

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

DIN – 20260478NX0000444B39

Date of Order: 30.04.2026

F. No. S/10-182/2016-17/COMMR/NS-V/CAC/JNCH

Date of Issue: 30.04.2026

SCN No.: 363/SIIB-I/2016-17/JNCH

SCN Date: 15.12.2016

Passed by: Sh. Anil Ramteke

Commissioner of Customs, NS-V, JNCH

Order No: 23/2026-27/COMMR/NS-V/CAC/JNCH

Name of Noticee: M/s Riddhi Siddhi Collection (IEC: 0308059656)

ORDER-IN-ORIGINAL

मूल - आदेश

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

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

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

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

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

3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

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

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

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

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

Fee -फ़ीस-

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

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

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

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

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

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

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

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

Subject: Adjudication of Show Cause Notice No. 363/SIIB-I/2016-17/JNCH dated 15.12.2016 issued to M/s Riddhi Siddhi Collection (IEC: 0308059656) and others as per Hon'ble Bombay High Court dated 19.07.2019- reg.

The Show Cause Notice was issued to M/s Riddhi Siddhi Collection and others vide F. No. 363/SIIB-I/2016-17/JNCH dated 15.12.2016. The same was adjudicated vide **Order-in-Original No. 53/2018-19/Commr/NS-V/JNCH** dated 13.07.2018. Subsequently, the Noticees viz M/s Riddhi Siddhi Collection through their proprietor Sh. Sunil Megraj Jain and M/s Aisha Electronics through their proprietor Sh. Faisal Javeri filed a writ petition in Hon'ble Bombay High Court vide WP no. 6368 of 2019 against the said OIO. Hon'ble Bombay High Court disposed of the said W.P. vide **Order 19.07.2019** and observed: *"the impugned order dated 13.07.2018 is quashed and set aside. The show cause notice dated 15th December, 2016 is re-stored to the file of Commissioner of Customs, respondent no. 2, for fresh disposal in accordance with law. Mr. Prakash Shah, the learned Counsel appearing for the petitioners states that they would file a reply within a period of two weeks from today. Thereafter the Commissioner of Customs would give a personal hearing to the petitioner in respect of the show cause notice dated 15th December, 2016 and pass an order in accordance with law"*.

In pursuance of the said Hon'ble Bombay High Court order, the said SCN is pending before me for adjudication.

2. **Brief facts of the case** :- M/s. Riddhi Siddhi Collection, Ashoka Shopping Centre 1st floor, office No. 224, Near G.T. Hospital, Mumbai-01 (IEC No.0308059656) had filed Bill of entry No. 3757783 dated 09.11.2013 for import of plastic torch (CTH 85131010) and M/s. Aisha Electronics, Office No. 528-C, 5th floor, Mohatta Market, Palton road Mumbai-01 (IEC No. 0308058879) had filed Bills of entry No. 3757805 dated 09.11.2013, 3757790 dated 09.11.2013, 3690099 dated 31.10.2013 for import of mosquito bat (CTH 85167990) and Bill of entry No. 3757789 dated 09.11.2013 for import of plastic torch (CTH 85131010). The goods pertaining to above said bills of entry were supplied by M/s. KS Group (HK) Ltd, Hong Kong.

2.1 Genesis of the case:-

An information received by DRI, MZU revealed that M/s. Riddhi Siddhi Collection (IEC No. 0308059656) and M/s Aisha Electronics (IEC No. 0308058879), importers of Rechargeable Torches, Rechargeable Lanterns, Emergency LED lights, Rechargeable LED lamps etc. (falling under CTH 8513

of the Customs Tariff Act, 1975) are indulging in rampant undervaluation of the goods imported by them with the intention of evading payment of applicable Customs duty. Intelligence also indicated that the Retail Sale Price (RSP) of the goods is being suppressed to evade CVD.

3. Investigation by DRI, Mumbai:-

Enquiry by DRI revealed that the impugned goods, viz. rechargeable torches, rechargeable lanterns, Emergency LED lights, rechargeable LED lamps etc. (falling under CTH 8513 of the Customs Tariff Act, 1975) are subjected to levy of Additional duty of Customs based on the Retail Sale Price as per Notification 49/2008 Central Excise (NT) dated 24.12.2008. It was found that these goods were being sold through web portals like eBay and other retailers. Market survey of these goods revealed that the importers are only declaring 20 to 25% of the actual Retail Sale Price (RSP). Accordingly, thirty one (31) container loads of goods, imported by M/s Riddhi Siddhi Collections and thirty five (35) container loads of goods imported by M/s Aisha Electronics were examined by the officers of DRI, MZU on various dates and seized. Further, the imported goods by M/s Riddhi Siddhi Collection and M/s Aisha Electronics lying in a godown at Sewri were also examined by the officers of DRI, MZU and seized and subsequently the seized goods were provisionally released subject to certain conditions. Further, in pursuance of said intelligence and to gather further evidence, simultaneous searches were conducted on the office and residential premises of M/s Riddhi Siddhi Collection and for M/s Aisha Electronics, the office premises of the CHA M/s Balraj & Co and CHA M/s M.P. Associates under Section 105 of the Customs Act, 1962 and documents relevant to investigation were recovered under panchanama. Further, the godown premises of M/s Riddhi Siddhi Collection and M/s Aisha Electronics at Sewri were also searched and it was found that huge volumes of goods were lying in the godown. These goods were inventorised and seized for future examination.

3.1. Statements recorded by DRI:-

During the course of investigation, DRI has recorded Statements of the following persons:-

3.1.1. Statement of Shri Sunil Jain, proprietor of M/s. Riddhi Siddhi Collection, was recorded on 03.07.2013 and 04.07.2013, wherein he, inter alia, stated the following;

(i) In the year 2008, he obtained an IEC No. 0308059646 in the name of M/s. Riddhi Siddhi Collection showing the office premises at Bhiwandi at Building No. C-2-C, Gala No.A-3, Ground Floor, Anmol Textil Market, AnjurPhata,

Bhiwandi, Distt. Thane and started importing LED Torches and LED Emergency Lights.

(ii) M/s. Aisha Electronics is engaged in import of same items, i.e. LED Torches and LED emergency lights. The said firm is owned by Faisal Javeri, who is his friend.

(iii) The said items are being imported from China by them through M/s. KS Group (HK) Limited having their office at Sheung Wan, Hong Kong. M/s. Aisha Electronics is also importing LED Torches and LED Emergency Lights from the same firm. The goods imported by them from China are sold by them in Mumbai to various wholesalers on cash basis.

(iv) They used to contact one Shri Kishore Sohanda, who is the owner of M/s. KS Group (HK) Limited.

(v) They import LED Torch lights and LED Emergency lights of 'Orkia' brand and 'Hoya'. These brands are not owned by M/s. KS Group (HK) Limited. The brand 'Orkia' is owned by his brother and 'Hoya' is owned by him.

(vi) He further stated that they are having their godown at Sewree, Mumbai and the imported goods are being stored at this godown. The said godown is common for his firm (M/s. Riddhi Siddhi Collection) as well as M/s. Aisha Electronics. That he had shown the address of Bhiwandi in the Bills of Entry only for the purpose of evading payment of octroi.

(vii) He undervalues the goods by 25% of the assessable value arrived at by Customs for calculation of Customs duty. The supplier of the goods used to collect the suppressed amount by sending someone with identification token. He agreed that he had evaded customs duty by way of undervaluation of imported goods. He also agreed that there was undervaluation in the imports of M/s Aisha electronics.

(viii) He admitted that there was a difference between RSP declared by them to customs and the price of the same product as per cash memo/website. He further stated that RSP declared in the bill of entry is approximately 2.5 times of the value arrived at after loading by the Customs.

3.1.2. Statement of Shri Faisal Ahmed Abdul Malik Javeri (Faisal Javeri), Proprietor of M/s. Aisha Electronics was recorded on 03.07.2013 and 04.07.2013 under Section 108 of the Customs Act, 1962, wherein he, inter alia, stated the following;

(i) He can understand Hindi and little bit of English. He can read a bit and understand English fully when read out.

(ii) On being asked what an Import Export Code is, he stated that it is IEC. That it is a license to buy goods and is obtained from some government office. He learnt about it from the market. Some documents like electricity bill, telephone bill, Ration Card, Bank Account, copy of passport etc. have to be submitted to obtain an IEC. That his CA, HemantBhai, who is residing at Malad helped him to get the IEC. He only signed some forms and he does not remember the full address and phone number of his CA.

(iii) On being asked whether he has heard about Directorate General of Foreign Trade (DGFT) office, he (Faisal) stated that he had not heard about Directorate General of Foreign Trade. That he does not know where the DGFT Office is located and has never been to DGFT office for submitting any form.

(iv) He has a bank account in Kotak Mahindra Bank, however, he does not remember its account number. He went to the bank along with one of the employee of Sunil Jain, i.e. Narpat Bhai who helped him to open an account in the bank and his staff Aziz operates his bank account.

(v) He does not know the procedure for import and export of goods and does not know what an LC is. He does not know anything about import documents or different types of customs duties.

(vi) He agreed that he undervalues the goods by 25% of the assessable value arrived at by Customs for calculation of Customs duty. Shri Kishore Sohanda used to collect the suppressed amount by sending someone with identification token. He agreed that he had evaded customs duty by way of undervaluation of imported goods. He also agreed that there was undervaluation in the imports of M/s Aisha electronics.

(vii) He admitted that there was a difference between RSP declared by them to customs and the price of the same product as per cash memo/website. He further stated that RSP declared in the bill of entry is approximately 2.5 times of the value arrived at after loading by the Customs.

3.1.3. Statement of Sanjay Tribhuvan Singh, G category CHA card holder for M/s Balraj Kumar CHA firm was recorded on 03.07.2013 and 04.07.2013 wherein he interalia stated that:-

(i) The customs clearance work of M/s Riddhi Siddhi Collection and M/s Aisha Electronics was being handled by M/s Balraj Kumar CHA firm since 2008-09.

(ii) The IECs of M/s Riddhi Siddhi Collection and M/s Aisha Electronics belong to Sunil Jain. All imports under both IEC are done by Sunil Jain. Faisal Javeri is only an employee of Sunil Jain and has an IEC in the name M/s Aisha Electronics.

(iii) He was aware that Sunil Jain has been resorting to undervaluation.

3.1.4. Statement of Faiyaz Merchant of M/s M.P.Associates, CHA firm was recorded on 29.11.2013 wherein he, interalia, stated that:-

(i) He handles clearance work in his brothers firm M/s M.P. Associates since year 2008. He did clearance work for M/s Riddhi Siddhi Collection and M/s Aisha Electronics from 09.04.2010 till about 2012.

(ii) Sunil Jain used to come for filing documents for both firms and Faisal Javeri appeared to be illiterate person who used to accompany Sunil Jain. Sunil Jain used to make the payments for both the parties by way of demand draft.

(iii) He had seen samples of items imported by M/s Riddhi Siddhi Collection and M/s Aisha Electronics and had a feeling that the value declared is low as the items were of good quality.

