OFFICE OF THE COMMISSIONER OF CUSTOMS (PREVENTIVE), MUMBAI
2ND FLOOR, NEW CUSTOMS HOUSE, BALLARD ESTATE, MUMBAI – 400001.
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DIN:20260279OC0000333C38

मूल आदेश सं. Order-in-Original No.	PCCP/ADJ/AH/13/2025-26
आदेश दिनांक: Date of Order:	19-02-2026
जारी दिनांक: Date of issue:	19-02-2026
फाइल संख्या/File No.	GEN/ADJ/COMM/636/2025-DISP-R&I
एससीएन संख्या /SCN No.	Cus(P)/ICD-Tarapur/KRS/21/2024
द्वारा जारी : PASSED BY:	डॉ. अतुलहाँडा/Dr. Atul Handa आयुक्तसीमाशुल्क(निवारक), मुंबई Commissioner of Customs (Preventive), Mumbai.

मूलआदेश

1. यह प्रति उस व्यक्ति के प्रयोग के लिए नि: शुल्क है, जिसके लिए यह पारित किया है।
2. इस आदेश के विरूद्ध क्षेत्रीयपीठ, सीमाशुल्क, उत्पाद एवं सेवाकर अपीलीय अधिकरण, जयसेन्टर, चौथा एवं पांचवा तल, 34 पी. डीमेलो रोड, पूना स्ट्रीट, मस्जिद बन्दर (पूर्व) मुंबई 400 009 को अपील की जा सकती है।
3. सीमाशुल्क (अपील) नियमों 1982 के नियम 6 के आधार पर अपील फॉर्म सीए-3 में जैसा कि उक्त नियम में संलग्नहै केआधार पर की जानी चाहिए।अपील चार प्रतियों में की जानी चाहिए एवं 90 दिनों के अन्दर दायर की जानी चाहिए एवं उसके साथ उस आदेश की चार प्रतियां संलग्न होनी चाहिए जिसके विरूद्ध अपील की गई हो (इन प्रतियों में कम से कम एक प्रति अभिप्रमाणित प्रति होनी चाहिए)।अपील के साथ सीमाशुल्कअधिनियम 1962 की धारा 129A की उपधारा (6) केअन्तर्गत लागू रु.1,000/- ,रु.5,000/- अथवा रु.10,000/- का, क्रास किया हुआ बैंक ड्रॉफ्ट अधिकरण की पीठ के सहायकर जिस्ट्रार के नाम जारी किया होना चाहिए।यह बैंक ड्राफ्ट ऐसे राष्ट्रीय बैंक का होना चाहिए जिसकी शाखा उस जगह स्थित हो जहांअधिकरण पीठ स्थित है।
4. अपीलअधिकरण पीठ के सहायक रजिस्ट्रार अथवा इस संबंध में उनके द्वारा अधिकृत किसी भी अधिकारी के कार्यालय में प्रस्तुत की जानी चाहिए अथवा सहायक रजिस्ट्रार या ऐसे अधिकारी के नाम पंजीकृत डाक द्वारा भेजी जानी चाहिए।

5. जो व्यक्ति इस आदेश के विरूद्ध अपील करना चाहता है वह इस अपील के लंबित रहने तक दंड राशि या अपेक्षित शुल्क की दस **प्रतिशत** धनराशि को जमा करे और ऐसे भुगतान का साक्ष्य प्रस्तुत करे।ऐसा न करने पर यह अपील सीमाशुल्क अधिनियम, 1962 की धारा 129E के प्रावधानों केअनुपालन न करने के आधार पर निरस्त मानी जाएगी।

ORDER-IN-ORIGINAL

1. This copy is granted free of charge for the use of the person to whom it is issued.
2. An appeal against this order lies to the Regional Bench, Customs, Excise and Service Tax Appellate Tribunal, Jai Centre, 4th & 5th Floor, 34 P. D'Mello Road, Poona Street Masjid Bunder (East), Mumbai 400 009.
3. The appeal is required to be filed as provided in Rule 6 of the Customs (Appeals) Rules, 1982 in form C.A.3 appended to said rules. The appeal should be in quadruplicate and needs to be filed within 90 days and shall be accompanied by four copies ofthe order appealed against (at least one of which should be certified copy). A crossed bank draft drawn in favour of the Asstt. Registrar of the Bench of the Tribunal on a branch of any nationalized bank located at a place where the bench is situated for Rs. 1,000/-, Rs. 5,000/- or Rs. 10,000/- as applicable under Sub Section (6) of the Section 129A of the Customs Act, 1962.
4. The appeal shall be presented in person to the Asstt. Registrar of the bench or an Officer authorized in this behalf by him or sent by registered post addressed to the Asstt. Registrar or such Officer.
5. Any person desirous of appealing against this decision or order shall pending the appeal deposit **ten per cent** of the duty demanded or the 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.

Sub:	**Adjudication of Show Cause Notice Vide F.No. Cus(P)/ICD-Tarapur/KRS/21/2024 dated 11.09.2025 issued to M/s. KRS Polyfab (IEC 0315065257) under the Customs Act, 1962-reg.**

1. BRIEF FACTS OF THE CASE

1.1 It is stated in the Show Cause Notice (SCN) Vide F.No.Cus(P)/ICD-Tarapur/KRS/21/2024 dated 11.09.2025 that Whereas, M/s. KRS Polyfab, a Partnership firm (IEC No. 0315065257) (GSTIN-24AAPFK3480M1ZU) having addresses as (i) Khatta No. 1477, Survey No. 210/3P, Maroli Umbergaon, Dist. Valsad–396130, Gujarat and (ii) Unit No. 231, 2nd Floor, Hubtown Solaris, N.S. Phadke Marg, Andheri (East), Mumbai–400069, Maharashtra(hereinafter referred to as '**the Importer**') imported the goods viz. Pet Lumps, Pet Regrinds etc. (hereinafter referred to as '**the goods**') falling under CTH 39076990 of the Customs Tariff Act, 1975 from ICD-Tarapur. During the period 13.09.2023 to 05.08.2024, M/s. KRS Polyfab, imported goods vide 132 Bills of Entry at ICD-Tarapur having declared Assessable Value of **₹12,10,16,734/-** (as detailed in '**Annexure A**) for the manufacture of Polyester Staple Fibre.

Annexure-A

S.N.	BE NO.	BE DATE	Item Description	CTH	Assess Value(Item)	Duty(Item)
1	7803691	13-09-2023	PET REGRIND -	39076990	449770.73	124743.9
2	7813016	13-09-2023	PET LUMPS/PET WIRY -	39076990	804709.28	223186.1
3	7839781	15-09-2023	PET LUMPS -	39076990	309567.57	85858.6
4	7862245	16-09-2023	PET REGRINDS -	39076990	647783.65	179662.8
5	7984629	23-09-2023	PET LUMPS -	39076990	699250.25	193937.1
6	8045995	28-09-2023	PET REGRINDS -	39076990	980379.2	271908.1
7	8104443	01-10-2023	PET REGRINDS -	39076990	693054.36	192218.6
8	8947893	03-10-2023	PET LUMPS -	39076990	269818.41	74834.1
9	8190316	07-10-2023	PET REGRINDS -	39076990	1112144.62	308453.3
10	8190345	07-10-2023	PET LUMPS -	39076990	1004428.63	278578.2
11	8302329	14-10-2023	PET REGRINDS -	39076990	906007.75	251281.3
12	8393891	20-10-2023	PET LUMPS/PET WIRY -	39076990	338722.57	93944.7
13	8434591	23-10-2023	PET LUMPS -	39076990	796905.85	221021.8
14	8443388	23-10-2023	PET REGRINDS -	39076990	672478.2	186511.9
15	8487753	27-10-2023	PET LUMPS/PET WIRY -	39076990	482575.45	133842.3

16	8548047	31-10-2023	PET LUMPS -	39076990	3708668.15	1028599.1
17	8579861	02-11-2023	PET LUMPS/PET WIRY -	39076990	340053.42	94313.8
18	8617164	04-11-2023	PET REGRINDS -	39076990	894186.39	248002.6
19	8801577	17-11-2023	PET LUMPS -	39076990	419566.55	116366.7
20	8817930	18-11-2023	PET CHIPS SWEEPING -	39076990	1303219.47	361447.9
	8817930	18-11-2023	PET REGRINDS -	39076990	1327151.35	368085.4
21	8909901	24-11-2023	PET REGRINDS -	39076990	641533.28	177929.3
22	8946470	26-11-2023	PET REGRINDS -	39076990	1122355.55	311285.4
23	8947893	26-11-2023	PET LUMPS -	39076990	1654104.61	458765.9
24	9053935	03-12-2023	PET LUMPS -	39076990	725828.98	201308.7
25	9053933	03-12-2023	PET REGRINDS -	39076990	686659.14	190444.8
26	9053936	03-12-2023	PET REGRINDS -	39076990	659104.6	182802.6
27	9056864	04-12-2023	PET LUMPS -	39076990	811579.3	225091.4
28	9144311	09-12-2023	PET LUMPS -	39076990	1082185.5	300144.1
29	9255623	16-12-2023	PET LUMPS -	39076990	554071.81	153671.8
30	9318118	20-12-2023	PET CHIPS SWEEPING -	39076990	552800.99	153319.4
	9318118	20-12-2023	PET REGRINDS -	39076990	1501267.21	416376.4
31	9376580	23-12-2023	PET CHIPS SWEEPING -	39076990	663994.91	184159
	9376580	23-12-2023	PET REGRINDS -	39076990	1522030.83	422135.2
32	9392446	24-12-2023	PET LUMPS -	39076990	690560.38	191526.9
33	9439395	28-12-2023	PET LUMPS -	39076990	496278.97	137643
34	9568924	08-01-2024	PET CHIPS SWEEPING -	39076990	497413.75	137957.7
	9568924	08-01-2024	PET REGRINDS -	39076990	696525.06	193181.2
35	9578526	08-01-2024	PET CHIPS SWEEPING -	39076990	945940.5	262356.6
	9578526	08-01-2024	PET REGRINDS -	39076990	237854.86	65969
36	9578529	08-01-2024	PET REGRINDS -	39076990	687560.97	190695.1
37	9665861	15-01-2024	PET LUMPS -	39076990	1354554.65	375685.8
38	9665859	15-01-2024	PET REGRINDS -	39076990	696028.47	193043.5
39	9665862	15-01-2024	PET REGRIND -	39076990	690518.14	191515.3
40	9791782	23-01-2024	PET REGRINDS -	39076990	1262280.14	350093.4
41	9847088	27-01-2024	PET REGRINDS -	39076990	683740.83	189635.6
42	9972773	04-02-2024	PET LUMPS -	39076990	647133.32	179482.4
43	2026062	07-02-2024	PET CHIPS	39076990	831455.46	230604.2

			SWEEPING -			
	2026062	07-02-2024	PET REGRINDS -	39076990	315292.77	87446.5
44	2026065	07-02-2024	PET LUMPS -	39076990	709944.83	196903.3
45	2026064	07-02-2024	PET REGRINDS -	39076990	705437.24	195653.1
46	2150690	15-02-2024	PET WIRY -	39076990	510477.04	141580.9
47	2196364	19-02-2024	PET LUMPS -	39076990	561771.16	155807.2
48	2372303	01-03-2024	PET LUMPS/PET WIRY -	39076990	285248.5	79113.7
49	2406916	03-03-2024	PET LUMPS -	39076990	1200357.3	332919.1
50	2460084	07-03-2024	PET LUMPS/PET WIRY -	39076990	868764.8	240951.9
51	2460086	07-03-2024	PET LUMPS -	39076990	396025.76	109837.7
52	2460083	07-03-2024	PET FINE -	39076990	840191.08	233026.9
53	2460082	07-03-2024	PET REGRINDS -	39076990	963781.08	267304.7
54	2511307	11-03-2024	PET LUMPS -	39076990	503630.56	139681.9
55	2511306	11-03-2024	PET LUMPS -	39076990	655945.29	181926.4
56	2619048	18-03-2024	PET LUMPS -	39076990	746051	206917.2
57	2625754	18-03-2024	PET WIREY LUMPS -	39076990	458366.82	127128.1
58	2619045	18-03-2024	PET REGRIND -	39076990	474467.09	131593.4
59	2668115	20-03-2024	PET REGRIND -	39076990	479386.68	132957.9
60	2753198	26-03-2024	PET LUMPS -	39076990	540248.84	149838.1
61	2780148	28-03-2024	PET LUMPS -	39076990	1683032.27	466788.9
62	2869199	04-04-2024	PET REGRINDS -	39076990	729029.24	202196.3
63	2905886	06-04-2024	PET CHIPS SWEEPING -	39076990	350950.06	97336
	2905886	06-04-2024	PET REGRINDS -	39076990	836053.72	231879.5
64	2905885	06-04-2024	PET REGRIND -	39076990	704626.24	195428.1
65	2957185	10-04-2024	PET REGRINDS -	39076990	2295484.91	636652.7
66	2984399	12-04-2024	PET CHIPS SWEEPING -	39076990	474681.79	131653
	2984399	12-04-2024	PET REGRINDS -	39076990	636006.46	176396.4
67	2984400	12-04-2024	PET LUMPS -	39076990	681264.62	188948.7
68	3045954	16-04-2024	PET LUMPS -	39076990	528314.75	146528.1
69	3072556	18-04-2024	PET POWDER (OFF GRADE) -	39076990	1311530.31	363753
70	3189346	25-04-2024	PET REGRIND -	39076990	806143.95	223584.1
71	3242696	28-04-2024	PET REGRIND -	39076990	837483.43	232276.1
72	3242695	28-04-2024	PET REGRIND -	39076990	564365.03	156526.6

73	3264715	30-04-2024	PET REGRIND -	39076990	585275.66	162326.3
74	3264714	30-04-2024	PET REGRIND -	39076990	520017.43	144226.8
75	3347137	06-05-2024	PET LUMPS -	39076990	612877.13	169981.5
76	3414618	10-05-2024	PET REGRINDS -	39076990	1071085.08	297065.4
77	3460725	13-05-2024	PET LUMPS -	39076990	980417.46	271918.7
78	3565750	20-05-2024	PET CHIPS SWEEPING -	39076990	695834.22	192989.7
	3565750	20-05-2024	PET REGRINDS -	39076990	551119.03	152852.8
79	3565515	20-05-2024	PET REGRINDS -	39076990	722802.89	200469.3
80	3597552	22-05-2024	PET LUMPS -	39076990	725808.85	201303.2
81	3636993	24-05-2024	PET LUMPS -	39076990	617931.09	171383.2
82	3636995	24-05-2024	PET LUMPS -	39076990	501890.42	139199.4
83	3643397	24-05-2024	PET POWDER OFFGRADE -	39076990	1138218.06	315684.8
84	3655011	25-05-2024	PET LUMPS/PET WIRY -	39076990	558750.69	154969.5
85	3680799	27-05-2024	PET CHIPS SWEEPING -	39076990	762931.28	211599
	3680799	27-05-2024	PET REGRINDS -	39076990	484193.72	134291.2
86	3687041	27-05-2024	PET LUMPS -	39076990	458541.5	127176.5
87	3751144	31-05-2024	PET LUMPS/PET WIRY -	39076990	494994	137286.7
88	3775423	01-06-2024	PET LUMPS/PET WIRY -	39076990	800632.03	222055.3
89	3775467	01-06-2024	PET LUMPS/PET WIRY -	39076990	461834.89	128089.9
90	3869660	07-06-2024	PET LUMPS -	39076990	633391.16	175671
91	3869659	07-06-2024	PET LUMPS -	39076990	1119676.88	310542.4
92	4050164	18-06-2024	PET REGRINDS -	39076990	798899.18	221574.6
93	4096456	20-06-2024	PET CHIPS SWEEPING -	39076990	627110.17	173929
	4096456	20-06-2024	PET REGRINDS -	39076990	630687.25	174921.1
94	4095786	20-06-2024	PET CHIPS SWEEPING -	39076990	623154.26	172831.9
	4095786	20-06-2024	PET REGRINDS -	39076990	602727.91	167166.6
95	4095067	20-06-2024	PET LUMPS -	39076990	661648.03	183508.1
96	4104216	21-06-2024	PET LUMPS -	39076990	698467.63	193720
97	4147897	23-06-2024	PET LUMPS -	39076990	391776.81	108659.3
98	4213731	27-06-2024	PET REGRINDS -	39076990	1056326.17	292972.1
99	4229973	28-06-2024	PET LUMPS -	39076990	631281.27	175085.9

