



भारत सरकार

वित्त मंत्रालय/ राजस्व विभाग

केंद्रीय अप्रत्यक्ष कर एवं सीमाशुल्क बोर्ड - मुंबई अंचल-1, भारतीय सीमाशुल्क

आयुक्त सीमाशुल्क (आयात-1) का कार्यालय

द्वितीय मंजिल, नवीन सीमाशुल्क भवन, शूरजी वल्लभदास मार्ग, वेलाई एस्टेट,
मुंबई-400001.

दूरध्वनि-22757401 फैक्स-22757402

ई-मेल: adjn-commr-imp1nch@gov.in

फा.सं. : I/(22)/OTH/3160/2022-Gr. 5

के द्वारा जारी किया गया : विवेक पाण्डेय
आयुक्त सीमाशुल्क (आयात-1)

आदेश दिनांक: 31.05.2023
जारी दिनांक: 31.05.2023

सी.ए.ओ. क्रमांक : 15/2023-24/CAC/CC(IMPORT-1)/VP/ADJ(IMP-1)
DIN No. 2023057700000000D04D

मूल आदेश

- 1- यह प्रति उस व्यक्ति के प्रयोग के लिए निः शुल्क है, जिसके लिए यह पारित किया है।
- 2- इस आदेश के विरुद्ध क्षेत्रीय पीठ, सीमाशुल्क, उत्पाद एवं सेवाकर अपीलीय अधिकरण, जय सेन्टर, चौथा एवं पांचवा तल, 34 पी. डी. मेलो रोड, पूना स्ट्रीट, मस्जिद बन्दर (पूर्व) मुंबई 400 009 को अपील की जा सकती है।
- 3- सीमाशुल्क (अपील) नियमों 1982 के नियम 6 के आधार पर अपील फॉर्म सी ए-3 में जैसा कि उक्त नियम में संलग्न है के आधार पर की जानी चाहिए। अपील चार प्रतियों में की जानी चाहिए एवं 90 दिनों के अन्दर दायर की जानी चाहिए एवं उसके साथ उस आदेश की चार प्रतियां संलग्न होनी चाहिए जिसके विरुद्ध अपील की गई हो (इन प्रतियों में कम से कम एक प्रति अभिप्रमाणित प्रति होनी चाहिए)। अपील के साथ सीमाशुल्क अधिनियम 1962 की धारा 129A की उपधारा (6) के अन्तर्गत लागू रु.1,000/-, रु.5,000/- अथवा रु.10,000/- का, क्रास किया हुआ बैंक ड्रॉफ्ट अधिकरण की पीठ के सहायक रजिस्ट्रार के नाम जारी किया होना चाहिए। यह बैंक ड्राफ्ट ऐसे राष्ट्रीय बैंक का होना चाहिए जिसकी शाखा उस जगह स्थित हो जहां अधिकरण पीठ स्थित है।
- 4- अपील अधिकरण पीठ के सहायक रजिस्ट्रार अथवा इस संबंध में उनके द्वारा अधिकृत किसी भी अधिकारी के कार्यालय में प्रस्तुत की जानी चाहिए अथवा सहायक रजिस्ट्रार या ऐसे अधिकारी के नाम पंजीकृत डाक द्वारा भेजी जानी चाहिए।
- 5- जो व्यक्ति इस आदेश के विरुद्ध अपील करना चाहता है वह इस अपील के लंबित रहने तक दंडराशि या अपेक्षित शुल्क की साढ़े सात प्रतिशत धनराशि को जमा करे और ऐसे भुगतान का साक्ष्य प्रस्तुत करे। ऐसा न करने पर यह अपील सीमाशुल्क अधिनियम, 1962 की धारा 129E के प्रावधानों के अनुपालन न करने के आधार पर निरस्त मानी जाएगी।



GOVERNMENT OF INDIA
MINISTRY OF FINANCE/ DEPARTMENT OF REVENUE
CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS, INDIAN CUSTOMS - MUMBAI ZONE - I
OFFICE OF THE COMMISSIONER OF CUSTOMS (IMPORT-I)
2nd FLOOR, NEW CUSTOM HOUSE, SHOORJI VALLABHDAS ROAD, BALLARD ESTATE,
MUMBAI - 400001.

Tel. No. 22757401 Fax No. 22757402

e-mail: adjn-commr-imp1nch@gov.in

F.No. : I/(22)/OTH/3160/2022-Gr. 5

Passed by: VIVEK PANDEY
COMMISSIONER OF CUSTOMS (IMPORT-I)

Date of Order: 31.05.2023
Date of Issue: 31.05.2023

C.A.O. No.: 15/2023-24/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I)
DIN No. 2023057700000000D04D

ORDER-IN-ORIGINAL

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

Subject: Adjudication of Show Cause Notice¹ dated 09.09.2022 issued vide F.No. 1/(22)/OTH/3160/2022-Gr. 5 regarding evasion of Customs Duty of Rs. 1,75,48,988/- by M/s Gami Enterprises and Rs. 42,99,363/- by M/s Alpa Print World by way of undervaluation in the import of electrical and electronic goods.

BRIEF FACTS OF THE CASE

An intelligence was developed by Directorate of Revenue Intelligence, Mumbai Zonal Unit², that M/s. **Gami Enterprises**³ (IEC No. 0313068364), having office at Ground Floor, 203, Bazar Gate, Peri Nariman Street, Fort, Mumbai – 400001 and godown at Krishna Complex, Dapode Road, Bhiwandi, Thane, imported goods such as Toner Cartridge, Inks, Laminators, Paper, Die Cutters, Printer peripherals, etc. from China, and evaded the applicable duty thereon by mis-declaring the value of the said goods. The goods imported by M/s. Gami Enterprises and M/s. **Alpa Print World**⁴ have been cleared from multiple jurisdictions. The case is covered under clause (a) of Section 110AA of the **Customs Act, 1962**⁵ and the highest amount of duty is in the jurisdiction of Mumbai NCH.

2. As per the intelligence, the modus-operandi adopted by the importer was to import the aforesaid items from suppliers in China, namely M/s. Far Industries Co. Ltd., M/s. Yiwu Rightway Import & Export Co. Ltd. and M/s. Euccoi Technology Co. Ltd. and then manipulate the actual invoices issued by the said suppliers and submit these manipulated invoices before Customs to show the goods to be of a lesser value and clear the goods on the basis of such manipulated invoices. The undervalued invoices of the items were prepared by **Shri Kanji Gokar Gami**⁶, Proprietor of M/s. Gami Enterprises and the same were submitted to the Customs for payment of duty and clearance of the goods. The intelligence also indicated that the goods were being under-valued by Shri Kanji Gokar Gami to the extent of 50-60% of the actual value and that he was also using the IEC of M/s. Alpa Print World (IEC No. 0313024375) to import Toner Cartridges by mis-declaring the value of the goods.

3. To verify the genuineness of the intelligence and to gather evidence searches were conducted at the below mentioned premises of M/s. Gami Enterprises and M/s. Alpa Print World:-

TABLE -1

Sr. No.	Premises	Outcome of the search
---------	----------	-----------------------

¹ Also referred to as the SCN

² Also referred to as DRI

³ Also referred to as Noticee-1

⁴ Also referred to as Noticee-2

⁵ Also referred to as the Act

⁶ Also referred to as Noticee-3



31.05.23

1.	Office: Ground Floor, 203, Bazar Gate, Peri Nariman Street, Fort, Mumbai – 400 001	Search was conducted under Panchnama dated 29.07.2021 in the presence of Shri Kanji Gokar Gami. The goods found stored in the premises were detained and proforma invoices, laptops and mobile phones were taken over from the premises for the purpose of investigation.
2.	Godown: Krishna Complex, Dapode Road, Bhiwandi, Thane.	The said godown was searched in presence of Shri Kanji Gokar Gami under Panchnama dated 30.07.2021 and goods found stored in the godown, were detained.

4. The preliminary scrutiny of the proforma invoices recovered from the office premises of M/s. Gami Enterprises indicated that the value of the goods specified therein was much higher than the value of the goods declared at the time of import. Accordingly, the statement of Shri Kanji Gokar Gami, Proprietor of M/s. Gami Enterprises, was recorded on 29.07.2021 under the provisions of Section 108 of the Customs Act, 1962, wherein, he inter-alia, stated that:

- (i) In 2004-05, he started a Proprietorship firm in the name of M/s. Alpa Enterprises in Vashi, Navi Mumbai, wherein, he was doing trading of Stationery Items; that in 2011, he changed the name of M/s. Alpa Enterprises to M/s. Gami Enterprises and obtained IEC No. 0313068364 in the name of M/s. Gami Enterprises;
- (ii) In 2015, he started another firm namely M/s. Alpa Print World in the name of his wife **Mrs. Diwaliben Gami**⁷. She is the Proprietor of M/s. Alpa Print World and that she had obtained IEC No. 0313024375 in the name of M/s. Alpa Print World;
- (iii) All the business activities of M/s. Alpa Print World were being looked after by him on behalf of his wife Mrs. Diwaliben Gami;
- (iv) M/s. Gami Enterprises was involved in local sale and purchase of Toner Cartridges and Stationery items. Later, in post-GST era (i.e. after 01st July 2017), both the firms started importing Toner Cartridges and Printer Accessories of different make and models, and, also Stationary products like Paper Cutter, Laminators and PVC ID Cards etc. and no local purchases were made by the said firms subsequently;
- (v) In relation to the goods to be imported, proforma invoices were raised by the Chinese suppliers and shared with him. The said invoices mentioned the actual value of the goods. The said proforma invoices were edited by him to the tune of 40-50% lesser

⁷ Also referred to as Noticee-4

unit price than the actual unit price of the goods; that the said fabricated invoices with lesser value were then sent to Customs for duty calculation and clearance. As per agreement, he was supposed to pay around 60% of the payment through Banking channels and the rest was decided to be handed over to the representative of the foreign supplier in Indian Currency after due verification of the representative by means of their identity card;

(vi) The actual unit price of the goods was mentioned in Chinese Yuan or RMB in the proforma invoices. However, in the fabricated invoices he used to change the unit price to US Dollars.

(vii) Many proforma invoices containing actual unit price of the goods had been withdrawn from his office under Panchnama dated 29.07.2021 and he had put his dated signatures on the said invoices.

(viii) From the proforma invoices and the corresponding import consignments, he was able to identify some corresponding consignments as under: -

TABLE -2

Sr. No.	Bill of Entry No. & date	Invoice No. & date	Declared Value (US\$)	Corresponding proforma invoice No. & date	Actual value as per proforma invoice	
					In RMB	In USD
1	2914514 / 25.02.2021	ZKS2020120 809 / 08.12.2020	16,563.25	ZKS2020120 809 / 08.12.2020	3,63,960	56,427.90
2	2253953 / 06.01.2021	ZKS2020112 808 / 28.11.2020	19,486.20	ZKS2020112 808 / 28.11.2020	4,43,900	68,821.70
3	2832541 / 19.02.2021	PI#2101211 / 21.01.2021	20,360.00	PI#2101211 / 21.01.2021	92,008	29,926.82
4	2467803 / 22.01.2021	2012255 / 31.12.2020	18,083.06	PI#2012255R 4 / 28.12.2020	1,71,749	26,627.75

5. The electronic devices taken over from the premises of M/s. Gami Enterprises and M/s. Alpa Print World during the search on 29.07.2021 were subjected to the process of data extraction. The data extraction proceedings were completed on 03.08.2021 in accordance with the **provisions of Section 65B of the Indian Evidence Act, 1872**. Scrutiny of the working copy of the data extracted from the said devices resulted in the recovery of invoices received by Shri Kanji Gokar Gami from the suppliers in China,

which indicated the actual price of the goods to be higher than what had been declared at the time of import. The invoices recovered from the working copy of the data extracted from the said devices and, during the search of the said premises, included invoices which indicated the value of the goods in Chinese Yuan or RMB.

6. Meanwhile, on 04.08.2021, the goods imported by M/s. Gami Enterprises under Bill of Entry No. 4763903 dated 22.07.2021 were examined under Panchnama by DRI officers at ICTPL Globicon CFS, Uran, Maharashtra. As per the said B/E, the CIF value of the goods had been declared as US\$ 25,634.70.

7. Subsequently, vide letter dated 20.08.2021, Shri Kanji Gokar Gami submitted full value proforma invoices or sales contracts in respect of 37 consignments imported by M/s. Gami Enterprises. Further, in his statement recorded under the provisions of Section 108 of the Customs Act, 1962 on 20.08.2021, he inter-alia, stated that:

(i) The full value invoices were either in the form of proforma invoices or sales contracts. He used to receive proforma invoices or sales contracts, wherein, full unit price of each item was mentioned. In such proforma invoices or sales contracts, actual unit price of each item was mentioned;

(ii) He had imported 40 consignments (in respect of 37 consignments Shri Kanji Gokar Gami submitted full value proforma invoices or sales contracts vide letter dated 20.08.2021) however, in respect of remaining 3 consignments, the full value Invoices were submitted by him later vide letter dated 08.09.2021) from China in the name of his firm M/s. Gami Enterprises and the same had already been cleared from Customs;

(iii) The proforma invoices or sales contracts, submitted by him vide letter dated 20.08.2021, had been obtained by him from the overseas suppliers. The said documents were authentic as they had the same invoice number and date as the documents submitted to the Customs;

(iv) he had done under-valuation in import of goods in the name of M/s. Gami Enterprises to save the duty and to be competitive in the market;

(v) The CIF value declared for the consignment under B/E No. 4763903 dated 22.07.2021, which had been examined by DRI on 04.08.2021, was USD 25,634.70 (Rs. 19,32,856/-). However, the CIF value in the actual invoice (No. ZKS2021051011 dated 10.05.2021) was USD 85,528/- (Rs. 64,48,811/-). He had mis-declared the value of the imported goods by way of under-valuation. The actual value of the said consignment was USD 85,528.00 CIF and not USD 25,634.70 CIF as declared to the Customs. He was ready to pay the differential duty considering the actual value of the consignment.

