



सीमा शुल्क आयुक्त का कार्यालय, एनएस-III
OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-III
केंद्रीकृत अधिनिर्णयन प्रकोष्ठ, जवाहरलाल नेहरू सीमा शुल्क भवन
CENTRALIZED ADJUDICATION CELL, JAWAHARLAL NEHRU CUSTOM
HOUSE,
न्हावा शेवा, तालुका-उरण, जिला- रायगढ़, महाराष्ट्र -400 707
NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA-
400707

File No: S/10-86/2016-17/CAC/NS-V/COMMR/JNCH
&
S/10-249/2016-17/CAC/NS-V/COMMR/JNC
SCN No: File No. SG/Misc-69/2015-16/SIIB (I)/JNCH dated 26.09.2016
&
774/SIIB-I/2016-17/JNCH dated 22.02.2017

DIN:20251178NX000000AB06	
आदेश की तिथि Date of Order	: 03.11.2025
जारी किए जाने की तिथि Date of Issue	: 06.11.2025
आदेश सं. Order No.	: 261/2025-26/आयुक्त/एनएस-III/ सीएसी/जेएनसीएच 261/2025-26 /Commr./NS-III /CAC/JNCH
पारितकर्ता Passed by	: श्री विजय रिशी SH. VIJAY RISI आयुक्त, सीमाशुल्क (एनएस-III), जेएनसीएच, न्हावा शेवा Commissioner of Customs (NS-III), JNCH, Nhava Sheva
पक्षकार (पार्टी)/ नोटिसी का नाम Name of Party/ Noticee	: मेसर्स मेजर ब्रांड्स (इंडिया) प्राइवेट लिमिटेड, M/s. Major Brands (India) Pvt. Ltd.,

मूलआदेश

ORDER-IN-ORIGINAL

1. इस आदेश की मूल प्रति की प्रतिलिपि जिस व्यक्तिको जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।
The copy of this order in original is granted free of charge for the use of the person to whom it is issued.
2. इस आदेश से व्यथित कोई भी व्यक्ति सीमाशुल्क अधिनियम १९६२ की धारा १२९(ए) (के तहत इस आदेश के विरुद्ध सी ई एस टी ए टी, पश्चिमी प्रादेशिक न्यायपीठ (वेस्ट रीजनल बेंच(, ३४, पी .डी .मेलोरोड, मस्जिद (पूर्व(, मुंबई— ४०० ००९ को अपील कर सकता है, जो उक्तअधिकरण के सहायक रजिस्ट्रार को संबोधित होगी।
Any Person aggrieved by this order can file an Appeal against this order to CESTAT, West Regional Bench, 34, P D Mello Road, Masjid (East), Mumbai - 400009 addressed to the Assistant Registrar of the said Tribunal under Section 129 A of the Customs Act, 1962.
3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

Main points in relation to filing an appeal:-

फार्म Form	: फार्म न .सीए ३, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कमसे कम एक प्रति प्रमाणित होनी चाहिए)
	Form No. CA3 in quadruplicate and four copies of the order appealed against (at least one of which should be certified copy)
समय सीमा Time Limit	: इस आदेश की सूचना की तारीख से ३ महीने के भीतर Within 3 months from the date of communication of this order.
फीस Fee	: (क) एक हजार रुपये—जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५ लाख रुपये या उस से कम है (a) Rs. One Thousand - Where amount of duty & interest demanded & penalty imposed is Rs. 5 Lakh or less. (ख) पाँच हजार रुपये— जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५ लाख रुपये से अधिक परंतु ५० लाख रुपये से कम है (b) Rs. Five Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 5 Lakh but not exceeding Rs. 50 lakh (ग) दस हजार रुपये—जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्तिकी रकम ५० लाख रुपये से अधिक है (c) Rs. Ten Thousand - Where amount of duty & interest demanded & penalty imposed is more than Rs. 50 Lakh.
भुगतान की रीति Mode of Payment	: क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीयकृत बैंक द्वारा सहायक रजिस्ट्रार, सी ई एस टी ए टी, मुंबई के पक्षमें जारी किया गया हो तथा मुंबई में देय हो। A crossed Bank draft, in favour of the Asstt. Registrar, CESTAT, Mumbai payable at Mumbai from a nationalized Bank.
सामान्य General	: विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमाशुल्क अधिनियम, १९९२, सीमाशुल्क (अपील) नियम, १९८२ सीमाशुल्क, उत्पादन शुल्क एवं सेवा कर अपील अधिकरण (प्रक्रिया) नियम, १९८२ का संदर्भ लिया जाए। For the provision of law & from as referred to above & other related matters, Customs Act, 1962, Customs (Appeal) Rules, 1982, Customs, Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 may be referred.

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

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

The proceedings in the present case arise from the Final Order No. 85396-85398/2024 dated 08.04.2024, passed by the Hon'ble CESTAT in Customs Appeals No. 85370 of 2020 and 85373 of 2020. The said appeals was filed by **M/s. Major Brands (India) Pvt. Ltd.**, located at 401 Skyline Icon, Near Mittal Estate, Andheri Kurla Road, Andheri (E), Mumbai – 400059 (hereinafter referred to as "the importer" or "the noticee" or "MBIPL"), against

- (i) Order-in-Original No. 59 /2019-20/Commr/NS-III/CAC/JNCH dated 28.11.2019 passed by the Commissioner of Customs, NS-III, JNCH, Nhava Sheva.
- (ii) Order-in-Original No. 60 /2019-20/Commr/NS-III/CAC/JNCH dated 28.11.2019 passed by the Commissioner of Customs, NS-III, JNCH, Nhava Sheva.

BRIEF FACTS OF THE DE-NOVO PROCEEDINGS

2. The brief facts of the case are that the Noticee, M/s. Apparel Group India Pvt. Ltd. (earlier known as **M/s. Major Brands (India) Pvt. Ltd**), is engaged in import and retail sale of products such as garments, footwear and accessories, ladies bags etc of various international brands such as Mango, Aldo, Charles and Keith, BHPC, Nine West, Guess, Bebe, La-senza and Inglot through their stores in multiple locations in India. M/s. Major Brands Pvt. Ltd. carries on business of import and retail trade through exclusive outlets format in India and it has Franchise rights of various international brands for India and the business format is in the nature of single Brand retail. Further, M/s Major Brands (I) Pvt. Ltd (MBIPL) have entered into different agreements with owners of the above said international fashion brands to sell their products in India and they are importing goods sold by them. The foreign branded goods were imported as per agreements entered with respective foreign brand owners and that payment of Franchise fee and other reimbursements to the foreign brand owners are made as per agreement as a condition of sales of imported goods in India, and the same have not been included in the assessable value of goods on which Customs duty has been paid.

Therefore, following demand Cum Show Cause Notice (SCN) were issued to M/s Major Brands (I) Pvt. Ltd for the goods imported through Nhava-Sheva:

- i. Show Cause Notice (SCN) issued vide File No. SG/Misc-69/2015-16/SIIB (I)/JNCH dated 26.09.2016 was issued for the period **from 01.10.2014 to 31.03.2015**.
- ii. Show Cause Notice (SCN) No. 774/SIIB-I/2016-17/JNCH dated 22.02.2017 vide F.No.SG/Misc-69/2015-16/ SIIB (I) JNCH issued for the period **from 01.04.2015 to 16.06.2015**.

BACKGROUND:

3. The case originated from an investigation conducted by the Directorate of Revenue Intelligence (DRI), Delhi Zonal Unit, which had developed intelligence that the Noticee was allegedly evading customs duty. The investigation suggested that certain payments made by

the Noticee to foreign brand owners such as franchise fee, store entry fee/ entrance fee, advertisement fee and sales promotion charges **etc.** were not being included in the assessable value of the imported goods. These payments were made under franchise or licensing agreements and were linked to the sale of imported goods. However, these were not declared/ added in the transaction value of the imported goods at the time of import and Customs duty was not paid on this amount.

3.1 Statement of the persons and analysis:

During the course of investigation by DRI, voluntary statements under section 108 of the Customs Act, 1962 of Shri. Naveen Golchha, CFO of M/s. MBIPL was recorded on 19th and 20th of May, 2015 and that of Shri. Tushar Raul, Director at Customs Broker firm M/s Sidhi Clearing and Forwarding Pvt. Ltd. was recorded on 20.05.2015 by the DRI officials. The relevant portion of the said statements is reproduced below:-

3.2 Shri Naveen Golchha, CFO of M/s. MBIPL in his statement recorded under Section 108 of Customs Act, 1962 on 19.05.2016 has *interalia* accepted that foreign branded goods were imported as per agreements entered into with respective foreign brand owners and that payment of Franchise Fee and other reimbursement to the foreign brand owners have been made as per agreement as a condition of sale of imported goods in India, which were not included in the assessable value on which Customs duty has been paid. He has further stated that on perusal of Customs Valuation (determination of value of imported goods) Rules, 2007 ('CVR, 2007' in short), according to Rule 10, Franchise Fee payments should have been included in the assessable value of the imported goods for the purpose of payment of Customs duty. In his further, statement on 20.05.2016, he has explained activities undertaken under the heading of advertisement and sales promotion as:

- A. Advertisement:-There are three types of expenses being made on account of advertisement (i) Imported material for advertisement (ii) locally procured material for advertisement (iii) Amount remitted to brand owner on account of advertisement done in India directly by them. Main activities being undertaken as advertisement are advertisement in Magazines and Newspapers, outdoor hoardings, flex printing, window banners, digital media, LED display, posters etc for brand promotion.
- B. Sales Promotion:-On account of sales promotion they used to undertake activities such as Media –Kit, event organisation, fashion shows, activities in stores, gift articles, store promotion material, contest, product catalogues, loyalty cards and gift vouchers, etc for promotion of brands.

He further stated that these expenditures are incurred in compliance of contractual obligation.

3.3 Shri Tushar Raul, Director, Customs Broker firm M/s Sidhi Clearing and Forwarding Pvt. Ltd., in his statement recorded under Section 108 of the Customs Act, 1962, inter-alia stated that they were associated with M/s. MBIPL for past 8-10 years and engaged in the clearing and forwarding of import consignments for M/s. MBIPL. He further stated that they

used to receive intimation of import consignments from Freight Forwarders and from M/s. MBIPL. On arrival of consignments at port and finalisation of Bill of Entry (B/E), they used to work out duty involved as per value declared in the invoices and informed the Logistics and Account department of M/s. MBIPL and accordingly they used to pay duty online. He confirmed that the affairs of M/s. MBIPL were looked after by Shri. Naveen Golchha. Further, Shri Tushar Raul stated that M/s. MBIPL were paying Customs Duty on the value declared as per invoices issued by the foreign supplier and they were not including any additional payment made for Franchisee Fee in transaction value for the payment of Customs duty, which should have been included in transaction value for the payment of Customs duty as per Rule 10 of the CVR, 2007.

3.4 Therefore, a Demand-Cum-SCN No. 30/2015 dated 30.05.2015 having File No. DRI/DZU/23/Enq.-33/2014/2713 was issued by the DRI, Delhi Zonal Unit, to M/s. MBIPL for the goods imported in India till 30.09.2014 which included imports made at Nhava-Sheva.

3.5 Thereafter, Special Intelligence & Investigation Branch (Import), JNCH ('SIIB (I)' in short) was asked to conduct investigations w.r.t. imports made after 30.09.2014 at Nhava Sheva Port by the importer. Therefore, to investigate the matter the importer M/s. MBIPL was asked to submit Balance Sheet for the year 2014-15 and 2015-16; agreements with foreign brand owners and other relevant details of the Entrance Fee, Franchise Fee, Advertisement expenses paid and Sales Promotion contribution paid to the foreign brand owners for the period from 01.10.2014 to 16.06.2015. Accordingly, the importer has submitted the required data and documents.

The relevant portions Agreements between M/s Major Brands Pvt. Ltd and Brand Owners are reproduced below:-

3.6 Contract between Aldo Group International AG, Baar, Switzerland the Franchisor and M/s. MBIPL, has indicated that the noticee has paid certain other charges to the franchisor.

- i. Para 8.1 stated that the franchisee shall pay to the Franchisor a onetime non-refundable consideration of twenty five thousand US Dollars (US \$ 25000.00).
- ii. Para 8.1.1. In addition, the Franchisee shall pay a continuing, non-refundable, franchisee fee in an amount equal to three percent (3%) of the selling price of all products. Such payments shall be made on or before 10th, day following end of each quarter during the term of agreement, based upon selling price of all products for the immediately preceding quarter.
- iii. Para 11.3. Franchisee shall pay the cost thereof of one copy of all advertising and promotional material and artwork which it uses and intends to use in connection with its own stores plus a 15% administration charges.
- iv. Para 11.7. In order to promote and enhance the global image and reputation of the Aldo Brand, Franchisee shall, if as and when Franchisor establishes an international advertising and promotion fund, pay into such fund as an advertising and promotion contribution an amount determined from time to time by Franchisor but which shall not be greater than one percent of selling price of all products for each quarter.

v. **“10. TRADE-MARKS**

10.1 Franchisee acknowledges that Franchisor has the exclusive right to grant a franchise to Franchises in respect of the Trademarks as herein contemplated. Franchisee further acknowledges that neither this Agreement nor the use of the Trade-marks by Franchisee shall in any way give or be deemed to give to Franchisee any interest in the Trade-marks except for the right to use the Trade-marks solely in the Territory in association with the ALDO System, the Franchised Business, the Products and in accordance with the terms of this Agreement. Franchisee shall not use the Trade-marks or any contraction, variation or abbreviation thereof or anything confusingly similar herewith in any manner calculated to represent or which suggests that it is the owner of the Trade-marks. Neither during the Term of this Agreement nor at any time after termination hereof shall Franchisee, either directly or indirectly, attempt any registration of the Trade-marks or of any contraction, variation or abbreviation thereof in any manner and whether as a trade-mark or as a domain name anywhere in the world, or attempt to dilute the value of any goodwill attaching to the Trade-marks.

10.2 Without limiting the generality of the foregoing provisions, Franchisee undertakes and agrees as follows:

10.2.2 not to use the Trade-marks, any variations thereof or anything confusingly similar therewith as part of its corporate, firm or business name or as part of a domain name, or for any other purposes save and except in accordance with the terms and conditions of this Agreement or as may otherwise be specifically authorised by Franchisor in writing.

10.3 Franchisee shall use the Trade-marks in such manner as to sufficiently protect and preserve all rights of Franchisor and its Affiliated Corporations therein within the Territory. Franchisee shall not take any action which might invalidate the Trademarks, impair any rights of Franchisor and its Affiliated Corporations therein or create any rights adverse to those of Franchisor and its Affiliated Corporations, and Franchisee undertakes not to register or attempt to register any of the Trade-marks in any additional classes anywhere. Without limiting the generality of the foregoing, Franchisee shall use the Trade-marks correctly spelled and not as a verb or in the plural and not in any manner which might endanger the validity or registrations thereof in the Territory or elsewhere. Furthermore, Franchisee shall use the Trade-marks only as depicted in their respective registrations, or if not registered, as used by Franchisor and/or its Affiliated Corporations,

10.4 No right, title or interest in the Trade-marks is transferred to Franchisee except the right to use them only during the Term of this Agreement in the manner and subject to the terms and conditions set forth in this Agreement.

10.5 Franchisee shall not use any Trade-mark, trade name, service mark, logo or any identifying mark other than the Trade-marks in association with the Products, nor shall Franchisee use any Trade-mark, trade name, service mark, logo or any identifying marks other than the Trade marks in association with the ALDO System, the Stores and the Franchised Business

10.7 Subject to the foregoing provisions, Franchises shall not use or permit the use of any other trade-mark, trade name or commercial symbol in connection with the Stores and Products including, without limitation, in any advertising and promotion, not use or permit the

use or employment of the ALDO System, the Trade-marks or any information contained in the Manuals, except in connection with the Stores.

10.9 In all of Franchisee's advertising or promotional materials bearing any of the Trade-marks, as well as on all documents and materials bearing any of the Trade-marks, Franchisee shall include a notice to the effect that the Trade-marks belong exclusively to Franchisor and/or that Franchisee is an authorised user thereof, or such other statement as Franchisor may reasonably require from time to time, in its sole discretion.

10.12 Franchisee agrees that any goodwill associated with the Trade-marks and the ALDO System shall ensure exclusively to the benefit of Franchisor and/or its Affiliated Corporations and is the property of Franchisor and/or its Affiliated Corporations, as the case may be. Upon the termination or expiration of the Term of this Agreement, no monetary amount shall be assigned or attributed to any goodwill associated with Franchisee's use of the Trade-marks or the ALDO System.

vi. **11. ADVERTISING AND PROMOTION**

11.1 In any advertising and promotion conducted by Franchisee, Franchisee shall:

11.1.1 advertise and promote only in a manner that will reflect favourably on Franchisor and its Affiliated Corporations, the Trade-marks, the Products, Franchisee and the good name, goodwill and reputation thereof,

11.1.2 use the Trade-marks on all advertising and promotions and in accordance with the terms and conditions of this Agreement, and

11.1.3 ensure that all such advertising and promotional materials are completely factual and conform to the highest standards of ethical advertising, be in full compliance with all applicable laws and are consistent with the practices, promotions and advertising strategy established by Franchisor and/or its Affiliated Corporations from time to time.

11.2 Prior to the first Store opening, Franchises shall engage the services of a local advertising/communications agency that will assist Franchisee, amongst other things, with the preparation of a seasonal marketing plan and a launch campaign for the ALDO brand in the Territory.

11.3 Franchisor shall, each Season, make available to Franchisee one (1) copy of all advertising and promotional material and artwork which it uses and intends to use in connection with its own stores, Franchisee shall pay the cost therefor plus a fifteen percent (15%) administration charge. Franchisee shall be solely responsible and pay for the translation and adaptation of such advertising and promotional material for use in the Territory. Franchisor also agrees to sell in Franchisee, upon request and upon payment therefor, any advertising or promotional material developed by or on behalf of Franchisor or any of its Affiliated Corporations, plus a fifteen percent (15%) administration charge. In the event that Franchisor, at its discretion, translates and adapts its advertising and promotional material for use in the Territory and Franchisee requests same, Franchisor shall provide same to Franchisee, and Franchiser also shall pay all costs incurred in connection with such translation and adaptation, plus fifteen percent (15%) administration charge.

11.4 Notwithstanding the foregoing, Franchiser shall, no later than thirty (30) days following a request from Franchiser, submit to Franchisor for its prior written approval, (i) all advertising and promotions to be employed by Franchisee, (ii.) any other material to be used

by Franchisee on which the Trade-marks appear, as well as (iii.) all relevant information with regard to any promotional, charitable or other similar event in connection with which the Trade-marks are to be used, which approval shall not be unreasonably withheld. Franchisor shall be deemed to have given the required approval should written disapproval thereof not be received by Franchisee within thirty (30) days of the date of receipt by Franchisor, as the case may be, of the aforesaid materials

11.5 Franchisee agrees to spend during each of the first two (2) Seasons on advertising and promotion of the Franchised Business, the Trade-marks and the Products the sum of twenty thousand U.S. dollars or in Euro (USD 20,000) and thereafter an amount equal to two percent (2%) of the Selling Price of all Products during the same Season in the immediately preceding Contract Year, in each case inclusive of the price of advertising and promotional materials purchased by Franchisee from Franchisor and/or its Affiliated Corporations under paragraph 11.2 hereof, provided, however, that in the event that the number of Stores operated by Franchisee in any Season following the first two (2) Seasons is greater than the number of Stores operated by Franchisee during the same Season in the immediately preceding Contract Year, the aforesaid rate of two percent (2%) shall be increased by the same percentage increase as such increase in the number of Stores. The foregoing advertising and promotion expenditures shall comprise:

- i. Purchase and production of in-store signage,
- ii. Purchase and production of outdoor media, print media and any other media that is suitable for advertising in the Territory.
- iii. Promotions for Store launches or new Seasons and for any other promotional periods, and
- iv. Public relation strategies

11.6 Furthermore, Franchisee shall:

11.6.1 at least six (6) months prior to the opening of the first Store in the Territory provide to Franchisor a marketing plan that has been prepared in accordance with Franchisor's template and which is acceptable to Franchisor

11.6.2 at least six (6) weeks prior to the beginning of each Season, provide to Franchisor a pre-season marketing budget which shall include all the initiatives to be carried out for such Season, together with seasonal event calendar, all of which shall be acceptable to Franchisor;

11.6.3 submit to Franchisor for its prior written approval, (i) all advertising and promotions to be employed by Franchisee, whether for distribution outside the Stores or for in-Store purposes (ii) any other material to be used by Franchisee on which the Trade-marks appear, as well as (iii) all relevant information with regard to any promotional, charitable or other similar event in connection with which the Trade-marks are to be used, which approval shall not be unreasonably withheld;

11.6.4 at least four (4) weeks following the end of each Season, provide to Franchisor a post-season marketing expense report which shall, among others, include all costs incurred for marketing activities together with pictures of such activities.

11.7 In order to promote and enhance the global image and reputation of the ALDO Brand, Franchisee shall, if, as and when Franchisor establishes an international advertising and promotion fund, pay into such fund as an advertising and promotion contribution an amount

determined from time to time by Franchisor but which shall not be greater than one percent (1%) of the Selling Price of all Products for each quarter (namely the quarters ending on the last day of the 13th, 26th and 39th and 52nd or 53rd weeks as the case may be following the commencement of each Contract Year), payable at the same time and in the same manner as the Franchise Fee. All such amounts will be deposited by Franchisor in a separate account maintained for such purpose and moneys therefrom will be used and disbursed by Franchisor for international advertising, promotional events and materials, market research costs, as well as creative and production costs. Franchisor agrees to contribute to such advertising and promotion fund an amount equal to the contribution made by Franchisee from time to time into such fund.

vii. **15. TERMINATION**

15.1 Notwithstanding anything otherwise contained in this Agreement, Franchiser shall have the right to terminate this Agreement and the right and franchise granted to Franchisee forthwith and without notice, without prejudice to any other rights which Franchisor may have in the circumstances, upon the occurrence of any one or more of the following events:

15.1.1 if Franchisee is in default under or fails to perform or comply with any requirement, provision or obligation imposed upon Franchisee by this Agreement and such default is not cured within thirty (30) days after receipt of written notice from Franchisor, (except with respect to a monetary obligation of Franchisee in which case the delay shall be seven (7) days after receipt of written notice from Franchisor);

viii. **16. EFFECT OF TERMINATION**

16.1 Upon the termination of this Agreement for any reason whatsoever, including the expiration of the Term of this Agreement

16.1.1 ...

16.1.2 ...

16.1.3 Franchisee shall forthwith destroy or deliver to Franchisor, at Franchisor's option, all unused labels, packaging, advertising and promotional material bearing the Trademarks: "

3.6.1 Therefore, on scrutiny of data as well as facts stated by Shri. Naveen Golchha, it is observed that continuing Franchisee fee has been paid to brand owner on the basis of sales volume i.e. 3% (6% w.e.f. 01.01.2014) of Net Actual Sales. M/s. MBIPL have also made expenses on account of advertisement and sales promotion. Shri Naveen Golchha has stated that above said expenditures have not formed parts of assessable value for the payment of Customs Duty at the time of import.

3.6.2 Scrutiny of the agreements, facts and circumstances indicated that payment of Franchisee fee and payments made on account of advertising expenses is not only condition of sale but it is a compulsion and obligation under the agreement to make these payments. Therefore, these payments towards Franchisee fee and advertising expenses relatable to import and sale of import goods and therefore it appeared that it has nexus to the imported goods and it deserved to be added to assessable value.

3.6.3 From the foregoing it is observed that the Franchisor has and maintains complete and enforceable control over all advertising and promotional activities of the Franchisee through a system of mandatory prior approvals. The Franchisee is obligated to first prepare and submit marketing plans, seasonal budgets, proposed campaigns, and event details to the Franchisor for written approval before taking any action. This applies to every form of advertising — signage, packaging, outdoor media, digital marketing, in-store promotions, posters, events, and special campaigns. The Franchisor decides the overall advertising strategy, provides standard promotional materials, and the Franchisee must either purchase these materials or get approval for any local adaptations.

The Franchisee must also spend a fixed minimum amount on advertising each season (e.g., USD 20,000 for the first seasons, then 2% of sales, plus any additional contributions to a global advertising fund), and this amount can increase as the number of stores grows.

All advertising must strictly follow the Franchisor's brand image, style, and marketing strategy, and every step — from planning and budgeting to content creation and execution — is subject to the Franchisor's final approval and control. **These advertising obligations are a condition of the right to sell the goods and operate under the brand, not optional marketing choices.** If the Franchisee fails to comply, the Franchisor has legally enforceable rights to treat it as a breach of contract, recover unpaid amounts, or terminate the agreement. Upon termination, the Franchisee must immediately stop all advertising and return or destroy all promotional materials, including anything bearing the trademarks or brand name.

In short: The Franchisor controls every stage of the advertising process — planning, budgeting, content, approvals, and spending. The Franchisee has no independent authority over branding and is legally bound to comply as part of the conditions of sale and continued franchise rights.

3.6.4 Further, it is noticed that the Franchisee/Noticee has agreed that they do not own the brand name or trademarks. They only get permission to use them while this agreement is active. The brand name and any reputation or goodwill created from its use will always belong to the Franchisor. The Franchisee cannot claim any ownership over the brand at any time. If this agreement ends or expires, the Franchisee must stop using the brand name and trademarks immediately. The Franchisee will not get any money or compensation for the goodwill built during the agreement. All rights to the brand stay fully with the Franchisor and its group companies.

3.6.5 In view of the aforesaid, expenses incurred on account of Franchise fee paid in relation to the imported goods as a condition of sale and expenditure incurred on account of advertisement in compliance with and in terms of the agreement obligation in relation to the imported goods as a condition of sale appeared to be includible in the transaction value for the payment of Customs duty at the time of import of goods in terms of Rule 10 (1)(c), 10(1) (d) and 10 (1)(e) of CVR, 2007, as discussed above.

3.7 Agreement between Beverly Hills Polo Club (BHPC) (Licensor) and M/s. MBIPL (Licensee) indicate the following

- i. Para 2.1 A This License agreement constitutes an exclusive license to use the Licensed Trademarks during the term in the Territory only in connection with the sale at retail of Licensed merchandise, and to advertise and operate the retail stores and shop in accordance with the terms of this agreement.
- ii. Para 2.2 Licensee shall not be permitted to sell, advertise or market Licensed Merchandise or to use Trademark use materials which do not comply with Polo Fashions.
- iii. Para 3.1 Licensee shall open at least the number of retail stores in the Territory as detailed by Licensor. Before establishing any store, Licensee shall submit to Licensor for approval any and all information reasonably required by Licensor.
- iv. Para 3.3 The stores must be designed, constructed and furnished in all respects in accordance with any plans, standards and specification required by the Licensor.
- v. Para 3.10 a) to stock at each stores the minimum variety of the products in commercial quantities of styles and sizes specified by Licensor. c) not to sell or display or promote or market at the sores without the prior written approval of Licensor, products not purchased from Licensor or its other Licensees or product bearing any trade mark other than Licensor Marks.
- vi. Para 4.1a Royalties: Licensee shall pay Earned Royalties to the Licensor equal to 7.5% of Net Sales of Licensed Merchandise.
- vii. Para 4.1b In addition to Earned Royalties, Licensee will be obligated on yearly basis period defined in Minimum Royalty Schedule to report on and pay, a bonus Royalty tied to the schedule.
- viii. Para 4.2 Licensee shall pay to Licensor the Earned Royalty for each quarter during the term, payable within 20 days of the end of Quarter.
- ix. Para 4.4 In addition to Earned Royalties, Licensee agrees to spend no less than 4% of Net Sales on Brand Support each year.
- x. ***"Section 2 - Grant and Term of License; Exploitation of License***
2.5 *Licensor shall provide Marketing visuals seasonally, with any use of said visuals in marketing campaigns to require approval by Licensor, within 10 days of submission by Licensee.*
- xi. ***Section 3-Approval & Operation of Stores***
3.11 *Signs, Packing, Etc. Licensee shall submit to Licensor for prior written approval all interior and exterior display signs, hangers, price tags, shopping bags, gift boxes, stationery, forms of invoices and receipts, and similar items using the TRADEMARK USAGE GUIDELINES (Exhibit "A"), such approval to be provided within a reasonable period failing which it shall be deemed approved.*
- xii. ***Section 4-Royalties***
4.4. *In addition to Earned Royalties, Licensee agrees to spend no less than the 4% of NET Sales on Brand Support in each Year. Licensee shall, on the last day of each respective Contract Year, submit to Licensor any documentation as shall be reasonably requested by Licensor to evidence the expenditure of such Brand Support. In the event that Licensee could*

not spend the entire Brand Support amount during the respective Contract Year in which the Brand Support Expense was to be expended hereunder, licensee can carry over this sum for expense the following year. Failing that, licensee will, on the day following the last day of the respective Contract Year, pay to Licensor the total sum of the Brand Support to spend in the territory, which was not expended hereunder.

xiii. **Section 5-Reports and Payments**

5.3. *In the event any Royalties payable in accordance with Sections 4 and 5 are not paid by Licensee within 15 days after the date on which they are due, Licensee shall be obligated to pay Licensor interest which will accrue and be payable, to the extent legally enforceable, on such unpaid principal amounts from and after the date on which the same became due, at a per annum rate equal to the lesser of (i) one point above the prime rate of interest in effect on the due date of the late payment as quoted by Chase Manhattan Bank in New York, New York, U.S.A. and (ii) the highest rate permitted by law in the applicable jurisdiction.*

xiv. **Section 6 - Licensed Trademark and Intellectual Property Rights.**

6.1.B. *Licensee will not use the Licensed Trademarks as, or as any part of, its corporate name or other name or designation under which it does business, unless approved by BHPC*

6.1.C. *Licensee agrees that it will not, during the term of this License Agreement or thereafter, register or use anywhere in the world, any mark identical or confusingly similar to the Licensed Trademarks.*

6.2.A. *Licensee acknowledges that Licensor is the owner of the Licensed Trademarks und the goodwill symbolized thereby in the Territory and elsewhere, and Licensee agrees that it acquires no title, property rights, or goodwill in, to, or under the Licensed Trademarks or said goodwill except for the rights specified in this License Agreement. Licensee further acknowledges that the Licensed Trademarks have acquired secondary meaning in the mind of the public. Licensee agrees that it will not, during the term of this License Agreement or thereafter, contest the property rights and ownership of Licensor, in and to the Licensed Trademarks or the goodwill pertaining thereto, or during the term of this License Agreement or thereafter, attack the validity of this License Agreement*

6.2. B. *Licensee acknowledges and agrees that Licensor owns or shall own all design rights, regardless of whether such designs were created by Licensor or by or on behalf of the Licensee. Licensee agrees to make, procure, and execute all assignments necessary to vest ownership of the applicable design rights in Licensor. All designs used by Licensee for the Licensed Merchandise shall be used exclusively for the Licensed Merchandise and may not be otherwise used whether during the Term or any time thereafter, without the prior written consent of Licensor which consent may be withheld in the sole discretion of Licensor.*

6.3. *Licensee shall forthwith cease any use of the Licensed Trademark to which Licensor objects or which, in Licensor's sole opinion, damages the distinctiveness and integrity of the Licensed Trademarks.*

6.4 *Licensee shall cooperate fully and in good faith with Licensor, at cost to Licensor, for the purpose of securing and preserving Licensor's (or any grantee of Licensor's) rights in and to the Licensed Trademarks.*

xv. **Section 8- Termination**

8.2. *If Licensee shall fail to fulfill or comply with any other material obligation, condition, or covenant contained in any part of this License Agreement, and such failure shall not be cured within 60 days after notice in writing from Licensor to Licensee specifying the nature of the default, Licensor shall have the right to terminate this License Agreement by giving notice of termination to Licensee, and this License Agreement shall terminate on the 7th day after the giving of such notice. Licensee shall have the right to cure any such default up to but not after the giving of such notice of termination by Licensor.....*

8.4. *In the event Licensee ceases to pay Royalties due under this License Agreement based on a claim of right, Licensor shall have the right to terminate this License Agreement by giving notice of termination to Licensee, and this License Agreement shall terminate with the giving of such notice.*

8.9 *Licensor may terminate this agreement immediately, without any right by Licensee to any cure period, upon the occurrence of any one, or more of the following:*

a- Licensee opens a store that was not approved by Licensor in advance, in writing

b- Licensee uses or authorizes the use of our Trademark in signs, or ads without Licensor approval, and in a manner that violates the Trademark usage guidelines (Exhibit "A") and as per the Polo/Ralph Lauren settlement agreement (Exhibit "H")."

3.7.1 On perusal of the agreement between M/s MBIPL and Beverly Hills Polo Club, it appeared that relation between seller (brand owner or its designated sellers) and the buyer M/s. MBIPL is not that of normal buyer and seller, but is actually very complex subject to many conditions, restrictions and obligations. The agreement seeks to control not just the sale of the goods but extends to various aspects such as minimum retail sale, right to sell products that bear variations of the 'Trademarks, opening of stores, Licensee will not open, alter or close stores without advance written approval.

3.7.2 From the foregoing it is observed that the Franchisor has complete and **enforceable control over all advertising and promotional activities of the Franchisee**, and these are binding obligations and conditions tied to the right to sell the goods and use the brand. The Franchisee cannot run any marketing campaign, make any advertisement, or use the brand name in any form without first submitting the plan, budget, and materials to the Franchisor for prior written approval. This includes everything from store signage, packaging, posters, and digital campaigns to special events, promotions, and marketing visuals. **The Franchisor also sets the minimum amount the Franchisee must spend on advertising each year — such as a fixed percentage of net sales for brand support — and the Franchisee must provide proof of how the money was used. If the Franchisee doesn't spend the required amount, the balance must be paid directly to the Franchisor, giving the Franchisor full control over both content and budget.**

The Franchisee must also submit all physical and promotional materials like signage, packaging, hangers, invoices, shopping bags, and displays for prior written approval in line with the Franchisor's trademark usage guidelines. Even locally developed advertising must be approved before use. These obligations are not optional — they are enforceable conditions

of the license and sale of goods. If the Franchisee fails to comply — for example, by using trademarks without approval or breaching advertising spend requirements — the Franchisor has the legal right to terminate the agreement immediately or after notice.

In simple terms: The Franchisor controls every step of the advertising process — planning, budgeting, content, approval, and spending. The Franchisee has no independent authority over brand promotion and is legally obligated to follow the Franchisor's directions as a condition of continuing the franchise and product sales.

3.7.3 Further, it is noticed that the Franchisor is and always remains the full owner of the trademark and all goodwill connected to it — before, during, and after the agreement. The Franchisee only gets permission to use the trademark in a limited way, under strict conditions set in the agreement. This permission does not give the Franchisee any ownership or claim over the brand name, trademark, goodwill, or reputation it carries. The Franchisee cannot register, copy, or use any similar brand name or design on its own, and must stop using the trademark immediately if the Franchisor objects to how it's being used. Any designs created or used under the brand automatically belong to the Franchisor, not the Franchisee. Even after the agreement ends, the Franchisee has no rights to the trademark or goodwill, and cannot use it in any business name or product without the Franchisor's prior written consent.

3.7.4 Shri Naveen Golchha, CFO of M/s. MBIPL, in his statement dated 19.05.2015 has stated that the Company is paying Franchise fee to the brand owner at the rate of 7.5% of Net Actual Sales (i.e. gross sales - all discounts - taxes mainly VAT). Further in his statement on dated 20.05.2015, he has stated that in case of BHPC there are various suppliers. They do not have contract with suppliers but only with Brand Owner and they used to make payments on account of Franchisee fee to the brand owner and payments on account of goods supplied used to be made to the respective supplier.

3.7.5 In view of the aforesaid, expenses incurred on account of Franchise fee paid in relation to the imported goods as a condition of sale and in compliance with and in terms of the agreement obligation in relation to the imported goods appeared to be includible in the transaction value for the payment of Customs duty at the time of import of goods in terms of Rule 10 (1)(c), 10 (1)(d) and 10 (1)(e) of CVR, 2007, as discussed above.

3.8 Contract between Charles and Keith International PTE Ltd, Singapore, the Franchisor and M/s. Fashion Brands India Pvt. Ltd, has the following clauses.

- i. Para 12.1 The franchisor shall deposit such amounts as mentioned in clause 12.4 as it shall receive from the Franchisee on a monthly basis into a separate fund which will be used in maintaining, administering, directing and preparing local regional and national advertising, television, radio, magazines and newspaper campaigns, representation a trade exhibitions and publication and dissemination of leaflets, brochures and other marketing materials.
- ii. Para 12.3. In addition to the contributions referred above to in clause 12.1, the Franchisee will expand in aggregate not less than 2% of the annual gross sale on local

advertising including maintaining in local telephone and trade directories advertisements in the form and style prescribed by the Franchisor.

- iii. Para 12.4. The Franchisee will cooperate with the Franchisor in any special advertising or sales promotion or any special activity and will contribute 1% of the total sales of the preceding contract year for this purpose.
- iv. Para 16. Price and payment: As consideration for the Franchisor entering into this agreement and appointing the Franchisee as its exclusive Franchise in the Territory, the Franchisee shall pay the Franchisor a onetime non-refundable consideration of one hundred thousand US Dollars (USD 100000.00). In addition to the onetime consideration, the Franchisee agrees that the Franchisor will be paid a Franchisee fee of five percent (5%) of the net sales. The franchisee fee will be paid within thirteen days after end of the quarter, the quarter being 1st January, 1st April, 1st July and 1st October of each calendar year.

v. ***“10. OBLIGATIONS OF THE FRANCHISEE***

10.1 The Franchisee agrees as follows:...

(i) to use only such signs, display materials, promotional literature, equipment and other items in connection with the Business as shall be approved in writing by the Franchisor and such approvals shall be given within 5 working days, otherwise it will be construed as approved.....

vi. ***11. RESTRICTION ON THE FRANSHISE:...***

(i) not to use or publish any advertisements, signs, directory entries or other forms of publicity whether or not relating in whole or not to the Business or display the same on or at the Premises unless the same shall have first been submitted to and approved by the Franchisor. Such approval should be given within 10 days from the request made by the Franchisee....

vii. ***12. ADVERTISING***

12.1 The Franchisor shall deposit such amounts as mentioned in clause 12.4 below as it shall receive from the Franchisee on a monthly basis into a separate fund which will be used in maintaining, administering, directing and preparing local regional and national advertising including television, radio, magazine and newspaper campaigns, representation at trade exhibitions and the publication and dissemination of leaflets, brochures and other marketing materials. Expenditure of the said funds by the Franchisor shall be deemed satisfactory compliance with its promotional obligations hereunder provided that if at any time the Franchisor expends monies in excess of those standing to the credit of the funds such excess expenditure may be appropriated against such past dues as a first charge against the subsequent monies received by the fund.

12.2 The advertising fund shall be audited annually and the Franchisor shall provide to the Franchisee an audited account of the income and expenditure of the fund.

12.3 In addition to the contributions referred to in clause 12.1 above, the Franchisee will expend in aggregate not less than 2% of the annual gross sale on local advertising including maintaining in local telephone and trade directories advertisements in the form and style prescribed by the Franchisor. The Franchisee will not publish any other advertising material unless samples thereof have been submitted to the Franchisor and the Franchisee has obtained the prior written approval of the Franchisor to use of such advertising materials. All such approvals shall be replied by the Franchisor within 3 (three) working days and if not replied in will be deemed as accepted.

12.4 The Franchisee will cooperate with the Franchisor in any special advertising or sales promotion or other special activity and will contribute 1% of the total net sales of the preceding contract year for this purpose. However such special advertisement or sales promotion shall be subject to the approval of the Reserve Bank of India and as allowed by the laws of the territory. The franchisee shall purchase from the Franchisor and utilize in the Business point of sale and other advertising material and will contribute in other promotional advertising activities as contemplated above.

viii. 14. TRADEMARKS

14.1 The Franchisor hereby represents and warrants that: (I) it is entitled to license and grant to Franchisee the exclusive right and license to use the Proprietary Marks to be utilized in the system throughout the terms of this Agreement and (II) the use of the Proprietary Marks by the Franchisee in the Territory shall not effectively indemnify the Franchisee for and against all loss, damage, costs, claims and expenses arising out of any such infringement. (iv) That the Franchisor has not granted any right or license to any third party in the Exclusive territory to use the Trade Marks or the Proprietary Rights and (v) there is no outstanding right or license granted by the Franchisor which would anyway conflict with the right and license hereby granted to the Franchisee.

To the best of the Franchisor's knowledge that there are no claims, actions, suits or proceedings with respect to or in any manner affecting the Trade-marks or the Proprietary System The Franchisor has not received any notice that the Trade-marks or the Proprietary Rights conflict with any other trade-marks, service marks or copyright or any other proprietary rights belonging to any other person within the Exclusive Territory.

14.2 The Franchisee shall render to the Franchisor all reasonable assistance at the cost of the franchisor to enable the Franchisor to obtain all requisite registration in the Territory of any of the Proprietary Marks. In no circumstances will the Franchisee apply for registration as proprietor of any of the Proprietary Marks in any part of the world. However, if requested by the franchisor, at Franchisor's expenses, the franchisee shall apply in its own name or jointly with the Franchisor for getting registration of the Trade Mark in the Territory. The Franchisee shall also do all such acts and things and execute all such documents necessary for obtaining such registration and thereupon shall assign such registration and all other rights in such trade mark to the Franchisor.

14.3 The Franchisee acknowledges that the goodwill and all other rights in and associated with the Proprietary Marks vest absolutely in the Franchisor and that it is the intention of the parties that all such rights will at all times hereafter and for all purposes remain vested in the Franchisor and in the event that any such rights at any time accrue to the Franchisee by operation of law or however otherwise the Franchisee will forthwith on demand do all such acts and things and execute all such documents at the cost of the franchisor as the Franchisor shall deem necessary to vest such rights absolutely in the Franchisor.

14.4 In the event that a registration is obtained by the franchisor from any of the Proprietary Marks subsequent to the date hereof, the Franchisee shall subject to the registration of particulars of this agreement at the Trade Marks Registry in respect of such other marks be entitled to such like rights under such registration as are granted by this agreement in respect of the other registered trade marks comprised at the date hereof in the Proprietary Marks, and hereby authorizes the Franchisor to register such particulars in respect thereof at its cost.

14.5 The Franchisee will notify the Franchisor forthwith of any and all circumstances coming to the attention of the Franchisee, Its directors, agents and employees which may constitute an infringement of any of the Proprietary Marks or any suspect passing off by any

unauthorized person and shall take such reasonable action in connection therewith as the Franchisor may direct at the expense of the Franchisor. The franchisee shall provide all the cooperation to prosecute or defend any infringement case without incurring any expense in that behalf. However It shall be the prime responsibility of the franchisor to prosecute, defend such infringement cases at its cost and expenses and shall keep the franchisee duly indemnified against all losses, damages, costs, claims, proceedings, etc., and keep the franchisee duly insulated.

ix. 19. TERMINATION

19.1. Termination by the Franchisor

19.1 The Franchisor may terminate the Agreement forthwith by giving 60 days notice in writing to the Franchisee for occurrence of such breach that is not cured within the said 60 days in any of the following events:

(k) If the Franchisee otherwise neglects or fails to perform or observe any of the previous of this Agreement or commits any breach of its obligations hereunder which breach if remediable is not remedied to the satisfaction of the Franchisor within 60 (sixty) days of a notice in writing to the Franchisee requesting its remedy.

x. 20. CONSEQUENCES OF TERMINATION

20.1 Upon the termination or expiration of this Agreement for any reason, the Franchisee shall:

(c) Immediately cease to use in any way whatsoever any and all of the Proprietary Marks and any other trade names, logos, devices, insignia, procedures or methods which are or may be associated with the Proprietary Marks or the System however the liquidation period of 180 days will not affected by this clause.

(d) return to the Franchisor or otherwise dispose of or destroy as the Franchisor shall direct all signs, advertising materials, stationery, invoices, forms, specifications, designed, records, date, samples, models, programmer and drawings pertaining to or concerning the Business or the System or bearing any of the Proprietary Marks after the liquidation period of 180 days.

(e) remove or permanently cover all signs or advertisements identifiable in any with the Franchisor if so directed by the Franchisor and in the event of failure promptly so to do as directed, to permit the authorized agents of the Franchisor to enter on the Premises for such purposes.....”

3.8.1 On perusal of the agreement between M/s. MBIPL and Charles and Keith, it appeared that relation between seller (brand owner or its designated sellers) and the buyer M/s. MBIPL is not that of normal buyer and seller, but is actually very complex subject to many conditions, restrictions and obligations.

3.8.2 From the foregoing it is observed that the Franchisor has full and effective control over all advertising and promotional activities of the Franchisee, and complying with these requirements is a binding contractual obligation and a condition of the right to sell the goods and use the brand. The Franchisee cannot use or publish any advertisement, sign, brochure, directory listing, or promotional material without first submitting it to the Franchisor and obtaining prior written approval. This includes any signage, displays, print materials, special promotions, or local campaigns. Even the style, format, and content of local advertisements must strictly match the Franchisor’s branding standards.

The Franchisee must also prepare advertising plans and budgets, and is required to spend a fixed minimum amount — for example, 2% of annual gross sales on local advertising and 1% for special campaigns. **These funds are managed or directed by the Franchisor through a central advertising fund, and the Franchisor decides what is advertised, how it looks, how much is spent, and when campaigns are run.**

If the Franchisee fails to comply with these advertising obligations, it is treated as a breach of the agreement, giving the Franchisor enforceable legal rights to issue notice and, if not remedied, terminate the contract. Upon termination, the Franchisee must immediately stop all advertising, return or destroy all materials bearing the brand name, logos, or trademarks, and remove all signage or promotional displays — and if the Franchisee fails to do so, the Franchisor may enforce removal directly.

In short: The Franchisor exercises complete control over advertising content, approval, budget, and spending, while the Franchisee only funds and follows. These are not optional guidelines, but enforceable contractual obligations directly tied to the right to sell the products and use the brand.

3.8.3 Further, the Franchisor is and always remains the full and exclusive owner of the trademark and all goodwill connected to it— before, during, and after the agreement. The Franchisee only receives a limited right to use the brand name and trademarks as long as the franchise agreement is in force and strictly as per the Franchisor's directions. The Franchisee cannot claim any ownership of the brand, register the trademark in its own name, or build any separate goodwill out of it. If any rights accidentally arise in the Franchisee's name, they must immediately transfer them back to the Franchisor. The Franchisor is also responsible for protecting the brand from misuse by third parties, while the Franchisee must report any misuse or infringement and support the Franchisor's legal action, but at no cost to the Franchisee. All goodwill created through the Franchisee's use of the brand automatically belongs to the Franchisor and stays with the Franchisor even after the agreement end.

3.8.4 Shri Naveen Golchha, CFO of M/s. MBIPL, has stated that the payments were made on accounts of Franchise fee @ 5% of Net Actual Sales to Charles and Keith and they have made expenses on account of advertisement and sales promotion as a condition of sale of imported goods in India as per agreement. Further he has stated that above said expenditures have not formed as part of assessable value for the payment of Customs Duty at the time of import.

3.8.5 In view of the aforesaid, expenses incurred on account of Franchise fee paid in relation to the imported goods as a condition of sale and expenditure incurred on account of advertisement in compliance with and in terms of the agreement obligation in relation to the imported goods as a condition of sale appeared to be includible in the transaction value for the payment of Customs duty at the time of import of goods in terms of Rule 10 (1)(c), 10 (1) (d) and 10 (1)(e) of CVR, 2007, as discussed above.

3.9 Agreement between Guess (Licensor) and M/s. MBIPL (Licensee) indicated the following:

Initial term: February 1, 2012- December 31, 2014 (renewal 01.01.2015 to 31.12.2016)

Advertise requirement: Spend 4% (till 31.12.2012), 3% (from 01.01.2013 to 31.12.2014) and 2% (from 01.01.2015) of the greater of minimum net sales of products.

Store opening: Licensee will not be open, alter or close stores without advance written approval within 20 business days.

Advertising: Prior approval for all advertising required. No advertising shall refer to Licensee's name. Sales presentation, fashion shows, special events and special promotion must be submitted for prior approval.

Rights: Exclusive in connection with the promotion and retail sale of the product and in operation of store in Territory.

Payment: Payment or purchase price for the products due in US Dollars by means of irrevocable commercial letter of credit opened in favour of Guess by the 15th day of the month prior to the month in which shipment is scheduled. Guess, at its sole discretion may modify the required method of payment from time to time upon prior notice to the Distributor, granted method complies with law of territory.

Royalty rate: Spend 4% of the greater of minimum Net Retail Sales of the products.

“ADVERTISING BUDGET:

Each Nov 1, Licensee must submit an advertising budget for the subsequent contact year, using the advertising budget forms. All advertising must be pre-approved by Guess. The name of the Licensee must not be used.”

“RIGHTS:

Exclusive in connection with the promotion and Retail Sale of the Products and in the operation of Stores in the Territory. No rights granted to Manufacture or to distribute at wholesale in this contract.”

3.9.1 On perusal of the agreement between M/s. MBIPL and GUESS, it appeared that relation between seller (brand owner or its designated sellers) and the buyer M/s. MBIPL is not that of normal buyer and seller, but is actually very complex subject to many conditions, restrictions and obligations. The agreement seeks to control not just the sale of the goods but extends to various aspects such as minimum retail sale, right to sell products that bear variations of the 'Trademarks' i.e. GUESS, opening of stores and the condition that Licensee will not open, alter or close stores without advance written approval. The Licensee is required prior approval for advertisement. The Licensor reserves the rights exclusive in connection with promotion and retail sale of the products and in operation of stores in the Territory.