100	4229847	28-06-2024	PET REGRINDS -	39076990	719686.99	199605.2
101	4322485	04-07-2024	PET REGRINDS -	39076990	720864.87	199931.9
102	4322487	04-07-2024	PET POWDER OFFGRADE -	39076990	818851.42	227108.5
103	4379608	07-07-2024	PET CHIPS SWEEPING -	39076990	2922074.84	810437.5
104	4379541	07-07-2024	PET REGRIND -	39076990	2167101.11	601045.6
105	4410011	09-07-2024	PET REGRIND -	39076990	873821.98	242354.5
106	4410006	09-07-2024	PET LUMPS -	39076990	620687.65	172147.8
107	4424110	10-07-2024	PET REGRINDS -	39076990	957653.59	265605.2
108	4483529	13-07-2024	PET LUMPS -	39076990	2386427.89	661875.8
109	4589955	19-07-2024	PET LUMPS -	39076990	508121.83	140927.5
110	4589957	19-07-2024	PET LUMPS -	39076990	805974.28	223537
111	4780911	30-07-2024	PET REGRIND -	39076990	930174.6	257983.9
112	4811700	01-08-2024	PET REGRIND -	39076990	982564.75	272514.3
113	4811697	01-08-2024	PET REGRIND -	39076990	679221.43	188382.1
114	4830346	02-08-2024	PET LUMPS -	39076990	499553.78	138551.3
115	4882647	05-08-2024	PET LUMPS -	39076990	715860.61	198543.9
116	5123364	19-08-2024	PET REGRINDS -	39076990	1172827.56	325283.8
117	5223628	24-08-2024	PET REGRINDS -	39076990	706518.59	195953
118	5255430	26-08-2024	PET LUMPS -	39076990	913286.6	253300
119	5310423	29-08-2024	PET LUMPS -	39076990	841185.03	233302.7
120	5310428	29-08-2024	PET LUMPS -	39076990	825322.68	228903.2
121	5366841	01-09-2024	PET REGRINDS -	39076990	721191.97	200022.6
122	5366842	01-09-2024	PET REGRINDS -	39076990	1309095.13	363077.5
123	5372074	02-09-2024	PET REGRIND -	39076990	886849.36	245967.7
124	5372231	02-09-2024	PET LUMPS -	39076990	836378.26	231969.5
125	5433888	05-09-2024	PET LUMPS/PET WIRY -	39076990	1387138.15	384722.8
126	5433885	05-09-2024	PET LUMPS -	39076990	1061311.56	294354.8
127	5569767	12-09-2024	PET LUMPS -	39076990	868045.28	240752.3
128	5901282	01-10-2024	PET REGRINDS -	39076990	998706.43	276991.3
129	5930373	03-10-2024	PET REGRINDS -	39076990	1255871.42	348316
130	5976279	05-10-2024	PET LUMPS -	39076990	938057.43	260170.2
131	6071575	11-10-2024	PET CHIPS SWEEPING -	39076990	754029.43	209130
	6071575	11-10-2024	PET REGRINDS -	39076990	407037.57	112891.9
132	7400045	23-12-2024	PET LUMPS -	39076990	2194779.09	608721.9

					121016733.79	33563991.9

1.2 During Post Clearance Audit (PCA) of the Bills of Entry conducted by the Audit Commissionerate, Circle B-3, New Custom House, Mumbai under Section 99A of the Customs Act, 1962, read with Section 157 (k) of the Customs Act and the Customs Audit Regulations, 2018, wherein, it has been observed that import of Pet Lumps, Bottle Waste and Scrap made from used Pet Bottles etc. is Prohibited as per O.M. No. 23-4/2009-HSMD dated 30.08.2016 and O.M. Nó. 23/66/2019-HSM dated 03.10,20219 issued by Ministry of Environment, Forest and Climate change (MoEF&CC). However, Import of Pet Flakes has been permitted under authorization from DGFT and subject to NOC from MoEF&CC. in accordance with the O.M. No. 23/66/2019-HSMD dated 23.08.2022, subject to the following conditions:

(i) A unit should be eligible for import only if it has used domestic waste of the extent at least 70% of the capacity in the previous year (e.g. Production of 2021-22 to be considered for 2022-23 permissions).

(ii) The imports for the year 2022-23 should be restricted to 20% of the production in the year 2021-2022 and thereafter, 15% of the actual capacity utilized in the preceding year.

(iii) An additional import up to 10% may be considered against exports of the products.

(iv) Units would be eligible for import after at least one year of production. Import of Pet Flakes has been permitted subject to NOC from MoEF&CC and authorization from DGFT as per S.O. 4331(E) and DGFT Notification No. 32/2015-20 both dated 14.09.2022, ensure compliance of CBIC Circular 23/2023-CUS dated 30.09.2023 for mandatory additional qualifiers in import declarations for commodities under Custom Tariff Heads (CTHs) 28, 29, 32, 39 and 3808 as stipulated in Para 4.1 and 4.2 w.e.f. 15.10.2023.

1.3. Accordingly, the Audit Commissionerate has issued a letter dated 11.07.2024 to the Importer, whereby, they were asked to elucidate the above facts along with all other relevant import documents, i.e. Test Reports, DGFT Licence etc.

1.4. In response to the subject letter, the Importer vide their letter dated 22.07.2024 and 29.07.2024 addressed to the Asstt. Commissioner of Customs, Audit Commissionerate, Circle B-3, NCH, Mumbai submitted that:

A. They are engaged in Manufacturing of POLYSTER STAPLE FIBRE using raw material, i.e. Wiry Waste, Polyester Lumps, Poly Chips, Pet Film, Pet Jar, Pet Bottle, Pet Flakes, Pet Box, Strapping, Pet Powder and any Form of Polyester or Pet for Making/Manufacturing of POLYSTER STAPLE FIBRE, material used for captive consumption at our plant at Khatta No. 1477, Survey No. 210/3P, Maroli Umbergaon, Dist. Valsad–396130, Gujarat, India.

B. They confirmed that whenever Department send samples for testing they are submitting Test Report, please acknowledge with all relevant import documents

in pursuance of the same they put all the import documents at the time of B/E presentation.

C. They are importing PET LUMPS as a raw material for making POLYSTER STAPLE FIBRE considering the benefits in the quality of the goods will be enhanced in Domestic & Export market.

D. They are engaged in importing raw material, i.e. PET Wiry, Pet Lumps, PET Chips, Pet Film, Pet Strapping, Pet Powder and any Form Pet Waste and the firm is engaged in processing of PSF Fibre Polyester Staple Fibre and for manufacturing of Polyester Staple Fibre Hollow. The above mentioned raw material required to be processed. All the given above raw material is considered as PET only.

E. They have not engaged in the import of Pet Flakes from the date of materials got restricted/and not allowed to import since they don't have any past imports of this material PET FLAKES.

F. They have permission of MoEF for the import of material PET FLAKES and still they are waiting for the permission of DGFT, which is not yet received.

G. They have Import Material PET LUMPS which does not required import license, these goods are freely imported as per policy".

1.5. Thereafter, the Additional Commissioner of Customs (Audit), NCH, Mumbai vide letter dated 09.08.2024 addressed to the Addl. Commissioner of Customs, ICD-Tarapur informed that:

A. Import policy in respect of import of Pet Bottle Waste/Scrap/Pet Flakes has been revised víde DGFT Notification No. 32/2015-2020 dated 14.09,2022, as per revised policy condition the import of Pet Bottle Waste/ Scrap made from used Pet. Bottle etc. is prohibited as per O.M. No. 23-4/2009-HSMD dated 30.08.2016 and OM No. 23/66/2019 HSM dated 03/10/2019 of Ministry of Environment, Forest and Climate Change (MoEF&CC).

B. However, import of Pet Flakes has been permitted under an authorisation from DGFT and subject to NOC from MoEF&CC, in accordance with their O.M. No. 23/66/2019-HSMD dated 23.08.2023.

C. On Verification of certain Bs/E, It has been observed that in some cases, the goods were not sent for testing to ascertain that imported Pet items are not made from waste & scrap goods. It has also been observed that Assessable Value of goods is not in comparison with similar goods imported on other Ports.

D. In this regard, you may look into the assessment/clearance practice being followed in respect of these goods as far as compliance to DGFT conditions and valuation is concerned & take necessary action in this regard.

1.6. Accordingly, the ICD-Tarapur Customs Authorities vide letter dated 08.11.2024 asked the Importer to re-work the Assessable Value of all imported goods in respect of the Bills of Entry mentioned in Annexure B for the declared Assessable Value was lower than the contemporary price of similar goods and consequently duty was paid on lower Assessable Value (with reference to the contemporary PLATT Rates). Further, the

importer was asked to pay the differential duty along with applicable interest. However, M/s. KRS Polyfab has not submitted any reply in this regard till date.

1.7. On scrutiny of the data available on ICES 1.5 Systems pertaining to import of PET Waste by the Importer during the period 13.09.2023 to 05.08.2024 it is noticed that, the Importer has filed total 132 Bs/E for import of Pet Lumps, Pet Regrinds etc. having declared Assessable Value of **₹12,10,16,734/-** (as detailed in '**Annexure A**). On perusal of data it is apparent that the Bs/E if assessed by Faceless Assessment Group (FAG), the same were assessed on First Check Examination basis and noticed that the declared value is not in consonance of the contemporaneous value of the similar goods imported at other Ports in India as well as found to be below the rate of PET Waste available in PLATT index.

1.8. A PLATTs Index, specifically from S&P Global Commodity Insights, is a benchmark price or index used in various commodity markets, particularly in energy and metals including the prices of Plastic/PET worldwide. These indices are derived from a wide range of price assessments based on data collected from market participants, trade associations, and other sources. They provide a standardized way to track and compare prices across different commodities and locations. M/s. S&P Global Commodity Insights access daily global polymer spot price assessments so that you're always up to date with the latest plastic prices, including: LDPE, LLDPE, polypropylene, polystyrene, PVC and the HDPE price.

1.9. On perusal of declared Unit price of the imported raw material by the Importer, it appeared that the declared unit price is found to be on lower side as compared to price available on PLATT platform. Accordingly, the FAG ordered for loading of Unit Price on the basis of contemporaneous import noticed on NIDB vis-à-vis prevalent PLATT Index on that particular date. The Importer readily accepted the loaded value and accordingly the Bs/E were re-assessed on the basis of loaded value and payment of applicable Customs Duty was made on the same without any protest. It is noticed that out of 132 Bs/E, 41 Bs/E were assessed by FAG and the Importer made duty payment on the revised unit price. Whereas, the Bs/E assessed by System on RMS facilitation basis, the Importer used to clear the goods on the basis of declarations made in the Bs/E including value of the goods. Being Bs/E assessed under RMS facilitation with orders 'No Assessment' and 'No Examination', there was absolutely no intervention by the Customs Officers in clearance of such consignments and accordingly, the Importer succeeded in clearance of 91 consignments assessed under RMS facilitation (as detailed in '**Annexure B**').

Annexure-B

S.N.	BE NO.	BE DATE	CTH	Assess Value(Item)	Duty paid	Re-determined Assess Value	Duty payable	Bal. duty payable
1	7813016	13-09-2023	39076990	804709.28	223186.1	1489009.733	412976.85	189790.73

2	7803691	13-09-2023	39076990	449770.73	124743.9	818371.464	226975.33	102231.41
3	7839781	15-09-2023	39076990	309567.57	85858.6	519939.288	144205.16	58346.60
4	7862245	16-09-2023	39076990	647783.65	179662.8	1035148.965	287098.57	107435.77
5	7984629	23-09-2023	39076990	699250.25	193937.1	1005652.664	278917.77	84980.71
6	8045995	28-09-2023	39076990	980379.2	271908.2	1839089.583	510071.50	238163.32
7	8104443	01-10-2023	39076990	693054.36	192218.6	1107490.909	307162.60	114943.98
8	8947893	03-10-2023	39076990	269818.41	74834.1	420808.092	116711.12	41876.99
9	8302329	14-10-2023	39076990	906007.75	251281.2	1817173.25	503993.00	252711.75
10	8393891	20-10-2023	39076990	338722.57	93944.7	613135.98	170053.26	76108.56
11	8443388	23-10-2023	39076990	672478.2	186511.8	1101270.226	305437.30	118925.47
12	8434591	23-10-2023	39076990	796905.85	221021.8	1049583.312	291101.93	70080.09
13	8487753	27-10-2023	39076990	482575.45	133842.3	873531.216	242273.88	108431.58
14	8548047	31-10-2023	39076990	3708668.15	1028599.1	5201766.54	1442709.95	414110.84
15	8579861	02-11-2023	39076990	340053.42	94313.8	615180.258	170620.24	76306.43
16	8617164	04-11-2023	39076990	894186.39	248002.6	1699891.239	471464.84	223462.24
17	8801577	17-11-2023	39076990	419566.55	116366.8	673600.632	186823.14	70456.35
18	8909901	24-11-2023	39076990	641533.28	177929.3	1041326.315	288811.85	110882.60
19	8947893	26-11-2023	39076990	1654104.61	458765.9	2579737.224	715490.12	256724.21
20	9053933	03-12-2023	39076990	686659.14	190444.9	1156945.888	320878.94	130434.03
21	9053936	03-12-2023	39076990	659104.6	182802.7	1110519.488	308002.58	125199.92
22	9053935	03-12-2023	39076990	725828.98	201308.7	1135589.744	314955.82	113647.15
23	9056864	04-12-2023	39076990	811579.3	225091.5	1092662.858	303050.04	77958.52
24	9144311	09-12-2023	39076990	1082185.5	300144.1	1687773.672	468104.03	167959.88
25	9255623	16-12-2023	39076990	554071.81	153671.8	864128.952	239666.16	85994.35
26	9392446	24-12-2023	39076990	690560.38	191526.9	1048705.5	290858.47	99331.55
27	9439395	28-12-2023	39076990	496278.97	137643.0	661614.408	183498.76	45855.78
28	9578529	08-01-2024	39076990	687560.97	190695.0	1121488.628	311044.87	120349.84
29	9665859	15-01-2024	39076990	696028.47	193043.5	1135300.064	314875.47	121831.98
30	9665862	15-01-2024	39076990	690518.14	191515.2	1138983.114	315896.97	124381.76
31	9665861	15-01-2024	39076990	1354554.65	375685.7	1946281.155	539801.08	164115.35
32	9972773	04-02-2024	39076990	647133.32	179482.4	919484.202	255018.94	75536.52
33	2026064	07-02-2024	39076990	705437.24	195653.0	1142892.845	316981.33	121328.31
34	2026065	07-02-2024	39076990	709944.83	196903.2	1068038.841	296220.57	99317.37
35	2150690	15-02-2024	39076990	510477.04	141580.8	891024.3932	247125.62	105544.81
36	2196364	19-02-2024	39076990	561771.16	155807.2	811299.9687	225014.05	69206.82

