvt. Ltd.**:

(i) I reject the declared Assessable Value of the goods imported vide 250 Bills of entry, as detailed in Annexure A to the subject SCN, amounting to **Rs. 18,44,62,080/-** under the provisions of Rule 12 of the CVR, 2007 and order to re-determine the same at **Rs. 38,36,81,127/-** (Rupees

Thirty Eight Crore Thirty Six Lakh Eighty One Thousand One Hundred Twenty Seven only) as per Rule 3(1) and Rule 10(1)(d) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.

(ii) I order to confiscate the goods imported having re-determined Assessable Value of **Rs. 38,36,81,127/-** (Rupees Thirty-Eight Crore Thirty-Six Lakh Eighty-One Thousand One Hundred Twenty-Seven only), as detailed in Annexure-A to the subject SCN, imported by M/s. S & J Granulate Solutions Pvt. Ltd., under Section 111 (d) and 111(m) of the Customs Act, 1962. I impose Redemption Fine of **Rs. 92,28,400/- (Rupees Ninety-Two Lakh Twenty-Eight Thousand Four Hundred only)** under Section 125 (1) of the Customs Act, 1962.

(iii) I confirm the demand and order to recover the differential duty amounting to **Rs. 6,15,22,358/-** (Rupees Six Crore Fifteen Lakh Twenty Two Thousand Three Hundred Fifty Eight only) against the subject 250 Bills of Entry as detailed in Annexure-A to the subject SCN, under the provisions of Section 28 (4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 from M/s. S & J Granulate Solutions Pvt. Ltd.

(iv) I order to appropriate an amount of **Rs. 60,00,000/-** (Rupees Sixty Lakh only) voluntarily deposited by the Importer during the period of investigation towards demanded differential Customs Duty and interest, recoverable from the Importer.

(v) I impose Penalty equal to the Differential duty amounting to **Rs. 6,15,22,358/-** (Rupees Six Crores Fifteen Lakhs Twenty-Two Thousand Three Hundred Fifty-Eight only) along with applicable interest under Section 114A of the Customs Act, 1962 on M/s. S & J Granulate Solutions Pvt. Ltd. However, such penalty would be reduced to 25% of the total penalty-imposed under Section 114A of the Customs Act, 1962 if the amount of duty as confirmed above, the interest and the reduced penalty are paid within 30 (thirty) days of communication of this Order, in terms of the first proviso to Section 114A of the Customs Act, 1962.

(vi) As I have imposed penalty under section 114A of the Customs Act, 1962, I refrain from imposing penalty on M/s. S & J Granulate Solutions Pvt. Ltd under Section 112(a) of the Customs Act, 1962.

7.2 **<u>As regards to the Importer, M/s. SKVA Rubber Solutions Pvt. Ltd</u>.**:

(i) I reject the declared Assessable Value of the goods imported vide 210 Bills of Entry, as detailed in Annexure B to the subject SCN, amounting to **Rs. 13,53,09,066/-** under the provisions of Rule 12 of the CVR, 2007 and order to re-determine the same at **Rs. 28,14,42,858/-** (Rupees Twenty Eight Crores Fourteen Lakhs Forty Two Thousand Eight Hundred Fifty Eight only) as per Rule 3(1) and Rule 10(1)(d) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

(ii) I order to confiscate the goods imported having re-determined Assessable Value of **Rs. 28,14,42,858/-** (Rupees Twenty-Eight Crore Fourteen Lakh Forty-Two Thousand Eight Hundred Fifty Eight only), as detailed in Annexure-B to the subject SCN, imported by M/s. SKVA Rubber Solutions Pvt. Ltd. under Section. 111 (d) & 111(m) of the Customs Act, 1962. I impose Redemption Fine of **Rs. 65,93,000/- (Rupees Sixty Five Lakh, Ninety Three**

Thousand only) under Section 125 (1) of the Customs Act, 1962, on M/s. SKVA Rubber Solutions Pvt. Ltd.

(iii) I confirm the demand and order to recover the differential duty amounting to **Rs. 4,39,53,680/-** (Rupees Four Crore Thirty Nine Lakh Fifty Three Thousand Six Hundred Eighty only) against the subject 210 Bills of Entry as detailed in Annexure-B to the subject SCN, under the provisions of Section 28 (4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962 from M/s. SKVA Rubber Solutions Pvt. Ltd.

(iv) I impose Penalty equal to the Differential duty amounting to **Rs. 4,39,53,680/-** (Rupees Four Crore Thirty-Nine Lakh Fifty Three Thousand Six Hundred Eighty only) along with applicable interest under Section 114A of the Customs Act, 1962 on M/s. SKVA Rubber Solutions Pvt. Ltd. However, such penalty would be reduced to 25% of the total penalty-imposed u/s. 114A of the Customs Act, 1962 if the amount of duty as confirmed above, the interest and the reduced penalty are paid within 30 (thirty) days of communication of this Order, in terms of the first proviso to Section 114A of the Customs Act, 1962.

(v) As I have imposed penalty under section 114A of the Customs Act, 1962, I refrain from imposing penalty on M/s. S & J Granulate Solutions Pvt. Ltd under Section 112(a) of the Customs Act, 1962.