3.9.2 M/s MBIPL have stated that the payments have been made on accounts of Franchise fee @ 4% of Net Actual Sales to GUESS and expenses have been incurred on account of advertisement and sales promotion as a condition of sale of imported goods in India as per agreement. Further he has stated that above said expenditures has not formed part of assessable value for the payment of Customs Duty at the time of import.

3.9.3 From the foregoing, it is observed that the Franchisor has full and enforceable control over all advertising and promotional activities of the Franchisee. The Franchisee must spend a fixed percentage of sales (4% initially and 3% in later years) on advertising, but it cannot spend this amount freely or make any independent advertising decisions.

Each year, by November 1, the Franchisee must submit a detailed advertising budget using the Franchisor's official budget forms. All advertisements, campaigns, special promotions, events, and fashion shows must be submitted to the Franchisor for prior written approval before being used. The Franchisee cannot use its own name in any advertising — only the brand name, which remains under the Franchisor's control.

This structure makes it clear that the Franchisor decides what gets advertised, how it looks, when it runs, and how much is spent, while the Franchisee is obligated to fund the advertising and follow the rules. These requirements are a condition of the Franchisee's right to sell the goods, and the Franchisor has legally enforceable rights to ensure compliance. In short: The Franchisor controls the plan, budget, content, approval, and spending for all advertising, leaving the Franchisee with no independent control over brand promotion — only a legal duty to comply and bear the cost.

3.9.4 Further, it is observed that the Franchisee is given only the right to promote and sell the products at retail within the agreed territory — nothing more. It does not get any right to manufacture, distribute at wholesale, or expand the business beyond what the agreement allows. All brand ownership and goodwill connected to the products and the brand name remain fully with the Franchisor before, during, and after the agreement. The Franchisee is simply allowed to use the brand temporarily to run stores and sell products, but it cannot claim or build any separate ownership over the brand or its reputation. Any goodwill generated through the Franchisee's activities automatically belongs to the Franchisor. Once the agreement ends, all rights to use the brand and trademarks stop immediately, and the goodwill stays with the Franchisor.

3.9.5 On perusal of the agreement and the facts and circumstances indicates that payment of Franchisee fee and payments made on account of advertising expenses is not only condition of sale but it is a compulsion and obligation under the agreement to make these payments. Therefore these payments towards Franchisee fee and advertising expenses relatable to import and sale of import goods and therefore it appeared that it has nexus to the imported goods and it deserved to be added to assessable value.

3.9.6 In view of the aforesaid, expenses incurred on account of Franchise fee paid in relation to the imported goods as a condition of sale and expenditure incurred on account of advertisement in compliance with and in terms of the agreement obligation in relation to the

imported goods as a condition of sale appeared to be includible in the transaction value for the payment of Customs duty at the time of import of goods in terms of Rule 10 (1)(c), 10 (1) (d) and 10 (1)(e) of CVR, 2007, as discussed above.

3.10 Agreement between Nine West Development Corporation and M/s. MBIPL indicated that the Franchisee Agreement is entered into as of April, 2009 between Nine West development Corporation, a Delaware corporation having its chief executive offices at 1007, Orange Street, Suite 225, Wilmington, Delaware 19801, USA and Nine West Footwear Corporation, a Delaware corporation having its chief executive offices at 1129, Wenchestor avenue, White Plains, New York-10604-3529, USA and M/s. MBIPL, a company incorporated under Indian Companies Act, 1956 and having its registered office at 402A, Poonam Chambers, Dr. Annie Besant Road, Worli, Mumbai, India(for itself and its successor by merger to M/s. Fashion Brands India Pvt. Ltd, (hereinafter referred to as 'Franchisee', which expression shall, unless repugnant to the context or meaning thereof, mean and include its successors and permitted assigns).

Para 2.5 The Franchisee agrees to pay the Franchisor a sum of six percent (6%) of Net Sales as Franchisee fee.

The Franchisee shall account for such Franchisee fee on a monthly basis (using average Exchange rate in effect for such period) within 30 days following close of each Quarter, the Franchisee shall pay the Franchisor (by wire transfer of immediately available funds in Dollars) the amount of such Franchise fee payable in respect of Net Sales for such Quarter.

Para 2.8.7. During each year during the term, Franchisee shall make expenditures for national, local, trade and co-operative advertising within Territory, for the products, in at least the following amounts:-

2009 :- Greater of \$ 21000.00 or 2 % of Net Sales in the Territory during 2009

2010 :- Greater of \$ 21600.00 or 2 % of Net Sales in the Territory during 2010

2011 :- Greater of \$ 51000.00 or 2 % of Net Sales in the Territory during 2011

2012 :- Greater of \$ 28300.00 or 2 % of Net Sales in the Territory during 2012

2013 :- Greater of \$ 32800.00 or 2 % of Net Sales in the Territory during 2013

NWG may, as its sole discretion, require that specific amounts be spent by Franchisee in the Territory for advertising relating to particular outlets. All such expenditure in connection with advertising shall be made in accordance with guidelines separately provided to Franchisee.

Para 2.8.8. Franchisee shall account for such advertising expenditures on monthly basis (using average Exchange rate in effect for such period). In the event that advertising expenditures made by Franchisee within the Territory during any year are less than Minimum Adventure Expenditures set forth above for such year, Franchisee

shall pay to NWG the amount by which the Minimum Adventure Expenditures for such year exceeds the amount of Advertising expenditures actually made within Territory for such year. Such payment shall be made by wire transfer of funds in Dollars to NWG within 30 days following the close of such year.

“2.8. Advertising and Promotion:

2.8.1. All Advertising and promotion for or in connection with the Products and the Proprietary Marks performed by the Franchisee shall be consistent with the image and prestige of the Proprietary Marks and with the standards maintained by the Franchisor and shall be subject to the prior written approval of Franchisor (such approval not to be unreasonably withheld).

2.8.2 No Advertising shall refer to Franchisee, other than Advertising in trade publications and as required by law.

2.8.3. No Proprietary Mark may be used or associated in any manner with any other trademark used by Franchisee.

2.8.4. Franchisee shall support any marketing program developed by NWG for use in the Territory, including, without limitation, participation in sales presentations, fashion shows, and special events.

2.8.5. NWG shall provide Franchisee, without charge, access to NWG's owned Advertising materials, subject to the retention by NWG of all rights in such materials; provided, however, that Franchisee shall bear the cost of production of additional copies of such materials requested by Franchisee.

2.8.6. Franchisee shall provide NWG, without charge, access to local-language Advertising materials developed by Franchisee in accordance with this Agreement; provided, however, that NWG shall bear the cost of production of additional copies of such materials requested by NWG.

2.8.7. During each Year during the Term, Franchisee shall make expenditures for national, local, trade, and co-operative Advertising within the Territory, for the Products, in at least the following amounts:

Minimum Advertising Expenditure:

2009: Greater of \$21,000 or 2% of Net Sales in the Territory during 2009

2010: Greater of \$21,600 or 2% of Net Sales in the Territory during 2010

2011: Greater of \$25,000 or 2% of Net Sales in the Territory during 2011

2012: Greater of \$28,300 or 2% of Net Sales in the Territory during 2012

2013: Greater of \$32,800 or 2% of Net Sales in the Territory during 2013

NWG may, at its sole discretion, require that specific amounts be spent by Franchisee in the Territory for Advertising relating to particular Outlets. All such expenditures in connection with advertising shall be made in accordance with guidelines separately provided to Franchisee.

2.8.8. Franchisee shall account for such Advertising expenditures on a monthly basis (using the Average Exchange Rate in effect for such period). In the event that the Advertising expenditures made by Franchisee within the Territory during any Year are less than the Minimum

Advertising Expenditure set forth above for such Year, Franchisee shall pay to NWG the amount by which the Minimum Advertising Expenditure for such Year exceeds the amount of Advertising expenditures actually made within the Territory for such Year. Such payment shall be made by wire transfer of funds in Dollars to NWG within thirty (30) days following the close of such Year. The Franchisee may nevertheless at its option carry forward up to 25% of the unspent Minimum Advertising Expenditures of the first Year only; however, all such amounts carried forward must be spent in the second Year. Franchisee shall pay to NWG all outstanding unspent amounts in respect of Minimum Advertising Expenditures upon expiration or termination of the Agreement.

For the avoidance of doubt, expenditures for Advertising may include expenses that could be described variously as relating to advertising, sales promotion, marketing and selling expenses, and merchandising, but only to the extent that such actions or communications are directed to the trade or to the public.

2.9.Periodic Reports; Annual Operating Plan; Annual Marketing/Sales Plans:-

2.9.3.4. details of all Advertising expenditures for such Quarter; and...

2.9.6. As soon as available and in any event within ninety (90) days after the end of each Year, Franchisee shall furnish to NWG a report which sets forth (a) the Net Sales of Products during such Year within the Territory, (b) the computation of corresponding Franchise Fee payable for such Year, (c) the total number of Outlets being operated by Franchisee as at the end of such Year within the Territory and (d) the amounts of Advertising expenditures incurred by Franchisee, all certified, without qualification as to the scope of the audit, by an internationally recognized firm of independent certified public accountants reasonably acceptable to NWG.

3.Franchisee Obligations:...

3.1.7. Franchisee shall not, whether directly or indirectly (or otherwise), without the prior written consent of the Franchisor;

3.1.7.7. use the Specified Proprietary Mark (or other Proprietary Marks, as the case may be) or any reproduction or variation thereof, in any manner whatsoever (including in Advertising and promotion) without obtaining the prior written approval of the Franchisor (such approval not to be unreasonably withheld)....

3.2. Use of Specified Proprietary Mark

3.2.7. The Franchisee shall, where desirable to optimize the marketing of Products, as determined by the Franchisee, develop local-language Advertising promoting Products, subject to the Franchisor's final approval; provided that all copyright in such Advertising shall be owned by or assigned to the Franchisor.

3.5. Beginning on the Effective Date and throughout the Term of this Agreement, the Franchisee shall:...

3.5.5. not proceed unless it obtains the prior written approval of the Franchisor of all Packaging Materials, fixtures, Outlet designs, Products, Advertising and promotional materials for the Products, and any other use of the Specified Proprietary Mark or other Proprietary Marks (or any reproduction or variation thereof) in any manner whatsoever;...

8. Proprietary Marks

8.1. Franchisee acknowledges that ownership of all right, title and interest to the Proprietary Marks now existing or hereafter developed is and shall remain vested solely in Franchisor, and the Franchisee disclaims any right or interest therein or the goodwill derived therefrom otherwise than as provided in this Agreement.

8.2. The Franchisee agrees to use the Specified Proprietary Mark strictly in accordance with the terms of this Agreement and all reasonable specifications, directions and requirements of Franchisor not in conflict with the terms of this Agreement. Franchisee further agrees that the Franchisor shall have all ownership and other rights with respect to any websites, along with any URLs, domain names and/or other electronic forms of address and/or identity, using any of the Proprietary Marks and/or otherwise related to the Business. Any such websites, along with any such URLs, domain names and/or other electronic forms of address and/or identity, shall only be owned by and registered, etc. in the name of the Franchisor. The Franchisee shall not launch any web-site which has any relation to the Business unless it has obtained the Franchisor's prior written approval.

8.3. The Franchisee acknowledges that upon expiration or termination of this Agreement, no monetary sum shall be designated by it as attributable to any goodwill associated with Franchisee's use of the Specified Proprietary Mark.

8.4. The Franchisee acknowledges Franchisor's exclusive ownership of the Proprietary Marks and acknowledges that all use of any Proprietary Mark inures to the exclusive benefit of Franchisor. The Franchisee acknowledges, as between Franchisor on the one hand and the Franchisee and its Affiliates on the other hand, Franchisor's exclusive ownership of the Proprietary Marks and acknowledges that all use of any such Proprietary Marks inures to the exclusive benefit of Franchisor. Accordingly, the Franchisee shall not at any time, whether during the Term of this Agreement or thereafter,

8.4.1. engage in any activity which may contest, dispute or otherwise impair the right, title or interest of Franchisor in and to the Proprietary Marks or the validity of this Agreement during the Term or thereafter, or assist, authorize or induce any other Person to do so or claim (directly or indirectly) ownership of, or register or attempt to register, any of the Proprietary Marks (whether on behalf of Franchisor or otherwise) in the Territory or anywhere else, and the Franchisee shall (or shall cause its Affiliates to) immediately transfer to Franchisor any such registration or other use (including but not limited to Internet domain names) of the Proprietary Marks;

8.4.2. do or commit or authorize any act, or omit to do any act, which act or omission would, directly or indirectly, adversely affect the value or the validity of any of the Proprietary Marks or detract from the reputation thereof,

8.4.3. infringe, or assist or allow any other Person to infringe, the Proprietary Marks;

8.4.4. join any name or names with the Specified Proprietary Mark or any other Proprietary Mark so as to form a new mark, or use any name or names or other marks in connection with the Proprietary Marks in any Advertising, publicity, Business Materials, Packaging Materials or other printed matter otherwise than in accordance with the terms and conditions of this Agreement, or use the Specified Proprietary Mark or any other Proprietary Mark as a business or corporate trade name (except to identify the relationship of the Franchisee with Franchisor), or use in any manner (or facilitate or authorize the use by third parties in any manner of) trademarks or distinctive signs that could be confused with any Proprietary Mark;

8.4.5. produce or manufacture (or authorize the production or manufacture of) goods bearing the Specified Proprietary Mark or any other Proprietary Mark, or use the Specified Proprietary Mark or any other Proprietary Mark in any way other than as expressly permitted by this Agreement; or

8.4.6. reproduce or copy (or authorize the reproduction or copying of), in whole or in part, any designs, molds or fabrications used in or as part of the Products (including but not limited to particular styles, fabrics or construction of, and all Packaging Materials for, the Products) or attempt to register or obtain designs, copyrights or patents for such.....

13. Termination

13.1. Either Party may terminate this Agreement upon written notice (which notice shall specify the grounds for termination) if:

13.2. Franchisor shall have the right to terminate this Agreement if the Distributor has breached any term of either: (a) the Letter Agreement or (b) the Distributor's India Agreement, and such breach is not cured within thirty (30) days after notice of such breach is given by the Franchisor to the Distributor.

14. Consequences of Termination

14.1. In the event this Agreement and the rights granted herein terminate under Section 13.6, but subject to Section 14.2.2, (a) the Franchisee, its receivers, representatives, trustees, agents, administrators, successors and/or assigns shall have no right after such termination to operate an Outlet, to sell the Products (other than inventory fully paid for on the date of termination, provided sufficient documentation is provided to the Franchisor evidencing said payment to the Distributor), or to use any Packaging Materials, Business Materials, Advertising or any other materials bearing the Specified Proprietary Mark or any other Proprietary Mark, except with and under the written consent and special instruction of Franchisor, and (b) Franchisor shall be deemed to have a right and option of first opportunity and refusal as to all fixtures, displays, signage and other uses of the Specified Proprietary Mark or the other Proprietary Marks, which any court may deem available for disposition or sale under applicable law

14.2.4. The Franchisee shall not make references in its advertising or business materials to the Specified Proprietary Mark or other Proprietary Marks (except to sell off Products in accordance with Section 14.2.6) or to having been formerly associated with Franchisor or the Outlets."

3.10.1 On perusal of the agreement between M/s. MBIPL and NINE WEST, it appeared that relation between seller (brand owner or its designated sellers) and the buyer M/s. MBIPL is not that of normal buyer and seller, but is actually very complex subject to many conditions, restrictions and obligations. The agreement seeks to control not just the sale of the goods but extends to various aspects such as achieving minimum selling, specifications of location of the stores, international look of outlets, use of sign NINEWEST in every store, furniture and fitting of the stores, site development, display and use of the product for sales promotion advertisement etc.

3.10.2 From the foregoing it is observed that the **Franchisor has full and enforceable control** over all advertising and promotional activities of the Franchisee, and complying with

these rules is a **binding obligation of the Franchisee**. The Franchisee cannot create, use, or publish any advertising, promotional material, packaging, signage, or branding content without first obtaining the Franchisor's prior written approval. This includes every kind of promotion — national or local campaigns, fashion shows, events, in-store branding, digital advertisements, or any use of the trademark. The Franchisee must submit an annual advertising plan and budget, follow the brand guidelines set by the Franchisor, and is required to spend a fixed minimum amount (a specific dollar amount or a percentage of sales) on advertising each year. **If the Franchisee fails to meet this spending obligation, the unspent amount must be paid directly to the Franchisor**, ensuring the Franchisor controls both the content and financial execution of advertising.

All materials created — even local-language advertisements — automatically belong to the Franchisor, and the Franchisee cannot use the brand with any other trademark or modify it in any way. These advertising and promotional obligations are a condition of the right to sell the goods and operate under the brand. **If the Franchisee breaches these obligations, the Franchisor has enforceable legal rights to demand compliance, recover unpaid amounts**, and, if necessary, terminate the agreement. Upon termination, the Franchisee must immediately stop all advertising and return or destroy all brand-related materials. In short: Advertising control is not optional — it is a core contractual obligation and a condition tied to the right to sell the products, giving the Franchisor full prior approval power and legally enforceable control over how its brand is promoted and presented.

3.10.3 Further, the Franchisor is and always remains the exclusive owner of the brand name, trademarks, and all goodwill connected to it — before, during, and after the agreement. The Franchisee does not gain any ownership rights over the trademarks or the goodwill created through its use; it only gets a limited right to use the brand according to the Franchisor's rules. All advertising, signage, online presence (like websites and domain names), and packaging using the brand must be approved in advance and remain under the Franchisor's ownership and control. The Franchisee cannot register, copy, mix, or modify the brand in any way, nor can it claim any rights over the goodwill even after years of using the mark. If the agreement ends, the Franchisee cannot ask for any compensation for goodwill or brand value it may have helped build. All use of the trademark is treated as benefiting the Franchisor alone, and the Franchisee must stop using it immediately upon termination.

3.10.4 Shri Naveen Golchha, CFO of M/s. MBIPL, has stated that the payments have been made on accounts of Franchise fee @ 6% (4% w.e.f. 01.09.2014) of Net Actual Sales to Nine West and expenses have been incurred on account of advertisement and sales promotion as a condition of sale of imported goods in India as per agreement. Further, he has stated that above said expenditures have not formed part of assessable value for the payment of Customs Duty at the time of import.

3.10.5 A perusal of the agreement and the facts and circumstances indicated that payment of Franchisee fee and payments made on account of advertising expenses is not only condition of sale but it is a compulsion and obligation under the agreement to make these payments. Therefore, these payments towards Franchisee fee were relatable to import and sale of

import goods and therefore it appeared that it has nexus to the imported goods and it deserved to be added to assessable value.

3.10.6 Further, the buyer/importer M/s. MBIPL are required to spend an amount fixed as per agreement or 2% of the net sales, whichever is greater, on advertisement including promotion in connection with the products. There is thus an obligation of the seller on the buyer to incur these expenditures. Further it shows that there are many restrictions placed in this area which, apart from the investment in local advertisement and special advertisement of sales promotion. Further, not only are these payments related to purchase / import and sale of goods, there is a compulsion and obligation under the agreement to make these expenses/payments.

3.10.7 In view of the aforesaid, expenses incurred on account of Franchise fee paid in relation to the imported goods as a condition of sale and expenditure incurred on account of advertisement in compliance with and in terms of the agreement obligation in relation to the imported goods as a condition of sale appeared to be includible in the transaction value for the payment of Customs duty at the time of import of goods in terms of Rule 10 (1)(c), 10 (1) (d) and 10 (1)(e) of CVR, 2007, as discussed above.

3.11 On scrutiny of data and agreements made between brand owners and M/s. Major Brands (I) Pvt. Ltd, it is observed that M/s. MBIPL has paid Franchise fee and Franchise entrance fee and incurred expenses (including reimbursement of advertisement expenses to brand owner) etc. on account of advertisement and sales promotion related to the imports and subsequent sale of the imported goods, but the same have been not included in the assessable value of imported goods for payment of Customs Duty.

3.12 The table below shows the name of seller/supplier of merchandise to whom remittances for imported merchandise have been sent and also the brand-holder to whom the reimbursements on account of franchise fee have been sent: -

Sr. No.	Seller/supplier of merchandise to whom remittances for imported goods was sent	Brand Holder to whom payment on account of Franchisee Fee was sent
1	Dynamic Fashion LLC	ALDO
2	Charles & Keith International	Charles & Keith International
3	Dynamic Fashion LLC	NINE WEST
4	Guess Asia Ltd., Guess Handbags Signal Products, LF Accessories Group LLC, Marc Fisher LLC	GUESS
5	(1) M/s. Runway Global Ltd. (2) M/s. Lonigo Corp.	BHPC

3.13 The Section 14 of the Customs Act, 1962 (CA, 1962) dealing with valuation of imported goods provides that the value of imported goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for exports to India

for delivery at the time and place of importation where the buyer and seller of the goods are not related and price is the sole consideration for the sale, subject to such other conditions as may be specified in the rules made in this behalf. The proviso to Section 14 further provides that such transaction values in the case of imported goods shall include, in addition to the price as aforesaid any amount paid or payable for cost and services including commissions and brokerage, engineering design work, royalties and licence fees, cost of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules in this behalf. Accordingly, the Central government has made the CVR, 2007 in exercise of the powers conferred by Section 156 read with Section 14 of the Customs Act, 1962. In terms of Rule 3 of the aforesaid CVR, 2007, the value of imported goods shall be the transaction value adjusted in accordance with the provisions of Rule 10 of the aforesaid Customs Valuation Rules. Rule 10 (1) of the CVR, 2007 provides that:

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

(c) Royalties and license fee 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.”

3.14 Scrutiny of the agreements and facts and circumstances of the case indicates that payments of Franchise entrance fee and Franchise fee are to be made as a condition of the sale to the brand holders. Further, not only these payments related to the purchase and import of goods, there is a compulsion and obligation under the agreement to make these payments. The expenses towards franchise entrance fee and franchise fee is thus relatable to the import of the goods and therefore it appeared that it has nexus to the imported goods and it is also to be paid as a condition of the sale and it deserves to be added to assessable value of the same in terms of Rule 10 (1)(c) and rule 10 (1)(e) of CVR, 2007.

3.15 Further, the buyer/importer M/s. MBIPL are also obliged under the agreement to incur/invest certain amounts in local advertising as a condition of sale of imported goods. Advertising and sales promotion involves disseminating information about product, product line, service, brand or company. The objective is to inform potential customers about product, product line, service, brand or company and uses various methods to create brand image. Such measures position a product or service against that of competitors to convey a brand message to consumers and to enhance its value in the consumer's eyes. Brand equity and identity typically develop over the longer term. Many promotional exposures are required for

the consumer to feel the emotional pull a product may offer. Advertising and sales promotion as a strategized bundle develops this relationship over time. With time the brand becomes associated with a level of credibility, quality and satisfaction in the consumers mind. Thus, brand helps harried customers in the crowded market place, by standing for certain benefits and value. Brand promotion is the process of enhancing a brand's equity, which builds up the image of the brand as a whole. Thus it is obvious that brand promotion is the obligation of the brand owner, and the buyer-if undertaking the brand promotion activities is obviously doing it on behalf of the brand owner. It is a fact that brand promotion activities — advertising is undertaken not to promote any brands of M/s. MBIPL, but the brands of the different brand owners. Thus, the benefit of advertising clearly flows to the brand owners and from this perspective also the expenses incurred on advertising and sales promotion is liable to be included in the assessable value of the goods. The Hon'ble Supreme Court in the decision in the case of M/s. Bombay Tyre International Ltd [1983(144) E.L.T. 1896 (S C)] has inter alia laid down "the price of an article is related to its value (using this term in general sense) and into that value have poured several component, including those which have enriched its value and given to the articles is marketability in the trade. Therefore, the expenses incurred on account of the several factors which have contributed to its value up to the date of sale, which apparently would be the date of delivery are liable to be included. Consequently, where sale is effected at the factory gate expenses incurred by the assessee up to the date of delivery on account of storage charges, outward handling charges, interest on inventories, charges for other services after delivery to the buyer namely after sales service and marketing and selling organisation expenses including advertisement expenses cannot be deducted. It will be noted that advertisement expenses, marketing and selling organisation expenses and after sales service promote the marketability of the article and enter into its value in the trade".

3.16 Therefore, there cannot be any doubt that advertising including sales promotion activity adds to value of the goods and should form part of the assessable value. More importantly these expenses/payments are related to the purchase/import of goods and there is compulsion and obligation under the agreement to make these expenses/payments. It is relevant to point out that there is clearly an obligation of the seller on buyer/importer under the agreement entered into to incur such expenses. In view of the aforesaid, these deserve to be added to assessable value of the same in terms of Rule 10 (1)(d) and Rule 10 (1)(e) of the CVR, 2007.

3.17 In view of the aforesaid, the expenses incurred on account of Franchise entrance fee and Franchise fee paid in relation to the imported goods as a condition of the sale and expenditure incurred on account of advertisement etc. to compliance with and in terms of the agreement obligation and (including expenses reimbursed to brand holder) in relation to the imported goods as a condition of the sale in terms of Rule 10 (1)(c), 10 (1)(d) and rule 10 (1)(e) of the CVR, 2007 as discussed above.

3.18 Subsequently, a Demand-Cum-SCN dated 26.09.2016 was issued by SIIB (I), JNCH to M/s. MBIPL for the goods imported through Nhava Sheva during the period from 01.10.2014 to 31.03.2015 which was answerable to the Adjudicating Authority viz. Commissioner of

Customs, NS-III, JNCH. Another Demand-Cum-SCN No. 774/SIIB-I/2016-17 JNCH dated 22.02.2017 was issued to the importer M/s. MBIPL for the goods imported through Nhava Sheva during the period from 01.04.2015 to 16.06.2015 which was answerable to the Commissioner of Customs, NS-III, JNCH.

3.19 Vide letter dated 22.02.2018, the Noticee informed that they have shifted out office to B-907, Mittal Commercial, Marol, Asanpada Road, Andheri-Kurla Road, Andheri (East), Mumbai – 400059.

ALLEGATIONS IN SCN:

4. The Show Cause Notice issued to MBIPL alleged that the importer had wilfully not included franchise fee, store entry fee/ entrance fee, advertisement fee and sales promotion charges etc. in the assessable value of the imported goods. These payments were made under franchise or licensing agreements to foreign brand owners and were linked to the sale of imported goods. However, these were **neither** declared, **nor** added in the transaction value of the imported goods at the time of import and Customs duty was not paid on this amount.

4.1 The SCN dated 26.09.2016 proposed addition and inclusion of the payments made on account of franchise entrance fee, franchise fee to the seller / brand holder and advertisement expenses incurred/ reimbursed to the brand holder in terms of Rule 3 read with Rule 10(1)(c), 10(1)(d) and 10(1) (e) of CVR, 2007 read with the Section 14 of the Customs Act, 1962, to re-determine the assessable value of imported goods from Rs. 29,79,02,365/- to Rs. 32,61,57,293/- along with demand of differential Customs duties amounting to Rs. Rs.1,01,25,374/- under erstwhile Section 28 (1) of the Customs Act, 1962 (invoking the extended period), along with applicable interest under section 28AA *ibid*. SCN also proposed the confiscation of the imported goods under Sections 111(d) and 111(m), although the goods had already been cleared. Further, a penalty under Section 112 was proposed along with penalty under section 114AA of the Customs Act, 1962 on the Noticee.

4.2 The SCN dated 22.02.2017 proposed addition and inclusion of the payments made on account of franchise entrance fee, franchise fee to the seller / brand holder and advertisement expenses incurred/ reimbursed to the brand holder in terms of Rule 3 read with Rule 10(1)(c), 10(1)(d) and 10(1) (e) of CVR, 2007 read with the Section 14 of the Customs Act, 1962, to re-determine the assessable value of imported goods from Rs. 7,11,84,836/- to Rs. 8,00,37,071/- along with demand of differential Customs duties amounting to Rs. 39,91,196/- under erstwhile Section 28 (1) of the Customs Act, 1962 (invoking the extended period), along with applicable interest under section 28AA *ibid*. SCN also proposed the confiscation of the imported goods under Sections 111(d) and 111(m), although the goods had already been cleared. Further, a penalty equal to the duty evaded under Section 114A, and penalty under Section 112 was proposed along with penalty under section 114AA of the Customs Act, 1962 on the Noticee.

4.3 The legal provisions available with the erstwhile adjudicating authority.

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

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

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

- (i) the circumstances in which the buyer and the seller shall be deemed to be related;
- (ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;
- (iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section;
- (iv) the additional obligations of the importer in respect of any class of imported goods and the checks to be exercised, including the circumstances and manner of exercising thereof, as the Board may specify, where, the Board has reason to believe that the value of such goods may not be declared truthfully or accurately, having regard to the trend of declared value of such goods or any other relevant criteria:

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

Customs Valuation (Determination of Value of Imported Goods) Rules, 2007

“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.

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, -*

.....

(c) royalties and licence 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.

Explanation.- *Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includible referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods*

11. Declaration by the importer. –

(1) The importer or his agent shall furnish - (a) a declaration disclosing full and accurate details relating to the value of imported goods; and (b) any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer, as considered necessary by the proper officer for determination of the value of imported goods under these rules.

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

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

The Schedule (See rule 13) Interpretative Notes

Rule 10(l)(c)

1. The royalties and licence fees referred to in rule 10(l)(c) may include among other things, payments in respect to patents, trademarks and copyrights. However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value.

2. Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods if such payments are not a condition of the sale for export to the country of importation of the imported goods."

Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded:

28. *"(4) Where any duty has not been ¹⁰[levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of—*

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

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied ¹¹[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"

Interest on delayed payment of duty.28AA. *"(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..."*

The provisions of Section 111(d) and 111(m) of the Customs Act, 1962 (relevant to the facts of the instant case) provide for confiscation of improperly imported goods, as under:-

(i) The provisions of Section 111 (d) stipulate that *"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" shall be liable to confiscation.*

(ii) The provisions of Section 111(m) stipulate that *"Any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with*

the declaration made under Section 77 in respect thereof, or in the goods under transshipment, with the declaration for transshipment referred to in the proviso to sub- Section (1) of Section 54" shall be liable to confiscation.

Section 112 of the Customs Act, 1962 *interalia* provides for penalty for improper importation of goods, which reads as under:-

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

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

The provisions of Section 11(1) of the Foreign Trade (Development & Regulations) Act 1992. provide that "No export or import shall be made by any person except in accordance with the provisions of this Act the rules and orders made there under and the export and import policy for the time being in force."

Penalty for short-levy or non-levy of duty in certain cases: 114A. *"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 ³⁰[(8)] of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined :*

³¹*[Provided that where such duty or interest, as the case may be, as determined under sub-section ³²[(8)] of section 28, and the interest payable thereon under section ³³[28AA], is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined :*

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

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

Provided also *that in a case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section ³³[28AA], and twenty-five per cent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:*

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

Penalty for use of false and incorrect material 114AA. “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.”

Option to pay fine in lieu of confiscation: 125. “(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit :—”

4.4 Accordingly, following Show Cause Notices were issued to importer:-

- (i) Show Cause Notice (SCN) issued vide File No. SG/Misc-69/2015-16/SIIB (I)/JNCH dated 26.09.2016 was issued to the Noticee for the period **from 01.10.2014 to 31.03.2015**, answerable to the Commissioner of Customs (Import), NS-V, Jawaharlal Nehru Custom House, Tal.- Uran, Dist.- Raigad, Maharashtra, which was transferred from the jurisdiction of Commissioner of Customs NS-V to the jurisdiction of Commissioner of Customs NS-III as per Public Notice 91/2018 dated 30.05.2018.
- (ii) Show Cause Notice (SCN) No. 774/SIIB-I/2016-17/JNCH dated 22.02.2017 vide F.No.SG/Misc-69/2015-16/SIIB(I) JNCH was issued to the Noticee for the period **from 01.04.2015 to 16.06.2015** answerable to the Commissioner of Customs (Import), NS-V, Jawaharlal Nehru Custom House, Tal. – Uran, Dist. – Raigad, Maharashtra, which was transferred from the jurisdiction of Commissioner of Customs NS-V to the jurisdiction of Commissioner of Customs NS-III as per Public Notice No. 91/2018 dated 30.05.2018 as the subject goods falling under the jurisdiction of NS-III;

4.5 Vide Show Cause Notice (SCN) issued vide File No. SG/Misc-69/2015-16/SIIB (I)/JNCH dated 26.09.2016 issued for the period **from 01.10.2014 to 31.03.2015 read with** Public Notice 91/2018 dated 30.05.2018, the Noticee was called upon to show cause to Commissioner of Customs NS-III, as to why: -

- i. The assessable value amounting to Rs. 29,79,02,365/- in respect of goods imported under various bills of entry as detailed in Annexure A,B,C,D & E to the SCN should not be re-determined as Rs. 32,61,57,293/- by adding and including the payments made on account of Franchise entrance fee, Franchise fee to the seller/brand holder and advertisement expenses incurred/reimbursed to the brand holder in terms of Rule 3 read with Rule 10 (1)(c), 10 (1)(d) and 10 (1)(e) of the CVR ,2007 read with the Section 14 of the Customs Act, 1962 and the said goods re-assessed to Customs duties accordingly as detailed in Annexure A,B,C,D & E to the SCN.
- ii. The total differential Customs duties amounting to Rs.1,01,25,374/- evaded/short paid in respect of goods imported under Bills of Entry as

detailed in Annexure A,B,C,D & E to the SCN, should be demanded and recovered from them on the basis of aforesaid re-determined values in terms of provisions of erstwhile Section 28 (1) of the Customs Act, 1962.

- iii. Interest as applicable should not be demanded and recovered from them under the provisions of Section 28 AA of the Customs Act, 1962 on the evaded / short paid duty detailed in clause (ii) above.
- iv. The goods having re-determined assessable value of Rs. 32,61,57,293/- as detailed in Annexure A,B,C,D & E to the show cause notice, should not be confiscated under the provisions of under Section 111 (d) and 111 (m) of the Customs Act, 1962. And as the goods are not available as to why redemption fine should not be imposed in lieu of confiscation, under the provisions of Section 125 of the CA, 1962.
- v. Penalty should not be imposed upon them under the provisions of Section 112 and/or Section 114 AA of the Customs Act, 1962.

4.6 Vide Show Cause Notice No. 774/SIIB-I/2016-17/JNCH dated 22.02.2017 having F.No.SG/Misc-69/2015-16/SIIB(I) JNCH issued for the period **from 01.04.2015 to 16.06.2015** read with Public Notice 91/2018 dated 30.05.2018, the Noticee was called upon to Commissioner of Customs NS-III, as to why:-

- (i) The assessable value amounting to Rs. 7,11,84,836/- (Rupees Seven Crore Eleven Lakhs Eighty Four Thousand Eight Hundred and Thirty Six Only) in respect of goods imported under various bills of entry as detailed in Annexures A, B, C & D to the SCN dated 22.02.2017 should not be re-determined as Rs.8,00,37,071/- (Rupees Eight Crores Thirty Seven Thousand and Seventy One Only) by adding and including the payments made on account of franchise entrance fee, franchise fee to the seller / brand holder and advertisement expenses incurred/reimbursed to the brand holder in terms of Rule 3 read with Rule 10(1)(c), 10(1)(d) and 10(1)(e) CVR, 2007 read with the Section 14 of the Customs Act, 1962 and the said goods re-assessed to Customs duties accordingly as detailed in Annexures A,B,C & D.
- (ii) The total differential Customs duties amounting to Rs. 39,91,196/- evaded / short paid in respect of goods imported under bills of entry as detailed in Annexures A,B,C & D to the SCN dated 22.02.2017, should not be demanded and recovered from them on the basis of aforesaid re determined values in terms of provisions of erstwhile Section 28 (1) of the Customs Act, 1962.
- (iii) Interest as applicable should not be demanded and recovered from them under the provisions of Section 28 AA of the Customs Act, 1962 on the evaded / short paid duty detailed in clause (ii) above.
- (iv) The goods having re-determined assessable value of Rs 8,00,37,071/- as detailed in Annexures A,B,C & D to the SCN dated 22.02.2017, should not be confiscated under the provisions of under Section 111 (d) and 111 (m) of the Customs Act, 1962. And as the goods are not available as to why redemption fine should not be imposed in lieu of confiscation, under the provisions of Section 125 of the Customs Act, 1962.

- (v) Penalty should not be imposed upon them under the provisions of Section 112 / Section 114A of the Customs Act, 1962.
- (vi) Penalty should not be imposed upon them under the provisions of Section 114 AA of the Customs Act, 1962.

5. SUBMISSION MADE BY MBIPL TO SCN (s)

5.1 Replies and Submissions of the Noticee-MBIPL to SCN dated 26.09.2016:

M/s. MBIPL vide their letters dated 21.12.2016 and 27.02.2019 had submitted a detailed reply to SCN. Briefly their submission was as under:-

- i. Department has not examined the pricing arrangement between the foreign supplier and the buyer and has only examined the royalty/TAA; the said payments were no way related to the imported items; no efforts was made by the department to ascertain whether there exists price adjustment between cost incurred by the buyer on account of royalty/licence fees payments and the price paid for imported items; no efforts was made to ascertain enhancement of royalty/licence fees by reducing the price of the imported items.
- ii. The scope of Rules 9(1)(c) and 9(1)(e) of the erstwhile CVR of 1988 which are parimateria to the rules 10(1)(c) and 10(1)(e) of the present CVR of 2007.
- iii. Hon'ble Supreme Court's decision in case of Commissioner of Customs Vs. Ferodo India Pvt. Ltd. reported at 2008(224) E.L.T 23(S.C) in which it is held that
 "royalty payments is not includible in the assessable value as there is not finding that what was termed as royalty/licence fee was in fact not such royalty/licence fee but some other payment made or to be made as a condition pre-requisite to the sale of imported goods".
- iv. They also cited following case laws in support of their contention:
 - ▶ 2013 (294) E.L.T 467(T) Tata Yutaka Autocomp Ltd. Vs CC (Imp), Mumbai
 - ▶ 2013 (292) E.L.T 403, Commissioner Vs. Bridgestone India Pvt. Ltd.
 - ▶ 2014 (307) E.L.T 956(T), Ortiker India Pvt. Ltd.
- v. Payment made by them to the franchisor were not as a condition of sale of the goods; they have taken opinion from reputed consultancy firm, after due consideration, they have opined that the payments being made to the overseas brand owners were eligible to service tax and they were not to be included in assessable value of the goods being imported from those brand owner for the purpose of levy of Customs Duty; they had been paying service tax on the franchise fee and the reimbursement being made to the overseas suppliers towards the advertisement cost incurred by them. However, after receipt of previous notice, they decided not to pay service tax and opt for provisional

assessments on import goods; advertisement materials being imported were cleared after payment of Customs Duties as applicable under their respective tariff headings.

- vi. A small portion of the imported goods are assessable under specific rates. Noticee submitted that merchandise being imported are subjected to either specific or ad-valorem rates of duty as the case may be according to the scheme of the Customs Tariff Act as shown in table below:

Table: Import during 01.10.2014 to 31.03.2015

Franchisor	Subject to specific rate of duty		Subject to ad valorem duty		Total Assessable value
	Assessable value	%	Assessable value	%	
1	2	3	4	5	6
Nine West	1,78,085/-	0.53	3,33,25,995/-	99.47	3,35,04,080/-

Once the goods are liable to duty on specific rates, the enhancement of value will not disturb the rate of duty and thus no extra duty is payable in this case; if any kind of addition is made to the declared assessable value of the imported goods, the department cannot presume that all goods attracted ad-valorem rates of duty and totally ignore imports made under specific rates; since the goods subjected to specific rate would remain unaffected by any addition, the extra duty, if any can be demanded only against value shown in column 4 of the above table after addition, if any.

- vii. SCN allege mis-statement and suppression of facts and has been issued without application of mind as the clause of erstwhile section 28(1) and it's proviso have been invoked in the notice even though the section is already replaced by a new section.
- viii. They have paid more service tax in relation to these imports than the amount of customs duty demanded in SCN and questioned that will any tax evader mis-state or suppress facts so as to pay more service tax to save less customs duty?
- ix. It is nobody's case that both customs duty and service tax can be levied or payable on the same goods; service tax cannot be charged on the goods as part of a transaction, it is leviable only on service part of the transaction; once the franchise fee or other fee which are subject matter of SCN is to be added to value of the goods, the possibility of their being again subjected to nil service tax; the service tax and custom duty are mutually exclusive as are the sales tax and service tax; they cited the decision of Hon'ble Supreme court in the case of Bharat Sanchar Nigam Vs Union of India reported at 2006(2) STR 161(SC) and Tribunal decision in United Shippers Ltd. Vs CCE Thane-II reported at 2015(37) STR 1043.

- x. They have not availed CENVAT credit of service tax paid on reverse charge basis in respect of the franchise fee all these years and it is only from FY 2014-15 that they have started claiming CENVAT credit to some extent since they are charging management fee and commissions.
- xi. Under the above circumstances the allegation of mis-statement or mis-declaration or under-valuation is not tenable because they have been a net loser in the path followed by them.
- xii. Figures of table summary in para 6.4 does not match with the figures in the table in para 6.3. The amount applied as 'additional reimbursement' in para 6.4 is incorrect resulting in the error of complete calculation for arriving at differential duty.
- xiii. Advertisement expense on account of material imported in case of 'Aldo=84,098/- and 'Charles & Keith=Rs. 2,08,397/- are wrongly taken under the head Advertisement Expenses on account of remittance sent to brand owner whereas the same are imports and not reimbursements.
- xiv. The above Advertisement expense on account of material imported and sales promotion imported (Aldo=Rs. 2,00,483/- and Charles & Keith =Rs. 18,84,314/-) are added as additional reimbursement in the assessable value for the purpose of calculating differential duty, whereas the same are imports and not reimbursements.
- xv. Purchases for the period are bifurcated into – Local Purchase, Imports through JNPT, ACC and imports in Delhi. The additional reimbursement for the period should have been applied only proportionately to the imports through JNPT. But the full amount of additional reimbursement is applied only to imports from JNPT resulting in high loading %.
- xvi. The method for calculation/rate applied for re-assessment of duty (resulting in differential duty) is not mentioned in SCN.
- xvii. In the case of BHPC the franchise fee of full year is taken and applied to 6 month of imports, that too without considering the local purchase.
- xviii. The notice proposes to add in the assessable value the above amounts based on the agreements with different suppliers and considering the fact that for the years 2014-15, the DRI has issued notice of demand up to 30.09.2014.
- xix. **Franchise Fee:** They submitted that said allegation is without any link to the actual payments made to the franchisors; the payment of franchisor fee are made at the end of the year after the actual sales during the year are unknown, notwithstanding the adhoc payments that could be made even final position is clear; the proposed inclusion of franchise fee without taking note of the Noticee's submissions in response to the query of the department appears to be improper; they were having belief that the franchise fee were eligible to service tax under Finance Act, 1994 and there was no mention of term "Franchise Fee" in the Customs Valuation Rules, therefore, they had been paying service tax.
- xx. **Remittance sent to the Brand Owner on account of advertisement expenses:** They submitted that they have paid service tax along with interest in March/April, 2015 on such payment made as reimbursement; this payment incurred by the franchisee is akin to the expenditure incurred by the importer towards marketing of the products sold through the retail outlet; The contract between the noticee and the

franchisor nowhere mentions this expenditure as a condition for the sale of the goods. They cited the decision of Hon'ble Supreme Court in Philips India Ltd. Vs CCE Pune reported at 1997(91) E.L.T 540(SC) and the decision of the Tribunal in Bayer India Ltd. Vs CC Mumbai reported at 2006(198) E.L.T 240(T) in support of his contention. They submitted that Customs Valuation Rules do not talk of adding advertisement expenses, in fact the interpretative note under Rule 3(2)(b) prohibits such addition and the same is exigible to service tax.

- xxi. **Advertisement expenses on account of material imported for advertisement:** Noticee submitted that imported materials have already suffered duties under their respective tariff headings and the proposition made in the notice has no legal backing; Customs Valuation Rules do not talk of adding advertisement expenses, in fact the interpretative note under Rule 3(2)(b) prohibits such addition.
- xxii. **Sales promotion imported:** Under this head store material such as Web Hosting, Campaign, Music Service charges, boot shapers, posters, cardboard box, booklet, sunglass case were imported; All these materials had suffered the duties of the Customs at the time of their imports under their respective tariff headings; Customs Valuation Rules do not talk of adding advertisement expenses, in fact the interpretative note under Rule 3(2)(b) prohibits it's addition.
- xxiii. With regard to the Confiscation the Noticee submitted that Rule 11 requires one to declare correctly the value, quantity and description of the goods and the same was followed by noticee. They had been paying service tax on such expenses and already paid Customs duty on materials imported. They have made all imports in accordance with law; they have not made any wrong declaration; invocation of this section to the imports made by them is not proper.
- xxiv. Allegation in SCN which invokes section 3(3) of the Foreign Trade (Development & Regulation) Act, 1992 is totally misplaced. This section requires Central Govt. to notify order under sub-section (2) making provisions for prohibiting, restricting or otherwise regulating. The SCN does not reveal as to whether any order has been passed and which order passed by Central Govt. is relevant to our imports and how imports can be deemed to be a prohibition under section 11 of the Customs Act, 1962. In view thereof, section 11 of the Customs Act, has no application to their case.
- xxv. In view of the above, sub section (d) of section 111 of the Customs Act, 1962 does not get attracted. Section 111(m) too cannot be applied in this case and therefore the proposal of the department to confiscate the impugned goods under any of the provisions of the Customs Act, 1962 is not sustainable.
- xxvi. With regard to the Penalty the Noticee submitted that as the goods imported by them are not liable to confiscation under section 111(d) or 111(m) of the Customs Act, 1962, hence they are not liable to imposition of penalty under section 112 of the Customs Act, 1962.
- xxvii. This is not a case of wilful mis-statement or suppression of value as there is no intention to evade payment of duty. Therefore neither the erstwhile section 28(1) nor can Section 28(4) of the CA, 1962 be invoked. Hence, question of imposition of penalty under section 114A of the Customs Act, 1962 does not arise.

- xxviii. They have not made any wrong or false declaration in the bills of entry or other related documents; their declarations have been based on their bonafide belief that certain charges paid or payable to franchisor were liable to service tax and were not to be added to the declared assessable value. Therefore, question of imposition of penalty under section 114AA of the Customs Act, 1962 does not arise.

5.2 Record of Personal hearing to SCN dated 26.09.2016:

5.2.1 Under the principles of Natural Justice, opportunity of Personal Hearing was granted to the noticee on 05.10.2018 by the then Adjudicating Authority which was attended by Shri Ankit Falor, authorised representative of M/s. MBIPL.

5.2.2 Further, opportunity of Personal Hearings was again granted to the noticee on 22.02.2019.

5.2.3 Shri Naveen Golchha, CFO in M/s. Major Brands (I) Pvt. Ltd. appeared for the hearing on 27.02.2019 and stated that on the Franchisee fees, service tax has been paid at higher rate than BCD of 10%; that there are errors in the calculation in page 12 & 13 of the SCN (para 11 of their written submission given vide letter dated 21.12.2016); that on the advertisement material imported, Customs duty has already been paid; that on advertisement and sales promotion contribution sent to brand owner, service tax has already been paid; that local parties are not related to brand owners and any payment made to local parties is not linked to import.

5.2.4 Further, Shri Naveen Golchha, CFO in M/s. Major Brands (I) Pvt. Ltd. appeared for the hearing on 16.09.2019 and submitted that the Entrance Fees, Franchisee fees, Advertisement and Sales Promotion fees, Advertisement expenses incurred locally and cost of Import of Advertisement and sales promotion materials cannot be includible in the assessable value, since these have no direct link to the imports and there also calculation errors, which has been pointed out in their earlier reply dated 27.02.2019. Further, franchisee fees are not mentioned in the Valuation Rules. Also it is a kind of profit sharing with the owner. Advertising contribution related to global advertisement and not linked to the imported materials. There are also case laws like Giorgio Armani India (P) Ltd. V/s Commissioner of Customs, New Delhi, 2018 (362) ELT 333 (I-Del) that local expenses cannot be included in the assessable value.

5.3 M/s. MBIPL vide their letter dated 27.02.2019 had submitted a detailed reply to SCN dated 22.02.2017. Briefly their submission was as under:-

- i. At the outset the company denies all the allegations made against them in the said SCN dated 22.02.2017.
- ii. The Company is engaged in the retail sale of the various merchandise viz apparels, footwear, accessories, through its channel of more than 150 retail stores in India. Company has paid Service Tax, to the extent of Rs. 10.03 crores in the last five years.
- iii. It is being submitted that in terms of Master Circular on SCNs, Adjudication and Recovery, viz. Circular No. 1053/02/2017-CX under F. No. 96/1/2017-CX.I dated 10.03.2017 (Para 3.7 of the said Circular) the present SCN cannot be sustained and the extended period under Section 28(4) cannot be invoked as the said SCN was issued on 22.02.2017 for the period 01.04.2015 to 16.06.2015, i.e. after one year and

eight months after the relevant date as per provisions of Section 28 (1) of the CA, 1962.

