

 सत्यमेव जयते	OFFICE OF THE COMMISSIONER OF CUSTOMS, NS-IV सीमाशुल्कआयुक्तकाकार्यालय, एनएस-IV CENTRALIZED ADJUDICATION CELL, JAWAHARLAL NEHRU CUSTOM HOUSE, केंद्रीकृतअधिनिर्णयनप्रक्रोष्ट, जवाहरलालनेहरूसीमाशुल्कभवन, NHAVA SHEVA, TALUKA-URAN, DIST- RAIGAD, MAHARASHTRA 400707 न्हावाशेवा, तालुका-उरण, जिला- रायगढ, महाराष्ट्र -400 707	
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F. No. S/10-245/2020-21/CC/NS-I/CAC/JNCH
 SCN F. No. DRI/MZU/E/52/2007/5652 to 5655
DIN-20251278NY0000616166

Date of Order:26-12-2025

Date of Issue: #ApprovedDate

आदेश की तिथि: **26-12-2025**

जारी किए जाने की तिथि: **26-12-2025**

Passed by: Dr. Kundan Yadav

पारितकर्ता: डॉ. कुंदन यादव

Commissioner of Customs (NS-IV), JNCH, Nhava Sheva

आयुक्त, सीमाशुल्क (एनएस-IV), जेएनसीएच, न्हावाशेवा

Order No.:320/ 2025-26 /Commr /NS-IV /CAC /JNCH

आदेश सं/320/2025-26: आयुक्त/एनएस-IV/ सीएसी/जेएनसीएच

Name of Party/Noticee: M/s. Parin Enterprises

पक्षकार (पार्टी)/ नोटिसी का नाम: मेसर्से पैरिन इंटरप्राइजेज

ORDER-IN-ORIGINAL

मूल आदेश

1. The copy of this order in original is granted free of charge for the use of the person to whom it is issued.
 1. इस आदेश की मूल प्रति की प्रतिलिपि जिस व्यक्ति को जारी की जाती है, उसके उपयोग के लिए निःशुल्क दी जाती है।
2. Any Person aggrieved by this order can file an Appeal against this order to CESTAT, West Regional Bench, 34, P D Mello Road, Masjid (East), Mumbai - 400009 addressed to the Assistant Registrar of the said Tribunal under Section 129 A of the Customs Act, 1962.
 2. इस आदेश से व्यक्ति कोई भी व्यक्ति सीमाशुल्क अधिनियम १९६२ की धारा १२९(ए) (के तहत इस आदेश के विरुद्ध सीईएसटीएटी, पश्चिमी प्रदेशिक न्यायपीठ (वेस्टरीजनलबोर्नेच, ३४, पी .डी .मेलोरोड, मस्जिद (पूर्व, मुंबई- ४००००९ को अपील कर सकता है, जो उक्त अधिकरण के सहायक रजिस्ट्रार को संबोधित होगा।
3. Main points in relation to filing an appeal:-
 3. अपील दाखिल करने संबंधी मुख्य मुद्दे:-

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

फार्म - फार्मन .सीए३, चार प्रतियों में तथा उस आदेश की चार प्रतियाँ, जिसके खिलाफ अपील की गयी है (इन चार प्रतियों में से कम से कम एक प्रति प्रमाणित होनी चाहिए)।

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

समय सीमा- इस आदेश की सूचना की तारीख से ३ महीने के भीतर

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

फीस- (क) एक हजार रुपये—जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५ लाख रुपये या उससे कम है।

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

(ख) पाँच हजार रुपये— जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५ लाख रुपये से अधिक परंतु ५० लाख रुपये से कम है।

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

(ग) दस हजार रुपये—जहाँ माँगे गये शुल्क एवं ब्याज की तथा लगायी गयी शास्ति की रकम ५० लाख रुपये से अधिक है।

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

भुगतान की रीति— क्रॉस बैंक ड्राफ्ट, जो राष्ट्रीय कृत बैंक द्वारा सहायक रजिस्ट्रार, सीईएसटीएटी, मुंबई के पक्ष में जारी किया गया हो तथा मुंबई में देय हो।

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

सामान्य - विधि के उपबंधों के लिए तथा ऊपर यथा संदर्भित एवं अन्य संबंधित मामलों के लिए, सीमा शुल्क अधिनियम, १९९२, सीमाशुल्क (अपील) नियम, १९८२ सीमाशुल्क, उत्पादन शुल्क एवं सेवाकर अपील अधिकरण (प्रक्रिया) नियम, १९८२ का संदर्भ लिया जाए।

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

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

Subject: Adjudication of Show Cause Notice No. DRI/MZU/E/52/2007/5652 to 5655 dated 28.05.2008 issued to Shri Parin Doshi, Proprietor, M/s. Parin Enterprises. – reg.

BRIEF FACTS OF THE CASE

1.1 Intelligence received by the Mumbai Zonal Unit of DRI indicated that Hot Melt Glue Sticks (hereinafter also referred to as the glue sticks or HMGS) were being imported from Malaysia and Taiwan and were being grossly undervalued to evade Customs duty; and that though its price in the international market was a minimum of US \$ 1.00 to US \$ 2.00 per kg., it was actually being imported in to India by declaring very low prices ranging between US \$ 0.25 to US \$ 0.50 per kg.

1.2 HMGS are solid adhesives at room temperatures. They are melted before they are used and differ from most other types of glues and adhesives in that the hot melt glue sticks, pellets, or blocks are heated to a molten state for application, and then cooled to form a solid bond between the materials being glued. Thermoplastic polymers, plastics which become liquid when heated and re-solidify when cooled, are used as a basis for hot melt glue for their strength and high viscosity. HMGS are easy to operate since a relatively inexpensive glue gun can be used to heat and melt the adhesive. The packaging, automotive, footwear, and furniture industries use hot melt adhesives extensively. Hot melt glue is also used in a wide variety of manufacturing, commercial, home, craft, and hobby applications. One reason for the popularity of hot melt adhesives is their versatility. Hot melt glue comes in a variety of forms - sticks in many sizes, pellets, chips, beads, blocks, and pillows. Typically, the diameter of these sticks is generally available in sizes of 11.1 mm to 11.3 mm, though in certain cases, a lower diameter of 7.4 mm is also available. The adhesive can be applied using hand or pneumatic operated glue guns, glue pots and skillets, foot-pedal controlled dispensers, wheel coaters, and other specialized equipment.

1.3. Pursuant to the said intelligence, inquiries were caused and it was further gathered that M/s Parin Enterprises, Mumbai - 400 003 were importing HMGS and were evading the payment of proper Customs duty by way of undervaluation of the goods at the time of clearance. The office premises of M/s Parin Enterprises was searched and incriminating documents were taken over under panchanama dated 18.12.2007. Scrutiny of the documents revealed that M/s Parin Enterprises had been importing HMGS from M/s Taiwan First Li-Bond Company Ltd, Taiwan (herein after referred as the "supplier") and clearing the same through the Mumbai and Nhava Sheva ports.

1.4 Statements of Shri Parin Doshi, Proprietor, M/s Parin Enterprises were recorded under Section 108 of the Customs Act, 1962, on 18.12.2007, 18.02.2008 and 27.02.2008. He stated inter-alia, that M/s Parin Enterprises was engaged in importing, trading, wholesaling and retailing of stationery items; that M/s Parin Enterprises had Imported Hot Melt Glue Sticks (HMGS) from M/s Taiwan First LU Bond Co. Ltd, Taiwan, since 2003; that he was interacting with Ms. Frances and Mr. Lewis for negotiating the deals regarding HMGS; that he had Interacted with them

through telephone, fax and emails; that after negotiations they used to settle the terms of the transaction including the price, shipment period, payment conditions, etc.; that the prices negotiated were always per Kg., CIF, Nhava Sheva or Mumbai port, as the goods were imported through JN port and Mumbai port; that after negotiations, a contract was signed which was prepared by the supplier and sent through fax or email, that after verifying, he used to send back the approved contract with his consent signature; that a copy of the proforma invoice and packing list was sent to him by the suppliers through fax or email and after confirmation, the documents were sent back to the suppliers; that after shipment of the goods from Taiwan, the documents were sent through bank; that the said glue sticks were sold in the Indian market to generally stationery shops situated in metro cities; that generally the prices were negotiated with the suppliers and agreed for a particular quarter; that depending upon the prevalent market conditions, production and raw material costs, the prices at times might change in the quarter or may remain constant for two or three quarters; that the original contracts were not in his possession, as the same were destroyed by them after payment was made and the goods were received; that the prices declared to Customs at the time of clearances were not the actual prices; that the goods viz. HMGS were undervalued in the documents declared to Customs and the actual prices were on the higher side than what was declared to Customs; that to remain competitive in the market, they had to resort to undervaluation, as importers in the South India generally got their imports cleared from the southern ports at incredibly low values; that the correct prices of HMGS per KG, CIF Indian port were ranging from approximately US \$ 1.00 in 2003 to US \$ 2.00 at present; that the differential amount between the invoice price and the actual contract price was handed over in cash to the representatives of the suppliers in India; that they used to receive a message from the supplier that their representative bearing a ten rupee note of a certain number would approach them and after verification of the number on the ten rupee note, the differential amount was paid to such a person; that he did not know the whereabouts of such persons as they maintained a lot of secrecy; that the settling of accounts including resolution of payment disputes if any was done during his business visits to Taiwan. Admitting the undervaluation, Shri Parin Doshi volunteered to pay the differential duty arising out of the said undervaluation.

1.5 During the course of Investigation, Shri Parin Doshi submitted a letter dated 21.02.2008 of M/s Taiwan First LI-Bond Company Ltd indicating the correct prices of HMGS. Scrutiny of the same revealed that the prices were fixed quarter wise and the terms were US \$ per kg CIF Indian port. The actual prices of HMGS as per this document were as under:

TABLE 'A'

Sr. No.	Year	Quarter	Period	Rate in US \$ per KG.
1	2003	1 st	Jan-March	0.9
2		2 nd	April-June	1.0
3		3 rd	July-Sept	1.0
4		4 th	Oct-Dec	1.05

5	2004	1 st	Jan-March	1.10
6		2 nd	April-June	1.15
7		3 rd	July-Sept	1.15
8		4 th	Oct-Dec	1.20
9	2005	1 st	Jan-March	1.25
10		2 nd	April-June	1.30
11		3 rd	July-Sept	1.35
12		4 th	Oct-Dec	1.40
13	2006	1 st	Jan-March	1.50
14		2 nd	April-June	1.50
15		3 rd	July-Sept	1.60
16		4 th	Oct-Dec	1.60
17	2007	1 st	Jan-March	1.70
18		2 nd	April-June	1.90
19		3 rd	July-Sept	1.95
20		4 th	Oct-Dec	2.00

The said letter of M/s Taiwan First LI-Bond Company Ltd was submitted by Shri Parin Doshi under his dated signatures. Scrutiny of the Import documents revealed that the rates declared to Customs at the time of import clearance were ranging from US \$ 0.25 per kg CIF to US \$ 0.63 per kg CIF.

1.6 Evidently, Shri Parin Doshi of M/s Parin Enterprises had interacted/informed/ negotiated constantly with the executives of M/s Taiwan First Li-Bond Company Ltd, regularly for the said transactions relating to the imports of the HMGS. It also follows that he was at all times aware of the correct prices of HMGS. However, he consciously chose to suppress this information and conspired with his suppliers to defraud the Government of its legitimate revenue. He resorted to preparation and submission of fictitious documents and channelling of money through unauthorised and illegal sources.

1.7 Shri Parin Doshi, accepting the duty liability, agreed to pay the differential duty voluntarily. Accordingly, M/s Parin Enterprises, admitting their duty liability, paid the differential duty of Rs 30,18,210/- (Rupees Thirty Lakhs Eighteen Thousand Two Hundred Ten only) vide pay orders as detailed below:

TABLE 'B'

Sr. No.	P.O/D.D. No & Date	Bank	Amount
1.	483607/10.12.2007	Bank of Baroda, Mandvi	2,50,000
2.	089819/26.12.2007	Union Bank of Ind Abdul Rehman Street	5,55,000
3.	088627/27.12.2007	Union Bank of India, Abdul Rehman	83,000

		Street	
4.	483662/22.12.2007	Bank of Baroda, Mandvi	2,50,000
5.	090638/22.02.2008	Union Bank of India, Abdul Rehman Street	10,00,000
6.	090886/14.03.2008	Union Bank of India, Abdul Rehman Street	8,00,000
7.	090889/12.03.2008	Union Bank of India, Abdul Rehman Street	80,210
		Total	30,18,210

1.8 From the forgoing it can be seen that;

(A) M/s Parin Enterprises were engaged in trading of stationery items and in the course of their business imported HMGS from M/s Taiwan First Li-bond Company Ltd, Taiwan. Shri Parin Doshi, Proprietor of M/s Parin Enterprises, had negotiated the import of HMGS with the executives of the said suppliers. The price negotiated was per KG of HMGS CIF Mumbai or Nhava Sheva Port. After every periodic negotiation, M/s Taiwan First Li-band Company Ltd prepared a sales contract which was sent to M/s Parin Enterprises through fax or email for verification. The consent signatures of M/s Parin Enterprises were obtained and only then the proforma invoice and packing list were forwarded to them. The contract copy mentioned the actual price and transaction value of the consignment, whereas the proforma invoice mentioned the undervalued price for Customs purposes.

(B) After shipment, the documents such as bill of lading, commercial invoice and packing list were forwarded through the bank. The bank in India collected the invoice price mentioned in the documents from M/s Parin Enterprises and released them the documents. The collected amount was remitted to its counterpart bank in the supplier's country through the authorised banking channel. The remaining amount as per the sales contract was handed over in cash to the Indian representative of the supplier after an elaborate verification process involving a ten rupee note number. This money was eventually forwarded to the supplier through illegal money laundering channel, the 'Hawala'.

(C) The documents released from the bank were presented to Customs and the price of goods declared was as per the understated prices mentioned in these documents. Accordingly, the bill of entry was filed and the goods were cleared from Customs after payment of the duty on the mis-declared prices.

(D) The price-list of M/s Taiwan First LI-Bond Company Ltd lists the actual prices of HMGS per kg CIF for various quarters since 2003 to 2008. Investigations revealed that the actual price of HMGS ranged from US \$ 0.90 in 2003 to US \$ 2.00 in 2008. The differential duty evaded due to this undervaluation amounted to Rs. 28,42,734/-, as detailed in Annexure- A to this notice.

(E) The year wise details of rates of Customs duty payable on HMGS in percentage is as under:

TABLE 'C'

Duty Name	Method of calculation	2003	2004	2005	2006	2007
Basic Customs Duty (BCD)	Assessable Value (AV) x duty rate	25	20	15	12.50	10
Countervailing Duty (CVD)	(AV + BCD) x duty rate	16	16	16	16	16
Educational Cess on CVD	(CVD x duty rate)	-	-	2	2	2
Sec. & Higher Edu Cees on CVD	(CVD x duty rate)	-	-	-	-	1
Customs Edu Cess	(BCD+CVD+Edu Cess+SHEC) x duty rate	-	-	2	2	2
Customs Sec. & Higher Edu Cess	(BCD+CVD+Edu Cess+SHEC) x duty rate	-	-	-	-	1
Special Additional Duty (SAD)	(AV+BCD+CVD+Edu Cess+SHEC) x duty rate	4	-	-	4	4
Total effective rate of duty		50.80	39.2	34.44	36.74	34.131

1.9 The extracts of the following relevant provisions of the Customs Act, 1962 and Customs Valuation (Determination of a Price of Imported Goods) Rules, 1988.