8. The goods covered under B/E No. 4763903 dated 22.07.2021, with declared CIF value of Rs. 19,32,856/- and admitted actual CIF value of Rs. 64,48,811/-, which had been examined by Officers of DRI, Mumbai at ICTPL Globicon CFS, Uran, Maharashtra on 04.08.2021, were subsequently seized vide Seizure Memorandum F. No. DRI/MZU/F/INT-57/2021/9104-9106 dated 06.09.2021 under the reasonable belief that the same were liable for confiscation under the provisions of Section 111 of the Customs Act, 1962.

9. The search of the importer's Office-cum-Godown at Fort, Mumbai and the Warehouse at Bhiwandi, Thane on 29.07.2021 and 30.07.2021, respectively, had resulted in the detention of the goods found therein. The total declared CIF value of the said goods was Rs. 1,67,21,201/-; however, on the basis of the invoices submitted by Shri Kanji Gokar Gami, the actual CIF value of the goods was found to be Rs. 2,20,07,569/-. Accordingly, the said goods were seized vide Seizure Memorandum issued vide F. No. DRI/MZU/F/INT-57/2021/9103 dated 06.09.2021 under the reasonable belief that the same were liable to confiscation under the provisions of Section 111 of the Customs Act, 1962.

10. Subsequently, vide letter dated 08.09.2021, Shri Kanji Gokar Gami submitted full value proforma invoices or sales contracts in respect of three more consignments imported by M/s. Gami Enterprises.

11. Vide letter dated 20.10.2021, Mrs. Diwaliben Kanji Gami, Proprietor of M/s. Alpa Print World, informed that **all the business activities of the said firm were taken care of by her husband Shri Kanji Gokar Gami and that she was just playing the role of a passive proprietor.** Further, vide the said letter dated 20.10.2021, she authorized, Shri Kanji Gokar Gami to sign/submit any letter/to represent/to attend DRI office/to appear in person/to give statement on behalf of M/s. Alpa Print World.

11.1. Further, vide letter dated 20.10.2021, Shri Kanji Gokar Gami submitted 20 proforma invoices/sales contracts issued by overseas suppliers in the name of M/s. Alpa Print World with actual invoice value.

12. In his statement dated 22.10.2021 recorded under the provisions of Section 108 of the Customs Act, 1962, Shri Kanji Gokar Gami, inter-alia, stated that:

(i) All the business activities of M/s. Alpa Print World were being looked after by him on behalf of his wife Mrs. Diwaliben Gami;

(ii) similar to M/s. Gami Enterprises, proforma invoices containing actual values of the goods had been raised on M/s. Alpa Print World by the Chinese suppliers. The said proforma invoices were edited by him in his Laptop using M.S. Excel at their Fort office, to the tune of 40-50% lesser unit price than the actual unit price of the goods mentioned in

the proforma invoice. The fabricated invoices were then sent to Customs for duty calculation and clearance;

(iii) all the actual value invoices (i.e. proforma invoices) raised by the overseas suppliers to Alpa Print World containing actual unit price of the goods, had been submitted vide their letter dated 20.10.2021. The said documents were authentic as they had been obtained from the overseas suppliers and, had the same invoice number and date as the documents submitted to the Customs;

(iv) they had imported 20 Import Consignments from China in the name of M/s. Alpa Print World, which have already been cleared from Customs;

(v) they had done under-valuation in import of goods imported in the name of M/s. Alpa Print World to save the duty and to be competitive in the market;

(vi) he would pay the entire differential duty along with interest on the consignments imported in the name of M/s. Alpa Print World.

13. On being asked, Shri Kanji Gokar Gami, submitted copies of **bills of entry**⁸ Nos. 4985052 dated 09.08.2021 and 5133682 dated 21.08.2021 along with their respective invoices, vide letter dated 24.03.2022. The said bills of entry had been filed by the importer subsequent to the investigation initiated by DRI. Scrutiny of the said documents indicated that the value of the goods under the aforementioned bills of entry were at parity with the values mentioned in the invoices recovered during the search proceedings, the invoices retrieved from the electronic devices, the full value invoice for the consignment under Bill of Entry No. 4763903 dated 22.07.2021 and the invoices submitted by M/s. Gami Enterprises vide letters dated 20.08.2021, 08.09.2021 and 20.10.2021.

14. Meanwhile, vide letter dated 06.09.2021, M/s. Gami Enterprises requested for provisional release of the consignments seized vide the two Seizure Memorandums dated 06.09.2021. Consequently, vide letter F. No. S/26-Misc-1103/2021-22/Gr. V dated 01.03.2022, the Dy. Commissioner of Customs, Group V, JNCH, Nhava Sheva-V informed that the conditions laid down for the provisional release of the goods had been fulfilled by the importer by submission of Bond/revenue deposit, as under.

(a) Deposit of Rs 13,63,507/- (Challan No. HC-3 dated 01.03.2022) towards the differential duty for the goods at the Warehouse located at Bhiwandi and the Office-cum-Godown at Fort, Mumbai which were seized vide Memorandum dated 06.09.2021;

⁸ In short BEs

(b) Bond of Rs. 3,25,00,000/- and Revenue Deposit of Rs. 15,00,000/- (Challan No. HCM- 687 dated 12.10.2021) for the goods imported vide Bill of Entry No. 4763903 dated 22.07.2021 and seized vide Memorandum dated 06.09.2021;

(c) In respect of goods imported under Bill of Entry No. 4763903 dated 22.07.2021, the importer had also paid an amount of Rs. 12,61,914/- on 12.10.2021 as the differential duty towards the said goods.

15. During the course of investigation, Shri Kanji Gokar Gami, Proprietor of M/s. Gami Enterprises and associate in M/s. Alpa Print World, admitted the duty liability against the imports and voluntarily deposited the following amounts against duty liabilities raised against M/s. Gami Enterprises and M/s. Alpa Print World as detailed in Table below, towards differential Customs duty, interest and other liabilities:-

TABLE-3

Sr. No	Demand Draft No. & Date	Issuing Bank	TR-6 Challan No. and date	Amount (in Rs.)	Amount paid at	Paid by
1	317032 dtd. 29.07.2021	ICICI, Fort Branch Mumbai	674 dtd. 06.08.2021	30,00,000	JNCH,	M/s. Gami Enterprises
2	317038 dtd. 31.07.2021			5,00,000		
3	317064 dtd. 04.08.2021			10,00,000		
4	148498 dtd. 11.08.2021	Kotak Mahindra Bank, Fort Branch, Mumbai	184 dtd. 12.08.2021	30,00,000	NCH, Mumbai	
5	148497 dtd. 11.08.2021		33 dtd. 12.08.2021	5,00,000		
6	148354 dtd. 24.08.2021		82 dtd. 24.08.2021	20,00,000		
7	148720 dtd. 06.10.2021		08 dtd. 06.10.2021	5,00,000		

8	148393 dtd. 20.10.2021		63 dtd. 25.10.2021	6,00,000		
9	500416 dtd. 27.10.2021		76 dtd. 27.10.2021	24,00,000		
10	148910 dtd. 22.11.2021		40 dtd. 23.11.2021	15,00,000		
Total				1,50,00,000		
1	500971 dtd. 22.11.2021	ICICI, Fort Branch Mumbai	98 dtd. 30.12.2021	7,00,000	NCH, Mumbai M/s. Alpa Print World	M/s. Alpa Print World
2	317322 dtd. 17.01.2022		53 dtd. 18.01.2022	8,00,000		
3	500596 dtd. 22.11.2021		39 dtd. 23.11.2021	10,00,000		
Total				25,00,000		
Grand Total				1,75,00,000		

16. SCRUTINY OF DOCUMENTS AND EVIDENCES:

16.1. From the above it is apparent that the search conducted at the office premises of M/s. Gami Enterprises on 29.07.2021 under the provisions of Section 105 of the Customs Act, 1962 resulted in the recovery of proforma invoices / sales contracts which indicated the value of the goods to be higher than the value declared by the importer at the time of import.

16.2. Comparison of the proforma invoices retrieved from the premises of the importer with the invoices submitted by the importer for the clearance of the goods indicates that most of the details in the two invoices, such as the invoice number, the description of the goods, quantity, etc. were the same and, that, it was only the unit price, currency and the total value of the goods which had been manipulated in the invoices submitted by the importer for Customs clearance. Snapshot of one set of such invoices is produced below for ease of reference.

F.No. I/(22)/OTH/3160/2022-Gr. 5
OIO dated 31.05.2023

Copy of sales contract retrieved during search (in USD)

YIWU RIGHTWAY IMPORT & EXPORT CO.,LTD

No.388 ROOM SECOND FLOOR No.328 WUKANG ROAD, NANSANLI INDUSTRIAL DISTRICT, YIWU CITY, ZHEJIANG PROVINCE, CHINA
TEL:+86-579-81515151 FAX:+86-579-81515109

SALES CONTRACT

THE BUYERS:Kangj	Invoice No:	ZKS2020090303									
THE SELLERS:Zhou	Order Date:	2020.9.3									
Model No. Description	CTN	Qty /Ctn	Total Qty	Unit Price	Amount	G.W	N.W	T.G.W	T.N.W	CTN/Box	Total VOL
8306 LAMINATOR	117	4	468	115	53820	20.5	18	2396.5	2126	0.054	5.718
320 LAMINATOR	480	4	1920	125	240000	25	22	12000	10260	0.055	45.954
8252 DIE CUTTER	81	4	324	125	30500	15	18	1150	1098	0.04	2.44
8294 PAPER CUTTER	100	10	1000	25	25000	18.5	16	1850	1800	0.070	7.8
8296A3 HEAVY DUTY CUTTER	30	1	30	465	13950	22	19.5	660	585	0.122	3.96
8292 PAPER CUTTER	40	5	200	45	9000	19	15.75	760	630	0.081	3.64
SPARE PARTS	4					19	18	75	72	0.04	0.16
KEEP BALANCE					-128822						
SEAFREIGHT(1850/16.71*1308)					13086						
10 RECEIVED					-300000						
Total	832	Carbn		RMB	-45167			18003.5	16601		59.202

Corresponding import invoice submitted to Customs for clearance(in USD)

YIWU RIGHTWAY IMPORT & EXPORT CO., LTD.

ROOM NO.388 SECOND FLOOR, NO.328 WUKANG ROAD YIDONG INDUSTRIAL DISTRICT NANSANLI DISTRICT YIWU CITY ZHEJIANG PROVINCE CHINA

COMMERCIAL INVOICE

GAME ENTERPRISES
GROUND FLOOR 303 BAZAR GATE,
PERIN NARIMAN STREET,
FORT MUMBAI MAHARASHTRA 400001

INVOICE No.: ZKS2020090303
Date: 02-09-2020
Payment Terms: Advance
Terms & Cond.: CIF Mumbai

FROM: NINGBO, CHINA

TO: MUMBAI, INDIA

NO.	ITEM NAME	QTY.	UNIT	UNIT PRICE	AMOUNT USD
1	LAMINATOR MACHINE 8306	468	PCS	4.650	2178.000
2	LAMINATOR MACHINE WITH KNIFE 320	1920	PCS	6.000	11520.000
3	DIE CUTTER 8252	324	PCS	7.500	2430.000
4	PAPER CUTTER 8294 (MANUAL)	1000	PCS	1.500	1500.000
5	PAPER CUTTER 8296A3 (MANUAL)	30	PCS	17.000	510.000
6	PAPER CUTTER 8292 (MANUAL)	200	PCS	3.000	600.000
TOTAL					USD 18366.00

Total Amt USD = Eighteen Thousand Three Hundred Eighty Six and Twenty Cents only
Total Customs = 832
Country of Origin = China

义乌市正道进出口有限公司
YIWU RIGHTWAY IMPORT & EXPORT CO., LTD

16.3. The scrutiny of the data extracted from the mobile phones, laptop of Shri Kanji Gokar Gami taken over during the search of the office premises on 29.07.2021 also led to the recovery of proforma invoices/ sales contracts indicating values higher than the ones declared at the time of import of the goods. Snapshot of a set of such invoices is produced below for ease of reference.