3.2 Arrest:-

As preliminary investigation and statements revealed that there was reason to believe that Sunil Jain and Faisal Javeri are guilty of an offence punishable under Section 135 (1) (i) of the Customs Act,1962 and it was found that their custody is crucial for further investigation, they were arrested on 04.07.2013.

3.3 Overseas Enquiry:-

Overseas enquiry was caused through Consulate General of India who forwarded the Annual Returns "ARI" forms of M/s Saturn International Limited and that of M/s K.S. Group (HK) Limited, filed with the Companies Registry under Government of Hong Kong. It revealed that the address of M/s Saturn International Limited and that of M/s K.S. Group (HK) Limited is same, i.e. 20/F, Champion Building, 287-291 Des Voeus Road, Central Sheung Wan, Hong Kong, which is the residential address of Manoj Jain and Mitesh Jain, brothers of Sunil Jain.

3.4 Enquiries made with online web portals/ retailers.

During the course of investigation, it was found that 'Orkia' and 'Hoya' brand products were being sold at online web portals like www.ebay.in, www.rediff.com, www.naptol.com. Enquiries were made with these web portals to get details of 'Orkia' and 'Hoya' brands products sold through their web portals. They submitted web portals to get details of 'Orkia' and 'Hoya' brands products sold through their web portals. They submitted list of sellers dealing with 'Orkia' and 'Hoya'. Further enquiries were also made with these resellers

and their statements were recorded to get further details. Relevant portion of their statements are reproduced below:-

3.4.1 Statement of Shri Devang Shah - Reseller on website ebay, rediff.com

a) He sold Orkia branded products like LED torch lights, Emergency LED lights and never sold 'Hoya' brand b) He used to purchase the 'Orkia' branded products from Bababhai who used to sell these products far above the MRP printed on the products. c) He submitted 55 invoices and Transaction-Cum-Payment receipt sheet pertaining to sale of 'Orkia' branded products. d) The purchase price for 'Orkia' branded products paid by him to Bababhai and eBay sales price vis-a-vis MRP printed on product is tabulated as below-

S No.	Details of products	Purchase price paid to Bababhai (in Rs.)	Price at which product sold on eBay (in Rs.)	MRP printed (in Rs.)
1	Orkia portable pad (4 GB in built memory) multi-touch screen	3200/- to 3500/-	4299/- to 4599/-	400/-
2	Orkia MP 3 player	230/-	469/-	50/-
3	Orkia MP 3 USB / TF card with FM stereo system OK-SM528	330/-	749/-	50/-
4	Orkia MP 3 USB / TF card with FM stereo system OK-SM71	330/-	749/-	50/-
5	Orkia 1W Emergency Powerful Rechargeable Emergency Torch + 2 Led	70/-	199/-	40/-
6	Orkia MP 3 USB / TF card with FM stereo system OK-SM77	230/-	550/-	40/-
7	Orkia MP 3 USB / TF card with FM stereo system OK-SM22	330/-	749/-	50/-

8	Orkia MP 3 USB / TF card with FM stereo system OK-SM20	330/-	749/-	50/-
9	Orkia LED plastic torch (1W+15LED) OK-119CCLED	230	349/-	30/-

3.4.2 Statement of Shri Nishit Dhamecha- Reseller on website eBay:

a) He stated that he has sold through eBay website items such as Orkia Emergency lights, Orkia 3-in-1 rechargeable fan (OK-055LED), Orkia 18 LED rechargeable bulb with remote (model OK-198BRLED) and Orkia 24 LED. b) These item were purchased by him at rates ranging between Rs. 125-175 from Shops in Masafirkhana, Crawford Market.

c) The MRP was printed on this Orkia branded items, however the rates printed on items was extremely low.

3.4.3 Statement of Shri Sunil Rane - Reseller on website eBay:

a) He sold 66 nos. of Orkia brand LED on eBay website. b) He sold only one type of product Orkia 24 BRLED AC/DC Rechargeable Battery Remote Bulb Emergency Light lamp Lantern. c) He has sold products at prices ranging from Rs. 219 to 249 and the said items were purchased by him at Rs. 125 to 150 from vendors selling the items near Manish Market.

3.4.4 Statement of Shri Jaspreet Sahni- Reseller on website eBay:

a) They buy their goods from vendors at Musafirkhana who sell the goods from makeshift shops. b) The Orkia and Hoya brand of goods were never sold by the shopkeepers at the printed price. c) The MRP printed on box and purchase price and eBay selling price (as per Jaspreet Sahni) are tabulated as under:-

S. No.	Product Name	Printed MRP (in Rs.)	Purchase price(in Rs.)	eBay selling price (in Rs.)
1	Orkia 30 LED Cordless bulb OK-30BR LED	25-30	185	399
2	Orkia 28 LED Emergency light OK-	90-100	225	499

	5528			
3	Orkia 52LED Emergency light OK- 5522	90-100	265	699
4	Orkia 24 LED Cordless bulb OK- 24BR LED	25-30	165	299

3.5. Enquiries with Wholesalers:

During the course of enquiry with on-line resellers, DRI found that they were buying Orkia brand products from Musafirkhana, Crawford Market, particularly from shop by name New Collections Electronics also known as White House Electronics, owned by Shri Bababhai. This shop was searched and it was found that owner of shop is Bababhai and manager of shop was Shri Pahad Singh Rathod.

3.5.1 Statement of Shri. Pahad Singh, Manager, New Collections Electronics was recorded. The relevant portion of statement is reproduced below:-

a) He has been working in this shop owned by Bababhai for last 9 months. They mainly sell torches and emergency light of brands Orkia, Hoya, JY Super, DP etc. b) He purchases Orkia and Hoya brand goods from Manish Market and Crawford market. When said goods required in large quantities, he used to purchase it from person named Faisal. When shown passport having photograph of Faisal Javeri, he recognized him as same Faisal. He further acknowledged that it is a common knowledge in the market that Faisal is main supplier for the Orkia and Hoya torches and emergency lights. c) He told that Faisal never used to sell his torches and emergency lights of Orkia and Hoya brands at the printed MRP. d) He was shown a list showing different models of Orkia products imported by M/s Riddhi Siddhi Collection and M/s Aisha Electronics and was asked to categorise them according to the rates and specification. He categorized them broadly into lantern, emergency light, Big torch, Medium Torch, Small torch etc.

3.6. Scrutiny of Samples:-

The sealed samples drawn during examination of the live consignments at Nhava Sheva as well as the goods lying in the godown at Sewari were re-examined in order to co-relate and broad categorization. This was done by Shri Pahad Singh Rathod, who is a wholesaler.

- i. Big Torches :- These were torches having handles with big reflectors to focus beam of light on large area.
- ii. Medium LED torches :- These were torches having handles and some without handles. They have medium reflectors and some of them were found to have another set of LED lights on bottom which were for use for focusing light on ground below while a person was walking. These torches medium in size.
- iii. Small Led Torches :- These were small in size. These Torches came with small reflectors and low intensity lights.
- iv. Mosquito Bat :- These were similar in size and shape but in various colours. These are rechargeable and used for swatting and killing mosquitoes.

3.7. Relationship between M/s Riddhi Siddhi Collection and M/s Aisha Electronics:-

(i) Investigation reveals that the firms M/s Riddhi Siddhi Collection and M/s Aisha Electronics both controlled by Sunil Jain. Although Faisal Javeri claimed to be proprietor of M/s Aisha Electronics, he is merely employee of Sunil Jain. They always had same CHA, the same transporter and same godown to store imported goods. The goods of both firms were stored in same godown without bifurcation.

(ii) Both CHAs Sanjay Singh of M/s Balraj Kumar and Faiyaz Merchant of M/s M.P. Associates who interact with these importers frequently have also admitted that Faisal Javeri is only an employee of Sunil Jain in their respective statements recorded under Section 108 of Customs Act, 1962.

3.8. Summary of investigation by DRI:-

It appears that a conspiracy was hatched by the Jain brothers, viz. Manoj, Sunil and Mitesh along with their accomplices, viz. Kishore Sohanda and Faisal Javeri to defraud the Government of India of its legitimate revenue. The Jain brothers recognizing that there was a huge demand for Emergency Lights, Lamps, LED Torches, and Desk Lamps etc. in India and decided to capitalize the demand by getting these products manufactured in China with brands owned or controlled by them and sell them in India. Soon Manoj and Mitesh Jain established themselves in Hong Kong and started trading under the name M/s Saturn International Ltd, while Sunil Jain stayed back in India to look after the import and further sales. Sunil Jain roped in his friend Faisal Javeri who had been associated with selling goods since his childhood through a network of shops owned by his uncle Bababhai, to assist him in the operation. Even though the Jain brothers had a branch of M/s Saturn International Ltd.

in India viz. M/s Saturn Intel (India) Co., they decided neither to export nor to import under the name of M/s Saturn International Ltd. as this would have caught the attention of authorities as to the related nature of transaction. Apparently to mask the transaction, they floated separate companies. A company in the name of M/s K S Group (HK) Ltd. was floated in Hong Kong and one Kishore Sohanda was shown as the director of the Company. This arrangement also enabled them to raise undervalued manipulated invoices which could be provided for production before the Indian Customs to evade duty. Similarly, a firm viz. M/s Riddhi Siddhi Collection was created in the name of Sunil Jain in India. However, to avoid unnecessary attention in one firm in view of large volume of imports of these goods, they apparently created another firm viz. M/s Aisha Electronics in the name of Faisal Javeri, for sake of distinction on paper, though goods were stored and sold in a combined manner.

3.8.1. Subsequently the Jain brothers started importing these goods into India under the name of M/s Riddhi Siddhi Collection and M/s Aisha Electronics. The undervalued invoices raised by M/s K S Group (HK) Ltd. were declared to the Indian Customs. At times invoices were also raised on M/s Aisha Electronics by M/s Saturn International Ltd. and M/s Orkia Manufacturing (HK) Ltd. On an average only 1/6th of the actual value was only declared. Similarly MRP/RSP of these goods was also undervalued with the intention to evade payment of applicable duty.

3.8.2 Investigations revealed the well-planned modus operandi of the Jain brothers viz. Manoj Jain, Sunil Jain and Mitesh Jain and their accomplices Kishore Sohanda and Faisal Javeri which shows the lengths to which they have gone to mask the operations, which are typical of covert black money operations, involving smuggling and tax evasion.

3.9 Findings by DRI:-

Their manner of conducting business as given in their statements is neither normal nor credible. Their alibis that seek to mask their irregular activities and devious replies to normal questions as indicated from the following appears to be symptomatic of a well-organized tax evasion plan, as it appears from the following:

- (i) While Sunil Jain and Faisal Javeri admitted to undervaluation to the extent of 25% (which in retrospect appears rather much less admission as compared to the actual as found in export declarations) during the preliminary statements recorded on 03.07.2013 and 04.07.2013.