37	2372303	01-03-2024	39076990	285248.5	79113.7	460449.2274	127705.59	48591.92
38	2406916	03-03-2024	39076990	1200357.3	332919.1	1701601.238	471939.10	139020.01
39	2460082	07-03-2024	39076990	963781.08	267304.7	1784238.708	494858.61	227553.92
40	2460083	07-03-2024	39076990	840191.08	233027.0	1685881.882	467579.34	234552.34
41	2460086	07-03-2024	39076990	396025.76	109837.7	701935.7276	194681.87	84844.13
42	2460084	07-03-2024	39076990	868764.8	240951.9	1399856.269	388250.14	147298.22
43	2511306	11-03-2024	39076990	655945.29	181926.4	986802.102	273689.56	91763.14
44	2511307	11-03-2024	39076990	503630.56	139681.9	812962.389	225475.12	85793.18
45	2619045	18-03-2024	39076990	474467.09	131593.4	832751.3294	230963.58	99370.13
46	2625754	18-03-2024	39076990	458366.82	127128.0	855641.925	237312.29	110184.25
47	2619048	18-03-2024	39076990	746051	206917.2	1083654.901	300551.69	93634.44
48	2668115	20-03-2024	39076990	479386.68	132957.9	841385.8478	233358.36	100400.47
49	2753198	26-03-2024	39076990	540248.84	149838.0	832933.752	231014.18	81176.16
50	2780148	28-03-2024	39076990	1683032.27	466789.0	2266830.72	628705.50	161916.50
51	2869199	04-04-2024	39076990	729029.24	202196.3	1155675.888	320526.71	118330.45
52	2905885	06-04-2024	39076990	704626.24	195428.1	1124795.48	311962.03	116533.94
53	2984400	12-04-2024	39076990	681264.62	188948.7	1012503.086	280817.73	91868.99
54	3045954	16-04-2024	39076990	528314.75	146528.1	816312.0069	226404.14	79876.04
55	3072556	18-04-2024	39076990	1311530.31	363752.9	2501851.22	693888.44	330135.50
56	3189346	25-04-2024	39076990	806143.95	223584.0	1731901.504	480342.88	256758.86
57	3242695	28-04-2024	39076990	564365.03	156526.6	1267130.96	351438.77	194912.13
58	3242696	28-04-2024	39076990	837483.43	232276.0	1240011.552	343917.20	111641.17
59	3264714	30-04-2024	39076990	520017.43	144226.8	890264.704	246914.92	102688.08
60	3264715	30-04-2024	39076990	585275.66	162326.2	971622.928	269479.62	107153.41
61	3347137	06-05-2024	39076990	612877.13	169981.5	850016.881	235752.18	65770.71
62	3414618	10-05-2024	39076990	1071085.08	297065.4	1917229.061	531743.48	234678.03
63	3460725	13-05-2024	39076990	980417.46	271918.8	1604099.13	444896.89	172978.11
64	3565515	20-05-2024	39076990	722802.89	200469.4	1150051.768	318966.86	118497.48
65	3597552	22-05-2024	39076990	725808.85	201303.1	1075190.791	298204.17	96901.08
66	3643397	24-05-2024	39076990	1138218.06	315684.8	2169957.65	601837.75	286152.98
67	3636995	24-05-2024	39076990	501890.42	139199.3	842217.88	233589.13	94389.82
68	3636993	24-05-2024	39076990	617931.09	171383.2	866308.24	240270.59	68887.40
69	3655011	25-05-2024	39076990	558750.69	154969.5	937634.6	260052.96	105083.45
70	3687041	27-05-2024	39076990	458541.5	127176.5	769474.44	213413.74	86237.25
71	3751144	31-05-2024	39076990	494994	137286.6	830645.06	230379.41	93092.82

72	3775423	01-06-2024	39076990	800632.03	222055.3	1343533.55	372629.03	150573.74
73	3775467	01-06-2024	39076990	461834.89	128089.9	775001.05	214946.54	86856.63
74	3869659	07-06-2024	39076990	1119676.88	310542.4	1746601.58	484419.95	173877.57
75	3869660	07-06-2024	39076990	633391.16	175671.0	887982.48	246281.94	70610.90
76	4095067	20-06-2024	39076990	661648.03	183508.1	1036001.923	287335.13	103827.05
77	4104216	21-06-2024	39076990	698467.63	193720.0	1100752.043	305293.58	111573.58
78	4147897	23-06-2024	39076990	391776.81	108659.3	879358.7502	243890.15	135230.85
79	4213731	27-06-2024	39076990	1056326.17	292972.1	1921364.596	532890.47	239918.41
80	4229847	28-06-2024	39076990	719686.99	199605.2	1163597.748	322723.84	123118.65
81	4229973	28-06-2024	39076990	631281.27	175085.9	979339.98	271619.94	96534.08
82	4322487	04-07-2024	39076990	818851.42	227108.4	1561100.61	432971.25	205862.81
83	4322485	04-07-2024	39076990	720864.87	199931.9	1173079.446	325353.58	125421.71
84	4379541	07-07-2024	39076990	2167101.11	601045.5	2649909.26	734952.33	133906.84
85	4410006	09-07-2024	39076990	620687.65	172147.7	883303.09	244984.11	72836.39
86	4483529	13-07-2024	39076990	2386427.89	661875.8	3534172.456	980202.73	318326.96
87	4589957	19-07-2024	39076990	805974.28	223537.0	1263617.253	350464.25	126927.28
88	4589955	19-07-2024	39076990	508121.83	140927.6	857151.77	237730.91	96803.32
89	4811697	01-08-2024	39076990	679221.43	188382.1	953462.3347	264442.78	76060.35
90	4830346	02-08-2024	39076990	499553.98	138551.2	778708.92	215974.92	77423.38
91	4882647	05-08-2024	39076990	715860.61	198543.9	1100996.699	305361.43	106817.49
				70323081.80	19504107.40	112995296.54	31339245.49	11835138.09

1.10 On receipt of a letter dated 09.08.2024 from the Audit Commissionerate, the ICD, Tarapur retrieved data from the ICES 1.5 system pertaining to the imports made by the importer. The data revealed that the importer was importing PET Lumps, PET Regrinds, etc., falling under CTH 39079900 and 39076990 (as detailed in Annexures A and B), which were freely importable and did not require any testing or authorisation for import.

1.11 However, it is a matter of record that the importer resorted to undervaluation of the goods despite being aware of the prevailing unit prices and, by taking advantage of RMS facilitation, succeeded in clearance of 91 consignments by paying less Customs duty than legitimately payable. On perusal of the data relating to 91 consignments mentioned in Annexure B, it is revealed that the importer declared an assessable value of ₹7,03,23,082/-. On application of contemporaneous values based on the PLATT platform, the value worked out to ₹11,29,95,297/-. Accordingly, a difference of ₹4,26,72,215/- was noticed between the declared and re-determined values, resulting in alleged duty evasion amounting to ₹1,18,35,138/-, as detailed in Annexure B.

1.12 It is also a matter of record that the importer neither furnished a satisfactory reply to the letter issued by the Audit Commissionerate nor replied to this office's letter dated 08.11.2024. This indicates that the importer failed to produce documentary evidence in support of the declared value. It is further noted that, after receipt of the said letters seeking documentary evidence, the importer stopped importation of the said raw material through ICD, Tarapur, which was construed by the Department as indicative of duty evasion.

1.13 **DETERMINATION OF VALUE**: As regards the issue of Valuation of the goods imported by M/s KRS Polyfab, as mentioned in Paras above, ongoing through the relevant import details, it was observed that in cases where the Bs/E were assessed by FAG, the same were marked for First Check assessment after examination and drawing of test samples, and as per the assessment done by the FAG, value was loaded as per contemporary price and duty was paid by the importer on the enhanced value without any protest. However, in cases where Bs/E were marked by the EDI System by RMS as 'Assessment and examination has not been prescribed for this BE', the Bs/E were facilitated and assessed as per the Assessable Value declared by the importer, without self intervention from the Customs Officers. It is apparent that the Importer has undervalued the goods imported by them in contravention of the provisions of Customs Act, 1962 to evade Customs duty.

1.14 On comparison of the value of the Items declared and the contemporaneous value found on PLATT Platform, it appeared that the declared Unit Price of the imported goods, i.e. Pet Lumps, Pet Regrinds etc. in the past consignments cleared during the period 01.09.2023 to 31.03.2025 was found to be 30% to 50% lower than that of the contemporaneous value of similar goods available on PLATT Platform. Since, the Importer has declared less value in respect of the goods covered under subject 91 past Bs/E (as detailed in **Annexure B**), hence, it is reasonable to believe that the Importer had undervalued the goods and short paid the applicable Customs duty on the imported goods, as they have accepted the value loaded on FAG assessed Bs/E (as detailed in **Annexure A**) and made payment of assessed Customs Duty without any protest. Therefore, the declared value of the goods pertaining to 91 Bs/E cleared under RMS facilitation do not appear to be the actual transaction value of the goods.

1.15 Section 14 of the Customs Act, 1962 provides that *the transaction value of goods shall be the price actually paid or payable for the goods when sold for export to India where the buyer and the seller of the goods are not related and the price is the sole consideration for the sale, subject to such other conditions as may be specified in the rules made in this behalf*. The Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 ('**CVR, 2007**' in short) have been framed in exercise of the powers conferred by section 14 of the Customs Act. Rule 12 of CVR, 2007 deals with rejection of the declared value, and is re-produced below for ready reference:

*"**Rule 12. Rejection of declared value.** - (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.*

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

Explanation. *-(1) For the removal of doubts, it is hereby declared that:-*
(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

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

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include-
(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;
(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;
(c) the sale involves special discounts limited to exclusive agents;
(d) the mis-declaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;
(e) the non-declaration of parameters such as brand, grade, specifications that have relevance to value;
(f) the fraudulent or manipulated documents."

1.16 As the importer was well aware that the value declared by them was less than the enhanced value assessed by FAG, when the B/Es were marked under 'First Check' in EDI System, and which were paid without any protest, therefore, the declared value is liable to be rejected in terms of explanation 1(iii)(a) given under Rule 12 of CVR, 2007.

1.17 Explanation 1(iii)(a) reads as 'the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed' read with Section 14 (1) of the

Customs Act, 1962 and in such case, the value needs to be re-determined in accordance with CVR, 2007.

1.18 Rule 3 (1) determination of the method of valuation of CVR is produced as below:

> *(1) Subject to Rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provision of Rule 10.*

1.19 In view of the above, the importer has declared less value while filing the B/Es mentioned above. Hence, as per Rule 3 (4) of CVR, 2007 the value of impugned goods is determined by proceeding sequentially through Rule 4 to 9 of the CVR, 2007.

> ***3. Determination of the method of valuation.-***
> *(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;*
>
> *(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.*
>
> ***Rule 4: Transaction value of identical goods. –***
> *(1)(a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued; Provided that such transaction value shall not be the value of the goods provisionally assessed under Section 18 of the Customs Act, 1962.*
>
> *(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.*
>
> *(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.*

1.20 As the imported goods are not of any brand or standard type and it varies on the basis of scrap materials imported, hence, data for identical goods for the relevant period is not available in PLATT Platform to ascertain valuation of the impugned goods using Rule 4 of the CVR, 2007.

> ***Rule 5. Transaction value of similar goods.-***
> *(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued: Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.*

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

1.21 Data for similar goods for the relevant period is available in PLATT Platform to ascertain valuation of the impugned goods using Rule 5 of the CVR, 2007.

1.22 To find the value of similar goods, data from ICES 1.5/PLATT Platform was retrieved, and data for similar goods were very much available which substantiate the stand of the Department, that the declared value was less and accordingly, Importer short paid Customs Duty applicable on imported goods. Hence, the Assessable Value of the goods is proposed to be determined/re-determined under Rule 5 ibid, i.e., as per the available contemporary/PLATT value. Hence, the available contemporary price of similar goods assessed by FAG was considered to re-determine the Assessable Value of the imported goods. The details of price found along with valuation declared is as per **Annexure B** and summary of the same is re-produced in following

TABLE – I

Declared Assessable Value (in ₹)	Re-determined Assessable Value (in ₹)	BCD @ 7.5% (in ₹)	SWS @ 10% (in ₹)	IGST @ 18% (in ₹)	Duty payable (in ₹)	Duty paid (in ₹)	Differential Duty to be paid (in ₹)
7,03,23,082/-	11,29,95,297/-	84,74,647/-	8,47,465/-	2,20,17,135/-	3,13,39,245/-	1,95,04,107/-	1,18,35,138/-

1.23 In the present case, the Assessable Value of the goods is proposed to be determined/re-determined under Rule 5 ibid, i.e., as per the available contemporary value.

1.24 To ascertain the details of similar goods imported by M/s. KRS Polyfab, data of imports made by the Importer was retrieved from the 1.5 ICES System, which revealed that the Importer has imported similar goods i.e. Pet lumps, Pet Wiry, Pet Powder, Pet Fine and Pet regrinds etc. under 132 B/Es filed during the period 13.09.2023 to 05.08.2024 (as detailed in **Annexure-A**). On perusal of the said data, it is also noticed that in many cases, the Importer has undervalued the subject goods. It is observed that total declared Assessable Value of the impugned goods imported vide 91 B/Es was **₹7,03,23,082/-** which is required to be rejected under Rule 12 of CVR, 2007 and required to be re-determined at **₹11,29,95,297/-** (Rupees Eleven Crores Twenty Nine Lakh Ninety FiveThousand Two Hundred and Ninety Sevenonly) (as detailed in **Annexure-B**).

1.25 **RE-DETERMINATION OF CUSTOMS DUTY**: It appears that the Importer has declared less value of the goods which has resulted in short payment of legitimate Customs Duty at the time of clearance of the goods. It is apparent that due to undervaluation of the imported goods, the self-assessed Customs Duty appears to be

incorrect and the same is required to be ascertained on the basis of re-determined value of the impugned goods. The details of re-determined Customs duty with reference to goods imported is tabulated in Table-I above.

1.26 In terms of Section 46 (4) of the Customs Act, 1962, the Importer is required to make a true and correct declaration in the B/Es submitted for assessment of Customs duty. In the instant case, it appeared that the goods cleared vide 91 B/Es mentioned in **Annexure-B** were cleared by them by declaring less value of the goods which was lower to the extent of 30% to 50% of the contemporaneous value of similar goods.

1.27 In view of the above, it appears that the Importer had not paid correct Customs Duty on the subject imported goods, by declaring less value of the goods at the time of filing of the B/Es and clearance of the same under RMS facilitation. By resorting to above practice, the Importer had not paid the correctly leviable duty on the imported goods resulting in loss to the Government Exchequer.

1.28 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, as explained in paras supra, the Importer has declared less value of the goods, thereby short payment of applicable Customs duty resulting in a loss of Government Revenue. Since, the importer has short paid the applicable duty, provisions of Section 28 (1)(a) are invokable in this case and the duty, so short paid, is recoverable u/s 28 (1)(a) of the Customs Act, 1962 along with applicable interest u/s. 28AA *ibid*.

1.29 Accordingly, the Customs duty short paid amounting to **₹1,18,35,138/-** (Rupees One Crores Eighteen Lakhs Thirty-Five Thousand One Hundred and Thirty-Eight only) (as detailed in Annexure–B), resulting from declaring less value of the goods is recoverable from the Importer under the provisions of Section 28 (1)(a) of the Customs Act, 1962 along with applicable interest u/s. 28AA *ibid*.

1.30 CONFISCABILITY OF THE GOODS AND PENAL ACTION ON THE IMPORTER: In view of the above facts, it is pertinent to mention here that the Importer has not declared the true and correct value of the goods in the import documents which resulted in short payment of Customs Duty at the time of assessment and clearance of goods imported. This act on the part of the importer is in contravention to the provisions of Section 46(4) of the Customs Act, 1962, which rendered the goods liable for

confiscation under the provisions of Section 111(m) of the Customs Act, 1962, and rendered the Importer liable for penal action under Section 112(a) of the said Act.

1.31 <u>RELEVANT PROVISIONS OF THE LAW</u>: The relevant provisions of law relating to import of goods in general, the Policy and Rules relating to imports, the liability of the goods to confiscation and the penal provisions for illegal importation under the provisions of the Customs Act, 1962 and any other laws for the time being in force are summarized as under:

1.32 <u>The Customs Act, 1962</u>:

A. ***Section 17: - Assessment of Duty: -***

…

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefor under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

B. ***Section 46: Entry of goods on importation: -***

…

(4) The importer while presenting a bill of entry 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,[2] [and such other documents relating to the imported goods as may be prescribed].

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

(a) the accuracy and completeness of the information given therein;
(b) the authenticity and validity of any documents supporting it; and
(c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under other law for the time being in force

During self-assessment of duty u/s. 17 of the Customs Act, 1962 and while presenting B/Es for Home Consumption u/s. 46 *ibid*, the Importer furnished incorrect information in the B/Es and Invoices with regard to the value of goods. Hence, the Importer violated the provisions of Section 46(4) and section 46(4A) of the Customs Act, 1962.

C. ***Section 28. [1][Recovery of [2][duties not levied or not paid or short-levied or short- paid] or erroneously refunded:*** -

(1) Where any [3][duty has not been levied or not paid or has been short-levied or short-paid] or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts, -

(a) the proper officer shall, within [4][two years] from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied [5][or paid] or which has been short-levied or short-paid or to

whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;

[6][Provided that before issuing notice, the proper officer shall hold pre-notice consultation with the person chargeable with duty or interest in such manner as may be prescribed;]

(b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of,-

(i) his own ascertainment of such duty; or

(ii) the duty ascertained by the proper officer,

the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.

[7][Provided that the proper officer shall not serve such show cause notice, where the amount involved is less than rupees one hundred.]…

D. ***Section 28AA. Interest on delayed payment of duty. -***

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

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

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

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

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

E. ***Section 111. Confiscation of improperly imported goods, etc.-***

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

…

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

F. ***Section 112. Penalty for improper importation of goods, etc****.-*

Any person, -

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

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111,
shall be liable, -
(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

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

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

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under Section 77 (in either case hereafter in this Section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;
(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

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

1.33 It appears that the Importer, M/s KRS Polyfab (IEC-0315065257) are liable to pay differential duty amount to the tune of **₹ 1,18,35,138/-** (Rupees One Crore Eighteen Lakh Thirty Five Thousand One Hundred Thirty Eight only), as detailed in the Annexure-B, along with applicable interest under Section 28AA and applicable penalty of the Customs Act, 1962. Accordingly, Pre-notice Consultative letter dated 19.08.2025 was issued to the Importer, to pay the said amount within 15 days of receipt of the letter. Further, they were requested to put forth their view along with submission of all necessary documents in support of their view/claim.