[illegible]

16.4. The scrutiny of the full value proforma invoices/sales contracts submitted by Shri Kanji Gokar Gami vide letters dated 20.08.2021 & 08.09.2021 and the import data in relation to the 40 consignments imported by M/s. Gami Enterprises, indicated the declared and the actual CIF value of the goods as under –

TABLE 4

Sr No	B/E No. and Date		Invoice No. & Date (submitted to Customs)		Declared Invoice Value (CIF in US\$)	Value as per actual Invoice (CIF in US\$)
1	2253953	06-01-2021	ZKS2020112808	28-11-2020	19,486.20	50,217.00
2	2305780	11-01-2021	EC2009151N	16-11-2020	24,969.10	27,300.00
3	2467803	22-01-2021	2012255	31-12-2020	18,083.06	28,559.27

4	2832541	19-02-2021	PI2101211	21-01-2021	20,360.00	27,301.09
5	2914514	25-02-2021	ZKS2020120809	08-12-2020	16,563.25	49,679.00
6	3295472	25-03-2021	ZKS20210223	23-02-2021	25,340.24	54,398.00
7	3625127	19-04-2021	ZKS2021031006	10-03-2021	28,993.00	56,706.00
8	3729478	27-04-2021	2103223	09-04-2021	21,956.97	33,690.17
9	4068818	25-05-2021	EC2103161N	13-04-2021	18,540.00	37,000.00
10	8043039	30-06-2020	ZKS2020031093	19-03-2020	11,528.00	57,032.00
11	9007286	30-09-2020	2007312	28-08-2020	10,708.37	15,774.28
12	7715626	21-05-2020	ZKS2020022801	28-02-2020	15,740.50	64,688.00
13	8068619	03-07-2020	2003102	01-03-2020	14,919.52	26,435.01
14	6427721	10-01-2020	1909195	05-12-2019	9,257.36	23,593.80
15	9608779	18-11-2020	ZKS2020090203	02-09-2020	18,386.20	52,872.00
16	9705389	25-11-2020	ZKS2020092906	29-09-2020	18,673.00	63,788.00
17	9788025	02-12-2020	201105	06-11-2020	18,600.00	35,475.28
18	2530883	22-03-2019	ZDS20190302	02-03-2019	13,284.00	27,896.00
19	5397682	22-10-2019	ZKS2019051203	01-10-2019	13,585.00	27,322.00
20	4648843	26-08-2019	1905171	31-07-2019	14,433.47	29,146.65
21	3144506	08-05-2019	1901088	25-01-2019	17,459.28	22,871.07
22	9489866	01-01-2019	1808115	29-08-2018	11,074.22	28,542.31
23	4822567	09-09-2019	ZKS2019071102	14-08-2019	13,402.50	27,900.00

24	3547353	06-06-2019	ZKS2019032602	18-05-2019	14,065.00	30,780.00
25	5041975	25-09-2019	ZKS2019080102	02-09-2019	14,714.00	32,782.40
26	6290984	30-12-2019	ZKS2019110703	07-12-2019	14,590.00	39,852.00
27	4820333	16-01-2018	21172-YEL-2017	26-12-2017	45,383.40	56,375.30
28	4820336	16-01-2018	21174-YEL-2017	26-12-2017	45,676.19	50,975.15
29	5582472	14-03-2018	21180-YEL-2018	30-01-2018	8,415.69	24,658.99
30	5626124	17-03-2018	21182-YEL-2018	05-02-2018	11,418.37	28,733.52
31	6336134	11-05-2018	21187-YEL-2018	04-04-2018	20,146.89	39,100.90
32	6576570	29-05-2018	21192-YEL-2018	26-04-2018	21,206.76	37,269.84
33	6582886	29-05-2018	21191-YEL-2018	26-04-2018	22,819.02	39,803.00
34	7135284	09-07-2018	21202-YEL-2018	13-06-2018	16,855.02	37,933.00
35	7552429	08-08-2018	21212-YUSH-2018	13-07-2018	14,905.04	34,174.55
36	7811476	28-08-2018	21216-2018	03-08-2018	16,145.36	36,633.80
37	8614360	26-10-2018	21227-YUSH-2018	26-09-2018	16,725.83	38,409.70
38	6397469	16-05-2018	ZDS20180403	04-03-2018	17,360.00	28,201.00
39	3204171	13-05-2019	21251-YUSH-2019	12-04-2019	12,653.00	23,617.00
40	5843740	27-11-2019	EC190815IN	08-11-2019	10,250.00	38,040.00

16.5. The invoices recovered during the search of the importer's premises and from the electronic devices indicated the value in Chinese Yuan or RMB, while the invoices submitted during the course of the investigation by Shri Kanji Gokar Gami vide letters dated 20.08.2021 and 08.09.2021, indicated the value of the goods in US Dollars. Comparison of the recovered and the submitted invoices indicated that though the currencies in the invoices were different, the value/rate of the goods were at parity and higher than the values declared by the importer at the time of the clearance of the goods.

16.6. The full value proforma invoice relating to the consignment imported vide B/E No. 4763903 dated 22.07.2021, was submitted by Shri Kanji Gokar Gami during his statement dated 20.08.2021. The comparison of the said invoice with the invoice submitted at the time of filing of the said B/E clearly indicated that the declared value was lower than the value specified in the full value invoice. Snapshot of the two invoices is produced below for ease of reference.

Actual invoice

Declared invoice

YIWU RIGHTWAY IMPORT & EXPORT CO.,LTD

ROOM 101 ON SECOND FLOOR, 1012 CHEN WANGJIANG ROAD YONGKANG INDUSTRIAL DISTRICT HANGZHOU DISTRICT ZHEJIANG PROVINCE, CHINA

TEL: 86-571-82331121 FAX: 86-571-82331120

COMMERCIAL INVOICE

GAMI ENTERPRISES
GROUND FLOOR 203 BAZAR GATE PERIN
NARIVAN STREET, FORT MUMBAI
MAHARASHTRA 400001

INVOICE No.

DATE

TERMS

2000010011

10/05/01

CFR

FROM	INCOTERMS	TO	QUANTITY	UNIT	UNIT PRICE	AMOUNT
0001	LAMINATOR	812	PCS	205.00	\$16,805.00	
0002	LAMINATOR	664	PCS	\$21.00	\$13,944.00	
0003	LAMINATOR	488	PCS	\$23.00	\$11,284.00	
0004	GLASS CUTTER	55	PCS	\$40.00	\$2,200.00	
0005	PAPER CUTTER 40	880	PCS	\$4.20	\$3,704.00	
0006	DIE CUTTER	176	PCS	\$14.70	\$2,587.20	
0007	DIE CUTTER	155	PCS	\$19.20	\$2,976.00	
0008	DRAGON SHEETS	170	BOYS	\$25.00	\$4,250.00	
						\$49,766.20

SHANGHAI BANK OF CHINA YIWU BRANCH
CREDIT CODE: 3443000101
BENEFICIARY NAME: YONG RIGHTWAY IMPORT & EXPORT CO.,LTD
A/C NO.: 3121000276
ADD: No.1012 CHEN WANGJIANG ROAD YIWU ZHEJIANG CHINA

义乌市正通进出口有限公司
YIWU ZHENG TONG IMPORT & EXPORT CO., LTD

Seventy
thousand
four hundred

YIWU RIGHTWAY IMPORT & EXPORT CO., LTD.

ROOM 101 ON SECOND FLOOR, 1012 CHEN WANGJIANG ROAD YONGKANG INDUSTRIAL DISTRICT HANGZHOU DISTRICT ZHEJIANG PROVINCE, CHINA

CITY ZHEJIANG PROVINCE CHINA

COMMERCIAL INVOICE

GAMI ENTERPRISES
GROUND FLOOR 203 BAZAR GATE,
PERIN NARIVAN STREET,
FORT MUMBAI MAHARASHTRA 400001

INVOICE No.

Date:

Payment Terms:

Terms & Conditions:

2000010011

10-05-2001

100% ADVANCE

CFR Mumbai

FROM: HONGKONG, CHINA

TO: MUMBAI, INDIA

NO.	ITEM NAME	QTY	UNIT	UNIT PRICE	AMOUNT
1	LAMINATOR MACHINE 800	812	PCS	205.00	168,050.00
2	LAMINATOR MACHINE 600X800 10	664	PCS	21.00	13,944.00
3	LAMINATOR MACHINE 800	488	PCS	23.00	11,284.00
4	PAPER CUTTER 400X (SHAWAL)	880	PCS	4.20	3,704.00
5	PAPER CUTTER 300X (SHAWAL)	40	PCS	1.00	40.00
6	DIE CUTTER 800	176	PCS	14.70	2,587.20
7	DIE CUTTER 800	155	PCS	19.20	2,976.00
8	PVC LAMINATE SHEETS 1000X2000MM (SPECIALTY 80)	170	BOYS	25.00	4,250.00
TOTAL:					208,235.20

Total Price USD - Twenty Five Thousand Six Hundred Thirty Five and Seventy Cents only
Total Gross = USD
Country of Origin = China

义乌市正通进出口有限公司
YIWU ZHENG TONG IMPORT & EXPORT CO., LTD

邵阳

11. 10. 01

12. 11. 01
4-8-2

16.7. Comparison of the unit price mentioned in the (a) invoices submitted to the Customs for the imports prior to initiation of the case (b) commercial invoices submitted by Shri Kanji Gokar Gami vide letter dated 20.08.2021 and (c) commercial invoices for bills of entry Nos. 4985052 dated 09.08.2021 and 5133682 dated 21.08.2021, i.e. the consignments imported subsequent to the initiation of the case, indicated the value of the goods as under –

TABLE -5

Sr. No.	Item description	Value declared to the Customs prior to initiation of the case (a)		Value of the goods as per proforma invoices submitted by Shri Kanji Gokar Gami vide letter dated 20.08.2021 (b)		Value of the goods in the invoices / Bills of Entry filed after initiation of the case (c)	
		Invoice No. & Date	Unit Price (\$)	Invoice No. & Date	Unit Price (\$)	Invoice No. & Date	Unit Price (\$)
1	8251 Die Cutter	ZKS2021051011 dtd. 10.05.2021	4.15	ZKS20210223 dtd. 23.02.2021	14	ZKS2021062511 dtd. 25.06.2021	14.75
2	8252 Die Cutter	ZKS2021051011 dtd. 10.05.2021	4.95	ZKS2020090203 dtd. 02.09.2020	19	ZKS2021062511 dated 25.06.2021	19.5
3	8298 A3 Ream Cutter	ZKS2021031006 dtd. 10.03.2021	29.67	ZKS2021031006 dtd. 10.03.2021	68	ZKS2021062511 dated 25.06.2021	69
4	Toner Cartridge TK 1114	2003102 dtd. 01.03.2020	0.46	2003102 dtd. 01.03.2020	0.6	2106241 dated 08.07.2021	0.7

16.8. From the above, it is apparent that the unit price mentioned in the proforma invoices submitted by Shri Kanji Gokar Gami vide letter dated 20.08.2021 was similar to the unit price of goods imported subsequent to the investigation of the case vide bills of entry Nos. 4985052 dated 09.08.2021 and 5133682 dated 21.08.2021. The unit price of the goods in the submitted invoices and the above two consignments was also at parity with the price mentioned in the invoices recovered from the premises of the importer and from the electronic devices. The similarity in the price confirms the genuineness of the invoices submitted by the importer during the course of the investigation. It is also apparent that the declared unit price of the same goods imported prior to the initiation of the case is much lower than the price appearing in the invoices submitted by Shri Kanji Gokar Gami during the course of the investigation. It also appears that in the case of imports prior to the investigation and the goods imported vide B/E No. 4763903 dated 22.07.2021, the

importer had mis-declared the value of the goods with the intention to evade the payment of the applicable Customs duty.

16.9. The scrutiny of the full value proforma invoices/sales contracts submitted by Shri Kanji Gokar Gami during investigation vide letter dated 20.10.2021 pertaining to the imports made in the name of M/s. Alpa Print World also indicated that a lower value had been declared to the Customs at the time of the clearance of the goods. The comparison of the documents vis-à-vis the import data in relation to the 17 past consignments imported by M/s. Alpa Print World, indicate the declared and the actual CIF value of the goods as under

TABLE -6

Sr. No	B/E No.	B/E Date	Declared Value (In \$)	Corresponding actual value Invoice No. and date (as proforma invoice)	Actual Value (In \$)
1	2138750	12/28/2020	21,674.00	KT20201107 dated 15-11-2020	38,000.00
2	6880395	2/14/2020	10,082.68	GAM190001R0 dated 10-01-2020	27,797.00
3	8089056	7/6/2020	15,000.80	EC200210IN dated 04-06-2020	26,240.00
4	8089064	7/6/2020	14,838.40	KT20200510 dated 14-01-2020	37,560.00
5	9543205	11/12/2020	23,653.00	KT20200915 dated 18-09-2020	38,940.00
6	2753966	4/8/2019	9,354.97	SZR10012019 dated 02-03-2019	20,264.00
7	4670682	8/28/2019	14,500.70	KT20190709 dated 20-07-2019	34,654.00
8	5866667	11/28/2019	49,61.14	XC20190822-1S dated 20-09-2019	6,573.00
9	2812895	4/12/2019	13,216.00	KT20190221 dated 15-02-2019	37,500.00
10	4640285	1/1/2018	13,133.96	21170-YEL-2017 dated 06-12-2017	28,432.00
11	7490464	8/3/2018	39,913.00	21206-2018 dated 29-07-2018	12,280.00
12	8193808	9/25/2018	13,050.00	ZKS2018050702 dated 04-09-2018	27,550.00
13	3211959	9/12/2017	15,952.28	21152-YEL-2017 dated 12-04-2017	20,502.00

14	3612715	10/13/2017	10,233.00	ZDS20170721 dated 21-07-2017	27,246.00
15	3738975	10/24/2017	14,785.40	21157-YEL-2017 dated 26-09-2017	30,884.00
16	4362030	12/12/2017	12,756.25	ZDS20170908 dated 01-10-2019	28,463.00
17	4457193	12/18/2017	11,241.26	21168-YEL-2017 dated 21-11-2017	25,335.00

16.10. Shri Kanji Gokar Gami, in his statements dated 29.07.2021, 20.08.2021 and 22.10.2021 has, inter-alia, admitted that the actual invoices sent to him by the Chinese Suppliers in relation to the goods imported by M/s. Gami Enterprises and M/s. Alpa Print World, had been manipulated by him to show lower value of the goods and that such manipulated invoices had been submitted to the Customs for the clearance of the goods.