- (ii) Many products package clearly says "A product by Saturn" and bear logo of Saturn group, which belongs to the family of Jain brothers.
- (iii) Further, Brand ORKIA is registered in the name of Manoj Jain, brother of Sunil Jain and similarly Sunil Jain had applied for getting the brand 'HOYA' registered in his name. And yet they have been holding out that someone else is manufacturing and supplying the goods, which on the face of it is not possible. That no one else can manufacture or sale these goods without their permission (in view of IP issues) is self-evident.
- (iv) They have stated in their statements under Section 108 of the Customs Act, 1962 (which casts legal onus on them to speak truth), that they have been getting goods from one Kishore Sohanda of M/s KS Group(HK) Ltd, that too without any formal orders. During the course of recording of the statements, both Sunil Jain and Faisal Javeri consistently gave evasive replies to queries that could expose them.
- (v) That M/s Aisha Electronics, and M/s K S Group (HK) Ltd. are only dummy companies which are created and controlled by the Jain brothers to cover their illicit activities is apparent from the investigations. Further the very fact that the M/s Saturn International Ltd., the flagship company of the Jain brothers is having links to companies in the British Virgin Islands, a tax heaven is indicative of the nature of the trade transactions.
- (vi) In the last five years M/s Riddhi Siddhi Collection and M/s Aisha Electronics have together imported goods valued at hundreds of crores (over Rs. 1000 crores as re-determined value, even above Rs. 200 as accepted assessed value), however both Sunil Jain and Faisal Javeri have claimed that they have sold all the goods in cash and they never mention the buyers name and details in the sales invoice. On being asked the details of their customers, they gave evasive replies and stated that they don't remember them. It is highly improbable that in a business worth hundreds of crores, details of customers are not maintained or remembered. It is obvious that they did not want to keep proper account of their sales so that no evidence of evasion of Customs duty (CVD) and VAT (Sales Tax) is left behind.
- (vii) Further enquiry with transporters reveal that both the firms M/s Riddhi Siddhi Collection and M/s Aisha Electronics have been showing delivery of the goods at their Bhiwandi godown whereas they have taken delivery of the goods at their Sewri godown in Mumbai thereby evading payment of octroi. That from their own admission of octroi evasion, by mis-representing godown address it is apparent that they are not averse to evading taxes by misrepresenting the facts. That reveals their tax evading mind set.
- (viii) In view of the above, it appears that the Jain Brothers are an organized syndicates who not only into evasion of Customs duty, but also in evasion of Octroi, VAT (sales tax) and other.

(ix) By resorting to the above modus operandi, the Jain brothers Manoj, Sunil and Mitesh along with their accomplices Faisal Javeri and Kishore Sohanda has caused huge loss to the Public Exchequer. Appropriate customs duty payable on the goods imported by M/s Riddhi Siddhi Collection and M/s Aisha Electronics was short levied by reason of collusion, wilful mis-statement and suppression of facts by M/s Riddhi Siddhi Collection and M/s Aisha Electronics. The differential duty is therefore recoverable from M/s Riddhi Siddhi Collection and M/s Aisha Electronics under the extended provisions of Section 28 of the Customs Act, 1962 along with interest under the provisions of Section 28AB (Section 28AA from 28.04.2011) of the Customs Act, 1962.

3.10 In view of the above, DRI, Mumbai issued Show Cause Notice to M/s Riddhi Siddhi Collection and M/s Aisha Electronics dated 24.12.2013.

4. Imports at JNCH:-

M/s Riddhi Siddhi Collection had filed B/E No. 3757783 dated 09.11.2013 and M/s Aisha Electronics had filed B/E No. 3757805 dated 09.11.2013, No. 3757790 dated 09.11.2013, No. 3690099 dated 31.10.2013 for import of Mosquito Bat (CTH 85167990) and B/E No. 3757789 dated 09.11.2013 for import of Plastic Torch (CTH 85131010) at JNCH which were examined under supervision of SIIB (I). The observations and details of goods found are tabled below.

(i) Imports by M/s Riddhi Siddhi Collection under B/E No. 3757783 dated 09.11.2013 vide container No. WHLU 5376265.

Sr No.	Description	Qty in Ctn.	Pcs per Ctn	Total pcs	Model No. & Brand	Value Declared/Doz (in USD)	MRPs printed on goods
1	LED Plastic Handle Torch	100	60	6000	OK-181 LED Orkia Brand	2	Rs. 40/- per piece
2	LED Plastic Handle Torch	123	60	7380	OK-E2001 LED Orkia Brand	2	Rs. 40/- per piece
3	LED Plastic Handle	29	60	1740	OK-E2006	2	Rs. 40/-

	Torch				LED Orkia Brand		per piece
4	LED Plastic Torch	100	60	6000	OK-8620 LED Orkia Brand	1.8	Rs. 30/- per piece
5	LED Plastic Torch	22	60	1320	OK-8640 LED Orkia Brand	1.8	Rs. 30/- per piece
6	LED Plastic Torch	190	60	11580	OK-8510 LED Orkia Brand	1.8	Rs. 30/- per piece
7	LED Plastic Torch	28	60	1680	OK-8700 LED Orkia Brand	1.8	Rs. 30/- per piece

(ii) Imports by M/s Aisha Electronics under B/E No:-3690099 dated 31.10.2013 vide container no. WHLU 5430828.

Sr No.	Description	Qty in Ctn.	Pcs per Ctn	Total pcs	Model No. & Brand	Value Declared/Doz (in USD)	MRPs printed on goods
1	LED Plastic Handle Torch	195	60	11700	OK-841	1.6	Rs 30/- per piece
2	LED Plastic Handle Torch	195	60	11700	OK-843	1.6	Rs 30/- per piece

3	LED Plastic Handle Torch	195	60	11700	OK- 845	1.6	Rs 40/- per piece
4	LED Plastic Handle Torch	201	60	12060	OK- 1311	1.6	Rs 40/- per piece

(iii) Imports by M/s Aisha Electronics under B/E No :- 3757789 dated 09.11.2013 vide container no. WHLU 5327830.

Sr No.	Description	Qty in Ctn.	Pcs per Ctn	Total pcs	Model No. & Brand	Value Declared/Doz (in USD)	MRPs printed on goods
1	Mosquito Bat	468 ctns	30	14040	OK- O12	2.2	Rs. 40/-
2	Mosquito Bat	289 ctns	60	17340	OK- O12	2.2	Rs. 40/-

(iv) Imports by M/s Aisha Electronics under B/E No:-3757790 dated 09.11.2013 vide container no. WHLU 5411221.

Sr No.	Description	Qty in Ctn.	Pcs per Ctn	Total pcs	Model No. & Brand	Value Declared/Doz (in USD)	MRPs printed on goods
1	Mosquito Bat with light	183ctns	50	9150	OK-O15 orkia	2.4	Rs. 40/-
2	Mosquito Bat with light	427ctns	50	21350	OK-O15 orkia	2.4	Rs. 40/-
3	Mosquito Bat with light	21 ctns	30	630	OK- O12orkia	2.2	Rs. 40/-

(v) Imports by M/s Aisha Electronics under B/E No:- 3757805 dated 09.11.2013 vide container no. BMOU 4008450.

Sr No.	Description	Qty in Ctn.	Pcs per Ctn	Total pcs	Model No. & Brand	Value Declared/Doz (in USD)	MRPs printed on goods
1	Mosquito Bat	470ctns	30	12210	OK-O12 Orkia	2.2	Rs. 40/-
2	Mosquito Bat	294ctns	60	17640	OK-O12 Orkia	2.2	Rs. 40/-
3	Mosquito Bat	44ctns	50	2200	OK-O12 Orkia	2.2	Rs. 40/-

4.1 These above said goods were seized as per instructions of DRI, Mumbai. However these goods were not included in the Show Cause Notice dated 24.12.2013 issued by DRI, Mumbai vide F.No. DRI/MZU/D/INV-3/2013-14. Therefore, another Show Cause Notice has been issued in respect of these bills of entry.

4.2 During course of investigation, a request was received from M/s Indev Logistics Ltd for granting permission to transfer seized cargo of 5x40' containers to leased containers. The said cargo was transferred to leased containers under supervision of SIIB (I) officers.

5 Suppression of Transaction value:-

During the investigation by DRI, shipping lines M/s Evergreen Shipping Agency had submitted 28 nos. of export declarations made by the exporter to the Chinese Customs along with the English translation of these declarations. Similarly, M/s Wan Hai Lines (India) Pvt. Ltd had submitted 22 nos of Export declarations.

5.1 Scrutiny of these documents reveals that the values declared in China are FOB whereas the values declared in India are CIF. It is found that declared FOB value in China (as per export declarations) are several times (4 to 53) higher than CIF value declared in India, even if insurance and freight is not considered. The comparison of load port values (FOB) per piece and the CIF

values per piece in respect of various models as available are tabulated as below:-

S. No.	Model No	Values as export declarations per PC (in USD) FOB	Declared value in India per PC(In declared value (in USD) CIF	Load port value vis-a- (in times)
1	OK-3535 LED	2.63	0.40	7
2	OK-3535 LED	2.87	0.40	7
3	OK-3636	3.56	0.29	12
4	OK-4545 LED	2.99	0.40	7
5	OK-4949 LED	4.11	0.40	10
6	OK-6565 LED	3.07	0.40	8
7	OK-404LED	2.99	0.29	10
8	OK-1503LED	4	0.13	30
9	OK-5510LED	3.56	0.40	9
10	OK-5535LED	2.63	0.29	9
11	OK-5540LED	3.56	0.29	12
12	OK-5543LED	3.56	0.29	12
13	OK-5544LED	2.87	0.29	10
14	OK-5547LED	3.32	0.29	11
15	OK-5549LED	3.07	0.40	8
16	OK-5556LED	3.32	0.29	11
17	OK-5575LED	3.63	0.40	9
18	OK-6652LED	2.87	0.29	10
19	OK-7740LED	4.11	0.29	14
20	OK-7756LED	3.63	0.29	12

21	OK-7775LED	4.11	0.40	10
22	OK-7784LED	4.11	0.29	14
23	OK-1LED	2.20	0.23	9
24	OK-181LED	4	0.13	30
25	OK-881LED	5.55	0.23	24
26	OK-883LED	4.80	0.23	21
27	OK-1201LED	2.2	0.10	28
28	OK-1202LED	4	0.10	28
29	OK-1203LED	5.55	0.10	28
30	OK-1290LED	4.8	0.10	15
31	OK-1514CCLED	2.8	0.13	27
32	OK-1712LED	2.8	0.10	27
33	OK-5051LED	2.8	0.12	30
34	OK-6474LED	2.25	0.18	10
35	OK-8550LED	2.2	0.12	24
36	OK-740LED	3.2	0.13	10
37	OK-840LED	3.5	0.13	10
38	OK-840CCLED	1.82	0.13	10
39	OK-1411LED	2.8	1.13	12
40	OK-C102LED	1.36	0.08	11
41	OK-C104LED	1.37	0.08	49
42	OK-C115LED	1.37	0.08	13
43	OK-C121LED	1.55	0.08	18
44	OK-C122LED	0.85	0.08	18
45	OK-C125LED	3.7	0.08	18
46	OK-C127LED	0.95	0.08	18
47	OK-C503LED	0.95	0.08	13