(i) *As per the provisions of Section 46 (4) of the Customs Act, 1962, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice if any, relating to the imported goods.*

(ii) *Section 14 of the Customs Act, 1962, - 1) For the purposes of [the Customs Tariff Act, 1975 (51 of 1975)], or any other law for the time being in force where under a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where -*

(a) *the seller and the buyer have no interest in the business of each other,*

or

(b) *one of them has no Interest in the business of the other, and the price is the sole consideration for the sale or offer for sale*

[Provided that such price shall be calculated with reference to the rate of exchange as in force on the date on which a Bill of Entry is presented under Section 46, or a Shipping Bills or Bill of Export, as the case may be, is presented under Section 50;]

[(1A) subject to the provisions of sub-section (1), the price referred to in that sub-section in respect of imported goods shall be determined in accordance with the rules made in this behalf]

(iii) *As per the Customs Valuation (Determination of a Price of Imported Goods) Rules, 1988;*

a) ***Rule 3 - Determination of the method of valuation - For the purposes of these rules,***

i) *subject to rules 9 and 10A, the value of imported goods shall be the transaction value;*

(iv) ***Section 111(m) of the Customs Act, 1962 read as:***

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

Section 111(m): "Any goods which do not correspond in respect of the value or in any 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 transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of Section 54".

(v) **Section 112 of the Customs Act, 1962** provides that any person (a) who in relation to any goods, does or omits to do an act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such act, or (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in other manner dealing with any goods which he knows or has reason to believe, are liable to confiscation under section 111, shall be liable to penalty for Improper importation of goods.

(vi) Section 28 of Customs Act, 1962 provides:

(1) When any duty has not been levied or has been short-levied or erroneously refunded, or when any interest payable has not been paid, part paid or erroneously refunded, the proper officer may:

- a. In the case of any Import made by any individual for his personal use or by government or by any educational, research or charitable Institution or hospital, within one year,
- b. In any other case, within six months from the relevant date, serve notice on the person chargeable with the duty or interest which has not been levied or charged or which has been so short levied or part 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.

Provided that where any duty has not been levied or has been short levied or the Interest has not been charged or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter, the provisions of this sub-section shall have effect as if for the words "one year" and "six months", the words "five years", were substituted.

(vii) Section 28AB of the Customs Act, 1962 provides that where the duty has not been levied or paid or has been short levied or short paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-section (2), or has paid the duty under sub-section 28 of section-28, shall in addition to duty, be liable to pay Interest at such rate as is for the time being fixed by the Central Government.

(viii) Section 114A of the Customs Act, 1962 provides that where the duty has not been levied or has been short levied or the Interest has not been charged or paid or has not been part paid or the duty or interest has been erroneously refunded by a reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest as the case may be as determined under Sub Section (2) of Section 28 of the Customs Act, 1962 shall also liable to pay a penalty equal to duty, or interest, so determined.

1.10 The price of the imported goods has to be in accordance with the provisions of Section 14(1) of the Customs Act 1962 read with the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, and the value of the goods shall be the transaction value and should not be in violation of Rule 10A of the Rules ibid. The Importer had mis-declared the value declared before Customs. Since, actual prices of HMGS were himself provided by the importer, the same are being taken as the true transaction value as per Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. As such the correct assessable value

works out to be: confessed new CIF price + 1% landing charges, as detailed in Annexure - 'A' to the show cause notice.

1.11 Whereas, as discussed in the above paras, differential duty as worked out in Annexure -'A' to the show cause notice, has been short levied at the time of import, Hence, differential duty of Rs 28,42,734/- is required to be demanded under Section 28 of the Customs Act, 1962 Invoking the extended period of 5 years.

1.12 M/s Parin Enterprises resorted to misdeclaration of the value of HMGS at the time of Imports and, therefore, the provisions of Section 111 (m) of the Customs Act 1962, are attracted, rendering the goods liable to confiscation. Hence, Shri Parin Doshi, Proprietor of M/s Parin Enterprises, has also rendered himself liable for penal action under Section 114A/112 (a) /(b) of the Customs Act, 1962.

Therefore,

A. Shri Parin Doshi, Proprietor, M/s Parin Enterprises was called upon to show cause to the Commissioner of Customs (Import), Jawahar Custom House, Nhava Sheva, Navi Mumbai - 400 707, within 30 days of the receipt of the notice as to why:

- i. The declared CIF prices of HMGS under 12 Bills of entry as detailed at Sr. Nos. 1 to 18 of Annexure-A appended to the show cause notice, should not be rejected under Rule 10A of the Customs Valuation (Determination of Price of Imported Goods) Rules 1988.
- ii. The assessable values of the HMGS should not be determined as detailed at Sr. Nos. 1 to 18 at Column-12 of Annexure-A appended to the show cause notice, under Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rules 1988.
- iii. The differential duty amounting to Re 27,62,524/- (Rupees Twenty-Seven Lakhs Sixty-Two Thousand Five Hundred Twenty-Four Only) should not be demanded and recovered from them for the goods cleared vide Bills of Entry as detailed at Sr. Nos. 1 to 18 of Annexure A appended to the show cause notice, under Section 28 (1) of the Customs Act 1962.
- iv. The amount of Rs. 29,38,000/- (Rupees Twenty-Nine Lakhs Thirty-Eight Thousand Only), out of the total amount of Rs. 30,18,210 /- deposited by M/s Parin Enterprises should not be appropriated towards the differential duty demanded in the show cause notice and any fine and penalty that may be Imposed.
- v. The Imported HMGS (Sr No 1 to 18 of Annexure A) having a total assessable value of Rs 1,07,29,595/- as detailed in Annexure A appended to the show cause notice should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1982.
- vi. Interest on duty evaded as above should not be demanded and recovered under the provisions of Section 28AB of the Customs Act, 1962.
- vii. Penalty should not be imposed under Section 114 (A) /112 (a), (b) of the Customs Act,

1962 as applicable.

B. Shri Parin Doshi, Proprietor of M/s Parin Enterprises was also called upon to show cause to the Additional Commissioner of Customs (Import), New Customs House, Ballard Estate, Mumbai-400 038, within 30 days of the receipt of the notice as to why:

- i. The declared CIF prices of HMGS under one bill of entry as detailed at Sr. Nos. 19 to 20 of Annexure-A appended to the show cause notice, should not be rejected under Rule 10A of the Customs Valuation (Determination of Price of Imported Goods) Rules 1988.
- ii. The assessable values of the HMGS should not be determined as detailed at Sr. Nos. 19 to 20 at Column-12 of Annexure-A appended to the show cause notice, under Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rules 1988.
- iii. The differential duty amounting to Rs 80,210/- (Rupees Eighty Thousand Two Hundred Ten Only) should not be demanded and recovered from them for the goods cleared vide Bill of Entry as detailed at Sr. Nos. 19 to 20 of Annexure-A appended to the show cause notice, under Section 28 (1) of the Customs Act 1962.
- iv. The amount of Rs. 80,210/- (Rupees Eighty Thousand Two Hundred Ten only), out of the total amount of Rs. 30,18,210/-, deposited by: M/s Parin Enterprises should not be appropriated towards the differential duty demanded in the show cause notice and any fine and penalty that may be imposed.
- v. The imported HMGS (Sr No 19 to 20 of Annexure A) having a total assessable value of Rs 4,51,853/- (pre-duty) as detailed in Annexure A appended to the show cause notice should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962.
- vi. Interest on duty evaded as above should not be demanded and recovered under the provisions of Section 28AB of the Customs Act, 1962.
- vii. Penalty should not be imposed under Section 114 (A)/112 (a), (b) of the Customs Act, 1962 as applicable.

2. WRITTEN SUBMISSION OF THE NOTICEE

2.1 Written submissions dated 09.03.2023, 26.03.2024 and 10.09.2025 were submitted by the Shri Parin Doshi, Proprietor, M/s. Parin Enterprises. Wherein noticee referring to para 6, 8.1 and Para 9 of the SCN denied all the charges levelled against him in the SCN under reference. The notice submitted that charges as regard to undervaluation in imported glue sticks and thereafter penalty are unlawful, unjustified, illegal and not sustainable on any grounds:

(i) The Show Cause Notice proposes to enhance value merely on the basis of (1) alleged admission made by the assessee while in fact in the statement recorded by DRI, there is even no admission by the assessee that he has in fact imported goods as per price list/quotation and has even deposed that prices are negotiated, and (2) on the basis of price list / quotation obtained from the assessee himself, after the alleged statement of admission of undervaluation and (3) on

the basis of duty paid by the assessee.

(ii) That there is no evidence in the SCN of contemporary, similar, identical goods 'imports. He further submitted that there is no consideration of factors such as quantity, quality, country of origin, period of purchase of the goods etc. in the SCN. The SCN merely proceeds to reject the value under Section 10A without going through the ingredients of the said section. He further said that after rejection of value under Rule 10A of CVR 1988/ or section 12 of CVR 2007, the Customs authorities have to necessarily go sequentially through Rules 5 to 8 of CVR 1988 or Rules 4 to 9 of CVR 2007. There is no compliance of statutory provisions of CVR 1988/2007 and Section 14 of CA 1962. The department has not brought on record any such evidence. The department has neither appreciated the facts of the case nor appreciated the statutory provisions of Act, Rules etc.

(iii) This issue is no more **Res Integra**. There are host of judgments including of Apex Court that if the text of the SCN does not bring out charges clearly, SCN not containing ingredients of Section invoked, the penalty is not sustainable. It has become **Stare Decisis** and therefore in accordance with the principle of Judicial Discipline the same is binding.

(iv) That the impugned SCN is not sustainable on grounds of law point as III as on the facts of the case and merit and requested to drop the SCN on following grounds and also on judicial pronouncements relied upon and reproduced hereunder:

A. Enhancement of value is based on sole evidence of admission --transaction value is to be departed based on records and as per customs valuation rules -- and not on admission -

i) that the department has alleged in the SCN that the assessee has undervalued the goods to evade the customs duties by not declaring the transaction value correctly. It alleges that he declared less transaction value in the 18 Bills of Entry. That the allegation is made by the Department only on the basis of statement made by the Shri Parin Doshi. That the enhancement was based mainly on the sole evidence of statement. That no circumstantial evidence or corroborative evidence has come on record to support the said statement. He said that value has to be enhanced as per the provisions of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 for the period 6.6.2003 to 12.9.2007 and as per Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 for period 13.9.2007 to 17.12.2007. The Section 14 of the Customs Act 1962 itself enumerates that if the transaction value is not as per sub section (1) then it is to determine as per the rules made therein and the rules has to applied in sequence. In other words, the value has to be determined as per Rules 5, 6, 7 and 8 CV 1988 or Rules 4, 5, 6, 7, 8, 9 of CV 2007 in sequence. The value cannot be decided on the basis of statement but as per the CV Rules, 1988.

ii) The statement made by the Assessee at Para 4.2 and 5.1 of the SCN. The said Para of the SCN is reproduced in submission.

iii) That the entire case is based on the statement of Assessee and it is totally devoid of any

circumstantial evidence or corroborative evidence. The case is solely based on the alleged admission. The department has not also complied with the statutory provisions for enhancing the value of imported goods.

iv) Further to buttress their cause that the statement for enhancing value was given under sheer fear of arrest. He said that the department on the very same nights of 18th December, 2007 and 18th February, 2008 when his statements are being recorded had threatened to arrest him in case, he did not pay differential duty amount and did not admit the undervaluation charge. The sheer fear of arrest and further apprehension of the criminals in the prison blackmailing and extorting money compelled him to admit undervaluation charge and pay the differential duty asked by the department, which is in fact more duty than what is now being demanded in the SCN. That the loading of the value is always to be based on the records not on the statements. The transaction value which is carried out in abroad is to be rebutted by documentary evidence and not by oral evidence or merely or solely on statement.

v) That even in the statement the assessee has not admitted the exact undervaluation of any import. He has deposed that the prices are negotiated. He has never admitted that he has imported the goods as per price list / quotation, which is made the basis of enhancement of value as per para 8.1 of SCN. Even the price list/quotation submitted by him is dated subsequent to his alleged admission. Therefore, he submitted that the same should not be made basis of any enhancement of valuation of any import.

vi) That issue that the enhancement of value of imported goods has to be decided by Customs Provisions Section 14 of CA 1962, CVR 1988 and CVR 2007. The issue is no more Res Integra. That it has become Stare Decisis. The noticee has relied on following case laws in support of their claim:

□□□ Metplast India Versus Commissioner of Customs, Nhava Sheva 2004 (173)
E.L.T. 59 (Tri. - Mumbai)

- 2000 (117) E.L.T. 538 (S.C.) In the Supreme Court of India S.P. Bharucha and N. Santosh Hegde, JJ. Sounds N. Images Versus COLLECTOR OF CUSTOMS
- Munna Gift Centre Versus Commissioner of Customs, Chennai 2004 (178) E.L.T. 310 (Tri. - Bang.)
- Bhavan Enterprises Versus Commissioner of Customs, Chennai 2007 (207) E.L.T. 433 (Tri. - Chennai).
- Maharishi Alloys Pvt. Ltd. Versus Commissioner of Customs, Chennai 2003 (151) E.L.T. 200 (Tri. – Chennai)
- Commissioner Of Cus. (Import), Mumbai Versus Lal International 2001 (131) E.L.T. 312 (Tri. - Mumbai)
- 2003 (151) E.L.T. 200 (Tri. - Chennai) Maharishi Alloys Pvt. Ltd. Versus Commissioner of Customs, Chennai
- 2002 (144) E.L.T. 432 (Tri. - Chennai) SHERATON OVERSEAS Versus COMMISSIONER OF CUSTOMS, CHENNAI
- 1997 (90) E.L.T. 68 (Tribunal) SREE RAJENDRA MILLS LTD. Versus COMMISSIONER OF CUSTOMS, MADRAS Valuation (Customs)

- 2003 (157) E.L.T. 239 (Commr. Appl.) BEFORE THE COMMISSIONER OF CUSTOMS (APPEALS), MUMBAI-I IN RE: ASIAN HOTELS LTD .

vii) That the above decisions have not been challenged and are accepted by the department. That department did not have contemporaneous import value; therefore, admission in the statements cannot be ground, and cannot be the basis for the enhancement of value. The value cannot be loaded on statement basis. It has to be on the basis of records and documents. Therefore, the admission or the statement shall not be the basis for value enhancement. The SCN is not sustainable if it holds the value loading on the basis of admission.

viii) That in alternative argument without prejudice to other submissions that an argument can be advanced against him that statement recorded under Section 108 of CA 1962 is admissible evidence and hence it shall be relied upon to sustain the charges in the SCN of undervaluation. He contests the above and states that the even statement given under Section 108 of CA 1962 **can't be sole basis of proof**. There has to be independent corroboration to the statement given for enhancement of value.

- 1997 (90) E.L.T. 241 (S.C.), K Ramaswamy, S. Saghir Ahmad and G.B. Pattanaik, JJ. K.I. Pavunny Versus Asstt. Collr. (HQ.), C. EX. Collectorate, Cochin
- 1999 (109) E.L.T. 247 (Tribunal) K.P. Basheer Versus Collector Of Central Excise, Cochin
- 1997 (93) E.L.T. 747 (Tribunal) METAL, Fitting(p) Ltd. Vs Collector of C. Excise, Delhi

ix) That the statement cannot be sole basis for proving charge or conviction. He said that the statements have to be corroborated by some independent evidence or there has to be circumstantial evidence. Therefore, the statement is not sufficient to enhance the value. He requested the Adjudicating Authority to drop the charges in the SCN on the above ground only.