17. From the above it is apparent that the invoices recovered during the search of the importers premises and retrieved from the electronic devices indicated that the actual invoices had been suppressed and manipulated invoices showing a lower value of the goods had been submitted during the import of the goods. In his statements given under the provisions of Section 108 of the Customs Act, 1962, Shri Kanji Gokar Gami had admitted of having manipulated the original invoices to show the goods to be of a lower value. During the course of the investigation Shri Kanji Gokar Gami had submitted invoices which indicated the actual value of the goods. The value of the goods in the invoices submitted during the course of the investigation also appeared to be at par with that of the invoices recovered/retrieved from the importers premises and the electronic devices. It therefore appears that Shri Kanji Gokar Gami had deliberately manipulated the actual invoices and mis-declared the value of the goods to evade the payment of the applicable duty.

18. VALUATION:

18.1. It was apparent that the value declared for the consignments imported prior to the initiation of the investigation and vide Bill of Entry No. 4763903 dated 22.07.2021 was based on manipulated invoices and, thereby, not the correct value of the goods. The manipulated invoices submitted at the time of the import of the goods appear to be incorrect documents in terms of Rule 11 of the **Customs Valuation (Determination of the Value of Imported Goods) Rules 2007⁹**. One of the reasons for rejection of declared value as per Rule 12 of CVR, 2007 is submission of fraudulent or incorrect documents. Hence, the said declared value is liable to be rejected under Rule 12 of CVR, 2007.

⁹ Also referred to as CVR 2007

18.2. Rule 12 of CVR, 2007 contemplates that where the Department has a 'reason to doubt' the truth or accuracy of the declared value, it may ask the importer to provide further explanation to the effect that the declared value represents the total amount actually paid or payable for the imported goods. Rule 12 of CVR, 2007 applies where the Proper Officer has reason to doubt the truth or accuracy of the value declared for the imported goods. The proper officer must ask and call upon the importer to furnish further information including documents to justify the declared transaction value. The Proper Officer may thereafter accept the transaction value as declared.

18.3. During the course of investigation, it was found that the actual transaction value of the said goods imported by M/s. Gami Enterprises and M/s. Alpa Print World, in terms of the provisions of Section 14(1) of the Customs Act, 1962 read with provisions of Rule 3(1) of the CVR, 2007 are the values depicted in the invoices recovered during the search, the invoices retrieved from the data contained in the electronic devices and the invoices submitted by the importers during the course of the investigation. Further, in his statements recorded under the provisions of section 108 of the Customs Act, 1962, Shri Kanji Gokar Gami has also admitted that the value of the imports had been mis-declared and that the actual transaction value of the goods imported by M/s. Gami Enterprises and M/s. Alpa Print World is as per the invoices submitted during the course of the investigation. In this case there is no further doubt that the invoices recovered or submitted by the importer during the investigation are the actual invoices and the values indicated therein are the actual transaction values. Hence, the values depicted in the actual invoices/proforma invoices are liable to be accepted as the actual transaction value in terms of the provisions of Section 14(1) of the Customs Act, 1962 read with provisions of Rule 3(1) of the CVR, 2007.

19. SUMMARY OF INVESTIGATION:

19.1. From scrutiny of the documents recovered during the course of the investigation and the statements recorded under the provisions of the Customs Act, 1962 it appears that M/s. Gami Enterprises & M/s. Alpa Print World procured Toner Cartridge, Inks, Laminators, Paper, Die Cutters, Printer and peripherals, etc. from Chinese suppliers and, in order to evade the payment of the applicable duty on the said goods, Shri Kanji Gokar Gami, Proprietor of M/s. Gami Enterprises and the actual person controlling the operations of M/s. Alpa Print World submitted manipulated invoices to Customs which indicated the value of the goods to be lower than the price specified in the actual invoices.

19.2. In most of the cases the actual invoices raised by the Chinese suppliers namely, M/s. Far Industries Co. Ltd., M/s. Yiwu Rightway Import and Export Co. Ltd. and M/s. Euccei Technology Co. Ltd., and the invoices submitted by Shri Kanji Gokar Gami at the

time of clearance of the goods mentioned identical invoice numbers, item description and quantity of the goods and it was the value/price of the goods which differed.

19.3. The search of the importer's premises led to the recovery of invoices issued by suppliers from China which indicated the value of the goods in Chinese Yuan or RMB and higher than the price declared to the Customs at the time of import. The examination of the data extracted from the electronic devices taken over from the premises of the importer also indicated the presence of invoices which depicted the price of the goods in Chinese Yuan or RMB. In his statement recorded on 29.07.2021, Shri Kanji Gokar Gami had admitted that the actual unit price of the goods was mentioned in Chinese Yuan or RMB in the proforma invoices. Though the actual value invoices submitted by Shri Kanji Gokar Gami during the course of the investigation indicated the value/unit price in US Dollars, it was apparent that the same were at parity with the values/unit price indicated in the invoices recovered from the search and the electronic devices. From the documents recovered during the course of the investigation it was apparent that the value of the goods had been manipulated and mis-declared by Shri Kanji Gokar Gami in order to evade the payment of the liable duty.

19.4. Accordingly, duty has to be calculated on the basis of the actual transaction value based on the invoices retrieved during search, retrieved from forensic of electronic devices taken over during the search and on basis of invoices submitted by the importer during the course of investigation.

20. LIABILITY IN TERMS OF THE PROVISIONS OF THE CUSTOMS ACT, 1962 (Section 111, and penalty under 112 & 114AA of the Customs Act, 1962):

20.1 Shri Kanji Gokar Gami, Proprietor of M/s. Gami Enterprises played a key role in putting the modus operandi in place. He was managing the day-to-day affairs of M/s. Gami Enterprises as well as of M/s. Alpa Print World. He was responsible for placing orders on the overseas suppliers and the import and clearance of the goods. He was instrumental in the evasion of duty by suppressing/deliberately mis-stating the actual value of the goods. The actual value invoices issued by the suppliers in China were being received by him on his 'WeChat' Application.

20.2. In his statements dated 29.07.2021, 20.08.2021 and 22.10.2021, Shri Kanji Gokar Gami has admitted that the goods imported by M/s. Gami Enterprises and M/s. Alpa Print World from the Chinese suppliers during 2017 to 2021 (as detailed in Annexure 'A', 'B', 'C' and 'D' to the SCN dated 09.09.2022) had been under-valued by almost 40% to 50% of the actual value. During the statement, he had submitted invoices issued by the Chinese exporters and copies of the fabricated invoices used for the clearance of the goods. He also admitted in his statements that the differential value between these two invoices was paid

in cash to the Indian agent of the aforesaid suppliers. It is apparent that Shri Kanji Gokar Gami had willfully and knowingly submitted false/incorrect/fabricated invoices to Customs and made false/incorrect submissions to evade payment of legitimate Customs duty.

20.3. The value of the goods had been mis-declared, and the goods imported by M/s. Gami Enterprises and M/s. Alpa Print World did not appear to correspond in respect of value with the declaration made in the bills of entry filed by the said importers. The act of deliberate mis-declaration on the part of Shri Kanji Gokar Gami by manipulating the values in the invoices issued by the suppliers appears to have rendered the said goods imported by M/s. Gami Enterprises and M/s. Alpa Print World liable to confiscation under Section 111(m) of the Customs Act, 1962.

20.4. Shri Kanji Gokar Gami was instrumental in deliberately mis-stating the value of the goods imported by M/s. Gami Enterprises. Consequently, in relation to the said goods imported by M/s. Gami Enterprises, Shri Kanji Gokar Gami appears to have rendered himself liable to penalty under Section 112 (a) and 112 (b) of the Customs Act, 1962.

20.5. In relation to the goods imported in the name of M/s. Alpa Print World, Proprietor Mrs. Diwaliben Gami, had permitted Shri Kanji Gami to manage the day-to-day affairs of the firm. As in the case of the imports made by M/s. Gami Enterprises, the value of the goods imported in the name of M/s. Alpa Print World had also been manipulated and mis-declared by Shri Kanji Gokar Gami. Consequently, in relation to the said goods imported by M/s. Alpa Print World, Shri Kanji Gokar Gami also appears to have rendered himself liable to penalty in terms of Section 112 (a) and 112 (b) of the Customs Act, 1962.

20.6. Further, in terms of Section 46(4) of the Customs Act, 1962, it is mandatory for the importer to make and subscribe to a declaration as to the truth of the contents of the bill of entry being presented. Further, in terms of Section 17 of the Customs Act, 1962, it is mandatory for the importer to correctly self-assess the duty. Accordingly, it was obligatory on the part of M/s. Gami Enterprises and M/s. Alpa Print World to have correctly declared the value of the goods at the time of import. However, it appears that M/s. Alpa Print World had failed to ensure that the correct value of the goods had been declared and this omission on the part of the importer also appears to have rendered the goods liable to confiscation. Consequently, Gami Enterprises and Alpa Print World also appears liable to penalty in terms of Section 112 (a) and 112 (b) of the Customs Act, 1962.

20.7. Further, Shri Kanji Gokar Gami in relation to the goods imported in the name of M/s. Gami Enterprises as well as M/s. Alpa Print World (as detailed in Annexures 'A' and 'B' to the SCN dated 09.09.2022) always knew that the documents and the declarations submitted under the respective bills of entry were false or incorrect in their material particulars. In spite of the above Shri Kanji Gokar Gami had knowingly made false or

incorrect declarations in relation to the consignments imported vide the said bills of entry. Consequently, Shri Kanji Gokar Gami appears to have also rendered himself liable to penalty under Section 114AA of the Customs Act, 1962.

20.8. Section 28 of the Customs Act, 1962 – In this case, it appears that the short levy of Customs duty on the goods imported by M/s. Gami Enterprises and M/s. Alpa Print World, was on account of the manipulation of value in the import invoices. Section 28 (4) of the Customs Act, 1962 provides that where an importer has by reasons of collusion, willful misstatement or suppression of facts, had not paid any duty which has not been levied or has been short levied, then the demand could be issued within five years from the relevant date. Since, the short levy was due to willful misstatement and suppression of facts in relation to the actual value of the goods, the duty short levied is liable to be demanded in terms of the provisions of Section 28(4) of the Customs Act, 1962, along with the interest in terms of Section 28AA, *ibid*. Consequently, the said importers also appear liable for imposition of penalty in terms of Section 114A of the Customs Act, 1962.

21. DUTY LIABILITY:

21.1. From the documents recovered during the course of the investigation, it is apparent that the goods had been imported by M/s. Gami Enterprises and M/s. Alpa Print World at the Mumbai Port and JNCH, Nhava Sheva. The details of the goods seized during the course of the investigation and the past imports of the said importers are mentioned in Annexure 'A', 'B', 'C' and 'D' to the SCN dated 09.09.2022 and the gist thereof is as under:-

TABLE -7

Goods imported by Gami Enterprises:

	Imported at	Annx.	Value declared (INR)	Actual value (INR)	Duty paid (INR)	Duty Liable to be paid (INR)	Difference in Duty (INR)
Previous imports (excluding the seized goods)	Mumbai NCH	A	3,79,74,206	8,50,23,557	95,08,330	2,18,32,608	1,23,24,278
	JNCH	A	69,30,484	1,63,57,681	18,00,514	43,99,804	25,99,290
Total			4,49,04,690	10,13,81,238	1,13,08,844	2,62,32,412	1,49,23,568

Goods seized that were imported vide Bill of Entry No. 4763903 dated 22.07.2021	JNCH	C	19,32,856	64,48,811	5,41,308	18,03,221	12,61,914
Goods seized at Fort warehouse and Bhiwandi warehouse	JNCH	D	1,67,21,202	2,20,07,569	49,32,580	62,96,086	13,63,506
Total			1,86,54,058	2,84,56,380	54,73,888	80,99,307	26,25,420
Grand Total			6,35,58,748	12,98,37,618	1,67,82,732	3,43,31,719	1,75,48,988

Table -8

Goods imported by Alpa Print World:

	Imported at	Annx	Value declared (INR)	Actual value (INR)	Duty paid (INR)	Duty Liabile to be paid (INR)	Difference in Duty (INR)
Previous imports (excluding the seized goods)	Mumbai NCH	B	1,44,78,555	3,20,47,341	34,35,860	75,69,115	41,33,255
	JNCH	B	11,93,540	21,16,360	2,14,837	3,80,945	1,66,108
Total			1,56,72,094	3,41,63,701	36,50,697	79,50,060	42,99,363

22. Amendments have been made in the Customs Act, 1962 vide Sections 86, 87, 88 and 94 of the Finance Act, 2022 (enacted on 30.03.2022) and Notifications have been issued thereunder with reference to appointment of officers of Customs and assignment of

functions of the Proper Officer. A new Section 110AA relating to action subsequent to inquiry, investigation or audit has also been inserted, which is reproduced below:

Section 110AA. Action subsequent to inquiry, investigation or audit or any other specified purpose.-

Where in pursuance of any proceeding, in accordance with Chapter XIIA or this Chapter, if an officer of customs has reasons to believe that—

(a) any duty has been short-levied, not levied, short-paid or not paid in a case where assessment has already been made;

(b) any duty has been erroneously refunded;

(c) any drawback has been erroneously allowed; or

(d) any interest has been short-levied, not levied, short-paid or not paid, or erroneously refunded, then such officer of customs shall, after causing inquiry, investigation, or as the case may be, audit, transfer the relevant documents, along with a report in writing —

(i) to the proper officer having jurisdiction, as assigned under section 5 in respect of assessment of such duty, or to the officer who allowed such refund or drawback; or

(ii) in case of multiple jurisdictions, to an officer of customs to whom such matter is assigned by the Board, in exercise of the powers conferred under section 5, and thereupon, power exercisable under sections 28, 28AAA or Chapter X, shall be exercised by such proper officer or by an officer to whom the proper officer is subordinate in accordance with sub-section (2) of section 5.

