



## 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)**  
2<sup>nd</sup> FLOOR, NEW CUSTOM HOUSE, SHOORJI VALLABHDAS ROAD, BALLARD ESTATE,  
MUMBAI - 400001.

Tel. No. 22757401

Fax No. 22757402

e-mail: [adjncell-imp2nch@gov.in](mailto:adjncell-imp2nch@gov.in)

F.No. DRI/MZU/F/04/2009/1999  
GEN/LGL/OTH/13/2021-Gr-5(AB)

Date of Order: 03.06.2022  
Date of Issue: 03.06.2022

Passed by : **MANOJ KUMAR KEDIA**  
**COMMISSIONER OF CUSTOMS (IMPORT-I)**

C.A.O. NO. : 20/2022-23/CAC/CC(IMPORT-I)/MKK.  
DIN NO. 202206770000000B468

### 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.



## भारत सरकार

वित्त मंत्रालय/ राजस्व विभाग

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

### आयुक्त सीमाशुल्क (आयात-I) का कार्यालय

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

दूरध्वनि-22757401

फैक्स-22757402

ई-मेल: [adjncell-imp2nch@gov.in](mailto:adjncell-imp2nch@gov.in)

फा.सं. **DRI/MZU/F/04/2009/1999**

**GEN/LGL/OTH/13/2021-Gr-5(AB)**

के द्वारा जारी किया गया : **मनोज कुमार केडिया** आदेश दिनांक: **03.06.2022**  
आयुक्त सीमाशुल्क (आयात-II) जारी दिनांक: **03.06.2022**

सी.ए.ओ. क्रमांक : **20/2022-23/CAC/CC(IMPORT-I)/MKK.**

**DIN No. 2022067700000000B468**

### मूल आदेश

- 1- यह प्रति उस व्यक्ति के प्रयोग के लिए निःशुल्क 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।

### BRIEF FACTS OF THE CASE

The present Order in Original is being taken up in pursuance of Hon'ble CESTAT vide order No. A/880-887/14/STB/C-I, S/527-534/14/CSTB/C-I & M/1063-1069/14/CSTB/C-I dated 03.06.2014 read with Hon'ble High Court of Bombay order dtd. 29.03.2022 in the case of W.P. No. 2490/2021- Amarjeet Sing Mago Vs. Union of India & Ors. As per the said Hon'ble High Court order, it is directed that the Respondent Authority to adjudicate upon the Show cause Notice as directed by the Competent Authority (CESTAT) preferably within two months.

2. The Hon'ble CESTAT vide its order No. A/880-887/14/STB/C-I, S/527-534/14/CSTB/C-I & M/1063-1069/14/CSTB/C-I dated 03.06.2014 has remanded back the matter adjudicated vide O-i-O C.A.O. No. 81/2013/CAC/CC(I)/AB dtd. 24.06.2013 issued vide F.No. S/26-Misc-235/2012 VB;S/10-Adj-44/2012VB, to decide the issue first from whom the duty is to be demanded and thereafter, if required, impose the penalties. Since, Shri Vijay Kumar Choithramani (Noticee No. 7) had not preferred an appeal against the first Order-in-Original, therefore, the charge already upheld initially vide above stated order for Shri Vijay Kumar Choithramani and will remain as it is and his charges is not within the scope of this adjudication.

3.1. The brief facts of the case are that intelligence was received by the officers of the Directorate of Revenue Intelligence (DRI), Mumbai which inter alia indicated that certain consignments of electronic goods imported from Hong Kong based suppliers namely, (i) M/s Chee Lin Exports and (ii) M/s Cosmo Trading Co., were heavily under-invoiced. On discreet enquiries, it was found that most of the importing firms were not in existence and / or were not in operation at their declared address The aforesaid intelligence also indicated that M/s Hiya International (IEC No.0307078698). M/s Magfour Electronics (IEC No. 0307080323) M/s MEPL Trade International (IEC No. 0306020912) and M/s Automart Accessories (IEC No.0306020971) were amongst the importers who had imported such consignments. The import clearances in the name of these firms were reportedly handled by Custom House Agent (CHA), M/s Sai Dutt Clearing Agency / M/s Sai Dutt Shipping Agency.

3.2. The relevant bills of entry under which imported goods were cleared by resorting to undervaluation were identified as under:

TABLE-1.1

Sr. No	Name of the Importer	Bill of Entry No. & Dt.	Item Description	Declared CIF Value (in Rs.)
1	M/s Hiya International	823973/15.02.2008	Pioneer/Sony/JVC Front Panel "Face" for Car Stereo Pioneer/Sony/JVC Remote Control for Car Stereo. (Malaysia/Thailand/Indonesia/China) Manuals and Gift boxes	2,08,012/-
2	-Do-	834082/11.04.2008	-Do-	2,43,853
3	M/s. Magfour Electronics	821461/04.02.2008	Unbranded metal cabinet fitted with PCB & CDM with wire and screw for Car CD Player (China)	9,80,908
4	-Do-	833040/07.04.2008	-Do-	11,04,770
5	M/s. MEPL Trade International	780026/17.07.2007	Pioneer/Sony/JVC Front Panel "Face" for Car Stereo Pioneer/Sony/JVC Remote Control for Car Stereo. (Malaysia/Thailand/Indonesia/China) Manuals and Gift boxes	3,29,160