B. Not a letter but a quotation - It is stated that the document obtained by the assessee on 27.02.2008 dated 21.02.2008 is a general price list/quotation that had been sent by the supplier M/s Taiwan First Li-Bond Co. Ltd. They are in no way to be understood or interpreted as the transaction value of the goods. He submitted that the transaction value after negotiations was reflected in the invoice. He said that the value declared in the invoice is the value of transaction and shall be accepted as assessable value.

They are sent by the suppliers as a quotation on which negotiations are carried out and then a price was decided based on which the transactions are carried out. Therefore, to hold this document as evidence in determining the charges of undervaluation would be incorrect, unjust and against the statutory provisions, that is Customs Valuation Rules, 1988 and Section 14 of Customs Act, 1962. That the quotation price cannot be the basis for assessable value. The noticee has relied on following case law in support of their claim:

- Super Duper TV v. Commissioner of Customs, Chennai (2007), 2007 (220) E.L.T. 506 (Tri. - Chennai)
- Suyog Extrusions v. Commissioner of Customs, Mumbai (2007), 2007 (213) E.L.T. 524 (Tri. - Mumbai)

- High Polymer Labs v. Collector of Central Excise, New Delhi (1998) 1998 (100) E.L.T. 368 (Tribunal)
- Polynova Chemical Industries v. Commissioner of Customs, Mumbai (2005) – Quotations cannot override transaction value. 2005 (179) E.L.T. 173 (Tri. - Mumbai)
- Hi-Tech Impex v. Commissioner of Customs, Chennai (2003) – 2003 (155) E.L.T. 313 (Tri. - Chennai)
- *ABM International Ltd. v. Commissioner of Customs, Kandla, 2002(148) E.L.T. (Tri.Del)*
- *Puja Poly Plastics Pvt. Ltd. v. Commissioner of Customs, Calcutta, 2001 (131) E.L.T. (tri. Kolkata)*
- *United Traders (India) v. Commissioner of Customs, Chennai, 1999, (112) E.L.T. 349(Tribunal)*
- *Laxmi Colour Lab v. Collector of Customs, 1992 (62), E.L.T. 613(Tri)*
- *Mirah Decor v. Collector of Customs (1993)*
- *1995(78) E.L.T.249 (Tribunal) Surya Products Vs Collector of Customs, Cochin*
- *1991(53) E.L.T.133(Tribunal) Shyam Antenna Electricals Ltd. Vs. Collector of Customs*
- *Mahavir Shipping Mills Ltd. Vs Collector of Customs, 1992(E.L.T. 730(Tribunal)*
- *1993(65) E.L.T.(S.C.) Mrah Décor Vs Collector of Customs*

That the quotation price/price list relied by the department cannot be made basis for the transaction value. The above judgments have concluded the same. That the department had not challenged or contradicted the above judgment. That the department had accepted the finding of the above judgment. Therefore, the department is now Estopped from taking opposite stand. Requested to consider the same and drop the above charges.

C. Price is paid to supplier after negotiation - the letter of supplier relied upon by the DRI relates to general price list prior to negotiated price (declared value).

- i) That the department has relied upon the general price list for the purpose of enhancing value. He said that the general price list contains only the value which covers prices offered to public in general. He said that however in the commercial parlance, if the negotiation further takes place, the negotiated price becomes the final transaction value. He said that the transaction value in our case was the negotiated price.
- ii) That the assessable value was enhanced on the basis of the pricelist and not on the basis of negotiated price. He said that in Para 8.1 of the SCN it is categorically stated by the DRI that

—since actual prices of HMGS are himself provided by the importer, the same are being taken as the true transaction value, he submitted that the admission of undervaluation of the assessee was recorded on 18-2-2008 and price list dated 21-2-2008 was obtained from the assessee on 27-2-08. I submit that the assessee had also deposed in his statement recorded on 18-2-08 by DRI that prices of imports are negotiated. He submitted that the price list is obtained from the assessee himself after the date of statement recording alleged admission. The same will lose the evidential value and therefore it should not be relied upon.

iii) The said letter dated 21-2-08, also alternatively described as document and/or price list in the SCN, cannot be the basis of enhancing the value of imports made by the assessee, when there is nothing on record to compare the value of contemporaneous imports, supported by investigations carried out by DRI as claimed in para 6(D) of SCN. He further submits that the DRI itself is not clear as to treat the said price list as a letter or as a document, failing to appreciate that all the three terms in the commercial transactions have different meaning. Such price list cannot be made basis of enhancement of value.

iv) that if the said letter dated 21/02/2008 relied upon by the DRI in SCN, is only a letter and not a price list or quotation, then as the letter is not signed it has no evidential value.

The notice has relied upon the following judgements:

- 2002 (144) E.L.T. 432 (Tri. - Chennai) SHERATON OVERSEAS Versus COMMISSIONER OF CUSTOMS, CHENNAI
- 2006 (204) E.L.T. 630 (Tri. - Mumbai) SHIMNIT MACHINE TOOLS & EQUIPMENT LTD. Versus COMMR. OF CUS., SHEVA

v) That the department has also alleged in the SCN at para 6 that there was a contract between the buyer and the supplier but the department has not produced any evidence to support its claim. No such contract was found during the search carried out by DRI. He said that there was not written contract between the parties. There are always only Proforma Invoices. The said statement was given to the department under fear of arrest by the department.

D. The department blowing hot and cold in the same breath

That the Show Cause Notice is taking a dual stand in terms of the price quotation of HMGS that had been submitted by the assessee. At one place in Para 6(D) the department is saying that they have investigated the case and on the basis of their investigation they have determined that the actual price of HMGS ranged from US \$ 0.90 in 2003 to US \$ 2.00 in 2008 on the basis of which the undervaluation has been determined. Then again in Para 8.1 of the Show Cause Notice the department goes on to allege that the importer had mis-declared the value

declared before Customs. Since, actual prices of HMGS are himself provided by the importer, the same are, being taken as the true transaction value as per Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. In both these place the department is taking a double and contradictory stand where at one place it is claiming to have investigated the matter to uncover the alleged undervaluation and at another place it is taking the base of the submission of quotation price of HMGS, which he had submitted, to arrive at the said undervaluation. Referred the para 6(D) and 8.1 of the SCN.

That the department cannot blow hot and cold in the same breath. He said that department has to take one stand. The Honourable courts in host of decisions have dismissed the contention of department when department had taken two contradictory stands.

E. Transaction value is to be loaded only as per valuation rules

That the transaction value declared by the Importer in the Bill of Entry is to be enhanced only by the statutory provisions enacted by the Legislatures. He said that he has adopted the GATT/WCO valuation method and enacted the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 and later amended as Customs Valuation (Determination Of Price Of Imported Goods) Rules, 2007. The transaction value has to be determined as per method laid down in Section 14 of CA 1962 and CVR 1988/2007.referred the Section 14 of the CA 1962.

That when the price is not determined as per the Section 14 of CA 1962, then the price has to be determined by CVR. Section 14 reveals that the transaction value of imported goods shall be accepted and if the value cannot be determined under the provisions of clause (i), the value shall be determined by proceeding sequentially through rules 5 to 8 in CVR 1988 or rules 4 to 9 CVR 2007.

The above statutory provisions expressly state that transaction value has to be determined by Section 14 and by CVR 1988/2007. The value declared at the time of import shall be the price to be accepted. If not then it is to be determined not on the basis of admission but as per the CVR.

- 1998 (97) E.L.T. 42 (Ker.) IN THE HIGH COURT OF KERALA AT ERNAKULAM K.G. Balakrishnan And B.N. Patnaik, JJ. KARN VIR MEHTA Versus COLLECTOR OF CUSTOMS, COCHIN
- 2002 (143) E.L.T. 364 (Tri. - Del.) IN THE CEGAT, COURT NO. I, NEW DELHI S/Shri C.N.B. Nair, Member (T) And P.G. Chacko, Member (J) VENUS INSULATION PRODUCTS MFG. CO. Versus COMMISSIONER OF CUS., GOA
- 2006 (199) E.L.T. 464 (Tri. - Bang.) IN THE CESTAT, SOUTH ZONAL BENCH, BANGALORE Dr. S.L. Peeran, Member (J) And Shri T.K. Jayaraman, Member (T) Commissioner of Customs, Bangalore Versus H.M. LEISURE

F. Transaction Value Declared as Per Section 14 of CA 1962

i) that the assessee had declared the transaction value as per section 14 of CA 1962. There is no evidence brought by the department that the price at which goods were purchased in Taiwan

are not ordinarily sold or offered for sale. He said that the declared price is correct price at the time and place of importation. The declared value was the price at which the goods are ordinarily sold or offered for sale in accordance with the international trade. The assessee and the seller had no interest in the business of each other. It was genuine price between two businessmen and not a price which is more or less than the genuine price, and the price is sole consideration for the same.

- ii) that department has not brought on record single evidence that the value declared was not as per the ingredients of the section 14 of CA 1962. There is no whisper by the department that price paid at the time and place of import was not the correct price in the ordinary course of international trade.
- iii) that the Valuation determining section 14 of CA 1962 has mainly following ingredients.

a. Price at which goods are ordinarily sold/offered for sale

- 1. time of importation of goods
- 2. In international trade.
- 3. Seller and buyer have no interest in the business of each other
- 4. And the price is sole consideration for the same.

iv) that the price paid or transaction value given by the assessee to the supplier M/s Taiwan First Li Bond Co. Ltd., Taiwan was in the ordinary course of international trade at place of import in Taiwan and the sale was the sole consideration. There was no relation between the assesee and Supplier and they had no interest in each other's business. It may be further stated that department also not brought on record anything which proved that transaction value was devoid of any ingredient of section 14 of CA 1962.

v) that if the transaction value declared as per the provisions of Section 14(1)(a) of the CA 1962 then there is no question of traversing to Section 14(1)(a) and invoking further Rule 10A of CVR 1988. It may be stated that even presuming for a moment that transaction value rejectable as per Rule 10A of CVR 1988 but as per the CBEC Board Circular No. 16/2003-Cus., dated 17-3-2003 the field officer has to reject transaction value only on the basis of contemporaneous value. He said that department has not brought on record any contemporaneous value. Therefore, the value declared by us in accordance with Section 14 of CA 1962 is correct and cannot be rejected or enhanced. He requests Honourable Adjudicating Authority to drop the charges proposed in the SCN.

G. No Contemporary Imports Evidence on Records

- i) that the enhancement or loading of the value has to be as per the statutory provision. The CVR 1988/2007 expressly enumerates that the value in case is rejected under Rule 3 or 10A of

CVR 1988 or Rule 4 or 11 of CVR 2007, the value has to be determined as per Rule 5 to 8 in sequence of CVR 1988 and Rule 5 to 9 sequence of CVR 2007.

ii) that the value has to be determined as per contemporaneous imports of similar or identical goods. I further say that as per Interpretative Notes to CVR 1988/2007, the quantity, Quality, Country of Origin, Brand, Model, same Supplier, Period of purchase, Stock Lot, Surplus stock clearance, goods cancelled against the Order, festival clearance etc are important factors in determining the value. He said that department has ignored the statutory provisions and decided the value only on admission.

iii) that Department has not produced any contemporary evidence of the imports. The contemporary value details shown in the SCN at Para 4.2 was not from imports under any Bills of Entry. Department also never given any copy of Bills of Entry of contemporary imports. Department had not relied upon any such Bill of Entry which shown contemporary imports against the impugned goods. He said that the entire case of the department is based on merely on admission of the importer. He said that even from the general principle of conviction one needs corroboration or circumstantial evidence to support it. He further said that the enhancement of value has to be done on the basis of data and as per the valuation rules 1988/2007.

iv) that once the value is not accepted as per Rule 3, of the CVR 2008 or Rule 4 of 2007 or the value rejected under Rule 10a of the CVR, then as per the statutory mandate the value have to be determined by rule 4 to 8 applying sequentially. He said that the department has to bring on record the prices of contemporaneous imports read with interpretative notes of Custom Valuation Rules. He further said that the prices of contemporaneous import has also to correlate with quantity, quality, brand name, time of export, stock lot, distress sell, excess production clearance, goods manufactured by the supplier remained un-cleared etc

v) that there is no iota of contemporaneous imports of similar goods or identical goods from the same country that is Taiwan in same quantity or of same quality. He said that it is claimed by the DRI in the SCN in para 6(D) that —investigations revealed that the actual price of HMGS ranged from US\$ 0.90 in 2003 to US\$ 2.00 in 2008. He said that DRI has chosen neither to rely upon results of such investigations nor has brought on record results of any such investigations. He said that the department has access to database of all National and International transactions of the identical goods. He said that the department must have verified other imports, as it is claimed by them that they have investigated the prices of imports, and must have found that imports made by the assessee are properly valued and hence they have not brought on record such comparative imports. He said the department has failed to determine the value as per the statutory provisions and he strongly make averment that the department had not discharged the burden of proof for proving undervaluation charge. He said that it is the duty of the department or it is universal principle that except in the expressed provision it is the person who is alleging the charge has to

discharge the burden of proof. He said that in the present case it is the department who is alleging against them that he has mis-declared the value of good but the department is miserably failing to discharge the burden of proof.

vi) That the honorable courts in plethora of decision have decided that the department has to bring on record contemporaneous imports data for proving the charge of alleged under valuation. The contemporaneous imports have to be of same quantity, quality and country of origin has to be the same. Relied on following Judgement:

- 2007 (220) E.L.T. 506 (Tri. - Chennai) SUPER DUPER T.V. Versus COMMISSIONER OF CUSTOMS, CHENNAI
- 2006 (204) E.L.T. 630 (Tri. - Mumbai) SHIMNIT MACHINE TOOLS & EQUIPMENT LTD. Versus COMMR. OF CUS., SHEVA
- 2007 (211) E.L.T. 400 (Tri. - Bang.) COMMISSIONER OF CUSTOMS, COCHIN Versus RUSHABH PLASTICS
- 2006 (194) E.L.T. 191 (Tri. - Bang.) DHIRISH INTERNATIONAL Versus COMMISSIONER OF CUSTOMS, BANGALORE
- 2005 (191) E.L.T. 732 (Tri. - Mumbai) NEPTUNE STEEL PROCESSORS Versus COMMISSIONER OF CUSTOMS, NHAVA SHEVA
- 2005 (188) E.L.T. 199 (Tri. - Chennai) COMMISSIONER OF CUSTOMS, TRICHY Versus UMA PARAMESWARI MILLS LTD.
- 2005 (186) E.L.T. 334 (Tri. - Bang.) PARK IMPEX INC. Versus COMMISSIONER OF CUSTOMS, BANGALORE
- 2007 (220) E.L.T. 332 (Tri. - Mumbai) GALAXY FUNWORLD PVT. LTD. Versus COMMISSIONER OF CUSTOMS, MUMBAI
- 2005 (182) E.L.T. 141 (Tri. - Del.) SIYARCO INDUSTRIES Versus COMMISSIONER OF CUSTOMS, JODHPUR
- 2007 (211) E.L.T. 400 (Tri. - Bang.) COMMISSIONER OF CUSTOMS, COCHIN Versus RUSHABH PLASTICS
- 2006 (206) E.L.T. 515 (Tri. - Mumbai) NATIONAL LAMINATION INDUSTRIES Versus COMMR. OF CUS. (SEA), CHENNAI
- 2003 (157) E.L.T. 602 (Commr. Appl.) BEFORE THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD Shri B.K. Singh IN RE: HAZEL MERCANTILE LTD.
- 2002 (140) E.L.T. 416 (Tri. - Kolkata) GRML EXPORTS LTD. Versus COMMISSIONER OF CUSTOMS (P), MUMBAI

That the department has not brought any evidence of contemporaneous imports on record therefore He said that the charges of undervaluation are not proved. He said that the value declared was correct and as per the law. He requested that the honourable adjudicating authority to drop the charges alleged in the impugned SCN.