23. Further, vide Notification No. 28/2022-Customs (N.T.) dated 31.03.2022 Board has appointed Proper Officers for the purpose of exercise of powers under sections 28, section 28AAA or Chapter X of the Customs Act, 1962 in a case of multiple jurisdictions as referred in Section 110AA, and have invested them with jurisdiction over the whole of India with all the powers under the said Act.

24. In the present case, investigation has been conducted by DRI, MZU and after completion of investigation this Investigation Report dated 06.09.2022 was issued under Section 110AA of the Customs Act, 1962, whereby, the above stated facts has been summarized.

25. On the basis of the Investigation Report, a SCN No. 08/2022-23 dated 09.09.2022 was issued by the Commissioner of Customs, New Custom House, Mumbai to M/s. Gami

Enterprises and its Proprietor Shri Kanji Gokar Gami, whereby they were called upon to show cause within 30 days of receipt of the SCN, to the Commissioner of Customs (Import-I), New Custom House, Mumbai, as to why:

- (i) The invoices submitted for the clearance of the goods, as mentioned in Annexure 'A' to the SCN dated 09.09.2022, are liable to be considered as incorrect in terms of Rule 11 of the CVR, 2007, and the values in the corresponding invoices, submitted during the course of the investigation as the correct invoices, should not be considered as the Transaction Value of the goods in terms of section 14 of the Customs Act, 1962 and Rule 3 of the CVR, 2007.
- (ii) The assessable value of the goods as mentioned in Annexure 'A' to the SCN dated 09.09.2022 as Rs 4,49,04,690/-, should not be re-determined as Rs 10,13,81,238/- and the duty of Rs 1,13,08,844/- assessed for the said goods is liable to be reassessed as Rs. 2,62,32,412/-; the differential duty of Rs 1,49,23,568/- should not be demanded under the provisions of Section 28 (4) of the Customs Act, 1962 along with the interest liable in terms of Section 28AA, and penalty should not be imposed on the importer in terms of Section 114A or Section 112(a) of the Customs Act, 1962.
- (iii) The goods, as mentioned in Annexure 'A' to the SCN dated 09.09.2022, having re-assessable of Rs. 10,13,81,328/- should not be confiscated under the provisions of Section 111 (m) of the Customs Act, 1962 however the goods are not present physically.
- (iv) In case of the seized goods that were imported vide B/E No. 4763903 dated 22.07.2021, as mentioned in Annexure 'C' to the SCN dated 09.09.2022, the declared Assessable Value of goods i.e. Rs. 19,32,856/- is liable to be re-determined as Rs. 64,48,811/- and the goods should not be confiscated under the provisions of Section 111(m) of the Customs Act, 1962.
- (v) the differential duty of Rs. 12,61,914/- emerged after assessment is liable to be demanded. The amount of Rs. 12,61,914/- paid as the differential duty towards the said goods along with the bond of Rs 3,25,00,000/- and revenue deposit of Rs 15,00,000/- submitted in relation to the provisional release of the goods is liable to be enforced for the recovery of fine, differential duty and interest and penalty should not be imposed on Shri Kanji Gokar Gami under Section 112(a) or Section 114A of the Customs Act, 1962;
- (vi) Redemption fine should not be imposed on the importer under Section 125 (1) of the Customs Act, 1962 in respect of the goods imported vide B/E No. 4763903 dated 22.07.2021; any duty and charges payable in respect of such goods on the enhanced value as per Section 125(2) of the Customs Act, 1962 should not be demanded.

(vii) In case of goods seized at Fort warehouse and Bhiwandi warehouse, as mentioned in Annexure 'D' to the SCN dated 09.09.2022, declared assessable value of goods i.e. Rs 1,67,21,202/- should not be re-determined as Rs. 2,20,07,569/- and the goods should not be confiscated under the provisions of Section 111 (m) of the Customs Act, 1962 and the differential duty of Rs. 13,63,506/- payable in relation to the goods should not be demanded. The amount of Rs. 13,63,506/- paid as the differential duty towards the said goods in relation to the provisional release of the goods should not be appropriated towards differential duty and penalty should not be imposed on the importer in terms of Section 112 (a) or Section 114A of the Customs Act, 1962;

(viii) Redemption fine should not be imposed on the importer under Section 125 (1) of the Customs Act, 1962 in respect of the seized goods; any duty and charges payable in respect of such goods on the enhanced value as per Section 125 (2) of the Customs Act, 1962 should not be demanded.

(ix) Penalty should not be imposed on Shri Kanji Gokar Gami in terms of Section 114AA of the Customs Act, 1962.

(x) The amount of Rs 1,50,00,000/- as mentioned in Table-3, deposited by the importer during the course of the investigation should not be appropriated against the fine, differential duty, interest and penalty liable to be paid by the importer post adjudication of the case.

25.1. Vide said SCN, M/s. Alpa Print World, its Proprietor, Smt. Diwaliben Gami and Shri Kanji Gokar Game were also called upon to show cause within 30 days of receipt of the SCN to the Commissioner of Customs (Import-I), New Custom House, Mumbai, as to why:

(i) The invoices submitted for the clearance of the goods, as mentioned in Annexure 'B' to the SCN dated 09.09.2022, should not be considered as incorrect in terms of Rule 11 of the CVR, 2007, and the values in the corresponding invoices, submitted during the course of the investigation as the correct invoices, should not be considered as the Transaction Value of the goods in terms of Section 14 of the Customs Act, 1962 and Rule 3 of the CVR, 2007.

(ii) The Assessable Value of the goods as mentioned in Annexure 'B' to the SCN dated 09.09.2022, as Rs. 1,56,72,094/- should not be re-determined as Rs. 3,41,63,701/- and the duty of Rs. 36,50,697/- assessed for the said goods should not be reassessed as Rs. 79,50,060/-; the differential duty of Rs. 42,99,363/- should not be demanded under the provisions of Section 28 (4) of the Customs Act, 1962 along with the interest liable in terms of Section 28AA, and penalty should not be imposed on the importer in terms of Section 114A or Section 112 (a) of the Customs Act, 1962.

- (iii) The goods, as mentioned in Annexure 'B' to the SCN dated 09.09.2022, having re-determined value of Rs 3,41,63,701/- should not be confiscated under the provisions of Section 111 (m) of the Customs Act 1962, however the goods are not present physically.
- (iv) Penalty should not to be imposed on Shri Kanji Gokar Gami having looked after all the business activities of M/s. Alpa Print World, in terms of Section 114AA of the Customs Act 1962.
- (v) Penalty should not to be imposed on Smt. Diwaliben Gami, Proprietor of M/s. Alpa Print World in terms of Section 114AA of the Customs Act 1962.
- (vi) The amount of Rs. 25,00,000/- as mentioned in Table-3, deposited by the importer during the course of the investigation should not be appropriated against the fine, differential duty, interest and penalty liable to be paid by the importer post adjudication of the case.

WRITTEN SUBMISSIONS AND RECORD OF PERSONAL HEARING

26. M/s. Gami Enterprises vide letter dated 28.11.2022 submitted a written reply to the SCN on behalf of Noticees-1 & 3. A Personal Hearing was granted to all the Noticees to appear on 09.02.2023. The said PH was attended by Ms. Pallavi Singhal, Advocate on behalf of all the four Noticees. During the PH, Ms Pallavi Singhal, Advocate reiterated the points of their written final reply to SCN.

Summary of submissions of Noticees-1 to 4

26.1 Noticees submitted their submissions on the following points:-

26.1.1 Valuation :-

(a). The noticees submitted that there is no mis-declaration of value or any other particulars in the bills of entry or any of the import documents. The invoice value reflects the true transaction value as per Section 14 of the Customs Act, 1962 and CVR, 2007. There was no manipulation of any of the invoices and hence the demand is not sustainable. proforma invoice is a quote in an invoice format that may be required by the buyer to apply for an import license, contract for pre-shipment inspection, open a letter of credit or arrange for transfer of hard currency (source: US Customs vide <https://www.trade.gov/pre-form-invoice>). The entire investigation and SCN has proceeded as an erroneous premise that proforma invoice is the final invoice. This is not legally tenable. Commercial invoices submitted to Customs for clearance of the goods. This aspect and its veracity could have been easily verified by Customs investigation by seeking the export documents from China Customs. Instead of that, relying on proforma invoice is not legally proper and tenable. They submitted that it is settled law that proforma invoices

cannot be relied upon to determine the transaction value of imported goods. In the case of M/s. Eisha Overseas Vs. Commissioner of Customs, Chennai vide Appeal Order No. C/175/2007 dated 28.08.2017, Hon'ble CESTAT, Chennai has held that proforma invoice is not to be relied for commercial value/transaction value under the Customs Act, 1962 and Valuation Rules. In view of the settled position of law it is submitted that the proposed value enhancement in the SCN is not tenable as it does not stand the sorting of law.

(b). No efforts were apparently made by investigation to obtain the export invoices from the export country Customs Authorities. Hence, such a conclusion is not legal and proper and hence the SCN may kindly be dropped. Further, he (Shri Kanji Gokar Gami) was made to deposit towards the alleged differential duty amount without any authority of law and the same may be refunded.

(c). They submitted that the procedure envisaged under Rule 12 of the CVR, 2017 has not been followed. No reasonable opportunity of being heard has been provided to the importer before rejection of the value. This is in grave violation of the Principles of Natural Justice and hence the SCN is bad in law and may be dropped.

(d). They submitted that valuation of imported goods is required to be done in terms of Section 14 of the Customs Act, 1962 read with CVR, 2007 which provides that transaction value of the goods shall be the price actually paid or payable for the goods when sold for export to India where the buyer or the seller of goods are not related and the price is the sole consideration for the same subject to such other conditions as may be specified under the Rules made in this behalf. The Valuation Rules have been framed in exercise of powers conferred by Section 14 of the Customs Act. In normal course, the declared value, i.e. the price which is actually paid for importing the goods as reflected in the imported invoices has to be treated as the transaction value. This is a settled position of law as being held by Hon'ble Supreme Court in the case of CCE & ST., Noida V/s. Sanjivani Non-Ferrous Trading Pvt. Ltd. 2019 (365) E.L.T.3 (SC) held that the normal rule is that the Assessable Value has to be arrived at on the basis of price actually paid, as provided in Section 14 of the Customs Act, 1962, and that the declared price can only be rejected with cogent reasons. It is settled law that the declared transaction value cannot be rejected on the basis of purchase orders/sales contract/proforma invoices etc. The transaction value/declared price can be rejected only with the cogent reasons by undertaking the exercise as to on what basis the Assessing Authority could hold that the paid price was not the sole consideration of the transaction value and the burden casts upon the Department to prove the same in accordance with the directions given under CVR, 2007. The Proper Officer had neither called for any documents or other evidence in terms of Rule 12(1) nor did he intimate the importer in writing the ground for doubting the truth or accuracy of the value declared in the import invoices. The Proper Officer also failed to provide a reasonable opportunity of

being heard to the importer. In short, the Proper Officer failed to follow the statutory rules and procedures set forth in Rule 12 of CVR 2017. In the absence of any specific and separate notice for rejection of the transaction value under Rule 12 of CVR the SCN is void ab initio as there is gross violation of law and Principles of Natural Justice. The Explanation in Rule 12 of CVR, 2017 provides that 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 any of the six reasons contained therein. More specifically the explanation categorically states that once the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with Rules 4 to 9. The SCN does not propose to determine the value in terms of the sequential procedure envisaged in the CVR, 2007. No contemporary import prices of identical or similar goods were conserved. No market enquiry was conducted. Hence, it is submitted that the proposed determination of value in the SCN is not legally tenable. The Department has not adduced any proof to show any extra payment of the alleged undervaluation amount through unofficial channels. The amount declared in the Bs/E is the actual value which has been paid only through proper banking channels and so the transaction value cannot be rejected since there is no evidence of any higher amount being paid to the supplier. The Department has not shown evidence of any contemporaneous imports or NIDB data to show undervaluation and so the invoice value should have been accepted and the transaction value itself could not have been discarded, as has been held by the Hon'ble Supreme Court in the matters of:

- (i) Commissioner Central Excise and Service Tax, Noida V/s. Sanjivani Non-Ferrous Trading Pvt. Ltd. - (2019) 2 SCC 378 = 2019 (365) ELT 3(SC);
- (ii) Commissioner of Customs V/s. South India Television Pvt. Ltd. - (2007) 6 SCC 373 = 2007 (214) ELT 3 (SC)
- (iii) Commissioner of Customs, Vishakhapatnam V/s. Aggarwal Industries Ltd. - 2011 (272) ELT. 641
- (iv) Commissioner of Customs, Mumbai V/s. Mahalaxmi Gems - 2008 (231) ELT. 198
- (v) Commissioner of Customs, Mumbai V/s. J.D. Orgochem Ltd. - 2008 (226) ELT 9
- (e). They submitted that to the Hon'ble Tribunal, in the case of H.S. Chadha V/s. Commissioner of Customs (Preventive), New Delhi (2021 (378) EL.T. 193 (Tri-Del) held inter alia that:¹⁷ *We find that it is trite law that since the goods were assessed by proper officer based on transaction value, onus lies on the Revenue to prove undervaluation, which it has failed miserably to do so since it did not show any contemporaneous import data of identical or similar items or NIDB data to indicate undervaluation and therefore the invoice value is required to be accepted and the transaction value itself and hence could not have been discarded, as held by various*

judgments of the Hon'ble Supreme Court like CCE V/s. Sanjivani Non-Ferrous Trading Pvt. Ltd. - (2019) 2 SCC 378 and CC V/s. South Indio Television Ltd. (2007) 6 SCC 373 = 2007 (214) ELT.3 (S.C.). We find that there is no allegation or finding that the buyer and seller being related or of any extra payment to the supplier beyond the normal authorized banking channels and thus undervaluation is not established as held by this Tribunal in Kelvin Infotech Pvt. Ltd. (supra)". Also there is no mention regarding which rule of the CVR, 2007 has been applied to arrive at the re-determined value and there is also no sequential application of Rules. They find that it is trite law that there has to be sequential application of rules to re-determine the value as has been held by the Hon'ble Apex Court in Eicher Tractors Pvt. Ltd. V/s. Commissioner of Customs, Mumbai - 2000 (122) ELT. 321. Merely based on some Emails, the transaction value cannot be disputed and negated without any cogent material.