- iv. They submitted that department has not examined the pricing arrangement between the foreign supplier and the buyer and has only examined the royalty/TAA; the said payments were no way related to the imported items; no efforts was made by the department to ascertain whether there exists price adjustment between cost incurred by the buyer on account of royalty/licence fees payments and the price paid for imported items; no efforts was made to ascertain enhancement of royalty/licence fees by reducing the price of the imported items.
- v.
- vi. They also highlighted the scope of Rules 9(1)(c) and 9(1)(e) of the erstwhile CVR of 1988 which are pari materia to the rules 10(1)(c) and 10(1)(e) of the present CVR of 2007. They made reference of Hon'ble Supreme Court's decision in case of Commissioner of Customs Vs Ferodo India Pvt. Ltd. reported at 2008(224) E.L.T 23(S.C) in which it is held that royalty payments is not includible in the assessable value as there is not finding that what was termed as royalty/licence fee was in fact not such royalty/licence fee but some other payment made or to be made as a condition pre-requisite to the sale of imported goods.
- vii. They also cited following case laws in support of his contention:
 - ▶ 2013 (294) E.L.T 467(T) Tata Yutaka Autocomp Ltd. Vs CC (Imp), Mumbai
 - ▶ 2013 (292) E.L.T 403, Commissioner Vs. Bridgestone India Pvt. Ltd.
 - ▶ 2014 (307) E.L.T 956(T), Ortiker India Pvt. Ltd.
- viii. They submitted that payment made by them to the franchisor were not as a condition of sale of the goods; they have taken opinion from reputed consultancy firm, after due consideration, they have opined that the payments being made to the overseas brand owners were exigible to service tax and they were not to be included in assessable value of the goods being imported from those brand owner for the purpose of levy of Customs Duty; they had been paying service tax on the franchise fee and the reimbursement being made to the overseas suppliers towards the advertisement cost incurred by them. However, after receipt of previous notice, they decided not to pay service tax and opt for provisional assessments on import goods; advertisement materials being imported were cleared after payment of Customs Duties as applicable under their respective tariff headings.
- ❖ Noticee submitted that merchandise being imported are subjected to either specific or ad-valorem rates of duty as the case may be according to the scheme of the Customs Tariff Act. They submitted that once the goods are liable to duty on specific rates, the enhancement of value will not disturb the rate of duty and thus no extra duty is payable in this case; if any kind of addition is made to the declared assessable value of the imported goods, the department cannot presume that all goods attracted ad-valorem rates of duty and totally ignore imports made under specific rates; since the goods subjected to specific rate would remain unaffected by any addition, the extra duty, if any can be demanded only against value shown in column 4 of the above table after addition, if any.

- ❖ ix. Allegation of suppression and mis-statement is unwarranted. Noticee submitted that:
- ❖ SCN allege mis-statement and suppression of facts and has been issued without application of mind as the clause of erstwhile section 28(1) and it's proviso have been invoked in the notice even though the section is already replaced by a new section.
- ❖ They have paid more service tax in relation to these imports than the amount of customs duty demanded in SCN and questioned that will any tax evader mis-state or suppress facts so as to pay more service tax to save less customs duty?
- ❖ It is nobody's case that both customs duty and service tax can be levied or payable on the same goods; service tax cannot be charged on the goods as part of a transaction, it is leviable only on service part of the transaction; once the franchise fee or other fee which are subject matter of SCN is to be added to value of the goods, the possibility of their being again subjected to nil service tax; the service tax and custom duty are mutually exclusive as are the sales tax and service tax; they cited the decision of Hon'ble Supreme court in the case of Bharat Sanchar Nigam Vs Union of India reported at 2006(2) STR 161(SC) and Tribunal decision in United Shippers Ltd. Vs CCE Thane-II reported at 2015(37) STR 1043.
- ❖ They have not availed CENVAT credit of service tax paid on reverse charge basis in respect of the franchise fee all these years and it is only from FY 2014-15 that they have started claiming CENVAT credit to some extent since they are charging management fee and commissions.
- ❖ Under the above circumstances the allegation of mis-statement or mis-declaration or under-valuation is not tenable because they have been a net loser in the path followed by them.
- x. Errors in duty quantification.
- xi. The notice proposes to add in the assessable value the above amounts based on the agreements with different suppliers and considering the fact that for the years 2014-15, the DRI has issued notice of demand up to 30.09.2014. Point wise submission is given below:-
 - ❖ **Franchise Fee:** They submitted that said allegation is without any link to the actual payments made to the franchisors; the payment of franchisor fee are made at the end of the year after the actual sales during the year are unknown, notwithstanding the adhoc payments that could be made even final position is clear; the proposed inclusion of franchise fee without taking note of the Noticee's submissions in response to the query of the department appears to be improper; they were having belief that the franchise fee were exigible to service tax under Finance Act, 1994 and there was no mention of term "Franchise Fee" in the Customs Valuation Rules, therefore, they had been paying service tax.
 - ❖ **Remittance sent to the Brand Owner on account of advertisement expenses:** They submitted that they have paid service tax along with interest in March/April, 2015 on such payment made as reimbursement; this payment incurred by the franchisee is akin to the expenditure incurred by the importer towards marketing of

the products sold through the retail outlet; The contract between the noticee and the franchisor nowhere mentions this expenditure as a condition for the sale of the goods. They cited the decision of Hon'ble Supreme Court in Philips India Ltd. Vs CCE Pune reported at 1997(91) E.L.T 540(SC) and the decision of the Tribunal in Bayer India Ltd. Vs CC Mumbai reported at 2006(198) E.L.T 240(T) in support of his contention. They submitted that Customs Valuation Rules do not talk of adding advertisement expenses, in fact the interpretative note under Rule 3(2)(b) prohibits it's addition and the same is exigible to service tax.

- ❖ **Advertisement expenses on account of material imported for advertisement:** Noticee submitted that imported materials have already suffered duties under their respective tariff headings and the proposition made in the notice has no legal backing; Customs Valuation Rules do not talk of adding advertisement expenses, in fact the interpretative note under Rule 3(2)(b) prohibits such addition.
- ❖ **Sales promotion imported:** Under this head store material such as Web Hosting, Campaign, Music Service charges, boot shapers, posters, cardboard box, booklet, sunglass case were imported; All these materials had suffered the duties of the Customs at the time of their imports under their respective tariff headings; Customs Valuation Rules do not talk of adding advertisement expenses, in fact the interpretative note under Rule 3(2)(b) prohibits such addition.

xii. **Confiscation:** Noticee submitted that-

- ❖ Rule 11 requires one to declare correctly the value, quantity and description of the goods and the same was followed by noticee.
- ❖ They had been paying service tax on such expenses and already paid customs duty on materials imported.
- ❖ They have made all imports in accordance with law; they have not made any wrong declaration; invocation of this section to the imports made by them is not proper.
- ❖ Allegation in SCN which invokes section 3(3) of the Foreign Trade (Development & Regulation) Act, 1992 is totally misplaced. This section requires Central Govt. to notify order under sub-section (2) making provisions for prohibiting, restricting or otherwise regulating. The SCN does not reveal as to whether any order has been passed and which order passed by Central Govt. is relevant to our imports and how imports can be deemed to be a prohibition under section 11 of the Customs Act, 1962. In view thereof, section 11 of the Customs Act, has no application to our case.
- ❖
- ❖ In view of the above, sub section (d) of section 111 of the Customs Act, 1962 does not get attracted. Section 111(m) too cannot be applied in this case and therefore the proposal of the department to confiscate the impugned goods under any of the provisions of the Customs Act, 1962 is not sustainable.

xiii. **Penalty:** Noticee submitted that-

- ❖ As the goods imported by them are not liable to confiscation under section 111(d) or 111(m) of the Customs Act, 1962, hence they are not liable to imposition of penalty under section 112 of the Customs Act, 1962.
- ❖ This is not a case of wilful mis-statement or suppression of value as there is no intention to evade payment of duty. Therefore neither the erstwhile section 28(1) nor section 28(4) of the Customs Act, 1962 can be invoked. Hence, question of imposition of penalty under section 114A of the Customs Act, 1962 does not arise.
- ❖ They have not made any wrong or false declaration in the bills of entry or other related documents; their declarations have been based on our bonafide belief that certain charges paid or payable to franchisor were liable to service tax and were not to be added to the declared assessable value. Therefore, question of imposition of penalty under section 114AA of the Customs Act, 1962 does not arise.

5.4 Recording of Personal Hearing to SCN dated 22.02.2017:

5.4.1 Under the principles of Natural Justice, opportunity of Personal Hearing was granted to the noticee on 05.10.2018 by the then Adjudicating Authority which was attended by Shri Ankit Falor, authorised representative of M/s. Major Brand (I) Pvt. Ltd.

5.4.2 Opportunity of Personal Hearing was again granted to the noticee on 27.02.2019, which was attended by Shri Naveen Golchha, CFO in M/s. MBIPL wherein he stated that on the Franchisee Fees, Service Tax has been paid at higher rate than BCD of 10%; that on the advertisement material imported, Customs duty has already been paid; that on advertisement and sales promotion contribution sent to brand owner, service tax has already been paid; that local parties are not related to brand owners and any payment made to local parties is not linked to import.

5.4.3 Further, Shri Naveen Golchha, CFO in M/s. Major Brands (I) Pvt. Ltd. appeared for the hearing on 16.09.2019 and submitted that the Entrance Fees, Franchisee fees, Advertisement and Sales Promotion fees, Advertisement expenses incurred locally and cost of Import of Advertisement and sales promotion materials cannot be includible in the assessable value, since these have no direct link to the imports and there also calculation errors, which has been pointed out in their earlier reply dated 27.02.2019. Further, franchisee fees are not mentioned in the Valuation Rules. Also it is a kind of profit sharing with the owner. Advertising contribution related to global advertisement and not linked to the imported materials. There are also case laws like Giorgio Armani India (P) Ltd. V/s Commissioner of Customs, New Delhi, 2018 (362) ELT 333 (I-Del) that local expenses cannot be included in the assessable value.

6. The Show Cause Notice (SCN) issued vide File No. SG/Misc-69/2015-16/SIIB (I)/JNCH dated 26.09.2016 issued for the period from 01.10.2014 to 31.03.2015 was adjudicated vide Order-in-Original No: 59 /2019-20/Commr/NS-III/CAC/JNCH dated 28.11.2019 passed by the Commissioner of Customs (NS- III), JNCH, Nhava Sheva, whereby the Adjudicating Authority has ordered as follows:-

- (i) I order re-determination of the assessable value amounting to Rs. 31,27,53,295/-

(Rupees Thirty One Crores Twenty Seven Lakhs Fifty Three Thousand Two Hundred Ninety Five Only) of goods imported under various Bills of Entry by adding and including the payments made on account of Franchise Entrance Fee, Franchise Fee paid to the seller / brand holder and advertisement expenses incurred/reimbursed to the brand holder in terms of Rule 3 read with Rule 10 (1)(c), 10 (1)(d) and 10 (1)(e) 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 demand and recover the differential Customs duties amounting to Rs. 63,80,090/- (Rupees Sixty Three Lakhs Eighty Thousand Ninety only) evaded/short paid in respect of goods imported (as discussed in above para 5.63 & 5.63.1) on the basis of aforesaid re-determined values in terms of provisions of erstwhile Section 28 (1) of the Customs Act, 1962 and present Section 28(4) of the Customs Act, 1962. The demand of Rs.1,01,25,374/- is modified as detailed in Para 5.54 of this order.
- (iii) I order to recover the interest as applicable from them under the provisions of Section 28 AA of the Customs Act, 1962 on the evaded / short paid duty.
- (iv) I confiscate the goods having re-determined assessable value of Rs. 31,27,53,295/- (Rupees Thirty One Crores Twenty Seven Lakhs Fifty Three Thousand Two Hundred Ninety Five Only), under the provisions of Section 111 (d) and 111 (m) of the Customs Act, 1962. Though the goods are not physically available, I refrain from imposition of redemption fine under Section 125 of the Customs Act, 1962.
- (v) I impose penalty of Rs. 6,38,000/- (Rupees six lakhs and thirty eight thousands only) under section 112 (a) of the Customs Act, 1962 on M/s. Major Brands (I) Pvt. Ltd., Mumbai.
- (vi) I also impose penalty of Rs. 1,50,00,000/- (Rupees One crore and fifty lakhs only) under section 114 AA of the Customs Act, 1962 on M/s. Major Brands (I) Pvt. Ltd., Mumbai.

6.1 The Show Cause Notice No. 774/SIIB-I/2016-17/JNCH dated 22.02.2017 having F.No.SG/Misc-69/2015-16/SIIB(I) JNCH issued for the period from 01.04.2015 to 16.06.2015 was adjudicated vide Order-in-Original No: 60/2019-20/Commr/NS-III/CAC/JNCH dated 28.11.2019 passed by the Commissioner of Customs (NS- III), JNCH, Nhava Sheva, whereby the Adjudicating Authority has ordered as follows:-

- (i) I order to re-determine the assessable value amounting to Rs. 8,11,12,108/-(Rupees Eight Crores Eleven Lakh Twelve Thousand One Hundred Eight only) of goods imported under various Bills of Entry by adding and including the payments made on account of Franchise Entrance Fee, Franchise Fee to the seller / brand holder and advertisement expenses incurred/reimbursed to the brand holder in terms of Rule 3

read with Rule 10(1)(c), 10(1)(d) and 10(1)(e) of the CVR, 2007 read with the Section 14 of the Customs Act, 1962.

- (ii) I order to demand and recover the differential Customs duties amounting to Rs. 45,38,125/-(Rupees Forty Five Lakh Thirty Eight Thousand One Hundred Twenty Five only) evaded/short paid in respect of goods imported on the basis of aforesaid re-determined values in terms of provisions of erstwhile Section 28 (4) of the Customs Act, 1962.
- (iii) I order to recover the interest as applicable from them under the provisions of Section 28 AA of the Customs Act, 1962 on the evaded / short paid duty.
- (iv) I order to confiscate the goods having re-determined assessable value of Rs. 8,11,12,108/-(Rupees Eight Crores Eleven Lakh Twelve Thousand One Hundred Eight only), under the provisions of under Section 111 (d) and 111 (m) of the Customs Act, 1962. Though the goods are not physically available, I refrain from imposition of redemption fine under Section 125 of the Customs Act, 1962.
- (v) I impose penalty of Rs. 45,38,125/- (Rupees Forty Five Lakh Thirty Eight Thousand One Hundred Twenty Five only) on M/s. Major Brands (I) Pvt. Ltd. under section 114A of the Customs Act, 1962, which should be paid by / recovered from them. Provided that where such duty or interest (as detailed in para (ii) & (iii) above), as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be fifteen per cent of the duty or interest, as the case may be, so determined.
- (vi) I also impose penalty of Rs. 1,00,00,000/- (Rupees One crore only) under section 114 AA of the Customs Act, 1962 on M/s. Major Brands (I) Pvt. Ltd., Mumbai.

6.2 Being aggrieved vide Order-in-Original No: 59 /2019-20/Commr/NS-III/CAC/JNCH dated 28.11.2019 & Order-in-Original No: 60/2019-20/Commr/NS-III/CAC/JNCH dated 28.11.2019, the Noticee filed an appeal before the Hon'ble CESTAT, Mumbai. The Tribunal, vide its Final Order dated 08.04.2024, held that the findings on confiscation, penalty under Section 112, and invocation of the extended period of limitation were not supported by adequate examination of facts and law. Accordingly, the Hon'ble Tribunal set aside the impugned orders and remanded the matter to the original authority for de novo adjudication on limited issues. The relevant para of said order passed by the Hon'ble CESTAT is as follows:-

"Para 19. The confiscation ordered in all three orders and penalty ordered under section 112 of Customs Act, 1962 in two of the orders are without sufficient examination of law and fact. Likewise, the invoking of extended period in all the orders has been undertaken without proper examination of factual circumstances that

enable such demand. These require re-ascertainment in accordance with our observations supra including quantification of demand legally recoverable. For these reasons, all the orders are set aside and restored to the original authority for fresh proceedings that shall be limited to justification, if any, for invoking extended period and consequent quantification of tenable demand and to evaluate the grounds on which liability to confiscation are supported by law and facts with penalty under section 112 to follow only in the event of validation of confiscation.”

DEFENCE’S REPLY

7. The noticee through Mr. B. K. Singh, Advocate submitted their written reply vide letter cum synopsis dated Nil against both the SCNs vide e-mail dated 15.09.2025. The noticee in his written submission has submitted that the submissions made earlier in their detailed reply to the Show Cause Notice’s may be taken on record once again and the following additional submissions are being made as listed hereunder.

A. Against Show Cause Notice F No. SG/Misc-69/2015-16/SIIB (I)/JNCH dated 26.09.2016, Noticee Submitted the Synopsis having Ref Nil dated Nil through e-mail dated 15.09.2025:-

1. *“The issue of addition of Franchise Fee has been settled in favour of the revenue in the case of Giorgio Armani India (P) Ltd Vs CC, New Delhi [2018 (362) ELT 333] which has been affirmed by the Supreme Court. Therefore, the appellant does not contest the addition of Franchise fees paid to the franchisors which is as follows as culled out from Table in Para 6.2 of the impugned Notice (Pg 11 of SCN)*
2. *The following amounts are liable to be added to the Bills of Entry filed between 01.10.2014 to 31.03.2015 towards Franchise Fees.*

<i>Sr No</i>	<i>Franchisor</i>	<i>No of Bills of Entry</i>	<i>Amount for the period as per proposal in the SCN (in Rs)</i>
<i>1</i>	<i>Aldo</i>	<i>30</i>	<i>51,67,808/-</i>
<i>2</i>	<i>BHPC</i>	<i>3</i>	<i>1,11,25,329/-</i>
<i>3</i>	<i>Charles & Keith</i>	<i>21</i>	<i>64,06,484/-</i>
<i>4</i>	<i>Guess</i>	<i>21</i>	<i>11,67,501/-</i>
<i>5</i>	<i>Nine West</i>	<i>11</i>	<i>25,17,735/-</i>

3. *However, the notice makes a calculation error insofar as the differential duty worked out was based on the total duty paid and making a loading factor. Most of the goods in these Bills of Entry pertain to goods on which MRP based duty is leviable during the relevant period. Since the Additional duty has already paid thereon correctly, the duty to be collected will only accrue towards basic customs duty and not towards the Additional Duty under Section 3 of the CTA*

1975. Hence it is requested that the order may be passed only for addition of the above amounts to those Bills listed in Column 2. Once the Bills of Entry in column 2 are recalled and reassessed by adding the franchise amount to SVB loading, the system will automatically calculate the differential amount and generate duty challan. Where the goods are already under MRP based valuation for Additional Duty, the system will not change the Additional duty amount already paid but only for those items where Additional Duty is payable on Ad-valorem basis. A revised working sheet indicating the amount of Franchise Fee to be added for each Bill of Entry will be submitted within two weeks of the completion of the hearing.

Advertising Expenses:

4. Similar the addition of payments made towards Institutional advertising has been settled in favour of the revenue in the case of CC Patparganj Vs Adidas India Marketing P Ltd [2020-TIOL-604-CESTAT-DEL] and in case of Indo-Rubber and Plastic Works Vs CC, Delhi [2020 (373) ELT 250] which has been affirmed by the Supreme Court.
5. The amounts proposed to be added to the value as per the SCN are as follows –

Sr No	Franchisor	No of Bills of Entry	Amount for the period as per proposal in the SCN (in Rs)
1	Aldo	30	84,098/-
2	BHPC	3	0
3	Charles & Keith	21	2,08,397/-
4	Guess	21	0
5	Nine West	11	0

6. It may be seen from the earlier reply to SCN that these amounts reflect the reimbursements made to the brand owners for the advertising spends made in India and hence the same are not liable to be added to the value of imported goods. Besides, they also reflect the cost of imported advertising material which have already suffered applicable duty thereon.
7. The salient features of the Agreement between the noticee and Aldo is given in Para 4.1 of the impugned notice. It may be seen from Para 11.3 of the agreement that this expenses relate to import of Advertising Material on which appropriate Customs Duty has been paid separately and therefore, the same is not liable to be added to the value of the imported goods. These are separate imports which have been valued appropriately by the proper officers of customs and do not form the Institutional Advertising expenses and therefore not hit by the Indo-Rubber Judgment. Para 11.7 provides for payment of 1% of sales towards Institutional royalty, which is liable to be added. However, it is clarified that this amount reflects the import of advertising material and are not

payments towards Institutional Advertising. We state that the invoices in this regard would be submitted in ten days of the hearing.

8. The salient features of the Agreement between the noticee and Charles & Keith is given in Para 4.3 of the impugned notice. It may be seen from Para 12.3 of the agreement provides that the noticee will spend a certain amount of total sales towards advertising and since it is a local advertising expense, the same is not liable to be added to the value of imported goods. Para 12.4 provides that 1% of the total sales will be paid to the Franchisor for Institutional Advertising. This amount is liable to be included in the value in terms of Indo-Rubber Judgment. However, it is clarified that this amount reflects the import of advertising material and are not payments towards Institutional Advertising. We state that the invoices in this regard would be submitted in ten days of the hearing.

Sales Promotion Expenses:

9. The Sale Promotion Expenses amounts proposed to be added to the value as per the SCN are as follows –

Sr No	Franchisor	No of Bills of Entry	Amount for the period as per proposal in the SCN (in Rs)
1	Aldo	30	2,00,483/-
2	BHPC	3	0
3	Charles & Keith	21	18,84,314/-
4	Guess	21	0
5	Nine West	11	0

10. It may be seen from the table in Para 6.3, that these amount reflect import of advertising material and therefore, have already been subjected to applicable customs duty and accordingly, cannot be once again added to the value of imported goods. Therefore, these amounts are clearly not liable to be added to the value of imported goods.
11. The salient features of the Agreement between the noticee and Aldo is given in Para 4.1 of the impugned notice. It may be seen from Para 11.3 of the agreement that this expenses relate to import of Advertising Material on which appropriate Customs Duty has been paid separately and therefore, the same is not liable to be added to the value of the imported goods. These are separate imports which have been valued appropriately by the proper officers of customs and do not form the Institutional Advertising expenses and therefore not hit by the Indo-Rubber Judgment.
12. The salient features of the Agreement between the noticee and Charles & Keith is given in Para 4.3 of the impugned notice. It may be seen from Para 12.3 of the agreement provides that the noticee will spend a certain amount of total sales towards advertising and since it is a local advertising expense, the same is not liable to be added to the value of imported goods. Para 12.4

provides that 1% of the total sales will be paid to the Franchisor for Institutional Advertising. This amount is liable to be included in the value in terms of Indo-Rubber Judgment.

13. *Hon'ble Tribunal in the case of Reliance Brands Luxury Fashion P Ltd Vs Pr. CC, New Delhi [2024 (4) TMI 243] held that no additions are liable to be made to the import value when such advertising and sale promotion costs are incurred by the importer in India. Accordingly, the same is not liable to be added to the value of imported goods.*

Demand is hit by limitation:

14. *It is submitted that the whole of the demand is hit by limitation since the amendment to Section 28(1) came about on 14.05.2016 wherein the phrase "one year" was substituted by the phrase "two years". The period involved in the matter is 01.10.2014 to 31.03.2015. Therefore, prior to 14.05.2016, the limitation period for section 28(1) under which the Show Cause Notice dated 26.09.2016 has been issued is one year, which actually expired on 30.03.2016 whereas the notice has been issued only on 26.09.2016 taking cover of the amendment to the Act. The reason for this averment is that as per section 28(3), the relevant date for issuance of notice is from the date of receipt of information. In the present case, the first Show Cause Notice No. DRI/DZU/23/INQ-33/2014 in the matter has been issued on 30.05.2015 by the DRI. Hence when the department was aware of the matter as early as 2014 leading to issuance of SCN dated 30.05.2015, then the limitation period has to be taken as one year only and accordingly, the whole of the demand is barred by limitation.*

Confiscation of the goods:

15. *The notice proposes confiscation of the imported goods under Section 111(d) and 111(m) as violation of the declaration of real value in terms of the FT (D&R) Act and the Customs Act, 1962.*
16. *In this regard, the Tribunal Observations in Para 15 of its order may kindly be seen, wherein it counselled that there is a further misconception that every rejection of 'transaction value' for replacement with 'surrogate transaction value' is a penalizable taint. Therefore, even if the franchise fee etc are liable to be added, the same ought not to be seen through the prism of mis-declaration so as to invoke the consequences of Section 111 and Section 112.*
17. *Hon'ble Tribunal in para 16 has held, the restricted context and evolving 'franchise model' of doing business elaborated supra are not entirely from doubts about the scope and extent of adjustments permitted by law. This is evident from the disputes in Giorgio Armani India (P) Ltd, Adidas India Marketing Pvt Ltd and Indo Rubber and Plastic Works Ltd pertaining to similarly placed businesses in similar circumstances that came up subsequently. As the controversy plagued the imports across the Industry, it cannot be*

concluded that the certainty perceived by adjudicating authorities prevailed among importers too.

- 18. In the light of the above, it is clear that the issue of such additions to the assessable value was not free from doubt and hence a view that the Noticee has deliberately misdeclared the value is incorrect.*
- 19. Hon'ble Tribunal in the recent case of Hewlett Packard Sales P Ltd & Ors Vs Pr. CC, New Delhi and vice-versa [2026 (6) TMI 556] held that, "the responsibility of the importer is confined to truthfully declaring the transaction value in the Bill of Entry. If the transaction value is not indicated correctly, the goods will be liable for confiscation under section 111(m) and NOT if the value declared in the Bill of Entry do not match with some value determined later by the proper officer during re- assessment or in any investigation or adjudication proceedings.". The said Order applies on all fours to the facts of this case and accordingly, the proposal for confiscation of the goods on grounds of misdeclaration of value under provisions of Customs Act 1962 cannot be sustained and needs to be dropped along with attendant proposal for penalty under Section 112 & 114AA of Customs Act, 1962, as also done in the instant case.*
- 20. Similarly the jurisdictional Tribunal by a majority in the case of Star Entertainment P ltd Vs CC (Adjn) [2014 (5) TMI 713] set aside the demand for extended period and the confiscation, redemption fine and penalties imposed in the case.*
- 21. Therefore, it is submitted that the goods cannot be held liable for confiscation at all in terms of the above said order and therefore no fine or penalty can be imposed on the noticee.*
- 22. The noticee had obtained legal opinion that such payments are not liable to addition under Customs Law but under Service Tax law and accordingly, had even paid Service Tax on the same which clearly shows the bona-fide belief of the noticee and there is no deliberate attempt to evade legitimate customs duties.*
- 23. The jurisdictional Tribunal in the case of Genx Entertainment Ltd Vs CC [2018 (4) TMI 1347] upheld the addition of Royalty to the transaction value but set aside the confiscation and redemption fine imposed on the ground that the goods were not released on bond and hence no redemption fine could have been imposed by placing reliance on the jurisdictional High Court Order in the case of CC (Import) Finesse Creations Inc [2009 (8) TMI 115 (Bom)], which has later been upheld by the Hon'ble Supreme Court in Commissioner Vs Finesse Creations Inc [2010 (5) TMI 804 (SC)].*
- 24. The Hon'ble Bombay High Court repeated its findings that once the goods are not available for confiscation, no redemption fine could be imposed in Commissioner of Customs (Import) Vs Air India Ltd [2023 (7) TMI 783 (Bom)]*
- 25. In an appeal filed by another Commissioner of Customs of this very Custom House, the Hon'ble Bombay High Court in the case of CC, NS – I Vs Frigorifico Allana P Ltd [2024 (12) TMI 101 (Bom)], the Hon'ble High Court held that*

placing reliance on judgments of some other High Courts while ignoring those of the jurisdictional High Court is improper. The jurisdictional officers in the State of Maharashtra are accordingly bound by the judgment of the Bombay High Court and rejected the appeal. It also held that the argument that Madras and Gujarat High Court judgments were dismissed by the Hon'ble Court in its judgment in the case of CC NS – I Vs Ganesh Benzoplast Ltd. It appears that no appeal has been filed against the subject Bombay High Court judgment.

26. *In view of the above, it is respectfully submitted that no redemption fine can be imposed when the goods are not available for confiscation and imposition of such fine would be in clear contempt of the jurisdictional High Court. It bears mention that the earlier Order-in-Original had not imposed any redemption fine as the goods were not available for confiscation and the said order has been accepted in review under section 129D of Customs Act, 1962.*

Penalty under Section 112 of Customs Act, 1962

27. *The Notice proposes penalty under Section 112 of Customs Act, 1962 without actually specifying whether the penalty is to be imposed under Section 112(a) or 112(b) of Customs Act, 1962. Both the sub-sections operate in different fields and unless the Show Cause Notice clearly specifies the correct sub-section, no penalty can be imposed on the noticee under Section 112 of Customs Act, 1962.*
28. *As already submitted hereinabove, the Tribunal Order in the case of Hewlett Packard Sales P Ltd & Ors Vs Pr. CC, New Delhi and vice-versa [2026 (6) TMI 556] fully applies to the facts of this case and therefore, no penalty under Section 112 or 114AA can be imposed on the noticee.*

Penalty Under Section 114AA of Customs Act, 1962

29. *The Tribunal has adequately examined the applicability of Section 114AA of Customs Act, 1962 and held in Para 18 of its order that the same is not liable to be imposed and therefore, the issue is foreclosed by the Tribunal's order.*

Conclusion:

30. *In view of the above, the following final submissions are made –*
- i. Franchise fee to the extent shown in the SCN is liable to be added to the value of Goods.*
 - ii. No addition is liable to be made towards Advertising Expenses and sale promotion expenses made in India.*
 - iii. Since there was confusion as rightly pointed out by Hon'ble Tribunal in its order, the non-payment was a bona-fide belief on part of the noticee and therefore, the goods are not liable for confiscation in terms of the Tribunal orders in the case of GenX and Hewlett Packard Sales.*
 - iv. Since there was no deliberate attempt to suppress facts, but a bona-fide belief, no penalty can be imposed under section 112 of Customs Act, 1962.*
 - v. No penalty under Section 114AA of Customs Act, 1962 is liable to be imposed in terms of Tribunal Remand Order."*

B. Against Show Cause Notice No. 774/SIIB/2016-17/SIIB (I)/JNCH dated 22.02.2017 for the period 01.04.2015 to 16.06.2015, Noticee Submitted the Synopsis having Ref Nil dated Nil through e-mail dated 15.09.2025:-

“The issue of addition of Franchise Fee has been settled in favour of the revenue in the case of Giorgio Armani India (P) Ltd Vs CC, New Delhi [2018 (362) ELT 333] which has been affirmed by the Supreme Court. Therefore, the appellant does not contest the addition of Franchise fees paid to the franchisors which is as follows as culled out from Table in Para 6.2 of the impugned Notice (Pg 11 of SCN)

- (1) *The following amounts are liable to be added to the Bills of Entry filed between 01.04.2015 to 16.06.2015 towards Franchise Fees.*

<i>Sr No</i>	<i>Franchisor</i>	<i>No of Bills of Entry</i>	<i>Amount for the period as per proposal in the SCN (in Rs)</i>
<i>1</i>	<i>Aldo</i>	<i>7</i>	<i>50,53,890/-</i>
<i>3</i>	<i>Charles & Keith</i>	<i>6</i>	<i>0</i>
<i>4</i>	<i>Guess</i>	<i>11</i>	<i>0</i>
<i>5</i>	<i>Nine West</i>	<i>2</i>	<i>2,43,821/-</i>

- (2) *However, the notice makes a calculation error insofar as the differential duty worked out was based on the total duty paid and making a loading factor. Most of the goods in these Bills of Entry pertain to goods on which MRP based duty is leviable during the relevant period. Since the Additional duty has already paid thereon correctly, the duty to be collected will only accrue towards basic customs duty and not towards the Additional Duty under Section 3 of the CTA 1975. Hence it is requested that the order may be passed only for addition of the above amounts to those Bills listed in Column 2. Once the Bills of Entry in column 2 are recalled and reassessed by adding the franchise amount to SVB loading, the system will automatically calculate the differential amount and generate duty challan. Where the goods are already under MRP based valuation for Additional Duty, the system will not change the Additional duty amount already paid but only for those items where Additional Duty is payable on Ad-valorem basis. A revised working sheet indicating the amount of Franchise Fee to be added for each Bill of Entry will be submitted within two weeks of the completion of the hearing.*

Advertising Expenses:

- (3) *Similar the addition of payments made towards Institutional advertising has been settled in favour of the revenue in the case of CC Patparganj Vs Adidas India Marketing P Ltd [2020-TIOL-604-CESTAT-DEL] and in case of Indo-Rubber and Plastic Works Vs CC, Delhi [2020 (373) ELT 250] which has been affirmed by the Supreme Court.*
- (4) *The amounts proposed to be added to the value as per the SCN are as follows –*

<i>Sr No</i>	<i>Franchisor</i>	<i>No of Bills of Entry</i>	<i>Amount for the period as per proposal in the SCN (in Rs)</i>
<i>1</i>	<i>Aldo</i>	<i>7</i>	<i>1,83,975/-</i>
<i>3</i>	<i>Charles & Keith</i>	<i>6</i>	<i>13,26,868/-</i>
<i>4</i>	<i>Guess</i>	<i>11</i>	<i>13,94,478/-</i>
<i>5</i>	<i>Nine West</i>	<i>2</i>	<i>1,05,828/-</i>

- (5) *It may be noted from the table in Para 6.3 of the Show Cause Notice (internal page 11) that the above amounts are not remittances made to the Brand owner/supplier but on account of material imported for advertisement and local, therefore, the same clearly not accrued to the supplier/brand owner and hence not liable to be added to the value of goods. -*
- (6) *The salient features of the Agreement between the noticee and Aldo is given in Para 4.1 of the impugned notice. It may be seen from Para 11.3 of the agreement that this expenses relate to import of Advertising Material on which appropriate Customs Duty has been paid separately and therefore, the same is not liable to be added to the value of the imported goods. These are separate imports which have been valued appropriately by the proper officers of customs and do not form the Institutional Advertising expenses and therefore not hit by the Indo-Rubber Judgment.*
- (7) *The salient features of the Agreement between the noticee and Charles & Keith is given in Para 4.2 of the impugned notice. It may be seen from Para 12.3 of the agreement provides that the noticee will spend a certain amount of total sales towards advertising and since it is a local advertising expense, the same is not liable to be added to the value of imported goods. Para 12.4 provides that 1% of the total sales will be paid to the Franchisor for Institutional Advertising. This amount is liable to be included in the value in terms of Indo-Rubber Judgment.*
- (8) *The salient features of the Agreement between the noticee and Guess are given in para 4.3 of the impugned notice, which only mandates that the noticee shall made a certain percentage of the sales towards local advertising. It does not provide that the noticee shall make payment to the brand owner and hence the same is not liable to be added to the value of the goods.*
- (9) *The salient features of the Agreement between the noticee and Nine West Development Corporation are given in para 4.4 of the impugned notice, which only mandates that the noticee shall made a certain percentage of the sales towards local advertising. It does not provide that the noticee shall make payment to the brand owner and hence the same is not liable to be added to the value of the goods.*
- (10) *Hon'ble Tribunal in the case of Reliance Brands Luxury Fashion P Ltd Vs Pr. CC, New Delhi [2024 (4) TMI 243] held that no additions are liable to be made to the import value when such advertising and sale promotion costs are incurred*

by the importer in India. Accordingly, the same is not liable to be added to the value of imported goods.

- (11) *The law is well settled by various orders of the tribunal that unless the remittance is made towards Institutional Advertising, the same cannot be added. In fact when the remittance is made towards import supply of the goods, the advertising material are cleared on payment of customs duty separately and hence not liable to be added to the value of the goods.*

Sales Promotion Expenses:

- (12) *The Sale Promotion Expenses amounts proposed to be added to the value as per the SCN are as follows –*

<i>Sr No</i>	<i>Franchisor</i>	<i>No of Bills of Entry</i>	<i>Amount for the period as per proposal in the SCN (in Rs)</i>
<i>1</i>	<i>Aldo</i>	<i>7</i>	<i>2,82,944/-</i>
<i>3</i>	<i>Charles & Keith</i>	<i>6</i>	<i>2,04,939/-</i>
<i>4</i>	<i>Guess</i>	<i>11</i>	<i>2,77,123/-</i>
<i>5</i>	<i>Nine West</i>	<i>2</i>	<i>33,236/-</i>

- (13) *It may be seen from the table in Para 6.3 of the Show Cause Notice (internal page 11) that the amount is towards both sale promotion material imported and local. Since the imported material are duty paid, the same are not liable to be added to the value of the goods. As far as local advertising promotion is concerned, the same is also not liable to be added to the value of the goods.*

- (14) *The salient features of the Agreement between the noticee and Aldo is given in Para 4.1 of the impugned notice. It may be seen from Para 11.3 of the agreement that this expenses relate to import of Advertising Material on which appropriate Customs Duty has been paid separately and therefore, the same is not liable to be added to the value of the imported goods. These are separate imports which have been valued appropriately by the proper officers of customs and do not form the Institutional Advertising expenses and therefore not hit by the Indo-Rubber Judgment.*

- (15) *The salient features of the Agreement between the noticee and Charles & Keith is given in Para 4.2 of the impugned notice. It may be seen from Para 12.3 of the agreement provides that the noticee will spend a certain amount of total sales towards advertising and since it is a local advertising expense, the same is not liable to be added to the value of imported goods. Para 12.4 provides that 1% of the total sales will be paid to the Franchisor for Institutional Advertising. This amount is liable to be included in the value in terms of Indo-Rubber Judgment.*

- (16) *The salient features of the Agreement between the noticee and Guess are given in para 4.3 of the impugned notice, which only mandates that the noticee shall made a certain percentage of the sales towards local advertising. It does not provide*

that the noticee shall make payment to the brand owner and hence the same is not liable to be added to the value of the goods.

- (17) *The salient features of the Agreement between the noticee and Nine West Development Corporation are given in para 4.4 of the impugned notice, which only mandates that the noticee shall made a certain percentage of the sales towards local advertising. It does not provide that the noticee shall make payment to the brand owner and hence the same is not liable to be added to the value of the goods.*
- (18) *Hon'ble Tribunal in the case of Reliance Brands Luxury Fashion P Ltd Vs Pr. CC, New Delhi [2024 (4) TMI 243] held that no additions are liable to be made to the import value when such advertising and sale promotion costs are incurred by the importer in India. Accordingly, the same is not liable to be added to the value of imported goods."*

Demand is hit by limitation:

- (19) *It is submitted that the whole of the demand is hit by limitation since the amendment to Section 28(1) came about on 14.05.2016 wherein the phrase "one year" was substituted by the phrase "two years". The period involved in the matter is 01.10.2014 to 31.03.2015. Therefore, prior to 14.05.2016, the limitation period for section 28(1) under which the Show Cause Notice dated 26.09.2016 has been issued is one year, which actually expired on 30.03.2016 whereas the notice has been issued only on 26.09.2016 taking cover of the amendment to the Act. The reason for this averment is that as per section 28(3), the relevant date for issuance of notice is from the date of receipt of information. In the present case, the first Show Cause Notice No. DRI/DZU/23/INQ-33/2014 in the matter has been issued on 30.05.2015 by the DRI. Hence when the department was aware of the matter as early as 2014 leading to issuance of SCN dated 30.05.2015, then the limitation period has to be taken as one year only and accordingly, the whole of the demand is barred by limitation.*

Confiscation of the goods:

- (20) *The notice proposes confiscation of the imported goods under Section 111(d) and 111(m) as violation of the declaration of real value in terms of the FT (D&R) Act and the Customs Act, 1962.*
- (21) *In this regard, the Tribunal Observations in Para 15 of its order may kindly be seen, wherein it counselled that there is a further misconception that every rejection of 'transaction value' for replacement with 'surrogate transaction value' is a penalizable taint. Therefore, even if the franchise fee etc are liable to be added, the same ought not to be seen through the prism of mis-declaration so as to invoke the consequences of Section 111 and Section 112.*
- (22) *Hon'ble Tribunal in para 16 has held, the restricted context and evolving 'franchise model' of doing business elaborated supra are not entirely from doubts about the scope and extent of adjustments permitted by law. This is evident from the disputes in Giorgio Armani India (P) Ltd, Adidas India Marketing Pvt Ltd*

and Indo Rubber and Plastic Works Ltd pertaining to similarly placed businesses in similar circumstances that came up subsequently. As the controversy plagued the imports across the Industry, it cannot be concluded that the certainty perceived by adjudicating authorities prevailed among importers too.

- (23) In the light of the above, it is clear that the issue of such additions to the assessable value was not free from doubt and hence a view that the Noticee has deliberately misdeclared the value is incorrect.*
- (24) Hon'ble Tribunal in the recent case of Hewlett Packard Sales P Ltd & Ors Vs Pr. CC, New Delhi and vice-versa [2026 (6) TMI 556] held that, "the responsibility of the importer is confined to truthfully declaring the transaction value in the Bill of Entry. If the transaction value is not indicated correctly, the goods will be liable for confiscation under section 111(m) and NOT if the value declared in the Bill of Entry do not match with some value determined later by the proper officer during re- assessment or in any investigation or adjudication proceedings.". The said Order applies on all fours to the facts of this case and accordingly, the proposal for confiscation of the goods on grounds of misdeclaration of value under provisions of Customs Act 1962 cannot be sustained and needs to be dropped along with attendant proposal for penalty under Section 112 & 114AA of Customs Act, 1962, as also done in the instant case.*
- (25) Similarly the jurisdictional Tribunal by a majority in the case of Star Entertainment P ltd Vs CC (Adjn) [2014 (5) TMI 713] set aside the demand for extended period and the confiscation, redemption fine and penalties imposed in the case.*
- (26) Therefore, it is submitted that the goods cannot be held liable for confiscation at all in terms of the above said order and therefore no fine or penalty can be imposed on the noticee.*
- (27) The noticee had obtained legal opinion that such payments are not liable to addition under Customs Law but under Service Tax law and accordingly, had even paid Service Tax on the same which clearly shows the bona-fide belief of the noticee and there is no deliberate attempt to evade legitimate customs duties.*
- (28) The jurisdictional Tribunal in the case of Genx Entertainment Ltd Vs CC [2018 (4) TMI 1347] upheld the addition of Royalty to the transaction value but set aside the confiscation and redemption fine imposed on the ground that the goods were not released on bond and hence no redemption fine could have been imposed by placing reliance on the jurisdictional High Court Order in the case of CC (Import) Finesse Creations Inc [2009 (8) TMI 115 (Bom)], which has later been upheld by the Hon'ble Supreme Court in Commissioner Vs Finesse Creations Inc [2010 (5) TMI 804 (SC)].*
- (29) The Hon'ble Bombay High Court repeated its findings that once the goods are not available for confiscation, no redemption fine could be imposed in Commissioner of Customs (Import) Vs Air India Ltd [2023 (7) TMI 783 (Bom)]*
- (30) In an appeal filed by another Commissioner of Customs of this very Custom House, the Hon'ble Bombay High Court in the case of CC, NS – I Vs Frigorifico Allana P Ltd [2024 (12) TMI 101 (Bom)], the Hon'ble High Court held that*

placing reliance on judgments of some other High Courts while ignoring those of the jurisdictional High Court is improper. The jurisdictional officers in the State of Maharashtra are accordingly bound by the judgment of the Bombay High Court and rejected the appeal. It also held that the argument that Madras and Gujarat High Court judgments were dismissed by the Hon'ble Court in its judgment in the case of CC NS – I Vs Ganesh Benzoplast Ltd. It appears that no appeal has been filed against the subject Bombay High Court judgment.

- (31) *In view of the above, it is respectfully submitted that no redemption fine can be imposed when the goods are not available for confiscation and imposition of such fine would be in clear contempt of the jurisdictional High Court. It bears mention that the earlier Order-in-Original had not imposed any redemption fine as the goods were not available for confiscation and the said order has been accepted in review under section 129D of Customs Act, 1962.*

Penalty under Section 112 of Customs Act, 1962

- (32) *The Notice proposes penalty under Section 112 of Customs Act, 1962 without actually specifying whether the penalty is to be imposed under Section 112(a) or 112(b) of Customs Act, 1962. Both the sub-sections operate in different fields and unless the Show Cause Notice clearly specifies the correct sub-section, no penalty can be imposed on the noticee under Section 112 of Customs Act, 1962.*
- (33) *As already submitted hereinabove, the Tribunal Order in the case of Hewlett Packard Sales P Ltd & Ors Vs Pr. CC, New Delhi and vice-versa [2026 (6) TMI 556] fully applies to the facts of this case and therefore, no penalty under Section 112 or 114AA can be imposed on the noticee.*

Penalty Under Section 114A of Customs Act, 1962

- (34) *It may be noted from the Tribunal Order that similar cases arose across the country as both the departmental officers and the importers were not clear as to the issue of addition of these expenses to the value of imported goods and therefore, penalty under Section 114A of Customs Act, 1962 is not imposable.*
- (35) *As already submitted hereinabove, there was a bona-fide belief that the expenses are not liable to be added and that they are subject to Service Tax, accordingly, the Noticee had paid service tax on the same. This was also based on the Legal Opinion received by the Noticee and accordingly, no penalty under Section 114A of Customs Act, 1962 is liable to be imposed as there is no wilful mis-statement, suppression of facts or collusion.*

Penalty Under Section 114AA of Customs Act, 1962

- (36) *The Tribunal has adequately examined the applicability of Section 114AA of Customs Act, 1962 and held in Para 18 of its order that the same is not liable to be imposed and therefore, the issue is foreclosed by the Tribunal's order.*

Conclusion:

(37) In view of the above, the following final submissions are made –

- i. *Franchise fee to the extent shown in the SCN is liable to be added to the value of Goods.*
- ii. *No addition is liable to be made towards Advertising Expenses and sale promotion expenses made in India.*
- iii. *Since there was confusion as rightly pointed out by Hon'ble Tribunal in its order, the non-payment was a bona-fide belief on part of the noticee and therefore, the goods are not liable for confiscation in terms of the Tribunal orders in the case of GenX and Hewlett Packard Sales.*
- iv. *Since there was no deliberate attempt to suppress facts, but a bona-fide belief, no penalty can be imposed under section 112 of Customs Act, 1962.*
- v. *No penalty under Section 114AA of Customs Act, 1962 is liable to be imposed in terms of Tribunal Remand Order."*

RECORD OF PERSONAL HEARING

8. In order to follow principle of natural justice, an opportunity of personal hearing was provided to noticee on 15.09.2025 and Ld. Counsel Sh. B. K. Singh & Ld. Counsel Sh. Sanjay Singhal, appeared before me (virtually) on behalf of Noticee and submitted as follows:

- “(i) They invited attention towards the scope of the present proceedings in terms of Para 17 & 19 of the Hon'ble CESTAT Order No. 85396-98/2024 dated 08.04.2024.*
- (ii) In this regards, Ld. Counsel Sh. BK Singh pointed out that as per Para 17 of the Hon'ble CESTAT Order, the issue of 'Franchise Fee' & 'International Marketing Charges' are to be included in to the assessable value, as per Rule 10 of CVR 2007, read with Section 14 of Customs Act, 1962.*
- (iii) However, on the issue of the inclusion of the 3rd element, which as per Ld. Counsel is that Advertisement Material supplied by the Foreign Supplier on which they have already discharged duty, therefore, the demand of duty on the said 3rd element does not sustain.*
- (iv) With regards to the extended period, the Ld. Counsel Sh. BK Singh, stated that the Show Cause Notice is based on only those documents & materials which have already been supplied by the Noticee, at the time of filing the subject Bills of Entry. Therefore, the demand of extended period does not sustain. As they themselves have declared all the information themselves to the Department and as per the Show Cause Notice along with the RUD's, no other document were found or submitted during the investigation.*
- (v) Ld. Counsel Sh. Sanjay Singhal further submitted that regarding the 1st element of Valuation before this adjudicating authority i.e. 'Franchise Fee', the Noticee had taken a legal opinion and they were under the impression that they have already paid the Service Tax, and that they were under the bonafide impression that they are not liable to pay Customs Duty again.*

- (vi) *That, they have submitted Synopsis on 15.09.2025 & shall also submit detailed written submissions. Both of them to be taken on record.*
- (vii) *In view of the above demand may be re-calculated and proceedings against the Noticee, may be dropped.*
- Noting further to add.”*

8.1 The noticee after attending the personal hearing submitted additional reply through Ld. Counsel Sh. BK Singh vide e-mail dated 16.09.2025 wherein the following has been submitted:-

“ Please refer to the hearing held on 15.09.2025 in respect of my client, Major Brands India Pvt. Ltd. (now Apparel Group India Pvt Ltd). It is clarified that while addition of Franchise Fee in the Assessable Value is not being disputed, the addition of Advertising Expense and Sale Promotion Material is being contested considering the fact that Customs Duty was paid at the time of import of Advertising materials and the service provided locally were not liable to be added in the assessable value of the imported goods. This was confirmed by the CESTAT while remanding this case for re-adjudication. The reason being to distinguish these expenses from Institutional Expenses, which are liable to be added. The invoices etc. will be submitted within a week.

2. During the hearing, it was submitted that no new documents were found other than the Bills of Entry. However, on demand, the Noticee had produced before the Authorities, the documents which were submitted to the Authorities such as copies of Bills of Entry, filed in past and invoices in respect of the Bills of Entry and the Agreements with their suppliers to confirm the valuation, as the suppliers were not related parties and the noticee had only franchise agreements with them. The noticee had legal opinion from reputed firm that these are not liable to be added to import value but liable to Service Tax on reverse charge basis. We had paid Service Tax thereon and copies of the legal opinion and service tax challans with relevant invoices will be submitted within a week

3. As regards, confiscation and penalty, it is stated that there was bona-fide belief, not only to the importer, but in all such similar placed persons and the Tribunal had adequately dealt with this aspect while holding that extended period is not liable to be invoked. The basic principle of law is, that not every violation has to be dealt as having been deliberate.

With Best wishes ”

DISCUSSION AND FINDINGS

9. Pursuant to the Tribunal's direction, I have carefully examined the SCN, the original adjudication orders, the Noticee's submissions to SCN, submission made during personal hearings and in writing, as well as the Hon'ble CESTAT's order.