H. Board Circular Directs Value Enhancement on the Basis of Contemporaneous Imports-

i) That the central Board of excise and customs had issued a Circular No. 16/2003-Cus to the field officer relating to rejection of declared value only on the basis of contemporaneous imports. He said that the board has directed that the value declared has been rejected under Rule 10A of

CVR 1988 on the basis of contemporaneous imports.

- ii) that the circular of board is the best rule for the interpretation of statute the doctrine Contemporaneous Exposito is the interpretative rule which says that the interpretation made by the executive authority is the basis and the board being the supreme executive of customs department has expressly stated in the circular that declared import value has to be rejected under rule 10a on the basis of contemporaneous import. He said that in the SCN there is no evidence of contemporaneous imports.
- iii) That the circular of board is the best rule for the interpretation of statute the doctrine Contemporaneous Exposito is the interpretative rule which says that the interpretation made by the executive authority is the basis and the board being the supreme executive of customs department has expressly stated in the circular that declared import value has to be rejected under rule 10a on the basis of contemporaneous import. He said that in the SCN there is no evidence of contemporaneous imports.
- iv) that the above sub paras clearly bring out that the board has issued the circular and the circular states that value has to be determined on the basis of contemporaneous imports. The circular is binding on the officer as said by the constitutional bench of the Supreme Court. I request the honourable adjudication officer to consider the board circular and drop the charges as alleged in the SCN.

I. After Rejection in Rule 10A, Price to be Determined by Proceeding Sequentially through Rule 5 to 8 Of CVR 1988.

The notice stated that the Show Cause Notice propose to reject the transaction value under Rule 10A of the CVR 1988 and thereafter proceeds on to determine the assessable value on the basis of only admission made in the statement. The SCN does not comply with the statutory provision. The SCN adopt the sequential scheme under the Valuation Rules. Rule 10A is not a substantive provision governing determination of value. The relevant Para 9 of the SCN proposing invocation of 10A rejecting transaction value. That statutory provision elucidate that the transaction value once rejected, then it has to be determined by Rule 5 to 8 sequentially.

The statutory provisions expressly enumerate that once the transaction value is rejected; the value shall be determined by proceeding sequentially through rule 5 to 8 of CVR 1988. He said in the present case, no evidence is brought by the department that value is determined as per statutory provision proceeding sequentially through Rule 5 to 8 of CVR. He said that Honourable Court in several decisions has dropped the demand of duty when department had ignored rule 5 to 8 of CVR 1988 or not applied sequentially.

- 2002 (143) E.L.T. 364 (Tri. - Del.). VENUS INSULATION PRODUCTS MFG. CO. Versus COMMISSIONER OF CUS., GOA
- 2006 (204) E.L.T. 585 (Tri. - Bang.) IN THE CESTAT, SOUTH ZONAL BENCH,

BANGALORE HEWLETT PACKARD (I) PVT. LTD. Versus COMMISSIONER OF CUS., BANGALORE

- 2006 (199) E.L.T. 464 (Tri. - Bang.) IN THE CESTAT, SOUTH ZONAL BENCH, BANGALORE COMMISSIONER OF CUSTOMS, BANGALORE Versus H.M. LEISURE
- 2005 (190) E.L.T. 244 (Tri. - Del.) IN THE CESTAT, PRINCIPAL BENCH, NEW DELHI RADHEY SHYAM RATANLAL Versus COMMISSIONER OF CUSTOMS, SHEVA, RAIGAD
- 2003 (157) E.L.T. 602 (Commr. Appl.) BEFORE THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD IN RE: HAZEL MERCANTILE LTD.

J. Pre-Payment of Duty Demanded is Not Criteria for Enhancement of Value - that during the investigation, he was forced to pay the amount of duty demanded. An amount of Rs 30,18,210/- (Rupees Thirty Lakhs Eighteen Thousand Two Hundred Ten only) was paid against the differential amount of duty. That he had paid that said amount out of fear of arrest. He said that by making such payment, he had not relinquished my right to challenge the order or my right of appeal against that order. The value enhancement cannot be based on the point that Notice has paid the duty; therefore, it is a sound or clinching proof for loading the value. The value has to be increased on the basis of record or on documents. Such elements are not available in the present case. Therefore, the SCN is liable to be set aside.

That he had paid the amount of Rs 30,18,210/- (Rupees Thirty Lakhs Eighteen Thousand Two Hundred Ten only) to the department under fear of arrest by the department. He said that the department on the very same nights of 18th December, 2007 and 18th February, 2008 when his statements were being recorded, had threatened him to arrest in case he does not pay differential duty amount and does not admit the undervaluation charge. The sheer fear of arrest and further apprehension of the criminals in the prison blackmailing and extorting money compelled him to pay the differential duty asked by the department. It may be seen that the duty liability raised by the Department is Rs 27, 62,524/- (Rupees Twenty-Seven Lakhs Sixty-Two Thousand Five Hundred Twenty-Four Only) against 18 Bills of Entry whereas the fear was draconian that he paid Rs 30,18,210/- which was in excess to duty liability. He said that this indicates the level of arrest fear in our mind. Relied on following case laws:

- 1997 (94) E.L.T. 129 (Tribunal) KHUSHIRAM BEHARILAL Versus COMMISSIONER OF CUSTOMS, NEW DELHI
- 2004 (169) E.L.T. 140 (Tri. - Mumbai) COMMISSIONER OF CUSTOMS (EP), MUMBAI Versus NEW INDIA EXPORT
- 2001 (133) E.L.T. 475 (Tri. - Mumbai) BECHTEL INTERNATIONAL INC. Versus COMMISSIONER OF CUSTOMS, MUMBAI
- 2001 (131) E.L.T. 200 (Tri. - Kolkata) PUJA POLY PLASTICS PVT. LTD. Versus COMMISSIONER OF CUSTOMS, CALCUTTA

K. No Evidence of Extra Remittance - that the entire charge alleged in the SCN is based on the mere admission. There is neither corroboration nor any circumstantial evidence brought on record by the Department to lend support to the confessional

statement. The honourable Courts have consistently decided that mere confession is not sufficient to enhance the value declared in the import. He said that there is no evidence of remittance of extra foreign exchange brought by the Department to prove the undervaluation allegation.

i) that Importer 's says or his admission for the enhancement of value cannot become sole evidence for the determining the value. The Honourable Courts in plethora of judgments have decided that the department should have brought on record the evidence of extra remittance paid by the Importer. The admission made by the Importer has to be supported by corroborative evidence or circumstantial evidence. The extra remittance is one of the circumstantial evidences which would support the admission for enhancing the assessable value. He said that the department has failed to provide such evidence. The Honourable Court in the following decision has decided that evidence of extra remittance has not been brought on record by the department; therefore, enhancement of assessable value is not sustainable.

- 2006 (198) E.L.T. 240 (Tri. - Mumbai) BAYER INDIA LTD. Versus COMMISSIONER OF CUSTOMS, MUMBAI
- 2006 (204) E.L.T. 72 (Tri. - Mumbai) KAINYA & ASSOCIATES PVT. LTD. Versus COMMISSIONER OF CUS. (IMPORT), MUMBAI
- 2006 (202) E.L.T. 464 (Tri. - Bang.) COMMR. OF CUS. & C. EX., HYDERABAD-II Versus BIG APPLE MANUFACTURING
- 2002 (146) E.L.T. 361 (Tri. - Chennai) GUPTA EXPORTS Versus COMMISSIONER OF CUSTOMS, CHENNAI Maintained in 2003 (157) ELT A150 (Supreme Court)
- 2001 (128) E.L.T. 456 (Tri. - Chennai) COMMISSIONER OF CUS., MADRAS Versus TAPAN TRADING CO.
- 2000 (118) E.L.T. 694 (Tribunal) COLLECTOR OF CUSTOMS, MADRAS Versus SOUTHERN SEA FOODS PVT. LTD.
- 2000 (118) E.L.T. 163 (Tribunal) VICKY ENTERPRISES Versus COMMISSIONER OF CUSTOMS, MADRAS
- 2006 (202) E.L.T. 464 (Tri. - Bang.) COMMR. OF CUS. & C. EX., HYDERABAD-II Versus BIG APPLE MANUFACTURING

i i) That the Honourable Adjudicating Authority to consider the above catena f decisions wherein the honourable Court has decided that the extra remittance evidence is one of the important factor in loading the as assessable value. I request Honourable Adjudicating Authority to set aside the charges on this ground itself.

L. Penalty is Not Imposable

That the Noticee has brought forth on record conclusive and overwhelming evidences and proved that there is no element of suppression and fraud or there is no breach of provision. Therefore, the question of imposing penalty does not arise. The transaction value was not rejected with any evidence by the department. There are no contemporaneous imports and the Department has not categorically found that the transaction value was not acceptable under Rule 4(1) and they have not given any reasons. Department has also not found that the imported goods were covered under mischief of Rule 4(2) of the Customs Valuation Rules, 1988 and until goods

are covered in the exception as contained in Rule 4(2) of the Customs Valuation Rules. The transaction value is binding under Rule 4(1) and cannot be discarded. He states that when there is no misdeclaration or suppression then no penalty can also be imposed, hence SCN is liable to be dropped.

□ BANSAL INDUSTRIES Versus COMMISSIONER OF CUSTOMS, CHENNAI
2002 (147) E.L.T. 967 (Tri. Chennai)

The Noticee has prayed that the demand is not sustainable and less demand charge is liable to be set aside and their prayer may please be taken accordingly. He further requested for Personal Hearing before Adjudicating Authority.

3. RECORD OF PERSONAL HEARINGS

3.1 The personal hearing was granted on 22.03.2021, 15.03.2023 & 28.03.2024 by the then adjudicating authority to uphold the principles of natural justice. However, subsequently the Show Cause Notice (SCN) under reference was reassigned to the current adjudicating authority. Following this, additional personal hearings were scheduled for 18.09.2025, 07.10.2025 and 14.10.2025 and noticee were requested to attend.

3.2 In order to comply the Principle of Natural Justice, opportunities to appear before the undersigned was granted to noticee for personal hearing on 18.09.2025, 07.10.2025 and 14.10.2025. Personal hearing in the matter was conducted on 14.10.2025 through virtual mode. Shri Lilesh P. Sawant, Advocate on behalf of Noticee Shri Parin Doshi in case of M/s. Parin Enterprises appeared for hearing. During the personal hearing, he reiterated their written submission dated 10.09.2025. Further he stated that recorded statement cannot be the only evidences and same should be corroborated with evidences of under valuation.

4. DISCUSSION AND FINDINGS

4.1 I have carefully gone through the Show Cause Notice, material on record and facts of the case, as well as written and oral submissions made by the Noticee. Accordingly, I proceed to decide the case on merit.

4.2 I find that present case was kept in call book as per the Board Instruction No. 04/2021, Customs, issued vide F. No. 450/72/2021-Cus-IV dated 17.03.2021, directing to keep SCN pending as per the Hon'ble Supreme Court Judgement dated 09.03.2021 in Civil Appeal No: 1827 of 2018, in the case of M/s Canon India Pvt. Ltd. Further, in the light of amendments made

in the Customs Act, 1962 vide Finance Bill 2022 and Notification No. 29/2022 Customs (N.T.) dated 31.03.2022, the said SCN was taken up for adjudication.

4.3 Vide CBIC Notification No.10/2009 – Customs (N.T.) dated 20.01.2009, the Commissioner of Customs (Import), JNCH, Nhava Sheva was appointed as Common Adjudicating Authority for the purpose of adjudicating the matters relating to the Show Cause Notice pertaining to Shri Parin Doshi, Proprietor, M/s. Parin Enterprises, Mumbai issued vide F. No. DRI/MZU/E/52/2007/5652 to 5655 dated 28.05.2008, by the Additional Director General, DRI, MZU, Mumbai. The Commissioner of Customs, NS-IV, JNCH has been assigned the adjudication of the subject Show Cause Notice as per the Office Order No. 42/2024 dated 27.05.2024, issued by the Chief Commissioner of Customs, JNCH.

4.4 In terms of principle of natural justice, opportunity for personal hearing was granted to the noticee on 18.09.2025, 07.10.2025 and 14.10.2025. In response to hearing 18.09.2025, noticee Shri Parin Doshi, Proprietor, M/s. Parin Enterprises requested to adjourn the matter and hearing was rescheduled to 07.10.2025. However, the noticee again requested to adjourn the matter, consequently the hearing was rescheduled on 14.10.2025, which was duly attended by the authorised representative. Thus, the principles of natural justice have been followed during adjudication proceedings. Having compiled with the requirement of the principle of natural justice, I proceed to decide the case on merits, bearing in mind the allegation made in the SCN as well as the Submission/Contention made by the Noticees.

4.5 The Noticee in their submission dated 10.09.2025 has placed reliance on various judgments of Tribunals, High Courts and Apex Court on various issues, however, I find that the facts and circumstances involved in these judgements are not similar to facts and circumstances of the case in hand. Further, I find that the Hon'ble Supreme Court of India in case of Ambica Quarry Works Vs. State of Gujarat & Others [1987(I) S.C. C. 213] observed that “the ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides and not what logically follows from it.” Further in the case of Bhavnagar University Vs. Palitana Sugar Mills (P) Ltd. 2003 (2) SCC 111, the Hon'ble Apex Court observed “It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.”

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

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

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

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

4 . 6 I find that intelligence was received by the Mumbai Zonal Unit of DRI indicated that HMGS were being imported from Malaysia and Taiwan and were being grossly undervalued to evade Customs duty; and that though its price in the international market was a minimum of US \$ 1.00 to US \$ 2.00 per kg., it was actually being imported in to India by declaring very low prices ranging between US \$ 0.25 to US \$ 0.50 per kg. From Investigation it was gathered that M/s Parin Enterprises, are importing HMGS and are evading the payment of proper Customs duty by way of undervaluation of the goods at the time of clearance. During the course of investigation, the office premises of M/s Parin Enterprises was searched and incriminating documents were taken over under panchanama dated 18.12.2007. Scrutiny of the documents revealed that M/s Parin Enterprises had been importing HMGS from M/s Taiwan First Li-Bond Company Ltd, Taiwan and clearing the same through the Mumbai and Nhava Sheva ports. Statements of Shri Parin Doshi, Proprietor, M/s Parin Enterprises were recorded under Section 108 of the Customs Act, 1962, on 18.12.2007, 18.02.2008 and 27.02.2008.

4.7 Shri Parin Doshi, accepting the duty liability and agreed to voluntarily pay the differential duty arising out of the said 13 Bills of Entry as detailed in Annexure ‘A’ to the subject SCN. Accordingly, M/s Parin Enterprises, admitting their duty liability, paid the differential duty of Rs 30,18,210/- (Rupees Thirty Lakhs Eighteen Thousand Two Hundred Ten only) vide pay orders as detailed in Table ‘B’ at Para 1.7 above.