			Control for Car Stereo. (Japan/Thailand/Indonesia/ China) Manuals and Gift boxes	
6	M/s. Automart Accessories	799194/16.10.2007	Unbranded metal cabinet fitted with PCB & CDM with wire and screw for Car CD Player (China)	8,67,964

3.3. Shri Ashwanii Dham, Director of the CHA firm M/s Sai Dutt Clearing Agency P Ltd (CHA 11/978 vide statement recorded on 10.11.2009 under Section 108 of the Customs Act, 1962 stated that his CHA firm had attended to the Customs clearance of the goods imported in the name of (a) M/s Hiya International (b) M/s Magfour Electronics (c) M/s MEPL Trade International (d) M/s Automart Accessories, that in respect of the goods imported in the name of (a) M/s Hiya International (b) M/s MEPL Trade International and (c) M/s Automart Accessories. Shri Rakesh Patel (Proprietor of M/s Hiya International), had approached him, that in respect of the goods imported in the name of M/s Magfour Electronics. Shri Amarjeet Singh Mago alias Babloo, had approached him with Rakesh Patel; that in respect of the goods imported in the name of M/s. Magfour Electronics and M/s. Automart Accessories, the authorizations etc. were signed by the proprietor of the said firms namely Darshan Dave and P.J. Rupani respectively; that he was not aware of the proprietor of M/s. MEPL Trade International, that he had never met the proprietor of (a) M/s Magfour Electronics (b) M/s MEPL Trade International (c) M/s Automart Accessories and had always interacted either with Rakesh Patel or Amarjeet Singh Mago only; that he had never visited or verified the address of the above importing firms; that there was a general trend of undervaluation in the import of electronic goods and accessories at that time, that wherever there had been any undervaluation in the imports handled by his firm, he shall ensure that the differential duty along with interest was paid forthwith.

3.4. Shri Darshan Yeshwant Dave, proprietor of M/s. Magfour Electronics, vide statement recorded on 10.11.2009 under Section 108 of the Customs Act. 1962 stated that he was working as a commission agent in the buying and selling of cars; that his friend Rakesh Patel, who had trading business of auto parts and accessories, had approached him and suggested him to obtain Import Export Code to import auto parts that on his agreement, Rakesh Patel obtained IEC in the name of M/s Magfour Electronics, with the help of one agent; that Rakesh Patel arranged the imports of goods in the name of M/s Magfour Electronics, that Rakesh Patel interacted with Ashwini Dham and Kuldeep Singh Rangrass alias Tony of M/s Sai Dutt Shipping for clearance of the goods imported in the name of M/s. Magfour Electronics; that that he had never negotiated anything for the above imports with the overseas suppliers; that the goods, namely, parts of the Car stereo were imported from M/s Chee Lin Exports, Hong Kong, were arranged by Rakesh Patel, that he had never interacted with the suppliers or the CHA in connection of the above stated imports; that the goods imported in the name of M/s. Magfour Electronics were sold in the market by Rakesh Patel, that Rakesh Patel had deposited money out of the sale proceeds of the goods in the bank account of M/s Magfour Electronics; that as suggested by Rakesh Patel, he had issued the cheques for payment of Customs duty. Magfour Electronics, CHA Clearance charges and for the payment to the supplier of the goods for the overseas remittance; that he was not aware about actual negotiated prices of the goods imported in the name of M/s. Magfour Electronics; that as regards the goods imported in the name of M/s. Magfour Electronics, which were stated to be undervalued, Rakesh Patel can clarify about the same, that being the importer on record, he undertakes to



pay the differential duty arising on account of undervaluation of the goods imported in the name of M/s. Magfour Electronics.

3.5. Shri Rakesh Shashikant Patel (named by Shri Ashwanii Dham and Shri Darshan Yeshwant Dave, proprietor of M/s Magfour Electronics). in his statement recorded on 10.11.2009, under Section 108 of Customs Act, 1962, inter alia, stated that he joined his father's business of automobile spare parts, which was conducted from shop No.14, A G Street, Opera House, Mumbai-400004 in the name of M/s. Patel Traders; that they had been dealing in imported and local spare parts from the said shop, that earlier he had a proprietorship firm in the name of M/s Hiya International [IEC 0307078698]; that he had imported electronic goods like front panel of car stereo, remote etc from M/s Cosmo Trading Company, Hong Kong and these goods were cleared through CHA M/s Sai Dutt Shipping Agency Pvt., that he did not have any previous experience in causing import of goods, that he knew Amarjeet Singh Mago for last 10 years, as he (Amarjeet Singh Mago) was having a shop dealing with automobile parts near his father's shop (ie. Patel Traders) and was supplying imported goods to them, that Amarjeet Singh Mago had assisted him to obtain an IEC in the name of M/s. Hiya International through his contacts and also assisted him with the import formalities, that Amarjeet Singh Mago had assisted him both financially and logistically for the said imports; that the negotiations with foreign suppliers, for the goods imported in the name of M/s Hiya International, were dealt by Amarjeet Singh Mago; that Amarjeet Singh Mago had financed the said imports and had also sent the remittance to the overseas suppliers, that he had sold the goods imported in the name of M/s. Hiya International and handed over the sale proceeds to Amarjeet Singh Mago, that Amarjeet Singh Mago had sent the differential value (difference between actual transaction value and undervalued invoice presented to Customs) to overseas supplier through Hawala that the goods imported in the name of M/s Hiya International were undervalued and he undertakes to pay the differential duty leviable; that his firm M/s. Hiya International was closed in March 2009 and no further imports were made in the name of M/s, Hiya International, that he knew Shri Darshan Dave, proprietor of M/s. Magfour Electronics from childhood, as they were neighbours, Darshan Dave was engaged in the business of trading of old and used cars for past several years, that he had assisted Darshan Dave to obtain IEC in the name of M/s. Magfour Electronics; that he had assisted Darshan Dave to import the goods in the name of M/s. Magfour Electronics, that the goods imported in the name of M/s. Magfour Electronics were also financed by Amarjeet Singh Mago; that the goods imported in the name of M/s. Magfour Electronics were also sourced from the same Hong Kong based overseas supplier and the differential value (difference between actual value and the undervalued invoice) was paid to the overseas supplier through hawala channel by Amarjeet Singh Mago, that he had sold the goods imported in the name of M/s. Magfour Electronics and deposited part of the sale proceed in the bank account of M/s. Magfour Electronics and returned remaining amount to Amarjeet Singh Mago; that he had also assisted Amarjeet Singh Mago in clearance and sold the goods imported in the name of M/s. MEPL Trade International and M/s Auto Mart Accessories; that he had approached Tony and Ashwini Dham of M/s Saidutt Shipping Agency Pvt. Ltd. for clearance of goods imported in the name of the above two firms that Amarjeet Singh Mago had also financed the goods imported in the name of M/s. MEPL Trade International and M/s. Auto Mart Accessories, that Paresh J Rupani, proprietor of M/s Automart Accessories was known to him, that he did not remember the name of the proprietor of M/s MEPL Trade International, even though he had approached Amarjeet Singh Mago for import. Tony and