1.34 In reply to the Pre-notice Consultative letter, the importer M/s KRS Polyfab have submitted reply vide letter dated 26.08.2025 via email is as follows:-

i. M/s KRS Polyfab engaged in manufacturing of POLYESTER STAPLE FIBRE using raw material i.e. Pet Lumps and any form of Polyester or Pet for making of POLYESTER STAPLE FIBRE, material used for captive consumption at their plant at Khata No. 1477, S. N. 210/3P, Maroli, TA Umbergao, Dist. Valsad, Gujarat.

ii. They have stated that the Customs duties was paid during the period September 2023 to March 2025 only after clearance done from all Departments with all documentary evidence that existed at the time of clearance of goods for home consumption.

iii. They have stated that all the Bills of entry were properly filed, Containers were inspected & examined by the Customs Authorities and permitted the reports in system for group clearance of the cargo.

iv. They have stated that whenever department send samples for testing, they ensure complete and accurate document submission of all test report along with all import documents in pursuance of the same they put all documents at the time of bill of entry presentation and they paid Customs duty as per TR Challan made on ICEGATE with documentary evidence from all the departments.

v. They have stated that they have all the sales contract made with their suppliers and all the price is confirmed & Forex payments made as per the sales contract with bank receipts.

vi. They have stated that during FAG, they have no idea where the documents will go on which port so that they pay Customs duty as per documents assessed, nor they can avoid the detention & demurrages expenses raise by the shipping lines due to the delay.

vii. They have stated that all the Customs formalities get completed properly and no misclassification, undervaluation of goods had occurred and goods were cleared in groups and in that event no orders for re-assessing the bill of entry passed and release the goods for onward transportation.

1.35 The importer, M/s KRS Polyfab, did not furnish a satisfactory reply to the pre-notice consultative letter issued on 19.08.2025. In paragraph (iii) of their reply, they stated that all containers were inspected and examined by Customs authorities. However, it is observed that the 91 Bills of Entry mentioned in Annexure B were RMS facilitated, and no intervention was made by Customs authorities. The said Bills of Entry were facilitated and assessed based on the assessable value declared by the importer. Hence, the submission of the noticee is factually incorrect. The importer merely reiterated the submissions made in their earlier replies dated 22.07.2024 and 29.07.2024 and failed to provide any documentary evidence to substantiate the declared value, despite being specifically requested to do so.

1.36 In view of the facts and circumstances and the legal position discussed above, it appears that:

(a) With the introduction of self-assessment, the onus lies on the importer to comply with the provisions of the Customs Act, 1962 and allied laws. Importers are required to declare the correct description, value, classification, and other relevant particulars of the imported goods. The importer is squarely responsible for self-assessment of duty and for ensuring that all declarations and documents filed are true, correct, and complete. In the present case, it appears that the importer failed to declare the correct value of the imported goods, in contravention of Section 46(4) of the Customs Act, 1962, which mandates a declaration as to the truth of the contents of the Bill of Entry.

(b) It further appears that the importer was aware that the declared value of the goods was lower, as the value was being enhanced by the Faceless Assessment Group based on PLATT values whenever the Bills of Entry were marked for First Check examination. The importer voluntarily paid Customs duty on the enhanced value without lodging any protest and did not prefer any appeal against such assessments. This conduct indicates that the importer knowingly declared lower values in cases where the Bills of Entry were RMS facilitated, in order to evade payment of the correct Customs duty.

(c) The subject short paid Customs duty due to undervaluation of the goods is required to be demanded and recovered in terms of Section 28(1)(a) of the Customs Act, 1962 along with applicable interest u/s. 28AA *ibid*.

(d) As discussed above, the undervaluation of the goods has resulted in short payment of applicable Customs Duty on the imported goods. This act on the part of the Importer is in contravention of the provisions of Section 46(4) & (4A) of the Customs Act, 1962.

(e) Further, to ascertain the correctness of the declared value, certain information was sought from the Importer. However, the Importer has not produced any documentary evidence or communication with the supplier to substantiate the declared value in the B/Es. Hence, the declared value cannot be accepted in its current form. Accordingly, it is proposed to reject the same under the provisions of Rule 12 of CVR, 2007 and re-determine the same under the provisions of Rule 5 of the CVR, 2007 on the basis of contemporary price available.

(f) The importer M/s KRS Polyfab undervalued the goods imported under the 91B/Es (as detailed in **Annexure-B**) which has subsequently resulted in short payment of Customs Duty. Therefore, it is apparent that the Importer has undervalued the goods before the Customs Authorities which made the provisions of Section 28(1)(a) invokable for demanding and recovering the Customs Duty short paid at the time of clearance of the goods. Such acts of omission and commission on the part of the Importer made the goods covered under the 91 B/Es liable for confiscation u/s. 111(m) of the Customs Act, 1962 and made themselves liable for penalty u/s. 112(a) *ibid*.

1.37 Now, therefore, in terms of powers conferred u/s 28 (1)(a) read with Section 124 of the Customs Act, 1962, the Importer, M/s. KRS Polyfab (IEC-0315065257) are hereby called upon to show cause within 30 days from the receipt of this notice to the Commissioner of Customs (Preventive), Mumbai Customs Zone-III having his office at 2nd Floor, New Customs House, Ballard Estate, Mumbai – 400 001, as to why:

(i) The declared Assessable Value of **₹7,03,23,082/- (Rs. Seven Crores Three Lakh Twenty-Three Thousand and Eighty-Two only)** of the goods viz. Pet lumps, Pet Wiry, Pet Powder, Pet Fine and Pet regrinds etc. imported under the

91 B/Es (as detailed in **Annexure-B**) imported by M/s KRS Polyfab should not be rejected under Rule 12 of the CVR, 2007 and should be re-determined at **₹11,29,95,297/-** (Rupees Eleven Crores Twenty-Nine Lakhs Ninety-Five Thousand Two Hundred and Ninety-Seven only) in terms of Rule 5 of the CVR, 2007.

(ii) The differential Customs Duty pertaining to the 91 B/Es (as detailed in **Annexure-B**) amounting to **₹1,18,35,138/-** (Rupees One Crores Eighteen Lakhs Thirty Five Thousand One Hundred and Thirty Eight only) should not be demanded and recovered from the Importer under the provisions of Section 28(1)(a) of the Customs Act, 1962 along with applicable interest under Section 28AA of the said Act by re-assessing the subject B/Es at the re-determined value;

(iv) The goods having total re-determined Assessable Value of **₹11,29,95,297/-** (Rupees Eleven Crores Twenty-Nine Lakhs Ninety-FiveThousand Two Hundred and Ninety-Seven only) imported under the 91 Bs/E (as detailed in **Annexure-B**) should not be held liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962;

(v) Penalty should be imposed on the Importer, M/s. KRS Polyfab under the provisions of Section 112(a) of the Customs Act, 1962.

2. WRITTEN SUBMISSIONS OF THE NOTICEE

The noticee has submitted written submissions to the impugned Show Cause Notice as follow:-

PART I-PRELIMINARY SUBMISSIONS

2.1 At the outset, the Noticees submit that Noticee No. 1 and Noticee No. 2 are one and the same legal entity, the latter being only the manufacturing unit/factory premises of the former. Accordingly, the present reply is being filed commonly on behalf of both noticees to avoid duplication of facts and submissions. The proceedings against Noticee No. 2 are therefore redundant and liable to be subsumed within the proceedings against Noticee No. 1.

2.2 The Noticees state and submit that save and except such statements or admissions as are expressly made herein, all allegations, averments, inferences, assumptions and conclusions, contained or implied in the Show Cause Notice are specifically denied as being incorrect, unfounded, misconceived and contrary to law. No part of the SCN shall be deemed to have been admitted merely because a corresponding reply may have been provided verbatim.

2.3 The SCN proceeds on misplaced assumptions and erroneous interpretations of facts and law. The same has been issued in a perfunctory manner, without adequate appreciation of the nature of goods imported, the applicable classification, the factual

matrix surrounding value declarations, and the extensive disclosures voluntarily made by the Noticees before the customs authorities at every stage.

2.4 The Noticees respectfully submit that they have at all times acted bona fide and in the ordinary course of business, without any intention to suppress facts, contravene statutory provisions, or evade customs duty. All import documents, including bills of entry, invoices, packing lists and requisite declarations, were duly filed before the Customs authorities. Wherever queries were raised or values were provisionally or finally assessed by the FAG, the Noticees complied with the directions and discharged the differential duty, without protest and within time.

2.5 There has been no suppression of material facts, misdeclaration, misrepresentation, fraud, collusion or willful misstatement on the part of the Noticees. Consequently, the essential juridical preconditions for invoking the extended period of limitation and proposing penal action do not exist in the present case.

2.6 The Show Cause Notice incorrectly presumes prohibited or restricted imports, undervaluation, and misuse of RMS facilitation. The Noticees submit that the goods imported are commercially accepted forms of PET regrind/lumps/powder, freely importable under the applicable Tariff Heading, without any requirement of authorization under the Ministry of Environment, Forest and Climate Change (MoEF& CC) or DGFT, and do not fall within the prohibited category of “PET Flakes” or “bottle waste/scrap derived from used bottles.”

2.7 The issuance of the SCN is premature, unwarranted and devoid of substantive evidence. It overlooks the fact that differential duty was already discharged wherever the FAG loaded values in certain Bills of Entry. The acceptance of such an assessment does not amount to admission of undervaluation, nor does it justify reopening past clearances.

2.8 The Noticees further submit that mere comparison with PLATT index or NIDB data cannot be the basis for overriding transaction value, in the absence of any evidence showing extra-commercial considerations, a relationship between buyer and seller, flow-back of consideration, or misdeclaration of description. The reliance placed on indicative reference values instead of transaction value is contrary to Section 14 of the Customs Act read with Rule 3 of the Customs Valuation Rules, 2007.

2.9 The proceedings proposed under Section 28(1)(a), Section 111(m) and Section 112(a) are without jurisdiction, since no foundational facts or conditions precedent exist for demand, confiscation or penalty. The Noticees reserve their right to take all legal pleas, both factual and legal, including those relating to limitation, valuation, classification, absence of mens rea and proportionality of penalty.

2.10 Without prejudice to the above, the Noticees crave leave to amend, supplement or modify these submissions if and when additional facts, documents or clarifications are placed on record by the Department or discovered during the course of adjudication.

2.11 In view of the foregoing preliminary objections the SCN is liable to be dropped in limine. However, without prejudice, the Noticees are furnishing below the facts in brief and detailed submissions under protest and in the alternative.

PART II-FACTS IN BRIEF

2.12 Noticee No. 1 is a registered business entity engaged in the lawful import of raw materials and manufacture of Polyester Staple Fiber(PSF). Noticee No. 2 is merely the factory premises/unit address of the same entity, where the imported raw materials are

brought, stored, and captively consumed. Both noticees form a single legal and operational unit, and all imports, documentation, assessments and statutory compliances are undertaken centrally by Noticee No. 1.

2.13 In the ordinary course of manufacturing operations, the Noticees import various forms of Polyethylene Terephthalate (PET) raw materials, such as PET Lumps, PET Powder, PET Wiry Regrind, etc. These materials are commercially recognized and traded internationally and are distinct from PET Flakes derived from post-consumer bottles or scrap, which fall in a separate regulatory category under the Plastic Waste Management Rules and certain DGFT restrictions.

2.14 The imported goods are consistently and correctly declared under the applicable Customs Tariff Heading 39076990, supported by invoices, packing lists, test reports and relevant purchase documentation. At no stage have the Noticees ever imported or declared goods falling under any restricted or prohibited category, nor have they made any request for exemption, duty concession, or authorization under MoEF& CC/DGFT.

2.15 Between 13.09.2023 and 05.08.2024, the Noticees filed a total of 132 Bills of Entry for the import of the aforesaid PET-based raw materials. The goods were subject to the RMS-based assessment process, wherein Bills of Entry were either facilitated or routed through the FAG(Faceless Assessment Group) depending upon the department's internal risk parameters.

2.16 In cases where the FAG made any loading of value or sought additional duty, the Noticees, without contest and in full compliance, paid the duty so assessed and cleared the goods accordingly. These instances were not a result of any admission or detection of misdeclaration but due to the operational necessity of uninterrupted production and to avoid demurrage or detention costs.

2.17 In respect of the majority of the consignments facilitated by RMS, the Department chose not to examine, not to raise any queries, and not to call for any further documentation at the time of clearance. All imports were thus completed with the knowledge, approval and supervision of the customs authorities.

2.18 The goods were thereafter transported to the Gujarat manufacturing unit, duly recorded in the books of account, and used exclusively for the captive manufacture of Polyester Staple Fiber. The same is further cleared on payment of applicable GST and other levies, wherever attracted. There is no instance of diversion, resale, under-reporting, or clandestine removal.

2.19 During the course of departmental inquiry, the Noticees furnished complete information, documents, and explanations. The Department also issued communications dated 22.07.2024, 29.07.2024 and 26.08.2025, to which the Noticees provided timely written responses clarifying the nature of goods, usage, and valuation.

2.20 The Show Cause Notice relies on selected comparative values, PLATT index references, or NIDB data, ignoring the actual transaction values and the fact that duty was discharged wherever assessments were finalized. No evidence was ever sought or provided to indicate suppression of facts, collection of extra consideration, relationship with suppliers, or any misdescription of goods.

2.21 The Noticees have no past history of violations, nor have they ever been subjected to confiscation, penalty, or prosecution under the Customs Act or allied laws. The business operations have always been conducted transparently, with full cooperation extended to customs authorities.

2.22 The issuance of the present SCN, based entirely on presumptions and without demonstrating any willful contravention, undervaluation, or import of prohibited goods, is

contrary to the facts on record. Nevertheless, without prejudice, the Noticees proceed to respond to the departmental allegations in detail.

PART III-DEPARTMENT'S ALLEGATIONS

2.23 The Show Cause Notice alleges that the Noticees have imported goods that are prohibited or restricted, specifically suggesting that the consignments described as PET Lumps, PET Powder, PET Regrind/Wiry materials are in fact "PET Flakes" or plastic waste/scrap derived from used bottles, which allegedly fall under restricted import categories under the Plastic Waste Management Rules and relevant DGFT Notifications.

2.24 It is further alleged that the Noticees imported such goods without obtaining the necessary authorizations, clearances, or consents from the Ministry of Environment, Forest & Climate Change (MoEF& CC) and/or the Directorate General of Foreign Trade(DGFT). The SCN claims that such imports are not permissible under the extant import policy and therefore amount to a violation of the Foreign Trade Policy read with the Customs Act, 1962.

2.25 The Department alleges that the Noticees have undervalued the imports by declaring transaction values that are allegedly lower than the prices reflected in PLATT Index, NIDB data, or other comparator references purportedly relating to similar goods. The SCN claims that the declared value does not represent the "true" or "correct" assessable value under Section 14 of the Customs Act.

2.26 The SCN places reliance on instances where the Faceless Assessment Group (FAG) loaded the declared value in certain Bills of Entry. It is alleged that the Noticees "accepted" the enhanced value and paid duty thereon without contest and therefore admitted that their declared value was incorrect or misdeclared.

2.27 The Department further alleges that several consignments were cleared under the Risk Management System (RMS) without detailed scrutiny, which, according to the SCN, was "taken advantage of" by the Noticees. The SCN suggests that facilitation through RMS was used as a means to clear undervalued or restricted goods without examination or proper assessment.

2.28 On the basis of the above assumptions, the SCN proposes that the declared transaction value is liable to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. It is alleged that the preconditions for rejection of value exist and that the declared price is unreliable.

2.29 Consequent to the alleged rejection of transaction value under Rule 12, the Department proposes to re-determine the assessable value under Rule 5 of the said Valuation Rules, purportedly using prices of identical or similar goods or alternate reference data.

2.30 Based on such proposed redetermination, the SCN seeks to demand differential customs duty under Section 28(1)(a) of the Customs Act, 1962, on the premise that the correct assessable value has not been declared and that duty has not been paid in full.

2.31 The SCN also proposes that the imported goods, though already cleared, are liable to confiscation under Section 111(m) of the Customs Act, alleging misdeclaration in the description, nature, classification, or value of the goods imported during the relevant period.