4.8 I observe that from investigation it is seen that:

(a) M/s Parin Enterprises imported HMGS from M/s Taiwan First Li-bond Company Ltd, Taiwan. Shri Parin Doshi, Proprietor, M/s Parin Enterprises, had negotiated the price per KG of HMGS CIF for Mumbai or Nhava Sheva Port. After every periodic negotiation, M/s Taiwan First Li-band Company Ltd prepared a sales contract which was sent to M/s Parin Enterprises through fax or email for verification. The consent signatures of M/s Parin Enterprises were obtained and only then the proforma invoice and packing list were forwarded to them. The contract copy mentioned the actual price and transaction value of the consignment, whereas the proforma invoice mentioned the undervalued price for Customs purposes.

(b) After shipment, the documents such as bill of lading, commercial invoice and packing list were forwarded through the bank. The bank in India collected the invoice price mentioned in the documents from M/s Parin Enterprises and released them the documents. The collected amount was remitted to its counterpart bank in the supplier’s country through the authorised banking channel. The remaining amount as per the sales contract was handed over in cash to the Indian

representative of the supplier after an elaborate verification process involving a ten rupee note number. This money was eventually forwarded to the supplier through illegal money laundering channel, the 'Hawala'.

(c) The documents released from the bank were presented to Customs and the price of goods declared was as per the understated prices mentioned in these documents. Accordingly, the Bill of entry was filed and the goods were cleared from Customs after payment of the duty on the mis-declared prices.

(d) The price-list of M/s Taiwan First LI-Bond Company Ltd lists the actual prices of HMGS per kg CIF for various quarters since 2003 to 2008. Investigations revealed that the actual price of HMGS ranged from US \$ 0.90 in 2003 to US \$ 2.00 in 2008. The differential duty evaded due to this undervaluation amounted to Rs. 28,42,734/-, as detailed in Annexure 'A' to the subject SCN and same is reproduced below as Table 'D':

TABLE 'D'

Sr No.	Custom House	B/E No.	B/E Date	Description of Goods	Unit of Qty	Quantity	Exchange Rate	Aggregate Custom Duty Rate in %	Total Duty Paid in Rs.	Actual CIF Rate in US\$	Re determined (Actual) AV	Differential Duty
1	2	3	4	5	6	7	8	9	10	11	12	13
1	INNSA1	852012	6/6/2003	HMGS NAMELY MAGIC 999 SIZE 11.3CM xx 300MM	KGS	13439	47.1	50.8	192699	1	639307	132069
2	INNSA1	852012	6/6/2003	HMGS NAMELY MAGIC999-A SIZE 7.4CM x 200MM	KGS	250	47.1	50.8	3585	1	11893	2457
3	INNSA1	852012	6/6/2003	HMGS NAMELY MAGIC 999 SIZE 11.3 CM x 300MM	KGS	1561	47.1	50.8	22383	1	74258	15340
4	INNSA1	928666	4/12/2003	HMGS NAMELY MAGIC 999 SIZE 11.2CM xx 300MM	KGS	18000	46	50.8	116635	1.05	878094	329437
5	INNSA1	602469	22/04/2004	HOT MELT GLUE STICK MAGIC 999 (SIZE 11.2MM X 300MM)	KGS	18150	44.95	39.2	89987	1.1	906401	265322
6	INNSA1	630629	7/6/2004	HOT MELT GLUE STICK MAGIC 999 SIZE 11.2MM X 300MM	KGS	18000	45.45	39.2	89698	1.15	950223	282789
7	INNSA1	643436	28/06/2004	HOT MELT GLUE STICK MAGIC 999 SIZE 11.2MM X 300MM	KGS	18000	45.45	39.2	89698	1.15	950223	282789
8	INNSA1	724082	20/10/2004	HOT MELT ADHESIVE STICK (MAGIC 999)	KGS	18000	46.1	39.2	93082	1.2	1005718	301160
9	INNSA1	768029	21/12/2004	HOT MELT ADHESIVE STICK (MAGIC 999)	KGS	18000	45.45	39.2	365579	1.2	981720	19255
10	INNSA1	956789	1/9/2005	HOT MELT GLUE STICK 11.2 X 300MM	KGS	2139	43.9	34.443	18135	1.35	128036	25965
11	INNSA1	956789	1/9/2005	HOT MELT GLUE STICK 11.2 X 300MM	KGS	7391	43.9	34.443	63761	1.35	442408	88618
12	INNSA1	715975	13/03/2006	HOT MELT GLUE STICK INDUSTRIAL PURPOSE ONLY	KGS	3750	44.65	34.44	36504	1.5	253668	50859
13	INNSA1	668851	24/02/2007	HOT MELT GLUE STICK (BULK PACKING) (INDUSTRIAL PURPOSE ONLY) ITEM No.1061	KGS	9000	44.45	36.74	59373	1.7	686886	192989
14	INNSA1	668851	24/02/2007	HOT MELT GLUE STICK (BULK PACKING) (INDUSTRIAL PURPOSE ONLY) Item No.1161	KGS	1000	44.45	36.74	6597	1.7	76321	21443

15	INNSA1	668851	24/02/2007	HOT MELT GLUE STICK (BULK PACKING) (INDUSTRIAL PURPOSE ONLY) Item No.1921	KGS	625	44.45	36.74	4123	1.7	47700	13402
16	INNSA1	764575	18/05/2007	HOT MELT GLUE STICK (INDUSTRIAL PURPOSE ONLY)	KGS	15500	41.95	34.131	78451	1.9	1247782	347429
17	INNSA1	764575	18/05/2007	HOT MELT GLUE STICK (INDUSTRIAL PURPOSE ONLY)	KGS	2500	41.95	34.131	12653	1.9	201255	56037
18	INNSA1	633774	17/12/2007	HOT MELT GLUE STICK (BULK PACKING) (INDUSTRIAL PURPOSE ONLY)	KGS	15500	39.85	34.131	90688	2	1247704	335166
19	Mumbai	578039	14/06/2005	HOT MELT GLUE STICK 11- 11.2 X 300MM	KGS	7500	43.7	34.443	71831	1.3	430336	76390
20	Mumbai	578039	14/06/2005	HOT MELT GLUE STICK 7.4 X 200M	KGS	375	43.7	34.443	3592	1.3	21517	3820
											11181448	2842734

4.9 Noticee in their submission has contended that statement for enhancing value was given under sheer fear of arrest and further apprehension of the criminals in the prison blackmailing and extorting money compelled him to admit undervaluation charge and pay the differential duty demanded and he paid an amount of Rs 30,18,210/-. I observe that from the brief of the statements of the Shri Parin Doshi, proprietor M/s. Parin Enterprises and the documentary evidences available in the import of the goods covered in the instant SCN as outlined above, it can be seen that the admissions/confessions made therein are in coherence with each other and the same have been recorded voluntarily without the use of any force or threat. Moreover, none of the statements have negated any facts adduced in the other statements. Further, Shri Parin Doshi even submitted a letter dated 21.02.2008 under his dated signature of M/s Taiwan First LI-Bond Company Ltd indicating the correct prices of HMGS. Thus, I find that the statements tendered during the investigation under the provisions of Customs Act 1962, are fully corroborated with cogent and tangible evidences. Further, from the records available, the DRI, had recorded the statement under Section 108 of the Customs Act, 1962 without any duress and coercion. I find from the facts on record, that Noticee had neither made any allegation during investigation and nor retracted their statements. In this regard, I place reliance in the decision of Hon'ble Supreme Court in the case of ***K.I. Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin, (1997) 3 SCC 721*** wherein the Apex Court has held that there is no law which forbids acceptance of voluntary and true admission statement if the same is later retracted on bald assertion of threat and coercion. In the light of the above discussed judgements, I find that the statements recorded under Section 108 of the Customs Act, 1962 have legal evidentiary value in the present matter.

4.10 The noticee in their submission has contended that as per the statutory mandate the value has to be determined by rule 4 to 8 applying sequentially. I observe that, the, price of the imported goods has to be in accordance with the provisions of Section 14(1) of the Customs Act 1962 read with the Customs Valuation (Determination of Price of Imported Goods) Rules,

1988/2007, and the value of the goods shall be the transaction value and should not be in violation of Rule 10A/12 of the Rules ibid. The Importer had mis-declared the value declared before Customs. Since, actual prices of HMGS were provided by the importer himself, the same were being taken as the true transaction value as per Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988/2007. In view of above, the contention of the noticee is baseless.

4.11 On careful perusal of the Show Cause Notice and case records, I find that following main issues are involved in this case pertaining to Goods imported vide 13 Bills of Entry filed at Nhava Sheva and New Custom House, Mumbai as detailed in Table 'D' above, are required to be decided:

- A. As to whether the declared Assessable Value of impugned goods should be rejected under Customs Valuation Rules 1988/2007 and the assessable values should be redetermined as per Customs Valuation Rules 1988/2007 or otherwise.
- B. As to whether the total differential duty amounting to Rs. 28,42,734/- should be demanded from importer, under Section 28 (1) of the Customs Act 1962 along with Interest under the provisions of Section 28AB of the Customs Act, 1962 or otherwise.
- C. As to whether the impugned imported goods should be held liable to confiscation under Section 111 (m) of the Customs Act, 1962 or otherwise.
- D. As to whether the penalty should be imposed under Section 114 (A) /112 (a), (b) of the Customs Act, 1962 as applicable.
- E. As to whether the amount Rs.30,18,210/, deposited by M/s Parin Enterprises during investigation should be appropriated towards the differential duty, fine and penalty if any, or otherwise.

5.1 A. Now, I proceed to examine the issue i.e., whether the declared CIF prices of impugned goods should be rejected under Customs Valuation Rules 1988/2007 and the assessable values should be redetermined as per Customs Valuation Rules 1988/2007 or otherwise. In order to examine the same, I proceed to examine investigation, statements, documents and case laws, etc.

5.1.1 Investigation: - I observe that during the course of investigation it was gathered that Shri Parin Doshi, proprietor, M/s Parin Enterprises imported HMGS (High Melt Glue Sticks) from M/s Taiwan First Li-bond Company Ltd, Taiwan (the overseas supplier) Vide 13 Bill of Entry as detailed below:

Sr No.	Custom House	B/E No.	B/E Date	Description of Goods	Unit of Qty	Quantity
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1	2	3	4	5	6	7
1	INNSA1	852012	6/6/2003	HMGS NAMELY MAGIC 999 SIZE 11.3CM xx 300MM	KGS	13439
2	INNSA1	852012	6/6/2003	HMGS NAMELY MAGIC999-A SIZE 7.4CM x 200MM	KGS	250
3	INNSA1	852012	6/6/2003	HMGS NAMELY MAGIC 999 SIZE 11.3 CM x 300MM	KGS	1561
4	INNSA1	928666	4/12/2003	HMGS NAMELY MAGIC 999 SIZE 11.2CM xx 300MM	KGS	18000
5	INNSA1	602469	22/04/2004	HOT MELT GLUE STICK MAGIC 999 (SIZE 11.2MM X 300MM)	KGS	18150
6	INNSA1	630629	7/6/2004	HOT MELT GLUE STICK MAGIC 999 SIZE 11.2MM X 300MM	KGS	18000
7	INNSA1	643436	28/06/2004	HOT MELT GLUE STICK MAGIC 999 SIZE 11.2MM X 300MM	KGS	18000
8	INNSA1	724082	20/10/2004	HOT MELT ADHESIVE STICK (MAGIC 999)	KGS	18000
9	INNSA1	768029	21/12/2004	HOT MELT ADHESIVE STICK (MAGIC 999)	KGS	18000
10	INNSA1	956789	1/9/2005	HOT MELT GLUE STICK 11.2 X 300MM	KGS	2139
11	INNSA1	956789	1/9/2005	HOT MELT GLUE STICK 11.2 X 300MM	KGS	7391
12	INNSA1	715975	13/03/2006	HOT MELT GLUE STICK INDUSTRIAL PURPOSE ONLY	KGS	3750
13	INNSA1	668851	24/02/2007	HOT MELT GLUE STICK (BULK PACKING) (INDUSTRIAL PURPOSE ONLY) ITEM No.1061	KGS	9000
14	INNSA1	668851	24/02/2007	HOT MELT GLUE STICK (BULK PACKING) (INDUSTRIAL PURPOSE ONLY) Item No.1161	KGS	1000
15	INNSA1	668851	24/02/2007	HOT MELT GLUE STICK (BULK PACKING) (INDUSTRIAL PURPOSE ONLY) Item No.1921	KGS	625
16	INNSA1	764575	18/05/2007	HOT MELT GLUE STICK (INDUSTRIAL PURPOSE ONLY)	KGS	15500
17	INNSA1	764575	18/05/2007	HOT MELT GLUE STICK (INDUSTRIAL PURPOSE ONLY)	KGS	2500
18	INNSA1	633774	17/12/2007	HOT MELT GLUE STICK (BULK PACKING) (INDUSTRIAL PURPOSE ONLY)	KGS	15500
19	Mumbai	578039	14/06/2005	HOT MELT GLUE STICK 11- 11.2 X 300MM	KGS	7500
20	Mumbai	578039	14/06/2005	HOT MELT GLUE STICK 7.4 X 200M	KGS	375

Importer, had negotiated the import of HMGS with the executives of the said overseas suppliers. The price negotiated was per KG of HMGS CIF Mumbai or Nhava Sheva Port. After every periodic negotiation supplier prepared a sales contract which was sent to M/s Parin Enterprises through fax or email for verification. The consent signatures of M/s Parin Enterprises were obtained and only then the proforma invoice and packing list were forwarded to them. The contract copy mentioned the actual price and transaction value of the consignment, whereas the proforma invoice mentioned the undervalued price for Customs purposes. After shipment, the documents such as bill of lading, commercial invoice and packing list were forwarded through the bank. The bank in India collected the invoice price mentioned in the documents from M/s Parin Enterprises and released them the documents. The collected amount was remitted to its counterpart bank in the supplier's country through the authorised banking channel. The remaining amount as per the sales contract was handed over in cash to the Indian representative of the supplier after an elaborate verification process involving a ten rupee note number. The documents released from the bank were presented to Customs and the price of goods declared was as per the understated prices mentioned in these documents. Accordingly, the bill of entry was filed and the goods were cleared from Customs after payment of the duty on the mis-declared prices. Value Declared to customs at the time of import clearance were ranging from US\$ 0.25 per kg to US\$ 0.63 per kg CIF prices during clearance of goods.

Shri Parin Doshi, under his dated signatures, submitted a letter dated 21.02.2008 of M/s Taiwan First LI-Bond Company Ltd. (Overseas supplier) indicating the correct prices of HMGS. Screen Shot of the same is reproduced below:

TAIWAN FIRST LI-BOND CO., LTD.

8F-5, NO.12, Lane 609, Chung Hsin Road, Sec.5
 San Chung City, Taipei Hsien (Tomson Area.)
 Tel:02-29995770 Fax:02-29995641/02-59995741
 E-mail Add: lewis@libond.com.tw

TO : Mr. Parin Doshi, President, Parin Enterprises, India.
 DT: 21/2/08
 SUB : Re: Rates of HMGS / kg CIF Indian Port

DEAR SIR,

As per your inquiry the rates of HMGS per Kg CIF India port quarter wise are as under -

QUARTER	YEAR	RATES / IN USD PER KG
1 st	2003	USD 0.90
2 nd	2003	USD 1.00
3 rd	2003	USD 1.00
4 th	2003	USD 1.05
1 st	2004	USD 1.10
2 nd	2004	USD 1.15
3 rd	2004	USD 1.15
4 th	2004	USD 1.20
1 st	2005	USD 1.25
2 nd	2005	USD 1.30
3 rd	2005	USD 1.35
4 th	2005	USD 1.40
1 st	2006	USD 1.50
2 nd	2006	USD 1.50
3 rd	2006	USD 1.60
4 th	2006	USD 1.60
1 st	2007	USD 1.70
2 nd	2007	USD 1.90
3 rd	2007	USD 1.95
4 th	2007	USD 2.00

Taiwan First Li-Bond Co.,Ltd.