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Ashwinii Dham for clearance of goods imported in the name of M/s. MEPL Trade International; that he will make sincere efforts of get the differential duty paid by the respective importers, that the sales proceeds were always given to Amarjeet Singh Mago, who in turn had remitted the differential value (difference between actual value and the undervalued invoice) to the overseas supplier through hawala

3.6. Shri Amarjeet Singh Mago, in his statement recorded on 10.11.2009 under Section 108 of Customs Act, 1962 stated that the business of import and trading of automobile parts was started by his father in the year 1989, in the name of M/s. Liberty Motors (a proprietary concern of his father); that his father did not attend any business matter of the said firm, as he was very old; that his brother Gurprit managed all the business activities of M/s Liberty Motors; that initially, he was also involved in the same business but subsequently he started the import and trading of spare automobile parts in the name of M/s. Mago Exim Pvt. Ltd, that he handled all the business activity of M/s. Mago Exim Pvt. Ltd.; that the bank account of his firm (ie. M/s. Mago Exim Pvt. Ltd) was maintained at Syndicate Bank, Pali Hill Branch; that he had mostly utilized the services of Custom House Agent Ashwinii Dham of M/s. Sai Dutt Clearing Agency / M/s Sai Dutt Shipping Agency; that he had interacted with foreign suppliers either on telephone or by way of personal meetings during exhibition visits; that he knew Rakesh Patel for last ten years, as he had supplied imported automobile goods to the shop of Rakesh Patel namely (i.e., Patel Traders); that he and Rakesh Patel had decided to import the goods from China, Hong Kong and Other Countries; that he knew foreign suppliers of these goods and he had introduced Rakesh Patel to these suppliers, that it was decided that he (ie. Amarjeet Singh Mago) would arrange the import and its clearance and Rakesh Patel would sell the said goods in the local Market, that since Ashwinii Dham of M/s Sai Dutt Clearing Agency and M/s Sai Dutt Shipping Agency was known to him, he arranged the clearance of the goods with the help of Ashwini Dham: that he and Rakesh Patel had imported speakers and automobile parts in the name of

- (a) M/s Hiya International (proprietor: Rakesh S. Patel)
- (b) M/s. Magfour Electronics (proprietor: Darshan Dave)
- (c) M/s. MEPL Trade International (proprietor: Prashant Shashikant Sawant)
- (d) M/s Automart Accessories (proprietor: PJ.Rupani),

3.7. He further stated that Rakesh Patel had brought the IEC of M/s Magfour Electronics and had arranged the IEC of M/s. MEPL Trade International and M/s. Automart Accessories, as the proprietor of the above firms, were known to him( Le., Rakesh Patel); that either he or Rakesh Patel had negotiated with the overseas suppliers for the goods imported in the name of all the above stated firms; that the above electronic goods imported from overseas suppliers were undervalued, that the understanding between them (ie.. he and Rakesh Patel) and the Hong Kong based overseas supplier was that overseas supplier would send them manipulated invoices showing lower value of the goods; that the prices shown in such invoices were substantially lower than the actual price negotiated and paid to the overseas supplier, that the value (.e., value shown in the invoice) was remitted to the supplier through banking channel and the differential value (difference between the actual value of the goods and value declared to the Indian Customs) was remitted to the overseas supplier through hawala Channels; that either he or Rakesh Patel had handed over the cash to the local hawala operator for sending it to overseas supplier, that he had