2.32 Finally, the SCN proposes the imposition of penalty under Section 112(a) of the Customs Act on the Noticees. It is alleged that the Noticees have rendered the goods

liable to confiscation through acts or omissions, and hence are liable for penal consequences.

PART IV-DETAILED SUBMISSIONS/POINT-WISE REBUTTALS

2.33 REBUTTAL TO ALLEGED NON-COMPLIANCE WITH MoEF&CC/DGFT REQUIREMENTS

2.33.1 The allegation that the Noticees were required to obtain "authorization" or permission" from the Ministry of Environment, Forest & Climate Change (MoEF&CC) and/or the Directorate General of Foreign Trade (DGFT) is misconceived, factually incorrect, and legally untenable. It proceeds on the erroneous presumption that the goods imported fall under the category of "plastic waste/scrap", such as PET Flakes derived from used bottles.

2.33.2 As clarified in the preceding section, the goods imported by the Noticees are virgin/off grade industrial PET forms (lumps, regrind, powder, wiry forms) and not "post-consumer plastic waste" that is subject to the licensing framework under the Plastic Waste Management Rules, relevant DGFT Notifications, or Hazardous and Other Waste Rules.

2.33.3 Under the ITC(HS) Import Policy, goods classified under CTH 39076990 are placed in the "Free" import category and do not require:

- MoEF&CC clearance,
- DGFT import licence,
- Certificate from Pollution Control Boards, or
- Any Extended Producer Responsibility(EPR) compliance.

2.33.4 The SCN does not cite any specific notification, circular, public notice, or statutory condition that mandates a prior licence for the import of the declared goods under Heading 3907. No policy condition number is invoked; no reference to any amendment or condition of any Standard Input Output Norm (SION) has been made.

2.33.5 It is well settled that the burden lies upon the Department to establish:

(a) that the goods are covered by a restricted policy entry; and

(b) that they fall within a description requiring a licence or prior approval.

The SCN makes no such determination based on evidence. Everything is purely based on presumptions and surmises.

2.33.6 The Noticees' Bills of Entry, supplier invoices, packing lists, and import declarations uniformly reflect the nature of the product as industrial raw material and have never been questioned or contradicted at the time of clearance by any customs officer or agency.

2.33.7 Goods that genuinely fall under restricted plastic scrap categories (such as flakes derived from post-consumer bottles) are covered by different CTH, documentary nomenclature, test protocols, and MoEF approval norms-none of which apply to the materials imported by the Noticees. No effort has been made in the SCN to show otherwise. And the investigation has not come up anything which concludes that the impugned goods are covered under the alleged category requiring MoEF approval and/or DGFT Licence.

2.33.8 The absence of even a single test report, examination note, or sampling record confirming that the goods are "scrap" or "flakes" is sufficient to nullify the allegation. Non-existent facts cannot create a non-existent obligation.

2.33.9 Therefore, the allegation that MoEF&CC or DGFT authorisations were required is based on a false premise and is liable to be rejected outright.

The imports were:

- Freely permissible ,
- Correctly declared, and
- Not subject to any licensing requirements.

2.33.10 Accordingly, the Noticees deny this allegation in toto, reserving their right to rely on the Foreign Trade Policy, ITC (HS) Schedule, and clarificatory CBIC circulars at the time of hearing. However, it is also a fact that this allegation, although discussed, has not been pressed upon in the show cause notice subsequently. So, it is not of any material value or consequence.

2.34 REBUTTAL TO ALLEGATION OF UNDERVALUATION BASED ON PLATT/NIDB REFERENCES

2.34.1 The allegation that the Noticees have "undervalued" the imported goods is baseless, unsubstantiated, and contrary to the statutory mandate of Section 14 of the Customs Act, 1962, read with Rule 3 of the Customs Valuation Rules, 2007. The Show Cause Notice does not produce a single document or evidence indicating that the declared price is not the actual transaction value paid to the overseas suppliers.

2.34.2 Section 14 clearly provides that transaction value is the primary basis of assessment, and it can only be discarded if specific circumstances under Rule 12 of the Valuation Rules are satisfied-such as:

- Relationship affecting price
- Extra-commercial considerations,
- Misdeclaration, or
- Flow-back of consideration.

No such circumstance has been there in the impugned imports nor alleged or has been established.

2.34.3 The SCN relies selectively on PLATT index quotations and NIDB data, which are only secondary reference tools and cannot override actual contractual invoice values. Both parameters serve merely as indicative guides and not as substitutes for legally mandated valuation under Section 14 of the Act.

The Hon'ble Supreme Court of India in the case of ***Eicher Tractors Ltd. Vs.CC [2000(122) ELT 321 (SC)]*** has held, *"Unless the price actually paid for the particular transaction falls within the exceptions, the Customs authorities are bound to assess the duty on the transaction value." Exceptions' here means the exceptions provided in Rule 4(2) of the Customs Valuation Rule,2007*.

This ruling of the Supreme Court has been accepted as a precedent in the subsequent judgements too.

The Apex Court, in the case of ***C.C Vs. Mahalaxmi Gems*-2008(231) ELT 198 (SC)**, has held *that the price declared in the invoice, unless shown to be not correct by the some contemporaneous evidence, has to be accepted as the transaction value.*

2.34.4 It is a settled principle that NIDB data:

- Is not conclusive or binding,
- Reflects past imports of varied grades/specifications,
- Does not verify comparability of goods,
- Excludes factors like logistics, quality, terms of sale,

- And cannot, by itself, justify discarding transaction value.

In the case of ***Agarwal Foundries (P) Ltd [2020 (371) E.L.T 859(Tri.-Hyd.)]***, the Tribunal has held that *NIDB data can only be guideline to the Customs to arrive at the value of goods and cannot be applied directly, unless the value given therein falls within the parameters of identical goods or similar goods*. The said decision has been upheld by the Hon'ble Apex Court too, as reported in ***2020(371) E.L.T A295(SC***). A similar decision was taken in the case ***of Eicher Tractors Ltd. vs. Commissioner of Customs, Mumbai 2000 (122) E.L.T 321(SC)***, mentioned supra.

The above position has also been followed by the South Zonal Bench of the CESTAT in the case of ***Vikarm Trading Company Vs. Commissioner of Customs (2023 (8) TMI 1022)*** in the Customs Appeal No. **40844 of 2017** while pronouncing its judgement on 24.08.2023.

2.34.5 The SCN does not:

- Identify any identical goods imported contemporaneously at higher price,
- Compare like-for-like quality, origin, and grade, or
- Establish any commercial relationship or compensation outside invoices.

Instead, it makes bland references to "higher declared values by others" without disclosing any Bill of Entry number, supplier details, specification parity, contemporaneity, or test-based comparability. Nor, the department has enclosed any NIDB data showing import of identical/similar goods at a higher price.

2.34.6 The Department has not demonstrated that:

- The suppliers and the Noticees are related parties,
- There was any discount not reflecting market realities,
- Any part of the consideration was paid indirectly,
- There is any "special condition" influencing price.

In the absence of these mandatory ingredients, the presumption of undervaluation is legally unsustainable.

2.34.7 It is significant that in all consignments where the FAG chose to load value, the Noticees:

- Paid the differential duty immediately, and
- Cleared the goods under departmental supervision.

Such compliance reflects transparency and commercial expediency, not undervaluation or admission of wrongdoing.

2.34.8 Moreover, the SCN does not allege that:

- There was any misdeclaration of description, or
- That the quality of goods was other than declared.
  Without challenging the description/specification, any enhancement based on abstract indices is violative of established valuation jurisprudence.

2.34.9 The reliance on PLATT values is also misplaced, since such publications reflect international indicative averages across grades, markets and timeframes, and frequently exclude off-grade or regrind forms. The Noticees import materials with specific quality and contractual pricing which cannot be equated with generic index data.

2.34.10 In light of the above, the allegation under Paragraph 10 (b) of the SCN is denied in full. The declared values represent bona fide negotiated commercial prices and are fully compliant with Section 14 of the Act.

2.35 REBUTTAL TO ALLEGED ADMISSION VIA ACCEPTANCE OF ENHANCED FAG VALUES

2.35.1 The allegation that acceptance of enhanced assessable value in certain Bills of Entry amounts to an "admission of undervaluation" is factually incorrect, legally misconceived, and contrary to settled jurisprudence.

2.35.2 In cases where the Faceless Assessment Group (FAG) loaded the declared value, the Noticees-acting in the ordinary course of business-paid the differential duty to avoid delay, demurrage and disruption of manufacturing activities. This was done as a matter of operational necessity and cannot be construed as any endorsement of alleged undervaluation.

2.35.3 It is well-settled that:

- Acceptance of loading does not create estoppel against the importer.
- It does not amount to a confession or admission, and
- It cannot be used to reopen unrelated consignments or past clearances.

Judicial authorities have consistently held that mere acquiescence to an assessment for clearance purposes does not negate the right to dispute the basis of enhancement or justify retrospective proceedings.

2.35.4 The SCN nowhere alleges that:

- Any protest was disallowed or withdrawn,
- Any written admission was made by the Noticees, or
- Any material evidence was recovered indicating acceptance of undervaluation.

The presumption of admission is therefore unsupported by fact of law.

2.35.5 Wherever assessments were enhanced, such enhancement was:

- Carried out by Customs authorities under their own discretion,
- Applicable only to specific consignments, and
- Without any finding of fraud, misdeclaration, suppression, or collusion.

Thus, such isolated instances cannot be cited as a basis to generalize undervaluation across 132 consignments.

2.35.6 The SCN also fails to demonstrate that the enhanced values were based on:

- Identical goods,
- Contemporaneous imports,
- Producer parity, or
- Verifiable commercial evidence.

In the absence of such a foundation, any reliance on occasional loading is merely conjectural and insufficient to displace the statutory presumption of correctness of declared transaction value.

2.35.7 The law is equally clear that "acceptance without protest" is not a legal admission unless supported by a categorical written acknowledgement of wrong valuation, which is absent in the present case.

2.35.8 Moreover, the Noticees' conduct reflects transparency:

- All invoices were disclosed.
- All consignments were assessed/cleared by Customs.
- Differential duty was voluntarily paid where demanded.

Such compliance discredits any inference regarding deliberate undervaluation.

2.35.9 Accordingly, the allegation under Paragraph 10 (n) of the SCN is denied in totality, and it is submitted that reliance on isolated FAG assessments cannot vitiate or reopen lawful transaction values under Section 14 of the Act.

2.36 REBUTTAL TO ALLEGATION OF "TAKING ADVANTAGE" OF RMS CLEARANCE/SUPPRESSION

2.36.1 The allegation that the Noticees "took advantage" of the Risk Management System (RMS) to clear undervalued or restricted goods is not only factually incorrect but also reflects a fundamental misunderstanding of the nature and purpose of RMS. The Noticees had no role whatsoever in determining whether consignments would be facilitated, examined, or subjected to query.

2.36.2 RMS is an internal mechanism of the Customs Department for optimizing resources, expediting trade, and reducing unnecessary intervention. It is not an exemption from law, nor does it constitute a concession granted at the request of the importer. Its application is entirely at the discretion of Customs authorities.

2.36.3 Once a Bill of Entry is processed under RMS and facilitated for clearance:

- The system presumes accurate declaration, and
- The Department consciously decides not to examine or query the consignment.

To later allege that facilitation implies misuse is contradictory to the Department's own conduct and systems.

2.36.4 In no instance did the Noticees suppress, conceal, or misstate any fact to influence RMS routing. All documents-including invoices, packing lists, value declarations, description of goods, country of origin certificates (where applicable), and classification details-were furnished electronically and were available to the assessing authorities at the time of clearance.

2.36.5 The SCN does not allege:

- Any false documentation
- Any non-declaration of relevant attributes, or
- Any manipulation of data fields in the Bills of Entry.

Without such a foundation, imputing mala fides based on RMS facilitation is unsustainable and speculative.

2.36.7 It is also pertinent that wherever the system or officers found it appropriate, the Bills of Entry were assessed by the FAG, and duty was paid accordingly. This demonstrates the Noticees' compliance with departmental directions and negates any presumption of deliberate evasion.

2.36.8 Further, RMS facilitation cannot be invoked retrospectively to allege suppression. If the Department believed the goods required physical examination, it has full authority to do so at the relevant time. The Noticees cannot be penalized for the Department's conscious choice not to intervene.

2.36.9 There is no provision in the Customs Act or Valuation Rules that treats RMS-facilitated clearance as a ground for reopening past transactions, rejecting declared values, or alleging evasion. Courts and Tribunals have consistently held that the

Department must demonstrate specific misdeclaration or suppression, not rely on assumptions based on internal risk criteria.

2.36.10 The allegation also overlooks that the Noticees have no history of non-compliance and have always cooperated with the authorities by submitting clarifications, paying loaded duties, and responding to departmental communications.

2.36.11 Accordingly, the allegation under Paragraph 10 (b) of the SCN is denied in its entirety, being speculative, unsupported by any evidence, and contrary to the legal framework governing RMS operations.

2.37 REBUTTAL TO PROPOSED REJECTION OF VALUE UNDER RULE 12 OF CVR, 2007

2.37.1 The proposal to reject the declared transaction value under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, is legally untenable and devoid of factual foundation. Rule 12 is merely an "enabling" provision and cannot be invoked in isolation without satisfying the specific conditions laid down under Rules 3 to 10 and Section 14 of the Customs Act.

2.37.2 The Hon'ble Supreme Court and multiple Tribunals have consistently held that Rule 12 does not provide independent authority to discard transaction value. The Department must first establish the existence of concrete grounds such as:

- Relationship affecting the price,
- Extra-commercial considerations,
- Misdeclaration of description/specification,
- Non-genuine invoices or consideration,
- Flow-back of money or compensatory arrangements.

No such factor is demonstrated or even alleged against the Noticees.

2.37.3 In the present case:

- The suppliers are unrelated foreign entities,
- The imports were made pursuant to arm's length commercial contracts,
- Payments were routed through banking channels, and
- There is no allegation of side payments, discounts, or hidden considerations.

Thus, the foundational requirements for invoking Rule 12 are completely absent.

2.37.4 The SCN does not point to any discrepancy in documents, any variation between the invoice and declaration, or any falsity in the declared description, quality, or specification. In the absence of misdeclaration, the declared value under Rule 3(1) must be accepted.

2.37.5 Rule 12 cannot be used merely because the Department speculates that the declared value is 'low' in comparison to:

- NIDB data, or
- PLATT reference rates.

These tools are not substitutes for transaction value but are at best indicative references that require further evidence and comparability analysis-neither of which has been furnished.

2.37.6 It is settled law that transaction value is the guiding principle, and the Department can only deviate from it if it successfully disproves its correctness by establishing:

- Falsity or inaccuracy in declaration,

- Incompleteness of disclosure,
- Or statutory disqualification.

The SCN is completely silent on these aspects.

2.37.7 The Noticees also emphasize that occasional loading of value by FAG does not equate to rejection under Rule 12. Loading is an officer's discretion on a specific consignment and does not constitute a conclusive determination that all consignments are undervalued.

2.37.8 In the absence of any cogent grounds, the proposal to invoke Rule 12 amounts to a reverse burden exercise, which is impermissible in valuation proceedings. The onus lies entirely on the Department to prove that the declared value is incorrect-not on the importer to prove correctness.

2.37.9 The SCN also fails to adhere to the sequencing mandated under the Valuation Rules, which require that transaction value must first be tested under Rule 3, and only if its conditions are not met can the Department proceed to Rules 4-9 in order. The attempt to jump directly to Rule 5 is per se invalid.

2.37.10 Accordingly, the proposal under Paragraph 11(i) of the SCN to reject the declared value under Rule 12 is untenable, unlawful, and liable to be dropped in limine.

2.38 REBUTTAL TO PROPOSED RE-DETERMINATION OF VALUE UNDER RULE 5 OF CVR, 2007

2.38.1 The proposal to re-determine the assessable value under Rule 5 of the Customs Valuation Rules, 2007 is wholly misconceived and premature, as it rests on the erroneous presumption that the declared transaction value has already been validly rejected under Rule 12-which, as shown earlier, is not the case.

2.38.2 Rule 5 can only be invoked sequentially and conditionally after:

(i) the transaction value is lawfully rejected under Rule 12. And

(ii) the Department demonstrates the existence of identical goods imported at higher values.

Neither of these preconditions has been fulfilled or even attempted to be established in the SCN.

2.38.3 The expression "identical goods" under Rule 2(d) requires strict comparability in terms of:

- Quality,
- Grade,
- Specifications,
- Country of origin,
- Manufacturer,
- And timing of import.