Lewis Chou

Lewis, Manager.

Submitted by me
Parin Doshi
 27.02.08

PARIN YOGESH DOSHI

Scrutiny of the Import documents revealed that the rates declared to Customs at the time of import clearance were ranging from US \$ 0.25 per kg CIF to US \$ 0.63 per kg CIF. The actual prices of HMGS as per above were submitted by Shri Parin Doshi, Proprietor M/s. Parin Enterprises. Further, year wise details of rates of Customs duty payable on imported goods viz HMGS in percentage is worked out by investigation as below;

Duty Name	Method of calculation	2003	2004	2005	2006	2007
Basic Customs Duty (BCD)	Assessable Value (AV) x duty rate	25	20	15	12.50	10
Countervailing Duty (CVD)	(AV + BCD) x duty rate	16	16	16	16	16
Educational Cess on CVD	(CVD x duty rate)	-	-	2	2	2
Sec. & Higher Edu Cess on CVD	(CVD x duty rate)	-	-	-	-	1

Customs Edu Cess	(BCD+CVD+Edu Cess+SHEC) x duty rate	-	-	2	2	2
Customs Sec. & Higher Edu Cess	(BCD+CVD+Edu Cess+SHEC) x duty rate	-	-	-	-	1
Special Additional Duty (SAD)	(AV+BCD+CVD+Edu Cess+SHEC) x duty rate	4	-	-	4	4
Total effective rate of duty		50.80	39.2	34.44	36.74	34.131

5.1.2 Statement: During the investigation, statements of Shri Parin Doshi, Proprietor, M/s. Parin Doshi was recorded under section 108 of the Customs Act, 1962, on 18.12.2007, 18.02.2008 and 27.02.2008 wherein he interalia stated that:

M/s Parin Enterprises was engaged in importing, trading, wholesaling and retailing of stationery items; that M/s Parin Enterprises had Imported Hot Melt Glue Sticks (HMGS) from M/s Taiwan First LU Bond Co. Ltd, Taiwan, since 2003; that he was interacting with Ms. Frances and Mr. Lewis for negotiating the deals regarding HMGS; that he had Interacted with them through telephone, fax and emails; that after negotiations they used to settle the terms of the transaction including the price, shipment period, payment conditions, etc.; that the prices negotiated were always per Kg., CIF, Nhava Sheva or Mumbai port, as the goods were imported through JN port and Mumbai port; that after negotiations, a contract was signed which was prepared by the supplier and sent through fax or email, that after verifying, he used to send back the approved contract with his consent signature; that a copy of the proforma invoice and packing list was sent to him by the suppliers through fax or email and after confirmation, the documents were sent back to the suppliers; that after shipment of the goods from Taiwan, the documents were sent through bank; that the said glue sticks were sold in the Indian market to generally stationery shops situated in metro cities; that generally the prices were negotiated with the suppliers and agreed for a particular quarter; that depending upon the prevalent market conditions, production and raw material costs, the prices at times might change in the quarter or may remain constant for two or three quarters; that the original contracts were not in his possession, as the same were destroyed by them after payment was made and the goods were received; that the prices declared to Customs at the time of clearances were not the actual prices; that the goods viz. HMGS were undervalued in the documents declared to Customs and the actual prices were on the higher side than what was declared to Customs; that to remain competitive in the market, they had to resort to undervaluation, as importers in the South India generally got their imports cleared from the southern ports at incredibly low values; that the correct prices of HMGS per KG, CIF Indian port were ranging from approximately US \$ 1.00 in 2003 to US \$ 2.00 at present; that the differential amount between the invoice price and the actual contract price was handed over in cash to the representatives of the suppliers in India; that they used to receive a message from the supplier that their representative bearing a ten rupee note of a certain number would approach them and after verification of the number on the ten rupee note, the differential amount was paid to such a person; that he did not know the whereabouts of such persons as they maintained a lot of secrecy; that the settling of accounts including resolution of payment disputes if any was done during his business visits to Taiwan.

5.1.3 The oral evidences were brought on record by the DRI, MZU. On the basis of the

deposition made by importer, the DRI, MZU was able to expose the modus operandi for the fraudulent imports of HMGS made by Shri Parin Doshi, Proprietor, M/s Parin Enterprises, who vide his voluntary statements recorded under Section 108 of the Customs Act, 1962, on 18.12.2007, 18.02.2008 and 27.02.2008, admitted that the prices declared to Customs at the time of clearances were not the actual prices and the goods viz. HMGS were undervalued in the documents declared to Customs and the actual prices were on the higher side than what was declared to Customs and to remain competitive in the market, they had to resort to undervaluation. The correct prices of HMGS per KG, CIF Indian port were ranging from approximately US \$ 1.00 in 2003 to US \$ 2.00 in 2007 and the differential amount between the invoice price and the actual contract price was handed over in cash to the representatives of the overseas suppliers in India. They used to receive a message from the supplier that their representative bearing a ten rupee note of a certain number would approach them and after verification of the number on the ten rupee note, the differential amount was paid to such a person.

5.1.4 The noticee in their submission has contended that admission or the statement shall not be the basis of value enhancement and the statement cannot be sole basis for proving charge or conviction and the SCN is not sustainable if it holds the value loading on the basis of admission.

I note that, during investigation the importer Shri Parin Doshi, Proprietor M/s. Parin Enterprises not only gave the confessional statement but also submitted under his dated signature a letter dated 21.02.2008 of M/s Taiwan First LI-Bond Company Ltd., indicating the correct prices of HMGS.

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

- i. *Asst. Collector of Central Excise, Rajamundry v. M/s. Duncan Agro India Ltd.* reported in 2000 (120) E.L.T. 280 (S.C.) : Statement recorded by a Customs Officer under Section 108 is a valid evidence
- ii. In 1996 (83) E.L.T. 258 (S.C.) in the case of *Shri Naresh J. Sukawani v. Union of India*:
“4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act.”
- iii. It was held that statement recorded by the Customs officials can certainly be used against a co-noticee when a person giving a statement is also tarnishing his image by making admission of guilt. Similar view was taken in the case of *In Gulam Hussain Shaikh Chougule v. S. Reynolds* (2002) 1 SCC 155 = 2001 (134) E.L.T. 3 (S.C.)
- iv. State (NCT) Delhi Vs Navjot Sandhu @ Afsan Guru, 2005 (122) DLT 194 (SC): Confessions are considered highly reliable because no rational person would make admission against his interest unless prompted by his conscience to tell the truth.

“Deliberate and voluntary confessions of guilt, if clearly proved are among the most effectual proofs in law.” (Vide Taylors’s Treatise on the Law of Evidence, VI. I).

- v. There is no law which forbids acceptance of voluntary and true admissional statement if the same is later retracted on bald assertion of threat and coercion as held by Hon’ble Supreme Court in the case of K.I. Pavunny Vs. Assistant Collector (HQ), Central Excise Cochin, (1997) 3 SCC 721.
- vi. Hon’ble Supreme Court in the case of Kanhaiyalal Vs. UOI, 2008 (1) Scale 165 observed: “*The law involved in deciding this appeal has been considered by this court from as far back as in 1963 in Pyare Lal Bhargava’s case (1963) Supp. 1 SCR 689. The consistent view which has been taken with regard to confessions made under provisions of section 67 of the NDPS Act and other criminal enactments, such as the Customs Act, 1962, has been that such statements may be treated as confessions for the purpose of Section 27 of the Indian Evidence Act.*”
- vii. **Hon’ble High Court of Mumbai in FERA Appeal No 44 OF 2007 in the case of KANTILAL M JHALA Vs UNION OF INDIA vide judgment dated: October 5, 2007 (reported in 2007-TIOL-613-HC-MUM-FEMA)** held that “*Confessional statement corroborated by the seized documents, admissible even if retracted*”.
- viii. The Apex Court in the case Hazari Singh V/s. Union of India reported in 110 E.L.T. 406, and case of Surjeet Singh Chhabra V/s. Union of India & Others reported in 1997 (1) S.C.C. 508 has held that the confessional statement made before the Customs Officer even though retracted, is an admission and binding on the person.-”
- ix. The Hon’ble Supreme Court in the case of Badaku Joti Savant Vs. State of Mysore [1966 AIR 1746 = 1978 (2) ELT J 323 (SC 5 member bench)] laid down that statement to a Customs officer is not hit by section 25 of Indian Evidence Act, 1872 and would be admissible in evidence and in conviction based on it is correct.
- x. In the case of Bhana Khalpa Bhai Patel Vs. Assstt. Collr. of Customs, Bulsar [1997 (96) E.L.T. 211 (SC)], the Hon’ble Apex Court at Para 7 of the judgment held that :–“ *It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence vide Romesh Chandra v. State of West Bengal, AIR 1970 S.C. 940 and K.I. Pavunny v. Assistant Collector (H.Q.), Central Excise Collectorate, Cochin, 1997 (90) E.L.T. 241 (S.C.) = (1997) 3 S.C.C. 721.* ”
- xi. In the case of Raj Kumar Karwal Vs. UOI & Others (1990) 2 SCC 409, the Court held that *officers of the Department of Revenue Intelligence who have been vested with the powers of an Officer-in-Charge of a police station under Section 53 of the NDPS Act, 1985, are not police officers within the meaning of Section 25 of the Evidence Act. Therefore, a confessional statement recorded by such officer in the course of investigation of a person accused of an offence under the Act is admissible in evidence against him.*
- xii. Hon. Supreme Court's decisions in the case of Romesh Chandra Mehta Vs. the State of West Bengal (1969) 2 S.C.R. 461, A.I.R. 1970 S.C. 940. The provisions of Section 108 are judicial provisions within statement has been read, correctly recorded and has been made without force or coercion. In these circumstances there is not an iota of doubt that the statement is voluntary and truthful. The provisions of Section 108 also enjoin that the statement has to be recorded by a Gazetted Officer of Customs and this has been done in the present case. The statement is thus made before a responsible officer and it has to be accepted as a piece of valid evidence
- xiii. Jagjit Singh vs State Of Punjab And Another , Hon’ble Punjab and Haryana High Court in Crl. Appeal No.S-2482-SB of 2009 Date of Decision: October 03, 2013 held that : *The statements under Section 108 of the Customs Act were admissible in evidence as has been held by the Hon’ble Supreme Court in Ram Singh vs. Central Bureau of Narcotics, 2011 (2) RCR (Criminal) 850.*

In view of the above referred consistent judicial pronouncements, the importance of statements rendered under Section 108 of the Customs Act, 1962 during the case are quite imperative and the noticee's contention is not justifiable. Going by the ratio of the above decisions, I am of the considered view that the oral evidences in the form of statements of noticee which were documented are acceptable and credible evidence to support the allegations levelled in the SCN against noticee and constitutes a valid and sound proof. In view of the above pronouncements, I find that the statements made in the case were voluntary and are very much valid in Law and can be relied upon as having full evidentiary value. I find that placing reliance upon statements is correct and legal and these evidences proved the offence of the Noticee and constitute material piece of evidence.

5.1.6 In view of the above discussions and ratio of relevant judgments, I observe that that the Investigating Agency on the basis of voluntary statements of the Shri Parin Doshi, proprietor of the importing firm and corroborating evidences in form of data of overseas supplier received from the importer himself and confessional statement of the importer that remaining amount as per the sales contract was handed over in cash to the Indian representative of the overseas supplier after an elaborate verification process involving a ten rupee note number, has succeeded in proving the fact that the importer resorted to undervalue the goods before Indian Customs which resulted in gross duty evasion at the time of importation. Accordingly, I hold that the value declared by the Importer while filing of Bills of Entry was very low and the imported goods were grossly undervalued.

5.1.7 The noticee in their submissions has contended that there is "No Evidence of Extra Remittance". In this context I find that as per investigation, Shri Parin Doshi submitted a letter dated 21.02.2008 under his dated signatures of M/s Taiwan First LI-Bond Company Ltd., listing the correct prices of HMGS. The price-list of M/s Taiwan First LI-Bond Company Ltd listed the actual prices of HMGS per kg CIF for various quarters since 2003 to 2008. Shri Parin Doshi in his voluntary statement confessed the undervaluation of HMGS and after shipment, the documents such as bill of lading, commercial invoice and packing list were forwarded through the bank. The bank in India collected the invoice price mentioned in the documents from M/s Parin Enterprises and released them the documents. The collected amount was remitted to its counterpart bank in the supplier's country through the authorised banking channel. The remaining amount as per the sales contract was handed over in cash to the Indian representative of the supplier after an elaborate verification process involving a ten rupee note number. In view of above, the contention of the notice that there is no evidence of extra remittance, is baseless.

5.1.8 I observed that, from investigation it was evident that Shri Parin Doshi proprietor, M/s Parin Enterprises had interacted/informed/ negotiated constantly with the executives of M/s Taiwan First Li-Bond Company Ltd, regularly for the said transactions relating to the imports of the HMGS. He was at all times aware of the correct prices of HMGS, however he consciously

chose to suppress this information and conspired with his suppliers to defraud the Government of its legitimate revenue. He resorted to preparation and submission of fictitious documents and channelling of money through unauthorised and illegal sources. In the nutshell, I find that a conspiracy was hatched by Shri Parin Doshi proprietor of M/s Parin Enterprises in association with their foreign supplier, to defraud the Government of India of its legitimate revenue by under-valuing the goods viz HMGS imported by M/s Parin Enterprises. Accordingly, I note that the value declared by the Importer while filing of said 13 Bills of Entry was very low and the imported goods were grossly undervalued. The price of the imported goods has to be in accordance with the provisions of Section 14(1) of the Customs Act 1962 read with the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988, and the value of the goods shall be the transaction value and should not be in violation of Rule 10A of the CVR 1988. The Importer had mis-declared the value before Customs. In this case there are sufficient evidence which confirm the wilful misdeclaration of value and undervaluation made by M/s Parin Enterprises. Therefore, the declared value is liable to be rejected as the same is not the true transaction value of the goods.

5.1.9 In this regard, the relevant provisions w.r.t. valuation of the imported goods are read as:

Section 14 of the Customs Act, 1962, - 1) For the purposes of [the Customs Tariff Act, 1975 (51 of 1975)], or any other law for the time being in force where under a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where -

(a) the seller and the buyer have no interest in the business of each other,

or

(b) one of them has no Interest in the business of the other, and the price is the sole consideration for the sale or offer for sale

[Provided that such price shall be calculated with reference to the rate of exchange as in force on the date on which a Bill of Entry is presented under Section 46, or a Shipping Bills or Bill of Export, as the case may be, is presented under Section 50;]

[(1A) subject to the provisions of sub-section (1), the price referred to in that sub-section in respect of imported goods shall be determined in accordance with the rules made in this behalf]

The Rule 10A of the Customs Valuation Rules, 1988 reads as under:

10A. 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 4.

(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).