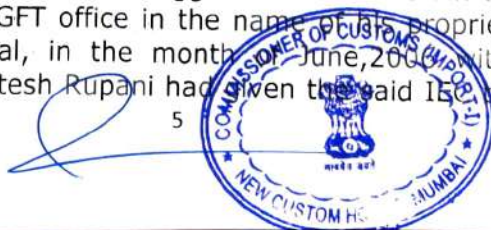
requested Aswinii Dham of M/s. Sai Dutt Clearing Agency and M/s Sai Dutt Shipping Agency to get cleared the goods from Customs that once the goods were cleared from the Customs Rakesh Patel had taken possession of the same; that Rakesh Patel sold the said goods in local market, that Rakesh Patel had deposited the amount equivalent to declared value of the goods along with the amount of Customs duty and Commission of the proprietor(IEC holder) of the firms in the account of concerned importing firms, that they (he and Rakesh Patel) remitted the undervalued invoice amount through banking channels and differential value (difference between actual negotiated amount and under valued invoice. amount) was handed over by either of them to local hawala operator for sending it to the overseas supplier, that in case of M/s Magfour Electronics M/s MEPL Trade International M/s Automart Accessories, they had paid Rs 25,000/- to 30,000/- to the proprietor of the concerned firm for allowing them to import the goods in the name of their firms, that he and Rakesh Patel had shared the remaining part of the profit; that he had financed the goods imported in the name of the above stated four firms; that he and Rakesh Patel had evaded duty amounting to Rs. 2 Crores, by resorting to undervaluation of the goods imported in the name of the above stated four firms, that he undertakes to pay the entire amount of differential duty, on account of the undervalued imports caused in the name of the above stated four firms

3.8. Shri Amarjeet Singh Mago made voluntary payment of Rs.1,97,00,000/-, as the differential Customs duty payable on account of undervaluation of the goods imported in the name of i) M/s. Hiya International, (ii) M/s Magfour Electronics, (i) M/s MEPL Trade International and (v) M/s Automart Accessories which was deposited in government treasury under TR-6 Challans as under:-

TABLE-1.2

Sr. No	Name of the Firm	Amount	D.D. No. & Date	Challan No. & Date
1	M/s Hiya International	16,00,000	068328/18.11.2009	219/ 19.11.2009
2	M/s. Magfour Electronics	1,25,00,000	068194/10.11.2009	99/ 10.11.2009
3	M/s. MEPL Trade International	24,00,000	068326/18.11.2009	218/ 19.11.2009
4	M/s. Automart Accessories	32,00,000	068283/18.11.2009	184/ 17.11.2009
<b>TOTAL</b>		<b>1,97,00,000</b>		

3.9. Shri Prashant Shashikant Sawant (proprietor of M/s MEPL Trade International) in his statement recorded on 26.04.2011 under Section 108 of the Customs Act, 1962 stated that he was running a mobile repairing shop at Mangalam Apartment, Shop No. 11. Besides Jain Mandir, Nala Sopara (E). Thane, that he was the proprietor of M/s MEPL Trade International, situated at Shree Sadan Building Near Nakoda Hospital. A-Wing. 5/6, Devchand Nagar Road, Bhayander (W), Thane-401101, that he knew Prutesh J. Rupani for last 20 years, as they had studied together in Holy Cross School, Bhayander, that he was unemployed in 2006 and was looking for some job to earn money, that he had requested Shri Prutesh Rupani to help him to get some job; that Prutesh Rupani told him that one Amarjeet Singh Mago and Rakesh Patel were importing car stereo in Mumbai and they were in need of some IECs for making imports; that Prutesh Rupani told him that he can earn some money by providing IEC to Amarjeet Singh Mago and Rakesh Patel and suggested him to obtain an IEC, that he obtained an IEC from DGFT office in the name of his proprietary firm M/s. MEPL Trade International, in the month of June, 2006 with the help of Prutesh Rupani, that Prutesh Rupani had given the said IEC to Rakesh Patel



and promised him that Rakesh Patel will give him Rs. 10,000/-, for each import made in the name of M/s MEPL Trade International, that it was agreed between him and Prutesh Rupani that he will take Rs. 6000/- out of Rs. 10,000/- and Prutesh Rupani will take Rs. 4000/- for helping him; that he had opened a bank account (being account no. 392801010050209) in Union Bank Of India, Station Road, Bhaynder (W) Branch, as suggested by Prutesh Rupani and the said account was operated by Prutesh Rupani, that he had handed over all the papers related to this account like passbook, cheque book to Prutesh Rupani; that Prutesh Rupani had taken his signature on the blank cheques; that he had also handed over blank signed letter heads of M/s MEPL Trade International to Prutesh Rupani to import the goods in the name of his proprietary firm; that Prutesh Rupani was dealing with Amarjeet Singh Mago and Rakesh Patel; that he had also met Rakesh Patel and Amarjeet Singh Mago with Prutesh Rupani; that he had never negotiated or imported any goods on his own, that he did not know how many imports were made under the IEC of M/s MEPL Trade International; that Rakesh Patel and Amarjeet Singh Mago had imported the goods in the name of M/s MEPL Trade International; that he had never interacted with the overseas suppliers or the CHA in connection with the goods imported in the name of M/s MEPL Trade International; that after clearance, the imported goods were sold in the market by Rakesh Patel and Amarjeet Singh Mago,