PRINCIPLE OF NATURAL JUSTICE

10. Before going into the merits of the case, I observe that in the instant case, in compliance of the provisions of Section 28(8) the Customs Act, 1962 and in terms of the principle of natural justice, personal hearing opportunity was granted to the Noticee on 08.09.2025 vide this office letter dated 29.08.2025, however Noticee did not availed the opportunity. Another personal hearing opportunity is provided to the Noticee on 15.09.2025 vide this office letter dated 08.09.2025 and Personal Hearing was attended virtually by the authorized legal representative of the Noticee Ld. counsel Sh. BK Singh & Ld. counsel Sh. Sanjay Singhal on 15.09.2025. The Noticee have already submitted their detailed defense reply/ written submission cum synopsis Ref Nil dated Nil vide e-mail dated 15.09.2025. The Authorized Representatives of Noticee reiterated their written submissions and confirmed that nothing more they want to add to their submissions. Further, vide e-mail dated 16.09.2025 Ld. counsel Sh. BK Singh provide further written submissions & vide emails dated 19.09.2025 & 21.09.2025 Noticee submitted copies of previous replies to SCN(s) dated 26.09.2016 & 22.02.2017, PH submission dated 27.02.2019, copy of agreements, MS-Excel calculation sheets of duty, copy of Bills of Entry related to the subject case. Moreover, as per the provisions of Section 28(9) of the Customs Act, 1962, this adjudicating authority is under strict legal obligation to complete the adjudication proceedings within a time bound manner. I thus find that the principle of natural justice has been followed and I can proceed ahead with the adjudication process. I also refer to the following case laws on this aspect--

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

HON'BLE CESTAT ORDER AND ITS IMPLICATIONS

11. I observe that the present *De Novo* proceedings are in pursuance of the Final Order Nos. 85396–85398/2024 dated 08.04.2024 passed by the Hon'ble CESTAT, Mumbai in the appeals filed by M/s. Major Brands (India) Pvt. Ltd. (now M/s. Apparel Group India Pvt. Ltd.) against Order-in-Original No. 59 /2019-20/Commr/NS-III/CAC/JNCH and Order-in-Original Nos. 60//2019-20/Commr/NS-III/CAC/JNCH both dated 28.11.2019 passed by Commissioner of Customs (NS- III), JNCH, Nhava Sheva and Order-in-Original No: COMM.R./AKG/03/2016-17/ADJN. ACC (X) dated 15th June 2016 passed by the Commissioner of Customs – IV (Export), Air Cargo Complex, Mumbai. The Hon'ble Tribunal, while setting aside the impugned orders, remanded the matter to the original authority for de novo adjudication, to issue a speaking reasoned order in respect of includability in Assessable Value of cost of certain intangibles like **Franchise Entrance Fee, Franchise Fee, International Marketing Charges and Local Advertisement and Sales Promotion Expenses in India which are condition of sale of subject imported goods.**

11.1 In this regard, I reproduce the comments of the Hon'ble Tribunal at Para 9, which points towards the willful suppression of facts and mis-declaration on the part of the Noticee.

*“9. This is a dispute over short-payment of duties of customs at the time of import. It is not the case of the customs authorities that the assessable value as declared then did not mirror the consideration for which goods were transferred by sale on each occasion to the appellant. **However, this was not a normal transaction of autonomous, and episodal, sale and purchase between two parties known to each other commercially; not only was there an engagement for regular commercial intercourse but also a special equation considering the nature of goods, i.e., identifiable by brand, which, though no different from a normal trading chain of sale and purchase, was, nonetheless, conditioned by the intangible of ‘goodwill’ attaching to the products. It was in acknowledgement thereof that the importer and seller entered into a ‘licence agreement’, encompassing responsibilities, liabilities and obligations during its tenor, which may be designated as ‘franchise’ model of business. Conceptually, the cost of import was not limited to the value of the goods agreed upon for each sale as the cost of ‘intangibles’, which would have to be spread over all of the goods imported during the tenor of the agreement, and, from the mode of quantifying thereon, not necessarily assignable to goods at the time of import. Furthermore, the blurring of taxable event, viz. import of goods, in such transactions with cross-over of services, which are normally excluded from levy intended by or under a commodity tax, does not lend itself to ease of association with customs assessment, or even as covered within the machinery provision for assessment. That such inclusion be restricted only to the narrow scope of the Rules is patent in***

‘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 labour or materials;*

(a) 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, moulds 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;*

- (b) *royalties and licence 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;*
- (c) *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;*
- (d) *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.*

Explanation.- Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includible referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods.

Xxxxx

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

of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 which is the sole repository of reference to intangibles in the scheme of levy of duties of customs on imported goods and has been invoked to justify the addition. We are not concerned with the specifics of addition in the impugned orders for the law, as judicially determined, has been settled and the merit of the inclusion or non-inclusion, as the case may be, are not pressed. Our concern here is the scope for presumption, from the factual matrix of prescriptive obligations in relation to assessment and compliance thereof, that the ingredients for invoking extended period of limitation and for imposition of penalty under section 114A of Customs Act, 1962 is palpably sustainable.

11.2 Further, in Para 10, the Hon'ble Tribunal has provided that the mis-statement and suppression of material facts may be done to get commercial gains, as follows:

"10. Businesses are about returns for those who have invested in the venture and also about securing the interests of those who are invested in its survival. It is, therefore, all about distributable profits and balanced flow of funds; much of it to do with accounting treatment and costing conventions. Most enterprises are less concerned with the intricacies of tax system and, even less so, with the valuation mechanics obtaining thereto than with reaping returns for their stakeholders. That which appears obvious to a customs authority may not be so to those dedicated to

pursuit of commerce and industry even with the two happening to be entwined in the same statutory framework for tax levy. Thus it is that responsibility devolves on an adjudicating authority, drawing upon an extraordinary contingency in the statute, to be expansively justificatory in fastening upon an importer or exporter the burden of having to dip into accumulated profits of the past for discharge of a post-transactional tax liability that cannot ever be recovered, in the way that indirect tax ought to be, from the buyer of goods or recipient of service. Mere provisioning for such eventuality in a statute is not demonstrative of legislative intent that every notice for recovery should not be restricted to the normal period of limitation and that every recovery should entail penal consequences predicated upon 'collusion, wilful mis-statement or suppression of facts' as set out in section 28(1) and section 28(4) and in section 114A of Customs Act, 1962. Each recourse to this 'out of ordinary' provision will have to be elaborately dealt with on its own set of facts and in comparison with the intent inferred from the corresponding legal obligation for it to have credibility and sustainability. Mechanical repetition of the provision, concatenated with confirmation of liability to duty as proposed in the notice or even as modified, is but a poor excuse for statutory imperative. "

11.2.1 In view of above responsibility of properly justifying the applicability of provisions of Section 28(4) and 114A, I would like to rely on the provisions of Section 17(1) and Section 46(4) wherein the prime responsibility, of making a true, correct and factual declaration while proper, accurate and complete self-assessment of duty while including all eligible elements of value, has been cast upon the importer. It has been dealt in findings in detail as to how importer can not escape from the aforesaid legal and unambiguous responsibility due to any reasons. In the instant case, there is no dispute about the facts that the importer was well aware of the subject agreements of sale wherein subject elements of value like **Franchise Entrance Fee, Franchise Fee, International Marketing Charges and Local Advertisement and Sales Promotion Expenses in India** were condition of sale of subject imported goods. There is also no dispute about the fact that importer has never declared the said facts while filling the subject Bills of Entry. Rather, the importer clearly, admittedly and deliberately attempted to cover up the whole suppression under a well planned strategy of obtaining a 'conflict -of-interest' based, faulty, irrelevant and old legal opinion even wherein it has been clearly mentioned that customs authorities may take a contrary view. Still the importer chose to not declare the subject substantive facts before the Customs Authorities. It clearly establishes that importer was well aware of their responsibility of true and correct declaration, self-assessment and accordingly paying the duty. I further observe that any commercial interest is distinguishable from self-entitled deliberate evasion of duty which is evident from the fact that Noticee failed to declare substantial facts of payment of different elements of import price in form of **Franchise Entrance Fee, Franchise Fee, International Marketing Charges and Local Advertisement and Sales Promotion Expenses in India** which were a condition of sale and which even as per importers own appreciation and subject legal opinion were potential inclusions in assessable value for payment of customs duty.

11.3. Further, in Para 11, the Hon'ble Tribunal has also commented on the order passed by ACC (Export), Mumbai, observing that the same was not well-reasoned, as it reflected inconsistency between the legal provisions invoked and the factual findings recorded in the matter.

"11. In the order pertaining to imports at Air Cargo Complex, it was held that section 114A of Customs Act, 1962 is not invocable owing to the consequence of

finding of goods being liable to confiscation under section 111(d) and section 111(m) of Customs Act, 1962 and, thus, to the alternate penalty. This, itself, is mystifying because goods that are prohibited for import, with liability to confiscation inhering by entering customs jurisdiction, are manumitted from evaluation for conformity with declaration owing to chronology of occurrence. Indeed, the impugned order has failed to demonstrate the prohibition operating on the goods and even resort to section 111(m) of Customs Act, 1962 is not backed by any justification. All that we are permitted to discern is

‘6.9.1 I find that the proper value has not been declared/included in the assessable value by the noticee i.e. Franchise Fee, reimbursements to franchisors and various advertisement expenses as discussed hereinabove as required under Rule 10(1)(c), Rule 10(1)(d) and Rule 10(1)(e) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 which resulted in undervaluation and short levy of Customs Duty. Therefore I hold that the goods in question were liable to confiscation under the provisions of Section 111(m) and 111 (d) of the Customs Act, 1962.’

which is for too peremptory to be tenable as support for confiscation followed by penalty under section 112 of Customs Act, 1962.”

11.4 In view of the above directions of the Hon’ble Tribunal, this authority has to pass a well-reasoned, speaking and consistent order. Otherwise also, any adjudicating has to follow the aforesaid principle. Therefore, if in any case including the instant case, any suppression with intention to evade duty is present; the said case cannot be dealt as per Section 28(1) but is needed to be dealt while confirming the demands under Section 28(4) of the Customs Act, 1962. The consistency and legal provisions also demand that in case of suppression, applicability of Section 114A also cannot be avoided. Moreover, the legal consistency also demands in case of suppression, that the provisions of confiscability under Section 111(m) and provisions of penalty under Section 112(a)(ii) subject to provisions of Section 114A also follow. Accordingly, in Para 19, the Hon’ble Tribunal has remanded back the case for *De novo* adjudication with the following directions:

*“19. The confiscation ordered in all three orders and penalty ordered under section 112 of Customs Act, 1962 in two of the orders are without sufficient examination of law and fact. Likewise, the invoking of extended period in all the orders has been undertaken without proper examination of factual circumstances that enable such demand. These require re-ascertainment in accordance with our observations supra including quantification of demand legally recoverable. For these reasons, all the orders are set aside and restored to the original authority for **fresh proceedings that shall be limited to justification, if any, for invoking extended period and consequent quantification of tenable demand and to evaluate the grounds on which liability to confiscation are supported by law and facts with penalty under section 112 to follow only in the event of validation of confiscation.**”*

I observe that the case is remanded back to examine the invocation of extended period, and applicability of penalty under section 112, in the event of confiscation.

11.5 In this regard, I observe that an adjudication order cannot be contradictory in terms of law and facts. The Hon'ble Tribunal, in Para 19 of its order, has clearly directed examination of the applicability of the extended period, which necessarily implies that the issue of extended period is to be examined in its entirety, covering not only the duty liability but also the consequential penalty. Any contrary approach would render the adjudication internally inconsistent, which is impermissible, both under the general principles of judicial discipline and in light of **the** de novo directions issued by the Hon'ble Tribunal.

11.6 Therefore, it is essential to pass a reasoned speaking order, therefore I proceed to decide the following issues, which are to be discussed and determined in the succeeding paragraphs in a clear and reasoned manner, in compliance with the Tribunal's directions and the principles of judicial discipline.

FRAMING OF ISSUES

12. Pursuant to a meticulous examination of the Show Cause Notice, Order in Original by the erstwhile Adjudicating Authority, CESTAT Order and a thorough review of the case records, the following pivotal issues have been identified as requisite for determination and adjudication.

- A.** As to whether the **(i)** Franchise Entrance Fee, **(ii)** Franchise Fee, **(iii)** Reimbursements made to the Franchisors/brand owners against advertisement expenses and sales promotion / Institutional Advertisement & Promotional Reimbursement, **(iv)** expenses related to import of Advertising & Sales promotion Material & **(v)** local Advertisement & Sales promotion expenses in India, are required to be included in the assessable value of the imported goods in terms of Rule 10(1)(c), 10(1)(d) and 10(1)(e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, read with Section 14 of the Customs Act, 1962, or otherwise.
- B.** As to whether the goods having RSP based assessment for CVD, shall have any additional CVD and corresponding cess implication due to the inclusion of the payments/ expenses incurred by the Importer in terms of finding at 'A' above, or otherwise.
- C.** The re-deterioration of the tenable duty demand from the Noticee, in terms of finding at 'A' & 'B', above.

- D. As to whether extended period of limitation under Section 28(4) of the Customs Act, 1962, can be invoked or otherwise.
- E. As to whether imported goods are liable for confiscation under Section 111 of the Customs Act, 1962 or otherwise.
- F. As to whether penalty should be imposed on the Noticee under Section 112 of the Customs Act, 1962 or otherwise.

A. Now, i take up the first issue before me, as to whether the (i) Franchise Entrance Fee, (ii) Franchise Fee, (iii) Reimbursements made to the Franchisors/brand owners against advertisement expenses and sales promotion / Institutional Advertisement & Promotional Reimbursement, (iv) expenses related to import of Advertising & Sales promotion Material & (v) local Advertisement & Sales promotion expenses in India, are required to be included in the assessable value of the imported goods in terms of Rule 10(1)(c), 10(1)(d) and 10(1)(e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, read with Section 14 of the Customs Act, 1962, or otherwise.

13. In order to examine the issue before me, i now proceed to examine the allegations made in the SCN, statements on records, findings of the investigation, relevant legal provisions, submission of the Noticee and relevant judicial precedence to reach a conclusion.

13.1 I observe that M/s. MBIPL is engaged in import and retail sale of various products such as Garments, Footwear, Ladies Bags, Accessories etc. of various international brands such as ALDO, Charles & Keith, GUESS, NINE WEST and BHPC through their stores in multiple locations in India. M/s. MBIPL carried on the business of import and retail trade through exclusive brand outlets format in India and they had franchise rights of various international brands for India and the business format was in the nature of Single Brand Retail. Further, M/s. MBIPL had entered into agreements with owners of the above international fashion brands to sell their products in India, after importing the goods from them. I observe that on a specific intelligence developed by the officers of DRI, Delhi Zonal Unit that M/s. MBIPL are evading the applicable Customs Duty by not declaring the Franchisee Fee/Entrance Fee and reimbursement of expenses on advertisement by the Brand Owners and expenses incurred on local advertisement by the importer M/s. MBIPL, the Directorate of Revenue Intelligence, Delhi Zonal Unit ('DRI' in short), booked a case against M/s. MBIPL, Mumbai for evasion of Customs duty.

Statement of the persons and analysis:

13.2 I observe that, during the course of investigation by DRI, voluntary statements of Shri. Naveen Golchha, CFO of M/s. MBIPL on 19th and 20th of May, 2015 and Shri. Tushar

Raul, Director in CB firm M/s Sidhi Clearing and Forwarding Pvt. Ltd. on 20.05.2015 were recorded. The relevant portion of the said statements are reproduced below:-

13.3 I further observe that, Shri Naveen Golchha, CFO of M/s. MBIPL in his voluntary statement recorded under Section 108 of Customs Act, 1962 on 19.05.2016 has *inter alia* accepted that foreign branded goods were imported as per agreements entered into with respective foreign brand owners and that payment of Franchise Fee and other reimbursement to the foreign brand owners have been made as per agreement as a condition of sale of imported goods in India, which were not included in the assessable value on which Customs duty has been paid. He has further stated that on perusal of Customs Valuation (determination of value of imported goods) Rules, 2007 ('CVR, 2007' in short), according to Rule 10, Franchise Fee payments should have been included in the assessable value of the imported goods for the purpose of payment of Customs duty. In his further, statement on 20.05.2016, he has explained activities undertaken under the heading of advertisement and sales promotion as:

- A. Advertisement:-There are three types of expenses being made on account of advertisement (i) Imported material for advertisement (ii) locally procured material for advertisement (iii) Amount remitted to brand owner on account of advertisement done in India directly by them. Main activities being undertaken as advertisement are advertisement in Magazines and Newspapers, outdoor hoardings, flex printing, window banners, digital media, LED display, posters etc for brand promotion.
- B. Sales Promotion:-On account of sales promotion they used to undertake activities such as Media –Kit, event organisation, fashion shows, activities in stores, gift articles, store promotion material, contest, product catalogues, loyalty cards and gift vouchers, etc for promotion of brands.

He further stated that these expenditures are incurred in compliance of contractual obligation.

13.4 I observe that Shri Tushar Raul, Director, CB firm M/s Sidhi Clearing and Forwarding Pvt. Ltd., in his statement recorded under Section 108 of the Customs Act, 1962, inter-alia stated that they were associated with M/s. MBIPL for past 8-10 years and engaged in the clearing and forwarding of import consignments for M/s. MBIPL. He further stated that they used to receive intimation of import consignments from Freight Forwarders and from M/s. MBIPL. On arrival of consignments at port and finalisation of Bill of Entry (B/E), they used to work out duty involved as per value declared in the invoices and informed the Logistics and Account department of M/s. MBIPL and accordingly they used to pay duty online. He confirmed that the affairs of M/s. MBIPL were looked after by Shri. Naveen Golchha. Further, Shri Tushar Raul stated that M/s. MBIPL were paying Customs Duty on the value declared as per invoices issued by the foreign supplier and they were not including any additional payment made for Franchise Fee in transaction value for the payment of Customs duty, which should have been included in transaction value for the payment of Customs duty as per Rule 10 of the CVR, 2007.

13.5 Accordingly, after through investigations, the investigating agency viz. DRI, Delhi issued a **SCN dated 31.05.2015 covering imports made by the importer since 2010-11 to 30.09.2014**, whereby proposed demand of duty evaded/short levied due to non-declaration of above said expenses incurred on the imported goods along with applicable interest as well as proposed penal action on the Noticee under the provisions of the Customs Act. Said SCN was subsequently adjudicated by the Addl. Director General (Adjudication), DRI, New Custom House, Mumbai vide **O-in-O dated 28.04.2016 issued vide F. No. S/26-14-ADJ.DRI/Major Brands/2015-16/539** whereby it was ordered re-determination of assessable value of the products imported upto 30.09.2014 by including payments made on account of Franchisee Fee/ Franchisee Entrance Fee, Advertisement Expenses; demanded differential duty along with applicable interest; appropriated voluntary duty deposit of Rs. 1.66 Crores by the Noticee during the course of investigation and imposed penalty on the Noticee under the provisions of Section 114A read with 114AA of the CA, 1962.

13.6 I observe that further investigations was entrusted with local investigating agency viz. SIIB (I), JNCH for the imports made w.e.f. 01.10.2014, at Nhava Sheva Port by the importer. Accordingly, the investigating agency called requisite documents and data w.r.t. imports made during the period 2014-15 & 2015-16 and after scrutiny of documents, viz. agreements of the importer with various suppliers/brand owners came to the conclusion that the importer wilfully suppressed the facts by non-declaring the said Franchisee Fees/Entrance Fees, Advertisement Expenses reimbursed/incurred and cleared the goods on the basis of import invoices showing only the transaction value as the assessable value of imported goods, which resulted in short levy of Customs Duty which are recoverable in view of the provisions of Rule 10 of CVR, 2007 read with Section 14 of the CA, 1962.

LEGAL PROVISIONS GOVERNING VALAUTION OF IMPORTED GOODS:

13.7 Relent legal provisions regarding valuation of imported goods are reproduced below as follows:

“Section 2(41)"value", in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of section 14;”

“Section 14: Valuation of goods.

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

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

“Rule 3 of CVR 2007:

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.....”

13.8 I observe that as per Section 2(41) of the CA, 1962, Value means value determined in accordance with Section 14 of the CA, 1962; Section 14(i) thereof defines value of imported goods be the ‘Transaction Value’ as the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of Rule 10 of the CVR, 2007. I also observe that in terms of Rule 3(i) of CVR, 2007, the value of imported goods shall be the transaction value adjusted in accordance with the provisions of Rule 10. The price actually paid or payable should be adjusted to include all the costs and services (dutiable valuation factors) specified in sub-Rule 10 (1) if not already included in the Invoice Value.

In other words, the assessable value should be determined by suitably adjusting the transaction value so as to include all payments 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.

13.9 I find that it is prudent to reproduce relevant portions of Rule 10(1) of CVR, 2007, which are as follows:

“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,

—
(c) *royalties and licence 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.*

Explanation.- Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includible referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods.

Interpretative Notes to Rule 10 (1)(c) :

1. *The royalties and licence fees referred to in Rule 10 (1)(c) may include among other things, payments in respect of patents, trademarks and copyrights. However, the charges for the right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the Customs Value.*

2. *Payments made by the buyer for the right to distribute or resell the imported goods shall not be added to the price actually paid or payable for the imported goods, if such payments are not a condition of the sale for export to the country of importation of the imported goods.”*

13.10 In view of the foregoing i observe that under Customs Valuation Rules, the transaction value of imported goods must include royalties and licence fees that the buyer is required to pay, directly or indirectly, as a condition of the sale, if not already included in the price actually paid or payable. It must also include any part of the proceeds from the resale, disposal, or use of the imported goods that accrues to the seller, as well as any other payments made by the buyer—either to the seller or to a third party to satisfy the seller’s obligation—as a condition of the sale. Notably, where such royalties, licence fees, or payments relate to a process (patented or otherwise), they are includible in the transaction value even if the process is carried out after the goods are imported.

13.11 Noticee vide Personal hearing dated 15.09.2025 has submitted that as per Para 17 of the Hon'ble CESTAT Order, the issue of 'Franchise Fee' & 'International Marketing Charges' are to be included in to the assessable value, as per Rule 10 of CVR 2007, read with Section 14 of Customs Act, 1962. However, on the issue of the inclusion of the 3rd element, which as per Noticee is imported Advertisement Material supplied by the Foreign Supplier on which they have already discharged duty, therefore, the demand of duty on the said 3rd element does not sustain.

13.12 Further vide synopsis, having Ref Nil dated Nil through e-mail dated 15.09.2025, Noticee wrt SCN dated 26.09.2016& SCN dated 22.02.2017 has inter-alia submitted that the issue of addition of Franchise Fee has been settled in favour of the revenue in the case of Giorgio Armani India (P) Ltd Vs CC, New Delhi [2018 (362) ELT 333] which has been affirmed by the Supreme Court. Therefore, the appellant does not contest the addition of Franchise fees paid to the franchisors.

13.12.1 Further that, similarly the addition of payments made towards Institutional advertising has been settled in favour of the revenue in the case of CC Patparganj Vs Adidas India Marketing P Ltd [2020-TIOL-604-CESTAT-DEL] and in case of Indo-Rubber and Plastic Works Vs CC, Delhi [2020 (373) ELT 250] which has been affirmed by the Supreme Court.

13.12.2 That, the expenses related to import of Advertising & Sales promotion Material on which appropriate Customs Duty has been paid separately and therefore, the same is not liable to be added to the value of the imported goods.

13.12.3 Further that, local Advertising & Sales promotion expenses are not liable to be added to the value of imported goods, as per *Reliance Brands Luxury Fashion P Ltd Vs Pr. CC, New Delhi* [2024 (4) TMI 243].

13.13 I observe that the Para 17 of the impugned CESTAT order dated 08.04.2024 order is as follows:

"17. All that can be concluded with certainty is that 'franchise fee' and 'international marketing charges' are to be included in the 'transaction value' for conformity with section 14 of Customs Act, 1962. To that extent, and in the context of not being pressed on behalf of the appellants, the includibility attains finality. On the issue of inclusion of third element in order of Commissioner of Customs, Air Cargo Complex (ACC), it has been submitted that the dispute for subsequent period has been remanded to the original authority. We note, however, that dropping of that element in the adjudication orders has not been appealed against by Revenue. It must be presumed to have attained finality in favour of appellant herein."

13.13.1 I observe that, Hon'ble CESTAT has held that the 'franchise fee' and 'international marketing charges' are to be included in the 'transaction value' for conformity with section

14 of Customs Act, 1962. Further, it is held that dropping of imported advertising and sales promotion material, not been appealed against by Revenue and presumed to have attained finality in favor of appellant.

13.14 I observe that there are mainly five elements:- expenses/payments on account of which are proposed to be added to the transaction value of the imported goods, namely:

- (i) Franchise Entrance Fee,
- (ii) Franchise Fee,
- (iii) Reimbursements made to the Franchisors/brand owners against advertisement expenses and sales promotion / Institutional Advertisement & Promotional Reimbursement
- (iv) expenses related to import of Advertising & Sales promotion Material &
- (v) local Advertisement & Sales promotion expenses.

I now proceed to examine the relevant legal provisions regarding the valuation of the imported goods, and thereafter analyze the inclusion of each expense in the value of the imported goods, importers submission & Hon'ble CESTAT order, in this regard, before to reach the conclusion.

Now i proceed to examine the issue, as to whether the (i) Franchise Entrance Fee & (ii) Franchise Fee are liable to be included in the assessable value, or otherwise.

14. In order to examine the issue before me, I proceed to examine the allegations made in the SCN, legal provisions on the issue and the reply submitted by the Noticee & Hon'ble CESTAT observations.

14.1 It is alleged that the Noticee M/s. MBIPL is making payments to the Franchisor/brand owners on account of Franchise Entrance Fee & Franchise Fee. It was proposed to add this amount to the Transaction Value of the imported goods for the purpose of arriving at correct Customs Duty payable by the importer.

14.2 As regards to the Franchisee Entrance Fees, the Noticee submitted that it was a one-time payment for opening of Store on the basis of a contract with Brand Owner. The store did not have a fixed life time and hence it would be totally unwarranted to add that amount in respect of a particular year to the imports made during that period by different Brand Stores even though all the stores was owned by the same management. The Noticee has submitted that the allegations made in SCN tried to justify the addition of this entrance fee to the assessable value by referring to the agreement which sought to control not just the sale of the goods but extended to various aspects pertaining to the store and way the sale carried out in India. The Noticee further submitted that these were normal requirements being insisted by all international brands for opening stores in different countries of the world which had not bearing upon the import value of goods and could not be treated as a condition for the sale of the goods because it did not have any link with the quantity or value of the goods to be imported for that store, hence, it did not have any bearing on the value of the goods.

14.3 As per Rule 10(1) (c), 10 (1)(d) & 10 (1) (e) of CVR, 2007, the royalties and licence fees, value of any part of the proceeds & all other payments must be added to the transaction value if the following main conditions are met:

- i. The Royalties and Licence Fees should be related to the imported goods being valued.
- ii. The Royalties and Licence Fees are required to be paid by the buyer, either directly or indirectly.
- iii. The Royalties and Licence Fees should be paid as a condition of sale of the goods being valued.
- iv. The Royalties and Licence Fees are not included in the price actually paid or payable.

14.4 I now proceed to examine as to whether the above mentioned four conditions of Section 10 (1)(c) are satisfied in the case under consideration.

- i. Condition A: The Royalties and Licence Fees should be related to imported goods. I observe that in the instant case the imported goods are themselves the subject of the Licence and hence the payments are clearly 'related to the goods being valued'. Thus the Franchisee Fee is clearly related to imported goods.
- ii. Condition B: The Royalties and Licence Fees are required to be paid by the buyer, either directly or indirectly. Here, it is not disputed that the Franchisee Entrance Fee & Franchisee Fee is required to be paid by the buyer and the buyer is paying it to the seller and hence this condition is satisfied.
- iii. Condition C: The Royalties and Licence Fees should be paid as a condition of sale of the goods being valued. With regard to the question of whether a Royalty, Licence Fees or any payment is a 'condition for sale', the determining factor is whether the buyer is unable to purchase the imported goods without paying the Royalty or Licence Fee. I observe that, Commentary 25.1 issued by the World Customs Organization (WCO) Valuation Committee in April, 2011, addresses Royalty and Licence Fee when they are paid to a third-party licensor unrelated to the seller. In focusing on the purpose of Article 8.1(c) the World Trade Organization (WTO), Customs Valuation Agreement (CVA), this Commentary states that

"the analysis requires a case by case determination focusing strongly on the terms of the licensing or royalty agreement and related transaction documents. Generally, however, it is unlikely that a fee paid to a third-party licensor would be included in the price paid or payable, but what must be analyzed is how the fee is related to the imported goods and if the fee is 'a condition of sale'. A Royalty or Licence Fee may be considered to relate to the goods being valued when the imported goods incorporate the intellectual property and/or are manufactured using the intellectual property covered by the licence. With regard to the question of whether a Royalty payment is a 'condition of the sale', the determining factor is whether the buyer is unable to purchase the imported goods without paying the Royalty or Licence Fee"

As this condition is satisfied, the Franchisee Fee payment is a condition of the sale.

- iv. Condition D : The Royalties and Licence Fees are not included in the price actually paid or payable i.e. the same payment should not be counted twice in Customs Value. In the instant case, I observe that Franchisee Fee was not included in the value for the purpose of assessment of Customs Duty.

14.5 Also as per Rule 10 (1)(d) of CVR, 2007, the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods accruing directly or indirectly to the seller is to be included in the assessable value for the purpose of determination of Customs Duty. Hence, the Franchisee Fees are clearly paid as a part of the proceeds from subsequent resale of the imported goods and hence are liable to be added to transaction value of the imported goods to arrive at the assessable value for the purpose of determination of Customs Duty.

14.6 Again as per Rule 10 (1)(e) of the CVR, 2007, all other payments are to be added to the transaction value if : (i) they are made to the seller or to a third party to satisfy the obligation of the seller as condition of sale of the imported goods; and (ii) such payments are not included in the price actually paid or payable. As discussed in Para 14.4 (iii) and 14.4 (iv) above, these conditions are clearly satisfied in the present case.

14.7 The Noticee had also made a submission that Franchisee Fee is not mentioned in Rule 10 (1)(c) of the CVR, 2007. I observe that, as per Investopedia “A Franchisee is a type of license that a party (franchisee) acquires to allow them to have access to a business’s (the franchiser) proprietary knowledge, processes and trademarks in order to allow the party to sell a product or provide a service under the business’s name. In exchange for gaining the franchise, the franchisee usually pays the franchisor initial start-up and annual licensing fees”. From the definition, it is noticed that Franchisee Fee/ Franchisee Entrance Fee is a type of licence fee and hence it is squarely covered under Rule 10 (1)(c). Also as the payments to the seller are made out of the proceeds of subsequent sale of the imported goods, the same is also covered under Rule 10 (1)(d) of the CVR, 2007.

14.8 Further, to substantiate the above findings, I rely on the case law of M/s. M.G.M. Entertainments Pvt. Ltd. V/s. Commissioner of Customs, Chennai reported in 2008 (228) ELT 120 (Tri. Chennai) wherein the Hon’ble Tribunal held that “Franchisee Fee, Licence Fee and Royalty paid by appellant to foreign supplier in relation to importation of subject goods and supply of technical know-how and right to use patent, brand name etc. of supplier as a condition of sale of goods, to be included in the value of goods – Rule 9 (1)(c) of CVR, 1988 – Rule 10 (1)(c) of CVR, 2007”. From this judgment it is amply clear that Franchisee Fee is covered under Rule 10 (1)(c) of the CVR, 2007.

14.9 On perusal of script of the agreements signed between Noticee and the International Brand owners, I observe that the agreements were signed for sale of their branded goods in the Indian Market from the franchisee outlets managed by the Noticee. These Brands & Trade-marks are internationally registered and had their own goodwill and brand value. The use of the brand name/logo/packaging and other brand embellishments was an integral element of the imported goods and therefore carry brand value or goodwill of the Brand/ trade Mark itself. The goods without the brand value or goodwill would not have the same sale value in the

market. In other words, the brand value & goodwill associated with the Brand & Trade Mark imparts additional value to the goods and due to the brand value/goodwill, the Noticee gets higher price independently, sans the brand value, the goods would not have fetched the desired market price, however, the brand value by itself had no value to the franchisee, unless it was linked with the goods. Thus, the goods and the brand value in conjunction added to the value of each other and played an active role in enhancing the market value of each other. The Franchisee Entrance Fees, Franchisee Fees and Royalties paid to the brand owners were therefore not only for sale of goods but also for usage of the brand. The whole soul of any franchisee agreement and sale of goods by the franchisee is to capitalize on the brand value of the goods and earn an enhanced market price which would otherwise not be possible for unbranded goods. The brand owner transfers these valuable elements to the goods when he enters into a franchisee agreement. Such goods which are imported under franchisee agreements have to be assessed to Customs Duty with the elements which embellish the brand value duly included in the assessable value.

14.10 It further appeared that the relationship between the seller (brand owner and its designated seller) and buyer, M/s. MBIPL was not that of a normal buyer and seller, but actually a very complex relationship – subject to various conditions, restrictions and obligations. The agreement sought to control not just the sale of the goods but also extended to various aspects of conducting of the business of selling of the products. That the franchisee should ensure that the retail business conducted at the stores should be carried on in accordance with the system and conform with the high standards and shall comply with the all reasonable instructions and requests by Franchisor regarding the operation of the said business in accordance with the territorial laws.

14.11 Further, Hon'ble CESTAT vide order dated 08.04.2024- Para 17, in Noticee's own case has also held that the '**franchise fee**' and 'international marketing charges' are to be included in the 'transaction value' for conformity with section 14 of Customs Act, 1962. And same is also not challenged by the Noticee/ appellant and therefore has attained finality. It is also on record that the Noticee vide written submissions dated 15.09.2025 to this *De Novo* adjudication and during the Personal Hearing dated 15.09.2025 (Para 13.11 & 13.12 supra) has also affirmed their acceptance to the inclusion of the Franchisee Fee to the value of the imported goods.

From the foregoing, I find that Franchisee Fee/Franchisee Entrance Fees paid by the Noticee to the seller are liable to be added to the assessable value of the imported goods.

Now I proceed to examine the issue, as to whether the (iii) Reimbursements made to the Franchisors/brand owners against their advertisement expenses and sales promotion / Institutional Advertisement & Promotional Reimbursement are liable to be included in the assessable value, or otherwise :-

15. In order to examine the issue in hand, I proceed to examine the allegations made in the SCN, legal provisions on the issue and the reply submitted by the Noticee & Hon'ble CESTAT's observations.

15.1 It is alleged that the Noticee M/s. MBIPL is making payments to the Franchisor/ brand owners as part of their commitments towards their share of Advertisement Expenses incurred by the brand owners throughout the world. It was proposed to add this amount to the Transaction Value of the imported goods for the purpose of arriving at correct Customs Duty payable by the importer.

15.2 Against this allegation, the Noticee submitted that the Franchisors had been incurring expenditure in Noticee's territory on advertisement which was required to be reimbursed by them as per the agreement. Accordingly, the Noticee had sent remittances to the brand owners on account of advertisement expenses. The Noticee submitted that the contract between them and the Franchisor nowhere mentioned this expenditure as a condition for the sale of the goods.

15.3 I observe that, as per Rule 10 (1)(d), the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods accruing directly or indirectly to the seller is to be included in the assessable value for the purpose of determination of Customs Duty. Here the reimbursements against advertisement expenses are against the imported goods and are clearly paid out of the proceeds of subsequent resale of the imported goods and hence are liable to be added to the transaction value of the imported goods.

15.4 I observe that as per Rule 10 (1)(e), all other payments are to be added to the assessable value if – (i) they are made to the seller or to a third party to satisfy the obligation of the seller as a condition of sale of the imported goods; and (ii) such payments are not included in the price actually paid or payable. Here the reimbursements against advertisement expenses are against the imported goods and are therefore a condition of sale of the imported goods. Further, such payments are not included in the price actually paid/ transaction value of the imported goods and therefore the conditions of Rule 10 (1)(e) are fully satisfied. Therefore, Reimbursements made to the Franchisors/brand owners against their advertisement expenses and sales promotion / Institutional Advertisement & Promotional Reimbursement are liable to be included in the assessable value of the goods for the payments of Customs Duty.

15.5 Further, Hon'ble CESTAT vide order dated 08.04.2024- Para 17, in Noticee's own case has also held that the 'franchise fee' and '**international marketing charges**' are to be included in the 'transaction value' for conformity with section 14 of Customs Act, 1962. And same is also not challenged by the Noticee/ appellant and therefore has attained finality. It is also on record that the Noticee vide written submissions dated 15.09.2025 to this De Novo adjudication and during the Personal Hearing dated 15.09.2025 (Para 13.11 & 13.12 supra) has also affirmed their acceptance to the inclusion of the international marketing charges to the value of the imported goods. From the foregoing, I find that Reimbursements made to the Franchisors/brand owners against their advertisement expenses and sales promotion / Institutional Advertisement & Promotional Reimbursement by the Noticee to the seller are

liable to be added to the assessable value of the imported goods. Therefore, I am of the considerate view that elements of **Franchise Entrance Fee, Franchise Fee, International Marketing Charges and Local Advertisement and Sales Promotion Expenses in India** are liable to be included in Assessable Value.

Now I proceed to examine the issue, as to whether the (iv) Expenses related to import of Advertising & Sales promotion Material are liable to be included in the assessable value, or otherwise:-

16. In this regard, I observe that the Noticee M/s. MBIPL was importing advertisement material from different brand owners and paying Customs Duty by classifying them under appropriate head of Customs Tariff. As per investigation, the value of these advertisement materials has been proposed to be added in the transaction value of the imported goods.

16.1 In reply to the said allegation, the Noticee has submitted that all the goods imported for advertisement and sales promotion suffered duties of Customs under their respective tariff headings at the time of their imports. Further, according to the Noticee there appeared to be no legal basis for making such a demand as all the imports made from the Franchisor were not under the project imports where all items were to be classified under one heading. The Noticee has submitted that it was nowhere stated in their contract that the imports of the advertisement materials from the importer was a condition of the sale of the goods.

16.2 In this regard, it is observed that the goods imported by the Franchisor for the advertising/sales promotion activities have already suffered duty. Hence, if the value of these advertising/sales promotion materials is included in the assessable value of the goods imported by the Franchisee, then it will lead to payment of Customs Duty twice on the portion of the value which has already suffered the incidence of Customs Duty.

In this regard, I rely on case law in the matter of *Tata Iron & Steel Co. Ltd. V/s. CCE reported at 2000 (116) ELT 422 (SC)*, wherein it was held that :

“the cost of technical documents and drawings cannot be included in the Customs Value if there is separate tariff heading for such drawings and there is no allegation that the equipment are undervalued by transferring part of the value of the equipment to value of drawings”.

16.3 In the instant case there is no such allegation of transfer of value of Readymade Garments, footwear, handbags, accessories etc. imported by the Noticee to the value of advertisement materials and also there exists a separate tariff headings for advertising/sales promotion materials.

Thus, relying on the above judgment of the Hon'ble Supreme Court, I find that the value of imported advertising/sales promotion materials to the assessable value of the impugned imported goods is not required.

Now I proceed to examine the issue, as to whether the (v) Local Advertisement & Sales promotion expenses made in India, are liable to be included in the assessable value, or otherwise :-

17. In order to examine the issue in hand, I now proceed to examine the allegations made in the SCN and the reply submitted by the Noticee, legal provisions and relevant case laws on the issue.

17.1 It is alleged in the SCN that the Noticee M/s. MBIPL is incurring expenses on account of Sales Promotion/Advertisement in India for promoting the brands as per their agreements with the Franchisors. It was proposed to include these amounts to the Assessable Value of the imported goods for the purpose of arriving at correct Customs Duty payable by the importer.

17.2 Against this allegation, the Noticee submitted that the contract between them and the Franchisor nowhere mentioned this expenditure as a condition for the sale of the goods. In support of their contention, the Noticee has relied upon the decision of the *Hon'ble Supreme Court in case of Philips India Ltd. V/s. CCE, Pune reported at 1997 (91) ELT 540 (SC)* and decision of the Tribunal in case of *Bayer India Ltd. V/s. CC, Mumbai reported at 2006 (198) ELT 240 (T)*. They further submitted that while the CVR, 2007 do not talk of adding the advertising expenses, in fact the interpretative note prohibited its addition and the same was liable to Service Tax under the Finance Act, 1994.

Analysis Of Applicability Of Rule 10 (1)(E) Of CVR, 2007 as per Judgment Of Commissioner Of Customs ICD Parganj V/S. M/S. Adidas India Marketing Pvt. Ltd, New Delhi In Customs Appeal No. 51928 Of 2018 Before Hon'ble CESTAT, Principal Bench, New Delhi (2020-Tiol-604-Cestat-Del).

17.3 As per Rule 10 (1)(e), all other payments are to be added to the assessable value if – (i) they are made to the seller or to a third party to satisfy the obligation of the seller as a condition of sale of the imported goods; and (ii) such payments are not included in the price actually paid or payable. Therefore two crucial conditions are required to be fulfilled, i.e. 1st :- The payments are made as a condition of sale of the imported goods and 2nd :- They are made either to the seller or to a third party to satisfy the obligation of the seller.

17.4 As per this judgment, Hon'ble Tribunal in the case of M/s. Adidas India Marketing Pvt (2020-Tiol-604-Cestat-Del), has specified conditions to be fulfilled for applicability of Rule 10(1)(e) of CR, 2007. Relevant portions of the judgment are reproduced below as follows:

“19.....For the sake of convenience, rule 10(1)(e) can be broken up into two parts for the purpose of

determining the transaction value by adding :

(a) such payments actually made or to be made as a condition of sale of the imported goods by the buyer to the seller to satisfy an obligation of the seller;

(b) such payment actually made or to be made as a condition of sale of the imported goods by the buyer to a third party to satisfy an obligation of the seller. ”

“20. What also needs to be noticed is that in both the aforesaid two situations there are two requirements. The first requirement is that the payment should be made as a condition of sale and the second requirement is that they should be made to satisfy an obligation of the seller which can be towards the buyer as contemplated in (a) or towards a third party as contemplated in (b). Both the aforesaid twin requirements have to be satisfied before any payment made by the buyer to the seller or the buyer to a third party can be added to the price actually paid by the buyer to the seller for determining the transaction value. In other words, whenever such a payment is made either by the buyer to the seller or the buyer to a third party, the payment should necessarily be made as a condition of sale of the imported goods to satisfy an obligation of the seller..... such payments are not included in the price actually paid or payable can be added to the price actually paid for determining the transaction value.”

“21., it is also necessary that there is an enforceable right available to a seller to enforce such a condition. Thus, an option must not be available with the buyer to ignore the condition of sale. In regard to the second condition, notwithstanding the fact that such payment has to be made by the buyer as a condition of sale of the imported goods, then too unless and until it is established that the seller has a pre-existing obligation to pay the said amount to the buyer or a third party and the buyer is only

discharging the said obligation of the seller, such payment cannot be added to the price actually paid by the buyer for the imported goods in terms of rule 10(1)(e). The seller must, therefore, have an obligation to pay an amount to the buyer or to a third party and the discharge of the same is by the buyer as a condition of sale of the imported goods. Any payment made by a buyer to a third party on his own account, even as a condition of sale of the imported goods in terms of a clause of the agreement between the buyer and seller, cannot be added to the value of the imported goods since such payment has not been made to satisfy an obligation of the seller.”

“24. It will be useful, at this stage, to refer to cases that have discussed the requirement of rule 10(1)(e) of the 2007 Rules that payment should actually be made as a condition of sale. These decisions hold that the costs incurred on advertisement and promotion, even if such advertisement and promotion is carried out under an agreement between the buyer and seller, can be added to the amount paid by the buyer

for import of goods only when there is a right with the seller to enforce such a condition on the buyer to incur such expenditure.

25. In **Commissioner of Central Excise, Surat vs Surat Textile Mills Ltd 2004 (167) E.L.T. 379 (S.C.) = 2004-TIOL-40-SC-CX**, the Supreme Court emphasized that advertisement expenditure incurred by a customer of the manufacturer can be added to the sale price for determining the assessable value only if the manufacturer has an enforceable legal right against the customer to insist on the incurring of such advertisement expenses by the customers. The relevant portion of the judgement is reproduced below:

“21. We have carefully perused the judgments and orders passed by the CEGAT which are impugned in these appeals. As rightly contended by the counsel appearing on either side, the CEGAT failed to appreciate the arguments advanced before it by the counsel appearing on either party in its proper perspective. In fact, in Civil Appeal Nos. 13400/1996, 4672/1997 and 4762/1997, the CEGAT failed to appreciate that in several earlier judgments, the CEGAT consistently held that the advertisement expenditure incurred by a manufacturers' customer can be added to the sale price for determining the assessable value, only if the manufacturer has an enforceable legal right against the customer to insist on the incurring of such advertisement expenses by the customer.

26. This judgement of the Supreme Court in *Surat Textiles Mills* was followed by the Principal Bench of the Tribunal in ***Honda Seils Power Products Ltd. vs Commissioner of Central Excise, Meerut- III 2015 (317) E.L.T. 510 (Tri. - Del.) = 2013-TIOL-1492-CESTAT-DEL***. The Tribunal noticed, after perusing the agreement, that there was nothing in the agreement from which it could be concluded that the Appellant had an enforceable legal right against the dealers that they must incur certain amount of expenses on advertisement and publicity of the products of the Appellant and merely because a clause in the agreement required the dealer to make efforts for promoting sales of the products of the Appellant would not mean that a legal obligation was cast upon the dealer to incur expenses on advertisement. The observations are as follow:

"5. We have considered the submissions from both the sides and perused the records. The undisputed facts are that:-

- (a) the appellant's agreement with their dealers only have a clause which require the dealers to make efforts for promoting the sales of the appellant's products; and
- (b) during the period of dispute, the dealers had incurred expense on advertisement and publicity, a part of which had been reimbursed by the appellants to the dealers.

The point of dispute is as to whether the expenses on advertisement and publicity expenses incurred by the dealers, which were borne by them, are to be added to the assessable value of the goods or not.

On this point, it is seen that the Apex Court in case of *C.C.E., Surat v. Surat Textile Mills Ltd.*, reported in 2004 (167) E.L.T. 379 (S.C) = 2004-TIOL-40-SC-CX has held in clear terms that only when a manufacturer has enforceable legal right against his customers/dealers to insist on incurring of expenses on advertisement, the advertisement expense incurred by the dealers can be added to the assessable value. Same view has been taken by the Tribunal in case of *Maruti Suzuki India Ltd.* reported in 2008(232) E.L.T 566 (Tri.-Del.) = 2008-TIOL-1713-CESTAT-DEL"

"30. In ***Samsonite South Asia Pvt. Ltd. Vs Commissioner of Customs (Import), Mumbai 2015 (327) E.L.T. 528 (Tri.- Mumbai) = 2013-TIOL-2324-CESTAT-MUM***, the Tribunal held that there was nothing to establish that the advertising expenses shared by the Appellant company with Samsonite, Hong Kong had any nexus to the imports made by the Appellant from various other Samsonite Companies. The Tribunal also found that the sharing of cost towards advertising expenses was not a condition of sale for the import of goods and, therefore, the provisions of rule 10(1)(e) of the 2007 Rules would not be attracted. The observations are as follows: 2020-TIOL-604-CESTAT-New Delhi-Customs Page 12 of 18

"6.1 We do not find any evidence, documentary or otherwise led by the Revenue to establish that the advertising expenses shared by the appellant company with Samsonite, Hong Kong has any nexus whatsoever to the imports made by the appellant from various other Samsonite group of companies. The advertising expenses are allocated on the basis of sales turnover of the individual company to the total sales made by the entire Samsonite group as a whole. The sales turnover includes not only the materials procured from abroad but also similar items procured indigenously and the various costs incurred in the manufacture of finished goods. Thus, there is no co-relation whatsoever between the costs of material imported from other Samsonite entities and the payment of cost towards sharing advertising expenditure. For example, in a given year even if the appellant does not import any raw materials, they have to share the cost of advertising expenses incurred on a global basis. It is thus, clear that the expenditure incurred on advertising has no influence or nexus with the import of raw materials. Where the exporter under a corporate advertising plan reimburses the importer for the part of its advertising expenses, such payments only reduces his net expenses for

advertising which is not a dutiable item in the first place. If the charge is not based on the number of units of the products imported, such a cost sharing arrangements cannot be regarded as an indirect payment constituting an additional element of the price paid by the importer to the exporter. In the present case, we find that there is no nexus between the imports made by the appellants and the expenditure shared by the appellants for the global advertising campaign. We also find that the sharing of cost towards advertising expenses is not a condition of sale for the import of goods. Therefore, we are of the view that the provisions of Section 10(1)(e) of the Customs Valuation Rules, 2007, are not attracted in the present case."