48	OK-C504LED	3.1	0.08	41
49	OK-C510LED	0.99	0.08	13
50	OK-C516LED	1.36	0.08	18
51	OK-C526LED	1.37	0.08	18
52	OK-C527LED	1.37	0.08	18
53	OK-C529LED	1.37	0.08	18
54	OK-C533LED	1.37	0.08	18
55	OK-1661LED	0.98	0.08	13
56	OK-1664LED	0.98	0.08	13
57	OK-1663CCLED	3.2	0.08	43
58	OK-2280LED	3.7	0.08	19
59	OK-2288LED	4	0.08	53
60	OK-4015LED	0.85	0.08	11
61	OK-5464LED	1.36	0.18	7
62	OK-5052LED	1.08	0.12	10
63	OK-6073LED	0.85	0.12	9
64	OK-6262LED	1.21	0.12	10
65	OK-6161LED	0.99	0.12	9
66	OK-8510LED	0.85	0.12	7
67	OK-8520LED	0.32	0.12	11
68	OK-8530LED	1.21	0.12	10
69	OK-8540LED	1.21	0.12	10
70	OK-8650LED	0.89	0.12	8
71	OK-805LED	1.4	0.12	12
72	OK-8121LED	1.62	0.12	14
73	OK-819LED	1.38	0.12	12
74	OK-78LED	3.8	0.15	25

75	OK-DL636	2.5	0.12	21
76	OK-DL636A	2.5	1.12	21
77	OK-666LED	2.22	1.12	19
78	OK-666ALED	2.22	0.12	19
79	OK-777LED	3	0.12	26
80	OK-777ALED	3	0.12	26
81	OK-888LED	3	0.12	26
82	OK-888ALED	3	0.12	26
83	OK-001	5.5	0.18	30
84	OK-002	3.7	0.18	20
85	OK-010	1.88	0.18	10
86	OK-012	3.8	0.18	21
87	OK-015	3.8	0.18	21
88	OK-018	3.75	0.18	20
89	OK-TVG1000	12.5	1.5	8
90	OK-TVG3000	7	1.5	5
91	OK-TVG1	6.2	1.1	6
92	OK-TVG2	4	1.1	4
93	OK-TVG3	4	1.1	4
94	OK-TVG4	4	1.1	4
95	V-3535LED	6	0.4	15
96	V-5549LED	6	0.29	21
97	V-5556LED	6	0.15	25
98	V-5053LED	3.7	0.15	25
99	V-5454LED	3.7	0.18	20
100	V-832LED	3.5	0.13	26
101	V-832LED	3.5	0.13	26

102	V-831LED	2.89	0.13	22
103	V-6464LED	3.8	0.18	21
104	V-1962LED	3.51	0.13	26
105	V-636LED	2.5	0.12	21
106	V-736LED	2.7	0.12	23
107	V-001	1.8	0.18	10
108	V-003	1.8	0.18	10
			Total items	108 1834

Note: Maximum is 53 times (Sr. No. 59) and minimum is 4 times (Sr. No. 92, 93, 94).

5.2 As it is clear from the above table that the range of suppression of value is 4 to 53 times and the average extent of suppression of value FOB China vis-a-vis CIF India is about 17 times and same would be much higher at CIF to CIF level. Overall, it appears that M/s Riddhi Siddhi Collection and M/s Aisha Electronics were declaring less than 1/6th of the actual value of the goods in India.

6 Suppression of RSP/MRP:

The goods imported by M/s Riddhi Siddhi Collection and M/s Aisha Electronics, viz. rechargeable torches (CTH 8513) and Mosquito Bat (CTH 8516) are subject to retail price based CVD levy.

6.2. Scrutiny of the export declarations reveals that the CIF value of the imported goods was also much higher than the printed MRP/RSP. Comparison of some of model are as below:-

S. No	Description	Model	Value as per export declarations FOB (in USD)	FOB (in Rs.)	CIF (in Rs)	Printed MRP (in Rs)
1	LED plastic handle torch	OK-881LED	5.55	306.92	317.75	60
2	Mini Mosquito Bat	OK-001	5.5	301.95	308.5	40

3	Emergency LED light	OK-4949LED	4.11	233.57	240.6	120
4	Emergency LED light	OK-5535LED	2.63	149.78	154.28	80
5	LED plastic handle torch	OK-1411LED	1.54	87.87	90.51	40
6	LED plastic torch	OK-8520LED	1.39	74.95	77.21	30
7	LED plastic torch	OK-8540LED	1.21	68.60	70.66	15
8	LED plastic torch	OK-1661LED	0.98	55.94	57.62	15
9	LED plastic torch	OK-8650LED	0.89	52.5	54	30
10	LED plastic torch	OK-1661LED	0.98	54.42	55.83	15
11	Mosquito Bat	OK-12	3.8	236	265	40
12	Mosquito Bat	OK-02	3.7	230	258	40

Note: The printed Maximum Retail Price (MRP) is several times lower than the transaction value declared at load port.

From above table, it appears that the importers have suppressed and mis-declared the printed MRP/RSP to evade payment of applicable duty.

6.3 During the course of investigation by DRI, it was found that Orkia branded goods were being sold at online web portals like www.ebay.in, www.rediff.com, www.natol.com. Enquiries made with resellers revealed that the Orkia branded products were never sold at the printed MRP/RSP, rather they were sold at several times higher rates. The actual RSP/MRP of these products was also submitted by the resellers and web portals which are as follows:-

S.No	Model No.	Web Portals	Sales price as web portals (in Rs)	Printed MRP	Assessed MRP as per B/E (in Rs)	Ratio

1	OK-8510LED	eBay	302	30	50	10
2	OK-8220LED	eBay	105	N.A	38	--
3	OK-7760LED	Tradus	842	N.A	100	--
4	OK-7575LED	eBay	699	N.A	83	--
5	OK-6652LED	Shopclues	660	80	100	8.2
6	OK-6464LED	eBay	449	N.A	58	--
7	OK-6069LED	Tradus	440	N.A	67	--
8	OK-5258LED	Naaptol	160	80	100	7.7
9	OK-5535LED	Naaptol	620	80	100	5.7
10	OK-5536LED	Naaptol	580	80	100	7.7
11	OK-5537LED	eBay	499	80	100	7.2
12	OK-5541LED	eBay	430	80	100	6.2
13	OK-5548LED	Naaptol	620	80	100	5.3
14	OK-5549LED	Shopclues	998	100	100	7.7
15	OK-5552LED	eBay	480	80	100	9.9
16	OK-5556LED	eBay	539	100	100	6

17	OK-5561LED	eBay	440	80	100	5.4
18	OK-5575LED	Naaptol	998	N.A	100	--
19	OK-5652LED	eBay	540	N.A	100	--
20	OK-4848LED	Tradus	447	N.A	100	--
21	OK-3434LED	Tradus	475	N.A	46	--
22	OK-1290LED	eBay	419	50	58	8.3
23	OK-1100LED	eBay	275	15	34	18.3
24	OK-718LED	Tradus	499	80	100	6.2
25	OK-716ALED	Tradus	877	N.A	100	--
26	OK-714LED	eBay	349	80	100	4.3
27	OK-693CCLED	Tradus	390	N.A	50	--
28	OK-640CCLED	Tradus	449	N.A	55	--
29	OK-484LED	eBay	560	80	100	7
30	OK-119CCLED	eBay	349	30	45	11.6
31	OK-055LED	eBay	395	N.A	42	--
32	OK-24BRLED	Tradus	298	N.A	45	--

Note: Actual Retail Sales Price were 4.3 to 18.5 times higher than oriented MRP

From above table it is clear that the actual price at which goods were sold in retail much higher than printed MRP/RSP

6.4 It appears that M/s Riddhi Siddhi Collection and M/s Aisha Electronics were indulging in gross suppression of both the transaction value and also the MRP/RSP of the goods imported by the in an organized manner to evade duty.

7. Valuation:

7.1 Rejection of transaction value and MRP/RSP:-

(i) In their statements recorded by DRI on Dt. 03.07.2013 and 04.07.2013 Sunil M. Jain, Proprietor of M/s Riddhi Siddhi Collection and Faisal Abdul Mali Javeri, Proprietor of M/s Aisha Electronics had agreed the undervaluation of goods by 25% of the assessable value arrived at by Customs for calculation of customs duty. They further stated that the suppressed amount was paid to authorized person sent by supplier after identification. Though the extent of admitted undervaluation is much less when seen in the light of load port export declarations, but the fact remains that the values have been suppressed. (ii) In their statement recorded by DRI on Dt. 03.07.2013 and 04.07.2013, Sanay T. Singh, G Category CHA card holder for M/s Balraj Kumar CHA firm and Faiyaz Merchant of M/s PP Associates, CHA who were engaged in handling customs clearance work of M/s Riddhi Siddhi Collection and M/s Aisha Electronics stated that they were aware that Sunil Jain has been resorting to undervaluation. (iii) During examination by DRI, it was also found that 'Orkia' brand products were being sold at online shopping websites like www.ebay.in, www.rediff.com, www.naptol.com at a price higher than MRP declared and printed at the time of import. Documents submitted and statements given to DRI by some of resellers on various internet website clearly indicate that there is suppression of transaction value. (iv) During investigation 50 export declaration made by exporter to the Chinese Customs along with English translations were submitted by shipping lines M/s Evergreen Shipping Agency and M/s Wan Hai Lines (India) Pvt. Ltd. On perusal of these documents it is revealed that values declared in China is FOB whereas value declared in India is CIF and the declared FOB value in China is 4 to 53 times higher than the CIF value declared in India. (v) In view of the above the declared transaction value is not the actual transaction value of these goods in terms of Section 14 of the Customs Act, 1962 and the Customs Valuation (Determination of Valuation of Imported Goods) Rules 2007 (herein after referred to as CVR, 2007). Where load port export declarations are available they represent the actual transaction value in terms of Rule 3 of CVR, 2007 read with Section 14

of the Customs Act, 1962 which have to be accepted as the transaction value of those consignments. In respect of the consignments where load port export declaration is not available, the same is proposed to be re-determined under the provisions of CVR, 2007 read with Section 14 of the Customs Act, 1962 as the declared values are liable for rejection under Rule 12 of the CVR, 2007 in view of the evidences as discussed above.

7.2 Redetermination of Transaction Value.

From the export declarations obtained by DRI during investigation revealed that the values declared by M/s Riddhi Siddhi Collection and M/s Aisha Electronics in China were FOB whereas same values declared in India were CIF. Therefore the CIF value has to be determined by adding freight and insurance. Actual freight could not be obtained for the imports of M/s Riddhi Siddhi Collection and M/s Aisha Electronics. On enquiry, the Shipping lines stated that average freight paid per container for transportation from all the ports in China to Mumbai was approximately USD 1200. In view of the above, instead of taking 20% of the re-determined value of the goods as freight, to be on the realistic side, the average freight of USD 1200 is being proposed to be taken as Freight to arrive at the re-determined CIF value. Since there are multiple rates of duty for the goods imported by M/s Riddhi Siddhi Collection and M/s Aisha Electronics, the freight amount of USD 1200 is apportioned among all the items in each bill of entry on the basis of their value to arrive at the CIF value of each item. Insurance at 1.125% of FOB value is also added, to arrive at the CIF value.