3.10. Shri Prutesh J. Rupani, proprietor of M/s Automart Accessories, situated at 104 Shree Krishna Bhavan, Prakash Market Road, Bhayander (West). Thane, in his statement recorded on 23.08 2011 under Section 108 of the Customs Act, 1962, stated that he was working with Shyambhai Builders at Nalasopara; that he knew Rakesh Patel of M/s Hiya International, since 2002, as they were friends, that Rakesh Patel conducted his trading business of imported car stereo parts in the name of M/s Patel Traders, at Opera House, Mumbai, that Rakesh Patel used to import car stereo parts from Hong Kong and China for trading, that Amarjeet Singh Mago was the partner of Rakesh Patel in the said business, that Rakesh Patel had requested him to obtain/ arrange a Import Export Code (IEC) to import the car stereo parts; that Rakesh Patel had promised him that he (Rakesh Patel) will pay him Rs 10,000/- for each consignment imported, that he had opened an account in Union Bank of India, Bhayander Branch, in the name of Automart Accessories and obtained an IEC in the name of M/S. Automart Accessories, from DGFT office with the help of Rakesh Patel: that Rakesh Patel and Amarjeet Singh Mago had imported goods namely car stereo parts from Hong Kong and China in the name of M/s Automart Accessories; that Rakesh Patel was operating the bank account of Automart Accessories in Union Bank of India, at Bhayander, that he had handed over all the papers related to bank account like passbook, cheque book etc. to Rakesh Patel; that Rakesh Patel had taken his signature on the blank cheques; that he had also handed over the blank signed letter heads of M/s Automart Accessories to Rakesh Patel; that he did not know how many imports were made by Rakesh Patel and Amarjeet Singh Mago under the IEC of M/s Automart Accessories; that he had signed import declarations to file bill of entry in the name of his firm M/s. Automart Accessories, as suggested by Rakesh Patel, that he had never interacted with the overseas suppliers or the CHA in connection with the goods imported in the name of M/s. Automart Accessories; that after clearance, the imported goods were sold in the market by Rakesh Patel or Amarjeet Singh Mago, that Rakesh Patel had informed him that they (Rakesh Patel and Amarjeet Singh Mago) required more IECs for the import of car stereo parts etc. that he had arranged one more IEC in the name of M/s MEPL Trade International (a proprietary





concern of his friend Shri Prashant Sawant) to enable import of the goods by Rakesh Patel and Amarjeet Singh Mago; that Rakesh Patel and Amarjeet Singh Mago had imported car stereo parts in the name of M/s MEPL Trade International also in the same manner as in the case of M/s Automart Accessories.

3.11. A reference was made to the Consul General of India, Hong Kong to cause enquiries with Hong Kong Customs and forward the export declarations submitted by the overseas suppliers before the Customs authorities in Hong Kong, in respect of the above mentioned goods. In response, trade declarations filed by the exporters M/s Chee Lin Exports and M/s Cosmo Trading Co. before the Hong Kong Customs (duly certified by the Senior Trade Controls Officer of the Customs and Central Excise Department, Hong Kong) were forwarded. The export declarations received from Hong Kong Customs revealed the following details:-

**TABLE-1.3**

**A) Exporter in Hong Kong (M/s Cosmo Trading)**

Sr No	Trade Declaration No.	Name of the Importer	Bill of Lading No.	Container No.	FOB Value Declared (in HKD)
1	8A1712KK100DFM	M/s Hiya International	HLCUHKG0801A VLZ2	HLXU6391394	647568.48
2	8A1712KK100DMF		HKINBOM8C027	CAIU8030934	87218.45
3	7A1712KK100CIR	M/s. MEPL Trade International	HKINBOM7F035	HDMU6353481	1414311.6
4	7A1712KK100CWD	M/s. Automart Accessories	HDMUHKBA0193 460	TRLU3725739	2743228.8

**B) Exporter in Hong Kong (M/s Chee Lin Exports)**

Sr. No.	Trade Declaration No.	Name of the Importer	Bill of Lading No.	Container No.	FOB Value Declared (in HKD)
1	8A20H6XB100FTC	M/s. Magfour Electronics	HDMUHKBA0219915	CAXU6520370	2582224.3
2	8A20H6XB100GBN		HDMUHKBA0230616	HDMU2508820	3136373.76

3.12. Since the above stated value(s) in the trade declarations were on FOB basis, the shipping agents were requested to furnish the details of the freight charges paid in respect to the said goods. In response M/s Console Shipping, M/s LCL Logistix (India) P Ltd. and M/s Hyundai Merchant Marine India P Ltd furnished the details of the freight charges, in respect of the goods covered by each of the above stated bill of lading, under their letters dated 07.06.2011, 04.06.2011 and 15.04.2011 respectively. The bill of lading wise freight charges conveyed by the above shipping agents and the corresponding bill of entry, under which the goods were cleared, were as under:-

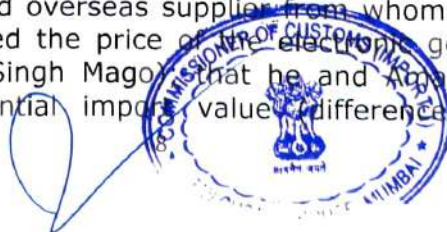
**TABLE-1.4**

Sr. No.	Name of the Importer	Bill of Entry No. & Dt.	Bill of Lading No.	Freight paid (USD)
1	M/s Hiya International	823973/15.02.2008	HLCUHKG0801AVLZ2	208.47
2		834082/11.04.2008	HKINBOM8C027	165.1
3	M/s. Magfour Electronics	821461/04.02.2008	HDMUHKBA0219915	1070
4		833040/07.04.2008	HDMUHKBA0230616	881
5	M/s. MEPL Trade International	780026/17.07.2007	HKINBOM7F035	343.53
6	M/s. Automart Accessories	799194/16.10.2007	HDMUHKBA0193460	1075