26.1.2. Statement made before DRI:

(a). They submitted that the statement of Shri Kanji Gokar Gori, Proprietor of Gami Enterprises, was recorded on 29.07.2021 under the provisions of Section 108 of the Customs Act, 1962. In the said statement it was deposed inter alia stated that the invoices were all proforma invoices only. The statement was dictated and he was persuaded to sign as if the invoices were subsequently manipulated by 50 to 60% lower value later. He has clearly stated in the statement that "many proforma invoices containing actual unit price of the goods had be withdrawn from his office under Panchanama dated 29.07.2021 and he had put his dated signatures on the said invoices (vide para 4(g) of the SCN). Further as per SCN Para 5 it is stated that scrutiny of the working copy of the data extracted from the said devices resulted in the recovery of invoices received by Shri Kanji Gokar Gami from the suppliers in China, which indicated the actual price of the goods to be higher than what had been declared at the time of import". It is submitted that what have been recovered by the investigation and relied upon are all only proforma invoices and not commercial invoices.

(b). Further, valuation cannot be determined by statements alone. There are many contradictions in the statements recorded at various times and the same cannot be considered as voluntary. The statements are tutored statements. The SCN has been issued in a mechanical manner without appreciating that the prices as reflected in the E-mails are only quotations and not the final price and thus cannot be relied for value enhancement of the goods, as been held by the Tribunal Delhi in Sai Impex V/s. Commissioner of Customs - 1992 (62) ELT.616 confirmed by the Hon'ble Supreme Court in 1996 (84) ELT. A47, and in Nava Durga Enterprises V/s. Commissioner of Customs (Sea Import) - 2013 (295) ELT. 227. It is also submitted that since the bills of entry had been assessed by the Proper

Officer based on transaction value as reflected in the import invoices, the onus is on the Department to prove undervaluation.

DISCUSSION AND FINDINGS

27. The present SCN dated 09.09.2022 was issued to the following 04 noticees:

Noticee-1: M/s Gami Enterprises,

Noticee-2: M/s Alpa Print World,

Noticee-3: Shri Kanji Gokar Gami, Proprietor, M/s Gami Enterprises,

Noticee-4: Smt. Diwaliben Gami, Proprietor, M/s Alpa Print World

28. I have carefully gone through the facts of the case, available records and submissions made by the noticees during the present adjudication proceedings. Ms. Pallavi Singhal, Advocate appeared for PH on behalf of all the Noticees and reiterated the points/ grounds of their final written reply dated 28.11.2022.

28.1 The duty demand in this case pertains to two ports: Mumbai Port and JNCH, Nhava Sheva Port. The bifurcation of duty demand between these two ports is shown in Table-7 & 8 above. The undersigned is the common adjudicating authority by virtue of Section 110AA of the Act read with Not. No. 28/2022-Customs (N.T.) dated 31.03.2022 as the higher amount of duty pertains to Mumbai Port.

28.2 I find that the following issues arise for determination in this adjudication:

- i) Whether statements made before DRI hold evidentiary value?
- ii) Whether the so called proforma invoices can be relied upon to determine the transaction value of the imported goods?
- iii) Whether the value of goods imported by M/s Gami Enterprises and M/s Alpa Print World is liable for Rejection under Rule 12 of CVR 2007 and the same can be Re-determined under Rule 3 of CVR 2007?
- iv) Whether the goods imported by M/s Gami Enterprises and M/s Alpa Print World are liable for Confiscation?
- v) Whether Noticee-1&2 are liable for penalty under Section 114A or 112(a) and Noticee-3 is liable for penalty under Section 114AA in respect of goods imported by Noticee-1&2 and Noticee-4 is liable for penalty under Section 114AA in respect of goods imported by Noticee-2?

Now let me take up the issues one by one.

29. Whether statements made before DRI hold evidentiary value?

29.1 Noticees have argued that valuation cannot be determined by statements alone.

29.2 I find that during the course of investigation, a voluntary statement of Shri Kanji Gokar Gami was recorded under Section 108 of the Act on 29.07.2021, wherein he admitted that he indulged in manipulating the import invoices and submitted the forged invoices with lower values to the Customs with an intent to evade customs duty. He also admitted that he was supposed to pay around 60% of the payment through banking channels and the rest was decided to be handed over to the representative of the foreign supplier in Indian Currency. He voluntarily agreed to pay the customs duty on re-determined value for the live as well as past imports effected through Mumbai Port and JNCH Port.

29.3 I find that on 22.10.2021, the statement of Shri Kanji Gokar Gami was recorded under Section 108 of the Act on behalf of Mrs. Diwaliben Kanji Gami (who authorized Shri Kanji Gami to give statement on her behalf) wherein he voluntarily admitted that the said proforma invoices were edited by him in his Laptop using M.S. Excel at their Fort office, to the tune of 40-50% lesser unit price than the actual unit price of the goods mentioned in the proforma invoice. The fabricated invoices were then sent to Customs for duty calculation and clearance; that all the actual value invoices (i.e. proforma invoices) raised by the overseas suppliers to Alpa Print World containing actual unit price of the goods, had been submitted vide their letter dated 20.10.2021. The said documents were authentic as they had been obtained from the overseas suppliers and had the same invoice number and date as the documents submitted to the Customs. He agreed to pay the entire differential duty along with interest on the consignments imported in the name of M/s. Alpa Print World.

29.4 I find that the statements of Shri Gami were recorded during the period July-October, 2021 and he had ample time to file a retraction against the said statements before higher authorities of DRI or before any Court of Law, which was never filed. So now after lapse of more than a year contending that his statement was recorded under force appears to be an afterthought and cannot be accepted at this juncture. There are a number of judicial pronouncements on the issue of acceptability of statements recorded under provisions of section 108 of the Act. In this regard, I rely upon following judgements:

i. The Hon'ble Supreme Court in the case of **Romesh Chandra Mehta**¹⁰ and in the case of **Percy Rustomji Basta**¹¹ has decided "that the provisions of Section 108 are judicial provisions within which a statement has been read, correctly recorded and has been made without force or coercion. The provisions of Section 108 also enjoin that the

¹⁰ Romesh Chandra Mehta vs the State of West Bengal (1969) 2 S.C.R. 461, A.I.R. 1970 S.C. 940
¹¹ Percy Rustomji Basta vs. the State of Maharashtra A.I.R. 1971 S.C. 1087

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".

ii. The Hon'ble Supreme Court in the case of **Badaku Jyoti Svant**¹² has decided 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".*

iii. Hon'ble Supreme Court regarding the evidentiary value of statements under Section 108 under the Act in the case of **Duncan Agro Industries Ltd**¹³ has decided that *"Section 108 of the Customs Act does not contemplate any magisterial intervention. The power under the said section is intended to be exercised by a gazetted officer of the Customs Department. Sub-section (3) enjoins on the person summoned by the officer to state the truth upon any subject respecting which he is examined. He is not excused from speaking the truth on the premise that such statement could be used against him. The said requirement is included in the provision for the purpose of enabling the gazetted officer to elicit the truth from the person interrogated. There is no involvement of the magistrate at that stage. The entire idea behind the provision is that the gazetted officer questioning the person must gather all the truth concerning the episode. If the statement so extracted is untrue its utility for the officer gets lost".*

iv. Hon'ble Punjab and Haryana High Court in the case of **Jagjit Singh**¹⁴ has decided that *"It is settled law that Customs Officers were not police officers and the statements recorded under Section 108 of the Customs Act were not hit by Section 25 of the Evidence Act. The statements under Section 108 of the Customs Act were admissible in evidence as has been held by the Hon'ble Supreme Court in the matter of Ram Singh¹⁵, in which it is held that recovery of opium was from accused by officers of Narcotic Bureau. Accused made confession before said officers. Officers of Central Bureau of Narcotics were not police officers within the meaning of Section 25 and 26 of the Evidence Act and hence, confessions made before them were admissible in evidence".*

29.5 In view of the foregoing discussion, I find that the statements given by the Noticee-3 under the provisions of Section 108 of the Act form a reliable evidence in the case supporting the charge of undervaluation.

30. Whether the so called proforma invoices can be relied upon to determine the transaction value of imported goods?

¹² Badaku Jyoti Svant Vs. State of Mysore [1966 AIR 1746 = 1978 (2) ELT J 323 (SC 5 member bench)

¹³ Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro Industries Ltd. [(2000) 7 SCC 53]

¹⁴ Jagjit Singh vs State Of Punjab And Another, CrI, Appeal No.S-2482-SB of 2009

¹⁵ Ram Singh vs. Central Bureau of Narcotics, 2011 (2) RCR (Criminal) 850

30.1 Noticees submitted that proforma invoice has been described on the internet as an invoice format that may be required by the buyer to apply for an import license, contract for pre-shipment inspection, open a letter of credit or arrange for transfer of hard currency (source: US Customs vide <https://www.trade.gov/pro-forma-invoice>). They have argued that the entire investigation and SCN has proceeded on an erroneous premise that proforma invoice is the final invoice. This is not legally tenable. They had submitted commercial invoices to Customs for clearance of the goods. This aspect and its veracity could have been easily verified by Customs investigation by seeking the export documents from China Customs. Instead of that, relying on proforma invoice is not legally proper and tenable. They relied on **M/s. Eisha Overseas**¹⁶ to argue that it is settled law that proforma invoices cannot be relied upon to determine the transaction value of imported goods.

30.2 I find that the Noticee-3 in his voluntary statement dated 29/30.07.2021 stated "*On being asked about the modus-operandi of undervaluation in the import of goods to evade customs duty and IGST, I state that proforma invoices are raised containing the actual value of the goods and shared by the chinese supplier to me. The said proforma invoices were edited by me in my laptop using M.S. Excel at our Fort office to the tune of 40-50% lesser unit price than the actual unit price of the goods as mentioned in the proforma invoices and fabricated invoices were prepared. In this regard, I state that mostly in proforma invoices, the actual unit price of the goods are mentioned in Chinese Yuan or in RMB. However, in the fabricated invoices, I use to change the Unit price of the goods in US\$. The said fabricated invoices with 40-50% lesser value were then sent to Customs for duty calculation and clearance.*" Further, noticee-3 in his voluntary statement dated 20.08.2021 stated "*the full value invoices are either in form of proforma invoice or in the form sales contract. So far, I have imported 40 import consignments from China in the name of my firm Gami Enterprises, which have already been cleared from customs. However, today, I am submitting copies of 37 consignments only out of 40 import consignments. In this regard, I would like to state that in practice I used to receive proforma invoices or sales contracts, wherein full unit price of each items is mentioned. As per the understanding with overseas suppliers, these values as mentioned in such proforma invoices or sales contracts, are actually considered as actual value of the consignments containing actual unit price of each items..... In such proforma invoice or sales contract, actual unit price of each item is mentioned. I state that proforma invoices have been obtained from my overseas suppliers and regarding authenticity, I state that the aforesaid proforma invoice/sales contract no. & date and corresponding invoice no & date as submitted to customs, bearing same number and date.*

¹⁶ M/s. Eisha Overseas Vs. Commissioner of Customs, Chennai vide Appeal Order No. C/175/2007 dated 28.08.2017

I would like to admit that I have done undervaluation in import of goods in the name of Gami Enterprises to save the duty and to be competitive in the market."

30.3 I find that the three statements recorded by DRI of the Noticee-3 span over a period of 3 months, where the noticees had every opportunity to consult a lawyer and file retraction in case they were coerced by DRI. Infact, the notices during summons have voluntarily gone to DRI office on 20.08.2021 twenty days after the DRI's search operation and have voluntarily submitted these so called proforma invoices and sales agreements and have recorded statements under section 108 stating that these are full value invoices or actual invoices and have categorically admitted their acts of omission & commission in undervaluation of imported goods by 100% (declaring only half of the actual value). The nature and circumstances of the statements indicate their voluntary nature. Even if the party's logic that proforma invoices are mere quotations prior to a sale or import transaction is accepted, the values therein would be close to sale value and not double the value. Furthermore, the correctness of valuation of the so called proforma invoices is also established by the fact that after initiation of the investigation, the noticees themselves filed two bills of entry No. 4985052 dated 09.08.2021 and 5133682 dated 21.08.2021 where the value declared was at par with the values given in the so called proforma invoices. Now during adjudication, the noticees are questioning for the first time DRI's reliance on the so called proforma invoices claiming that they were only only proforma or like quotations and not real invoices and also questioning as to why DRI did not obtain export documents from the exporting country to prove undervaluation. I also refer to the Hon'ble Supreme Court ruling in **Systems & Components Pvt. Ltd**¹⁷ wherein it has been held that "*it is a basic and settled law that what is admitted need not be proved*". Once all the charges and modus operandi were admitted by the noticees, there was no reason for DRI to seek further investigation from China.