No such parameters have been examined, let alone satisfied. Instead, the SCN loosely relies on indicative averages and generic data, which are no substitutes for valuation evidence under Rule 5.

2.38.4 Even assuming arguendo that comparator data were to be used, the Department has failed to furnish:

- Any Bill of Entry number,
- Details of supplier or importer,

- Description of goods allegedly comparable,
- Evidence of identical contractual terms, or
- Proof of same commercial circumstances.

This omission renders the proposal legally unsustainable.

2.38.5 The selective use of PLATT quotations and NIDB values does not satisfy the test for identical goods. Both are external compilations that neither confirm the physical comparability of the goods nor reflect actual transaction prices between unrelated parties.

2.38.6 Rule 5 also mandates that the value of alleged identical goods must be:

- From “recent imports”
- “at or about the same time”, and
- “under comparable commercial conditions.”
  The SCN is conspicuously silent on all these statutory requirements.

2.38.7 The Noticees further submit that the materials they import-such as PET lumps, regrind, wiry off-spec, and powder-do not have a single uniform international pricing baseline. Variations in quality, polymerization, form, and sourcing inevitably influence contractual pricing. This factor has been entirely ignored.

2.38.8 The Department has also not discharged its burden of proving that the alleged comparator goods were not:

- Of superior grade,
- Virgin resin,
- Branded material,
- Or supplied under different commercial arragements.

Without such proof, recourse to Rule 5 is arbitrary and contrary to Rule 3.

2.38.9 It is well settled in law that transaction value is the norm and alternative methods are exceptions, permissible only upon strict compliance with procedure and burden of proof. A mere reference to alternate pricing data cannot trigger Rule 5.

2.38.10 Accordingly, the proposal under Paragraph 11 (i) of the SCN to re-determine value under Rule 5 is legally untenable, devoid of evidentiary backing, and liable to be rejected outright.

2.39 REBUTTAL TO DEMAND PROPOSED UNDER SECTION 28(1)(A)

2.39.1 The proposal to demand differential duty under Section 28(1)(a) of the Customs Act, 1962 is wholly unsustainable, as it is premised on the incorrect assumption that there has been short payment of duty due to undervaluation. Since the declared transaction value is correct and has not been lawfully rejected, the very basis for demand collapses.

2.39.2 Section28(1)(a) is attracted only in cases where:

- Duty has not been paid, short paid, or erroneously refunded, and
- Such non-payment or short payment is due to any reason other than suppression, willful misstatement or collusion.

Even this lower threshold is not met, as the SCN does not demonstrate any actual duty shortfall, miscalculation, or omission attributable to the Noticees.

2.39.3 The SCN also admits that in several Bills of Entry where the value was loaded by the FAG, the Noticees paid the differential duty immediately. There is no instance of

non-payment or delayed payment of duty. Hence, there is no surviving cause of action under Section 28.

2.39.4 Furthermore, the SCN lacks any quantitative computation of alleged differential duty. There is:

- No bill-wise breakup,
- No reassessed value calculation,
- No comparative matrix, and
- No reasoned determination of short levy.

A demand under Section 28 cannot be sustained without such clarity and specificity.

2.39.5 The demand proposal also fails because the Department has not complied with the mandatory preconditions of a valuation re-determination.

Unless and until:

- The declared value is lawfully rejected under Rule 12, and
- A legally valid alternate method is applied sequentially,

No duty demand can be confirmed against the Noticees.

2.39.6 It is a settled principle that valuation and demand proceedings cannot be sustained on conjecture or indirect references such as market trends, trade publications, or RMS facilitation. The SCN provides no primary evidence of any duty shortfall.

2.39.7 The recourse to Section 28 is also misplaced because the Department does not allege:

- Clandestine removal,
- Misdeclaration of description or quantity,
- Non-declaration of consignments, or
- Collection of any premium outside the invoice value.

In the absence of such allegations, Section 28 proceedings are unwarranted.

2.39.8 Even assuming arguendo that re-assessment were permissible, recovery under Section 28 requires a proper speaking order of assessment and a clear demonstration of differential duty. The SCN does not refer to any reassessment order, nor does it quantify duty.

2.39.9 The demand is also time-barred, as there is no allegation of fraud, collusion, willful misstatement, or suppression with intent to evade duty-conditions required to trigger the extended period under Section 28(4). Invoking Section 28(1)(a) without a factual basis for short levy renders the proposal invalid.

2.39.10 Accordingly, the proposal under Paragraph 11 (ii) of the SCN to demand duty under Section 28(1)(a) is untenable on facts, erroneous in law, unsupported by computation, and liable to be dropped forthwith.

2.40 REBUTTAL TO PROPOSED CONFISCATION UNDER SECTION 111(m)

2.40.1 The proposal to confiscate the goods under Section 111(m) of the Customs Act, 1962, is wholly misplaced and unsustainable. Section 111(m) applies only where there is misdeclaration in respect of the nature, quantity, value, quality, or any other material particulars at the time of importation. No such misdeclaration has been alleged, established, or evidenced in this case.

2.40.2 The imported goods were:

- Correctly described in the Bills of Entry,
- Correctly classified under CTH 39076990,
- Supported by genuine commercial invoices and packing lists, and
- Cleared under the scrutiny and approval of the Department, whether via RMS or FAG.

There is not a single instance of false declaration relation to description, specifications, or composition that would trigger Section 111(m).

2.40.3 The SCN proceeds on a flawed assumption that goods were 'actually PET Flakes"or restricted waste material, but:

- No sampling was conducted,
- No test report was drawn,
- No discrepancy was recorded at the time of clearance, and
- No contemporaneous objection was raised by Customs authorities.

Without establishing that the declared description is false, Section 111(m) cannot be invoked in law.

2.40.4 It is well settled that valuation disputes alone do not attract confiscation under Section 111(m). Even assuming arguendo that there were differences of opinion regarding value (which is not conceded), mere alleged undervaluation does not amount to "misdeclaration" unless accompanied by intent, false documents, or suppression of material particulars-which are conspicuously absent here.

In this context, we find it relevant to quote the relevant para of Apex Court's judgment in the case *of* ***Akbar Badruddin Jiwani vs. CC [1990 (47) E.L.T. 161 (SC)],*** as follows:

"In order to render the goods liable to confiscation, it must be established that the importer has made a willful misdeclaration or has attempted to import goods by misrepresenting the nature or value thereof. Mere technical or venial breach without any intention to evade duty or contravene the law cannot justify confiscation. Penalty provisions being penal in nature must be strictly construed, and unless the element of mens rea is established, penalty cannot be sustained."

2.40.5 The goods in question have already been cleared for home consumption. In such circumstances, notional confiscation of goods that are no longer physically available is legally impermissible unless the Department produces conclusive proof of deliberate misdeclaration.

2.40.6 It is also pertinent that:

- No seizure memo was issued,
- No goods were detained or examined,
- No panchnama was drawn, and
- No test-based discrepancy was found.

Confiscation proceedings cannot be initiated retrospectively based on assumption or comparison with third-party imports.

2.40.7 The SCN also fails to appreciate that penal provisions must be construed strictly, and confiscation cannot be proposed in the absence of a clearly demonstrated offence. Here, the Department seeks to infer misdeclaration indirectly from unrelated valuation references, which is impermissible.

2.40.8 The Hon'ble Courts and Tribunals have consistently held that confiscation cannot be sustained without mens rea or evidence of conscious contravention. No such evidence exists in this case.

2.40.9 Since the imports were bona fide, properly declared, and duly assessed by Customs authorities at the time of import, any attempt to confiscate the goods under Section 111(m) is an afterthought lacking jurisdictional basis.

2.40.10 Accordingly, the proposal under Paragraph 11 (iv) of the SCN for confiscation under Section 111(m) is liable to be dropped in toto, being contrary to facts, contrary to law, and based purely on presumptions unbacked by evidence.

2.41 REBUTTAL TO PROPOSED PENALTY UNDER SECTION 112 (A)

2.41.1 The proposal to impose a penalty under Section 112(a) of the Customs Act, 1962, is entirely misconceived, as the Department has not established even the basic ingredients necessary to attract this provision. Section 112(a) applies only where a person has "knowingly or intentionally" committed or facilitated an act or omission rendering the goods liable to confiscation.

2.41.2 As demonstrated in the preceding sections, the goods were never liable for confiscation under Section 111(m), as there was:

- No misdeclaration of description or value,
- No suppression or concealment of facts,
- No violation of import policy, and
- No prohibition applicable to the nature of the goods imprted.

In the absence of confiscability, there is no legal foundation for imposing a penalty under Section 112(a).

2.41.3 The Noticees have acted bona fide, transparently, and in full compliance with customs law. All Bills of Entry were duly assessed, and duty was paid in full, including any enhanced duty demanded by the Faceless Assessment Group. No act or omission attributable to the Noticees can be said to indicate intent to evade duty or contravene the law.

2.41.4 The SCN nowhere alleges or establishes:

- Any falsification of documents,
- Use of forged or fabricated invoices,
- Tampering with descriptions or valuations,
- Side payments to suppliers,
- Clandestine import channels, or
- Any misrepresentation to secure clearance.

Without such allegations and proof, the invocation of Section 112(a) is statutorily impermissible.

2.41.5 Section 112(a) further requires proof of mens rea, i.e., knowledge and conscious involvement in a wrongful act. The SCN is completely silent on mens rea and fails to allege any culpable mental state. A penalty cannot be imposed on the basis of mere assumption or retrospective reinterpretation of facts.

2.41.6 It is well settled that where the alleged violation is based on interpretation of valuation of import policy, and there is no contumacious conduct, a penalty cannot be imposed. The Department has failed to demonstrate even a technical infraction, much less a deliberate contravention.

It is pertinent to quote the relevant portion of the Apex Court's judgement in the case of ***Hindustan Steel Ltd. vs. State of Orissa, 1978 (2) ELT JI59 (SC),*** which is the classic authority on when penalties can be imposed:

"*An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of contumacious or dishonest conduct, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.*"

2.41.7 It is also discriminatory and arbitrary to propose a penalty on the Noticees without naming or implicating any supplier, freight forwarder, customs broker, or other person allegedly involved in the supposed undervaluation or misdeclaration.

2.41.8 The fact that the Noticees:

- Voluntarily paid reassessed duty wherever applicable,
- Responded to departmental communications,
- Made available all required documents, and
- Have no prior history of customs violations,

  Clearly negates any inference of willful or intentional misconduct.

2.41.9 The imposition of penalty is also unwarranted given the absence of any material loss to the exchequer, any fraudulent intent, or any attempt to circumvent statutory procedures.

2.41.10 Accordingly, the proposal under Paragraph 11 (v) of the SCN for imposing a penalty under Section 112(a) is liable to be dropped entirely, being devoid of legal merit, unsupported by evidence, and contrary to the fundamental principles governing penal consequences under customs law.

2.42 PART V-PRAYER AND RELIEF SOUGHT

2.42.1 In light of the foregoing submissions, the Noticees respectfully submit that the Show Cause Notice is based on incorrect assumptions, lacks evidentiary support, misapplies the provisions of the Customs Act and Valuation Rules, and proceeds contrary to the settled legal position. No case has been made out for demand of duty, confiscation, penalty, or any other adverse action.

2.42.2 It is reiterated that:

- There has been no import of restricted or prohibited goods;
- No licence, authorization, or permission was required from MoEF&CC or DGFT;
- The declared transaction values are genuine, based on arm's length contracts;
- PLATT, NIDB or other indicative references cannot override Section 14;
- There has been no misdeclaration of description, quality or value;
- Acceptance of occasional FAG loading cannot be treated as admission or suppression;
- RMS facilitation is a departmental mechanism, not misuse by the importer;
- No ground exists for rejection of value under Rule 12 or its redetermination under Rule 5;
- Section 28(1)(a) is not attracted in the absence of a short levy or misstatement;
- Confiscation under Section 111(m) is inapplicable and unsustainable; and
- A penalty under Section 112(a) cannot be imposed in the absence of mens rea or violation.

2.42.3 The Noticees further submit that the SCN:

- Fails to meet the essential jurisdictional requirements,
- Contains no quantification of alleged duty short-payment,
- Relies on conjecture rather than verifiable evidence,
- Ignores the fact of prior assessments and voluntary duty compliance, and
- Seeks to penalize lawful and bona fide commercial imports.

2.42.4 The Noticees have acted transparently at every stage, and no material has been produced by the Department to show otherwise. The proceedings are thus liable to be dropped in entirety.

2.43 PRAYER

In view of the above, the Noticees most respectfully pray that the Learned Adjudicating Authority may be pleased to:

(a) Drop the Show Cause Notice in toto, and

(b) Hold that no demand, confiscation, penalty, interest, or other proceedings are warranted against the Noticees under any provision of the Customs Act, 1962 or the Rules framed thereunder.

2.44 The Noticees reverse the right to supplement, amend or modify this reply at any stage prior to or during the course of adjudication, and also to rely upon additional documents, case law, circulars or clarifications in support of their submissions.

2.45 The Noticees respectfully request that a personal hearing be afforded before any adverse order is passed, in accordance with the principles of natural justice.

3. RECORD OF PERSONAL HEARING

3.1 A personal hearing in the matter was fixed on 07.01.2026 at 16:00 hours. However an email dated 29.12.2025 from authorized representative of the noticee was received to postpone the hearing preferably in the 3rd week of January as they were unable to attend the scheduled personal hearing owing to predisposition. Accordingly personal hearing was re-fixed on 20.01.2026 at 16.00 hours. The authorised representative of the noticee, Shri K.V.P Singh appeared for the hearing and reiterated the submissions made vide letter dated 16.10.2025.

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4 DISCUSSIONS & FINDINGS

4.1 I have carefully gone through the entire case records including the impugned SCN dated 11.09.2025 and its relied upon documents, material on record, written and oral submissions made by the noticee as well as relevant legal provisions and case laws.

4.2 I find that in the impugned SCN it is, inter alia, alleged that the noticee had resorted to undervaluation of the goods viz., Pet Lumps, Pet Regrinds etc.(falling under CTH 39079900 and 39076990) imported by them despite being aware of the prevailing unit prices of the said goods. It alleges that out of the total 132 BOEs, 41 BOEs were

assessed by Faceless Assessment Group (FAG) wherein it was found that the declared value was not in consonance of the contemporaneous value of the similar goods imported at other Ports in India as well as found to be below the rate of PET Waste available in PLATT index, and therefore, the FAG ordered for loading of value on the unit price of the impugned goods and the noticee readily accepted the loaded value and paid the applicable Customs duty without any protest. However, by taking advantage of RMS facilitation, the noticee succeeded in clearance of 91 consignments by paying less Customs duty than legitimately payable. Therefore, the impugned SCN has been issued to the noticee proposing to reject the assessable value of Rs.7,03,23,082/- declared by them w.r.t. the impugned goods imported under the said 91 BOEs and re-determine the same as Rs.11,29,95,297/-, and accordingly the differential Customs duty of **Rs. 1,18,35,138/-** has been demanded under Section 28(1)(a) of the Customs Act, 1962 along with applicable interest under Section 28AA ibid and penalty under Section 112(a) ibid. The impugned SCN also proposes for confiscation of the said imported impugned goods under Section 111(m) of the Customs Act, 1962.

4.3 In view of the above, I find that the main issues to be decided in the instant case are:-

(i) Whether the assessable value of Rs.7,03,23,082/- declared by the noticee w.r.t. the impugned goods imported under the said 91 BOEs should be rejected and re-determine as Rs.11,29,95,297/-, and accordingly the differential duty amounting to **Rs. 1,18,35,138/-** should be demanded from them under Section 28(1)(a) of the Custom Act, 1962;

(ii) Whether interest should be recovered from the noticee under Section 28AA of the Customs Act. 1962;

(iii) Whether the impugned goods imported vide the said 91 BOEs, as detailed in Annexure-'B' to the impugned SCN, are liable to be confiscated under Section 111(m) of the Customs Act, 1962; and

(iv) Whether Penalty should be imposed on the noticee under Section 112(a) of the Customs Act, 1962.

4.4 After having identified and framed the main issues to be decided, I now proceed to examine each of the issues individually in the light of facts and circumstances of the case, provisions of the Customs Act, 1962, contentions made in the defence submissions by the noticee and evidences available on record. I find that the primary issue to be decided in the case is as to whether the assessable value of Rs.7,03,23,082/- declared by the noticee is liable to be rejected and re-determine as Rs.11,29,95,297/-, and whether the noticee is liable to pay the differential duty amounting toRs.**1,18,35,138**/- as demanded by the impugned SCN.