5.1.10 As discussed in preceding para, it is clear that the declared assessable value of the impugned goods imported in said 12 Bills of Entry (listed at Sr. No. 1 to 17 & 19 to 20 in Table 'D', Para 4.8 above) was not the true or actual transaction values of the said goods, in terms of the provisions of Section 14(1) of the Customs Act, 1962. From the investigation it is evident that importer provided the fraudulent/ manipulated documents at the time of clearance of the goods to Customs, therefore the actual value of the goods cannot be the declared value. Therefore, I hold that the declared assessable value of imported goods in respect 12 Bills of Entry (listed at Sr. No. 1 to 17 & 19 to 20 in Table 'D', Para 4.8 above), cannot be treated as the correct value and is, therefore, liable for rejection under Rule 10A of the Customs Valuation Rules, 1988 read with Section 14(1) of the Customs Act, 1962.

5.1.11 I observe that during investigation, the importer in his statement stated that after shipment, the documents such as bill of lading, commercial invoice and packing list were forwarded through the bank. The bank in India collected the invoice price mentioned in the documents from M/s Parin Enterprises and released them the documents. The collected amount was remitted to its counterpart bank in the supplier's country through the authorised banking channel. The remaining amount as per the sales contract was handed over in cash to the Indian representative of the supplier after an elaborate verification process involving a ten rupee note number. Therefore, the correct value of the imported goods is the total price which was paid by the importer though his bank and through hawala operator. Here, I would refer to Rule 3 of the Customs Valuation Rules, 1988

Rule 3 - Determination of the method of valuation - For the purposes of these rules, -

i) subject to rules 9 and 10A, the value of imported goods shall be the transaction value;

5.1.12 Rule 3 of the Customs Valuation Rules, 1988 prescribes that Subject to rule 9 and 10A, the value of imported goods shall be the transaction value. As discussed above, the declared value at the port of import is liable to be rejected as the same is not the true transaction value of the goods. I observe that, in this case direct evidence i.e., actual prices of impugned imported goods

were provided by the importer himself, the same are being taken as the true transaction value as per Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. I find that the investigation has appropriately worked out the correct assessable value which works out to be: confessed new CIF price + 1% landing charges, as detailed in Table 'D' at para 4.8 above.

5.1.13 I find that for the Bill of Entry No. 633774 dated 17.12.2007 (listed at Sr. No.18 in Table 'D' at para 4.8 above), the CVR 2007 will be applicable as CVR 2007 came into force on 10.10.2007.

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

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

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

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

- i. *This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.*
- ii. *The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.*
- iii. *The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include –*
 - (a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;*
 - (b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;*
 - (c) the sale involves special discounts limited to exclusive agents;*
 - (d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;*
 - (e) the non-declaration of parameters such as brand, grade, specifications that have relevance to value;*
 - (f) the fraudulent or manipulated documents."*

5.1.14 As discussed in preceding para, it is clear that the declared assessable value of the goods

imported in the Bill of Entry No. 633774 dated 17.12.2007 (listed at Sr. No.18 in Table 'D' at para 4.8 above) was not the true or actual transaction values of the said goods, in terms of the provisions of Section 14(1) of the Customs Act, 1962. Explanation 1(iii)(f) of Rule 12 of the Customs Valuation (Determination of the Value of Imported Goods) Rules, 2007 clearly mentions that if the fraudulent or manipulated documents are provided at the time of clearance of the goods, then the proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value. The actual value of the goods cannot be the declared value, and, therefore, I hold that the declared assessable value in respect of goods that were imported in the Bill of Entry No. 633774 dated 17.12.2007 (listed at Sr. No.18 in Table 'D' at para 4.8 above) cannot be treated as the correct transaction value and is therefore liable for rejection under Rule 12 of the Customs Valuation Rules, 2007 read with Section 14(1) of the Customs Act, 1962 for submitting fraudulent and manipulated documents.

5.1.15 I find that during investigation, the importer in his statement stated that after shipment, the documents such as Bill of Lading, Commercial Invoice and Packing List were forwarded through the bank. The bank in India collected the invoice price mentioned in the documents from M/s Parin Enterprises and released them the documents. The collected amount was remitted to its counterpart bank in the supplier's country through the authorised banking channel. The remaining amount as per the sales contract was handed over in cash to the Indian representative of the supplier after an elaborate verification process involving a ten rupee note number. Therefore, the correct value of the imported goods is the total price which was paid by the importer through his bank and through hawala operator.

Here, I refer to Rule 3 of the Customs Valuation Rules, 2007-

Rule 3. Determination of the method of valuation.

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

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

Provided that -

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

- (i) are imposed or required by law or by the public authorities in India; or*
- (ii) limit the geographical area in which the goods may be resold; or*
- (iii) do not substantially affect the value of the goods;*

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

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made

in accordance with the provisions of rule 10 of these rules; and

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

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

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

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

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

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

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

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

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

5.1.16 The Rule 3 of the CVR 2007 prescribes that Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10. The Importer had mis-declared the value declared before Customs, therefore the declared value is liable to be rejected as the same is not the true transaction value of the goods. In this case direct evidence i.e., actual prices of HMGS were provided by the importer, the same are being taken as the true transaction value as per Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007. I find that the investigation has appropriately worked out the correct assessable to be: confessed new CIF price + 1% landing charges, as detailed in Table 'D' above.

5.1.17 Accordingly, I hold that total declared CIF prices of HMGS under 13 Bills of Entry (listed at Sr. No. 1 to 20 in Table 'D' at para 4.8 above) was not true or actual transaction value of the said goods in terms of the provisions of Section 14 of the Customs Act, 1962 for submitting fraudulent and manipulated documents. Therefore, for the goods pertaining to 12 Bills of Entry (Sr. No.1 to 17 and Sr. No. 19 to 20 in Table 'D' above in para 4.8) listed in above the declared value is rejected under Rule 10 A of the Customs Valuation (determination of Price of imported Goods) Rules 1988 read with Section 14 of Customs Act, 1962 and the same is re-determined in terms of Rule 3 of CVR 1988 as Rs. 99,33,744/- [1,11,81,448/- (Total AV of 13 BEs) –

12,47,704/- (AV of 01 BE mentioned at Sr. No. 18 in Table 'D'] . For declared CIF prices of HMGS under Bill of Entry No. 633774 dated 17.12.2007 (listed at Sr. No.18 in Table 'D' above at par 4.8 above) the declared value is rejected under Rule 12 of the Customs Valuation 2007 read with Section 14 of Customs Act, 1962 and the same is re-determined in terms of Rule 3 of CVR 2007 as Rs.12,47,704/-.

5.1.18 Since, in this case there are sufficient evidence which confirm the wilful misdeclaration of description and undervaluation in the imports made by M/s Parin Enterprises, the declared value with respect of such 13 Bills of Entry is liable to be rejected as the same is not the true transaction value of the goods. Thus, I hold that the declared value with respect to said 13 Bills (listed in Table 'D' at para 4.8 above) has to be redetermined as Rs. 1,11,81,448/- in terms of Rule 3 of CVR 1988/2007 read with Section 14 of the Customs Act, 1962. Accordingly, re determined Assessable Values of the impugned goods are as below:

Sr No.	Custom House	B/E No.	B/E Date	Description of Goods	Unit of Qty	Quantity	Exchange Rate	Aggregate Custom Duty Rate in %	Total Duty Paid in Rs.	Actual CIF Rate in US\$	Re determined (Actual) AV	Differential Duty
1	2	3	4	5	6	7	8	9	10	11	12	13
1	INNSA1	852012	6/6/2003	HMGS NAMELY MAGIC 999 SIZE 11.3CM xx 300MM	KGS	13439	47.1	50.8	192699	1	639307	132069
2	INNSA1	852012	6/6/2003	HMGS NAMELY MAGIC999-A SIZE 7.4CM x 200MM	KGS	250	47.1	50.8	3585	1	11893	2457
3	INNSA1	852012	6/6/2003	HMGS NAMELY MAGIC 999 SIZE 11.3 CM x 300MM	KGS	1561	47.1	50.8	22383	1	74258	15340
4	INNSA1	928666	4/12/2003	HMGS NAMELY MAGIC 999 SIZE 11.2CM xx 300MM	KGS	18000	46	50.8	116635	1.05	878094	329437
5	INNSA1	602469	22/04/2004	HOT MELT GLUE STICK MAGIC 999 (SIZE 11.2MM X 300MM)	KGS	18150	44.95	39.2	89987	1.1	906401	265322
6	INNSA1	630629	7/6/2004	HOT MELT GLUE STICK MAGIC 999 SIZE 11.2MM X 300MM	KGS	18000	45.45	39.2	89698	1.15	950223	282789
7	INNSA1	643436	28/06/2004	HOT MELT GLUE STICK MAGIC 999 SIZE 11.2MM X 300MM	KGS	18000	45.45	39.2	89698	1.15	950223	282789
8	INNSA1	724082	20/10/2004	HOT MELT ADHESIVE STICK (MAGIC 999)	KGS	18000	46.1	39.2	93082	1.2	1005718	301160
9	INNSA1	768029	21/12/2004	HOT MELT ADHESIVE STICK (MAGIC 999)	KGS	18000	45.45	39.2	365579	1.2	981720	19255
10	INNSA1	956789	1/9/2005	HOT MELT GLUE STICK 11.2 X 300MM	KGS	2139	43.9	34.443	18135	1.35	128036	25965
11	INNSA1	956789	1/9/2005	HOT MELT GLUE STICK 11.2 X 300MM	KGS	7391	43.9	34.443	63761	1.35	442408	88618
12	INNSA1	715975	13/03/2006	HOT MELT GLUE STICK INDUSTRIAL PURPOSE ONLY	KGS	3750	44.65	34.44	36504	1.5	253668	50859
13	INNSA1	668851	24/02/2007	HOT MELT GLUE STICK (BULK PACKING) (INDUSTRIAL PURPOSE ONLY) ITEM No.1061	KGS	9000	44.45	36.74	59373	1.7	686886	192989
14	INNSA1	668851	24/02/2007	HOT MELT GLUE STICK (BULK PACKING) (INDUSTRIAL PURPOSE ONLY) Item No.1161	KGS	1000	44.45	36.74	6597	1.7	76321	21443
15	INNSA1	668851	24/02/2007	HOT MELT GLUE STICK (BULK PACKING) (INDUSTRIAL PURPOSE ONLY) Item No.1921	KGS	625	44.45	36.74	4123	1.7	47700	13402

16	INNSA1	764575	18/05/2007	HOT MELT GLUE STICK (INDUSTRIAL PURPOSE ONLY)	KGS	15500	41.95	34.131	78451	1.9	1247782	347429
17	INNSA1	764575	18/05/2007	HOT MELT GLUE STICK (INDUSTRIAL PURPOSE ONLY)	KGS	2500	41.95	34.131	12653	1.9	201255	56037
18	INNSA1	633774	17/12/2007	HOT MELT GLUE STICK (BULK PACKING) (INDUSTRIAL PURPOSE ONLY)	KGS	15500	39.85	34.131	90688	2	1247704	335166
19	Mumbai	578039	14/06/2005	HOT MELT GLUE STICK 11- 11.2 X 300MM	KGS	7500	43.7	34.443	71831	1.3	430336	76390
20	Mumbai	578039	14/06/2005	HOT MELT GLUE STICK 7.4 X 200M	KGS	375	43.7	34.443	3592	1.3	21517	3820
											11181448	2842734

5.2 B. As to whether the total differential duty amounting to Rs.28,42,734/- should be demanded from importer, under Section 28 (1) of the Customs Act 1962 along with Interest on duty evaded should be demanded under the provisions of Section 28AB of the Customs Act, 1962 or otherwise.

Legal Provisions when subject SCN dated 28.05.2008 was issued:

(vi) Section 28 of Customs Act, 1962 provides:

(I) *When any duty has not been levied or has been short-levied or erroneously refunded, or when any interest payable has not been paid, part paid or erroneously refunded, the proper officer may:*

- a. *In the case of any Import made by any individual for his personal use or by government or by any educational, research or charitable Institution or hospital, within one year,*
- b. *In any other case, within six months from the relevant date, serve notice on the person chargeable with the duty or interest which has not been levied or charged or which has been so short levied or part 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.*

Provided that where any duty has not been levied or has been short levied or the Interest has not been charged or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by the importer or the exporter or the agent or employee of the importer or exporter, the provisions of this sub-section shall have effect as if for the words "one year" and "six months", the words "five years", were substituted.

(vii) Section 28AB of the Customs Act, 1962 provides that where the duty has not been levied or paid or has been short levied or short paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-section (2), or has paid the duty under sub-section 28 of section-28, shall in addition to duty, be liable to pay Interest at such rate as is for the time being fixed by the Central Government.

5.2.1 I find that in terms of Section 46 (4) of the Customs Act, 1962, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice if any, relating to the imported goods.

5.2.2 In view of the discussion in the foregoing paras, I find that Shri Parin Doshi, proprietor of M/s. Parin Enterprises, deliberately evaded correctly payable Customs duty by collusion with the overseas supplier and suppressing the actual value of the imported goods by not declaring the same at the time of filing of the Bills of Entry. By resorting to this collusion, willful mis-statement and suppression of facts, the importer has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer. This act of collusion, willful mis-statement and suppression of facts was done with the fraudulent intention to evade Customs duty by declaring the lower value in order to get financial benefits. Therefore, the matter falls under the purview of Section 28(1) of the Customs Act, 1962.

5.2.3 I observe from the investigation that the Importer Shri Parin Doshi, proprietor of M/s. Parin Enterprises, entered into conspiracy with foreign supplier to undertake the fraudulent Imports by way of mis-declaration of value of the goods. As per investigation, after every periodic negotiation, M/s Taiwan First Li-band Company Ltd prepared a sales contract which was sent to M/s Parin Enterprises through fax or email for verification. The consent signatures of M/s Parin Enterprises were obtained and only then the proforma invoice and packing list were forwarded to them. The contract copy mentioned the actual price and transaction value of the consignment, whereas the proforma invoice mentioned the undervalued price for Customs purposes. After shipment, the documents such as Bill of lading, commercial invoice and packing list were forwarded through the bank. The bank in India collected the invoice price mentioned in the documents from M/s Parin Enterprises and released them the documents. The collected amount was remitted to its counterpart bank in the supplier's country through the authorised banking channel. The remaining amount as per the sales contract was handed over in cash to the Indian representative of the supplier after an elaborate verification process involving a ten rupee note number. This money was eventually forwarded to the supplier through illegal money laundering channel, the 'Hawala'.

5.2.4 I observe that, the importer resorted to two modes of payment for each consignment- one through banking channels with respect to the value declared to the customs and another through Hawala Operators for the differential value which was over and above the value declared to the Customs. Therefore, it is evident that such undervaluation was wilful and with intention to take wrongful benefit of duty and evade the payment of duty.

5.2.5 I observe that in the instant case, it is evident that with malafide intention the importer had been evading Customs Duty causing loss to Government Revenue which the importer had been doing knowingly and wilfully so as to maximize monetary gains by evading customs duty. The investigation carried out by the DRI Mumbai brought such violations to the notice of the Customs authorities. Therefore, it is apparent that M/s. Parin Enterprises has been deliberately contravening the provisions of the Customs Act, 1962, which shows 'mens rea' on their part.

Therefore, I find that in the instant case there is an element of 'mens rea' involved. In the instant case, the Noticee deliberately chose to undervalue the imported goods to evade duty, being fully aware of the correct value of the imported goods. This wilful and deliberate act clearly brings out their 'mens rea' in this case. Once the 'mens rea' is established on the part of the Noticee, the extended period of limitation, automatically get attracted.