*"31. The provisions of rule 10(1)(e) of the 2007 Rules also came up for interpretation before a Division Bench of this Tribunal in **M/s Indo Rubber And Plastic Works vs Commissioner of Customs, Inland Container Depot, Tughlakabad, New Delhi 2020-VIL-85-CESTAT-DEL-CU**. M/s Indo Rubber entered into an agreement with Sunlight Sports for the purpose of import and sale of "Li Ning" brand sports goods within India. Article 4 of the agreement provided that the Distributor will make best endeavours to promote and extend sales of goods within the territory. Article 7 provided that the Distributor will bear all costs of marketing, advertising and promotions for the territory. The Revenue believed that the marketing, advertising, sponsorship and promotional expenses/ payments made by M/s Indo Rubber for promotion of "Li Ning" brand was a condition of sale and consequently such amount was liable to be included in the value of the imported goods in terms of rule 10(1)(e). The Tribunal held that the Appellant was not obliged to incur any particular amount or percentage towards sales, promotion/advertisement as a condition of sale and that the activity of advertisement and sales promotion was a post import activity incurred by the Appellant on its own account and not for discharge of any obligation of the seller under the terms of sales.*

"32. The relevant portion of the decision of the Tribunal is reproduced below:

"16. Having considered the rival contentions, we find that in the facts and circumstances of the present case there is nothing in the agreement that a fixed amount or fixed percentage of the invoice value of the imported goods, is obliged to be spent by the appellant as a condition of sale/ import. As per the stipulation in the agreement, the appellant is obliged to or responsible for sales and distribution in its territory of distribution and further to make such expenditure in consultation with the seller, does not attract the provisions of Rule 10(1)(e) of CV Rules. We find that there is total absence of the prescribed condition precedent as the appellant is not obliged to incur any particular amount or percentage of invoice value towards sales promotion/ advertisement. Further, we find that the activity of advertisement and sales promotion is a post import activity incurred by the appellant on its own account and not for discharge for any obligation of the seller under the terms of sale."

17.5 From the foregoing, it is noticed that the following conditions are required to be fulfilled for the payments to be included in the assessable in terms of Rule 10(1)(e):

1. The payments made are a condition of sale of the imported goods.
2. Such payments are not included in the price actually paid or payable.
3. The Payments are not made by the buyer to a third party on his own account.
4. The buyer incurs a particular amount or percentage towards sales.
5. The payment is made either by the buyer to the seller or the buyer to a third party, to satisfy an obligation of the seller. Seller has a pre-existing obligation to pay the said amount to the buyer or a third party and the buyer is only discharging the said obligation of the seller.
6. Seller should have enforceable right to enforce buyer to incur such expenditure.

Now, I proceed to examine the agreement between the Noticee and brand owner- Nine West

I. Now, I proceed to examine, as to whether the payments made for Local Advertisement & Sales promotion expenses made in India are a condition of sale of the imported goods or otherwise:-

17.6 On perusal of the agreement, it is noticed that the Brand Owner and the Noticee has a Franchisor & Franchisee relationship. Noticee being the Franchisee has agreed to fulfill the terms and conditions of the agreement. With regard to the question of whether any payment is a 'condition for sale', the determining factor is whether the buyer is unable to purchase the imported goods without making such payment. I observe that, Noticee shall not able to purchase the goods without fulfilling the terms and conditions of the agreement. Further, the imported goods are not raw-material, but instead finished branded goods to be sold by the Noticee under the agreement. Therefore such payments/expenditure made have a nexus with the imported goods and therefore is a condition of sale.

II. Now, i proceed to examine, as to whether such payments made for Local Advertisement & Sales promotion expenses made in India are not included in the price actually paid or payable or otherwise:

17.7 I observe that it is undisputed fact that noticee is paying the above mentioned expenses over and above the invoice value/ transaction value of the Imported goods. Such expenditure is being undertaken by the Noticee as a condition of sale of the imported goods, in order to Franchisee in satisfaction of obligations imposed by the Franchisor to promote the brand of the franchisor in India. Therefore, I find that such payments are not included in the price actually paid or payable for the imported goods.

III. Now, i proceed to examine, as to whether, the payments made for Local Advertisement & Sales promotion expenses made in India are not made by the buyer to a third party on his own account & buyer incurs a particular amount or percentage towards sales, or otherwise:

17.8 In order to examine this issue, I rely upon the following Para (s) of the agreement between the Noticee and the Band Owner. Relevant portion of the same are reproduced, as follows:

"2.8.4. Franchisee shall support any marketing program developed by NWG for use in the Territory, including, without limitation, participation in sales presentations, fashion shows, and special events."

"2.8.7. During each Year during the Term, Franchisee shall make expenditures for national, local, trade, and co-operative Advertising within the Territory, for the Products, in at least the following amounts:

Minimum Advertising Expenditure:

2009: Greater of \$21,000 or 2% of Net Sales in the Territory during 2009

2010: Greater of \$21,600 or 2% of Net Sales in the Territory during 2010

2011: Greater of \$25,000 or 2% of Net Sales in the Territory during 2011

2012: Greater of \$28,300 or 2% of Net Sales in the Territory during 2012

2013: Greater of \$32,800 or 2% of Net Sales in the Territory during 2013

NWG may, at its sole discretion, require that specific amounts be spent by Franchisee in the Territory for Advertising relating to particular Outlets. All such expenditures in connection with advertising shall be made in accordance with guidelines separately provided to Franchisee."

17.9 On examination of Clauses 2.8.4 and 2.8.7 of the Franchise Agreement between NWG and the Franchisee, it is evident that the payments and expenditures incurred towards advertising and promotion are not made by the buyer on his own account, but are contractual obligations imposed as a condition of the franchise relationship.

17.9.1 Clause 2.8.4 specifically mandates that the Franchisee **shall** support any marketing program developed by NWG for use in the Territory, including participation in sales presentations, fashion shows, and special events, thereby requiring the Franchisee to execute the marketing strategies devised and controlled entirely by the Franchisor.

17.9.2 Clause 2.8.7 further obliges the Franchisee to incur advertising expenditure each year, **quantified** as the greater of a fixed dollar amount or two percent of the Franchisee's net sales in the Territory, and also empowers NWG to direct the allocation of such expenditure for specific outlets in accordance with guidelines prescribed by it.

17.9.3 The use of mandatory language such as "shall" and the presence of a formula-based minimum clearly establish that these expenditures are not voluntary or incidental selling costs but fixed contractual payments linked to sales turnover. Therefore, they represent amounts spent by the Franchisee in satisfaction of obligations imposed by the Franchisor. Accordingly, I find that these expenditures are not made by the buyer to a third party on his own account & the buyer has to incur a particular amount or percentage of net sales.

IV. Now, i proceed to examine, as to whether the payments made for Local Advertisement & Sales promotion expenses made in India is made either by the buyer to the seller or the buyer to a third party, to satisfy an obligation of the seller or otherwise & Seller has a pre-existing obligation to pay the said amount to the buyer or a third party and the buyer is only discharging the said obligation of the Seller or otherwise:

17.10 In order to examine this issue, I rely upon the following Para (s) of the agreement between the Noticee and the Band Owner. Relevant portion of the same are reproduced, as follows:

"2.8.1. All Advertising and promotion for or in connection with the Products and the Proprietary Marks performed by the Franchisee shall be consistent with the image and prestige of the Proprietary Marks and with the standards maintained by the Franchisor and shall be subject to the prior written approval of Franchisor (such approval not to be unreasonably withheld)."

“2.8.4. Franchisee shall support any marketing program developed by NWG for use in the Territory, including, without limitation, participation in sales presentations, fashion shows, and special events.”

“2.8.5. NWG shall provide Franchisee, without charge, access to NWG's owned Advertising materials, subject to the retention by NWG of all rights in such materials; provided, however, that Franchisee shall bear the cost of production of additional copies of such materials requested by Franchisee.”

“2.8.6. Franchisee shall provide NWG, without charge, access to local-language Advertising materials developed by Franchisee in accordance with this Agreement; provided, however, that NWG shall bear the cost of production of additional copies of such materials requested by NWG.”

“2.8.7. During each Year during the Term, Franchisee shall make expenditures for national, local, trade, and co-operative Advertising within the Territory, for the Products, in at least the following amounts:

Minimum Advertising Expenditure:

2009: Greater of \$21,000 or 2% of Net Sales in the Territory during 2009

2010: Greater of \$21,600 or 2% of Net Sales in the Territory during 2010

2011: Greater of \$25,000 or 2% of Net Sales in the Territory during 2011

2012: Greater of \$28,300 or 2% of Net Sales in the Territory during 2012

2013: Greater of \$32,800 or 2% of Net Sales in the Territory during 2013

NWG may, at its sole discretion, require that specific amounts be spent by Franchisee in the Territory for Advertising relating to particular Outlets. All such expenditures in connection with advertising shall be made in accordance with guidelines separately provided to Franchisee.”

“2.9. Periodic Reports; Annual Operating Plan; Annual Marketing/Sales Plans:-

2.9.3.4. details of all Advertising expenditures for such Quarter; and...

2.9.6. As soon as available and in any event within ninety (90) days after the end of each Year, Franchisee shall furnish to NWG a report which sets forth (a) the Net Sales of Products during such Year within the Territory, (b) the computation of corresponding Franchise Fee payable for such Year, (c) the total number of Outlets being operated by Franchisee as at the end of such Year within the Territory and (d) the amounts of Advertising expenditures incurred by Franchisee, all certified, without qualification as to the scope of the audit, by an internationally recognized firm of independent certified public accountants reasonably acceptable to NWG.”

“3.1.7.7. use the Specified Proprietary Mark (or other Proprietary Marks, as the case may be) or any reproduction or variation thereof, in any manner whatsoever (including in Advertising and promotion) without obtaining the prior written approval of the Franchisor (such approval not to be unreasonably withheld)”

“3.2. Use of Specified Proprietary Mark

3.2.7. The Franchisee shall, where desirable to optimize the marketing of Products, as determined by the Franchisee, develop local-language Advertising promoting Products, subject to the Franchisor's final approval; provided that all copyright in such Advertising shall be owned by or assigned to the Franchisor”

“3.5. Beginning on the Effective Date and throughout the Term of this Agreement, the Franchisee shall:...

3.5.5. not proceed unless it obtains the prior written approval of the Franchisor of all Packaging Materials, fixtures, Outlet designs, Products, Advertising and promotional materials for the Products, and any other use of the Specified Proprietary Mark or other Proprietary Marks (or any reproduction or variation thereof) in any manner whatsoever;...”

17.11 From the foregoing clauses of the Franchise Agreement, it is evident that the Franchisor exercises absolute control over every aspect of advertising and promotional activities undertaken by the Franchisee. Under Clause 2.8.1, all advertising and promotion “for or in connection with the Products and the Proprietary Marks” are required to be consistent with the image and prestige of the brand and are subject to the Franchisor’s prior written approval, thereby depriving the Franchisee of any autonomy in its promotional operations. As per Clause 2.8.4, the Franchisee is bound to support all marketing programs developed by the Franchisor (NWG), including participation in sales presentations, fashion shows, and special events, clearly evidencing that the scope, nature, and extent of promotional activity are dictated by the Franchisor.

17.11.1 Further, Clause 2.8.5 provides that while the Franchisor shall make available its proprietary advertising materials without charge, it retains all intellectual property rights therein. Under Clause 2.8.6, even local-language advertising prepared by the Franchisee is made accessible to the Franchisor, and the copyright in such materials vests in the Franchisor, reaffirming the Franchisor’s ownership and control. Clause 2.8.7 mandates that the Franchisee must incur minimum advertising expenditures based on either a fixed amount or a percentage of Net Sales, with the Franchisor empowered, *at its sole discretion*, to direct the manner and area of such spending, and to impose guidelines for advertising execution.

17.11.2 On examination of Clauses 2.9, 2.9.3.4, and 2.9.6 of the Franchise Agreement, it is observed that the Franchisee is required to submit periodic and annual reports to the Brand Owner detailing, inter alia, advertising expenditures incurred during each quarter and year. Such reports must be certified by independent auditors and are subject to the Brand Owner’s review and verification. These provisions ensure continuous financial disclosure and oversight of the Franchisee’s promotional activities. It is therefore evident that the Brand Owner retains ongoing supervision and control over the Franchisee’s advertising expenditure. Accordingly, the Brand Owner is controlling every aspect of such promotion.

17.11.3 Similarly, Clause 3.1.7.7 prohibits the Franchisee from using any of the Proprietary Marks “in any manner whatsoever” (including advertising and promotion) without the Franchisor’s prior written approval, while Clauses 3.2.7 and 3.5.5 reinforce that all packaging materials, fixtures, outlet designs, and advertising content require explicit prior approval from the Franchisor, who also holds final decision-making authority over marketing design and implementation.

17.11.4 Taken collectively, the above clauses establish beyond doubt that the Franchisor maintains pervasive and binding control over the Franchisee's promotional functions, extending to approval, content, design, expenditure, audit and intellectual property ownership. The Franchisee's advertising activities are thus not independent commercial expenditures but are mandated, directed, and controlled by the Franchisor as part of a coordinated brand policy. Therefore, the Brand Owner is controlling every aspect of such promotion.

17.11.5 It is observed that where the Franchisor dictates or supervises promotional activities and the Franchisee merely acts as an implementing arm of the Franchisor's global marketing policy, the expenses so incurred cannot be regarded as independent local costs but constitute an extension of the Franchisor's overall brand promotion efforts. The Franchisor, therefore, not only owns the brand and its goodwill but also retains control over its representation, image, and commercial exploitation, leaving the Franchisee as a contractual executor rather than an independent entrepreneur in respect of promotional functions. The Brand Owner is the exclusive proprietor of the brand name, trademarks, and associated goodwill. The promotional and advertising activities undertaken by the Noticee are evidently directed towards promoting the brand as a whole, and not merely the imported goods. The Franchise Agreement clearly establishes that such promotions are carried out under the direction and control of the Brand Owner; therefore, the Noticee performs these activities on behalf of the Brand Owner, in accordance with its prescribed standards and approvals. Consequently, the related promotional expenses are incurred on behalf of the Brand Owner.

As to whether Seller has a pre-existing obligation to pay the said amount to the buyer or a third party and the buyer is only discharging the said obligation of the seller or otherwise:

17.12 On perusal of the agreements executed between the Noticee and the international brand owners, it is observed that the agreements were entered into for the sale of the brand owners' goods in the Indian market through franchisee outlets operated by the Noticee. These brands and trademarks are internationally registered and possess their own goodwill and brand value. The use of the brand name, logo, packaging, and other brand elements forms an integral part of the imported goods, embodying the brand's inherent goodwill and market reputation. Goods bearing such branding command a higher market value, whereas identical goods without the brand's goodwill would not fetch a comparable price. The essence of any franchise arrangement lies in leveraging the brand's value to achieve enhanced market recognition and higher sales realization, for which the Franchisee pays Franchise Entrance Fees and Royalty/Franchise Fees to the Brand Owner for the licensed use of the trademarks and goodwill. It is therefore evident that **brand promotion is fundamentally the obligation of the Brand Owner**, who has a pre-existing responsibility to promote the brand globally and within the franchisee's territory, enabling the Franchisee to derive commercial benefit from the arrangements of the Franchise agreement.

In view of the above, I find that the Noticee is making such expenses on behalf of the Brand Owner in order to fulfill an existing obligation of the Brand Owner towards the Buyer itself.

V. Now, i proceed to examine, as to whether the Seller have enforceable right to enforce buyer to incur such expenditure for Local Advertisement & Sales promotion expenses made in India or otherwise:

17.13 In order to examine this issue, I rely upon the following Para (s) of the agreement between the Noticee and the Band Owner. Relevant portion of the same are reproduced, as follows:

“2.8.7. During each Year during the Term, Franchisee shall make expenditures for national, local, trade, and co-operative Advertising within the Territory, for the Products, in at least the following amounts:

Minimum Advertising Expenditure:

2009: Greater of \$21,000 or 2% of Net Sales in the Territory during 2009

2010: Greater of \$21,600 or 2% of Net Sales in the Territory during 2010

2011: Greater of \$25,000 or 2% of Net Sales in the Territory during 2011

2012: Greater of \$28,300 or 2% of Net Sales in the Territory during 2012

2013: Greater of \$32,800 or 2% of Net Sales in the Territory during 2013

NWG may, at its sole discretion, require that specific amounts be spent by Franchisee in the Territory for Advertising relating to particular Outlets. All such expenditures in connection with advertising shall be made in accordance with guidelines separately provided to Franchisee.”

“2.8.8. Franchisee shall account for such Advertising expenditures on a monthly basis (using the Average Exchange Rate in effect for such period). In the event that the Advertising expenditures made by Franchisee within the Territory during any Year are less than the Minimum Advertising Expenditure set forth above for such Year, Franchisee shall pay to NWG the amount by which the Minimum Advertising Expenditure for such Year exceeds the amount of Advertising expenditures actually made within the Territory for such Year. Such payment shall be made by wire transfer of funds in Dollars to NWG within thirty (30) days following the close of such Year. The Franchisee may nevertheless at its option carry forward up to 25% of the unspent Minimum Advertising Expenditures of the first Year only; however, all such amounts carried forward must be spent in the second Year. Franchisee shall pay to NWG all outstanding unspent amounts in respect of Minimum Advertising Expenditures upon expiration or termination of the Agreement.

For the avoidance of doubt, expenditures for Advertising may include expenses that could be described variously as relating to advertising, sales promotion, marketing and selling expenses, and merchandising, but only to the extent that such actions or communications are directed to the trade or to the public.”

“13. Termination

13.1. Either Party may terminate this Agreement upon written notice (which notice shall specify the grounds for termination) if:

13.1.1 the other Party has failed to make any payment required by the terms of this Agreement and such failure is not cured within fifteen (15) days after the date on which such payment was due and payable; provided, however, that the occurrence of any draw upon a Standby Letter of Credit in

accordance with the terms of this Agreement shall constitute a failure by the Franchisee to make a payment required by the terms of this Agreement;

13.1.2 the other Party has breached any other term of this Agreement (including but not limited to Article 15) and such breach is not cured within thirty (30) days after notice of such breach given by the Party claiming breach; or

13.2. Franchisor shall have the right to terminate this Agreement if the Distributor has breached any term of either: (a) the Letter Agreement or (b) the Distributor's India Agreement, and such breach is not cured within thirty (30) days after notice of such breach is given by the Franchisor to the Distributor."

"19. Arbitration

19.1. The Parties shall make endeavours to settle by mutual conciliation any claim, dispute, or controversy (hereinafter "Dispute") arising out of, or in relation to this Agreement, including any Dispute with respect to the existence or validity hereof, the interpretation hereof, the activities performed hereunder, or the breach hereof. Any Dispute which cannot be resolved through such conciliation within thirty (30) days after one Party notifies the other Party of such Dispute, shall be finally settled by an arbitration in accordance with provisions of the Rules of Arbitration of the International Chamber of Commerce (hereinafter referred to the "Act") and any statutory modification or re-enactment thereof, by one or more arbitrators appointed

in accordance with the said Act. Each of the Parties, for itself and its successors and assigns, irrevocably consents to the service of process (including summonses, notices and documents) in any such proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid and return receipt requested, to such Party at its address provided pursuant to Article 21.

19.2. Such arbitration proceedings shall be conducted in London, United Kingdom. The arbitration proceedings shall be conducted in the English language, provided that if a party wishes to submit testimony or documentary evidence in another language it shall, at its own expense, furnish a translation or interpretation into the English language of any such testimony or documentary evidence.

19.3. The arbitrators shall have powers to award and/or enforce specific performance. Each of the Parties, for itself and its successors and assigns, (a) agrees that a final decision in any such proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law or by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and (b) irrevocably waives any immunity from the maintaining of an action to enforce any such decision for money obtained in any such proceeding and, to the extent permitted by applicable law, any immunity from execution.

19.4. Distribution of costs of arbitration (excepting each Party's counsel fees, which shall be at such Party's sole expense) shall be determined by the arbitrators."

17.14 On examination of Clauses 2.8.7 and 2.8.8 of the Franchise Agreement, it is evident that the Franchisor (Seller/Brand Owner) possesses a contractually enforceable right to compel the Franchisee (Buyer/Noticee) to incur specific levels of advertising and promotional expenditure. The agreement mandates the Franchisee to spend a minimum prescribed amount on advertising within the territory each year — either a fixed sum or a fixed percentage of annual net sales, whichever is higher. Further, Clause 2.8.8 explicitly provides that if the Franchisee fails to meet the required level of expenditure, it must remit

the shortfall amount to the Franchisor (NWG) within thirty (30) days after the close of the year. This payment obligation is not discretionary but contractually enforceable, and any failure to comply constitutes a breach of agreement.

17.14.1 Moreover, under Clause 13.1.1, non-payment of such amounts is expressly recognized as a default giving rise to termination and arbitration under Clause 19, confirming that the Franchisor has the right to enforce compliance through termination or recovery of dues. The inclusion of arbitration provisions under Clause 19 further strengthens this enforceability, granting the Franchisor recourse to binding arbitration in London under *International Chamber of Commerce (ICC)* Rules to recover unpaid advertising obligations or enforce specific performance.

17.14.2 Thus, these provisions collectively establish that the Seller/Franchisor possesses an enforceable legal right to ensure that the Buyer/Franchisee incurs or pays the prescribed advertising expenditure. Such expenditure is not voluntary or independent but constitutes a contractual obligation imposed by the Seller, enforceable through legal and arbitral remedies provided under the agreement. Consequently, the expenditure is incurred under compulsion of the contract and must be regarded as an enforceable payment condition integral to the franchise relationship, rather than a discretionary local business cost. Accordingly, the Seller has an enforceable right to compel the Buyer to incur such expenditure.

17.15 From the above discussions, I find that payments made for Local Advertisement & Sales promotion expenses made in India are:

- 1. Condition of Sale:** It is evident from the terms of the franchise and distribution agreements that the payments made by the Noticee towards advertising and sales promotion are a condition of sale of the imported goods. The importer's continued right to import and sell the branded products is contingent upon fulfilling this obligation.
- 2. Not Included in Price Actually Paid or Payable:** These promotional payments are not reflected in the invoice value or the price actually paid or payable for the imported goods, and therefore remain outside the declared transaction value.
- 3. Not on Buyer's Own Account:** The expenditure is not incurred voluntarily or independently by the buyer on his own account; rather, it arises from contractual obligations imposed by the brand owner/franchisor and must be incurred in accordance with their prescribed standards and approvals.
- 4. Linked to Sales Turnover:** The agreement specifically requires the buyer to incur expenditure based on a fixed amount or a percentage of net sales, making the obligation directly linked to the volume of sales of imported branded goods.
- 5. Discharge of Seller's Obligation:** The payments are made to third parties to satisfy a pre-existing obligation of the seller/brand owner, who is primarily responsible for brand promotion. The buyer merely discharges this obligation on behalf of the seller, as stipulated under the agreement.
- 6. Enforceable Right of Seller:** The seller/brand owner retains an enforceable legal right to compel the buyer to incur or pay such expenditure. Failure to comply attracts contractual penalties or termination, confirming that the expenditure is legally enforceable and not discretionary.

In other words, I find that all six elements prescribed for inclusion of advertising and sales promotion expenses under Rule 10(1) (e) of the Customs Valuation (Determination of Value

of Imported Goods) Rules, 2007 are fully satisfied. Accordingly, such payments are includable in the assessable value of the imported goods, as they represent consideration made, directly or indirectly, to satisfy an obligation of the seller/brand owner in connection with the imported goods.

17.16 I also find that all the above elements are consistently present in each of the agreements executed by the Noticee with the respective Brand Owners with respect to payments made for Local Advertisement & Sales promotion expenses made in India. Accordingly, these findings shall apply uniformly to all Brand Owners who are the subject matter of the present de novo proceedings.

EXCLUSION OF THE EXPENSES FROM THE RULE 3 (2) OF CR, 2007

17.17. As regards to the advertisement and sales promotion expenses incurred by the Noticee in India, Noticee has submitted that CVR, 2007 do not talk of adding the advertisement expenses, however, in fact the interpretative note to Rule 3 (2)(b) prohibited its addition.

17.18 The relevant portion of interpretative note to Rule 3 (2)(b) are reproduced, which states as follows :

“If the sale or price is subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued, the transaction value shall not be acceptable for Customs purposes. Some examples of this include :-

- (a) The Seller establishes the price of the imported goods on condition that the buyer will also buy other goods in specified quantities.*
- (b) the price of the imported goods is dependent upon the price or prices at which the buyer of the imported goods sells other goods to the seller of the imported goods.*
- (c) the price is established on the basis of a form of payment extraneous to the imported goods, such as where the imported goods are semifinished goods which have been provided by the seller on condition that he will receive a specific quantity of the finished goods.*

However, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value. For example, the fact that the buyer furnishes the seller with engineering and plans undertaken in India shall not result in rejection of the transaction value for the purposes of Rule 3. Likewise, if the buyer undertakes on his own account, even though by agreement with the seller, activities relating to the marketing of the imported goods, the value of these activities is not part of the value of imported goods nor shall such activities result in rejection of the transaction value”.

17.19 I observe that, as per the investigation, the value of the imported goods has been accepted as the transaction value adjusted in accordance with provisions of Rule 10 as

specified under Rule 3 (1) of the CVR, 2007. The interpretive note to Rule 3 (2)(b) talks of the situation where the buyer undertakes activities relating to marketing of the imported goods on his own account even though by an agreement with the seller. Here it has to be emphasized that the exemption of inclusion in the assessable value is available only when the expenditure is made by the importer '*on his own account*'.

17.20 On examination of the agreements between the Noticee and the international brand owners, it is evident that the Franchisee is contractually obligated to incur fixed expenditure on local advertising, sales, and promotional campaigns in India as a condition of sale of the imported goods, and not on its own discretion. The Franchisor exercises effective control over the entire advertising process — deciding what is advertised, how it appears, when it runs, and how much is spent, while the Franchisee's role is limited to funding and complying with these directions. The Franchisee must submit advertising plans and budgets for prior approval, make fixed minimum spending, and where applicable, deposit the amount into an advertisement fund managed by the Franchisor or pay the Franchisor the shortfall.

This structure clearly establishes that the Franchisor retains enforceable rights over the use, planning, content, and expenditure of all brand promotion activities. The Franchisee does not exercise independent control over advertising, making these expenses an obligatory and controlled component of the commercial arrangement linked to the sale of imported goods. Therefore, the Brand owners are controlling every aspect of such promotion and it is an obligation of the Noticee to the Seller for import of the goods and Noticee is not making such expenses on his own account. It is obvious that such promotion and advertising is towards promotion of their brand as a whole and not only in respect of goods being imported by the Noticee.

In other words, the advertising spend is not voluntary, instead it is a condition of sale with enforceable rights vested in the Franchisor, who dictates the plan, budget, content, and execution, leaving the Franchisee with no independent discretion. The Brand owners are controlling every aspect of such promotion.

Thus, the exemption of exclusion of local advertisement and sales promotion expenses made in India from the assessable value as per the interpretive note to Rule 3 (2)(b) is not available to the importer under the facts of the case.

17.21 Now, I proceed to discuss the cases cited by the Noticee in their defence the case of *Philips India Ltd. V/s. CCE, Pune reported at 1997 (91) ELT 540 (SC)* pertains to valuation under Central Excise and the same is not applicable in the facts and circumstances of the present case. In case of *Bayer India Ltd. V/s. CC Mumbai reported at 2006 (198) ELT 240 (T)*, the transaction value was sought to be rejected on the ground that the importer and the exporter have interest in the business of each other and the valuation was proposed under Rule 5 of the CVR, 2007. Here there was no allegation of extra remittance to the supplier by the importer. However, in the instant case, the investigation has sought to include the extra remittance/expenses under Rule 10 (1)(d) and 10 (1)(e) of the CVR, 2007 and hence the case cited by the Noticee is not applicable in the case in hand.

17.22 Further, the Noticee has submitted that as they are already paying Service Tax on advertisement/sales promotion expenses, this amount should not be added to the value of the imported goods for charging the Customs Duty. In this regard, I would again like to cite and follow the judgment of the Principal Bench, CESTAT, New Delhi in the case of Atul Kaushik V/s. Commissioner of Customs (Export), New Delhi reported at 2015 (330) ELT 417 (Tri. Del). In Para 14 of the said judgment, Hon'ble Tribunal has held that:

“14. Coming to the contention that from 2008 OIPL was paying service tax on the licence fee paid by it to Oracle USA and therefore the value of the licence fee could not be added in the value of the media packs imported, we find that OIPL has relied upon the judgment of Supreme Court in the case of Imagic Creative Private Ltd. (supra) in support of this contention. The said judgment essentially laid down the ratio that payment of service tax and VAT are mutually exclusive. The said ratio laid down by the Supreme Court cannot be extrapolated to mean that customs duty and service tax are also mutually exclusive. In this regard it is pertinent to recall once again the observation of the Supreme Court in the case of CC, Chennai v. Toyota Kirloskar Motor Pvt. Ltd. (supra) that a “decision is an authority for what it decides and not what can be logically deduced therefrom.” We are not even for a moment suggesting that mutual exclusivity of customs duty and service tax can be logically deduced from the Supreme Court judgment in the case of Imagic Creative Pvt. Ltd. (supra). No constitutional provision is brought to our notice inhibiting levy of taxes under different statutes on the same transactions. It is axiomatic that the same transaction may inhere distinct taxable events, exigible to different taxes. The only question is whether demand of tax is sustainable under the particular statute, as claimed by Revenue. The licence fee being a condition of sale is includible in the assessable value of the media packs in terms of the Customs Act, 1962 and the Rules made thereunder and there is no provision warranting exclusion from the assessable value for customs purposes, on the ground that service tax has become chargeable on such licence fee under a different statute.”

Thus, the Noticee's contention is not acceptable that the amount of advertisement and sales promotion expenses cannot be added to the assessable value because they are paying Service Tax on the same transaction.

B. Now I proceed to examine the next issue, as to whether the goods having RSP based assessment for CVD, shall have any additional CVD and corresponding cess implication due to the inclusion of the payments/ expenses incurred by the Importer in terms of finding at 'A' above, or otherwise.

18. I observe that M/s. MBIPL vide written submission cum synopsis dated 15.09.2025 w.r.t. De Novo adjudication has submitted as follows:

“However, the notice makes a calculation error insofar as the differential duty worked out was based on the total duty paid and making a loading factor. Most of the goods in these Bills of Entry pertain to goods on which MRP based duty is leviable during the relevant period. Since the Additional duty has already paid thereon correctly, the duty to be collected will only accrue towards basic customs duty and

not towards the Additional Duty under Section 3 of the CTA 1975. Hence it is requested that the order may be passed only for addition of the above amounts to those Bills listed in Column 2. Once the Bills of Entry in column 2 are recalled and reassessed by adding the franchise amount to SVB loading, the system will automatically calculate the differential amount and generate duty challan. Where the goods are already under MRP based valuation for Additional Duty, the system will not change the Additional duty amount already paid but only for those items where Additional Duty is payable on Ad-valorem basis. A revised working sheet indicating the amount of Franchise Fee to be added for each Bill of Entry will be submitted within two weeks of the completion of the hearing. “

18.1 Tariff Value:

I observe that there are mainly inter-alia two components of customs duty namely; i) Basic Custom Duty (BCD) levied in terms of Section 12(1) of the Customs Act, 1962 read with First Schedule and Section 2 of the Customs Tariff Act, 1975; and ii) Counter Vailing Duty (CVD) levied in terms of Section 12(1) of the Customs Act, 1962 read with Section 3 of the Customs Tariff Act, 1975 and Section 3 of the Central Excise Act, 1944. The issue of charging duty on some of the imported items namely Apparels of Chapter 61 and 62 and Footwears of Chapter 64 in the instant case on the basis of RSP is pertaining to the said CVD and not to the BCD. I observe that all the subject BOEs in the instant case pertains to pre GST Legacy period. Accordingly, since as per Section 3 of the Customs Tariff Act, 1975, CVD has to be charged equal to excise duty leviable on like articles manufactured in India, the same has to be charged as per the rates specified in the erstwhile First Schedule of the Central Excise Tariff Act, 1985 in case the Central Excise/CVD is chargeable on *ad valorem* basis. However, CVD has to be charged as per the RSP adjusted by rates of specified abatement, if the Central Excise/CVD is chargeable on **Specific Tariff Value/RSP** basis. In the instant case, it is the contention of the Noticee that since the CVD/Central Excise on Footwears and Apparels is chargeable on **Specific Tariff Value/RSP** basis, the elements of **Franchise Entrance Fee, Franchise Fee, International Marketing Charges and Local Advertisement and Sales Promotion Expenses in India** are not liable for addition in the RSP Based Valuation of Footwears and Apparels for charging CVD. I observe that as per the provisions of Section 4A of CEA44 read with Notification No. 49/2008-Central Excise (N.T.) dated 24.12.2008 (as amended), Central Excise/CVD on footwears of Chapter 64 is chargeable on **Specific Tariff Value/RSP** basis. Similarly, as per the provisions of Section 3(2) of CEA44 read with Notification No. 20/2001-Central Excise (N.T.) dated 30.04.2001 (as amended)), Central Excise/CVD on articles of apparel and clothing accessories, whether or not knitted or crocheted, falling under Chapters 61 and 62 is chargeable on **Specific Tariff Value/RSP** basis. I observe that once the tariff value of any item is fixed by law for charging CVD, the same has to be charged on the said fixed Tariff Value in terms of Section 3(2) or Section 4A as the case may be. The question of adding any elements, in form of Franchise Entrance Fee, Franchise Fee, International Marketing Charges and Local Advertisement and Sales Promotion Expenses in India, arises only in those cases where CVD is chargeable on *ad valorem* basis in terms of Section 4(1) of the CEA44. Since in the instant case the Central Excise Duty/CVD on Footwears and Apparels is chargeable on **Specific Fixed Tariff Value/RSP** basis, no other elements can be added for charging CVD on subject imported

Footwears and Apparels. However, it is also seen that Tariff Value for charging BCD is fixed as per the provisions of Section 14(2) of the Customs act, 1962. I observe that in the instant case there is no dispute about the fact that no Tariff Value for any of the imported goods including Footwears and Apparels has been fixed under Section 14 (2) of CA62. Therefore, the value of the subject elements namely; Franchise Entrance Fee, Franchise Fee, International Marketing Charges and Local Advertisement and Sales Promotion Expenses in India; is liable to be included for charging BCD on all items including Footwears and Apparels.

Section 3 (2) of Central Excise Act, 1944 (as before 2017), read as follows:

1. Substituted vide THE TAXATION LAWS (AMENDMENT) Act, 2017 before it was read as,

"Section 3. Duties specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 to be levied.-

(1) There shall be levied and collected in such manner as may be prescribed,-

(2) The Central Government may, by notification in the Official Gazette, fix, for the purpose of levying the said duties, tariff values of any articles enumerated, either specifically or under general headings, in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986)] as chargeable with duty ad valorem and may alter any tariff values for the time being in force.

(3) Different tariff values may be fixed-

(a) for different classes or descriptions of the same excisable goods; or

(b) for excisable goods of the same class or description-

(i) produced or manufactured by different classes of producers or manufacturers;

or

(ii) sold to different classes of buyers:

Provided that in fixing different tariff values in respect of excisable goods falling under sub-clause (i) or sub-clause (ii), regard shall be had to the sale prices charged by the different classes of producers or manufacturers or, as the case may be, the normal practice of the wholesale trade in such goods."

Central Excise Notification 20/2001 (as amended), issued under Section 3 (2) of Central Excise Act, 1944 (as before 2017), read as follows:

20/2001-CE (NT)

Tariff values for articles of apparel and clothing accessories not knitted or crocheted — Notification No. 8/2001-

C.E. (N.T.) superseded

In exercise of the powers conferred by sub-section (2) of section 3 of the Central Excise Act, 1944 (1 of 1944), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 8/2001-Central Excise (N.T.), dated the 1st March, 2001 [G.S.R. 142(E), dated the 1st March, 2001], except as respects things done or omitted to be done before such supersession, the Central Government, hereby fixes tariff value in respect of articles of apparel, not knitted or crocheted, all sorts, falling under sub-heading No. 6201.00 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), at the rate of 60% of the retail sale price that is declared or required to be declared on the retail packages under the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) or the rules made thereunder or under any other law for the time being in force.

Explanation. - For the purposes of this notification, "retail sale price" means the maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like, as the case may be, and the price is the sole consideration for such sale.

2. This notification shall come into force on the 1st day of May, 2001.

[Notification No. 20/2001-C.E. (N.T.), dated 30-4-2001]

7/2011-C.E. (N.T.)

Tariff value for goods of Chapter 61, 62 or 63 — Amendment to Notification No. 20/2001-C.E. (N.T.)

In exercise of the powers conferred by sub-section (2) of section 3 of the Central Excise Act, 1944 (1 of 1944), the Central Government, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 20/2001-Central Excise (N.T.), dated the 30th April, 2001 published in the Gazette of India, Extraordinary, vide G.S.R. 318 (E), dated the 30th April, 2001, namely : -

In the said notification, -

- (i) in the opening paragraph, for the words and figures "articles of apparel, whether or not knitted or crocheted, all sorts, falling under Chapter 61 or 62", the words and figures "articles of apparel and clothing accessories, whether or not knitted or crocheted, all sorts falling under Chapter 61 or 62 and other made up textile articles or sets, falling under Chapter 63" shall be substituted;
- (ii) for the words, figures and brackets "Standards of Weights and Measures Act, 1976 (60 of 1976)", the words, figures and brackets "Legal Metrology Act, 2009 (1 of 2010)" shall be substituted.

[Notification No. 7/2011-C.E. (N.T.), dated 1-3-2011]

Section 4A of Central Excise Act, 1944, read as follows:

SECTION 4A-Valuation of excisable goods with reference to retail sale price

Section 4A. Valuation of excisable goods with reference to retail sale price. -

(1) The Central Government may, by notification in the Official Gazette, specify any goods, in relation to which it is required, under the provisions of the ¹[Legal Metrology Act, 2009 (1 of 2010)] or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods, to which the provisions of sub-section (2) shall apply.

(2) Where the goods specified under sub-section (1) are excisable goods and are chargeable to duty of excise with reference to value, then, notwithstanding anything contained in section 4, such value shall be deemed to be the retail sale price declared on such goods less such amount of abatement, if any, from such retail sale price as the Central Government may allow by notification in the Official Gazette.

Central Excise Notification 49/2008 (as amended), issued under Section 4A of Central Excise Act, 1944, read as follows:

TO BE PUBLISHED IN PART II, SECTION 3, SUB-SECTION (i) OF THE GAZETTE OF INDIA, EXTRAORDINARY DATED THE 24TH DECEMBER, 2008

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

(Department of Revenue)

New Delhi, the 24th December, 2008

3 PAUSA, 1930 (SAKA)

Notification No. 49/2008-Central Excise (N.T.)

G.S.R. (E)-In exercise of the powers conferred by sub-sections (1) and (2) of section 4A of the Central Excise Act, 1944 (1 of 1944) the Central Government, in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.14/2008-Central Excise (N.T.), dated the 1st March, 2008, published in the Gazette of India Extraordinary, vide number G.S.R.147(E) of the same date, except as respects things done or omitted to be done before such supersession, hereby specifies the goods mentioned in Column (3) of the Table below and falling under Chapter or heading or sub-heading or tariff item of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) mentioned in the corresponding entry in column (2) of the said Table, as the goods to which the provisions of sub-section (2) of said section 4A shall apply, and allows as abatement the percentage of retail sale price mentioned in the corresponding entry in column (4) of the said Table.

TABLE

S.No	Chapter, heading, sub-heading or tariff item	Description of goods	Abatement as a percentage of retail sale price
(1)	(2)	(3)	(4)
1.	17 or 21	Preparations of other sugars	35
2.	1702	Sugar syrups not containing added flavouring or colouring matter; artificial honey, whether or not mixed with natural honey; caramel	35
3.	1704	Gums, whether or not sugar coated (including chewing gum, bubblegum and the like)	35
The following goods namely: -			
56.64	(i)	Footwear of retail sale price exceeding Rs 250/- and not exceeding Rs 750/- per pair	35
	(ii)	All other foot wear	40

7/2012-C.E. (N.T)

M.R.P. based valuation — Abatement percentage — Amendment to Notification No. 49/2008-C.E.

In exercise of the powers conferred by sub-section (1) and sub-section (2) of section 4A of the Central Excise Act, 1944 (1 of 1944), the Central Government, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 49/2008-Central Excise, dated the 24th December, 2008, published in the Gazette of India, Extraordinary, vide number G.S.R. 882(E), dated the 24th December, 2008, namely :

In the said notification, in the TABLE, —

(i) after S.No. 26 and the entries relating thereto, the following shall be inserted, namely :—

(1)	(2)	(3)	(4)
"26A	2402	Cigarettes	50%"

(ii) after S.No. 28 and the entries relating thereto, the following shall be inserted, namely :—

(1)	(2)	(3)	(4)
"28A	2523 29	All goods	30"

(iii) for S.No. 56 and the entries relating thereto, the following shall be substituted, namely :—

(1)	(2)	(3)	(4)
"56.	64	All footwear	35".

[Notification No. 7/2012-C.E. (N.T.), dated 17-3-2012]

18.2 CVD

In the context of levy of CVD under Section 3(2) read with Section 4A of the Central Excise Act, 1944, tariff value refers to the value deemed by law for duty calculation purposes, which is not based on the transaction or invoice value, but on the Retail Sale Price (RSP) declared on the imported goods, reduced by the permissible abatement notified by the Government.

In simple terms, tariff value = RSP declared on the goods minus the notified abatement percentage.

Therefore, where goods are notified for RSP-based valuation (such as footwear under Chapter 64 and apparel under Chapters 61 and 62), the CVD is required to be calculated on the tariff value alone, irrespective of the actual assessable value or additions made to such assessable value.

18.3 BCD

However, as far as chargeability of BCD on all imported items including Footwears and Apparels is concerned, I observe that the present case involves addition of amounts towards franchise fees, royalty/license fees, advertisement and sales-promotion expenditure, and reimbursements made to the foreign brand owner. Such additions flow from the contractual obligations forming a condition of sale and, therefore, fall squarely within the scope of Section 14(1) of the Customs Act, 1962 read with Rule 10(1)(c), (d) & (e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, which mandate inclusion of all payments made directly or indirectly as a condition of sale of the imported goods.

18.4 Therefore in terms of above discussion, I observe that Section 3(2) and Section 4A of the legacy Central Excise Act, 1944 and Section 14(2) of the Customs Act, 1962 provide a statutory mechanism for levy of customs duty in form of CVD and BCD respectively on the basis of Tariff Value wherever notified by the Government, which is independent of the transaction value determined under Section 14(1). A similar valuation framework exists under the Central Excise law. Section 3(2) of the Central Excise Act, 1944 stipulates that, in respect of goods on which the Central Government has fixed a tariff value, the excise duty shall be calculated on such tariff value and not on the actual transaction value. Further, Section 4A of the Central Excise Act mandates assessment on the basis of Retail Sale Price (RSP) minus prescribed abatement for notified goods.

18.5 CVD

I observe that the impugned goods include footwear and apparel. In the case of footwear, the Countervailing Duty (CVD) is leviable in terms of Section 4A of the Central Excise Act, 1944, on the basis of the Retail Sale Price (RSP) minus the prescribed abatement, as notified. In the case of apparel, the valuation for CVD is governed by Notification issued under Section 3(2) of the Central Excise Act, 1944, wherein the Tariff Value has been fixed at certain % of the RSP declared or required to be declared, i.e., the duty is computed on a notional tariff value derived from the RSP. In both situations, the levy of CVD is linked to RSP / Tariff Value prescribed under law and not to the transaction value under Section 14(1) of the Customs Act, 1962. Consequently, in cases where CVD is assessed on RSP minus abatement under Section 4A, any enhancement in the assessable value under Section 14(1) due to additions under Rule 10(1)(c), (d) or (e) of CVR, 2007 does not affect the CVD liability.

18.6 Therefore, the levy of CVD on goods covered under RSP-based assessment remains unaffected by any enhancement in the transaction value arising from such additional elements, as the CVD is computed solely on the declared RSP of the goods (after permissible abatement) in terms of Section 3(2) and Section 4A of the Central Excise Act, 1944. Accordingly, loading of CVD and the cess @ 3% paid on CVD is required to be excluded while determining the net differential duty liability payable by the Noticee.

18.7 However, I don't agree with the contention of the Noticee that the duty to be collected will only accrue towards Basic Customs Duty and not towards the Additional Duty for all impugned imported goods, as the Noticee is also importing various goods which are not covered under levy of CVD on under RSP-based assessment, viz. Goods of Chapter 42-Bags, Chapter 71- Imitation Jewellery, Chapter 90-Sunglasses. Therefore, segregation of goods under RSP and Non-RSP heading in each Bill of Entry is required and loaded as per loading factor, taking care of exclusion of only Footwears and Apparels for loading for charging CVD and Cess @3% on CVD for RSP based assessment goods, as the same are not affected by the loading on account of the additional re-imbursements.

C. Now I proceed to examine the re-determination of the tenable duty demand from the Noticee, in terms of findings at 'A' & 'B', above.

19. I now proceed to quantify duty in view (a) Denovo order of CESTAT dated 08.04.2024, (b) above findings with respect to inclusion/exclusion of (i) Franchise Entrance Fee, (ii) Franchise Fee, (iii) Reimbursements made to the Franchisors/brand owners against advertisement expenses and sales promotion / Institutional Advertisement & Promotional Reimbursement, (iv) expenses related to import of Advertising & Sales promotion Material & (v) local Advertisement & Sales promotion expenses in India, in the assessable value of the imported goods in terms of Rule 10(1)(c), 10(1)(d) and 10(1)(e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, read with Section 14 (1) of the Customs Act, 1962, or otherwise and (c) written submission of the Noticee.

19.1 In view of above findings as per Para 13 to 17 *supra*, I find that (i) Franchise Entrance Fee, (ii) Franchise Fee, (iii) Reimbursements made to the Franchisors/brand owners against advertisement expenses and sales promotion / Institutional Advertisement & Promotional Reimbursement, & (iv) local Advertisement & Sales promotion expenses in India are to be included in the assessable value of the imported goods. I also find that expenses related to import of Advertising & Sales promotion Material is to be excluded from the assessable value of the imported goods for the payment of Customs Duty at the time of import of the goods in terms of Rules 10 (1)(c), 10 (1)(d) and 10 (1)(e) of the CVR, 2007.

19.2 In view of the submission of the noticee as discussed in para 18 *supra*, I find that the levy of CVD on goods covered under RSP-based assessment remains unaffected by any enhancement in the transaction value arising from such additional elements, as the CVD is computed solely on the declared RSP of the goods (after permissible abatement) in terms of Section 3(2) and Section 4A of the Central Excise Act, 1944. Accordingly, loading of CVD and the cess @ 3% paid on CVD is required to be excluded while determining the net differential duty liability payable by the Noticee. However, I don't agree with the contention of the Noticee that the duty to be collected will only accrue towards Basic Customs Duty and not towards the Additional Duty, as the Noticee is also importing various goods which are not covered under levy of CVD on under MRP-based assessment, viz. Goods of Chapter 42-Bags, Chapter 71- Imitation Jewellery, Chapter 90-Sunglassess. Therefore, segregation of goods under RSP and Non-RSP heading in each Bill of Entry is required and loaded as per loading factor, taking care of the deductions for loading on CVD and Cess @3% on CVD for RSP based assessment goods, as the same are not affected by the loading on account of the additional re-imburements.

19.3 I find that the payment made/expenditure incurred on account of Entrance fee, Franchise fee, Advertisement expenses and sales promotion expenses by M/s. MBIPL are on consolidated basis and not on consignment wise, therefore these payments have been distributed brand-wise and loaded on the total declared assessable value of the imported goods during period 01.10.2014 to 16.06.2015 on pro-rata basis.

19.4 I observe that the imported goods fall under various chapters of the Customs Tariff, each carrying different duty structures. However, any enhancement in the assessable value will have a proportionate impact on the customs duties payable. Therefore, it is appropriate to determine a uniform loading factor, which shall be calculated as the ratio of the additional payments/reimbursements/expenses to the assessable value of the impugned imported goods. This loading factor shall then be applied to each Bill of Entry to arrive at the revised assessable value and the consequential duty liability, as follows:

Formula for Loading Factor

$$\text{Loading Factor (LF)} = \frac{\text{Total Additional Consideration}}{\text{Total Declared Assessable Value}}$$

Where *Total Additional Consideration* includes:

- (i) Franchise Entrance Fee,
- (ii) Franchise Fee / Royalty / License Fee,
- (iii) Reimbursements made to the Franchisor / Brand Owner towards advertisement expenses, sales promotion, institutional advertisement and promotional reimbursements, and
- (iv) Local advertisement and sales promotion expenses incurred in India as a condition of sale under the franchise / license agreement.

Re-determination of Assessable Value

$$\text{Re-determined Assessable Value (per B/E)} = \text{Declared Assessable Value} \times (1 + \text{LF})$$

Re-determined Duty (Direct LF Method)

$$\text{Re-determined Duty} = \text{Declared Duty} \times (1 + \text{LF})$$

$$\text{Differential Duty} = \text{Re-determined Duty} - \text{Declared Duty}$$

19.5 I observe that the M/s. MBIPL vide their letters dated 21.12.2016 and 27.02.2019 wrt SCN dated 26.09.2016 had submitted as follows:

- i. The Figures of table summary in para 6.4 does not match with the figures in the table in para 6.3. The amount applied as ‘additional reimbursement’ in para 6.4 is incorrect resulting in the error of complete calculation for arriving at differential duty.
- ii. Advertisement expense on account of material imported in case of ‘Aldo=84,098/- and ‘Charles & Keith=Rs. 2,08,397/- are wrongly taken under the head Advertisement Expenses on account of remittance sent to brand owner whereas the same are imports and not reimbursements.
- iii. The Advertisement expense on account of material imported and sales promotion imported (Aldo=Rs. 2,00,483/- and Charles & Keith =Rs. 18,84,314/-) are added as

additional reimbursement in the assessable value for the purpose of calculating differential duty, whereas the same are imports and not reimbursements.