Issue of rejection, redetermination of assessable value and demand of differential duty

4.5 I find that the noticee was engaged in manufacturing of POLYSTER STAPLE FIBRE and was importing PET Lumps, Pet Regrinds etc. as raw material for the same. It is seen that based on Audit observations made by the Customs Audit Commissionerate, New Customs House, Mumbai that the declared assessable value of the impugned goods imported by the noticee was not in comparison with the similar goods imported on other Ports, a detailed scrutiny of the data available on ICES Systems pertaining to import of the impugned goods viz. PET Lumps, Pet Regrinds etc. by the noticee during the period 13.09.2023 to 05.08.2024 was carried out. It is further seen that the notice had filed total 132 BOEs for import of Pet Lumps, Pet Regrinds etc. having declared Assessable Value of Rs.12,10,16,734/- (as detailed in **'Annexure**-A).

4.6 I find that in their defence reply, the noticee has inter alia contended that mere comparison with PLATT index or NIDB data cannot be the basis for overriding transaction value, in the absence of any evidence showing extra-commercial considerations, a relationship between buyer and seller, flow-back of consideration, or mis-declaration of description. The reliance placed on indicative reference values instead of transaction value is contrary to Section 14 of the Customs Act read with Rule 3 of the Customs Valuation Rules, 2007. They have further contended that in cases where the FAG made any loading of value or sought additional duty, the noticee, without contest and in full compliance, paid the duty so assessed and cleared the goods accordingly.

4.7 I find that the undisputed fact in the instant case is that the assessable value of the goods viz., PET Lumps, Pet Regrinds etc. declared by the noticee in the said 41 BOEs were not in consonance of the contemporaneous value of the similar goods imported at other ports in India and the noticee had undervalued the said goods by 30% to 50% than that of the contemporaneous value of similar goods available on NIDB and/or PLATT index during the relevant period of the impugned import. It is also undisputed that when the FAG reassessed the said 41 BOEs by loading value to the tune of 30% to 50%, as per contemporary price of the impugned goods, to the declared assessable value, the noticee readily accepted the same and made payment of the reassessed Customs duty without any protest.

4.8 I find that the noticee, after seeing the contemporaneous import data (prevailing during the relevant period), had agreed to the redetermination of value and after that the value was enhanced by the FAG in respect of the said 41 BOEs and the enhanced Customs duty was paid by the noticee without any contest or protest. I also find that nobody stopped the noticee of their right to protest even if the clearance was being taken to save the demurrage charges. I also find that it is a matter of fact that the noticee has never contested the enhancement of assessable value in respect of the said 41 BOEs and the duty was not paid under protest.

4.9 I find that in several decisions where the Courts and Tribunals have held that an admission before an Assessing Officer of Customs is admissible evidence and in the present case also, the noticee had voluntarily accepted the value loading by the FAG in respect of the said 41 BOEs. I find that the Tribunal in the case of ***Commissioner of Customs, Delhi v. M/s Hanuman Prasad & Sons [final order no. 51584-51619 reported in 2020 (12) TMI 1092-CESTAT NEW DELHI]***, after considering all the provisions of Customs Act, 1962 relating to valuation and the Customs Valuation Rules, 2007, has held *that "**the very fact that the importers had agreed for enhancement of the declared value in the letters submitted by them to the assessing authority, itself implies that the importers had not accepted the value declared by them in the Bills of Entry. The value declared in the Bills of Entry, therefore, automatically stood rejected"***.

4.9.1 I also observe that subsequent to the passing of the judgement in the case of M/s Hanuman Prasad & Sons (cited supra), another Division Bench of the Principal Bench of Tribunal, New Delhi in the case of M/s Sumridhi Aluminium (P) Ltd. vs. Commissioner of Customs, New Delhi vide Final Order No. 51191-51282 of 2023 dated 13.09.2023 again examined all the rules relating to valuation and by relying upon the decision in the case of M/s Hanuman Prasad & Sons and other decisions dismissed the appeals of the importer.

4.10 Thus, I find that the very fact that the noticee had agreed for enhancement of the declared assessable value, itself implies that the noticee had not accepted the value declared by them in the BOEs. The value declared by them in the BOEs, therefore, automatically stood rejected. Further, I find that once the noticee had readily accepted the enhanced value, it was not necessary for the assessing authority to undertake the exercise of determining the value of the declared goods under the provisions of rules 4 to 9 of the Valuation Rules. In this regard, I find that the Tribunal in the case of ***M/s. Advanced Scan Support Technologies vs. Commissioner of Customs, Jodhpur [reported in 2015 (326) E.L.T. 185 (Tri.-Del)]*** has held that "***as the Appellant therein had expressly given consent to the value proposed by the Revenue…., it was not necessary for the Revenue to establish the valuation any further as the consented value became the declared transaction value requiring no further investigation or justification***".

4.11 I find that in the instant case, the noticee had expressly given their consent to the value proposed by the FAG and after accepting the reassessed value, the noticee had paid the duty without any protest. Thus, by consenting to the enhancement of value, the noticee has made it unnecessary for the department to establish the valuation any further as the consented value in effect becomes the declared transaction value requiring no further investigation or justification. As such, I also find that the contention of the noticee that the impugned SCN is contrary to Section 14 of the Customs Act read

with Rule 3 of the Customs Valuation Rules, 2007 does not hold any merit and is liable to be discarded.

4.12 Therefore, I find that by accepting the loaded value of the impugned goods and paying the duty accordingly thereon without any protest or objection, the noticee settled their duty liability once and for all and paid the duty amount on the loaded value of the impugned goods. The Tribunal in the case of ***M/s. Vikas Spinners v. C.C.,Lucknow - 2001 (128) E.L.T. 143 (Tri.-Del)*** has held that "***enhanced value once settled and duty having been paid accordingly without protest, importer is estopped from challenging the same subsequently"***. It also held that "***enhanced value uncontested and voluntarily accepted, and accordingly payment of duty made discharges the burden of the department to establish declared value to be incorrect"***. Similarly, in the case of ***Commissioner of Customs (Import), ICD, TKD, New Delhi vs. M/s Sodagar Knitwear Pvt. Ltd. [2018 (362) E.L.T. 819 (Tri.-Del) (Tri-Del)]***, the Tribunal has held that ***once the importer voluntary accepted the enhancement then he is precluded from challenging the same***. This judgement of the Tribunal has been upheld by the Hon'ble Apex Court as reported in 2018 (362) E.L.T. A213 (S.C.) wherein the Hon'ble Apex Court has held that "we do not find any infirmity in the order passed by the CESTAT, the appeal is dismissed." I find that out of the said 132 BOEs, 41 BOEs were assessed by Faceless Assessment Group (FAG) and the FAG found that the declared value of the impugned goods was not in consonance of the contemporaneous value of the similar goods imported at other Ports in India and found to be below the rate of PET Waste available in PLATT index. Therefore, the FAG ordered for loading of value on the unit price of the impugned goods on the basis of the contemporaneous import noticed on NIDB as well as prevalent PLATT index on that particular date. I find that the noticee readily accepted the loaded value and accordingly the said 41 BOEs were re-assessed on the basis of loaded value, and the noticee paid the applicable Customs duty without any protest. However, it is seen that the remaining 91 BOEs were facilitated through RMS on "no assessment and no examination" basis. Therefore, it is apparent that there was no intervention by the Customs officers in clearance of the said 91 consignments cleared through RMS facilitation.

4.13 Whether the value of the imported goods should be re-determined at Rs. 11,29,95,297/- (Rupees Eleven Crore Twenty-nine Lakh Ninety-five Thousand Two Hundred and Ninety-seven only) as per Annexure-B of the SCN, in terms of Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962;

(i) From the above discussion, it is observed that there is huge undervaluation of the imported goods with an aim to defraud the revenue. Since, the issue involved is the enhancement of the value of the imported goods, the relevant portion of Section 14 of

the Customs Act, 1962 which is germane to the issue is reproduced below for ease of reference;

"**Section 2. Definitions:**

. . . . .

(41) '**value'** in relation to any goods, means the value thereof determined in accordance with the provisions of sub-Section (1) of Section 14.

*****. *****. *****

Section 14. Valuation of goods for purposes of assessment:

14. Valuation of goods.

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

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

. . . . . .

Generally speaking, the transaction value shall be the assessable value on which duty should be determined-whether it is import duty or export duty. It also a well settled law that valuation of the imported goods has to be done in terms of Section 14 of the Customs Act, 1962 and the *Customs Valuation Rule, 2007*. If transaction value can be determined under Rule 3(1) of *Customs Valuation Rules, 2007* and such value does not fall under exceptions provided under Rule 3(2) of *Customs Valuation Rules, 2007*, the transaction value cannot be rejected under Rule 12 of *Customs Valuation Rules,2007*.

(ii) I observed that if the department has a reason to doubt the truth and accuracy of the transactional value of the imported goods, it has the jurisdiction to reject the transaction value. This principle is laid down by the Hon'ble Supreme Court in the *case* of Century

Metals Recycling Pvt. Ltd. Vs. UOI [2019(367) ELT 3 (SC)], wherein the Apex court held as under: -

***4.14**. Sub-rule (3) to Rule 3 deals with cases when the buyer and seller are related. We would not dilate on the said sub-rule for this is not required for the purpose of the present decision. As per sub-rule (4), where the value cannot be determined under sub-rule (1) to Rule 3, the transaction is to be valued by step wise applying Rules 4 to 9. Rule 4 deals with transaction value based on identical goods. Rule 5 deals with transaction value based on similar goods. Rule 6 deals with the determination of value where the transactional value cannot be determined under Rules 3, 4 and 5. Rules 7 and 8 deal with deductive value and computed value respectively. Rule 9 prescribes the residual method for computing the transaction value. What is important to note is that Rules 4 to 9 are subject to the provisions of Rule 3 thereby giving primacy to Rule 3 which in turn gives primacy to Rule 12 of the 2007 Rules.*

4.15. *Rule 12, which as noticed above enjoys primacy and pivotal position, applies where the proper officer has reason to doubt the truth or accuracy of the value declared for the imported goods. It envisages a two-step verification and examination exercise. At the first instance, the proper officer must ask and call upon the importer to furnish further information including documents to justify the declared transactional value. The proper officer may thereafter accept the transactional value as declared. However, where the proper officer is not satisfied and has reasonable doubt about the truth or accuracy of the value so declared, it is deemed that the transactional value of such imported goods cannot be determined under the provision of sub-rule (1) of Rule 3 of the 2007 Rules. Clause (iii) of Explanation to Rule 12 states that the proper officer can on 'certain reasons' raise doubts about the truth or accuracy of declared value. 'Certain reasons' would include conditions specified in clauses (a) to (f) i.e. higher value of identical similar goods of comparable quantities in a comparable transaction, abnormal discount or abnormal deduction from ordinary competitive prices, sales involving the special prices, misdeclaration on parameters such as description, quality, quantity, country of origin, year of manufacture or production, non-declaration of parameters such as brand and grade etc. and fraudulent or manipulated documents. Grounds mentioned in (a) to (f) however are not exhaustive of 'certain reasons' to raise doubt about the truth or accuracy of the declared value. Clause (ii) to Explanation states that the declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after enquiry in consultation with the importers. Clause (i) to the Explanation states that Rule 12 does not provide a method of determination of value but provides the procedure or mechanism in cases where declared value can be rejected when there is a reasonable doubt that the declared transaction*

value does not represent the actual transaction value. In such cases the transaction value is to be sequentially determined in accordance with Rules 4 to 9 of the 2007 Rules.

Sub-rule (2) of Rule 12 stipulates that on request of an importer, the proper officer shall intimate to the importer in writing the grounds, i.e. the reason for doubting the truth or accuracy of the value declared in relation to the imported goods. Further, the proper officer shall provide a reasonable opportunity of being heard to the importer before he makes the valuation in the form of final decision under sub-rule (1).

***4.16**. The requirements of Rule 12, therefore, can be summarised as under :*

(a) The proper officer should have reasonable doubt as to the transactional value on account of truth or accuracy of the value declared in relation to the imported goods.

(b) Proper officer must ask the importer of such goods further information which may include documents or evidence;

(c) On receiving such information or in the absence of response from the importer, the proper officer has to apply his mind and decide whether or not reasonable doubt as to the truth or accuracy of the value so declared persists.

(d) When the proper officer does not have reasonable doubt, the goods are cleared on the declared value.

(e) When the doubt persists, sub-rule (1) to Rule 3 is not applicable and transaction value is determined in terms of Rules 4 to 9 of the 2007 Rules.

(f) The proper officer can raise doubts as to the truth or accuracy of the declared value on 'certain reasons' which could include the grounds specified in clauses (a) to (f) in clause (iii) of the Explanation.

(g) The proper officer, on a request made by the importer, has to furnish and intimate to the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to the imported goods. Thus, the proper officer has to record reasons in writing which have to be communicated when requested.

(h) The importer has to be given opportunity of hearing before the proper officer finally decides the transactional value in terms of Rules 4 to 9 of the 2007 Rules.

***4.17**. Proper officer can therefore reject the declared transactional value based on 'certain reasons' to doubt the truth or accuracy of the declared value in which event the proper officer is entitled to make assessment as per Rules 4 to 9 of*

the 2007 Rules. What is meant by the expression "grounds for doubting the truth or accuracy of the value declared" has been explained and elucidated in clause (iii) of Explanation appended to Rule 12 which sets out some of the conditions when the 'reason to doubt' exists. The instances mentioned in clauses (a) to (f) are not exhaustive but are inclusive for there could be other instances when the proper officer could reasonably doubt the accuracy or truth of the value declared.

***4.18** The choice of words deployed in Rule 12 of the 2007 Rules are significant and of much consequence. The Legislature, we must agree, has not used the expression "reason to believe" or "satisfaction" or such other positive terms as a pre-condition on the part of the proper officer. The expression "reason to believe" which would have required the proper officer to refer to facts and figures to show existence of positive belief on the undervaluation or lower declaration of the transaction value. The expression "reason to doubt" as a sequitur would require a different threshold and examination. It cannot be equated with the requirements of positive reasons to believe, for the word 'doubt' refers to un-certainty and irresolution reflecting suspicion and apprehension. However, this doubt must be reasonable i.e. have a degree of objectivity and basis/foundation for the suspicion must be based on 'certain reasons'."*

***4.19**. The expression "proof beyond reasonable doubt" in criminal law requires the prosecution to establish guilt and secure conviction of the accused by proving the charge "beyond reasonable doubt". In **Ramakant Rai v. Madan Rai [Ramakant Rai v. Madan Rai, (2003) 12 SCC 395 : 2004 SCC (Cri) Supp 445]** referring to the expression "reasonable doubt" in criminal law it was held as under : (SCC p. 405, para 24)*

"24. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case."

4.20 However, after rejection of the transaction value under Rule 12 of the Customs Valuation Rules, 2007, the question needs to be answered is whether the valuation has been done in accordance with the procedure prescribed under Rule 12 of the *Customs Valuation Rules,* 2007.

4.21 In the present case, I find that the department on the basis of cogent evidences available during the Audit has rejected the transaction value of the imported goods and

redetermind the assessable value of the imported goods on the basis of the Customs Valuation Rules, 2007.Rule 3(2) of the Customs Valuation Rules,2007 mandates that if the transaction value is to be rejected, there must be evidence available on record to justify the same.

4.22 In view of above, I find that in case of 41 Bills of Entry of the same importer assessed by FAG, the assessing officer was having evidence for higher value than declared value and having reasonable doubt as to the transaction value on account of truth or accuracy of the value declared in relation to goods imported vide aforesaid 41 BOEs and as per rule 12 of said rules he informed the importer in writing i.e in form of queries w.r.t lower value the grounds for doubting the truth and accuracy of value. This shows that importer has been given opportunity to explain. I also find that importer accepted the contention of the assessing officer and he allowed the officer to assess the goods as per value suggested by the officer. I also find that the importer neither filed his protest nor filed appeal against such assessment. This fact shows that importer was aware about the higher price of the goods. I also find this was not occasional as in such manner he cleared 41 consignments during the reasonable long period. I find that in case of goods cleared vide 91 BOEs were facilitated through RMS without proposing any assessment and examination. In these BOEs the declared value was lower than the value found in contemporaneous import data. In this regard Rule 12(2) (iii)(a) of Customs Vaulation Rules 2007 states that the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed. In the present case since the higher value was available, the declared value in 91 BOEs is rejected under Rule 12(2)(iii)(a) of CVR 2007.

4.23 Having rejected the declared transaction value, the assessable value is required to be determined in terms of Rule 3(4) of the CVR, 2007 by proceeding sequentially through Rules 4 to 9.