3.13. Shri Amarjeet Singh Mago in his statement recorded under Section 108 of the Customs Act, 1962 on 23.01.2012 stated that the overseas supplier from whom they (he and Rakesh Patel) had imported electronic goods were M/s Chee Lin Exports, Hong Kong and M/s Cosmo Trading, Hong Kong; that Vijay Kumar Choitramani was the concerned person of the above stated overseas supplier from whom he and Rakesh Patel had negotiated the price of the electronic goods imported by them (he and Rakesh Patel); that the understanding between him and Vijay Kumar Choitramani (of M/s. Chee Lin Exports and M/s. Cosmo Trading Company) was that Vijay Kumar Choitramani would send them (him and Rakesh Patel) manipulated invoices showing lesser value which would be then submitted to the Customs authorities in India to save Custom duties; that the declared value was remitted through banking channels and the differential value (difference between the actual value of the goods and value declared to the Indian Customs) was collected in cash by representative of Vijay Kumar Choitramani; that he does not know the name of the person to whom they (he and Rakesh Patel) had handed over the cash for sending it to overseas supplier namely Vijay Kumar Choitramani of M/s Chee Lin Exports, Hong Kong and M/s Cosmo Trading, Hong Kong; that Vijay Kumar Choitramani (owner of M/s Chee Lin Exports, Hong Kong and M/s Cosmo Trading, Hong Kong) informed them (him or Rakesh Shashikant Patel) the mobile number of his representative and after identification the said person and confirmation by Vijay Kumar Choitramani on phone, they (he and Rakesh Patel) handed over the cash to the said person; that he clarified that in his earlier statement he mentioned that he and Rakesh Patel handed over the cash to local hawala operator, presuming that the representative of Vijay Kumar Choitramani was the hawala operator recruited by Vijay Kumar Choitramani; that the arrangement of CHA and all other Customs clearance related formalities of the goods imported in the name of (i) M/s. Hiya International, (ii) M/s Magfour Electronics, (iii) M/s MEPL Trade International and (iv) M/s Automart Accessories, were handled by him and Rakesh Patel; that the understanding between proprietor of the above stated firms and them (he and Rakesh Patel) was that they would affix their signature on Customs related documents and bank related documents concerned to their firms and he and Rakesh Patel would pay them for utilizing their IECs; that the proprietor of concerned firm signed on the blank Custom related/ bank related documents, as per his instruction; that the requisite details were subsequently filled in these documents, as per his instructions; that he was shown the trade declarations filed by the overseas supplier at Hong Kong as well as a typed summary chart prepared there from and the corresponding bills of entry filed in India for clearance of the said goods, which revealed a differential value of Rs 5,52,16,056/- whereupon he (Amarjeet Singh Mago) admitted that Customs duty is leviable on this differential value; that he had paid an amount of Rs 1,97,00,000/- towards the differential duty payable.

3.14. Statement of Shri Rakesh Shashikant Patel in his statement recorded under Section 108 of the Customs Act, 1962 on 24.01.2012 stated that he and Amarjeet Singh Mago had imported electronic goods from M/s Chee Lin Exports, and M/s Cosmo Trading, both situated at Hong Kong, in the name of four firms namely (i) M/s Hiya International, (ii) M/s Magfour Electronics (iii) M/s MEPL Trade International and (iv) M/s Automart Accessories; that Vijay Kumar Choitramani (popularly known as Kumar) was the concerned person of the above stated overseas supplier from whom he and Amarjeet Singh Mago had negotiated the price of the electronic goods imported by them (he and Amarjeet Singh Mago); that he and Amarjeet Singh Mago handed over the differential import value (difference) between actual



transaction value and invoice value) in cash, to the representative of Vijay Kumar Choithramani in India, after identification of the said representative by Vijay Kumar Choithramani, on phone; that he was shown the trade declarations filed by the overseas supplier at Hong Kong as well as a typed summary chart prepared there from and the corresponding bills of entry filed in India for clearance of the said goods, which revealed a differential value of Rs 5,52,16,056/- whereupon he (Rakesh Patel) admitted that Customs duty is leviable on this differential value.

3.15. Summons under Section 108 of the Customs Act, 1962 was issued to Shri Vijay Kumar Choithramani of M/s Chee Lin Exports and M/s Cosmo Trading Co. Hong Kong, for his appearance in DRI office for the purpose of recording his evidence, but he did not appear on the said date. Shri Vijay Kumar Choithramani had admitted under his letter dated 16.01.2012 that the firms namely, Chee Lin Exports and Cosmo Trading Company had only shipped the goods and the invoices issued by them were only for the purposes of shipment.