- iv. Purchases for the period are bifurcated into – Local Purchase, Imports through JNPT, ACC and imports in Delhi. The additional reimbursement for the period should have been applied only proportionately to the imports through JNPT. But the full amount of additional reimbursement is applied only to imports from JNPT resulting in high loading %.
- v. In the case of BHPC the franchise fee of full year is taken and applied to 6 month of imports, that too without considering the local purchase.
- vi. I observe that the Noticee Para 11.5 of letter dated 21.12.2016 in reply to SCN dated 26.09.2016 issued by Commissioner of Customs, NS-III, JNCH, by 21.10.2025 has submitted that the Local Merchandise Purchase regarding the Brand- BHCP and GUESS should also be considered for computation of additional reimbursement to the Brand holder, especially w.r.t. period 01.10.2014 to 31.03.2015.

19.6 Therefore being a fact finding authority, this office wrote e-mails dated 19.10.2025, 27.10.2025 & 28.10.2025 to the Noticee to provide the following:

- (i) to provide detailed written submissions supported by documentary evidence to substantiate your claim to include Local Merchandise Purchases, as per Para 11.5, Annexure-1 of your letter dated 21.12.2016 in reply to SCN dated 26.09.2016 issued by Commissioner of Customs, NS-III, JNCH, by 21.10.2025.
- (ii) to provide copies of Balance Sheet for the year FY 2014-15, & FY 2015-2016, agreements with foreign brand owners and other relevant details of the (a) Franchise Entrance Fee, (b) Franchise Fee, (c) Reimbursements made to the Franchisors/brand owners against advertisement expenses and sales promotion (c) expenses related to import of Advertising & Sales promotion Material & (e) local Advertisement & Sales promotion expenses for the period from 01.03.2014 to 31.03.2016, and

19.7 Noticee vide e-mail dated 27.10.2025 & 29.10.2025 submitted Balance Sheet for FY 2014-15 & FY 2015-16, along with breakup on account of Franchise Entrance Fee, Franchise Fee, Advertisement re-imbursement, Imported Advertisement and Sales Promotion Material, Expenses incurred towards local Advertisement and Sales Promotion for Various Brands. Relevant portion of the same are reproduced, as follows:

Major Brands India Pvt. Ltd.				
ANNEXURE "A"				
Franchise Fees:				
Brand	Total for Financial Year 2014-15 (Rs.)	Amount considered by DRI for part of the Financial year 2014-15 (Rs.)	Balance Amount for FY2014-15 (Rs.)	April-15 to Sept-15 (Rs.)
Aldo & Acc	5,16,51,195	4,64,83,387	51,67,808	2,65,63,778
CIS	14,87,475	-	14,87,475	22,05,812
BEBE	2,71,36,804	1,20,66,665	1,50,70,139	81,31,896
BHPC	1,11,25,329	-	1,11,25,329	72,25,399
Charles and Keith	1,30,53,246	66,46,762	64,06,484	-
GUESS	21,74,693	10,07,192	11,67,501	8,86,300
INGLOT	18,32,661	12,78,788	5,53,873	21,27,454
La Senza	3,79,50,234	1,72,60,049	2,06,90,185	1,72,70,186
Mango	3,79,30,516	2,00,21,466	1,79,09,050	1,81,61,651
Nine West	57,50,057	32,32,322	25,17,735	20,18,032
TOTAL	19,00,92,211	10,79,96,631	8,20,95,580	8,45,90,507
ANNEXURE "B"				
Advertisement expenses-Contribution Paid				
Brand	Total for Financial Year 2014-15 (Rs.)	Amount considered by DRI for part of the Financial year 2014-15 (Rs.)	Balance Amount for FY2014-15 (Rs.)	April-15 to Sept-15 (Rs.)
La Senza	20,08,464	14,64,092	5,44,372	8,52,607
Mango	1,65,82,999	41,74,602	1,24,08,397	84,76,034
TOTAL	1,85,91,463	56,38,694	1,29,52,769	93,28,641
ANNEXURE "C"				
Advertisement expenses- (5311 & 5315) - Imports				
Brand	Total for Financial Year 2014-15 (Rs.)	Amount considered by DRI for part of the Financial year 2014-15 (Rs.)	Balance Amount for FY2014-15 (Rs.)	April-15 to Sept-15 (Rs.)
Aldo & Acc	1,15,957	31,859	84,098	47,669
CIS	4,478	-	4,478	-
BEBE	2,72,238	4,00,527	{1,28,289}	-
Charles and Keith	31,22,754	29,14,357	2,08,397	7,12,777
GUESS	54,126	66,671	{12,545}	12,432
Mango	16,61,093	1,04,16,596	{87,55,503}	3,19,859
Nine West	3,651	4,999	{1,348}	-
TOTAL	52,34,297	1,38,35,009	{86,00,713}	10,92,737
ANNEXURE "D"				
Sales Promotion Expenses- Imports:				
Brand	Total for Financial Year 2014-15 (Rs.)	Amount considered by DRI for part of the Financial year 2014-15 (Rs.)	Balance Amount for FY2014-15 (Rs.)	April-15 to Sept-15 (Rs.)
Aldo & Acc	11,84,093	9,83,610	2,00,483	54,011
CIS	6,91,139	-	6,91,139	22,573
BEBE	16,08,904	2,93,310	13,15,594	6,53,161
Charles and Keith	21,99,873	3,15,559	18,84,314	1,93,654
GUESS	5,75,446	7,31,641	{1,56,195}	65,246
INGLOT	19,15,910	18,83,615	32,295	7,64,458
La Senza	2,80,554	2,80,554	-	-
Mango	22,12,699	2,00,467	20,12,232	6,19,857
TOTAL	1,06,68,618	46,88,756	59,79,862	23,72,959

However, Noticee could not submit any document to substantiate their claim of inclusion of Local Merchandise Purchase regarding the Brand- BHCP and GUESS, as per Para 11.5 of reply dated 21.12.2016, therefore same is not considered by this adjudicating authority.

19.8 I observe that importer is a reputed firm, and also made a declaration that the above details in Par 19.7 supra are true and correct and the signatory to the submitted letter is a

Chartered Accountant. Therefore, the same is accepted by this adjudicating authority for the purpose of computation.

19.9 In view of the foregoing, i find that:

- (i) the Advertisement expense on account of material imported in case of 'Aldo'=Rs.84,098/- and 'Charles & Keith'=Rs. 2,08,397/- are wrongly taken under the head Advertisement Expenses on account of remittance sent to brand owner whereas the same are imports and not reimbursements.
- (ii) That, the Advertisement expense on account of material imported and sales promotion imported (Aldo=Rs. 2,00,483/- and Charles & Keith =Rs. 18,84,314/-) are added as additional reimbursement in the assessable value for the purpose of calculating differential duty, whereas the same are imports and not reimbursements.
- (iii) That in case of BHPC the franchise fee of full year was taken and applied to 6 month of imports because DRI had not taken any amount of franchise fee.
- (iv) The additional reimbursement for the period should have been applied only proportionately to the imports through JNPT, however, since the Noticee failed to substantiate inclusion of Local Merchandise Purchase, same are excluded from the duty computation.
- (v) The Declared Assessable Values in SCN for 'Aldo', 'Charles & Keith' & 'Guess' are wrongly mentioned as Rs. 9,69,41,838/-, Rs. 12,77,11,300/- & Rs. 3,49,62,344/- instead of Rs. 9,69,41,839/-, Rs. 12,77,11,220/- & Rs. 3,49,62,347/- respectively.

19.10 I further observe that the M/s. MBIPL vide their letters dated 27.02.2019 had submitted that there is Errors in duty quantification.

19.11 Noticee vide e-mail dated 27.10.2025 & 29.10.2025 submitted Balance Sheet for FY 2014-15 & FY 2015-16, along with breakup on account of Franchise Entrance Fee, Franchise Fee, Advertisement re-imbursement, Imported Advertisement and Sales Promotion Material, Expenses etc. incurred towards local Advertisement and Sales Promotion for Various Brands. Relevant portion of the same are reproduced, as follows:

Reconciliation is provided below for your reference:

Brand	Amount(Rs.)
ALDO GROUP	64,343,683
BEBE	17,382,097
BHPC	13,815,465
GUESS (Last Year provision reversed)	(1,731,441)
INGLOT	3,609,229
LASENZA	41,594,098
MANGO	31,302,648
NINE WEST	4,268,355
Franchise Fee as per Note 34 (C) of the Audited Financials	174,584,134
Service Tax paid on Franchise Fee	3,369,015
Franchise Fee as per Note 24 of the Audited Financials	177,953,149

BRAND-WISE break up is given below:

Brand	TOTAL	Advertising Contribution	Import of Advertisement Materials		Import of Sales Promotion Materials		Local Expenses in India	
(All Figures in Rs)			Invoice Amount	Duty Etc.	Invoice Amount	Duty Etc.	Advertisement	Sales Promotion
ALDO GROUP	22,913,040	-	606,705	429,580	65,001	8,503	18,265,945	3,537,306
BEBE	5,413,422	-	829,056	513,361	400,741	137,686	3,045,216	487,362
BHPC	2,862,945	-	-	-	-	-	2,293,517	569,428
CHARLES & KEITH	16,010,755	-	4,712,807	2,134,302	405,836	130,341	7,194,231	1,433,240
GUESS	10,936,350	-	131,052	27,442	263,646	-	8,858,731	1,655,479
INGLOT	6,294,256	-	386,267	175,092	-	-	1,155,449	4,577,448
LASENZA	10,462,861	2,076,265	513,211	435,323	-	-	5,572,538	1,865,523
MANGO	21,822,219	17,292,837	1,772,443	2,124,419	17,400	3,732	569,839	41,548
NEW BALANCE	2,719,208	-	497,148	337,550	-	-	1,884,510	-
NINE WEST	2,434,472	-	-	-	-	-	1,852,632	581,840
Grand Total	101,869,528	19,369,102	9,448,689	6,177,069	1,152,624	280,262	50,692,607	14,749,174

19.12 In view of the foregoing, i find that in para 6.1 of the SCN dated 22.02.2017, the Assessable Value of 'Aldo' Brand had been wrongly taken as Rs. 2,27,87,642/- instead of Rs. 2,70,87,642/-. Further Advertisement expenses of 'Aldo' Brand had been wrongly taken as Rs. 23,42,282/- instead of Rs. 1,82,65,945/-. That, the Declared Assessable Values in SCN for 'Charles & Keith' & 'Guess' is wrongly mentioned as Rs. 2,70,65,336/- & Rs. 1,36,32,530/- respectively, instead of Rs. 2,70,65,339/- & Rs. 1,36,32,529/- respectively. Accordingly, there would be change in the Re-assessed Duty and Differential Duty in both these Brands.

19.13 It is also observed that Advertisement expenses (on account of material imported for advertisement + local) and Sales promotion imported and local are not bifurcated in to imported and local expenses in the SCN. Same is necessary in view of findings of this adjudicating authority as per Para 13 to 17 supra, as imported advertisement and sales promotion material has already suffered duty at the time of importation and are not to be included to calculated Assessable Value, whereas, the local advertisement and sales expenditure is liable to be included to calculate the correct Assessable Value, in terms of Rule 10(1)(e) of CVR, 2007. Accordingly, relying on the breakup provided by the Noticee, same are bifurcated to calculate the re-determined Assessable Value.

DUTY QUANTIFICATION FOR THE SCN DATED 26.09.2016 ISSUED FOR THE PERIOD 01.10.2014 TO 31.03.2015 PROPOSES AS FOLLOWS:

20. I observe that as per SCN dated 26.09.2016 proposed inclusion of elements i.e. (i) Franchise Entrance Fee, (ii) Franchise Fee, (iii) Reimbursements made to the Franchisors/brand owners against advertisement expenses and sales promotion / Institutional Advertisement & Promotional Reimbursement, (iv) expenses related to import of Advertising & Sales promotion Material & (v) local Advertisement & Sales promotion expenses in India as follows:-

(All Figures are in Rs.)									
S. No.	Brand	Entrance fee	Franchise fee	Advertisement expenses on account of remittances sent to the brand owner	Advertisement expenses on account of material imported for advertisement	Advertisement expenses (local)	Sales promotion imported	Sales promotion (local)	Total Additional Reimbursement
1	Aldo	-	51,67,808	84,098		-	2,00,483	-	54,52,389
2	BHPC	-	1,11,25,329	-	-	-	-	-	1,11,25,329
3	Charles and Keith	-	64,06,484	2,08,397		-	18,84,314	-	84,99,195
4	Guess	-	11,67,501	-	-	-	-	-	11,67,501
5	Nine West	-	25,17,735	-	-	-	-	-	25,17,735
	Total								2,87,62,149

20.1 After considering the Noticee's submission, the erstwhile adjudicating authority included (i) Franchise Entrance Fee, (ii) Franchise Fee, (iii) Reimbursements made to the Franchisors/brand owners against advertisement expenses and sales promotion / Institutional Advertisement & Promotional Reimbursement, & (iv) local Advertisement & Sales promotion expenses in India are to be added in the transaction value of the imported goods. I also find that expenses related to import of Advertising & Sales promotion Material is to be excluded from the transaction value of the imported goods for the payment of Customs Duty as follows:-

(All Figures are in Rs.)									
S. No.	Brand	Entrance fee	Franchise fee	Advertisement expenses on account of remittances sent to the brand owner	Advertisement expenses on account of material imported for advertisement	Advertisement expenses (local)	Sales promotion imported	Sales promotion (local)	Total Additional Reimbursement
1	Aldo	-	51,67,808	-	84,098	-	2,00,483	-	51,67,808
2	BHPC	-	1,11,25,329	-	-	-	-	-	1,11,25,329
3	Charles and Keith	-	64,06,484	-	2,08,397	-	18,84,314	-	64,06,484
4	Guess	-	11,67,501	-	-	-	-	-	11,67,501
5	Nine West	-	25,17,735	-	-	-	-	-	25,17,735
	Total								2,63,84,857

20.2 Now this adjudicating authority after considering the Noticee's submission (i) Franchise Entrance Fee, (ii) Franchise Fee, (iii) Reimbursements made to the Franchisors/brand owners against advertisement expenses and sales promotion / Institutional Advertisement & Promotional Reimbursement, & (iv) local Advertisement & Sales promotion expenses in India are to be added in the transaction value of the imported goods. I also find that expenses related to import of Advertising & Sales promotion Material is to be excluded from the transaction value of the imported goods for the payment of Customs Duty as follows:-

(All Figures are in Rs.)

S. No.	Brand	Entrance fee	Franchise fee	Advertisement expenses on account of remittances sent to the brand owner	Advertisement expenses on account of material imported for advertisement	Advertisement expenses (local)	Sales promotion imported	Sales promotion (local)	Total Additional Reimbursement
1	Aldo	-	51,67,808	-	84,098	-	2,00,483	-	51,67,808
2	BHPC	-	1,11,25,329	-	-	-	-	-	1,11,25,329
3	Charles and Keith	-	64,06,484	-	2,08,397	-	18,84,314	-	64,06,484
4	Guess	-	11,67,501	-	-	-	-	-	11,67,501
5	Nine West	-	25,17,735	-	-	-	-	-	25,17,735
	Total								2,63,84,857

20.3 Accordingly, Proportionate additional reimbursement and Loading Factor is calculated, as follows:

(All Figures are in Rs.)

S. No.	Brand	Imports -ACC	Imports -JNPT	TOTAL	Total Additional Reimbursements	Proportionate Additional Reimbursements at JNPT	Loading Factor
1	Aldo	1,63,50,639	9,69,41,839	11,32,92,478	51,67,808	44,21,978	4.561%
2	BHPC	-	47,82,802	47,82,802	1,11,25,329	1,11,25,329	232.611%
3	Charles and Keith	-	12,77,11,220	12,77,11,220	64,06,484	64,06,484	15.016%
4	Guess	5,71,38,961	3,49,62,347	9,21,01,308	11,67,501	7,24,309	1.268%
5	Nine West	-	3,35,04,081	3,35,04,081	25,17,735	26,27,320	7.515%
	Total					2,53,05,419	

20.4 Re-determined & re-quantified assessable value and re-determined differential duty:

(all figures in Rs.)

Duty Computation										
Sr. No.	Brand	Declared Assessable Value	Declared Duty	Loading Factor	Re-determined Assessable Value	Re-determined Duty	Gross Diff-Duty	CVD paid on RSP Items	Deduction of Loading on CVD & Cess on CVD @3% for RSP Items	Net Diff-Duty Payable
		A	B	C	D= A*	E= B *	F= E-B	G	H= G*1.03*C	I= F-H
1	ALDO	96,941,839	47,096,030	4.561%	101,363,356	49,244,080	2,148,050	32,955,845	1,548,210	599,840
2	BHPC	4,782,802	1,163,988	232.61%	15,908,076	3,871,540	2,707,552	188,449	451,503	2,256,050
3	CK	127,711,220	55,325,766	15.016%	146,888,337	63,633,483	8,307,717	35,009,245	5,414,698	2,893,019
4	Guess	34,962,347	8,291,718	1.270%	35,406,369	8,397,023	105,305	1,197,999	15,671	89,634
5	NW	33,504,081	14,542,999	7.515%	36,021,912	15,635,906	1,092,906	10,021,467	775,707	317,200
	Total	297,902,289	126,420,501		335,588,051	140,782,031	14,361,531	79,373,006	8,205,788	6,155,743

In view of the above calculations, the re-quantified re-determined Assessable Value comes to Rs. 33,55,88,051/- (Rupees Thirty-three crore fifty-five lakh eighty-eight thousand fifty-one Only) as against re-determined value suggested by investigating agency i.e. Rs. 32,61,57,293/- and the re-quantified Differential Duty to be demanded from the importer M/s.

MBIPL comes to Rs. 61,55,743/- (Rupees Sixty-one lakh fifty-five thousand seven hundred forty-three only) as against proposed differential duty of Rs. 1,01,25,374/- (Rupees One Crore One Lakh Twenty Five Thousand Three Hundred and Seventy Four only), as suggested by investigating agency.

Further, Brand wise Bill of Entry detail is as follows:

21 BRAND: ALDO

Sr. No.	BE No /Date	Item Details	Declared			Re-determined		Gross Diff. Duty	CVD paid on RSP Items	(All figures in Rs.)	
			Assessable Value	Duty	Loading Factor	Assesable Value	Duty			Deduction of Loading on CVD & Cess @ 3% for RSP Items	Net Diff. Duty Payable
			A	B	C	D= A* (1+C)	E= B * (1+C)	F= E-B	G	H= G*1.03*C	I= F-H
1	6991672	Non -RSP Items	-	-	4.561%	-	-	2,811	-	-	581
	10/8/2014	RSP Items	123,705	61,621	4.561%	129,347	64,431		47,455	2,229	
2	7124022	Non -RSP Items	-	-	4.561%	-	-	2,317	-	-	497
	10/20/2014	RSP Items	105,778	50,808	4.561%	110,603	53,125		38,750	1,820	
3	7140082	Non -RSP Items	-	-	4.561%	-	-	18,054	-	-	3,521
	10/21/2014	RSP Items	749,587	395,836	4.561%	783,776	413,890		309,348	14,533	
4	7368576	Non -RSP Items	28,948	4,950	4.561%	30,268	5,175	5,897	-	-	1,427
	11/13/2014	RSP Items	255,742	124,340	4.561%	267,406	130,011		95,144	4,470	
5	7553739	Non -RSP Items	753,332	185,290	4.561%	787,691	193,741	56,274	-	-	17,682
	12/1/2014	RSP Items	1,962,429	1,048,510	4.561%	2,051,935	1,096,333		821,479	38,592	
6	7565358	Non -RSP Items	164,661	40,504	4.561%	172,171	42,352	17,357	-	-	4,974
	12/2/2014	RSP Items	665,558	340,037	4.561%	695,914	355,546		263,578	12,382	
7	7622945	Non -RSP Items	14,514	4,188	4.561%	15,176	4,379	46,458	-	-	9,603
	12/8/2014	RSP Items	2,003,519	1,014,406	4.561%	2,094,900	1,060,673		784,508	36,855	
8	7635238	Non -RSP Items	1,825,895	444,912	4.561%	1,909,175	465,205	37,499	-	-	23,564
	12/9/2014	RSP Items	696,327	377,248	4.561%	728,086	394,455		296,628	13,935	
9	7680481	Non -RSP Items	914,671	228,696	4.561%	956,389	239,127	56,355	-	-	18,993
	12/12/2014	RSP Items	1,822,581	1,006,892	4.561%	1,905,709	1,052,816		795,307	37,362	
10	7749422	Non -RSP Items	547,609	131,098	4.561%	572,586	137,077	50,512	-	-	14,540
	12/19/2014	RSP Items	1,822,355	976,387	4.561%	1,905,472	1,020,920		765,714	35,972	
11	7789035	Non -RSP Items	1,489,684	388,019	4.561%	1,557,629	405,716	161,476	-	-	44,510
	12/23/2014	RSP Items	5,707,363	3,152,350	4.561%	5,967,676	3,296,128		2,489,797	116,966	
12	7792843	Non -RSP Items	623,629	150,813	4.561%	652,073	157,692	33,565	-	-	12,191
	12/23/2014	RSP Items	1,130,903	585,093	4.561%	1,182,483	611,779		454,961	21,373	
13	7803323	Non -RSP Items	1,370,270	345,690	4.561%	1,432,768	361,457	157,031	-	-	42,035
	12/24/2014	RSP Items	5,591,451	3,097,211	4.561%	5,846,477	3,238,475		2,447,856	114,996	
14	7848098	Non -RSP Items	1,283,399	327,015	4.561%	1,341,935	341,930	158,109	-	-	41,958
	12/30/2014	RSP Items	5,739,750	3,139,520	4.561%	6,001,539	3,282,714		2,472,435	116,151	
15	7861422	Non -RSP Items	-	-	4.561%	-	-	3,732	-	-	816
	12/31/2014	RSP Items	173,746	81,834	4.561%	181,671	85,566		62,076	2,916	
16	7930020	Non -RSP Items	1,339,448	328,739	4.561%	1,400,540	343,732	144,090	-	-	39,496
	1/8/2015	RSP Items	5,215,659	2,830,438	4.561%	5,453,545	2,959,534		2,226,432	104,594	
17	7974110	Non -RSP Items	7,670	2,213	4.561%	8,019	2,314	35,154	-	-	6,828
	1/13/2015	RSP Items	1,431,941	768,532	4.561%	1,497,252	803,585		602,954	28,326	
18	7974212	Non -RSP Items	1,200,770	302,531	4.561%	1,255,537	316,329	192,367	-	-	47,332
	1/13/2015	RSP Items	7,138,175	3,915,118	4.561%	7,463,747	4,093,686		3,087,268	145,035	
19	8050460	Non -RSP Items	1,356,604	332,398	4.561%	1,418,479	347,558	135,331	-	-	37,471
	1/20/2015	RSP Items	4,749,063	2,634,744	4.561%	4,965,668	2,754,914		2,083,098	97,860	

20	8050506	Non -RSP Items	2,111,954	554,215	4.561%	2,208,280	579,493	140,590	-	-	47,111
	1/20/2015	RSP Items	4,647,514	2,528,224	4.561%	4,859,487	2,643,536	1,989,835	93,479	-	-
21	8108578	Non -RSP Items	-	-	4.561%	-	-	11,141	-	-	2,291
	1/27/2015	RSP Items	487,685	244,267	4.561%	509,929	255,408	188,384	8,850	-	-
22	8134302	Non -RSP Items	-	-	4.561%	-	-	13,352	-	-	2,606
	1/29/2015	RSP Items	554,818	292,748	4.561%	580,124	306,100	228,740	10,746	-	-
23	8189458	Non -RSP Items	1,873,342	477,874	4.561%	1,958,785	499,670	96,214	-	-	34,868
	2/3/2015	RSP Items	2,782,571	1,631,625	4.561%	2,909,484	1,706,043	1,305,845	61,346	-	-
24	8189459	Non -RSP Items	1,206,770	311,219	4.561%	1,261,811	325,414	137,821	-	-	36,767
	2/3/2015	RSP Items	4,804,848	2,710,509	4.561%	5,023,997	2,834,135	2,151,077	101,054	-	-
25	8256361	Non -RSP Items	33,906	9,783	4.561%	35,452	10,229	48,079	-	-	9,613
	2/10/2015	RSP Items	1,951,196	1,044,341	4.561%	2,040,190	1,091,973	818,803	38,466	-	-
26	8345549	Non -RSP Items	876,366	219,324	4.561%	916,337	229,328	123,747	-	-	31,549
	2/18/2015	RSP Items	4,586,286	2,493,836	4.561%	4,795,466	2,607,579	1,962,571	92,198	-	-
27	8404836	Non -RSP Items	-	-	4.561%	-	-	30,246	-	-	5,910
	2/24/2015	RSP Items	1,258,047	663,137	4.561%	1,315,427	693,383	518,018	24,336	-	-
28	8443097	Non -RSP Items	-	-	4.561%	-	-	46,423	-	-	10,020
	2/27/2015	RSP Items	2,092,171	1,017,832	4.561%	2,187,595	1,064,255	774,900	36,404	-	-
29	8466890	Non -RSP Items	2,163,768	553,146	4.561%	2,262,458	578,375	172,635	-	-	48,655
	3/3/2015	RSP Items	4,986,610	3,231,878	4.561%	5,214,049	3,379,283	2,639,084	123,980	-	-
30	8754082	Non -RSP Items	-	-	4.561%	-	-	13,414	-	-	2,430
	3/30/2015	RSP Items	517,251	294,092	4.561%	540,843	307,506	233,801	10,984	-	-
	Total		96,941,839	47,096,030	4.561%	101,363,356	49,244,080	2,148,050	32,955,845	1,548,210	599,840

22 BRAND: BHPC

Sr. No.	BE No /Date	Item Details	Declared			Re-determined		Gross Diff. Duty	CVD paid on RSP Items	(All figures in Rs.)	
			Assessable Value	Duty	Loading Factor	Assessable Value	Duty			Deduction of Loading on CVD & Cess @ 3% for RSP Items	Net Diff. Duty Payable
			A	B	C	D= A* (1+C)	E= B * (1+C)	F= E-B	G	H= G*1.03*C	I= F-H
1	7140047	Non -RSP Items	15,58,543	3,72,429	233%	51,83,869	12,38,737	12,38,418	-	-	10,18,677
	21-10-2014	RSP Items	6,35,962	1,59,972	233%	21,15,273	5,32,082		91,716	2,19,741	
2	8104717	Non -RSP Items	11,77,041	2,81,266	233%	39,14,956	9,35,518	10,45,952	-	-	8,14,190
	27-01-2015	RSP Items	6,67,555	1,68,394	233%	22,20,354	5,60,094		96,734	2,31,762	
3	8693815	Non -RSP Items	7,43,701	1,81,928	233%	24,73,624	6,05,110	4,23,182	-	-	4,23,182
	24-03-2015	RSP Items	-	-	233%	-	-		-	-	
	Total		47,82,802	11,63,988	233%	1,59,08,076	38,71,540	27,07,552	1,88,449	4,51,503	22,56,050

23 BRAND: CK

Sr. No.	BE No /Date	Item Details	Declared		Loading Factor	Re-determined		Gross Diff. Duty	CVD paid on RSP Items	(All figures in Rs.)	
			Assessable Value	Duty		Assessable Value	Duty			Deduction of Loading on CVD & Cess @ 3% for RSP Items	Net Diff. Duty Payable
			A	B	C	D= A * (1+C)	E= B * (1+C)	F= E-B	G	H= G*1.03*C	I= F-H
1	7238679	Non -RSP Items	9,00,509	1,97,879	15.016%	10,35,729	2,27,592	3,72,382			
	31-10-2014	RSP Items	42,55,280	22,82,024	15.016%	48,94,253	26,24,693		17,90,029	2,76,855	95,528
2	7337176	Non -RSP Items	24,84,238	5,93,633	15.016%	28,57,271	6,82,773	6,25,219		-	1,92,050
	11-11-2014	RSP Items	66,53,710	35,70,051	15.016%	76,52,832	41,06,130		28,00,698	4,33,169	
3	7337231	Non -RSP Items	13,00,903	3,25,163	15.016%	14,96,246	3,73,990	2,91,646		-	95,831
	11-11-2014	RSP Items	30,39,114	16,17,074	15.016%	34,95,467	18,59,894		12,66,064	1,95,816	
4	7480939	Non -RSP Items	34,08,319	8,18,249	15.016%	39,20,112	9,41,117	5,55,658		-	2,06,546
	24-11-2014	RSP Items	54,10,239	28,82,193	15.016%	62,22,641	33,14,983		22,57,222	3,49,113	
5	7498516	Non -RSP Items	41,01,526	9,81,671	15.016%	47,17,412	11,29,078	3,55,294		-	1,87,926
	25-11-2014	RSP Items	26,19,731	13,84,431	15.016%	30,13,110	15,92,317		10,82,134	1,67,368	
6	7680504	Non -RSP Items	43,13,265	10,30,698	15.016%	49,60,945	11,85,467	6,15,818		-	2,42,341
	12-12-2014	RSP Items	56,61,989	30,70,382	15.016%	65,12,194	35,31,431		24,14,753	3,73,477	
7	7780167	Non -RSP Items	6,680	1,755	15.016%	7,683	2,019	3,56,404		-	70,164
	22-12-2014	RSP Items	45,17,711	23,71,741	15.016%	51,96,090	27,27,882		18,50,713	2,86,240	
8	7793339	Non -RSP Items	38,75,636	9,26,122	15.016%	44,57,601	10,65,189	4,38,819		-	1,96,919
	23-12-2014	RSP Items	37,40,486	19,96,222	15.016%	43,02,157	22,95,974		15,64,031	2,41,901	
9	7972310	Non -RSP Items	7,77,033	1,77,397	15.016%	8,93,712	2,04,035	2,89,812		-	76,048
	13-01-2015	RSP Items	31,94,657	17,52,626	15.016%	36,74,367	20,15,800		13,82,114	2,13,764	
10	7978121	Non -RSP Items	26,29,492	6,73,463	15.016%	30,24,336	7,74,591	4,58,336		-	1,74,084
	13-01-2015	RSP Items	47,17,060	23,78,857	15.016%	54,25,373	27,36,067		18,37,860	2,84,252	
11	8014917	Non -RSP Items	1,27,410	36,760	15.016%	1,46,542	42,280	3,42,900		-	69,590
	17-01-2015	RSP Items	41,42,522	22,46,807	15.016%	47,64,563	25,84,188		17,67,113	2,73,310	
12	8057127	Non -RSP Items	18,62,931	4,45,166	15.016%	21,42,668	5,12,012	2,05,026		-	95,301
	21-01-2015	RSP Items	18,39,792	9,20,218	15.016%	21,16,055	10,58,398		7,09,436	1,09,725	
13	8117410	Non -RSP Items	8,68,915	2,07,636	15.016%	9,99,391	2,38,814	2,82,666		-	81,525
	28-01-2015	RSP Items	32,55,215	16,74,795	15.016%	37,44,018	19,26,282		13,00,492	2,01,140	
14	8193955	Non -RSP Items	1,13,550	27,134	15.016%	1,30,600	31,208	6,49,263		-	1,29,797
	04-02-2015	RSP Items	81,28,724	42,96,676	15.016%	93,49,333	49,41,865		33,58,658	5,19,466	
15	8231474	Non -RSP Items	-	-	15.016%	-	-	3,26,841		-	63,079
	07-02-2015	RSP Items	40,78,458	21,76,621	15.016%	46,90,879	25,03,462		17,05,379	2,63,762	
16	8257385	Non -RSP Items	44,95,558	10,74,258	15.016%	51,70,611	12,35,569	5,49,250		-	2,37,675
	10-02-2015	RSP Items	49,22,458	25,83,507	15.016%	56,61,614	29,71,446		20,14,519	3,11,575	
17	8345550	Non -RSP Items	41,20,630	9,84,665	15.016%	47,39,384	11,32,523	4,46,003		-	2,05,169
	18-02-2015	RSP Items	37,05,557	19,85,521	15.016%	42,61,984	22,83,667		15,57,135	2,40,834	
18	8404876	Non -RSP Items	65,36,588	15,61,983	15.016%	75,18,122	17,96,530	3,38,455		-	2,54,966
	24-02-2015	RSP Items	13,20,201	6,91,978	15.016%	15,18,443	7,95,885		5,39,803	83,489	
19	8451710	Non -RSP Items	11,56,720	3,10,517	15.016%	13,30,413	3,57,145	1,64,647		-	69,527
	28-02-2015	RSP Items	14,80,620	7,85,961	15.016%	17,02,950	9,03,981		6,15,007	95,120	
20	8768682	Non -RSP Items	10,28,528	2,50,687	15.016%	11,82,972	2,88,330	3,09,704		-	82,924
	31-03-2015	RSP Items	29,27,676	18,11,808	15.016%	33,67,296	20,83,869		14,66,270	2,26,780	
21	8771271	Non -RSP Items	5,76,266	87,949	15.016%	6,62,798	1,01,156	3,33,571		-	66,030
	31-03-2015	RSP Items	34,15,325	21,33,487	15.016%	39,28,170	24,53,852		17,29,813	2,67,541	
Total			12,77,11,220	5,53,25,766	15.016%	14,68,88,337	6,36,33,483	83,07,717	3,50,09,245	54,14,698	28,93,019

Sr. No.	BE No /Date	Item Details	Declared		Loading Factor	Re-determined		Gross Diff-Duty	CVD paid on RSP Items	(All figures in Rs.)	
			Assessable Value	Duty		Assessable Value	Duty			Deduction of Loading on CVD & Cess @ 3% for RSP Items	Net Diff-Duty Payable
			A	B	C	D= A * (1+C)	E= B * (1+C)	F= E-B	G	H= G*1.03*C	I= F-H
1	6991958	Non -RSP Items	1,398,478	334,180	1.270%	1,416,238	338,424	4,244	-	-	4,244
	10/8/2014	RSP Items	-	-	1.270%	-	-		-	-	
2	7096618	Non -RSP Items	92,861	22,190	1.270%	94,040	22,472	282	-	-	282
	10/17/2014	RSP Items	-	-	1.270%	-	-		-	-	
3	7368305	Non -RSP Items	2,102,334	502,374	1.270%	2,129,034	508,754	6,380	-	-	6,380
	11/13/2014	RSP Items	-	-	1.270%	-	-		-	-	
4	7480866	Non -RSP Items	2,590,962	619,136	1.270%	2,623,867	626,999	7,863	-	-	7,863
	11/24/2014	RSP Items	-	-	1.270%	-	-		-	-	
5	7749416	Non -RSP Items	2,464,431	588,900	1.270%	2,495,729	596,379	7,479	-	-	7,479
	12/19/2014	RSP Items	-	-	1.270%	-	-		-	-	
6	7861346	Non -RSP Items	1,602,171	382,855	1.270%	1,622,519	387,717	4,862	-	-	4,862
	12/31/2014	RSP Items	-	-	1.270%	-	-		-	-	
7	7861385	Non -RSP Items	1,085,081	259,291	1.270%	1,098,862	262,584	3,293	-	-	3,293
	12/31/2014	RSP Items	-	-	1.270%	-	-		-	-	
8	7861406	Non -RSP Items	1,640,312	391,969	1.270%	1,661,144	396,947	4,978	-	-	4,978
	12/31/2014	RSP Items	-	-	1.270%	-	-		-	-	
9	7993979	Non -RSP Items	1,215,304	290,409	1.270%	1,230,739	294,097	3,688	-	-	3,688
	1/14/2015	RSP Items	-	-	1.270%	-	-		-	-	
10	8056152	Non -RSP Items	100,217	23,948	1.270%	101,489	24,252	304	-	-	304
	1/21/2015	RSP Items	-	-	1.270%	-	-		-	-	
11	8056157	Non -RSP Items	1,534,136	366,597	1.270%	1,553,619	371,253	4,656	-	-	4,656
	1/21/2015	RSP Items	-	-	1.270%	-	-		-	-	
12	8116693	Non -RSP Items	-	-	1.270%	-	-	26,873	-	-	11,202
	1/28/2015	RSP Items	9,160,996	2,115,982	1.270%	9,277,341	2,142,855		1,197,999	15,671	
13	8172590	Non -RSP Items	2,538,053	606,493	1.270%	2,570,287	614,196	7,702	-	-	7,702
	2/2/2015	RSP Items	-	-	1.270%	-	-		-	-	
14	8175021	Non -RSP Items	1,762,671	421,208	1.270%	1,785,057	426,557	5,349	-	-	5,349
	2/2/2015	RSP Items	-	-	1.270%	-	-		-	-	
15	8197999	Non -RSP Items	327,310	78,214	1.270%	331,467	79,207	993	-	-	993
	2/4/2015	RSP Items	-	-	1.270%	-	-		-	-	
16	8202106	Non -RSP Items	601,919	143,835	1.270%	609,563	145,661	1,827	-	-	1,827
	2/4/2015	RSP Items	-	-	1.270%	-	-		-	-	
17	8256370	Non -RSP Items	92,373	22,074	1.270%	93,546	22,354	280	-	-	280
	2/10/2015	RSP Items	-	-	1.270%	-	-		-	-	
18	8256395	Non -RSP Items	2,844,133	679,634	1.270%	2,880,253	688,265	8,631	-	-	8,631
	2/10/2015	RSP Items	-	-	1.270%	-	-		-	-	
19	8642690	Non -RSP Items	1,215,313	297,296	1.270%	1,230,748	301,072	3,776	-	-	3,776
	3/18/2015	RSP Items	-	-	1.270%	-	-		-	-	
20	8703377	Non -RSP Items	99,110	24,245	1.270%	100,369	24,553	308	-	-	308
	3/24/2015	RSP Items	-	-	1.270%	-	-		-	-	
21	8703409	Non -RSP Items	494,182	120,889	1.270%	500,458	122,425	1,535	-	-	1,535
	3/24/2015	RSP Items	-	-	1.270%	-	-		-	-	
	Total		34,962,347	8,291,718	1.270%	35,406,369	8,397,023	105,305	1,197,999	15,671	89,634

25 BRAND: NINE WEST

Sr. No.	BE No /Date	Item Details	Declared			Re-determined		Gross Diff. Duty	CVD paid on RSP Items	(All figures in Rs.)	
			Assessable Value	Duty	Loading Factor	Assessable Value	Duty			Deduction of Loading on CVD & Cess on CVD@ 3% for RSP Items	Net Diff. Duty Payable
			A	B	C	D= A*(1+C)	E= B* (1+C)	F= E-B	G	H= G*1.03*C	I= F-H
1	6992008	Non -RSP Items	59,925	14,321	7.515%	64,428	15,397	98,194		-	22,109
	10/8/2014	RSP Items	2,717,280	1,292,322	7.515%	2,921,483	1,389,440		982,954	76,085	
2	7203956	Non -RSP Items	38,200	8,439	7.515%	41,070	9,073	51,621		-	11,365
	10/29/2014	RSP Items	1,386,266	678,462	7.515%	1,490,444	729,449		520,074	40,256	
3	7373923	Non -RSP Items	1,277,823	304,684	7.515%	1,373,852	327,581	69,318		-	32,932
	11/14/2014	RSP Items	1,296,451	617,715	7.515%	1,393,879	664,136		470,078	36,386	
4	7584881	Non -RSP Items	509,310	118,990	7.515%	547,585	127,932	140,929		-	38,294
	12/3/2014	RSP Items	3,791,993	1,756,316	7.515%	4,076,961	1,888,303		1,325,963	102,635	
5	7733977	Non -RSP Items	864,650	203,654	7.515%	929,628	218,959	135,837		-	43,509
	12/18/2014	RSP Items	3,429,903	1,603,892	7.515%	3,687,661	1,724,425		1,192,798	92,328	
6	7956126	Non -RSP Items	69,473	11,878	7.515%	74,694	12,770	85,636		-	19,614
	1/12/2015	RSP Items	2,418,682	1,127,651	7.515%	2,600,446	1,212,394		852,939	66,021	
7	8224563	Non -RSP Items	779,143	152,200	7.515%	837,696	163,638	61,188		-	22,877
	2/6/2015	RSP Items	1,477,902	662,016	7.515%	1,588,966	711,766		494,944	38,311	
8	8256473	Non -RSP Items	1,625,912	388,532	7.515%	1,748,100	417,730	81,141		-	41,226
	2/10/2015	RSP Items	1,553,972	691,185	7.515%	1,670,753	743,127		515,658	39,914	
9	8427841	Non -RSP Items	512,993	120,930	7.515%	551,545	130,018	125,800		-	35,908
	2/26/2015	RSP Items	3,464,916	1,553,052	7.515%	3,725,305	1,669,764		1,161,326	89,892	
10	8647828	Non -RSP Items	101,369	24,797	7.515%	108,987	26,661	84,225		-	18,180
	3/19/2015	RSP Items	2,107,963	1,095,958	7.515%	2,266,377	1,178,319		853,239	66,045	
11	8750039	Non -RSP Items	13,441	2,298	7.515%	14,451	2,471	159,018		-	31,185
	3/28/2015	RSP Items	4,006,513	2,113,709	7.515%	4,307,602	2,272,554		1,651,494	127,833	
Total			33,504,081	14,542,999	7.515%	36,021,912	15,635,906	1,092,906	10,021,467	775,707	317,200

RE-QUNANTIFICATION OF THE TENABLE DEMAND FOR SCN DATED 22.02.2017

26. I observe that as per SCN dated 22.02.2017 proposed inclusion of elements i.e. (i) Franchise Entrance Fee, (ii) Franchise Fee, (iii) Reimbursements made to the Franchisors/brand owners against advertisement expenses and sales promotion / Institutional Advertisement & Promotional Reimbursement, (iv) expenses related to import of Advertising & Sales promotion Material & (v) local Advertisement & Sales promotion expenses in India as follows:-

(All Figures are in Rs.)									
S. No.	Brand	Entrance fee	Franchise fee	Advertisement expenses on account of remittances sent to the brand owner	Advertisement expenses on account of material imported for advertisement	Advertisement expenses (local)	Sales promotion imported	Sales promotion (local)	Total Additional Reimbursement
1	Aldo	-	6,43,43,683	-		23,42,282		36,02,307	7,02,88,272
3	Charles and Keith	-	-	-		1,19,07,038		18,39,076	1,37,46,114
4	Guess	-		-		89,89,783		17,86,531	1,07,76,314
5	Nine West	-	42,68,355	-		18,52,632		5,81,840	67,02,827
Total			6,86,12,038			2,50,91,735		78,09,754	10,15,13,527

26.1 After considering the Noticee's submission, the erstwhile adjudicating authority included (i) Franchise Entrance Fee, (ii) Franchise Fee, (iii) Reimbursements made to the Franchisors/brand owners against advertisement expenses and sales promotion /

Institutional Advertisement & Promotional Reimbursement, & (iv) local Advertisement & Sales promotion expenses in India are to be added in the transaction value of the imported goods. I also find that expenses related to import of Advertising & Sales promotion Material is to be excluded from the transaction value of the imported goods for the payment of Customs Duty as follows:-

(All Figures are in Rs.)

S. No.	Brand	Entrance fee	Franchise fee	Advertisement expenses on account of remittances sent to the brand owner	Advertisement expenses on account of material imported for advertisement	Advertisement expenses (local)	Sales promotion imported	Sales promotion (local)	Total Additional Reimbursement
1	Aldo	-	6,43,43,683	-		23,42,282		36,02,307	7,02,88,272
3	Charles and Keith	-	-	-		1,19,07,038		18,39,076	1,37,46,114
4	Guess	-		-		89,89,783		17,86,531	1,07,76,314
5	Nine West	-	42,68,355	-		18,52,632		5,81,840	67,02,827
	Total		6,86,12,038			2,50,91,735		78,09,754	10,15,13,527

26.2 Now this adjudicating authority after considering the Noticee's submission (i) Franchise Entrance Fee, (ii) Franchise Fee, (iii) Reimbursements made to the Franchisors/brand owners against advertisement expenses and sales promotion / Institutional Advertisement & Promotional Reimbursement, & (iv) local Advertisement & Sales promotion expenses in India are to be added in the transaction value of the imported goods. I also find that expenses related to import of Advertising & Sales promotion Material is to be excluded from the transaction value of the imported goods for the payment of Customs Duty as follows:-

(all figures in Rs.)

S. No.	Brand	Entrance fee	Franchise fee	Advertisement expenses on account of remittances sent to the brand owner	Advertisement expenses on account of material imported for advertisement	Advertisement expenses (local)	Sales promotion imported	Sales promotion (local)	Total Additional Reimbursement
1	Aldo	-	6,43,43,683	-	6,06,705	1,82,65,945	65,001	35,37,306	8,61,46,934
3	Charles and Keith	-	-	-	47,12,807	71,94,231	4,05,836	14,33,240	86,27,471
4	Guess	-		-	1,31,052	88,58,731	2,63,646	16,55,479	1,05,14,210
5	Nine West	-	42,68,355	-		18,52,632		5,81,840	67,02,827
	Total		42,68,355	-	-	18,52,632	-	5,81,840	11,19,91,442

26.3 Accordingly, Proportionate additional reimbursement and Loading Factor calculated is as follows:

(all figures in Rs.)							
S. No.	Brand	Imports - ACC	Imports - JNPT (from 01.04.2015 to 16.06.2015)	Total (FY 2015-16)	Total Additional Reimbursements	Proportionate Additional Reimbursements at JNPT (from 01.04.2015 to 16.06.2015)	Loading Factor
1	Aldo	-	2,70,87,642	28,91,42,193	8,61,46,934	80,70,484	93.600%
3	Charles and Keith	-	2,70,65,336	24,28,78,560	86,27,471	9,61,408	3.552%
4	Guess	-	1,36,32,530	8,78,84,789	1,05,14,210	16,30,945	11.964%
5	Nine West	-	33,99,328	5,95,08,879	67,02,827	3,82,886	11.264%
	Total				11,19,91,442	1,10,45,723	

26.4 Re-determined & re-quantified assessable value and re-determined differential duty:

(all figures in Rs.)										
Duty Computation										
Sr. No.	Brand	Declared Assessable Value	Declared Duty	Loading Factor	Re-determined Assesable Value	Re-determined Duty	Gross Diff- Duty	CVD paid on RSP Items	Deduction of Loading on CVD & Cess on CVD@3% for RSP Items	Net Diff- Duty Payable
		A	B	C	D= A * (1+C)	E= B * (1+C)	F= E-B	G	H= G*1.03*C	I= F-H
1	ALDO	27,087,642	13,767,391	93.600%	52,441,675	26,653,669	12,886,278	9,246,661	8,914,520	3,971,758
2	CK	27,065,339	12,265,700	3.552%	28,026,700	12,701,377	435,678	7,666,296	280,476	155,202
3	Guess	13,632,529	3,486,236	11.964%	15,263,525	3,903,329	417,093	236,211	29,108	387,985
4	NW	3,399,328	1,703,853	11.264%	3,782,228	1,895,775	191,922	1,301,683	151,020	40,902
	Total	71,184,839	31,223,180		99,514,129	45,154,151	13,930,971	18,450,850	9,375,125	4,555,846

In view of the above calculations, the re-quantified re-determined Assessable Value comes to Rs. 9,95,14,219/- (Rupees Nine crore ninety-five lakh fourteen thousand two hundred nineteen rupees and zero paise only) as against re-determined value suggested by investigating agency i.e. Rs. 8,00,37,071/- and the re-quantified Differential Duty to be demanded from the importer M/s. MBIPL comes to Rs. 45,55,846/- (Rupees Forty-five lakh fifty-five thousand eight hundred forty six rupees and zero paise only) as against proposed differential duty of Rs. 39,91,196/- (Rupees Thirty nine lakh ninety one thousand one hundred ninety six only).