4.24 I find that the goods under consideration are PET Lumps, PET Regrinds, PET Waste, PET Powder etc., which are not branded goods but are traded commodities, the value of which is influenced by international market conditions. Reliable contemporaneous data of similar goods imported at or about the same time were available in NIDB. Further, internationally accepted benchmark prices for such goods were available on the PLATT platform during the relevant period.

4.25 In view of the availability of contemporaneous data of similar goods imported during the same period and in comparable commercial quantities, I hold that the value of the impugned goods is appropriately determinable under Rule 5 (Transaction value of similar goods) of the CVR, 2007. The re-determined values have been arrived at on the basis of contemporaneous imports and prevailing PLATT benchmark prices for the

respective dates of import, ensuring parity with the enhanced values adopted in FAG-assessed Bills of Entry of the same importer.

4.26 Accordingly, the assessable value in respect of the 91 Bills of Entry detailed in Annexure-B is re-determined at ₹11,29,95,297/- as against the declared value of ₹7,03,23,082/-. Consequently, the differential duty amounting to ₹1,18,35,138/- is recoverable under Section 28(1)(a) of the Customs Act, 1962 along with applicable interest under Section 28AA ibid.

4.27 I therefore hold that the re-determined assessable value as detailed in Annexure-B is legally sustainable, being in conformity with Section 14 of the Customs Act, 1962 and Rules 5 read with Rule 3(4) of the Customs Valuation Rules, 2007 as said reassessed loaded value has been explicitly accepted by the noticee without any protest.

4.28 I also find that the goods imported by the noticee under all their BOEs were similar. Therefore, in view of the foregoing, I find that the proposed reassessment of the declared assessable value of the goods imported by the noticee under the impugned 91 BOEs, vide the impugned SCN, based on the contemporaneous data i.e., the reassessed value of similar goods imported by the noticee themselves under the above mentioned 41 BOEs, is valid and legitimate. Hence, I hold that the enhanced value voluntarily accepted by the noticee in case of the 41 BOEs assessed by the FAG is also applicable to the 91 BOEs which were facilitated through RMS. In support of the same, I find that the Tribunal in the case of ***Commr. of Customs (Import), Mumbai vs. Lorex International [2006 (194) E.L.T. 109 (Tri. - Mumbai)]*** has held that ***there is no infirmity in the order of original authority enhancing value on the basis of loaded value adopted earlier to assess similar goods imported under Bill of Entry on par in quantity, supplier and place of import***.

4.29 It is seen that the noticee has cited the case laws of *Eicher Tractors Ltd. Vs.CC [2000(122) ELT 321 (SC)]; C.C V. Mahalaxmi Gems*-[2008(231) ELT 198 (SC)]; *Agarwal Foundries (P) Ltd [2020 (371) E.L.T 859(Tri.-Hyd.)]*, etc. in their defence submissions. On going through the said case laws, I find that in all these cases, the importers had contested and protested the loaded value at the first time only when it was done. However, in the instant case, it is undisputed that the noticee had expressly given consent to the value proposed by the FAG and accepted the reassessed value and accordingly paid the duty without any protest. Therefore, I find that the ratio of the law laid down in the above case laws cited by the noticee is not at all attracted to the instant case. The ratio of these case laws could be applied only if the noticee had contested the loaded value at the time when it was done, but not now after having voluntarily accepted the correctness of loaded value of the goods as determined by the FAG and paid the duty thereon accordingly.

4.30 In view of the foregoing, I find that the noticee had failed to declare the correct value of the impugned goods imported under the said 91 BOEs in contravention of Section 46(4) of the Customs Act, 1962 and resorted to undervaluation despite being aware of the prevailing value of the impugned goods. Their resort to undervaluation and evasion of duty is also apparent from the fact that when the officers initiated inquiry into the instant case, the noticee stopped importation of the impugned goods through ICD, Tarapur. Therefore, I hold that the assessable value of Rs.7,03,23,082/- declared by the noticee w.r.t. the impugned goods imported under the said 91 BOEs is liable to be rejected under Rule 12 of the CVR, 2007 and the same should be redetermined at Rs.11,29,95,297/-in terms of Rule 5 of the CVR, 2007.Accordingly, I find that the noticee is liable to pay the differential duty (comprising of BCD, SWS and IGST) totally amounting to Rs.**1,18,35,138**/-. The details of the same are as under:-

(Amount in Rs.)

Declared Assessable Value	Re-determined Assessable Value	BCD @ 7.5%	SWS @ 10%	IGST @ 18%	Total Duty payable	Total Duty paid	Differential Duty Payable
7,03,23,082/-	11,29,95,297/-	84,74,647/-	8,47,465/-	2,20,17,135/-	3,13,39,245/-	1,95,04,107/-	1,18,35,138/-

4.31 In view of the above, I hold that the above differential duty (comprising of BCD, SWS and IGST) amounting to Rs.**1,18,35,138**/- is liable to be recovered from the noticee under Section 28(1)(a) of the Custom Act, 1962 along with applicable interest and penalty.

Interest under section 28AA of the Act

4.32 I find that the impugned SCN has proposed to recover interest on the demanded duty, under Section 28AA of the Customs Act, 1962. The provisions for recovery of interest on delayed payment of duty as per Section 28AA of the Customs Act, 1962, read as under: -

> '***28AA. Interest on delayed payment of duty***
> *(1) Notwithstanding ….., the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.*'

4.32.1 From the above, it is apparent that Section 28AA of the Act mandates that any person, who is liable to pay duty as per Section 28 of the Act, is also liable to pay the applicable interest, in addition to the said duty. As already discussed herein above that the noticee is liable to pay the differential duty amounting to **Rs.1,18,35,138**/-under the provisions of Section 28(1) of the Customs Act, 1962, therefore, the noticee is also liable to pay the interest at applicable rate as per the provisions of Section 28AA of the Act. I also find that Hon'ble Supreme Court, in the case of ***Pratibha Processors Vs.***

Union of India reported in [1996(88) E.L.T.12(S.C.)], has settled this issue and held that interest is compensatory in character and is imposed on the assessee who has withheld payment of any tax as and when it is due and payable; that the levy of interest is levied on the delay in payment of tax due and payable on the due date. I further find that Hon'ble Supreme Court in the case of ***Commissioner of Trade Tax Lucknow Vs Kanhai Ram Thekedar, [2005(185) E.L.T. 3(S.C.)]*** had held that interest liability accrues automatically from confirmation of demand of duty/tax as recoverable. Thus, I find that payment of interest under Section 28AA of the Act is mandatory on every person who is liable to pay duty as per Section 28 of the Act. Therefore, I hold that the noticee is liable to pay applicable interest under the provisions of Section 28AA of the Customs Act, 1962.

Issue of Confiscation of the goods under Section 111(m) of the Customs Act, 1962

4.33 I find that the impugned SCN has proposed confiscation of the impugned goods imported by the noticee under Section 111(m) of the Customs Act, 1962. In this context, it would be pertinent to go through the provisions of the same. The provisions of Section 111(m) of the Customs Act, 1962 are reproduced below: -

> ***Section 111.*** *Confiscation of improperly imported goods, etc. –*
>
> *The following goods brought from a place outside India shall be liable to confiscation:*
>
> ***(m)*** *any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;*

4.33.1 From the above, it is apparent that an importer mis-declare the value or any other particulars of the imported goods will be liable to confiscation under Section 111(m) of the Customs Act, 1962.

4.33.2 I find that in the instant case, it is proven beyond doubt that the noticee had not declared the correct value of the impugned goods in the impugned 91 BOEs resulting in short-payment of Customs duty. The noticee had suppressed the correct value of the imported goods solely to evade the Customs duty. Thus, I find that the imported goods do not correspond with declaration made by the noticee in the said BOEs filed by them. Therefore, I find that the provisions of Section 111(m) of the Customs Act, 1962 is squarely applicable to the present case. I find that to invoke the provisions of Section 111(m) of the Customs Act, this clause does not even require intentional non-disclosure; simple mismatch is sufficient. In support of my contention, I rely on the judgement of ***Pine Chemicals Suppliers V/s. Collector of Customs [1993(67) E.L.T. 25 (S.C.)]***, wherein it was held that *as the case of mis-declaration of description and value of imported goods, the question of mens rea was not relevant for liability to confiscation and that penalty was possible under Sections 111(m) and 112 of Customs*

Act. I also rely on the judgement of ***CC Mumbai Vs Multimetal Ltd.-[2002(144)E.L.T.574(Tri-Mumbai)], upheld in Apex court in [2003(151)E.L.T.A309 (SC)]***, wherein it is held that *when mis-declaration is established, goods are liable for confiscation irrespective of whether there was malafide or not*.

Further, I find that once the goods are found violating the relevant provisions of the Customs Act, 1962, the liability of confiscation arises as per Section 111 of the Act, and the physical availability of goods or seizure doesn't alter this position. I find that this position has already been settled by the Hon'ble Madras High Court in the case of ***M/s. DadhaPhama Private Limited vs. Secretary to Govt of India [2000 (126) E.L.T. 535 (Mad.)]***.

In view of above, I hold that all the impugned goods imported by the noticee vide the above mentioned 91 BOEs covered under the impugned SCN are liable for confiscation under Section 111(m) of the Customs Act, 1962.

Applicability of Redemption Fine

4.33.3 As the impugned goods viz, PET Lumps, PET Regrinds etc. are found to be liable for confiscation under Section 111(m) of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged in impugned SCN. The Section 125 ibid reads as under:-

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

A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods, by paying redemption fine.

4.33.4 In the instant case, it is seen that the impugned goods have been cleared and are not physically available for confiscation under Section 111(m) of the Customs Act, 1962. In this regard, I find that redemption fine is imposable even if the goods are not seized & are not available for confiscation. There is a catena of judgments wherein it has been held that the availability of the goods is not necessary for imposing the redemption fine. A couple of them are cited below and relied upon by me.

(i) In the case of ***M/s.Venus Enterprises Vs. CC, Chennai [2006(199)E.L.T.661(Tri.-Chennai)]***, it has been held that:

"We cannot accept the contention of the appellants that no fine can be imposed in respect of goods which are already cleared. Once the goods are held liable for confiscation, fine can be imposed even if the goods are not available. We uphold the finding of the mis-declaration in respect of the parallel invoices issued prior to the date of filing of the Bill of Entry. Hence, there is mis-declaration and suppression of value and the offending goods are liable for confiscation under Section 111(m) of the Customs Act. Hence the imposition of fine even after the clearance of the goods is not against the law."

(ii) Further, in the case of ***M/s. Visteon Automotive Systems India Ltd. [reported in 2018(9)G.S.T.L.142(Mad)]***, the Hon'ble High Court of Madras has passed the landmark judgment. In the said judgment, it has been held that:

"23. The penalty directed against the import under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularized, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorized by this Act…..", brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act."

(iii) Further, in case of ***Synergy Fertichem Ltd vs. Union of India[reported in 2020(33)G.S.T.L.513(Guj.)]***, the Hon'ble Gujrat High Court has relied on the judgment in case of C.M.A. No. 2857 of 2011 in the case of Visteon Automotive Systems India Ltd. Vs. CESTAT. Chennai [2018(9)G.S.T.L.142(Mad)] and held that:-

"Even in the absence of the physical availability of the goods or the conveyance, the authority can proceed to pass an order of confiscation and also pass an order of redemption fine in lieu of the confiscation. In other words, even if the goods or the conveyance has been released under Section 129 of the Act and, later, confiscation proceedings are initiated, then even in the absence of the goods or the conveyance, the payment of redemption fine in lieu of confiscation can be passed."

(iv) Further, I also find that the Hon'ble Supreme Court in the case of ***Weston Components Lad. Vs Commissioner of Customs, New Delhi [as reported in 2000 (115) E.LT. 278 (S.C.)]*** has held that-

"Redemption fine imposable even after release of goods on execution of bond- Mere fact that the goods were released on the bond would not take away the power of the Customs Authorities to levy redemption fine if subsequent to release of goods import was found not valid or that there was any other irregularity which would entitle the Customs authorities to confiscate the said goods."

4.33.5 Relying on the above guiding judgments, I conclude that imposition of redemption fine under Section 125 of the Customs Act, 1962 is not contingent upon the physical availability of the goods. Redemption fine is intrinsically linked to the authorization of confiscation under Section 111 and serves to mitigate the consequences of such confiscation. Therefore, the absence of the impugned goods does not preclude the imposition of redemption fine, which remains valid and enforceable in accordance with the law. Thus, I find that the impugned goods which are not available for confiscation does not prevent to impose redemption fine.

4.33.6 In view of the above discussions, I find that redemption fine is liable to be imposed on the impugned goods imported by the noticee vide the above mentioned 91 BOEs which has been held to be liable for confiscation under Section 111(m) of the Customs Act, 1962.

Issue of imposition of penalty Section 112(a) of the Customs Act, 1962

4.34 The impugned SCN has proposed penalty on the noticee under Section 112(a) of the Act. Therefore, it would be pertinent to go through the provisions of Section 112(a) ibid. The same are reproduced below:-

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

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

(b) ----------,

shall be liable, -

(i) ----------;

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

4.34.1 From the above, it is apparent that penalty under Section 112(a) is imposable if goods are liable to confiscation under Section 111 of the Act. I have, in the foregoing para, discussed in detail and conclusively held that the impugned goods imported by the noticee vide the above mentioned 91 BOEs is liable for confiscation under Section 111(m) of the Customs Act, 1962. Therefore, I hold that the noticee is liable for penalty under Section 112(a)(ii) of the Customs Act, 1962.

5. In view of the foregoing discussions and findings, I pass the following order:

ORDER

(i) I reject the declared Assessable Value of ₹7,03,23,082/- (Rs. Seven Crores Three Lakh Twenty-Three Thousand and Eighty-Two only) of the impugned goods viz. Pet lumps, Pet Wiry, Pet Powder, Pet Fine and Pet regrinds etc. imported under the 91 BOEs (as detailed in Annexure-B) by the noticee viz., M/s KRS Polyfab, under the provisions of Rule 12 of the CVR, 2007; and redetermine the same at Rs.11,29,95,297/- (Rupees Eleven Crore Twenty-nine Lakh Ninety-five Thousand Two Hundred and Ninety-seven only) in terms of Rule 5 of the CVR, 2007.

(ii) I confirm the demand of differential duty amounting to Rs.1,18,35,138/- (Rupees One Crore Eighteen Lakhs Thirty Five Thousand One Hundred and Thirty Eight only), as detailed in Para 4.30 of this order, under Section 28(1)(a) of the Customs Act, 1962, and order to recover the same from the noticee viz., M/s. KRS Polyfab under Section 28(1) of the Customs Act, 1962. .

(iii) I confirm and order to recover interest on the duty amount confirmed at (ii) above, under Section 28AA of the Customs Act, 1962 from the noticee viz M/s. KRS Polyfab.

(iv) I order to confiscate the impugned goods having total redetermined assessable value of Rs.11,29,95,297/-, as detailed in Para 4.30 of this order, under Section 111(m) of the Customs Act, 1962. However, since the impugned goods are not physically available, I impose a Redemption Fine of Rs.25,00,000/- (Rupees Twenty Five Lakh only) under Section 125(1) of the Customs Act, 1962 on the noticee viz., M/s. KRS Polyfab in lieu of confiscation.

(v) I impose penalty of Rs.11,83,514/- (Rupees Eleven Lakh Eighty-three Thousand five Hundred and Fourteen only) on the noticee viz., M/s. KRS Polyfab under Section 112(a)(ii) of the Customs Act, 1962.

6. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or the noticee viz., M/s. KRS Polyfab (IEC-0315065257) or any other person under the Customs Act, 1962 or any other law for the time being in force in India.

(Dr. Atul Handa)
Commissioner

F.No: GEN/ADJ/COMM/636/2025-DISP-R&I

To,

1. M/s KRS Polyfab, Unit No. 231, 2nd Floor,
Hubtown Solaris, N.S Phadke Marg,
Andheri(East), Mumbai-400069,

2. M/s. M/s KRS Polyfab,(IEC-0315065257)
Khatta No. 1477, Survey No. 210/3P

MaroliUmbergaon,
Dist. Valsad-396130, Gujrat

Copy to:

1. The Principal Chief Commissioner of Customs, Mumbai Zone-III.
2. The Additional Commissioner of Customs, Audit Commissionerate, NCH, Mumbai.
3. The Additional Commissioner of Customs, M&P Wing, Mumbai.
4. The Assistant Commissioner of Customs, ICD, Tarapur, M&P wing, Mumbai.
5. Notice Board.
6. Master File.