30.3.1 The noticees have failed to provide any proof/document why the value given in the proforma invoices are nearly 2 times the value declared by him to Customs. They did not provide any details of negotiation done by them on the values given in the proforma invoices. On perusal of the proforma invoices/sales contract, it is seen that values given in these are the final values as the advance payments and other charges were added and deducted from these values only. One of the proforma invoices is reproduced below for reference:

¹⁷ Commissioner of C. Ex., Madras Vs. Systems & Components Pvt. Ltd. [2004 (165) E.L.T. 136 (S.C.)]

[illegible]

30.3.2 From the above, it can be seen that the addition and deduction of prices are done on the proforma invoices. For instance, in the image above terms like “balance from the last order, payment received etc.” were used and further calculations were done on these amounts. Hence, it is clear that the proforma invoices are the actual invoice and values declared in the proforma invoices are the actual prices of the goods imported and the noticees have used ‘proforma’ word only to misguide the department.

30.4 Further, in the **Eisha Overseas case (supra)** relied upon by the noticees, it was held that “*proforma invoice/quotation being only a tentative statement of the seller for sale of goods at the price mentioned therein, is not a relevant evidence of sale price in the absence of actual import in pursuance of such invoice/quotation*”. I find that in the case **Eisha Overseas (supra)**, the description of the goods, terms of payment, packing and date mentioned in the proforma invoice and commercial invoice were varied and also proforma invoice have been issued by a different company whereas in the present case proforma invoice and commercial invoice have been issued by the same company and also the description of the goods, date and number is same in both proforma invoice and commercial invoice. Therefore, the said case law is not applicable in the present case. Further, I rely upon the case law of **Auto Control¹⁸** wherein it has been decided that “*the proforma invoice number was found quoted in the regular invoice covering the goods. Thus proper significance has to be given to this invoice. The contention of the Appellant*

¹⁸ AUTO CONTROL (P) LTD. Versus COLLECTOR OF CUSTOMS, BOMBAY-1999 (111) E.L.T. 96 (Tribunal)

that there was negotiation of price is not supported by any evidence on record. We, therefore, hold that the contention of the Appellant is not convincing". The said case was affirmed by the **Hon'ble Supreme Court**¹⁹. In the present case also noticees have not submitted any record of price negotiation and proforma invoices and commercial invoices are having the same details. Therefore, proper significance has to be given to the so-called proforma invoices in the present case.

30.5 To conclude this issue, I hold that the proforma invoices and sales agreements relied upon by DRI for redetermination of value of imported goods, were not mere quotations but actual invoices showing the correct value of goods as they were either recovered from the noticees' offices/electronic devices during search or voluntarily submitted by the noticees themselves to DRI and in both cases, their authenticity has been admitted by them. Their claim of these invoices being mere quotations is only an afterthought. After the DRI's investigation, the noticees have filed two bills of entry of similar items at the value shown in the so called proforma invoices which further establishes their authenticity.

31. Whether the value of goods imported by M/s Gami Enterprises and M/s Alpa Print World is liable for rejection under Rule 12 of CVR 2007 and the same can be redetermined under Rule 3 of CVR 2007?

31.1 The noticees have argued that the procedure of rejection of value envisaged under Rule 12 of the CVR 2007 has not been followed. They have argued that the Department has not adduced any proof to show any extra payment of the alleged undervaluation amount through unofficial channels. They have argued that it is a settled position of law as being held by Hon'ble Supreme Court in the case of **Sanjivani Non-Ferrous**²⁰ that the assessable value has to be arrived at on the basis of price actually paid, as provided in Section 14 of the Act and that the declared price can only be rejected with cogent reasons. They have argued that no market enquiry was conducted and the Department has not shown evidence of any contemporaneous imports or NIDB data to show undervaluation. In this regard they relied upon case laws of **South India Television**²¹, **Aggarwal Industries**²², **Mahalaxmi Gems**²³, **J.D. Orgochem**²⁴ and **H.S. Chadha**²⁵.

31.2 Rule 12 of the CVR provides rejection of declared value wherever the value declared by the importer appears to be doubtful. Rule 12 of the CVR is reproduced below:

¹⁹ Auto Control (P) Ltd. v. Collector - 2006 (199) E.L.T. A127 (S.C.)

²⁰ CCE & ST., Noida V/s. Sanjivani Non-Ferrous Trading Pvt. Ltd. 2019 (365) E.L.T.3 (SC)

²¹ Commissioner of Customs V/s. South India Television Pvt. Ltd. - (2007) 6 SCC 373 - 2007 (214) ELT 3 (SC)

²² Commissioner of Customs, Vishakhapatnam V/s. Aggarwal Industries Ltd. - 2011 (272) ELT. 641

²³ Commissioner of Customs, Mumbai V/s. Mahalaxmi Gems - 2008 (231) ELT. 198

²⁴ Commissioner of Customs, Mumbai V/s. J.D. Orgochem Ltd. - 2008 (226) ELT 9

²⁵ H.S. Chadha V/s. Commissioner of Customs (Preventive), New Delhi (2021 (378) EL.T. 193 (Tri -Del)

12. Rejection of declared value. -

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

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

31.3 I find that DRI, MZU on the basis of specific intelligence conducted search at the premises of the two importers (M/s. Gami Enterprises and M/s. Alpa Print World) and recovered parallel invoices (so-called proforma invoices) from the electronic devices of these importers. I find that Shri Kanji Gokar Gami(Noticee-3) during his voluntary statements accepted undervaluation in the import of these goods to the tune of 40-50% of the actual value of the goods and he also submitted so-called proforma invoices and sale contract reflecting the true / actual value of these goods. Further, Noticee-3 during his voluntary statement accepted that the value declared for the consignments imported by them was based on manipulated invoices and payment of additional amounts over and above these manipulated invoices (submitted to the Customs at the time of clearance) was made through non banking channels. Based on these evidences DRI,MZU found that 36 past BEs, 1 live BE and goods seized at Fort and Bhiwandi Warehouse of M/s. Gami Enterprises; and also 17 past BEs of M/s. Alpa Print World were undervalued. Annexures 'A', 'B', 'C' & 'D' of the SCN dated 09.09.2022 may be referred in this regard. Thus I find that DRI had a reasonable doubt over the declared values of these imported goods (37 BEs of Gami Enterprises + 17 BEs of Alpa Print World + consignments found at warehouse) and therefore their proposal in the said SCN of rejection of declared value of these goods imported by Noticee-1 and Noticee-2 under Rule 12 of CVR 2007 is justified.

31.4 In the case **Sanjivani Non-Ferrous (supra)**, the Hon'ble Supreme Court had decided that "*as per Sections 14(1) and 14(1A) of Customs Act, 1962, the value of any goods chargeable to ad valorem duty is deemed to be the price as referred to in that provision. Section 14(1) is a deeming provision as it talks of 'deemed value' of such goods. Therefore, normally, the Assessing Officer is supposed to act on the basis of price which is actually paid and treat the same as assessable value/transaction value of the goods. This, ordinarily, is the course of action which needs to be followed by the Assessing Officer. This*

principle of arriving at transaction value to be the assessable value applies. That is also the effect of Rules 3(1) and 4(1) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 namely, the adjudicating authority is bound to accept price actually paid or payable for goods as the transaction value". I find that in the present case Noticee-3 in his voluntary statement dated 29.07.2021 has accepted that they were supposed to pay 60% of invoice value through banking channel and remaining through non banking channel and also accepted that proforma invoices, voluntarily submitted by them / recovered from their premises, are reflecting true transactional value of the goods. It means the price of the goods mentioned in the proforma invoices was actually paid / payable by the noticees to foreign supplier. Therefore the same was considerable as transactional value under Rule 3(1) of CVR 2007. In view of the above, I find that the said case law does not help the noticees.

31.5 In the case **South India Television(supra)**, the Hon'ble Supreme Court had decided that *"the respondent importer has relied upon contemporaneous imports from the same supplier, namely, M/s Pearl Industrial Company, Hong Kong which indicates comparable price of like goods during the same period of importation. This evidence has not been rebutted by the department".* In the present case proforma invoices recovered from the premises and laptop of noticees were the true invoices and the invoices submitted to the Customs were false and fabricated as accepted by the noticees in their voluntary statements. The proforma invoices were having the same details such as number, quantity, goods description with respect to commercial invoices submitted to Customs. In the present case proforma invoices were reflecting true transactional value of goods which was not the case in the case law relied upon by the noticees. Hence, facts of the present case are different from **South India Television(supra)**, therefore, I find that the said case law is not applicable in the present case.

31.6 In **Aggarwal Industries (supra)**, the Hon'ble Supreme Court had decided that *"onus to prove under-valuation is on the revenue but once the revenue discharges the burden of proof by producing evidence, the onus shifts to the importer to establish that the price indicated in the invoice relied upon by him is correct. If on the basis of some contemporaneous evidence, the revenue is able to demonstrate that the invoice does not reflect the correct price, it would be justified in rejecting the invoice price and determine the transaction value in accordance with the procedure laid down in CVR, 1988".* In the present case the Department proved undervaluation with the so called proforma invoices recovered from the noticees therefore onus was on the noticees to prove that proforma invoices recovered from them are not the true invoices. However, noticees failed to do the same, instead noticees themselves in their voluntary statements accepted that the proforma invoices are true invoices which are reflecting the true transactional value of the goods and admitted that proforma invoices were edited by them to the tune of 40-50% lesser unit

price than the actual unit price of the goods mentioned in the proforma invoices. In view of the above, it appears that the said case law does not help the noticees.

31.7 The Hon'ble Supreme Court in **Mahalaxmi Gems(supra)** had decided that *"in the present case, the department has failed to show from any contemporaneous evidence that the invoices were either fabricated or fake or that any relationship existed between the importer and the exporter. We entirely agree with the view taken by the Tribunal that the transaction value has to be accepted until and unless it is shown by some contemporaneous evidence that the price declared in the invoice was not the correct price"* and in **J.D. Orgochem(supra)** has decided that *"contemporaneous evidence to reject transaction value was not produced by Revenue"*. I find that in the present case as discussed above it has been clearly proved and voluntarily accepted by noticees that the invoices submitted by them to the Department were false and fabricated and the proforma invoice recovered from the premises of noticees were true invoices. As the proforma invoice were reflecting the true transactional value of the imported goods so there was no need to check contemporaneous value of identical / similar goods as per CVR 2007. Therefore, I find the said case law does not help the noticees.

31.8 Hon'ble Tribunal in **H.S. Chadha(supra)** had decided that *"further we find that no copy of the emails on which the Department seeks to rely has been made as RUDs. Emails and other electronic evidence cannot be relied upon to prove undervaluation in absence of compliance of provisions of Section 138C of the Act ibid as held by Anvar P.V. (supra) and S.N. Agrotech (supra). It is trite law that statements can be relied upon only if they are voluntary and true. It can be seen from above that all the statements of the Director Shri H.S. Chadha recorded on 16-7-2014, 25-8-2014, 24-9-2014, 26-9-2014, 12-11-2014, are conflicting"*. In the present case, the said proforma invoices / sales contract has been made part of the RUDs by the investigation agency and the statements dated 29.07.2021, 20.08.2021 and 22.10.2021 of Noticee-3 are voluntarily in nature and no contradictory statement / retraction has been made by Noticee-3 in all of the statements recorded by the investigation agency. Certificate under section 65B of the Evidence Act(which is pari materia with Section 138C of the Act) regarding extraction of data from mobile phones has also been made RUD by the DRI. Hence, the ratio of H.S. Chadha does not apply in the present case.

31.9 In view of the above, I conclude that the SCN's proposal to reject the declared value of the goods imported by Noticee-1 and Noticee-2 under the provisions of Rule 12 of CVR 2007 is reasonable and just.

31.10 I find that DRI has used reliable and strong evidences for redetermination of value in the instant case, which are pro-forma invoices recovered/submitted during investigation, Self-admission/confession of undervaluation and duty liability by the Noticee-3 through

their voluntary statements recorded under Section 108 of the Act, and the values of similar items declared in the bills of entry No. 4985052 dated 09.08.2021 and 5133682 dated 21.08.2021 filed after initiation of the investigation.

31.11 As far as regarding the contention of the importer that the value has not been determined by following the provisions of CVR 2007 and not determined by following the provisions of Rule 4 to 9 of the said rules sequentially is concerned, I find that once the so called proforma invoices were established as the true / actual invoices of the import transactions based on recovery from their electronic devices, voluntary submissions and confessions of noticees and further supported by subsequent filing of two BEs with the same valuation by the noticees, the redetermination was done under the very first rule in the sequence which is Rule 3(1) and therefore there was no need to go to other rules. Hence, I find that the SCN has rightly proposed to redetermine the value of the goods imported by Noticee-1 as Rs. 10,13,81,238/- (Details as per annexure 'A' to the SCN), Rs. 64,48,811/- (Details as per annexure 'C' to the SCN) and Rs. 2,20,07,569/- (Details as per annexure 'D' to the SCN) and similarly the value of goods imported by Noticee-2 as Rs. 3,41,63,701/- (Details as per annexure 'B' to the SCN) under Rule 3(1) of CVR 2007.

31.12 As discussed above, it is amply clear that the noticees wilfully suppressed actual invoice from the Department and knowingly submitted false and fabricated invoices to the Department with the intention to evade customs duty. Therefore, I hold that the SCN has rightly proposed a demand of differential duty (Details as per **Table-7 & 8 above**) in respect of goods imported by Noticees -1 & 2 under the provisions of Section 28(4) of the Act.