5.2.6 In view of the foregoing, I find that, the true applicable duty had not been levied by reasons of collusion, wilful mis-statement and suppression of facts the duty demand against the Importer has been correctly proposed under Section 28(1) of the Customs Act, 1962 by invoking the extended period of limitation. In support of my stand of invoking extended period, I rely upon the following court decisions:

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

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

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

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

5.2.7 Therefore, I hold that differential duty of Customs amounting to Rs. Rs.28,42,734/- in respect of 13 Bills of Entry (listed in Table- 'D' at para 4.8 above) should be demanded from Shri Parin Doshi, proprietor of M/s. Parin Enterprises in terms of Section 28(1) of the Customs Act, 1962 by invoking extended period.

5.2.8 Further, as per Section 28AB (Now 28AA) of the Customs Act, 1962, the person who is liable to pay the duty as determined under sub-section (2), or has paid the duty under sub-section 28 of section-28, shall in addition to duty, be liable to pay Interest at such rate as is for the time being fixed by the Central Government. From the above provisions, it is evident that regarding demand of interest, Section 28AB (Now 28AA) of the Customs Act, 1962 is unambiguous and mandates that where there is a short payment of duty, the same along with interest shall be recovered from the person who is liable to pay duty. The interest under the Customs Act, 1962 is

payable once demand of duty is upheld and such liability arises automatically by operation of law. In an umpteen number of judicial pronouncements, it has been held that payment of interest is a civil liability and interest liability is automatically attracted under Section 28AB (Now 28AA) of the Customs Act, 1962. Interest is always accessory to the demand of duty as held in case of *Pratibha Processors Vs UOI [1996 (88) ELT 12 (SC)]*. In *Directorate of Revenue Intelligence, Mumbai Vs. Valecha Engineering Limited*, Hon'ble Bombay High Court observed that, in view of Section 28AA, interest is automatically payable on failure by the assessee to pay duty as assessed within the time as set out therein.

5.2.9 I have already held that differential duty of customs amounting to Rs.28,42,734/- in respect of 13 Bills of Entry should be demanded from Shri Parin Enterprises, Proprietor, M/s. Parin Enterprises in terms of Section 28(1) of the Customs Act, 1962 by invoking extended period. Therefore, in terms of the provisions of Section 28AB (Now 28AA of the Customs Act 1962) of the Customs Act, 1962, interest on the differential duty of Rs. Rs.28,42,734/-, is also liable to be recovered from the Noticee.

5.3 C. As to whether the imported goods having a total assessable redetermined value of Rs.1,11,81,448/- should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962 or otherwise

5.3.1 The SCN proposes confiscation of goods imported vide said 13 Bills of Entry, having total re- determined value of Rs. 1,11,81,448/- under the provisions of Section 111(m) of the Customs Act, 1962.

5.3.2 From the discussions above, I find that the importer had failed to assess and discharge the customs duty correctly by way of undervaluation of goods, imported by them vide 13 Bills of Entry by collusion, wilful mis-declaration of facts and suppressing the true transaction value of goods and thereby contravened the provisions of Section 46 the Customs Act, 1962. Thus, I find that the subject goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. Further, I find that Section 111(m) deals with any and all types of mis-declaration regarding any particular of Bill of Entry. Therefore, the gross undervaluation of the imported goods resorted to by the importer amounts to mis-declaration and shall make the goods liable to confiscation in terms of Section 111(m) of the Customs Act, 1962.

5.3.3 In terms of provisions of Section 46(4) of the Customs Act, 1962, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such Bill of Entry and shall in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods. In terms of the provisions of Section 47 of the Customs Act, 1962, the importer shall pay the appropriate duty payable on imported goods and then clear the same for home consumption. However, in the instant case, the

importer while filing the Bill of Entry has resorted to deliberate suppression of correct value of the goods and wilful mis-declaration of value of the goods. Further, the above said undervaluation and mis-declaration was done with the sole intention to fraudulently evade the correctly payable duty. Thus, the Importer has failed to correctly assess and pay the appropriate duty payable on the imported goods before clearing the same for home consumption.

5.3.4 I find that the SCN proposes confiscation of goods under the provisions of Section 111(m) of the Customs Act, 1962. Section 111(m) of the Customs Act, 1962 states that the following goods brought from a place outside India shall be liable to confiscation:

Section 111(m): *"Any goods which do not correspond in respect of the value or in any 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 transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of Section 54".*

5.3.5 I observe that evidences are placed on record substantiating that the Importer M/s. Parin Enterprises, Importer has undervalued the imported goods, therefore, it is apparent that the Importer has not made the true and correct disclosure with regard to the actual valuation of the goods in respective Bills of Entry leading to wilful mis-statement and suppression of facts. From the above discussions and findings, I find that the Importer has done deliberate suppression of value and wilful mis-declaration of the goods and has submitted misleading declaration under Section 46(4) of the Customs Act, 1962 with an intent to evade duty. Due to this deliberate suppression of facts and wilful statement, the Importer has not paid the correctly leviable duty on the imported goods resulting in loss to the government exchequer.

5.3.6 As discussed above I find that the impugned goods imported vide said 13 Bills of Entry (listed in Table 'D' at para 4.8 above) are liable for confiscation under Section 111(m) of the Customs Act, 1962. I also find that the case is established on documentary evidences provided by the importer himself, though the department is not required to prove the case with mathematical precision but what is required is the establishment of such a degree of probability that a prudent man may on its basis believe in the existence of the facts in issue [as observed by the Hon'ble Supreme Court in CC Madras V/s D Bhuramal – [1983 (13) ELT 1546 (SC)]. Further in the case of K.I. International Vs Commissioner of Customs, Chennai reported in 2012 (282) E.L.T. 67 (Tri. - Chennai) the Hon'ble CESTAT, South Zonal Bench, Chennai has held as under: -

"Enactments like Customs Act, 1962, and Customs Tariff Act, 1975, are not merely taxing statutes but are also potent instruments in the hands of the Government to safeguard interest of the economy. One of its measures is to prevent deceptive practices of undue claim of fiscal incentives. Evidence Act not being applicable to quasi-judicial proceeding, preponderance of probability came to rescue of Revenue and Revenue was not required to prove its case by mathematical precision. Exposing entire modus operandi through allegations made in the show cause notice on the basis of evidence gathered by Revenue

against the appellants was sufficient opportunity granted for rebuttal. Revenue discharged its onus of proof and burden of proof remained un-discharged by appellants. They failed to lead their evidence to rule out their role in the offence committed and prove their case with clean hands. No evidence gathered by Revenue were demolished by appellants by any means. ‘

5.3.7 In view of intentional undervaluation for the imported goods, the impugned goods imported vide said 13 Bills of Entry (listed in Table 'D' at para 4.8 above) having a total re-determined assessable value of Rs 1,11,81,448/-, are liable for confiscation under Section 111(m) of the Customs Act, 1962.

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

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

5.3.9 I further find that the above view of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), has been cited by

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

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

- a. M/s Dadha Pharma h/t. Ltd. Vs. Secretary to the Govt. of India, as in 2000 (126) ELT 535 (Chennai High Court);
- b. M/s Sangeeta Metals (India) Vs. Commissioner of Customs (Import) Sheva, as reported in 2015 (315) ELT 74 (Tri-Mumbai);
- c. M/s SacchaSaudhaPedhi Vs. Commissioner of Customs (Import), Mu reported in 2015 (328) ELT 609 (Tri-Mumbai);
- d. M/s Unimark Remedies Ltd. Versus. Commissioner of Customs (Export Promotion), Mumbai reported in 2017(335) ELT (193) (Bom)
- e. M/s Weston Components Ltd. Vs. Commissioner of Customs, New Delhi reported in 2000 (115) ELT 278 (S.C.) wherein it has been held that:

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

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

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

5.3.11 In view of the above, I find that the decision of Hon'ble Madras High Court in case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), which has been passed after observing decision of Hon'ble Bombay High Court in case of M/s Finesse Creations Inc reported vide 2009 (248) ELT 122 (Bom)-upheld by Hon'ble Supreme Court in 2010(255) ELT A. 120 (SC), is squarely applicable in the present case.

5.3.12 In view of above facts, findings and legal provisions, I find that it is an admitted fact with documentary evidences that the importer had wilfully mis-declared the value before Customs of the impugned goods. Therefore, I hold that the acts and omissions of the importer, by way of collusion, wilful mis-statement, mis-declaration and suppression of facts of the imported goods, have rendered the imported goods mentioned at Serial no. 1 to 20 of Table 'D' above are liable for confiscation under section 111 (m) of the Customs Act, 1962. Accordingly, I observe that the present case also merits imposition of Redemption Fine, regardless of the physical availability, once the goods are held liable for confiscation.

5.4 D. As to whether the penalty should be imposed under Section 114 (A) /112 (a), (b) of the Customs Act, 1962 as applicable.

5.4.1 *Legal provision when instant SCN dated 20.05.2008 was issued:*

Section 114A of the Customs Act, 1962 provides that where the duty has not been levied or has been short levied or the Interest has not been charged or paid or has not been part paid or the duty or interest has been erroneously refunded by a reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest as the case may be as determined under Sub Section (2) of Section 28 of the Customs Act, 1962 shall also liable to pay a penalty equal to duty, or interest, so determined.

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

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

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

5.4.2 The noticee in their written submission has contended that 'Penalty is Not Imposable'. I observe that the impugned imports under the ambit of the subject SCN were affected in the name of M/s. Parin Enterprises. It is an admitted fact that the declared value of the impugned goods was

not the true transactional value and value of the impugned goods was also mis-declared. Shri Parin Doshi Proprietor of M/s. Parin Enterprises, had colluded with foreign supplier and hawala operator in all these fraudulent importations. Moreover, he intentionally suppressed the true value of the goods. The importer used forged/manipulated documents at the time of clearance of the goods, so as to escape from the payment of appropriate customs duty. The understated amount was remitted to the overseas suppliers through hawala channel. Thus, the goods presented by the importer, Shri Parin Doshi Proprietor of M/s. Parin Enterprises to Customs authorities at the time of clearance of the imported goods were mis-declared and grossly undervalued. In view of above, the contention of the noticee does not hold any strength.

5.4.3 I find that the importer had mis-declared and suppressed the correct value of the goods in the Bills of Entry with intention to evade the Customs duty for the imported goods. I find that, in the instant case, as discussed *supra*, the duty has been short-levied for the reasons of collusion and wilful mis- statement and suppression of facts at the end of the importer in respect of the goods imported vide 13 Bills of Entry as detailed in Table 'D' above, the importer Shri Parin Doshi, Proprietor, M/s. Parin Enterprises is liable for penal action under Section 114A of the Customs Act, 1962. I refrain from imposing penalty under section 112.

5.5 E. As to whether the amount Rs.30,18,210/, deposited by M/s Parin Enterprises during investigation should be appropriated towards the differential duty, fine and penalty if any, or otherwise.

5.5.1 I find that during the course of investigation, on being pointed out the act of undervaluation of the impugned goods, viz. HMGS, Shri Parin Doshi, proprietor of M/s. Parin Enterprises, voluntarily paid the differential duty admitting their duty liability and paid the differential duty of Rs. 30,18,210/- vide pay orders as detailed in Table 'B' of Para 1.7 above. As I am confirming the demand of short levied Customs Duty amounting to Rs.28,42,734/- under the provisions of Section 28 (1) invoking extended period and applicable interest recoverable from the Importer under provisions of Section 28AB (Now 28AA) of the Customs Act, 1962. I hold that the amount of Rs. 30,18,210/- deposited by Shri Parin Doshi, Proprietor, M/s. Parin Enterprise during the course of investigation shall be appropriated towards the total demand of differential duty, interest and penalty recoverable from importer.

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

ORDER

(i) I reject the declared CIF prices of HMSG imported under 12 Bills of Entry as detailed at Sr. No. 1 to 17 and 19 to 20 in Table 'D' in Para 4.8 above, under the provisions of Rule 10A of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988

read with Section 14 of Customs Act, 1962 and order that the same should be re-determined to Rs. 99,33,744/- [1,11,81,448/- (Total AV of 13 BEs) – 12,47,704/- (AV of 01 BE mentioned at Sr. No. 18 in Table 'D'] as per Rule 3 of Customs Valuation (Determination of Price of Imported Goods) 1988 read with Section 14 of Customs Act, 1962.

AND

I reject the declared CIF prices of HMSG imported under One Bill of Entry No. 633774 dated 17.12.2007 as detailed at Sr. No.18 in Table 'D' in Para 4.8 above, under the provisions of Rule 12 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 read with Section 14 of Customs Act, 1962 and order that the same should be re-determined to Rs. 12,47,704/- as per Rule 3 of Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 read with Section 14 of Customs Act, 1962.

(ii) I confirm the demand and order to recover the total differential duty amounting to Rs. 28,42,734/- (Rupees Twenty-Eight Lakhs Forty-Two Thousand Seven Hundred Thirty-Four only) for the goods cleared against the Bills of Entry detailed at Sr. Nos. 1 to 20 in Table 'D' in Para 4.8 above, under the provisions of Section 28(1) of the Customs Act, 1962 along with applicable interest under Section 28AB (now 28AA) of the Customs Act, 1962, from Shri Parin Doshi, proprietor, M/s. Parin Enterprises.

(iii) I confiscate the goods as detailed in Sr. No. 1 to 20 in Table 'D' in Para 4.8 above under Section 111(m) of the Customs Act, 1962. I impose Redemption Fine of Rs. 11,18,144/- (Rupees Eleven Lakhs Eighteen Thousand One Hundred Forty-Four only) under Section 125 (1) of the Customs Act, 1962.

(iv) I impose penalty equal to the differential duty amounting to Rs. 28,42,734/- (Rupees Twenty-Eight Lakhs Forty-Two Thousand Seven Hundred Thirty-Four only) along with applicable interest under Section 114A of the Customs Act, 1962 on Shri Parin Doshi, Proprietor, M/s. Parin Enterprises. However, such penalty would be reduced to 25% of the total penalty-imposed under Section 114A of the Customs Act, 1962 if the amount of duty as confirmed above, the interest and the reduced penalty are paid within 30 (thirty) days of communication of this order, in terms of the first proviso to Section 114A of the Customs Act, 1962.

(v) As I have imposed penalty under section 114A of the Customs Act, 1962, I refrain from imposing penalty under Section 112(a) of the Customs Act, 1962.

(vi) I order appropriation of voluntary deposit of Rs. 30,18,210/- deposited by Shri Parin Doshi, Proprietor, M/s. Parin Enterprise during the course of investigation to be appropriated towards the total demand of differential duty, interest and penalty recoverable from importer.

7. This order is issued without prejudice to any other action that may be taken in respect of

the goods in question and/or against the persons concerned or any other person, if found involved, under the provisions of the Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

(DR. KUNDAN YADAV)

(डॉ. कुन्दन यादव)

सीमा शुल्क आयुक्त /Commissioner of Customs,
एनएस-IV, जेएनसीएच /NS-IV, JNCH.

To,

Shri Parin Doshi,
Proprietor, M/s. Parin Enterprises,
240, Abdul Rehman Street,
Mumbai 400 003.

Copy to:

1. The ADG, DRI, MZU,13, Sir Vithaldas Thackersey Marg, New Marine Lines, Mumbai-400020
2. The Additional Commissioner of Customs (Import), New Custom House, Mumbai 400 001.
3. AC/DC, Chief Commissioner's Office, JNCH
4. AC/DC Group 2D, JNCH.
5. AC/DC, Centralized Revenue Recovery Cell, JNCH
6. Superintendent (P), CHS Section, JNCH – For display on JNCH Notice Board.
7. EDI Section for displaying on website
8. Office Copy.