3.16. As per understanding between Shri Amarjeet Singh Mago alias Babloo and Shri Rakesh Shashikant Patel with the overseas supplier namely Shri Vijay Kumar Choithramani at Hong Kong, the below mentioned consignments were despatched to India by the said overseas supplier in the name of M/s Cosmo Trading Co. and M/s Chee Lin Exports, from Hong Kong:

TABLE-1.5

A) Exporter in Hong Kong (M/s Cosmo Trading)

Sr. No.	Name of the Importer	Description of goods	No. of pkgs (ctns)	Bill of Lading No.	Container No.
1	M/s Hiya International	Pioneer/Sony/JVC Front Panel "Face" for Car stereo Pioneer/Sony/JVC Remote Control for Car stereo (Malaysia/ Thailand/Indonesi/China) Manyals and Gift boxes	101	HLCUHKGO 801AVLZ2	HLXU63 91394
2		-do-	109	HKINBOM8 C027	CAIU80 30934
3	M/s. MEPL Trade International	-do-	205	HKINBOM7 F035	HDMU6 353481
4	M/s. Automart Accessories	Unbranded metal cabinet fitted with PCB & CDM with wire and screw for Car CD Player (China)	372	HDMUHKBA 0193460	TRLU37 25739

B) Exporter in Hong Kong (M/s Chee Lin Exports)

Sr. No.	Name of the Importer	Description of goods	No. of pkgs (ctns)	Bill of Lading No.	Container No.
1	M/s. Magfour Electronics	Unbranded metal cabinet fitted with PCB & CDM with wire and screw for Car CD Player (China)	421	HDMUHKBA 0219915	CAXU65 20370
2		Unbranded metal cabinet fitted with PCB & CDM with wire and screw for Car CD Player (China)	476	HDMUHKBA 0230616	HDMU2 508820

3.17. Upon arrival of the goods at Mumbai Port the following bills of entry were filed on the basis of invoices showing less value of the said goods



through Shri Ashwanii Dham, Director of M/s Sai Dutta Clearing Agency (CHA 11/978).

**TABLE-1.6**

(i) Importer:- M/s Hiya International (IEC No. 0307078698)

Bill of Entry No. & Dt.	Description of goods	Invoice No. & date	No. of pkgs (ctns)	CIF/ Assessable Value (in Rs.)	Total Amt. of duty (Rs.)
823973/15.02.2008	Pioneer/Sony/JVC Front Panel "Face" for Car stereo	COS-D633/08 dated 25.01.2008	101	2,08,012/- ----- 5,52,756/-	190841
834082/11.04.2008	Remote Control for Car stereo (Malaysia/ Thailand/Indonesi/China) Manuals and Gift boxes	COS-D639/08 dated 17.03.2008	109	2,43,853/- ----- 6,66,770/-	210778

(ii) Importer:- M/s Magfour Electronics (IEC No. 0307080323)

Bill of Entry No. & Dt.	Description of goods	Invoice No. & date	No. of pkgs (ctns)	CIF/ Assessable Value (in Rs.)	Total Amt. of duty (Rs.)
821461/04.02.2008	Unbranded metal cabinet fitted with PCB & CDM with wire and screw for Car CD Player (China)	DL-1294/08 dated 09.01.2008	421	9,80,908/- ----- 9,90,717/-	338139
833040/07.04.2008		DL-1308/08 dated 20.03.2008	476	11,04,770/- ----- 12,08,803/-	383231

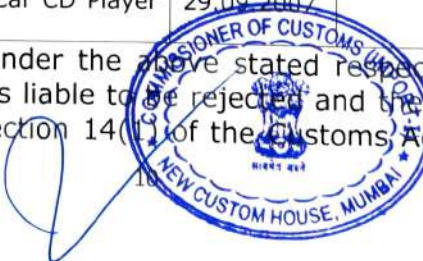
(iii) Importer:- M/s MEPL Trade International (IEC No. 0306020912)

Bill of Entry No. & Dt.	Description of goods	Invoice No. & date	No. of pkgs (ctns)	CIF/ Assessable Value (in Rs.)	Total Amt. of duty (Rs.)
780026/17.07.2007	Pioneer/Sony/JVC Front Panel "Face" for Car stereo Pioneer/Sony/JVC Remote Control for Car stereo (Malaysia/ Thailand/Indonesi/China) Manuals and Gift boxes	COS-D596/07 dated 21.06.2007	205	3,29,160/- ----- 6,14,680/-	219252

(iv) Importer:- M/s Automart Accessories (IEC No. 0306020971)

Bill of Entry No. & Dt.	Description of goods	Invoice No. & date	No. of pkgs (ctns)	CIF/ Assessable Value (in Rs.)	Total Amt. of duty (Rs.)
799194/16.10.2007	Unbranded metal cabinet fitted with PCB & CDM with wire and screw for Car CD Player (China)	COS-D613/07 dated 29.09.2007	372	8,67,964/- ----- 9,49,697/-	324138

3.18. The value declared under the above stated respective bills of entry, which were misdeclared was liable to be rejected and the actual transaction value for the purpose of Section 14(1) of the Customs Act, 1962 read with



provisions of Rule 3 of the Customs Valuation Rules, 2007, appeared to be the FOB value as disclosed in the export declarations by the exporter at the Hong Kong. Since the said value was FOB, the freight given by the shipping line and insurance at the normal rate (1.125%) has to be added to arrive at the CIF value. The bill of entry wise summary of redetermined value is as follows:-