Further, Brand wise Bill of Entry detail is as follows:

27 BRAND- ALDO

Sr. No.	BE No /Date	Item Details	Dcalared		Loading Factor	Re-determined		Gross Diff-Duty	CVD paid on RSP Items	(All figures in Rs.)	
			Assessable Value	Duty		Assesable Value	Duty			Deduction of Loading on CVD & Cess on CVD@3% for RSP Items	Net Diff-Duty Payable
			A	B	C	D= A *	E= B *	F= E-B	G	H= G*1.03*C	I= F-H
1	8840949	Non -RSP Items	1,859,899	487,638	93.600%	3,600,764	944,067	3,471,337			934,583
	4/7/2015	RSP Items	4,959,691	3,221,055	93.600%	9,601,961	6,235,963		2,631,269	2,536,754	
2	8848595	Non -RSP Items	28,502	8,391	93.600%	55,180	16,246	262,333		-	51,103
	4/8/2015	RSP Items	448,606	271,879	93.600%	868,500	526,357		219,099	211,229	
3	8913479	Non -RSP Items	2,946,539	728,258	93.600%	5,704,500	1,409,907	2,936,593		-	1,051,247
	4/15/2015	RSP Items	3,833,683	2,409,128	93.600%	7,422,011	4,664,072		1,955,591	1,885,346	
4	9073256	Non -RSP Items			93.600%	-	-	96,134		-	18,173
	4/29/2015	RSP Items	188,504	102,707	93.600%	364,944	198,841		80,865	77,960	
5	9078027	Non -RSP Items	1,885,822	472,607	93.600%	3,650,951	914,966	3,715,067		-	963,202
	4/29/2015	RSP Items	5,402,475	3,496,482	93.600%	10,459,192	6,769,189		2,854,395	2,751,865	
6	9262491	Non -RSP Items	2,558,701	712,195	93.600%	4,953,644	1,378,809	1,884,944		-	860,281
	5/18/2015	RSP Items	2,008,824	1,301,634	93.600%	3,889,083	2,519,963		1,062,840	1,024,662	
7	9262949	Non -RSP Items			93.600%	-	-	519,871		-	93,168
	5/18/2015	RSP Items	966,397	555,418	93.600%	1,870,944	1,075,289		442,601	426,703	
Total			27,087,642	13,767,391	93.600%	52,441,675	26,653,669	12,886,278	9,246,661	8,914,520	3,971,758

28. BRAND- CK

Sr. No.	BE No /Date	Item Details	Dcalared		Loading Factor	Re-determined		Gross Diff-Duty	CVD paid on RSP Items	(All figures in Rs.)	
			Assessable Value	Duty		Assesable Value	Duty			Deduction of Loading on CVD & Cess on CVD@3% for RSP Items	Net Diff-Duty Payable
			A	B	C	D= A * (1+C)	E= B * (1+C)	F= E-B	G	H= G*1.03*C	I= F-H
1	8848581	Non -RSP Items	1,506,861	368,616	3.552%	1,560,385	381,709	50,998			19,413
	4/8/2015	RSP Items	1,727,265	1,067,131	3.552%	1,788,618	1,105,036		863,323	31,585	
2	8933502	Non -RSP Items	568,607	139,095	3.552%	588,804	144,036	73,851		-	16,856
	4/16/2015	RSP Items	3,256,759	1,940,039	3.552%	3,372,439	2,008,949		1,557,856	56,995	
3	9012643	Non -RSP Items	2,370,159	579,800	3.552%	2,454,347	600,395	75,414		-	29,894
	4/23/2015	RSP Items	2,541,833	1,543,336	3.552%	2,632,119	1,598,155		1,244,200	45,520	
4	9145744	Non -RSP Items	3,423,317	836,964	3.552%	3,544,913	866,693	65,385		-	35,693
	5/6/2015	RSP Items	1,630,198	1,003,833	3.552%	1,688,103	1,039,489		811,576	29,692	
5	9215580	Non -RSP Items	180,348	53,362	3.552%	186,753	55,257	89,777		-	17,372
	5/13/2015	RSP Items	4,230,291	2,474,143	3.552%	4,380,551	2,562,024		1,979,052	72,405	
6	9215593	Non -RSP Items	3,056,849	747,782	3.552%	3,165,428	774,343	80,253		-	35,974
	5/13/2015	RSP Items	2,572,851	1,511,599	3.552%	2,664,238	1,565,291		1,210,288	44,279	
Total			27,065,339	12,265,700	3.552%	28,026,700	12,701,377	435,678	7,666,296	280,476	155,202

29. BRAND- GUESS

Sr. No.	BE No /Date	Item Details	Dcalared			Re-determined		Gross Diff-Duty	CVD paid on RSP Items	(All figures in Rs.)	
			Assessable Value	Duty	Loading Factor	Assesable Value	Duty			Deduction of Loading on CVD & Cess on CVD@3% for RSP Items	Net Diff-Duty Payable
			A	B	C	D= A* (1+C)	E= B * (1+C)	F= E-B	G	H= G*1.03*C	I= F-H
1	8827018	Non -RSP Items	5,010,639	1,225,728	11.964%	5,610,112	1,372,374	146,646	-	-	146,646
	4/6/2015	RSP Items	-	-	11.964%	-	-		-	-	
2	8840991	Non -RSP Items	2,145,189	524,766	11.964%	2,401,839	587,549	62,783	-	-	62,783
	4/7/2015	RSP Items	-	-	11.964%	-	-		-	-	
3	8897681	Non -RSP Items	-	-	11.964%	-	-	15,869	-	-	3,394
	4/13/2015	RSP Items	275,409	132,643	11.964%	308,359	148,513		101,239	12,476	
4	8897730	Non -RSP Items	-	-	11.964%	-	-	10,891	-	-	2,575
	4/13/2015	RSP Items	208,952	91,036	11.964%	233,951	101,927		67,489	8,317	
5	8934141	Non -RSP Items	-	-	11.964%	-	-	10,345	-	-	2,029
	4/16/2015	RSP Items	164,659	86,468	11.964%	184,359	96,812		67,483	8,316	
6	9086687	Non -RSP Items	1,099,912	269,066	11.964%	1,231,505	301,257	32,191	-	-	32,191
	4/30/2015	RSP Items	-	-	11.964%	-	-		-	-	
7	9145582	Non -RSP Items	166,149	40,644	11.964%	186,027	45,507	4,863	-	-	4,863
	5/6/2015	RSP Items	-	-	11.964%	-	-		-	-	
8	9161430	Non -RSP Items	172,795	42,270	11.964%	193,468	47,327	5,057	-	-	5,057
	5/7/2015	RSP Items	-	-	11.964%	-	-		-	-	
9	9161439	Non -RSP Items	1,729,240	423,015	11.964%	1,936,126	473,625	50,610	-	-	50,610
	5/7/2015	RSP Items	-	-	11.964%	-	-		-	-	
10	9215702	Non -RSP Items	2,325,328	568,833	11.964%	2,603,530	636,888	68,055	-	-	68,055
	5/13/2015	RSP Items	-	-	11.964%	-	-		-	-	
11	9234763	Non -RSP Items	334,258	81,768	11.964%	374,249	91,551	9,783	-	-	9,783
	5/14/2015	RSP Items	-	-	11.964%	-	-		-	-	
Total			13,632,529	3,486,236	11.964%	15,263,525	3,903,329	417,093	236,211	29,108	387,985

29.1 BRAND- NINE WEST

Sr. No.	BE No /Date	Item Details	Dcalared			Re-determined		Gross Diff-Duty	CVD paid on RSP Items	(All figures in Rs.)	
			Assessable Value	Duty	Loading Factor	Assesable Value	Duty			Deduction of Loading on CVD & Cess on CVD@3% for RSP Items	Net Diff-Duty Payable
			A	B	C	D= A* (1+C)	E= B * (1+C)	F= E-B	G	H= G*1.03*C	I= F-H
1	8800919	Non -RSP Items	-	-	11.264%	-	-	29,021	-	-	5,918
	4/4/2015	RSP Items	510,101	257,643	11.264%	567,559	286,664		199,129	23,103	
2	9182167	Non -RSP Items	91,718	22,436	11.264%	102,049	24,963	162,901	-	-	34,984
	5/11/2015	RSP Items	2,797,510	1,423,775	11.264%	3,112,621	1,584,148		1,102,554	127,917	
Total			3,399,328	1,703,853	11.264%	3,782,228	1,895,775	191,922	1,301,683	151,020	40,902

C. NOW I TAKEUP THE NEXT ISSUE, AS TO WHETHER THE EXTENDED PERIOD OF LIMITATION UNDER SECTION 28(4) OF THE CUSTOMS ACT, 1962, CAN BE INVOKED.

30. In the case at hand, it is observed that the Noticee has raised a multi-pronged defense against the invocation of the extended period. They contend that (i) the entire demand is time-barred as the normal period was one year at the material time, (ii) their actions were based on a bona fide belief fortified by legal opinion and payment of Service Tax, and (iii) the legal landscape was murky, thus negating any allegation of mala fide intent. I now proceed to examine the relevant case records, voluntary statements of Sh. Naveen Golchha, Sh Tushar Raul, legal provisions & case law to reach any conclusion.

30.1 I observe that case originated from an investigation conducted by the Directorate of Revenue Intelligence (DRI), Delhi Zonal Unit, which had developed intelligence that the Noticee was allegedly evading customs duty. The investigation brought on record that certain payments made by the Noticee to foreign brand owners such as franchise fee, store entry fee/ entrance fee, advertisement fee and sales promotion charges etc. were not being included in the assessable value of the imported goods. These payments were made under franchise or licensing agreements and were linked to the sale of imported goods as a condition of sale. However, these were not declared/ added in the transaction value of the imported goods at the time of import and Customs duty was not paid on this amount. After investigation, a Demand-Cum-SCN No. 30/2015 dated 30.05.2015 having File No. DRI/DZU/23/Enq.-33/2014/2713 was issued by the DRI, Delhi Zonal Unit, to M/s. MBIPL for the goods imported in India till 30.09.2014 which included imports made at Nhava-Sheva. Thereafter, Special Intelligence & Investigation Branch (Import), JNCH ('SIIB (I)' in short) was asked to conduct investigations w.r.t. imports made after 30.09.2014 at Nhava Sheva Port by the importer. Therefore, to investigate the matter the importer **M/s. MBIPL was asked to submit Balance Sheet for the year 2014-15 and 2015-16; agreements with foreign brand owners and other relevant details of the Entrance Fee, Franchise Fee, Advertisement expenses paid and Sales Promotion contribution paid to the foreign brand owners for the period from 01.10.2014 to 16.06.2015.** Accordingly, the importer has submitted the required data and documents. Subsequently, a Demand-Cum-SCN dated 26.09.2016 was issued by SIIB (I), JNCH to M/s. MBIPL for the goods imported through Nhava Sheva during the period from 01.10.2014 to 31.03.2015 which was answerable to the Adjudicating Authority viz. Commissioner of Customs, NS-III, JNCH. Another Demand-Cum-SCN No. 774/SIIB-I/2016-17 JNCH dated 22.02.2017 was issued to the importer M/s. MBIPL for the goods imported through Nhava Sheva during the period from 01.04.2015 to 16.06.2015 which was answerable to the Commissioner of Customs, NS-III, JNCH. The investigation has brought the following evidences on record:-

List of Evidences.

- i. List of Bills of Entry cleared by M/s. Major Brands Pvt. Ltd. Pertaining to Brands: Aldo, BHPC, Charles & Keith, Guess, Nine West.
- ii. Letter submitted by M/s. Major Brands Pvt. Ltd. Along with the details of payments made to foreign brand owners for the period 01.10.2014 to 31.03.2015; and
- iii. Letter submitted by M/s. Major Brands Pvt. Ltd. Along with the details of payments made to foreign brand owners for the period 01.04.2015 to 18.05.2015.

30.2 The Show Cause Notice issued to MBIPL alleged that the importer had wilfully not included franchise fee, store entry fee/ entrance fee, advertisement fee and sales promotion charges etc. in the assessable value of the imported goods. These payments were made under franchise or licensing agreements to foreign brand owners and were linked to the sale of imported goods. However, these were **neither** declared, **nor** added in the transaction value of the imported goods at the time of import and Customs duty was not paid on this amount.

30.3 The SCN dated 26.09.2016 & 22.02.2017 proposed addition and inclusion of the payments made on account of franchise entrance fee, franchise fee to the seller / brand holder

and advertisement expenses incurred/ reimbursed to the brand holder in terms of Rule 3 read with Rule 10(1)(c), 10(1)(d) and 10(1) (e) of CVR, 2007 read with the Section 14 of the Customs Act, 1962, to re-determine the assessable value of imported goods.

30.4 As discussed in detail in Para 14 to 29 supra, in terms of Section 2(41) read with Section 14(1) of the Customs Act, 1962 and Rules 3, 10(1)(c), 10(1)(d) and 10(1)(e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 2007), the assessable value of imported goods must include all payments made as a condition of sale—whether paid directly to the seller or to a third party on behalf of the seller. Further, after examining the legal provisions governing the valuation of imported goods, and upon perusal of the agreement executed between the Noticee and the Brand Owner, I find that the various payments made by the Noticee to the Brand Owner, viz. Franchise Entrance Fee, Franchise Fee, International Marketing Charges, and expenses incurred on advertising and sales promotion in India etc., are liable to be included in the assessable value of the imported goods for the purpose of computation of Customs Duty. Noticee has neither declared the agreement with the Brand Owner and nor included these payments/ expenses in the assessable value of the imported goods, which has resulted in short-levy and short-payment of Customs Duty to the tune of **Rs. 60,77,465/-** (From 01.10.2014 to 31.03.2015 Rs. 42,29,118/- & from 01.04.2015 to 16.06.2015 Rs. 18,48,347/-)

30.5 This legal position has been upheld by the Hon'ble CESTAT, in Noticee's own case. Relevant Part of the Para 9 of the Tribunal order dated 08.04.2024 are reproduced, as follows:

*“9. This is a dispute over short-payment of duties of customs at the time of import. It is not the case of the customs authorities that the assessable value as declared then did not mirror the consideration for which goods were transferred by sale on each occasion to the appellant. **However, this was not a normal transaction of autonomous, and episodal, sale and purchase between two parties known to each other commercially; not only was there an engagement for regular commercial intercourse but also a special equation considering the nature of goods, i.e., identifiable by brand, which, though no different from a normal trading chain of sale and purchase, was, nonetheless, conditioned by the intangible of 'goodwill' attaching to the products. It was in acknowledgement thereof that the importer and seller entered into a 'licence agreement', encompassing responsibilities, liabilities and obligations during its tenor, which may be designated as 'franchise' model of business. Conceptually, the cost of import was not limited to the value of the goods agreed upon for each sale as the cost of 'intangibles', which would have to be spread over all of the goods**”*

30.6 I observe that, Hon'ble Tribunal has found that this was not a routine or isolated transaction between two independent commercial entities. It reflected a structured and continuing business relationship shaped by the character of the goods—branded products carrying inherent goodwill and commercial value beyond their physical attributes. While the arrangement bore the outward form of an ordinary trading chain, its terms were clearly influenced and conditioned by the intangible value associated with the brand. In

acknowledgment of this commercial reality, the importer and the foreign supplier entered into a formal licence agreement delineating their respective rights, responsibilities, and obligations. In substance, the arrangement was in the nature of a franchise model, wherein the cost of import was not confined merely to the invoice value of the goods but necessarily encompassed an apportioned element of the intangible costs embedded in the commercial framework.

30.7 I observe that with the **advent of self-assessment under Section 17**, a lot of faith and responsibility is placed on the importer and exporter, as they are required to assess their own duty liability accurately and ensure compliance with customs regulations, thereby reducing administrative burdens for the customs department. Therefore, with the introduction of self-assessments and consequent upon amendments to Section 17, since 8th April, 2011, it is responsibility of the importer to declare correct description, value, notification etc and to correctly classify, determine and pay the duty applicable in respect of imported goods.

30.8 Further, an importer has to subscribe to a declaration affirming the truthfulness and accuracy of the contents of the Bill of Entry, in accordance with **the provisions of Section 46(4)** of the Customs Act, 1962, in respect of all import declarations, including Bills of Entry, filed with the Customs authorities. Although the importer has subscribed that the declaration in the said Bills of Entry is true and correct, I observe that this is not the case. The importer is required to declare all relevant facts concerning the valuation of the imported goods, including any payments made to the brand owner as a condition of sale under a franchise agreement. Failure to disclose such information amounts to misdeclaration and suppression of facts under customs law.

30.9 In view of the above, it is an undisputed fact that with the advent of self-assessment under Section 17 of the Customs Act, 1962, a higher degree of trust and responsibility is placed on importers, who are required to correctly assess duty, declare all material particulars, and ensure full compliance with Customs laws. In terms of Section 46(4), the Importer must affirm the truthfulness and completeness of the Bill of Entry. However, in the present case, the Noticee failed to do so. On examination of the franchise and brand licensing agreements, it is evident that the Noticee was under an absolute contractual obligation to incur franchise fees, mandatory advertising expenses, etc. as a condition of sale of the imported goods. These payments clearly influence the valuation of the imported goods and are required to be included in the assessable value under the Customs Valuation Rules, 2007. I find that despite this, the Noticee did not disclose these facts to Customs and did not add such mandatory payments to the assessable value, thereby violating the statutory obligation of truthful and complete declaration under Sections 17 and 46(4). The omission is not accidental but amounts to suppression of material facts and wilful mis-declaration, made with intent to evade duty. Accordingly, the differential duty is legally recoverable under Section 28(4) of the Customs Act, 1962, and the extended period of limitation stands rightly invoked. Penalty provisions under the said section also become applicable.

30.10 I find that, **Rule 11 of the Customs Valuation (determination of value of imported goods) Rules, 2007** requires the importer or his agent to furnish declaration disclosing full and accurate details relating to the value of imported goods and makes the provisions of the Customs act, 1962 (52 of 1962) relating to confiscation, penalty and prosecution applicable in cases where wrong declaration, information, statement of documents are furnished under these rules.

30.11 I further observe that, in the present case, the responsibility of the importer with respect to duty liability is specifically laid down in law. However, even where the law does not expressly impose such a responsibility—as in the broader context of public finance—it is well established that when the duty is based on the value of the imported goods, the importer is obligated to make a correct and complete declaration. This is because it is a settled ***principle of public finance*** that the system cannot function effectively in cases involving misdeclaration or suppression of facts.

The system of customs valuation rests on fundamental '*public finance principles*' and law enriched in section 17, section 46(4) of the Customs Act, 1962 and Customs Valuation Rules, 2007, which require truthful and complete disclosure by taxpayers. When customs duty is levied ad valorem, the duty liability can be correctly determined only if the importer declares all facts affecting the assessable value, including payments made to brand owners under franchise or royalty arrangements. A self-assessment framework cannot function effectively in the face of suppression or misdeclaration of material information.

30.12 I further observe that the case of mis-declaration is clearly established by the documents relied upon in the Show Cause Notice, namely the Bills of Entry and the computation sheet indicating remittances made to the foreign brand owner. I further observe that there is no dispute regarding the fact that the agreement between the importer and the brand owners was never disclosed in the Bills of Entry at the time of filing. Such non-disclosure is material, as the existence of this agreement has a direct bearing on the valuation of the imported goods. In order to illustrate this omission, a sample Bill of Entry is reproduced below for reference.

30.13 Above fact is substantiated by the Noticee vide Personal Hearing dated 15.09.2025 and vide further submission dated 16.09.2025, has submitted as follows:

“2. During the hearing, it was submitted that no new documents were found other than the Bills of Entry. However, on demand, the Noticee had produced before the Authorities, the documents which were submitted to the Authorities such as copies of Bills of Entry, filed in past and invoices in respect of the Bills of Entry and **the Agreements with their suppliers to confirm the valuation**, as the suppliers were not related parties and the noticee had only franchise agreements with them. The noticee had legal opinion from reputed firm that these are not liable to be added to import value but liable to Service Tax on reverse charge basis. We had paid Service Tax

thereon and copies of the legal opinion and service tax challans with relevant invoices will be submitted within a week”

30.14 Therefore, it stands on record that the Noticee has admitted that they did not disclose the agreements with the Brand Owners at the time of filing the Bills of Entry, and that the said agreements were subsequently unearthed by the DRI during the course of investigation.

30.15 It is also on record that a DRI initiated an investigation on **09.10.2014** into the evasion of Customs duty on payments made to the brand owner as a condition of sale of imported goods, and the same culminated in to issuance of a Demand-Cum-SCN No. 30/2015 dated 30.05.2015 having File No. DRI/DZU/23/Enq.-33/2014/2713. Despite being fully aware of the ongoing proceedings and their legal consequences, MBIPL, in respect of Bills of Entry filed subsequent to 09.10.2014, deliberately failed to declare the payments made to foreign suppliers, either in the Bills of Entry filed after 09.10.2014 or through any voluntary disclosure to the Customs field formations. This deliberate, continued, and conscious non-disclosure, even during an active investigation, constitutes a serious and wilful violation of the provisions of the Customs Act, 1962 and the Customs Valuation Rules. Such conduct goes far beyond a mere procedural lapse and clearly demonstrates a sustained pattern of deliberate suppression, calculated evasion, and mala fide intent to circumvent the payment of legitimate Customs duty.

Statement of the persons and analysis:

30.16 This position is further corroborated by the voluntary statements of Shri Naveen Golchha, CFO of MBIPL, recorded under Section 108 of the Customs Act, 1962 on 09.10.2014 and 19.05.2016.

Shri Naveen Golchha, CFO of M/s MBIPL in his voluntary statement, dated 09.10.2014 recorded under Section 108 of the Customs Act, 1962, before DRI, inter-alia, stated that M/s Major Brands (1) Pvt. Ltd. was engaged in retail sale of products such as garments, footwear and accessories etc. of various international brands such as Mango and Guess etc. through their stores in multiple locations in India; that they have entered in agreement with owners of the international fashion brands to sell their products in India; that they were importing the majority of goods sold by them; that he (Naveen) was CFO in M/s Major Brands (1) Pvt. Ltd. and associated with the company since, 2006; that he was Chartered Accountant and has been looking after Accounts and Finance in M/s Major Brands (1) Pvt. Ltd.; that they were associated with brands Mango, ALDO, ALDO accessories, Charles & Keith, La-senza, BEBE, Nine West, Guess, Guess accessories, BHPC and Inglot; that he has submitted copies

of the agreements with these international brands; that Mr. Neeraj Kekchandani and Mr. Kamal Kotak were the Directors in M/s Major Brands (1) Pvt. Ltd.; that both the Directors are NRIs, that he was looking after the business activities in India and reported to the Directors and promoter of the Company Mr. Nilesh Kumar Naval Ved; that foreign branded goods were imported as per agreements entered with respective foreign brand owners; that post importation payment of Franchisee Fee and other reimbursement to foreign brand owners have been made as per agreement as a condition of sale of imported goods in India, which were not formed part of the assessable value on which Customs duty has been paid; that they were paying service tax on the Franchisee Fee payments, considering it as a service; that on perusal of Customs Valuations (Determination of Value and Imported Goods) Rules, 2007, according to Rule 10. Franchisee Fee payments should have been included in the assessable value of the imported goods for the purpose of payment of Customs duty.

Further, Shri Naveen Golchha, CFO of M/s MBIPL in his voluntary statement, dated 19.05.2016 recorded under Section 108 of the Customs Act, 1962, again admitted that upon perusal of Rule 10 of the CVR, 2007, he knew that the franchise fee payments "should have been included in the assessable value." And also admitted that aforesaid payments were not included in the assessable value on which Customs duty has been paid by the importer. This fact was also corroborated through the statement of Shri. Tushar Raul, Director, CB firm M/s Siddhi Clearing and Forwarding Pvt. Ltd. who also confirmed that the Franchisee Fee paid by the importer are liable to Customs Duty. Both of them has not retracted their statements.

30.17 In view of the above, i observe that Shri Golchha, CFO of M/s MBIPL categorically admitted that franchise fee payments were linked to the import of goods and, as per Rule 10 of CVR, 2007, ought to have been included in the assessable value. It is a settled legal position that statements recorded under Section 108 are admissible as substantive evidence.

30.18 In view of the above, i find that in terms of Section 2(41) read with Section 14(1) of the Customs Act, 1962 and Rules 3, 10(1)(c), 10(1)(d) and 10(1)(e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 2007), the assessable value of imported goods must include all payments made as a condition of sale—whether paid directly to the seller or to a third party on behalf of the seller. As per agreement between the Noticee and the Brand Owner, I find that the various payments made by the Noticee to the Brand Owner, viz. Franchise Entrance Fee, Franchise Fee, International Marketing Charges, and expenses incurred on advertising and sales promotion in India etc., are liable to be included in the assessable value of the imported goods for the purpose of computation of Customs Duty. Noticee has neither declared the agreement with the Brand Owner and nor included these payments/ expenses in the assessable value of the imported goods, which has resulted in short-levy and short-payment of Customs Duty to the tune of **Rs. 60,77,465/-** (From 01.10.2014 to 31.03.2015 Rs. 42,29,118/- & from 01.04.2015 to 16.06.2015 Rs. 18,48,347/-).

30.18.1 The Hon'ble Tribunal in the subject DE novo order in Para 9 has also observed that this was not a routine or isolated commercial transaction but a structured and

continuing arrangement influenced by brand goodwill, wherein the cost of imports extended beyond the invoice price to include intangible elements. The importer and the foreign supplier were contractually bound through a licence/franchise agreement defining their rights, obligations, and financial commitments. The Para 9 of the *De novo* order is reproduced below:-

“9. This is a dispute over short-payment of duties of customs at the time of import. It is not the case of the customs authorities that the assessable value as declared then did not mirror the consideration for which goods were transferred by sale on each occasion to the appellant. However, this was not a normal transaction of autonomous, and episodal, sale and purchase between two parties known to each other commercially; not only was there an engagement for regular commercial intercourse but also a special equation considering the nature of goods, i.e., identifiable by brand, which, though no different from a normal trading chain of sale and purchase, was, nonetheless, conditioned by the intangible of ‘goodwill’ attaching to the products. It was in acknowledgement thereof that the importer and seller entered into a ‘licence agreement’, encompassing responsibilities, liabilities and obligations during its tenor, which may be designated as ‘franchise’ model of business. Conceptually, the cost of import was not limited to the value of the goods agreed upon for each sale as the cost of ‘intangibles’, which would have to be spread over all of the goods imported during the tenor of the agreement, and, from the mode of quantifying thereon, not necessarily assignable to goods at the time of import. Furthermore, the blurring of taxable event, viz. import of goods, in such transactions with cross-over of services, which are normally excluded from levy intended by or under a commodity tax, does not lend itself to ease of association with customs assessment, or even as covered within the machinery provision for assessment. That such inclusion be restricted only to the narrow scope of the Rules is patent in

‘10. Cost and services. -

(2) 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 labour 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: -

- (v) materials, components, parts and similar items incorporated in the imported goods;*
- (vi) tools, dies, moulds and similar items used in the production of the imported goods;*
- (vii) materials consumed in the production of the imported goods;*
- (viii) 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 licence 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.*

Explanation.- Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includible referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods.

Xxxxx

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

of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 which is the sole repository of reference to intangibles in the scheme of levy of duties of customs on imported goods and has been invoked to justify the addition. We are not concerned with the specifics of addition in the impugned orders for the law, as judicially determined, has been settled and the merit of the inclusion or non-inclusion, as the case may be, are not pressed. Our concern here is the scope for presumption, from the factual matrix of prescriptive obligations in relation to assessment and compliance thereof, that the ingredients for invoking extended period of limitation and for imposition of penalty under section 114A of Customs Act, 1962 is palpably sustainable."

30.18.2 With the introduction of self-assessment w.e.f. 08.04.2011, through the amendment to Section 17 of the Customs Act, the responsibility of ensuring correct declaration was '*expressly imposed on the importer*'. Further, under Section 46(4) and 46(4A) of the Act, every importer must make a full and true declaration regarding the description, classification, quantity, value, applicable exemption notifications, and rate of duty. This obligation is statutory, substantive, and non-delegable.

30.18.3 The system of customs valuation rests on fundamental '*public finance principles*', which require truthful and complete disclosure by taxpayers. When customs duty is levied ad valorem, the duty liability can be correctly determined only if the importer declares all facts affecting the assessable value, including payments made to brand owners under franchise or

royalty arrangements. A self-assessment framework cannot function effectively in the face of suppression or misdeclaration of material information.

30.18.4 It is undisputed that the importer failed to disclose the franchise agreement with the brand owner in any of the Bills of Entry filed during the relevant period. This non-disclosure is material since the existence of the agreement has a direct bearing on the determination of assessable value. This is substantiated by Bills of Entry and computation sheets relied upon in the Show Cause Notice.

30.18.5 The deliberate failure to disclose these material facts amounts to suppression and wilful misdeclaration. The importer was under an express statutory obligation to declare these elements, both under the self-assessment provisions of law and under the overarching principles of public finance governing customs valuation.

Therefore, I find that MBIPL wilfully mis-declared the assessable value of the imported goods by suppressing material particulars directly impacting valuation. The franchise-related payments are legally includible in the transaction value under the Customs Valuation Rules. The responsibility of correct declaration is explicitly laid down in law, and its breach attracts penal consequences under the Customs Act, 1962.

30.19 Further, I find that although evidently it is proved by investigation, foregoing Para-13 to 29 and statements of Sh. Naveen Golchha, Sh. Tushar Raul, Director of CB firm M/s. Sidhi Clearing & Forwarding Pvt. Ltd. recorded under section 108 of Customs Act 1962 that the Noticee has violated various provisions of the Act by wilfully not included the various payments to brand owner on account of Entrance Fee, Franchisee Fee, International Marketing charges, etc. despite the clear legal provisions governing the subject matter and despite on-going DRI investigation initiated on 09.10.2014, Noticee consciously & deliberately neither declared the payments made to the brand owner in the subsequent filed Bills of Entry, nor intimated customs authority about the existing agreement with the brand owner.

30.20 It is also observed on the weight of the case laws that Revenue does not need to prove the allegation of violation with mathematical precision in the case. I rely upon following judgement in this context:

- (i) Hon'ble Supreme Court in CC Madras V/s D Bhuramal - [1983 (13) ELT 1546 (SC)] has held that 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.
- (ii) In the case of Satish Mohan Agarwal (Prop M/s Casino Electronics) Vs Cc (Sea-Export) Chennai. Reported in 2016-TIOL-620-CESTAT-MAD, Tribunal held that Penal provisions are enacted to suppress the evil of defrauding Revenue which is an anti-social activity adversely affecting the public revenues, the earning of foreign

exchange, the financial stability and the economy of the country. Such provisions should be construed in a manner which would suppress the mischief, promote their object, prevent their subtle evasion and foil their artful circumvention.

It was also held that "It may be stated that Revenue need not prove its case with mathematical precision."

- (iii) In the case of Collector of Customs, Madras And... vs D. Bhoormul on 3 April, 1974 the Hon'ble Supreme Court held that "we must pay due regard to other kindred principles, no less fundamental, of universal application. One of them is that the prosecution or the Department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and-as Prof. Brett felicitously puts it all exactness is a fake" El Dorado of absolute proof being unattainable, the law accepts for it, probability as a working substitute in this work-a-day world. The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus, legal proof is not necessarily perfect proof; often it is nothing more than a prudent man's estimate as to the probabilities of the case. The other, cardinal principle having an important bearing on the incidence of burden of proof is that sufficiency and weight of the evidence is to be considered-to use the words of Lord Mansfield in Batch v. Archer(1) "according to the proof which it was in the power of one side to prove, and in the power of the other to have contradicted". Since it is exceedingly difficult, if not absolutely impossible, for the prosecution to prove facts which are especially within the knowledge of the opponent or the accused, it is not obliged to prove them as parts of its primary burden."

30.21 Therefore the Customs duties have been evaded by M/s. MBIPL by way of wilful suppression of facts and mis-statements, as brought out clearly in the preceding paragraphs, the provision of the proviso to the erstwhile Section 28 (1) of the Customs Act, 1962 is invokable in this case for demanding the evaded Customs duties short paid / not paid by the importer.

As to whether the Demand Is Hit By Limitation or otherwise:-

31. The Noticee's argument that the department was "aware" due to a prior DRI SCN (dated 30.05.2015) and thus the clock for limitation had started.

Noticee has submitted that *the whole of the demand is hit by limitation since the amendment to Section 28(1) came about on 14.05.2016 wherein the phrase "one year" was substituted by the phrase "two years". The period involved in the matter is 01.10.2014 to 31.03.2015. Therefore, prior to 14.05.2016, the limitation period for section 28(1) under which the Show Cause Notice dated 26.09.2016 has been issued is one year, which actually expired on 30.03.2016 whereas the notice has been issued only on 26.09.2016 taking cover of the amendment to the Act. That, the reason for this averment is that as per section 28(3), the relevant date for issuance of notice is from the date of receipt of information. In the present*

case, the first Show Cause Notice No. DRI/DZU/23/INQ-33/2014 in the matter has been issued on 30.05.2015 by the DRI. Hence when the department was aware of the matter as early as 2014 leading to issuance of SCN dated 30.05.2015, then the limitation period has to be taken as one year only and accordingly, the whole of the demand is barred by limitation. That, that in terms of Master Circular on SCNs, Adjudication and Recovery, viz. Circular No. 1053/02/2017-CX under F. No. 96/1/2017-CX.I dated 10.03.2017 (Para 3.7 of the said Circular) the present SCN cannot be sustained and the extended period under Section 28(4) cannot be invoked as the said SCN was issued on 22.02.2017 for the period 01.04.2015 to 16.06.2015, i.e. after one year and eight months after the relevant date as per provisions of Section 28 (1) of the CA, 1962.

31.1 I observe that the issuance of a SCN for a different period (2010-11 to 30.09.2014) does not absolve the Noticee from its continuous statutory obligation to declare the full and correct value for each subsequent import. The suppression of the additional costs in the Bills of Entry for the present period (from 01.10.2014 to 31.03.2015 & from 01.04.2015 to 16.06.2015) is a distinct, wilful act. Suppression is a positive act of concealment, and its continuation in subsequent imports, even after the initiation of investigation for a prior period, demonstrates a persistent intent to evade duty.

Extended period is invoked on account of wilful mis-declaration and suppression of fact. After DRI issued SCN dated 30.05.2015 for the period 2010-2011 to 31.09.2014, case was transferred to SIIB (I) JNCH to examine the duty evasion for the subsequent period 01.10.2014 to 16.06.2015. **So, the investigation in the importer's case was not complete and the subsequent SCNs are stemming out from the transfer of the ongoing investigating from DRI-DZU to SIIB (I), JNCH and itself was not a new matter at hand.**

31.2 It is also on record that a DRI initiated an investigation on **09.10.2014** into the evasion of Customs duty on payments made to the brand owner as a condition of sale of imported goods, and the same culminated in to issuance of a Demand-Cum-SCN No. 30/2015 dated 30.05.2015 having File No. DRI/DZU/23/Enq.-33/2014/2713. Despite being fully aware of the ongoing proceedings and their legal consequences, MBIPL, in respect of Bills of Entry filed subsequent to 09.10.2014, deliberately failed to declare the payments made to foreign suppliers, either in the Bills of Entry filed after 09.10.2014 or through any voluntary disclosure to the Customs field formations. This deliberate, continued, and conscious non-disclosure, even during an active investigation, constitutes a serious and wilful violation of the provisions of the Customs Act, 1962 and the Customs Valuation Rules. Such conduct goes far beyond a mere procedural lapse and clearly demonstrates a sustained pattern of deliberate suppression, calculated evasion, and mala fide intent to circumvent the payment of legitimate Customs duty.

31.3 The Master Circular on SCNs, Adjudication and Recovery, viz. Circular No. 1053/02/2017-CX under F. No. 96/1/2017-CX.I dated 10.03.2017, it is observed that the intent and purport of Para 3.7 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 is to ensure that once the Department is in possession of all material facts, issuance of repeated Show Cause Notices (SCNs) invoking the extended period on the same set of facts

is avoided. This is to prevent abuse of the extended period and to encourage timely and comprehensive investigation and action. However, the said circular does not, in any manner, place an absolute bar or prohibition on issuance of subsequent SCNs invoking the extended period. The context of the circular is that where the Department has already discovered the modus operandi and facts at the time of the first SCN, a second SCN on the same facts and period would be legally untenable

In the present matter, the subsequent SCN arises from the continuation and extension of the same investigation initiated by the DRI, which was thereafter handed over to SIIB (I), JNCH for further investigation covering a **different period** of imports.

Accordingly, the Circular does not preclude the issuance of such a subsequent SCN in bona fide and legally sustainable circumstances. Each case must be examined on its own facts and merits, and the circular cannot be applied in a mechanical or blanket manner. Hence, I hold that the issuance of the subsequent SCN is **justifiable and legally tenable**.

31.4 Therefore, in view of the above legal position, the extended period under the proviso to Section 28(4) of the Customs Act, 1962 is rightly invocable for the present demand. The issuance of the subsequent SCN is legally sustainable, justified by fresh acts of wilful suppression by the importer, and squarely in conformity with the Master Circular. The continued non-declaration by MBIPL after the initiation of investigation reflects a fresh, conscious and deliberate design to evade Customs duty, rather than an inadvertent lapse. Accordingly, I hold that the subsequent SCN is valid in law and fully enforceable.

Lack of clarity in Legal landscape

32. While the Hon'ble CESTAT observed that the legal issues involved were not free from doubt, such an observation cannot be construed as granting any blanket amnesty or protection to all importers. The Tribunal's observation is intended only as a caution against the **mechanical invocation of the extended period** and emphasizes that the applicability of the extended period must be **determined based on the facts and circumstances of each individual case**. It does not dilute or override the importer's statutory obligation to make full and truthful disclosure of all elements forming part of the assessable value. Where there is clear evidence of wilful suppression, deliberate non-disclosure, and intent to evade duty—as in the present case—the extended period is rightly invocable, notwithstanding any general observations made in earlier judicial pronouncements.

32.1 I observe that, it is an undisputed fact that with the advent of self-assessment under Section 17 of the Customs Act, 1962, a higher degree of trust and responsibility is placed on importers, who are required to correctly assess duty, declare all material particulars, and ensure full compliance with Customs laws. In terms of Section 46(4), the Importer must affirm the truthfulness and completeness of the Bill of Entry. However, in the present case, the Noticee failed to do so. On examination of the franchise and brand licensing agreements, it is evident that the Noticee was under an absolute contractual obligation to incur franchise

fees, mandatory advertising expenses, etc. as a condition of sale of the imported goods. These payments clearly influence the valuation of the imported goods and are required to be included in the assessable value under the Customs Valuation Rules, 2007. I find that despite this, the Noticee did not disclose these facts to Customs and did not add such mandatory payments to the assessable value, thereby violating the statutory obligation of truthful and complete declaration under Sections 17 and 46(4). The omission is not accidental but amounts to suppression of material facts and wilful mis-declaration, made with intent to evade duty. Accordingly, the differential duty is legally recoverable under Section 28(4) of the Customs Act, 1962, and the extended period of limitation stands rightly invoked. Penalty provisions under the said section also become applicable.

32.1.1 Further, M/s. MBIPL have subscribed to a declaration as to the truthfulness of the contents of the Bill of Entry in terms of Section 46(4) of the Customs Act, 1962 (CA, 1962) in respect of all their import declaration (including Bill of entry) filed with the Customs. Further, with the introduction of self-assessments and consequent upon amendments to Section 17, since 8th April, 2011, it is responsibility of the importer to declare correct description, value, notification etc and to correctly classify, determine and pay the duty applicable in respect of imported goods.

32.2 I note that the Hon'ble CESTAT, in its order dated 08.04.2024 (para 11), while examining the adjudication order passed by ACC, Export, Mumbai, observed that although penalty was proposed under Section 114A of the Customs Act, 1962, the finding in that case treated the goods as prohibited in nature, and therefore, to maintain coherence, penalty ought to have been imposed under Section 112(a). The Tribunal emphasized that the adjudicating authority's findings and the statutory provision invoked for penalty must be coherent and legally aligned with the nature of the offence.

Applying the same principle to the present case, it is seen that the Hon'ble Tribunal has directed examination of the extended period under Section 28(4), which presupposes wilful mis-declaration and suppression of facts. At the same time, if penalty were to be confined to Section 112 alone, it would create an inconsistency, because Section 112 applies to general contraventions, whereas Section 114A specifically applies to cases where duty has been evaded by reason of fraud, collusion, wilful mis-statement or suppression of facts. Since the record clearly establishes wilful suppression and mis-declaration affecting valuation, justifying invocation of Section 28(4), the coherent and legally correct penalty provision in this case is Section 114A, and not Section 112.

Accordingly, I hold that the penalty shall be imposed under Section 114A. Any observation of the Hon'ble CESTAT that appears to confine penalty to Section 112, while simultaneously directing examination under Section 28(4), is **obiter dicta** and cannot override the statutory scheme and factual findings of wilful suppression and mis-declaration. In view of the foregoing, I hold that the importer is liable to penalty-equal to duty evaded- under section 114A of Customs Act, 1962.

LEGAL OPINION REGARDING PAYMENT OF SERVICE TAX FROM PRICEWATERHOUSE COOPERS

33. Noticee vide written submission cum synopsis has submitted that they had obtained legal opinion that such payments are not liable to addition under Customs Law but under Service Tax law and accordingly, had even paid Service Tax on the same which clearly shows the bona-fide belief of the Noticee and there is no deliberate attempt to evade legitimate customs duties. I therefore, now proceed to examine the said legal opinion dated 13.05.2009 of Price Water House Coopers, Mumbai, to the importer regarding payment of Customs Duty and Service tax in the subject case.

33.1 At the outset, I observe that the said legal opinion was obtained against payment of consideration by the importer. This gives rise to a clear conflict of interest between the parties to the opinion—the party soliciting it and the party rendering it—since both derive financial benefit from the underlying commercial arrangement. Consequently, the opinion cannot be treated as an independent or unbiased assessment of the facts and issues involved.

33.2 I Further, I observe that the Noticee, MBIPL, never brought the said legal opinion to the notice of the Department, and the same came to light only through intelligence and investigation conducted by the DRI. Consequently, the Revenue Department cannot be bound by the contents or conclusions of an opinion that was neither voluntarily disclosed nor subjected to examination or scrutiny during the relevant period.

33.3 It is also noticed that there are many loop holes in the said legal opinion, namely,

(i) I observe that the agreement between MBIPL and Punto Spain, in respect of which the legal opinion was sought, pertains to the year 2001, whereas the importer obtained the said opinion only in 2009, i.e., after a considerable lapse of eight years from the execution of the agreement. There is no explanation or justification on record as to what prompted the importer to seek the opinion after such an extended gap.

(ii) I further observe that the legal opinion dated 13.05.2009 does not disclose or reflect the importer's understanding or position regarding the payment of customs duty during the intervening period from 2001 to 2009.

(iii) It is also observed that the actual agreement between MBIPL and Punto Spain was never placed before the legal consultant, PricewaterhouseCoopers (PwC), at the time of seeking the opinion.

(iv) The said legal opinion was based solely on the information and representations made by the importer regarding the terms and conditions of the agreement.

(v) The opinion proceeded on the assumption that the contractual payment or flow-back of money to the foreign brand owner was not a condition of sale of the imported goods.

(vi) The conclusions recorded in the opinion were expressly made subject to the completeness and accuracy of the facts and assumptions stated by the importer, with a specific stipulation that any inaccuracy or omission in the information provided could materially affect the conclusions drawn therein.

(vii) It is further noted that the opinion itself contains a caveat that the tax authorities or regulators may adopt a position contrary to the view expressed therein, thereby negating any claim of binding effect on the Department.

This chain of observations clearly establishes that the legal opinion relied upon by the importer is neither contemporaneous nor based on the actual contractual documents, and **was in fact obtained on the basis of misrepresentation of facts—specifically, the assertion that payments to the brand owner were not a condition of sale of the imported goods.** Further, the opinion itself is qualified by multiple disclaimers and limitations, which materially undermine its evidentiary weight. Accordingly, the said legal opinion does not carry any binding or persuasive value in the present proceedings.

33.4 It is further noticed that the Hon'ble Tribunal has also not made any specific observations or findings with respect to the said legal opinion while deliberating upon the facts and circumstances of the case in its final order dated 08.04.2024. This further reinforces the position that the said opinion was neither relied upon nor accorded any evidentiary or persuasive weight in the adjudication of the matter.

PAYMENT OF SERVICE TAX BY THE NOTICEE

34. Further, the Noticee contended that as they are already paying Service Tax on Franchisee Service on reverse charge basis, and therefore they were under bona fide belief that the same amount should not be added to the value of the imported goods for charging the Customs Duty. Shri Naveen Golchha, CFO in M/s. Major Brands (I) Pvt. Ltd. during hearing dated 27.02.2019 stated that on the Franchisee fees, service tax has been paid at higher rate than BCD of 10% demanded in SCN and questioned that will any tax evader mis-state or suppress facts so as to pay more service tax to save less customs duty?. That, it is nobody's case that both customs duty and service tax can be levied or payable on the same goods; service tax cannot be charged on the goods as part of a transaction, it is leviable only on service part of the transaction; once the franchise fee or other fee which are subject matter of SCN is to be added to value of the goods, the possibility of their being again subjected to nil service tax; the service tax and custom duty are mutually exclusive as are the sales tax and service tax; That, they have not availed CENVAT credit of service tax paid on reverse charge basis in respect of the franchise fee all these years and it is only from FY 2014-15 that they have started claiming CENVAT credit to some extent since they are charging management fee and commissions. That, the Company is engaged in the retail sale of the various merchandise viz. apparels, footwear, accessories, through its channel of more than 150 retail stores in India. Company has paid Service Tax, to the extent of Rs. 10.03 crores in the last five years. In any case, both the Customs Act, 1962 and Finance Act, 1994 are separate legal

codes and therefore, there does not exist any mutual exclusivity between the two, so that the noticee could claim any relief from the Customs Duty in this respect.

34.1 In this regard, in view of facts and circumstances of the present case, I would like to cite and follow the judgment of the Principal Bench, CESTAT, New Delhi in the case of Atul Kaushik V/s. Commissioner of Customs (Export), New Delhi reported at 2015 (330) ELT 417 (Tri. Del.). Same has been upheld by the Hon'ble Supreme Court of India. The Hon'ble Supreme Court Bench comprising Hon'ble Mr. Justice Madan B. Lokur and Hon'ble Mr. Justice N.V. Ramana on 11-3-2016, dismissed Civil Appeal No. 13443 of 2015 filed by Oracle India Pvt. Ltd. against the CESTAT Final Order Nos. A/52353-52355/2015-CU(DB) dated 29-7-2015 as reported in 2015 (330) E.L.T. 417 (Tri.-Del.). In Para 14 of the said judgment, Hon'ble Tribunal has held that:

“14. Coming to the contention that from 2008 OIPL was paying service tax on the licence fee paid by it to Oracle USA and therefore the value of the licence fee could not be added in the value of the media packs imported, we find that OIPL has relied upon the judgment of Supreme Court in the case of Imagic Creative Private Ltd. (supra) in support of this contention. The said judgment essentially laid down the ratio that payment of service tax and VAT are mutually exclusive. The said ratio laid down by the Supreme Court cannot be extrapolated to mean that customs duty and service tax are also mutually exclusive. In this regard it is pertinent to recall once again the observation of the Supreme Court in the case of CC, Chennai v. Toyota Kirloskar Motor Pvt. Ltd. (supra) that a “decision is an authority for what it decides and not what can be logically deduced there from.” We are not even for a moment suggesting that mutual exclusivity of customs duty and service tax can be logically deduced from the Supreme Court judgment in the case of Imagic Creative Pvt. Ltd. (supra). No constitutional provision is brought to our notice inhibiting levy of taxes under different statutes on the same transactions. It is axiomatic that the same transaction may *inhere* distinct taxable events, *exigible* to different taxes. The only question is whether demand of tax is sustainable under the particular statute, as claimed by Revenue. The licence fee being a condition of sale is includible in the assessable value of the media packs in terms of the Customs Act, 1962 and the Rules made thereunder and there is no provision warranting exclusion from the assessable value for customs purposes, on the ground that service tax has become chargeable on such licence fee under a different statute.”

34.2 The Appellate Tribunal in its impugned order had held that it is settled law that **licence fee is includible in assessable value of imported goods if paid or required to be paid as a ‘condition of sale’**. Also settled law that licence fee charged for countrywide use of same software includible in assessable value of imported software. Applying settled law on factual matrix of instant case where licence fee paid on import of commercial media pack under a unique identification number pertaining to each customer by M/s. Oracle India from

copyright holder of said goods was found to be condition of sale, said licence fee is includible in assessable value.

34.3 It was further held by Tribunal that there is no prohibition of levy of different taxes on same transaction, as it may inhere distinct taxable events. **Payment of Service Tax on licence fee under a different statute is no ground for its non-inclusion in assessable value under another statute for paying Customs duty. Customs duty and Service Tax are not mutually exclusive.** It was also held that in view of provisions of Section 3(8) of Customs Tariff Act, 1975, provisions of confiscation, interest and penalties under Customs Act applicable to CVD leviable under Section 3 of Customs Tariff Act.

Thus, the Noticee's contention is not acceptable that the amount of Franchisee Fee cannot be added to the assessable value because they are paying Service Tax on the same transaction.

34.4 Therefore, I find that MBIPL's contention that the payment of Service Tax reflects a lack of intent to evade Customs duty is wholly untenable. Customs duty and Service Tax are not mutually exclusive, and payment of one cannot exempt or justify non-payment of the other. This legal position has been categorically upheld by the Hon'ble Supreme Court in Civil Appeal No. 13443 of 2015 filed by Oracle India Pvt.Ltd. against the CESTAT Final Order Nos. A/52353-52355/2015-CU(DB) dated 29-07-2015, reported in 2015 (330) E.L.T. 417 (Tri.-Del.). In fact, a single transaction may simultaneously attract both levies, depending on its nature. By selectively paying Service Tax while deliberately failing to discharge the corresponding Customs duty liability, MBIPL cannot claim bona fide conduct or ignorance of the law.

34.5 In view of the above, although the payment of service tax is immaterial, however I can't fail to observe that the importer has failed to furnish any documentary evidence or details regarding the payment of Service Tax. Further, the importer has neither disclosed whether any refund application has been filed with the tax authorities in respect of the service tax allegedly paid on the impugned goods, nor submitted any details or declaration to that effect. The importer has also not provided any declaration indicating whether there exists any pending Service Tax liability or any show cause notice, demand, or proceedings initiated by the GST/Service Tax authorities in relation to the said transactions. This deliberate non-disclosure of material facts further undermines the credibility of the importer's claim and indicates a clear lack of transparency and bona fides.

34.6 In view of above findings and the responsibility cast upon this adjudicating authority by the Hon'ble Tribunal in the subject de-novo order, I find that element of deliberate suppression with intent to evade customs duty is clearly present in the instant case. Under provisions of Section 17(1) and Section 46(4) the prime responsibility, of making a true, correct and factual declaration while proper, accurate and complete self-assessment of duty while including all eligible elements of value, has been cast upon the importer. It is evident from above findings as to how importer cannot escape from the aforesaid legal and unambiguous responsibility due to any reasons. In the instant case, there is no dispute about the facts that the importer was well aware of the subject agreements of sale wherein subject elements of value like **Franchise Entrance Fee, Franchise Fee, International Marketing Charges and Local Advertisement and Sales Promotion Expenses in India** were condition of sale of subject imported goods. There is also no dispute about the fact that importer has

never declared the said facts while filling the subject Bills of Entry. Rather, the importer clearly, admittedly and deliberately attempted to cover up the whole suppression under a well-planned strategy of obtaining a 'conflict -of-interest' based, faulty, irrelevant and old legal opinion even wherein it has been clearly mentioned that customs authorities may take a contrary view. Still the importer chose to not declare the subject substantive facts before the Customs Authorities. It clearly establishes that importer was well aware of their responsibility of true and correct declaration, self-assessment and accordingly paying the duty. I further observe that any commercial interest is distinguishable from self-entitled deliberate evasion of duty which is evident from the fact that Noticee failed to declare substantial facts of payment of different elements of import price in form of Franchise Entrance Fee, Franchise Fee, International Marketing Charges and Local Advertisement and Sales Promotion Expenses in India which were a condition of sale and which even as per importers own appreciation and subject legal opinion were potential inclusions in assessable value for payment of customs duty.