(i) Identical Models corresponding to those in Export Declarations

The export declarations of the 108 models were procured by DRI during the investigation including LED plastic torch model no OK-181, OK 6474 and OK-8510, Mosquito bat OK-02, OK-12, and Mosquito Bat with light OK-15. The model no and price quoted in various export declarations is as below:

Model No.	Price range (in USD)
OK-181	4
OK-840	1.37-1.54
OK-8510	0.8476-1.43
Mosquito Bat OK-02	3.7-5.5
Mosquito Bat OK-12	3.8-5.5
Mosquito Bat OK-15	3.8-5.5

As above said prices reflects the transaction value of identical models, the lowest price is proposed to be used to re-determine the assessable value of these models occurring in subject consignments in terms of Rule 4 of CVR 2007 read with Section 14 of the Customs Act, 1962. Since the actual freight is not available, the average freight of 1200 USD as stated by the shipping lines, insurance at 1.125% of FOB, is added to arrive at the CIF value.

(ii) Similar goods / Models

The sealed samples drawn during examination by DRI were re-examined by Pahad Singh Rathod who is wholesaler of these goods to co relate and broad categorization. These goods were then grouped into similar categories such as Big torch, medium torch, small torch, LED plastic handle torch, mosquito bat with light, mini mosquito bat based on their usage and functions and concerned items are reproduced as below.

Medium Plastic Torch	Small Plastic Torch
OK-2001, OK-E2006, OK-841, OK-843, OK-845, OK-1311, OK-840	OK-8620, OK-8640, OK-8700, OK-8510

LED plastic handle torch OK-2001, OK- E2006, OK-841, OK-843, OK-845, OK-1311 is similar to OK 840 in usage and functions being Medium plastic handle torch. Similarly, OK-8620, OK-8640 and OK-8700 can be grouped with OK-8510 as these are small plastic torch. As values of the OK-8510 and OK-6474 models are available in the export declarations procured by DRI, the lowest value of these models is proposed to be used to re-determine the assessable value of similar products of the subject consignments models in terms of Rule 5 of CVR 2007 read with Section 14 of the Customs Act, 1962. Since the actual freight is not available, the average freight of 1200 USD as stated by the shipping lines, insurance at 1.125% of FOB, is added to arrive at the CIF value.

(iii) Re-determination of the MRP/ RSP:-

- (a) M/s Riddhi Siddhi Collection and M/s Aisha Electronics had imported branded Rechargeable LED torches, Mosquito bats etc falling under various chapters of Schedule I to the Customs Tariff Act, 1975 are subject to Retail Sales Price based additional duty equal to excise duty. Further the Proviso to Sub section (2) of Section 3 of the said Act provides that in case of a pre-packaged articles in relation to which it is required under Legal Metrology Act or any other law, to declare on the

package thereof the retail sales price of article. Section 4A of the Central Excise Act, 1944 stipulates that 'Retail sales Price' means the maximum price (MRP) at which excisable goods in packaged form may be sold to the ultimate consumer. The CVD is charged on the retail sales price less amount of abatement as may be allowed by Notification under Sub Section (2) of Section 3 of the Central Excise Act, 1944. Therefore apart from CIF value, MRP of the goods has substantial impact on amount of duty payable. (b) In their statements recorded by DRI on Dt. 03.07.2013 and 04.07.2013 Sunil M. Jain, Proprietor of M/s Riddhi Siddhi Collection and Faisal Abdul Mali Javeri, Proprietor of M/s Aisha Electronics had admitted that there was a difference between the RSP declared by them to customs and the price of the same product as per the cash memo/website. They further stated that the RSP declared in the bill of entry is approximately 2.5 times the value arrived at after loading by the Customs. (c) Scrutiny of export declaration received by DRI from the port of export reveals that the CIF value of the goods was much higher than printed MRP/RSP. As per invoices submitted by Devang Shah, web retailer and statements given by other web retailers to DPI, purchase price paid by them is very high as compared to MRP printed on the products. (d) In view of the above, it appears that importers have suppressed MRP/RSP and mis-declared and even printed on the product to evade payment of applicable duty and needs to be re-determined in terms of the proviso to sub section (2) of Section 3 of Customs Tarriff Act, 1975 read with Section 4A of the Central Excise Act, 1944. (e) During the course of investigation, DM obtained the MRP/RSP of few models from web portals and their resellers. On comparison of these MRP/RSP with data obtained from export declarations made at port of export, it is found that MRP/RSP is at least 2.36 times the actual value of the goods. The data pertaining to some models as obtained from export declarations and retail sales prices submitted by web portals sellers is as below:

S.No	Model No.	Value as per export declaration/pc (in USD) FOB	CIF (in RS)	MRP as per web portals (in RS)	MRP vis-a-vis CIF In times
1	Model 5535	2.63	164	520	3.17

2	Model 5535	2.92	182	520	2.85
3	Model 5535	3.55	220	520	2.36
4	Model 5549	3.56	221	849	3.84
5	Model 6652	2.87	179	560	3.12
6	Model 5575	3.63	226	849	3.75
7	Model 8510	0.8746	53	302	5.8
8	Model 8510	1.43	89	302	3.39

(f) In order to verify whether the MRP could be 2.36 times of the actual value of goods, CIF value is taken as 100 and different costs, taxes and profits were added to arrive at the MRP as below:-

Sr No	Remarks	%	Total
1	CIF		100
2	1% Landing Charge	1.00	101.00
3	Duty	29.441	130.74
4	Octroi-5.5% (on 3)	5.50	137.93
5	Handling & transportation @ 4.5% (On 4)	4.5	144.13
6	Profit of Importer @ 10 % on 5	10.00	158.543
7	Profit of whole seller @ 15% on 6	15.00	182.32
8	Profit of retailer @15 % on 7	15.00	209.66

9	VAT @ 12.5 % on 8	12.5	235.86 =236
10	Retailers selling price		236

In view of the above calculations, it appears that MRP comes to about approximately 2.36 times the CIF value and therefore, MRP/RSP of the various models under subject consignments are proposed to be re-determined at 2.5 times CIF value in terms of subsection (2) of Section 3 of the Customs Tariff Act, 1975 read with the Section 4A of the Central Excise Act, 1944.

8. In view of the above, it appears that M/s Riddhi Siddhi Collection and M/s Aisha Electronics deliberately mis-declared the transaction value of the goods as well as suppressed the MRP/RSP of the goods imported by them with the intention to evade applicable customs and caused huge loss to the Public Exchequer. Appropriate customs duty payable on the goods imported by M/s Riddhi Siddhi Collection and M/s Aisha Electronics was short levied by reason of collusion, wilful mis-statement and suppression of facts by M/s Riddhi Siddhi Collection and M/s Aisha Electronics. The differential duty is therefore recoverable from M/s Riddhi Siddhi Collection and M/s Aisha Electronics under the extended provisions of Section 28 of the Customs Act, 1962 along with interest under the provisions of Section 28AB (Section 28AA From 28.04.2011) of the Customs Act, 1962.

8.2 By resorting to undervaluation and suppression of MRP/ RSP of the goods imported by M/s Riddhi Siddhi Collection has resulted, in short levy of duty and therefore these goods having re-determined value of Rs. 34,98,702/- (Rupees Thirty Four Lakh Ninety Eight Thousand Seven Hundred and Two Only) are liable for confiscation under Section 111(m) of the Customs Act, 1962 and M/s Riddhi Siddhi Collection rendered themselves liable to penalty under Section 112 (a) and 112(b) or Section 114A of the Customs Act, 1962, in relation to said goods.

8.3 By resorting to undervaluation and suppression of MRP/ RSP of the goods imported by M/s Aisha Electronics has resulted in short levy of duty and therefore these goods having re-determined value of Rs 1,79,00,832/- (Rupees One Crore Seventy Nine Lakhs Eight Hundred Thirty Two Only) are liable for confiscation under Section 111(m) of the Customs Act, 1962 and M/s Aisha Electronics rendered themselves liable to penalty under Section 112 (a) and 112(b) or Section 114A of the Customs Act, 1962, in relation to said goods.

8.4 Sunil Jain, the proprietor of M/s Riddhi Siddhi Collection, imported above goods by grossly suppressing the value with manipulated undervalued invoices and suppressed MRP/RSP to evade payment of applicable Customs duty. Consequently, by his various acts of commission and omission, which has

rendered the goods imported by M/s Riddhi Siddhi Collection having value of Rs. 34,98,702/- (Rupees Thirty Four Lakh Ninety Eight Thousand Seven Hundred and Two Only) liable for confiscation under Section 111(m) of the Customs Act, 1962 and Sunil Jain rendered himself liable to penalty under Section 112 (a) and 112(b) or Section 114A of the Customs Act, 1962, in relation to said goods.

8.5 Faisal Javeri, the proprietor of M/s Aisha Electronics, imported above goods by grossly suppressing the value with manipulated undervalued invoices and suppressed MRP/RSP to evade payment of applicable Customs duty. Consequently, by his various acts of commission and omission, which has rendered the goods imported by M/s Aisha Electronics having value of Rs 1,79,00,832/- (Rupees One Crore Seventy Nine Lakhs Eight Hundred Thirty Two Only) liable for confiscation under Section 111(m) of the Customs Act, 1962 and Faisal Javeri rendered himself liable to penalty under Section 112 (a) and 112(b) or Section 114A of the Customs Act, 1962, in relation to the said goods.

8.6 Further, by knowingly and intentionally making false declarations of the value in the import consignments by submitting false and suppressed value invoices, Sunil Jain, the proprietor of M/s Riddhi Siddhi Collection and Faisal Javeri, the proprietor of M/s Aisha Electronics are liable for penalty under Section 114 AA of the Customs Act, 1962.

9. Therefore, M/s Riddhi Siddhi Collection; vide SCN dated 15.12.2016, were called upon to show cause to the Commissioner of Customs (Import), NS V, Nhava Sheva as to why:-

9.1.1 The declared CIF value in respect of goods imported by them having declared assessable value Rs. 3,52,242 (Rupees Three Lakhs Fifty Two Thousand Two Hundred Forty Two) for the imports as detailed in Annexure A should not be rejected under the provisions of CVR, 2007 read with Section 14 of the Customs Act, 1962.

9.1.2 The declared assessable value of the goods imported by them should not be re-determined as Rs. 34,98,702/- (Rupees Thirty Four Lakh Ninety Eight Thousand Seven Hundred and Two Only) as detailed in Annexure A under the provisions of Rule 4 and Rule 5 of CVR, 2007 read with Section 14 of the Customs Act, 1962.

9.1.3 The declared MRP/RSP of the goods imported by them should not be re-determined as detailed in Annexure A in terms of proviso to subsection (2) of Section 3 of the Customs Tariff Act, 1975 read with the Section 4A of the Central Excise Act, 1944

9.1.4 The goods imported by them having re-determined value of Rs. 34,98,702/- (Rupees Thirty Four Lakh Ninety Eight Thousand Seven Hundred and Two Only) as detailed in Annexure A should not be held liable for confiscation under Section 111 (m) of the Customs Act.