7.3 Penalties on Directors of importing firms, M/s S&J Granulate Solutions Pvt. Ltd and M/s. SKVA Rubber Solutions Pvt. Ltd

(i) I impose penalty of **Rs. 1,00,00,000/- (Rupees One Crore only)** on Shri Amit Aggarwal, Director and controller of the importing firm, M/s S&J Granulate Solutions Pvt. Ltd and M/s. SKVA Rubber Solutions Pvt. Ltd. under the provisions of Section 112 (a) of the Customs Act, 1962.

(ii) I impose penalty of **Rs. 2,00,00,000/- (Rupees Two Crore only)** on Shri Amit Aggarwal, Director and controller of the importing firm, M/s S&J Granulate Solutions Pvt. Ltd and M/s. SKVA Rubber Solutions Pvt. Ltd. under the provisions of Section 114AA of the Customs Act, 1962.

(iii) I impose penalty of **Rs. 61,52,250/- (Rupees Sixty One Lakh, Fifty Two Thousand Two hundred and Fifty only)** on Shri Kunal Jiwarajka, Ex-Director/controller/shareholder of the importing firm, M/s S&J Granulate Solutions Pvt. Ltd and M/s. SKVA Rubber Solutions Pvt. Ltd. under the provisions of Section 112 (a) of the Customs Act, 1962.

(iv) I impose penalty of **Rs. 1,00,00,000/- (Rupees One Crore only)** on Shri Kunal Jiwarajka, Ex-Director/controller/shareholder of the importing firm, M/s S&J Granulate Solutions Pvt. Ltd and M/s. SKVA Rubber Solutions Pvt. Ltd. under the provisions of Section 114AA of the Customs Act, 1962.

(v) I impose penalty of **Rs. 1,00,00,000/- (Rupees One Crore only)** on Shri Govind Sharma, Director of the importing firm M/s S&J Granulate Solutions Pvt. Ltd and M/s. SKVA Rubber Solutions Pvt. Ltd. under the provisions of Section 112 (a) of the Customs Act, 1962. I refrain from imposing penalty under Section 117 of the Customs Act,1962.

(vi) I impose penalty of **Rs. 50,00,000/-- (Rupees Fifty Lakh only)** on Vaishali Aggarwal, Ex-Director of the importing firm, M/s. SKVA Rubber Solutions Pvt. Ltd. under the provisions of Section 112(a) of the Customs Act, 1962. I refrain from imposing penalty under Section 117 of the Customs Act, 1962.

(vii) I impose penalty of Rs**. 50,00,000/- (Rupees Fifty Lakh only)** on Ms. Sakshi Jiwarajka, Ex-Director M/s. SKVA Rubber Solutions Pvt. Ltd. under the provisions of Section 112(a) of the Customs Act, 1962. I refrain from imposing penalty under Section 117 of the Customs Act, 1962.

8. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved, under the provisions of the Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

Digitally signed by
Kundan Yadav
Date: 10-11-2025
15:10:46

(**DR. KUNDAN YADAV**)
(डॉ. कुन्दन यादव)
सीमा शुल्क आयुक्त /Commissioner of Customs,
एनएस-IV, जेएनसीएच /NS-IV, JNCH,

To,

1. M/s. S&J Granulate Solutions Pvt. Ltd.,
   Survey No. 208/A/P, in Village Lavachha,
   Vapi-Silvasa Road, Taluka-Pardi,
   District Valsad, Gujarat.– 396 193.

2. M/s. SKVA Rubber Solutions Pvt. Ltd.,
   Survey No. 208/4/A in Village Lavachha,
   Vapi-Silvasa Road, Taluka-Pardi, s
   District Valsad , Gujarat.– 396 193

3. Shri Amit Aggarwal, Director,
   M/s. S&J Granulate Solutions Pvt. Ltd. &
   M/s. SKVA Rubber Solutions Pvt. Ltd.,
   The View Building, 2/3rd Floor,
   165, Dr. Annie Basant Road, Opp. Tata Show Room,
   Worli, Mumbai.

4. Ms. Vaishali Aggarwal, Director,
   M/s. SKVA Rubber Solutions Pvt. Ltd.,
   Survey No. 208/4/A in Village Lavachha,
   Vapi-Silvasa Road, Taluka-Pardi,
   District Valsad, Gujarat – 396 193

5. Shri Kunal Jiwarajka, Director,
   M/s. S&J Granulate Solutions Pvt. Ltd. &
   M/s. SKVA Rubber Solutions Pvt. Ltd.,
   C-161, Grand Paradi, Kemps Corner,
   August Kranti Marg, Mumbai – 400 026.

6. Ms. Sakshi Jiwarajka, Director,
   M/s. SKVA Rubber Solutions Pvt. Ltd.,
   R/o. C-161, Grand Paradi, Kemps Corner,
   August Kranti Marg, Mumbai – 400 026.

7. Shri Govind Sharma, Director,
   M/s. S&J Granulate Solutions Pvt. Ltd. &
   M/s. SKVA Rubber Solutions Pvt. Ltd.,
   Survey No. 208/4/A in Village Lavachha,
   Vapi-Silvasa Road, Taluka-Pardi,
   District Valsad, Gujarat – 396 193,.

Copy to:

1. The ADG, DRI, New Delhi

2. The Commissioner of Customs, ICD Tarapur, Maharashtra

3. The Commissioner of Customs, ICD, Valsad,Maharashtra

4. The AC/ DC, Chief Commissioner's Office, JNCH.

5. The AC/DC Group II (H-K), JNCH

6. The DC/ AC, Centralised Revenue Recovery Cell, JNCH.

8. The Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.

9. Office Copy.