34.7 In view of the de-novo directions of the Hon'ble Tribunal, this authority has to pass a well-reasoned, speaking and consistent order. Otherwise also, any adjudicating has to follow the aforesaid principle. In view of above detailed findings, the element of suppression with intention to evade duty is clearly and unambiguously present in the instant case. Therefore, the instant case cannot be dealt as per the provisions of Section 28(1) but is needed to be dealt while confirming the demands under Section 28(4) of the Customs Act, 1962. The consistency and legal provisions also demand that in this case of suppression, applicability of Section 114A also cannot be avoided. Moreover, the legal consistency also demands in this case of suppression, that the provisions of confiscability under Section 111(m) and provisions of penalty under Section 112(a)(ii) subject to provisions of Section 114A also follow.

D. NOW, I PROCEED TO EXAMINE THE NEXT ISSUE, AS TO WHETHER IMPORTED GOODS ARE LIABLE FOR CONFISCATION UNDER SECTION 111 OF THE CUSTOMS ACT, 1962.

35. Show Cause Notice (SCN) proposes for confiscation under Sections 111(d) and 111(m) of the Customs Act, 1962.

The provisions of Section 111(d) and 111(m) of the Customs Act, 1962 (relevant to the facts of the instant case) provide for confiscation of improperly imported goods, as under:-

(i) The provisions of Section 111 (d) stipulate that "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" shall be liable to confiscation.

(ii) The provisions of Section 111(m) stipulate that "Any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the goods under transshipment, with the declaration for transshipment referred to in the proviso to sub- Section (1) of Section 54" shall be liable to confiscation.

35.1 I observe that Noticee has argued that a bona fide valuation dispute does not warrant confiscation. That, CVR-2007 Rule 11 requires one to declare correctly the value, quantity and description of the goods and the same were followed by noticee. That, the noticee had a legal opinion regarding its tax liability and was under bona fide impression that payments to brand owners were liable to addition under Customs Law but under Service Tax law and accordingly, paid Service Tax.

35.2 In this regard, I reiterate my findings as recorded in **Para 13 to 34 supra**, as the same are **mutatis mutandis** applicable to the present case. I find that:-

35.2.1 I find that, as per Section 2(41) of the Customs Act, 1962, read with Section 14(1) *ibid* and Rules 3, 10(1)(c), 10(1)(d) and 10(1)(e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 2007), the assessable value of imported goods is determined by suitably adjusting the transaction value to include all payments made as a condition of the sale of the imported goods—whether made by the buyer directly to the seller or to a third party to discharge an obligation of the seller.

That, in terms of Article 8.1(c) of the WTO Customs Valuation Agreement (CVA), a royalty or licence fee is considered to be related to the imported goods when those goods use or incorporate the licensed intellectual property. To determine whether such a fee is a “condition of sale,” the key test is whether the buyer must pay the royalty or licence fee in order to purchase the goods. If the buyer cannot purchase the goods without making this payment, then the fee is deemed to be a condition of sale.

That, as per Investopedia, a franchise is a type of licence that allows a party (the franchisee) to access the franchisor’s proprietary knowledge, processes, and trademarks to sell products or provide services under the franchisor’s brand name. In return, the franchisee typically pays the franchisor an initial start-up fee and annual licensing fees.

In the present case, under the agreement between M/s Major Brands Pvt. Ltd. (MBIPL) and the foreign brand owners, the expenses towards Entrance Fee, Franchise Fee, and International Marketing are directly related to the import of the goods. These payments have a clear nexus with the imported goods, and the importer cannot procure the goods without making these payments. Therefore, such payments are a condition of sale and must be added to the transaction value of the imported goods in accordance with Rule 10(1)(c), 10(1)(d) and 10(1)(e) of CVR, 2007.

I also note that Shri Naveen Golchha, CFO of M/s MBIPL, in his voluntary statement dated 09.10.2014 & 19.05.2016 recorded under Section 108 of the Customs Act, 1962, categorically admitted that, as per Rule 10 of CVR, 2007, franchise fee payments should have been included in the assessable value of the imported goods for the purpose of payment of customs duty.

The legal position regarding the evidentiary value of statements made under Section 108 of the Customs Act, 1962 is well settled. It has been consistently held by various judicial fora that Section 108 is an enabling provision and an effective tool for the Customs authorities to collect evidence in the form of voluntary statements. Such statements are considered material and can be relied upon as substantive evidence, among others.

35.2.2 In view of the above, it is an undisputed fact that with the advent of self-assessment under Section 17 of the Customs Act, 1962, a higher degree of trust and responsibility is placed on importers, who are required to correctly assess duty, declare all material particulars, and ensure full compliance with Customs laws. In terms of Section 46(4), the Importer must affirm the truthfulness and completeness of the Bill of Entry. However, in the present case, the Noticee failed to do so. On examination of the franchise and brand licensing agreements, it is evident that the Noticee was under an absolute contractual obligation to incur franchise fees, mandatory advertising expenses, etc. as a condition of sale of the imported goods. These payments clearly influence the valuation of the imported goods and are required to be included in the assessable value under the Customs Valuation Rules, 2007. I find that despite this, the Noticee did not disclose these facts to Customs and did not add such mandatory payments to the assessable value, thereby violating the statutory obligation of truthful and complete declaration under Sections 17 and 46(4). The omission is not accidental but amounts to suppression of material facts and wilful mis-declaration, made with intent to evade duty. Accordingly, the differential duty is legally recoverable under Section 28(4) of the Customs Act, 1962, and the extended period of limitation stands rightly invoked. Penalty provisions under the said section also become applicable.

35.2.3 I find that MBIPL's contention that the payment of Service Tax reflects a lack of intent to evade Customs duty is wholly untenable. Customs duty and Service Tax are not mutually exclusive, and payment of one cannot exempt or justify non-payment of the other. This legal position has been categorically upheld by the Hon'ble Supreme Court in Civil Appeal No. 13443 of 2015 filed by Oracle India Pvt. Ltd. against the CESTAT Final Order Nos. A/52353-52355/2015-CU(DB) dated 29-07-2015, reported in 2015 (330) E.L.T. 417 (Tri.-Del.). In fact, a single transaction may simultaneously attract both levies, depending on its nature.

By selectively paying Service Tax while deliberately failing to discharge the corresponding Customs duty liability, MBIPL cannot claim bona fide conduct or ignorance of the law. On the contrary, this reflects a calculated and deliberate business strategy to pay a lower tax (Service Tax) while evading a significantly higher liability (Customs duty), which included Basic Customs Duty (BCD), Education Cess at 2%, Secondary and Higher Education Cess at 1%, and Countervailing Duty (CVD). This wrongful conduct is further aggravated by the fact that such payment of Service Tax and non-payment of Customs duty was sought to be justified on the basis of a legal opinion that was itself obtained against payment of consideration, thereby giving rise to a clear conflict of interest between the party seeking and the party rendering the opinion. Moreover, the said legal opinion was never disclosed to the Department and came to light only through investigation conducted by the DRI, indicating

deliberate concealment of material facts. Reliance on such a tainted and undisclosed legal opinion cannot absolve the importer of its statutory duty liability. On the contrary, the said legal opinion itself debunks the Noticee's case and establishes a deliberate and premeditated strategy to create a façade of legal justification to evade Customs duty, thereby reinforcing the finding of wilful suppression and lack of bona fides.

That, the importer has failed to furnish any documentary evidence or details regarding the payment of Service Tax. Further, the importer has neither disclosed whether any refund application has been filed with the tax authorities in respect of the service tax allegedly paid on the impugned goods, nor submitted any details or declaration to that effect. The importer has also not provided any declaration indicating whether there exists any pending Service Tax liability or any show cause notice, demand, or proceedings initiated by the GST/Service Tax authorities in relation to the said transactions. This deliberate non-disclosure of material facts further undermines the credibility of the importer's claim and indicates a clear lack of transparency and bona fides.

35.2.4 I find that the issuance of a prior SCN covering the period 2010–11 to 30.09.2014 in no manner absolves MBIPL of its continuing statutory obligation to declare the full and correct value of goods for each subsequent import. The importer was legally required to disclose all payments made to foreign suppliers—including franchise fees, marketing fees, and entrance fees—under Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, in every Bill of Entry filed. The suppression of these additional costs in the Bills of Entry for the periods 01.10.2014 to 31.03.2015 and 01.04.2015 to 16.06.2015 constitutes a fresh, distinct, and independent act of suppression. Further, this fact has been categorically admitted by the Noticee during the personal hearing held on 15.09.2025 and in its subsequent submission dated 16.09.2025, wherein it was expressly acknowledged that the importer failed to disclose the agreements with the brand owners. These agreements made it contractually mandatory for MBIPL to make payments to the brand owners as a condition of sale of imported goods. Suppression is a positive act of concealment, and the continuation of such non-disclosure even after initiation of investigation demonstrates a persistent, conscious, and deliberate intent to evade payment of duty.

Since each import transaction is a separate transaction and governed by the provision of the Customs Act, 1962, the importer cannot seek refuge under the plea that the Department was already aware of the modus operandi due to the earlier investigation and SCN. The law is well settled that **every import transaction attracts a separate and independent obligation to declare the true and complete assessable value**, and failure to do so constitutes a fresh contravention. Moreover, with the introduction of **self-assessment** under Section 17 of the Customs Act, 1962 w.e.f. 08.04.2011, it is the importer's responsibility to correctly classify, value, and declare goods, and to pay the applicable duty. MBIPL also subscribed to declarations under **Section 46(4)** of the Customs Act, 1962 for each Bill of Entry, certifying the truthfulness of the value declared. Additionally, under **Rule 11 of the CVR, 2007**, the importer is mandatorily required to furnish full and accurate value details, with non-compliance attracting provisions relating to confiscation, penalty, and prosecution.

Despite being fully aware of the ongoing investigation initiated by DRI on 09.10.2014, MBIPL continued to deliberately withhold information about payments made to brand owners for the subsequent period, neither declaring such payments in the Bills of Entry nor voluntarily disclosing them to the field formations. This **deliberate non-disclosure, even during an active investigation**, goes far beyond inadvertence and establishes a clear pattern of wilful suppression and mala fide intent to evade Customs duty. The **importer's defence**, claiming that the extended period is not invocable because the Department already possessed the relevant documents, is thus both factually and legally unsustainable. The **reliance on a tainted legal opinion** obtained through misrepresentation of facts further underscores the deliberate and premeditated nature of the evasion.

I find that, Rule 11 of the Customs Valuation (determination of value of imported goods) Rules, 2007 requires the importer or his agent to furnish declaration disclosing full and accurate details relating to the value of imported goods and makes the provisions of the Customs act, 1962 (52 of 1962) relating to confiscation, penalty and prosecution applicable in cases where wrong declaration, information, statement of documents are furnished under these rules. Further, M/s. MBIPL have subscribed to a declaration as to the truthfulness of the contents of the Bill of Entry in terms of Section 46(4) of the Customs Act, 1962 (CA, 1962) in respect of all their import declaration (including Bill of entry) filed with the Customs. Further, with the introduction of self-assessments and consequent upon amendments to Section 17, since 8th April, 2011, it is responsibility of the importer to declare correct description, value, notification etc and to correctly classify, determine and pay the duty applicable in respect of imported goods.

Therefore, Noticee- MBIPL, by way of wilful suppression of facts and mis-statements- has not declared the correct assessable value of the imported goods in the bill of Entry and evaded the Customs duties as brought out clearly in the preceding paragraphs. As the assessable values have been mis-declared, in as much as the additions required to be made to the assessable values on account of payment made on account of franchise entrance fee, franchise fee, and advertisement as discussed above have not been made, & therefore has rendered the imported goods liable for confiscation under the provisions of Section 111 (m) of the Customs Act, 1962.

Regarding the **invocation of extended period**, Para 3.7 of the Master Circular No. 1053/02/2017-CX dated 10.03.2017 aims to avoid repeated SCNs invoking extended period on the same set of facts and period, once the Department is in possession of all material evidence. However, the same circular does not impose an absolute bar on issuance of subsequent SCNs covering a **different period of import**, even if the modus operandi remains the same. In the present case, the subsequent SCN arises directly out of the **continuation of the DRI investigation**, which was later transferred to SIIB (I), JNCH, and pertains to a later period. It is not a fresh or unrelated matter, but a logical extension of the same investigation covering distinct imports and separate taxable events.

Therefore, in view of the above legal position, the **extended period under the proviso to Section 28(4)** of the Customs Act, 1962 is **rightly invocable** for the present demand. The

issuance of the subsequent SCN is legally sustainable, justified by fresh acts of wilful suppression by the importer, and squarely in conformity with the Master Circular. The continued non-declaration by MBIPL after the initiation of investigation reflects a **fresh, conscious and deliberate design to evade Customs duty**, rather than an inadvertent lapse. Accordingly, I hold that the subsequent SCN is valid in law and fully enforceable.

35.3 Further, I find that although evidently it is proved by investigation, foregoing Para-13 to 34 and statements of Sh. Naveen Golchha, Sh. Tushar Raul, Director of CB firm M/s. Sidhi Clearing & Forwarding Pvt. Ltd. recorded under section 108 of Customs Act 1962 that the noticee has violated various provisions of the Act by wilfully not included the various payments to brand owner on account of Entrance Fee, Franchisee Fee, International Marketing charges, despite the clear legal provisions governing the subject matter, and instead sought to obtain a *legal opinion* based on misrepresentation *by the client himself*, and despite ongoing DRI investigation initiated on 09.10.2014, Noticee consciously & deliberately neither declared the payments made to the brand owner in the subsequent filed Bills of Entry, nor intimated customs authority about the existing agreement with the brand owner.

It is also observed on the weight of the case laws that Revenue does not need to prove the allegation of violation with mathematical precision in the case. I rely upon following judgement in this context:

- (i) Hon'ble Supreme Court in CC Madras V/s D Bhuramal - [1983 (13) ELT 1546 (SC)] has held that 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.
- (ii) In the case of Satish Mohan Agarwal (Prop M/s Casino Electronics) Vs Cc (Sea-Export) Chennai. Reported in 2016-TIOL-620-CESTAT-MAD, Tribunal held that Penal provisions are enacted to suppress the evil of defrauding Revenue which is an anti-social activity adversely affecting the public revenues, the earning of foreign exchange, the financial stability and the economy of the country. Such provisions should be construed in a manner which would suppress the mischief, promote their object, prevent their subtle evasion and foil their artful circumvention. It was also held that "It may be stated that Revenue need not prove its case with mathematical precision.
- (iii) In the case of Collector Of Customs, Madras And... vs D. Bhoormul on 3 April, 1974 the Hon'ble Supreme Court held that "we must pay due regard to other kindred principles, no less fundamental, of universal application. One of them is that the prosecution or the Department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and-as Prof. Brett felicitously puts it all exactness is a fake" El Dorado of absolute proof being unattainable, the law accepts for it, probability as a working substitute in this work-a-day world. The law does not require the prosecution to prove

the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus, legal proof is not necessarily perfect proof; often it is nothing more than a prudent man's estimate as to the probabilities of the case. The other, cardinal principle having an important bearing on the incidence of burden of proof is that sufficiency and weight of the evidence is to be considered-to use the words of Lord Mansfield in Batch v. Archer(1) "according to the proof which it was in the power of one side to prove, and in the power of the other to have contradicted". Since it is exceedingly difficult, if not absolutely impossible, for the prosecution to prove facts which are especially within the knowledge of the opponent or the accused, it is not obliged to prove them as parts of its primary burden."

Therefore the Customs duties have been evaded by M/s. MBIPL by way of wilful suppression of facts and mis-statements, as brought out clearly in the preceding paragraphs.

35.4 I further observe that CVR-2007, Rule 11 states as follows:-

"11. Declaration by the importer. –

(1) The importer or his agent shall furnish - (a) a declaration disclosing full and accurate details relating to the value of imported goods; and (b) any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer, as considered necessary by the proper officer for determination of the value of imported goods under these rules.

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

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

35.5 I find that, Rule 11 of the Customs Valuation (determination of value of imported goods) Rules, 2007 requires the importer or his agent to furnish declaration disclosing full and accurate details relating to the value of imported goods and makes the provisions of the Customs act, 1962 (52 of 1962) relating to confiscation, penalty and prosecution applicable in cases where wrong declaration, information, statement of documents are furnished under these rules. Further, M/s. MBIPL have subscribed to a declaration as to the truthfulness of the contents of the Bill of Entry in terms of Section 46(4) of the Customs Act, 1962 (CA, 1962) in respect of all their import declaration (including Bill of entry) filed with the Customs. Further, with the introduction of self-assessments and consequent upon amendments to Section 17, since 8th April, 2011, it is responsibility of the importer to declare correct description, value, notification etc and to correctly classify, determine and pay the duty applicable in respect of imported goods.

Therefore, Noticee- MBIPL, by way of wilful suppression of facts and mis-statements- has not declared the correct assessable value of the imported goods in the bill of Entry and evaded the Customs duties as brought out clearly in the preceding paragraphs. As the assessable values have been mis-declared, in as much as the additions required to be made to the assessable values on account of payment made on account of franchise entrance fee, franchise fee, and advertisement as discussed above have not been made, & therefore has rendered the imported goods liable for confiscation under the provisions of Section 111 (m) of the Customs Act, 1962.

35.6 I also find that the case is established on documentary evidences as detailed in Paras above, 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. ‘

35.7 I further observe that Show Cause notice has proposed confiscation under section 111(d) of the Customs Act, 1962.

35.8 I find that section 111(d) applies only where the import of goods is contrary to any prohibition imposed under the Customs Act, the Foreign Trade (Development & Regulation) Act, 1992, Foreign Trade Policy, or any other law in force. Such prohibition may arise from import licensing conditions, quota restrictions, NOC requirements, or express policy bans.

In the present case, the imported branded goods are freely importable under the prevailing Foreign Trade Policy and there is no prohibition under the FTDR Act, FTDR Rules, or any provision of the Customs Act restricting their import. The Noticee has not imported any prohibited or restricted goods, nor is there any allegation of violation of any condition of import licence or Foreign Trade Policy. Thus, the essential statutory condition to invoke Section 111(d) is not satisfied. The issue in this case pertains solely to misdeclaration of value by non-disclosure and non-inclusion of franchise fees, advertisement expenses, etc. in the assessable value, which constitutes suppression of material particulars affecting valuation.

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

“23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be oticeati, 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 oticeat by this Act”, brings out the point clearly. The power to impose redemption fine springs from the oticeation of confiscation of goods provided for under Section 111 of the Act. When once power of oticeation 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).”

35.10 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.).

35.11 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.

35.12 It is established under the law that the declaration under section 17 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 are liable for confiscation under Section 111 of the Customs Act, 1962 and Redemption Fine is imposable on them under provisions of Section 125 of the Customs Act, 1962. A few such cases are detailed below:

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

- b) M/s Sangeeta Metals (India) Vs. Commissioner of Customs (Import) Sheva, as reported in 2015 (315) ELT 74 (Tri-Mumbai);
- c) M/s Saccha SaudhaPedhi Vs. Commissioner of Customs (Import), Mu reported in 2015 (328) ELT 609 (Tri-Mumbai);
- d) M/s Unimark Remedies Ltd. Versus. Commissioner of Customs (Export Promotion), Mumbai reported in 2017(335) ELT (193) (Bom)
- e) M/s Weston Components Ltd. Vs. Commissioner of Customs, New Delhi reported in 2000 (115) ELT 278 (S.C.) wherein it has been held that:

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

- 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.”

35.13 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.

35.14 In view of the above findings, it is clear that the goods imported by the Noticee are not prohibited goods, nor has there been any contravention of the Foreign Trade (Development & Regulation) Act, FTDR Rules or the Foreign Trade Policy. Accordingly, confiscation cannot be sustained under Section 111(d) of the Customs Act, 1962, as there exists no prohibition on import in law.

However, the deliberate non-disclosure and non-inclusion of franchise fees, local advertisement expenses and promotional expenses etc. in the assessable value constitute wilful suppression and misdeclaration of material particulars affecting the valuation of imported goods. Therefore, the goods are squarely liable to confiscation under Section 111(m) of the Customs Act, 1962.

E. NOW, I PROCEED TO EXAMINE THE NEXT ISSUE, AS TO WHETHER PENALTY SHOULD BE IMPOSED ON THE NOTICEE UNDER SECTION 112 OF THE CUSTOMS ACT, 1962.

36. I observe that the legal provision reading penalty under section 112 & 114A are as follows:

Section 112 of the Customs Act, 1962 interalia provides for penalty for improper importation of goods, which reads as under:-

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

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

.....

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions 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:"

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

"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 ³⁰[(8)] of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined :

.....

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

36.1 It is observed that on a comparative analysis of **penalty under Section 112 and penalty under Section 114A** of the **Customs Act, 1962** establishes that the **decisive factor for their application is the presence or absence of wilful intent** to evade duty, and that both provisions are **mutually exclusive** in their operation in respect of the same act of duty evasion.

Section 112 is a general penal provision applicable in cases where goods are rendered liable to confiscation, irrespective of whether there was any deliberate intent to evade duty. Penalty under this section can be imposed even for non-wilful contraventions, including negligence, procedural lapses, or failure to comply with statutory requirements. The quantum of penalty is discretionary subject to maximum of 10% of duty evaded for dutiable goods that are not prohibited, allowing the adjudicating authority to consider the facts, nature of the offence, and mitigating factors.

Section 114A, however, is a specific and more stringent provision, applicable only when the duty has not been levied, short-levied, or erroneously refunded by reason of fraud, collusion, wilful misstatement, suppression of facts, or contravention of provisions with intent to evade duty. Once wilful intent is established, penalty under Section 114A is mandatory and equivalent to the amount of duty evaded. It is, therefore, a penal consequence for deliberate and fraudulent conduct.

Importantly, the fifth proviso to Section 114A expressly provides that “no penalty shall be imposed under Section 114A if penalty has been imposed under Section 112...” for the same act or omission. This legislative intent makes it clear that penalties under Section 112 and Section 114A are mutually exclusive in respect of the same offence. In other words, where wilful intent is established, penalty must be imposed under Section 114A, and not under Section 112; whereas if wilful intent is not proved, the case falls within the ambit of Section 112.

Thus, Section 112 is designed to address **non-wilful, technical or negligent contraventions**, whereas Section 114A is reserved for **wilful and deliberate evasion**. The **mutual exclusivity** embodied in the fifth proviso ensures proportionality of penalty and prevents double jeopardy for the same act. The choice between the two provisions must, therefore, be guided strictly by the **mens-rea established on record**.

36.2 It is an undisputed fact that with the advent of self-assessment under Section 17 of the Customs Act, 1962, a higher degree of trust and responsibility is placed on importers, who are required to correctly assess duty, declare all material particulars, and ensure full compliance with Customs laws. In terms of Section 46(4), the Importer must affirm the truthfulness and completeness of the Bill of Entry. However, in the present case, the Noticee failed to do so. On examination of the franchise and brand licensing agreements, it is evident that the Noticee was under an absolute contractual obligation to incur franchise fees, mandatory advertising expenses, etc. as a condition of sale of the imported goods. These payments clearly influence the valuation of the imported goods and are required to be included in the assessable value under the Customs Valuation Rules, 2007. I find that despite this, the Noticee did not disclose these facts to Customs and did not add such mandatory payments to the assessable value, thereby violating the statutory obligation of truthful and complete declaration under Sections 17 and 46(4). The omission is not accidental but amounts to suppression of material facts and wilful mis-declaration, made with intent to evade duty. Accordingly, the differential duty is legally recoverable under Section 28(4) of the Customs Act, 1962, and the extended period of limitation stands rightly invoked. Penalty provisions under the said section also become applicable.

36.3 As held in Para 13 to 34 supra, importer by way of **wilful suppression of facts and mis-statements**- has not declared the correct assessable value of the imported goods in the bill of Entry and evaded the Customs duties. As the assessable values have been mis-declared, in as much as the additions required to be made to the assessable values on account of payment made on account of franchise entrance fee, franchise fee, and advertisement as discussed

above have not been made, & therefore has evaded Customs duty on such payments and rendered the imported goods liable for confiscation under the provisions of Section 111 (m) of the Customs Act, 1962.

36.4 I note that the Hon'ble CESTAT, in its order dated 08.04.2024 (para 11), while examining the adjudication order passed by ACC, Export, Mumbai, observed that although penalty was proposed under Section 114A of the Customs Act, 1962, the finding in that case treated the goods as prohibited in nature, and therefore, to maintain coherence, penalty ought to have been imposed under Section 112(a). The Tribunal emphasized that the adjudicating authority's findings and the statutory provision invoked for penalty must be coherent and legally aligned with the nature of the offence.

Applying the same principle to the present case, it is seen that the Hon'ble Tribunal has directed examination of the extended period under Section 28(4), which presupposes wilful mis-declaration and suppression of facts. At the same time, if penalty were to be confined to Section 112 alone, it would create an inconsistency, because Section 112 applies to general contraventions, whereas Section 114A specifically applies to cases where duty has been evaded by reason of fraud, collusion, wilful mis-statement or suppression of facts. Since the record clearly establishes wilful suppression and mis-declaration affecting valuation, justifying invocation of Section 28(4), the coherent and legally correct penalty provision in this case is Section 114A, and not Section 112.

Accordingly, I hold that the penalty shall be imposed under Section 114A. Any observation of the Hon'ble CESTAT that appears to confine penalty to Section 112, while simultaneously directing examination under Section 28(4), is **obiter dicta** and cannot override the statutory scheme and factual findings of wilful suppression and mis-declaration. In view of the foregoing, I hold that the importer is liable to penalty-equal to duty evaded- under section 114A of Customs Act, 1962.

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

"31. "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a

party makes representations, which he knows to be false, although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (Ram Chandra Singh v. Savitri Devi and Ors.[2003 (8) SCC 319].

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

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

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

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

So also no Court in this country can allow any benefit of fraud to be enjoyed by anybody as is held by Apex Court in the case of Chengalvaraya Naidu reported in (1994) 1 SCC 1 : AIR 1994 SC 853. Ram Preeti Yadav v. U.P. Board High School and Inter Mediate Education (2003) 8 SCC 311.

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

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

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

36.6 It is also noticed that the SCN dated 26.09.2016, that is adjudicated by O-I-O No. 59 /2019-20/Commr/NS-III/CAC/JNCH dated 28.11.2019, proposed penalty under section 112, whereas SCN dated 22.02.2017 that is adjudicated by O-I-O No. 60 /2019-20/Commr/NS-III/CAC/JNCH dated 28.11.2019 proposed penalty under section 112 / 114A. Therefore, I find that due to inadvertent error in charging penalty only under section 112 in SCN dated 29.09.2016, the ester-while adjudicating authority had no option but to impose the penalty under s section 112 of Customs Act, 1962.

36.7 Therefore, I impose a penalty equal to 10% of the differential duty/ duty evaded under section 112 on the Noticee as proposed in SCN dated 26.09.2016 and impose a penalty equal to the differential duty/ duty evaded under section 114A on the Noticee as proposed in SCN dated 22.02.2017 of Customs Act, 1962.

IMPOSITION OF PENALTY UNDER SECTION 114AA OF CUSTOMS ACT, 1962.

37. I observe that provision for Penalty under Section 114AA of the Customs Act, 1962, is as follows: ***Penalty for use of false and incorrect material 114AA.*** “*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.”

37.1 Noticee has contended that the imposition of the penalty under section 114AA on M/s. Major Brands (I) Pvt. Ltd (MBIPL), is non-tenable under Customs act 1962, as MBIPL being a company or artificial person does not comes under the definition of ‘any person’, as per section 114AA *ibid*. **And placed reliance on the case of TR Venkatadari.**

37.2 I this regard, I observe that section 140 of Customs Act provides as follows:

“140. Offences by companies.—(1) If the person committing an offence under this Chapter is

a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to such

punishment provided in this Chapter if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Chapter has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) —company¹ means a body corporate and includes a firm or other association of individuals;

and

(b) —director¹, in relation to a firm, means a partner in the firm.”

37.3 I find that Penalty under Section 114AA of the Customs Act, 1962 is imposed on a person who makes a false statement or delivers a false document which he knows or has reason to believe to be false. In the case on hand, I note that the signed Bills of Entry, containing the mis-declaration of the value of the imported by not including the payments made to the brand owner as a conditions of sale of imported goods, constitute such a document.

37.4 In view of the above, it is an undisputed fact that with the advent of self-assessment under Section 17 of the Customs Act, 1962, a higher degree of trust and responsibility is placed on importers, who are required to correctly assess duty, declare all material particulars, and ensure full compliance with Customs laws. In terms of Section 46(4), the Importer must affirm the truthfulness and completeness of the Bill of Entry. However, in the present case, the Noticee failed to do so. On examination of the franchise and brand licensing

agreements, it is evident that the Noticee was under an absolute contractual obligation to incur franchise fees, mandatory advertising expenses, etc. as a condition of sale of the imported goods. These payments clearly influence the valuation of the imported goods and are required to be included in the assessable value under the Customs Valuation Rules, 2007. I find that despite this, the Noticee did not disclose these facts to Customs and did not add such mandatory payments to the assessable value, thereby violating the statutory obligation of truthful and complete declaration under Sections 17 and 46(4). The omission is not accidental but amounts to suppression of material facts and wilful mis-declaration, made with intent to evade duty. Accordingly, the differential duty is legally recoverable under Section 28(4) of the Customs Act, 1962, and the extended period of limitation stands rightly invoked. Penalty provisions under the said section also become applicable.

37.4.1 Further, M/s. MBIPL have subscribed to a declaration as to the truthfulness of the contents of the Bill of Entry in terms of Section 46(4) of the Customs Act, 1962 (CA, 1962) in respect of all their import declaration (including Bill of entry) filed with the Customs. Further, with the introduction of self-assessments and consequent upon amendments to Section 17, since 8th April, 2011, it is responsibility of the importer to declare correct description, value, notification etc and to correctly classify, determine and pay the duty applicable in respect of imported goods.

37.5 I note that the Hon'ble CESTAT, in its order dated 08.04.2024 (para 11), while examining the adjudication order passed by ACC, Export, Mumbai, observed that although penalty was proposed under Section 114A of the Customs Act, 1962, the finding in that case treated the goods as prohibited in nature, and therefore, to maintain coherence, penalty ought to have been imposed under Section 112(a). The Tribunal emphasized that the adjudicating authority's findings and the statutory provision invoked for penalty must be coherent and legally aligned with the nature of the offence.

Applying the same principle to the present case, it is seen that the Hon'ble Tribunal has directed examination of the extended period under Section 28(4), which presupposes wilful mis-declaration and suppression of facts. At the same time, if penalty were to be confined to Section 112 alone, it would create an inconsistency, because Section 112 applies to general contraventions, whereas Section 114A specifically applies to cases where duty has been evaded by reason of fraud, collusion, wilful mis-statement or suppression of facts. Since the record clearly establishes wilful suppression and mis-declaration affecting valuation, justifying invocation of Section 28(4), the coherent and legally correct penalty provision in this case is Section 114A, and not Section 112.

Accordingly, I hold that the penalty shall be imposed under Section 114A. Any observation of the Hon'ble CESTAT that appears to confine penalty to Section 112, while simultaneously directing examination under Section 28(4), is **obiter dicta** and cannot override the statutory scheme and factual findings of wilful suppression and mis-declaration. In view of the foregoing, I hold that the importer is liable to penalty-equal to duty evaded- under section 114A of Customs Act, 1962.

37.6 The knowledge of the Sh. Naveen Golchha, CFO of MIPL establishes the "knowingly" element. In this regard, I observe the voluntary statement of Shri Naveen Golchha, CFO of M/s MBIPL recorded under Section 108 of the Customs Act, 1962.

37.6.1 Shri Naveen Golchha, CFO of M/s MBIPL in his voluntary statement, dated 09.10.2014 recorded under Section 108 of the Customs Act, 1962, before DRI, inter-alia, stated that M/s Major Brands (1) Pvt. Ltd. was engaged in retail sale of products such as garments, footwear and accessories etc. of various international brands such as Mango and Guess etc. through their stores in multiple locations in India; that they have entered in agreement with owners of the international fashion brands to sell their products in India; that they were importing the majority of goods sold by them; that he (Naveen) was CFO in M/s Major Brands (1) Pvt. Ltd. and associated with the company since, 2006; that he was Chartered Accountant and has been looking after Accounts and Finance in M/s Major Brands (1) Pvt. Ltd.; that they were associated with brands Mango, ALDO, ALDO accessories, Charles & Keith, La-senza, BEBE, Nine West, Guess, Guess accessories, BHPC and Inglot; that he has submitted copies of the agreements with these international brands; that Mr. Neeraj Kekchandani and Mr. Kamal Kotak were the Directors in M/s Major Brands (1) Pvt. Ltd.; that both the Directors are NRIs, that he was looking after the business activities in India and reported to the Directors and promoter of the Company Mr. Nilesh Kumar Naval Ved; that foreign branded goods were imported as per agreements entered with respective foreign brand owners; that post importation payment of Franchisee Fee and other reimbursement to foreign brand owners have been made as per agreement as a condition of sale of imported goods in India, which were not formed part of the assessable value on which Customs duty has been paid: that they were paying service tax on the Franchisee Fee payments, considering it as a service; that on perusal of Customs Valuations (Determination of Value and Imported Goods) Rules, 2007, according to Rule 10. Franchisee Fee payments should have been included in the assessable value of the imported goods for the purpose of payment of Customs duty.

37.6.2. Further, Shri Naveen Golchha, CFO of M/s MBIPL in his voluntary statement, dated 19.05.2016 recorded under Section 108 of the Customs Act, 1962, again admitted that upon perusal of Rule 10 of the CVR, 2007, he knew that the franchise fee payments "should have been included in the assessable value." And also admitted that aforesaid payments were not included in the assessable value on which Customs duty has been paid by the importer. This fact was also corroborated through the statement of Shri. Tushar Raul, Director, CB firm M/s Siddhi Clearing and Forwarding Pvt. Ltd. who also confirmed that the Franchisee Fee paid by the importer are liable to Customs Duty. Both of them has not retracted their statements.

37.7 I further observe that the Legal position about the importance and validity of statements rendered under Section 108 of the Customs Act, 1962 is well settled. It has been held by various judicial fora that Section 108 is an enabling act and an effective tool in the hands of Customs to collect evidences in the form of voluntary statements. The Hon'ble Courts in various judicial pronouncements have further strengthened the validity of this enabling provision. It has been affirmed that the statement given before the Customs officers

is a material piece of evidence and certainly can be used as substantive evidence, among others. In this regard, I rely on following case laws:

- (i) There is no law which forbids acceptance of voluntary and true admission statement if the same is later retracted on bald assertion of threat and coercion as held by Hon'ble Supreme Court in the case of K.I. Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin, (1997) 3 SCC 721. Hon'ble Supreme Court also held that:

"Even though the Customs officers have been invested with many of the powers which an officer in charge of a police station exercises while investigating a cognizable offence, they do not, thereby, become police officers within the meaning of Section 25 of the Evidence Act and so the confessional statements made by the accused persons to Customs officials should be admissible in evidence against them."

*.....the object of the Act is to prevent large-scale smuggling of precious metals and other dutiable goods and to facilitate detection and confiscation of smuggled goods into, or out of the country. **The contraventions and offences under the Act are committed in an organized manner under absolute secrecy. They are white-collar crimes upsetting the economy of the country.** Detection and confiscation of the smuggled goods are aimed to check the escapement and avoidance of customs duty and to prevent perpetration thereof. In an appropriate case when the authority thought it expedient to have the contraveners prosecuted under Section 135 etc., separate procedure of filing a complaint has been provided under the Act. By necessary implication, resort to the investigation under Chapter XII of the Code stands excluded unless during the course of the same transaction, the offences punishable under the IPC, like Section 120-B etc., are involved. Generally, the evidence in support of the violation of the provisions of the Act consists in the statement given or recorded under Section 108, the recovery panchnama (mediator's report) and the oral evidence of the witnesses in proof of the offences committed under the Act has consistently been adopting the consideration in the light of the object which the Act seeks to achieve."*

- (ii) State (NCT) Delhi Vs Navjot Sandhu @ Afsan Guru, 2005 (122) DLT 194 (SC): **Confessions are considered highly reliable because no rational person would make admission against his interest unless prompted by his conscience to tell the truth. "Deliberate and voluntary confessions of guilt, if clearly proved are among the most effectual proofs in law."** (Vide Taylors's Treatise on the Law of Evidence, VI. I).
- (iii) In 1996 (83) E.L.T. 258 (S.C.) in the case of *Shri Naresh J. Sukawani v. Union of India*: "4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. **Therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act."**

- (iv) 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.-”**
- (v) The Hon’ble Supreme Court in the case of Badaku Joti Savant Vs. State of Mysore [1966 AIR 1746 = 1978 (2) ELT J 323 (SC 5 member bench)] **laid down that statement to a Customs officer is not hit by section 25 of Indian Evidence Act, 1872 and would be admissible in evidence and in conviction based on it is correct.**
- (vi) In the case of Bhana Khalpa Bhai Patel Vs. Asstt. Collr. of Customs, Bulsar [1997 (96) E.L.T. 211 (SC)], the Hon’ble Apex Court at Para 7 of the judgment held that :-“ ***It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence vide Romesh Chandra v. State of West Bengal, AIR 1970 S.C. 940 and K.I. Pavunny v. Assistant Collector (H.Q.), Central Excise Collectorate, Cochin, 1997 (90) E.L.T. 241 (S.C.) = (1997) 3 S.C.C. 721.***”
- (vii) In the case of Raj Kumar Karwal Vs. UOI & Others (1990) 2 SCC 409, the Court held that *officers of the Department of Revenue Intelligence who have been vested with the powers of an Officer-in-Charge of a police station under Section 53 of the NDPS Act, 1985, are not police officers within the meaning of Section 25 of the Evidence Act. Therefore, a confessional statement recorded by such officer in the course of investigation of a person accused of an offence under the Act is admissible in evidence against him.*
- (viii) Hon. Supreme Court's decisions in the case of Romesh Chandra Mehta Vs. the State of West Bengal (1969) 2 S.C.R. 461, A.I.R. 1970 S.C. 940. **The provisions of Section 108 are judicial provisions within statement has been read, correctly recorded and has been made without force or coercion. In these circumstances there is not an iota of doubt that the statement is voluntary and truthful. The provisions of Section 108 also enjoin that the statement has to be recorded by a Gazetted Officer of Customs and this has been done in the present case. The statement is thus made before a responsible officer and it has to be accepted as a piece of valid evidence**
- (viii) Jagjit Singh vs State of Punjab And Another, Hon’ble Punjab and Haryana High Court in Crl. Appeal No.S-2482-SB of 2009 Date of Decision: October 03, 2013 held that : *The statements under Section 108 of the Customs Act were admissible in evidence as has been held by the Hon'ble Supreme Court in Ram Singh vs. Central Bureau of Narcotics, 2011 (2) RCR (Criminal) 850.*

37.8 That MBIPL's contention that the payment of Service Tax reflects a lack of intent to evade Customs duty is wholly untenable. Customs duty and Service Tax are not mutually exclusive, and payment of one cannot exempt or justify non-payment of the other. This legal position has been categorically upheld by the Hon'ble Supreme Court in Civil Appeal No. 13443 of 2015 filed by Oracle India Pvt. Ltd. against the CESTAT Final Order Nos. A/52353-52355/2015-CU(DB) dated 29-07-2015, reported in 2015 (330) E.L.T. 417 (Tri.-Del.). In fact, a single transaction may simultaneously attract both levies, depending on its nature. By selectively paying Service Tax while deliberately failing to discharge the corresponding Customs duty liability, MBIPL cannot claim bona fide conduct or ignorance of the law.

37.8.1 I also find that the importer has failed to furnish any documentary evidence or details regarding the payment of Service Tax. Further, the importer has neither disclosed whether any refund application has been filed with the tax authorities in respect of the service tax allegedly paid on the impugned goods, nor submitted any details or declaration to that effect. The importer has also not provided any declaration indicating whether there exists any pending Service Tax liability or any show cause notice, demand, or proceedings initiated by the GST/Service Tax authorities in relation to the said transactions. This deliberate non-disclosure of material facts further undermines the credibility of the importer's claim and indicates a clear lack of transparency and bona fides.

37.9 It is also pertinent to mention here that the importer was legally required to disclose all payments made to foreign suppliers—including franchise fees, marketing fees, and entrance fees—under Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, in every Bill of Entry filed.

That, despite being fully aware of the on-going investigation initiated by DRI on 09.10.2014, MBIPL continued to deliberately withhold information about payments made to brand owners for the subsequent period, neither declaring such payments in the Bills of Entry nor voluntarily disclosing them to the field formations. This **deliberate non-disclosure, even during an active investigation**, goes far beyond inadvertence and establishes a clear pattern of wilful suppression and mala fide intent to evade Customs duty. The **reliance on a tainted legal opinion** obtained through misrepresentation of facts further underscores the deliberate and premeditated nature of the evasion.

37.10 Therefore, in Contrary to the Noticee's interpretation, the term "person" in the Customs Act, unless the context otherwise requires, includes an artificial juridical person like a company. **The case of TR Venkatadari, being a Service Tax case, is not a binding precedent on the interpretation of the Customs Act.** The wilful act of the company, through its responsible officer, Shri Naveen Golchha, CFO of M/s MBIPL necessitates this penalty.

37.11 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.

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

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

37.13 Thus, I find that this is a fit case to impose penalty upon M/s. Major Brands India Pvt. Ltd., / M/s. Apparel Group India Pvt. Ltd., under Section 114AA of the Customs Act, 1962, as proposed in both the SCN dated 26.09.2016 & 22.02.2017.

38. In view of the above and in pursuance of Hon'ble CESTAT Final Order No. 85396-85398/2024 dated 08.04.2024, against (i) Order-in-Original No. 59 /2019-20/Commr/NS-III/CAC/JNCH dated 28.11.2019 passed by the Commissioner of Customs, NS-III, JNCH, Nhava Sheva, which ordered demand of differential duty of Rs. 63,80,090/- and imposed total penalty of Rs. 1,56,38,000/- (as detailed in Para 6 supra) and against the (ii) Order-in-Original No. 60 /2019-20/Commr/NS-III/CAC/JNCH dated 28.11.2019 passed by the Commissioner of Customs, NS-III, JNCH, Nhava Sheva, which demanded differential duty of Rs. 45,38,125/- and imposed total penalty of Rs. 1,45,38,125/- (as detailed in Para 6.1 supra), I pass the following order:

DE-NOVO ORDER

With respect to Show Cause Notice (SCN) issued vide File No. SG/Misc-69/2015-16/SIIB (I)/JNCH dated 26.09.2016 issued for the period from 01.10.2014 to 31.03.2015:

38.1. I order re-determination of the assessable value amounting to Rs. 33,55,88,051/- (Rupees Thirty three crore fifty five lakh eighty eight thousand fifty one Only) of goods imported under various Bills of Entry (as per Para 20 to 25 supra) by adding and including the payments made on account of Franchise Entrance Fee, Franchise Fee paid to the seller / brand holder and advertisement expenses incurred/reimbursed to the brand holder and expenditure towards local advertisement and sales promotion in India in terms of Rule 3 read

with Rule 10 (1)(c), 10 (1)(d) and 10 (1)(e) of the Customs Valuation (determination of value of imported goods) Rules, 2007 read with Section 14 of the Customs Act, 1962 and the said goods re-assessed to Customs duties accordingly as detailed in Para 20 to 25 supra. The said additions are ordered for charging BCD in case of both RSP items and Non-RSP items. However, for charging CVD, the same are ordered for addition only in case of Non-RSP items.

38.2 I order to demand and recover the differential Customs duties amounting to Rs. 61,55,743/- (Rupees Sixty one lakh fifty five thousand seven hundred forty three only) evaded/short paid in respect of goods imported on the basis of aforesaid re-determined values in terms of provisions of Section 28(4) of the Customs Act, 1962. The demand of Rs.1,01,25,374/- is modified as detailed in Para 20 to 25 supra of this order.

38.3. I order to recover the interest as applicable from them under the provisions of Section 28 AA of the Customs Act, 1962 on the evaded / short paid duty.

38.4. I confiscate the goods having re-determined assessable value of Rs. 33,55,88,051/- (Rupees Thirty three crore fifty five lakh eighty eight thousand fifty one Only) (as per Para 20 to 25 supra) under the provisions of Section 111 (m) of the Customs Act, 1962. I impose a Redemption Fine of Rs. 3,00,00,000/- (Rupees Three crore Only) under section 125 (1) of the Customs Act, 1962.

38.5. I impose penalty of Rs. 6,15,000/- (Rupees Six lakh fifteen thousand only) under section 112 (a) of the Customs Act, 1962 on M/s. Major Brands (I) Pvt. Ltd., Mumbai as penalty under Section 114A has not been proposed in the subject SCN.

38.6. I also impose penalty of Rs. 1,50,00,000/-, (Rupees One Crore Fifty Lakhs Only) under section 114 AA of the Customs Act, 1962 on M/s. Major Brands (I) Pvt. Ltd., Mumbai.

With respect to Show Cause Notice (SCN) No. 774/SIIB-I/2016-17/JNCH dated 22.02.2017 vide F.No.SG/Misc-69/2015-16/ SIIB (I) JNCH issued for the period from 01.04.2015 to 16.06.2015:

38.7. I order to re-determine the assessable value amounting to Rs. 9,95,14,129/- (Rupees Nine crore ninety five lakh fourteen thousand one hundred twenty nine only) of goods imported under various Bills of Entry (as per Para 26 to 29.1 supra) by adding and including the payments made on account of Franchise Entrance Fee, Franchise Fee to the seller / brand holder, advertisement expenses incurred/reimbursed to the brand holder and expenditure towards local advertisement and sales promotion in India in terms of Rule 3 read with Rule 10(1)(c), 10(1)(d) and 10(1)(e) of the CVR, 2007 read with the Section 14 of the Customs Act, 1962 and the said goods re-assessed to Customs duties accordingly as detailed in Para 26 to 29.1 supra. The said additions are ordered for charging BCD in case of both RSP items and Non-RSP items. However, for charging CVD, the same are ordered for addition only in case of Non-RSP items.

38.8. I hold that the total differential Customs duties calculates to Rs. 45,55,846/- (Rupees Forty five lakh fifty five thousand eight hundred forty six only. However, in the subject Show Cause Notice, demand of differential duty of only Rs. 39,91,196/- has been made, therefore, I restrict myself to the SCN and confirm the demand of differential duty of Rs. 39, 91,196/- (Thirty Nine Lakh, Ninety One Thousand, One Hundred Ninety Six) short paid in respect of goods imported (as per Para 26 to 29.1 supra) on the basis of aforesaid re-determined values in terms of provisions of Section 28(4) of the Customs Act, 1962.

38.9. I order to recover the interest as applicable from them under the provisions of Section 28 AA of the Customs Act, 1962 on the evaded / short paid duty.

38.10 I order to confiscate the goods having re-determined assessable value of Rs. 9,95,14,129/- (Rupees Nine crore ninety five lakh fourteen thousand one hundred twenty nine only) (as per Para 26 to 29.1 supra) under the provisions of under Section 111 (m) of the Customs Act, 1962. I impose a Redemption Fine of Rs. 1,00,00,000/- (Rupees One crore Only) under section 125 (1) of the Customs Act, 1962.

38.11 I impose penalty of Rs. 39,91,196/- (Thirty Nine Lakh, Ninety One Thousand, One Hundred Ninety Six and interest, on M/s. Major Brands (I) Pvt. Ltd. under section 114A of the Customs Act, 1962, which should be paid by / recovered from them. Provided that where such duty or interest (as detailed in para 38.8 & 38.9 supra), as the case may be, as determined under sub-section (8) of section 28, and the interest payable thereon under section 28AA, is paid within thirty days from the date of the communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent of the duty or interest, as the case may be, so determined.

38.12 I also impose penalty of Rs. 1,00,00,000/- (Rupees One crore Only) under section 114 AA of the Customs Act, 1962 on M/s. Major Brands (I) Pvt. Ltd., Mumbai.

Digitally signed by
Vijay Risi
Date: 03-11-2025
18:14:14
(VIJAY RISI)
Commissioner of Customs
NS-III, JNCH, Nhava Sheva.

Regd. AD/Speed Post

To,

M/s Major Brands (India) Pvt. Ltd.,
B-907, Mittal Commercial,
Marol, Asanpada Road,
Andheri-Kurla Road, Andheri (East),

Mumbai – 400059.

Copy to:-

- i. The Asst. /Dy. Commissioner of Customs, Chief Commissioner's Office, JNCH
- ii. The Additional Director General, Directorate of Revenue Intelligence, Delhi Zonal Unit, B-3 & 4, 6th floor, Paryavaran Bhawan, CGO complex, Lodhi Road, New Delhi 100 003.
- iii. The Asst. /Dy. Commissioner of Customs, Centralized Revenue Recovery Cell, JNCH
- iv. The Asst. /Dy. Commissioner of Customs, Group-III, JNCH
- v. The Asst. /Dy. Commissioner of Customs, Customs SIIB(I), NS-IV, JNCH
- vi. The Asst. /Dy. Commissioner of Customs (CAC), JNCH: For uploading on CARMA Portal.
- vii. The Asst. /Dy. Commissioner of Customs, EDI, JNCH: For display on JNCH Website.
- viii. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
- ix. Office Copy.