9.1.5 The total duty of Rs. 15,29,989/- (Rupees Fifteen Lakh Twenty Nine Thousand Nine Hundred Eighty Nine Only) as detailed in Annexure A against the goods imported by them should not be demanded and recovered from them under the provisions of Section 28 of the Customs Act, 1962 along with applicable interest under Section 28 AA of Customs Act, 1962.

9.1.6 Penalty under Section 112(a) and 112(b) or Section 114A of the Customs Act should not be imposed on M/s Riddhi Siddhi Collection.

9.1.7 Penalty under Section 114AA of the Customs Act should not be imposed on M/s Riddhi Siddhi Collection.

9.1.8 Penalty under Section 112(a) and 112(b) or Section 114A of the Customs Act should not be imposed on Shri. Sunil Jain.

9.2. M/s Aisha Electronics were called upon to show cause to the Commissioner of Customs (Import), NS V, Nhava Sheva having his office at Jawaharlal Customs house, Nhava Sheva, Uran, Raigad as to why:-

9.2.1. The declared CIF value in respect of goods imported by them having declared assessable value of Rs 15,16,182/- (Rupees Fifteen Lakhs Sixteen Thousand One Hundred Eighty Two Only) for the imports as detailed in Annexure B should not be rejected under the provisions of CVR, 2007 read with Section 14 of the Customs Act, 1962.

9.2.2 The declared assessable value of the goods imported by them should not be re-determined as Rs. 1,79,00,832/- (Rupees One Crore Seventy Nine Lakhs Eight Hundred Thirty Two Only) as detailed in Annexure B under the provisions of Rule 4 and Rule 5 of CVR, 2007 read with Section 14 of the Customs Act, 1962.

9.2.3 The declared MRP/RSP of the goods imported by them should not be re-determined as detailed in Annexure B in terms of proviso to subsection (2) of Section 3 of the Customs Tariff Act, 1975 read with the Section 4A of the Central Excise Act, 1944

9.2.4 The goods imported by them having re-determined value of Rs 1,79,00,832/- (Rupees One Crore Seventy Nine Lakhs Eight Hundred Thirty Two Only) as detailed in Annexure B should not be held liable for confiscation

under Section 111 (m) of the Customs Act, 1962 under the provisions of Rule 4 and Rule 5 of CVR,2007 read with Section 14 of the Customs Act,1962.

9.2.5 The total duty of Rs. 68,59,430/- (Rupees Sixty Eight Lakh Fifty Nine Thousand Four Hundred Thirty only) as detailed in Annexure B against the goods imported by them should not be demanded and recovered from them under the provisions of Section 28 of the Customs Act, 1962 along with applicable interest under Section 28 AA of Customs Act,1962.

9.2.6 Penalty under Section 112(a) and 112(b) or Section 114A of the Customs Act should not be imposed on M/s Aisha Electronics.

9.2.7 Penalty under Section 114AA of the Customs Act should not be imposed on M/s Aisha Electronics.

9.2.8 Penalty under Section 112 (a) and 112 (b) or Section 114A of the Customs Act should not be imposed on Shri Faisal Javeri.

10. **Personal Hearing**

10.1 The initial submission at the time of SCN was submitted are reproduced below:-

a.) The two noticee firms, viz. M/s Riddhi Siddhi Collection and M/s Aisha Electronics, vide identical letters dated 03.01.2017 denied all the allegations levelled against them. However, no grounds, reasons or evidences were adduced in support of their contention. They also stated that the documents relied upon in the SCN, viz. Annexure A and B and RUD 1-9 have not been supplied along with the SCN. They, therefore, requested for the supply of RUDs so as to enable them to make further submissions.

b.) In response to the aforesaid letter dated 03.01.2017, letter dated 10.11.2017 was sent to the noticees informing that the soft copies of the RUDs were available in this office and they could inspect or get copies of the RUDs by visiting this office. The letter also requested the noticees to submit their written replies at the earliest so that the adjudication process may be proceeded with. However, no response was received in response to the said letter.

10.2 The learned counsel on behalf of the noticees stated at the time of Writ Petition that they would file a reply within two weeks. However, no reply was filed by them as per the records available, nor they mentioned anything about the compliance of Hon'ble High Court Order regarding filing of reply.

10.3 As per the hon'ble High Court Order dated 19.07.2019, personal hearing letters dated 08.04.2026, 17.04.2026 were issued to the noticees. In response to the aforesaid letter dated 17.04.2026, Ms Linzy Sharan, PDS Legal appeared on behalf of two notices:- Sh. Sunil Megraj Jain, proprietor of M/s Riddhi Siddhi Collection and Sh. Faisal Ahmed Malik Javeri, proprietor of M/s Aisha Electronics and submitted that

" 1. The learned Commissioner of Customs, NS-V, vide order dated 13.07.2018/, adjudicated the show cause notice dated 15.12.2016, and inter-alia, rejected the and redetermined the declared value of the goods, finalized the provisional assessment, ordered confiscation of the goods, appropriated the payment of duty made at the time of provisional release, demanded differential duty with interest, and imposed penalties.

2. Since, this captioned show cause notice was already adjudicated vide the said Order-in Original No. 53/2018/-19/Commr/NS-V/JNCH dated 13.07.2018, no proceedings can be initiated in respect of this captioned show cause notice."

Discussion and Findings

11. I find that the Show Cause Notice No. 363/SIIB-I/2016-17/JNCH dated 2016 was adjudicated vide **Order-in-Original No. 53/2018-19/Commr/NS-V/JNCH** dated 13.07.2018 as mentioned below:-

- a. In respect of M/s Riddhi Siddhi Collection, -
 - i.) ordered confiscation of the impugned goods,
 - ii.) Confirmed the demand of differential duty
 - iii.) Imposed penalty under Section 114A and 114AA of the Customs Act.
- b. In respect of M/s Aisha Electronics,-
 - i.) ordered confiscation of the impugned goods,
 - ii.) Confirmed the demand of differential duty
 - iii.) Imposed penalty under Section 114A and 114AA of the Customs Act.

11.1 I find that the noticees filed a writ petition in Hon'ble Bombay High Court vide WP no. 6368 of 2019 against the said OIO on grounds that personal hearing opportunity was not provided to them. Hon'ble Bombay High Court disposed of the said W.P. vide **Order 19.07.2019** and observed: "*the impugned order dated 13.07.2018 is quashed and set aside. The show cause notice dated 15th December, 2016 is re-stored to the file of Commssioner of Customs, respondent no. 2, for fresh disposal in accordance with law. Mr. Prakash Shah, the learned Counsel appearing for the petitioners states that they would file a reply within a period of two weeks from today. Thereafter the Commissioner of*

Customs would give a personal hearing to the petitioner in respect of the show cause notice dated 15th December, 2016 and pass an order in accordance with law". However, no reply has filed by them as per the records available.

11.2 I have carefully gone through the all the documents on record available and I find that following main issues are involved in this case which are required to be decided:

- (i) Whether the self-assessment in respect of B/Es of the subject SCN, done by the importers M/s Riddhi Siddhi Collection and M/s Aisha Electronics, in terms of Section 17(1) should be rejected and re-assessed as per Section 17(4) of the Customs Act, 1962. Consequent to such re-assessment, the differential duty should be demanded under Section 28(4) of the Customs Act, 1962, along with applicable interest as per Section 28AA of the Customs Act, 1962.
- (ii) Whether the impugned goods imported by M/s Riddhi Siddhi Collection and M/s Aisha Electronics, should be confiscated under Section 111(m) of the Customs Act, 1962.
- (iii) Whether for acts of omission and commission and wilful suppression of facts, as discussed in the foregoing paragraphs, penalty should be imposed on the importer, M/s Riddhi Siddhi Collection and M/s Aisha Electronics, under Sections 112(a), 114A and 114AA, of the Customs Act, 1962.
- (iv) Whether the amounts paid by the importer should be appropriated towards differential duty, interest and penalty for the Bills of Entry covered under Annexure-A.

11.3 After having identified and framed the main issues to be decided, I now proceed to examine each of the issues individually based on the facts and circumstances mentioned in the SCN; provision of the Customs Act, 1962; nuances of various judicial pronouncements, as well as documents / evidences available on record.

11.4.1 Whether the self-assessment in respect of B/Es of the subject SCN, done by the importers M/s Riddhi Siddhi Collection and M/s Aisha Electronics, in terms of Section 17(1) should be rejected and re-assessed as per Section 17(4) of the Customs Act, 1962. Consequent to such re-assessment, the differential duty should be demanded under Section 28(4)

of the Customs Act, 1962, along with applicable interest as per Section 28AA of the Customs Act, 1962.

11.4.2 The relevant provisions of the Customs Act, 1962 are reproduced as below

Section 17 of the Customs Act, 1962

Assessment of duty -

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

Section 17(4): Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

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

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

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

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

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

11.4.3.1 Consequent upon amendment to the Section 17 of the Customs Act, 1962 vide Finance Act, 2011, 'Self-assessment' has been introduced in Customs clearance. **Under self-assessment, it is the importer who has to**

ensure that he declares the correct classification, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported goods while presenting the Bill of Entry. Thus, with the introduction of self-assessment by amendments to Section 17, it is the added and enhanced responsibility of the importer, to declare the correct description, value, notification, etc. and to correctly classify, determine and pay the duty applicable in respect of the imported goods. In the instant case, importers M/s Riddhi Siddhi Collection and M/s Aisha Electronics had imported goods and under-valued them to evade the applicable customs duty, the said fact was revealed during the detailed investigation. I find that the enquiry with the retail sellers and web-portals (such as www.ebay.in; www.rediff.com; and www.naptol.com) clearly confirm the charge that the impugned goods, bearing the brand names "Orkia" and "Hoya", have RSP significantly higher than those printed on the packets/cartons and declared by the importers in respect of the bills of entry covered by the SCN. I find that the evidence proving actual sale of the of the same brand name (i.e. Orkia and Hoya) and models as covered by the SCN at retail prices substantially higher than the declared MRP in the bills of entry as well as those found on the goods. I, further find that the impugned goods were mis-declared as to value, both in terms of the transaction value, as admitted by the noticees, as well as the retail sales price (RSP), in as much as there are evidences to show that these goods, identified by brand name and models, are sold at prices significantly higher than those declared and found pasted on the goods.

11.4.3.2 Also, on scrutiny of the export declarations reveals that the CIF value of the imported goods was also much higher than the printed MRP/RSP. Comparison of some of model are as below:-

S. No	Description	Model	Value as per export declarations FOB (in USD)	FOB (in Rs.)	CIF (in Rs)	Printed MRP (in Rs)
1	LED plastic handle torch	OK-881LED	5.55	306.92	317.75	60
2	Mini Mosquito Bat	OK-001	5.5	301.95	308.5	40
3	Emergency LED light	OK-4949LED	4.11	233.57	240.6	120

4	Emergency LED light	OK-5535LED	2.63	149.78	154.28	80
5	LED plastic handle torch	OK-1411LED	1.54	87.87	90.51	40
6	LED plastic torch	OK-8520LED	1.39	74.95	77.21	30
7	LED plastic torch	OK-8540LED	1.21	68.60	70.66	15
8	LED plastic torch	OK-1661LED	0.98	55.94	57.62	15
9	LED plastic torch	OK-8650LED	0.89	52.5	54	30
10	LED plastic torch	OK-1661LED	0.98	54.42	55.83	15
11	Mosquito Bat	OK-12	3.8	236	265	40
12	Mosquito Bat	OK-02	3.7	230	258	40

Note: The printed Maximum Retail Price (MRP) is several times lower than the transaction value declared at load port.