32. Whether the goods imported by M/s Gami Enterprises (Noticee-1) and M/s Alpa Print World(Noticee-2) are liable for confiscation under Section 111(m) of the Act?

32.1 Section 111(m) of the Act, is reproduced hereinbelow for reference:

Section 111(m): any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54.

32.2 On perusal of the above section, it is clear that any goods which do not correspond in respect of value with the entry made under this Act are liable for confiscation under Section 111(m) of the Act. In the present case, as discussed above, the noticees submitted false and fabricated invoices to the Customs at the time of clearance of goods, which were

reflecting transaction value as merely half of the actual transaction value of the goods. Therefore, I hold that the goods imported by Noticee-1 & 2 are liable for confiscation under Section 111(m) of the Act.

32.3 I find that the impugned goods have already been cleared from the port and not available for confiscation. I find that in terms of Section 125 of the Act, there is an option to pay fine in lieu of confiscation. Section 125 is reproduced below:

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

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

Section 125(2): Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]

32.4 I find that the Hon'ble High Court of Chennai, in the case of **Visteon Automotive Systems India Limited**²⁶, has held that availability of goods is not necessary for imposing redemption fine. Vide the said order it was inter alia held that "...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."

32.5 I find that the above view of the Hon'ble Madras High Court was relied upon by Hon'ble Gujarat High Court in the case of **M/s. Synergy Fertilchem Pvt. Ltd**²⁷. Hon'ble

²⁶ Visteon Automotive Systems India Ltd Vs CESTAT, Chennai-2018 (9) G.S.T.L. 142 (Mad.)

²⁷ M/s. Synergy Fertilchem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.)

Gujarat High Court at para 174 and 175 of the judgement held that *"We would like to follow the dictum as laid down by the Madras High Court in Para-23 in the case of Visteon Automotive Systems India Limited Vs CESTAT, Chennai"*. Therefore, in view of the above, I find that the goods imported by Noticee-1 & 2 are liable for redemption fine in lieu of confiscation even if the goods are not physically available at present .

33. Whether Noticees-1 & 2 are liable for penalty under Section 114A or 112(a) ; whether Noticee-3 is liable for penalty under Section 114AA in respect of goods of both the importers; and whether Noticees -2 & 4 are separately liable for penalty under Section 114AA in respect of goods imported by Noticee-2?

33.1 As discussed above , demand under Section 28(4) of the Act is sustainable in the present case in respect of goods (Details as per annexure 'A', 'B', 'C' and 'D' to the SCN) imported by the Noticees -1 & 2. Where demand is sustainable under Section 28(4), penalty is imposable under Section 114A of the Act. Thus, I hold that Noticee-1 in respect of the goods (Details as per annexure 'A', 'C' and 'D' to the SCN) and Noticee-2 in respect of goods (Details as per annexure 'B' to the SCN) are liable for penalty under Section 114A of the Act. Out of both penalties under Section 112(a) and 114A, only one can be imposed therefore I refrain from imposing penalty under Section 112(a) on Noticees -1 & 2.

33.2 I find that the SCN proposed imposition of penalty on the Proprietors (Noticee-3 & 4) of both the firms (**M/s. Gami Enterprises and M/s. Alpa Print World**), namely Shri Kanji Gokar Gami and Mrs. Diwaliben Kanji Gami under the provisions of Section 114AA of the Act. I find that Shri Kanji Gami (Noticee-3) was instrumental in mis-declaring the value of the goods in the import documents of both firms by submitting false invoices to Customs. The invoices were forged by him to defraud the revenue. Shri Kanji looked after all day to day work of M/s. Alpa Print World and appeared beneficial owner of the firm. Therefore, I find that Shri Kanji Gami is liable for penal action under the provisions of Section 114AA of the Act for the goods of both the importing firms controlled by him. Similarly, I hold Noticee-2 (M/s. Alpa Print World) also liable for penalty under Section 114AA of the Act in respect of its 17 consignments. Since the proprietorship firm Noticee-2 has been held liable for penalty under Section 114AA and there is no difference between a proprietor and a proprietorship firm , I do not intend to impose the same penalty for the same offence on its proprietor Noticee-4, who was not found to be active, and the firm Noticee-2 was actually controlled by her husband Noticee-3.

34. In view of the above, I pass the following order.

ORDER

(A) In respect of M/s. Gami Enterprises:

- (i) I reject the declared assessable value of the goods against past imports (as mentioned in **Annexure 'A'** to the SCN dated 09.09.2022) amounting to Rs. 4,49,04,690/- under Rule 12 of the CVR 2007 and re-determine the same as **Rs. 10,13,81,238/- (Rupees ten crore thirteen lakh eighty one thousand two hundred thirty eight only)** under Rule 3 of the CVR 2007.
- (ii) I reject the declared assessable value of the goods imported vide live B/E No. 4763903 dated 22.07.2021 (as mentioned in **Annexure 'C'** to the SCN dated 09.09.2022) amounting to Rs. 19,32,856/- under Rule 12 of the CVR 2007 and re-determine the same as **Rs. 64,48,811/- (Rupees sixty four lakh forty eight thousand eight hundred eleven only)** under Rule 3 of CVR 2007 .
- (iii) I reject the declared assessable value of the goods seized at Fort and Bhiwandi Warehouse of M/s. Gami Enterprises (as mentioned in **Annexure 'D'** to the SCN dated 09.09.2022) amounting to Rs. 1,67,21,202/- under Rule 12 of the CVR 2007 and re-determine the same as **Rs. 2,20,07,569/- (Rupees two crore twenty lakh seven thousand five hundred sixty nine only)** under Rule 3 of the CVR 2007.
- (iv) I order to re-assess all the concerned bills of entry as detailed in **Annexures 'A', 'C' & 'D'** to the SCN dated 09.09.2022 on the basis of re-determined value of the goods.
- (v) In respect of 36 BEs of M/s. Gami Enterprises(as detailed in **Annexure 'A'** to the SCN dated 09.09.2022) , I confirm the demand and order for recovery of differential customs duty amounting to **Rs. 1,49,23,568/- (Rupees one crore forty nine lakhs twenty three thousand five hundred sixty eight only)** under the provisions of Section 28 (4) of the Act along with applicable interest under Section 28AA of the Act from M/s. Gami Enterprises.
- (vi) In respect of one live BE No. 4763903 dated 22.07.2021 of M/s.Gami Enterprises(as detailed in **Annexure 'C'** to the SCN dated 09.09.2022), I confirm the demand and order for recovery of differential customs duty amounting to **Rs. 12,61,914/- (Rupees twelve lakh sixty one thousand nine hundred fourteen only)** under the provisions of Section 28 (4) of the Act along with applicable interest under Section 28AA of the Act from M/s. Gami Enterprises. I order to appropriate the amount of Rs. 12,61,914/- paid as the differential duty , revenue deposit of Rs 15,00,000/- and order to enforce bond of Rs 3,25,00,000/- submitted in relation to the provisional release of this live consignment towards the dues of the firm.

(vii) In respect of the goods seized at Fort and Bhiwandi Warehouse of M/s. Gami Enterprises (as mentioned in **Annexure 'D'** to the SCN dated 09.09.2022) I confirm the demand and order for recovery of differential customs duty amounting to **Rs. 13,63,506/- (Rupees thirteen lakh sixty three thousand five hundred six only)** under the provisions of Section 28 (4) of the Act along with applicable interest under Section 28AA of the Act from M/s. Gami Enterprises. I order to appropriate the amount of **Rs. 13,63,506/- (Rupees thirteen lakh sixty three thousand five hundred six only)** paid as the differential duty.

(viii) I order to confiscate the total goods having total re-determined value of **Rs. 12,98,37,618/- (Rupees twelve crore ninety eight lakh thirty seven thousand six hundred eighteen only)** (as detailed in **Annexures 'A', 'C' & 'D'** to the SCN dated 09.09.2022) under the provisions of Section 111 (m) of the Act. However, in lieu of the confiscation, I impose a redemption fine of **Rs. 35,00,000 (Rupees thirty five lakh only)** under Section 125 of the Act.

(ix) I impose a penalty equal to the short paid duty and interest on M/s. Gami Enterprises under Section 114A of the Act, provided that where such duty and interest is paid within thirty days from the date of the order of the proper officer determining such duty, the amount of penalty liable to be paid under this section shall be twenty-five percent of the duty or interest, as the case may be, so determined. The benefit of reduced penalty shall be available subject to condition that the amount of penalty so determined has also been paid within the period of thirty days.

(x) I impose a penalty of **Rs. 3,50,00,000/- (Rupees three crore fifty lakh only)** on Shri Kanji Gokar Gami, Proprietor of M/s. Gami Enterprises under the provisions of Section 114AA of the Act.

(xi) I order to appropriate the amount of Rs. 1,50,00,000/- (Rupees one crore fifty lakh only) deposited by M/s. Gami Enterprises at JNCH and New Custom House (as detailed in Table-3 above) against the above referred differential customs duty, interest and redemption fine.

(B) In respect of M/s. Alpa Print World:

(i) In respect of 17 BEs of M/s. Alpha Print World (as mentioned in **Annexure 'B'** to the SCN dated 09.09.2022), I reject the declared assessable value of the goods against past imports amounting to Rs. 1,56,72,094/- under Rule 12 of the CVR 2007 and re-determine the same as **Rs. 3,41,63,701/- (Rupees three crore forty one lakh sixty three thousand seven hundred one only)** under Rule 3 of the CVR 2007.

(ii) I order to re-assess all the concerned bills of entry as detailed in **Annexure 'B'** to the SCN dated 09.09.2022 on the basis of re-determined value of the goods.

- (iii) I confirm the demand and order for recovery of differential customs duty amounting to **Rs. 42,99,363/- (Rupees forty two lakh ninety nine thousand three hundred sixty three only)** (as detailed in Annexures 'B' to the SCN dated 09.09.2022) under the provisions of Section 28 (4) of the Act along with applicable interest under Section 28AA of the Act from M/s. Gami Enterprises.
- (iv) I order to confiscate the total goods having total re-determined value of Rs. 3,41,63,701/- (as detailed in Annexures 'B' to the SCN dated 09.09.2022) under the provisions of Section 111 (m) of the Act. However, in lieu of the confiscation, I impose a redemption fine of **Rs. 8,00,000 (Rupees eight lakh only)** under Section 125 of the Act.
- (v) I impose a penalty equal to the short paid duty and interest on M/s. Alpa Print World under Section 114A of the Act provided that where such duty and interest is paid within thirty days from the date of the order of the proper officer determining such duty, the amount of penalty liable to be paid under this section shall be twenty-five percent of the duty or interest, as the case may be, so determined. The benefit of reduced penalty shall be available subject to condition that the amount of penalty so determined has also been paid within the period of thirty days.
- (vi) I impose a penalty of **Rs. 80,00,000/- (Rupees eighty lakh only)** on M/s. Alpa Print World under the provisions of Section 114AA of the Act.
- (vii) I impose a penalty of **Rs. 80,00,000/- (Rupees eighty lakh only)** on Shri Kanji Gokar Gami, in his role as the authorized representative and beneficial owner of M/s. Alpa Print World under the provisions of Section 114AA of the Act.
- (viii) I order to appropriate the amount of Rs. 25,00,000/- deposited by M/s. Alpa Print World at New Custom House (as detailed in Table-3 above) against the above referred differential customs duty, interest and redemption fine.
35. 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 Act, and/or any other law for the time being in force in the Republic of India.
36. Annexures 'A', 'B', 'C' & 'D' of the SCN dated 09.09.2022 are enclosed with this Order for reference.



विवेक
31.05.23
(Vivek Pandey)
आयुक्त सीमाशुल्क (आयात-I)
Commissioner of Customs (Import-I),
नवीन सीमाशुल्क भवन, मुंबई
New Custom House, Mumbai-01

To,

1. M/s. Gami Enterprises,
Ground Floor, 203, Bazar Gate,
Peri Nariman Street, Fort,
Mumbai – 400 001.
2. M/s. Alpa Print World
Ground Floor, 203, Bazar Gate,
Peri Nariman Street, Fort,
Mumbai – 400 001.
3. Shri Kanji Gokar Gami, Proprietor,
M/s. Gami Enterprises,
Flat No. D-1701, Neelyog Towers,
Dhanji Wadi, Khot Kuwa Road,
Malad (East), Muimbai – 400 064.
4. Mrs. Diwaliben Kanji Gami, Proprietor,
M/s. Alpa Print World,
Flat No. D-1701, Neelyog Towers,
Dhanji Wadi, Khot Kuwa Road,
Malad (East), Muimbai – 400 064

EM 171715772IN

EM 171715895IN

01/

Copy to:

1. The Pr. Chief Commissioner of Customs, Mumbai Customs Zone-I, NCH, Mumbai.
2. The Commissioner of Customs, NS-V, Mumbai Customs Zone-II, JNCH, Nhava Sheva
as a portion of the demand in this case pertains to JNCH Port. Table 7 & 8 of this OIO may
be referred.
3. The Addl./Jt. Commissioner of Customs, Review Cell, Pr. Chief Commissioner's Office,
NCH
4. The Principal ADG, Directorate of Revenue Intelligence, MZU, Mumbai.
5. The Addl./Jt. Commissioner of Customs, Appraising Gr. V, NCH, Mumbai.
6. The Supdt./CHS, NCH, Mumbai – For Display on Notice Board.
7. Office Copy.