From above table, it appears that the importers have suppressed and mis-declared the printed MRP/RSP to evade payment of applicable duty.

From the above, it is evident that importer has deliberately and willfully undervalued the said goods and suppressed the facts with regard to true transaction value with an intention to evade applicable duty. Further, I find that from the statements and importers M/s Riddhi Siddhi Collection and M/s Aisha Electronics, it was evident that the importer has willfully suppressed the true transaction value of the imported goods.

In view of the above, I find that, the self-assessment done by the importer in terms of Section 17(1) of the Customs Act, 1962, is liable to be rejected and the same should be re-assessed in term of Section 17(4), *ibid*.

11.4.4 The scheme of RMS wherein the importers are given so many facilitations also comes with responsibility of onus for truthful declaration. The Tariff classification and Description of the item, are the first parameters that decides the rate of duty for the goods, which is the basis on which Customs duty is payable by any importer. However, if the importer does not declare the

complete details and evades payment of correctly payable duty, it definitely amounts to mis-leading the Customs authorities, with intent to evade payment of legitimate Customs duty leviable on the said imported goods. In the instant case, the importers had imported goods and undervalued them which was uncovered by the investigation agency during the investigation to evade applicable customs duty. I, therefore, find that the ingredients of wilful mis-statement and suppression of material facts with intent to evade duty are clearly established as provided under Section 28(4) of the Customs Act, 1962.

11.4.5 In view of the above, I find that the differential duty resulting from re-assessment of the Bs/E as proposed in the subject Show Cause Notice, is recoverable from M/s Riddhi Siddhi Collection and M/s Aisha Electronics under the provisions of Section 28(4) of the Customs Act, 1962.

11.4.6 Therefore, I hold that the self-assessment in respect of B/Es done by the importers, M/s Riddhi Siddhi Collection and M/s Aisha Electronics, in terms of Section 17(1) should be rejected and re-assessed as per Section 17(4) of the Customs Act, 1962. Consequent to such re-assessment, the differential duty should be demanded under Section 28(4) of the Customs Act, 1962.

11.5 Whether applicable interest should be demanded under Section 28AA of the Customs Act, 1962, on the differential duty of customs duty for the imported goods.

11.5.1 I find that, in terms of Section 28AA of the Customs Act, 1962, interest on the aforesaid differential/short-paid is mandatorily payable. Interest liability under Section 28AA arises automatically by operation of law once the duty demand is upheld and is a civil consequence of delayed payment of duty. The Hon'ble Supreme Court in *Pratibha Processors v. Union of India* [1996 (88) ELT 12 (SC)] has held that interest is compensatory in nature and is an accessory to the principal duty demand. Similar view has been taken by the Hon'ble Bombay High Court in *Directorate of Revenue Intelligence v. Valecha Engineering Ltd.*, wherein it was held that interest under Section 28AA is automatically payable on failure to pay duty within the prescribed time.

11.5.2 Accordingly, I hold that the applicable interest on differential duty is recoverable from M/s Riddhi Siddhi Collection and M/s Aisha Electronics under Sections 28AA of the Customs Act, 1962.

11.6 Whether the impugned goods imported by M/s Riddhi Siddhi Collection and M/s Aisha Electronics should be confiscated under Section 111(m) of the Customs Act, 1962.

11.6.1 I have carefully examined the proposal in the Show Cause Notice to hold the goods imported vide the Bills of Entry liable for confiscation under Section 111(m) of the Customs Act, 1962. The said proposal arises from the findings that the importer undervalued the goods which resulted in short payment of duty.

11.6.2 I find from the records that the importers imported goods by undervaluing them for the sole purpose to evade the Customs duty, which ultimately resulted in loss to the exchequer.

11.6.3 Section 111(m) of the Customs Act, 1962 provides that any goods which do not correspond in respect of value, quantity or any other particular with the entry made under the Act in the Bill of Entry shall be liable to confiscation.

11.6.4 In the present case, the importer undervalued the impugned goods which fall within the meaning of Section 111(m) of the Customs Act, 1962, as the same directly impacted the collection of customs duty. The undervaluation of the goods, thereby affecting duty liability and rendering the goods liable for confiscation under Section 111(m).

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

11.6.6 I find that the importer while filing the Bills of Entry for the clearance of the subject goods had subscribed to a declaration as to the truthfulness of the contents of the Bill of Entry in terms of Section 46(4) of the Customs Act, 1962 and Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2011 in all their import declarations. Thus, under the scheme of self-assessment, it is the importer who has to diligently ensure that he declares all the particulars of the imported goods correctly e.g., the correct description of the imported goods, its correct classification, the applicable rate of duty,

value, benefit of exemption notification claimed, if any, in respect of the imported goods when presenting the Bill of Entry. With the introduction of self-assessment by amendment to Section 17, w.e.f. 8th April, 2011, the complete onus and responsibility is on the importer to declare the correct description, value, notification, etc. and to correctly classify, determine and claim correct exemption notification and pay the applicable duty in respect of the imported goods.

11.6.7. Prior to 08.04.2011, sub-section (2) of Section 2 of the Customs Act, 1962 read as under:

(2) "assessment" includes provisional assessment, reassessment and any order of assessment in which the duty assessed is nil;

Finance Act, 2011 introduced provision for self-assessment by the importer. Subsequent to substitution by the Finance Act, 2011 (Act 8 of 2011), (w.e.f. 08.04.2011) sub-section (2) of Section 2 ibid read as under:

Section 2 - Definitions, Sub-section (2) – assessment:

(2) "assessment" includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;

With effect from 29.03.2018, the term 'assessment' in sub-section (2) of Section 2 ibid means as follows:

(2) "assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to-

- a) the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;*
- b) the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;*
- c) exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefore under this Act or under the Customs Tariff Act or under any other law for the time being in force;*
- d) the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;*
- e) the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods,*

f) any other specific factor which affects the duty, tax, cess or any other sum payable on such goods,

and includes provisional assessment self-assessment, re-assessment and any assessment in which the duty assessed is nil;

11.6.8 From a plain reading of the above provisions related to assessment, it is very clear that w.e.f. 08.04.2011, the importer must self-assess the duty under Section 17 read with Section 2(2) of the Customs Act, and since 2018 the scope of assessment has been widened. Under the self-assessment regime, it was statutorily incumbent upon the importer to correctly self-assess the goods in respect of classification, valuation, claimed exemption notification and other particulars. With effect from 29.03.2018, the term 'assessment', which includes provisional assessment also, the importer is obligated to not only establish the correct classification but also to ascertain the eligibility of the imported goods for any duty applicability. From the facts of the case as detailed above, it is evident that M/s Riddhi Siddhi Collection and M/s Aisha Electronics has deliberately failed to discharge this statutory responsibility cast upon them.

11.6.9 In view of the above discussion, I hold that the impugned goods imported by M/s Riddhi Siddhi Collection and M/s Aisha Electronics are liable for confiscation under Section 111(m) of the Customs Act, 1962.

11.7 Whether for acts of omission and commission and wilful suppression of facts, as discussed in the foregoing paragraphs, penalty should be imposed on the importer, M/s Riddhi Siddhi Collection and M/s Aisha Electronics, under Sections 112(a)/ 114A and Section 114AA of the Customs Act, 1962.

11.7.1 I have carefully examined the proposal in the Show Cause Notice for imposition of penalty on M/s Riddhi Siddhi Collection and M/s Aisha Electronics under Section 112(A), 114A and 114AA of the Customs Act, 1962 under section 112(a) of the Customs Act, 1962 for the acts and omissions discussed in the preceding paragraphs of this order.

11.7.2 I find that the importer had imported goods and significantly undervalued them to evade applicable Customs duty as found during the detailed investigation. The said fact was well established by the investigation agency and also from the statements of the proprietors of M/s Riddhi Siddhi Collection and M/s Aisha Electronics recorded under the provisions of Section 108 of the Customs Act, 1962.

11.7.3 I further note that the undervaluation of the goods in the Bills of Entry resulted in short-payment of duty, as discussed in the earlier findings of this order. Such undervaluation in the import documents constitutes a material mis-declaration which directly impacted the assessment of duty and rendered the goods liable to confiscation under Section 111(m) of the Customs Act, 1962.

11.7.4 Section 112(a) of the Customs Act, 1962 provides for imposition of penalty on any person who, in relation to any goods liable to confiscation under the Act, does or omits to do any act which renders such goods liable to confiscation. In the present case, by undervaluing the goods, the noticee has rendered the goods liable to confiscation under Section 111(m) of the Act.

11.7.5 Being the importer and the beneficiary of the customs duty evaded in the Bills of Entry, M/s Riddhi Siddhi Collection and M/s Aisha Electronics was responsible for making correct and truthful declarations in the import documents filed before Customs. The undervaluation of the goods itself to evade the customs duty constitutes deliberate evasion of the customs duty.

11.7.6 In view of the above discussion, I find that M/s Riddhi Siddhi Collection and M/s Aisha Electronics has rendered the impugned goods liable to confiscation under Section 111(m) of the Customs Act, 1962, and is therefore, liable to penalty under Section 112(a) of the said Act. Accordingly, I hold that penalty is imposable on M/s Riddhi Siddhi Collection and M/s Aisha Electronics under Section 112(a) of the Customs Act, 1962, for the acts and omissions discussed above.

11.7.7 Further, I find that Section 114A provides that where duty has not been levied or has been short-levied by reason of collusion or any wilful misstatement or suppression of facts, the person who is liable to pay duty under Section 28(4) shall also be liable to a penalty equal to the duty so determined. I find that as per Section 114A, imposition of penalty is mandatory once the elements for invocation of extended period is established. Hon'ble Supreme Court in *Grasim Industries Ltd. V. Collector of Customs, Bombay* [(2002) 4 SCC 297=2002 (141) E.L.T.593 (S.C.)] has followed the same principle and observed:

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

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

11.7.8 Thus, in view of the mandatory nature of penalty under Section 114A no other conclusion can be drawn in this regard. I also rely upon case reported in 2015 (328) E.L.T. 238 (Tri. - Mumbai) in the case of *SAMAY ELECTRONICS (P) LTD. Versus C.C. (IMPORT) (GENERAL), Mumbai*, in which it has been held:

Penalty - Imposition of - Once demand confirmed under Section 28 of Customs Act, 1962 read with Section 9A of Customs Tariff Act, 1975 on account of fraud, penalty under Section 114A ibid mandatory and cannot be waived - Therefore imposition of penalty cannot be faulted - Section 114A ibid.

11.7.9 In the present case, I have already held that Section 28(4) is invocable on account of deliberate undervaluation, which resulted in short-payment of duty. It is also evident that the acts and omissions of the importer directly led to confirmation of differential duty under Section 28(4). Therefore, the statutory pre-condition for invoking Section 114A stands satisfied. Therefore, penalty under Section 114A is rightly proposed on M/s Riddhi Siddhi Collection and M/s Aisha Electronics, in the impugned SCN. Accordingly, I find that M/s Riddhi Siddhi Collection and M/s Aisha Electronics are liable for a penalty under Section 114A of the Customs Act, 1962. Since differential duty has been determined, the penalty imposable under Section 114A of the Customs Act, 1962 is equivalent to the **differential duty** as per annexure-A and annexure-B alongwith applicable interest as provided in section 114A of the Customs Act, 1962.

11.7.10 In view of the foregoing, I hold that penalty on M/s Riddhi Siddhi Collection and M/s Aisha Electronics under Section 114A is legally sustainable, as the ingredients of suppression and wilful misstatement leading to short-payment of duty under Section 28(4) are established.

11.7.11 Further, I have already held above that by their acts of omission and commission, the importers has rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962, making them liable for a penalty under Section 112(a), ibid. However, I find that the penalty under Section 114A and Section 112 of the Customs Act, 1962 are mutually exclusive and both cannot be imposed simultaneously. Therefore, in view of fifth proviso to Section

114A, I hold that no penalty is imposable on the importer under Section 112(a),
ibid.

11.7.12 The Bills of Entry filed before Customs constitute statutory declarations made under the Customs Act, 1962, and the importer is under a legal obligation to declare the correct description, classification and other particulars of the imported goods. In the present case, the deliberate undervaluation of the impugned goods, which resulted in short-payment of duty, amounts to making an incorrect declaration in a material particular.

11.7.13 Section 114AA of the Customs Act, 1962 provides that if a person knowingly or intentionally makes, signs or uses any declaration, statement or document which is false or incorrect in any material particular in the transaction of any business relating to the Customs Act, such person shall be liable to penalty under the said provision.

11.7.14 Such declaration of an incorrect value in the Bills of Entry, which directly led to the evasion of customs duty, enabled the noticee to, constitutes use of a document containing a false or incorrect statement in a material particular within the meaning of Section 114AA of the Customs Act, 1962.

11.7.15 In view of the above facts and circumstances, I find that Sh. Sunil Megraj Jain, Proprietor of M/s Riddhi Siddhi Collection and Sh. Faisal Ahmed Malik Javeri, Proprietor of M/s Aisha Electronics have rendered themselves liable to penalty under Section 114AA of the Customs Act, 1962 for knowingly using Bills of Entry containing undervaluation of the imported goods. Accordingly, I hold that penalty under Section 114AA of the Customs Act, 1962 is imposable on Sh. Sunil Megraj Jain and Sh. Faisal Ahmed Malik Javeri, for the acts discussed above.

11.7.16 Whether separate penalties can be imposed on the two Noticees viz. (i) M/s Riddhi Siddhi Collection and Sh. Sunil M Jain, Proprietor of M/s Riddhi Siddhi Collection and (ii) M/s Aisha Electronics and Sh. Faisal Ahmed Malik Javeri, Proprietor of M/s Aisha Electronics.

11.7.16.1 In the subject SCN, there are two Noticees viz. (i) M/s Riddhi Siddhi Collection and Sh. Sunil M Jain, Proprietor of M/s Riddhi Siddhi Collection and (ii) M/s Aisha Electronics and Sh. Faisal Ahmed Malik Javeri, Proprietor of M/s Aisha Electronics. From the 'IEC Details' available on DGFT web portal, I find that M/s Riddhi Siddhi Collection is a 'Proprietorship' firm with Sh. Sunil M Jain, as its Proprietor and M/s Aisha Electronics is a

'Proprietorship' firm with Sh. Faisal Ahmed Malik Javeri . In this regard, I note that in the eye of law, 'Proprietorship firm' and 'Proprietor' are one and same and have no distinct identity. It is settled position of law that no separate penalty can be imposed on Proprietor and Proprietorship Firm, and same has been held in number of cases. I rely upon case law reported in 2015 (321) E.L.T. 199 (Bom.) in the case of Commissioner of Cus., CSI Airport, Mumbai Versus Gyanchand Jain [Customs Appeal No. 59 of 2013, decided on 27-3-2014], wherein it has been held that:

Penalty - Customs - Separate penalties not imposable on sole proprietorship firm and its proprietor - No infirmity in Tribunal's order setting aside penalty imposed separately on proprietor - No substantive question of law - Sections 114 and 130 of Customs Act, 1962. [para 3]

11.7.16.2 Therefore, given the proprietary status of M/s Riddhi Siddhi Collection and M/s Aisha Electronics, both the above Noticees are to be legally considered as one and the same. Accordingly, I hold that no separate penalty can be imposed on the Proprietorship firm and Proprietor.

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

ORDER

12.1 In respect of M/s Riddhi Siddhi Collection :-

(i) I reject the declared CIF value in respect of goods imported having declared assessable value Rs. 3,52,242/- (Rupees Three Lakhs Fifty-Two Thousand Two Hundred Forty Two) for the imports as detailed in Annexure A under the provisions of CVR, 2007 read with Section 14 of the Customs Act,1962 and order to re-determine the same as Rs. 34,98,702/- (Rupees Thirty-Four Lakh Ninety-Eight Thousand Seven Hundred and Two only) as detailed in Annexure A under the provisions of Rule 4 and Rule 5 of CVR, 2007 read with Section 14 of the Customs Act,1962.

(ii) I reject the declared MRP/RSP of the goods imported by them and order their re-determination as detailed in Annexure A in terms of proviso to subsection (2) of Section 3 of the Customs Tariff Act, 1975 read with the Section 4A of the Central Excise Act, 1944.

(iii) I order confiscation of the impugned goods, having re-determined value of Rs. 34,98,702/- (Rupees Thirty-Four Lakh Ninety-Eight Thousand Seven Hundred and Two only) as detailed in Annexure A, under Section 111 (m) of the

Customs Act. Accordingly, I impose redemption fine of Rs. 4,00,000 (Rs Four Lakh Only) under Section 125(1) of the Customs Act, 1962 in lieu of confiscation.

(iv) I confirm the demand of differential duty of Rs.15,29,989/- (Rupees Fifteen Lakh Twenty-Nine Thousand Nine Hundred Eighty-Nine Only) as detailed in Annexure A under the provisions of Section 28 of the Customs Act, 1962 along with applicable interest on delayed payment thereof under Section 28 AA of Customs Act, 1962.

(v) I impose penalty equal to the differential duty amounting to Rs. 15,29,989/- (Rupees Fifteen Lakh Twenty-Nine Thousand Nine Hundred Eighty-Nine Only) along-with applicable interest thereon on M/s Riddhi Siddhi Collection under section 114A of the Customs Act, 1962.

(vi) As penalty is imposed under Section 114A of the Customs Act, 1962, no penalty is imposed on M/s Riddhi Siddhi Collection under Section 112(a) in terms of the fifth proviso to Section 114A ibid.

(vii) I impose a penalty of Rs. 5,00,000/- (Rupees Five Lakh Only) on Shri Sunil M. Jain, Proprietor of M/s Riddhi Siddhi Collection under section 114AA of the Customs Act, 1962.

12.2 . In respect of M/s Aisha Electronics :-

(i) I reject the declared CIF value in respect of goods imported having declared assessable value Rs.15,16,182/- (Rupees Fifteen Lakhs Sixteen Thousand One Hundred Eighty Two Only) for the imports as detailed in Annexure B under the provisions of CVR,2007 read with Section 14 of the Customs Act,1962 and order to re-determine the same to Rs. 1,79,00,832/- (Rupees One Crore Seventy Nine Lakhs Eight Hundred Thirty Two Only) as detailed in Annexure B under the provisions of Rule 4 and Rule 5 of CVR,2007 read with Section 14 of the Customs Act, 1962.

(ii) I reject the declared MRP/RSP of the goods imported by them and order their re-determination as detailed in Annexure B in terms of proviso to subsection (2) of Section 3 of the Customs Tariff Act, 1975 read with the Section 4A of the Central Excise Act, 1944.

(iii) I order confiscation of the impugned goods, having re-determined value of Rs 1,79,00,832/- (Rupees One Crore Seventy Nine Lakhs Eight Hundred Thirty Two Only) as detailed in Annexure B under Section 111 (m) of the Customs Act, 1962. Accordingly, I impose redemption fine of Rs. 18,00,000/- (Rupees Eighteen Lakh Only) under Section 125(1) of the Customs Act, 1962 in lieu of confiscation.

(iv) I confirm the demand of differential duty of Rs. 68,59,430/- (Rupees Sixty-Eight Lakh Fifty-Nine Thousand Four Hundred Thirty Only) as detailed in Annexure B under the provisions of Section 28 of the Customs Act, 1962 along with applicable interest on delayed payment thereof under Section 28 AA of Customs Act, 1962.

(v) I impose penalty equal to the differential duty amounting to Rs. 68,59,430/- (Rupees Sixty-Eight Lakh Fifty-Nine Thousand Four Hundred Thirty Only) along with applicable interest thereon on M/s Aisha Electronics under Section 114A of the Customs Act, 1962.

(vi) As penalty is imposed under Section 114A of the Customs Act, 1962, no penalty is imposed on M/s Aisha Electronics under Section 112(a) in terms of the fifth proviso to Section 114A ibid.

(vii) I impose a penalty of Rs. 10,000/- (Rupees Ten Thousand Only) on Shri Faisal Abdul Mali Javeri, Proprietor of M/s Aisha Electronics under Section 114AA of the Customs Act, 1962.

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

Anil Ramteke
30/12/16

(अनिल रामटेके/ ANIL RAMTEKE)
सीमाशुल्क आयुक्त/Commissioner of Customs
एनएस-V, जेएनसीएच/NS-V, JNCH

To,

1) M/s Riddhi Siddhi Collection, 224, 1st Floor, Ashoka Shopping Centre, Near GT Hospital. Crawford Market, Mumbai 400 001.

2) M/s Aisha Electronics, 5th Floor In Mohata Market, Mussafirkhana Road, 1st Floor, Mumbai-400 001

3) Shri Sunil Meghraj Jain, Proprietor of M/s. Riddhi Siddhi Collection, Flat No. 1901- 1902, 19th Floor, Sumer Tower - 5, Love Lane, Byculla, Mumbai - 400 010.

4) Shri Faisal Ahmed Abdul Malik Javeri, Proprietor of M/s. Aisha Electronics, 1st Floor, Flat No. 12, Cadell Castle, Cadell Road, Mahim, Mumbai - 400 016.

Copy to:

1. The ADG, DRI, MZU, Mumbai
2. AC/DC, Chief Commissioner's Office, JNCH
3. AC/DC, Centralized Revenue Recovery Cell, JNCH
4. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
5. EDI Section.
6. Office copy.