TABLE-1.7

Sr. No.	Name of the Importer	Bill of Entry No. & Dt.	Re-determined Value (in Rs.)	CIF	Redetermined Assessable value (in Rs.)
1	M/s Hiya	823973/15.02.2008	3348029		3381510
2	International	834082/11.04.2008	4514361		4559505
3	M/s. Magfour	821461/04.02.2008	13359978		13493578
4	Electronics	833040/07.04.2008	16528257		16693540
5	M/s. MEPL Trade International	780026/17.07.2007	7522771		7597998
6	M/s. Automart Accessories	799194/16.10.2007	14330048		14473349

3.19. The Retail Sale Price (RSP) which was declared in the bill of entry no. 823973 dated 15.02.2008 filed in the name of M/s Hiya International and bill of entry No. 780026 dated 17.07.2007 filed in the name of M/s. MEPL Trade International for the purpose of levy of additional Customs duty (CVD) also appeared to be misdeclared, in view of the evident misdeclaration of value. Scrutiny of the bills of entry no. 823973 dated 15.02 2008 revealed that to arrive at the RSP (as declared) loading of about 251% (2.51 times of the value) was made in the import value to the value declared in the said bill of entry, filed in the name of M/s. Hiya International. Similarly, loading of about 273% to 277% (2.73 to 2.77 times of the value) was made in the import value to the values declared in the bill of entry No. 780026 dated 17.07.2007, filed in the name of M/s MEPL Trade International Since the import value itself was misdeclared, the retail sale price determined by loading thereon was also vitiated. The said retail sale prices were therefore liable to be rejected and redetermined. Accordingly, taking into consideration the percentage of loading at the RSPs, the revised RSPs of the goods based on the redetermined CIF value is as under:-

TABLE-1.8

(a) Importer-M/s Hiya International

Bill of Entry No. & Dt.	Item	Re-determined CIF Value (in Rs.)	% of RSP to value	Re-determined CIF Value (in Rs.)
823973/15.02.2008	JVC 3.5" Front Panel Faces (with screen) for Car CD player	469899	251	

(b) Importer-M/s MEPL Trade International

Bill of Entry No. & Dt.	Item	Re-determined CIF Value (in Rs.)	% of RSP to value	Re-determined CIF Value (in Rs.)
780026/17.07.2007	JVC KW-AVX706 Car DVD Player	1552709		4299896
	JVC KW-AVX700 Car	8171	277	1767734



	DVD Player			
	Pioneer AVH-P6850DVD Car DVD Player	287465	273	784779
	Pioneer AVH-P5750DVD Car DVD Player	958215	273	2615927

3.20. Consequently, the differential duty in the bill of entry no. 823973 dated 15.02.2008 (filed in the name of M/s Hiya International) and bill of entry No. 780026 dated 17.07 2007 (filed in the name of M/s. MEPL Trade International) appeared as under:-

**TABLE-1.9**

Sr. No	Name of the Importer	Bill of Entry No. & Dt.	Declared CIF Value (in Rs.)/ Assessable value (Rs.)	Re-determined CIF Value/ Revised Assessable value (in Rs.)	Differential value (in Rs.)	Differential Duty (in Rs.)
1	M/s Hiya International	823973/15.02.2008	208012 ----- 552756	3348029 ----- 3381510	2828754	1007382
2		834082/11.04.2008	243853 ----- 666770	4514361 ----- 4559505	3892735	1234739
3	M/s. Magfour Electronics	821461/04.02.2008	980908 ----- 990717	13359978 ----- 13493578	12502861	4267315
4		833040/07.04.2008	1104770 ----- 1208803	16528257 ----- 16693540	15484737	4909185
5	M/s. MEPL Trade International	780026/17.07.2007	329160 ----- 614680	7522771 ----- 7597998	6983318	2709629
6	M/s. Automart Accessories	799194/16.10.2007	867964 ----- 949697	14330048 ----- 14473349	13523652	4615719
<b>TOTAL</b>						<b>1,87,43,969</b>

The details of the determination of the above stated differential duty were stated in Annexure A-2 of the SCN.

3.21. It appeared that the above stated differential duty of Rs 1,87,43,969/- (Rupees One crore eighty seven Lakhs forty three Thousand Nine Hundred Sixty nine Only) under bills of entry, as stated above, was not levied or short levied by reason of collusion, misstatement and Suppression of facts by or on behalf of the respective importing firms by Shri Amarjeet Singh Mago alias Babloo, Shri Rakesh Shashikant Patel and Ashwanil Dham (Director: M/s Sai Dutta Clearing Agency, CHA no. 11/978) acting in collusion with the respective proprietors of the importing firms and the overseas supplier. The said amount of the differential duty amounting to Rs 1,87,43,969/- was recoverable under the provisions of Section 28 of the Customs Act, 1962, along with interest under the provisions of the Section 28AB (28AA from 08.04.2011) of the said Customs Act, 1962.

4. In view of the aforesaid, Shri Amarjeet Singh Mago alias Babloo, M/s. Hiya International, through its proprietor Shri Rakesh Shashikant Patel, M/s. Magfour Electronics, through its proprietor Darshan Yeshwant Dave, M/s. MEPL Trade International, through its proprietor Shri Prashant Shashikant



Sawant, M/s. Automart Accessories, through its proprietor Shri Prutesh J. Rupani, Shri Vijay Kumar Choithramani (of M/s Chee Lin Exports and M/s Cosmo Trading) and Shri Ashwani Dham (Director: M/s Sai Dutta Cleaning Agency, CHA 11/978) were called upon to show cause in writing to the Commissioner of Customs (Import), Mumbai as under:-

I. (a) In respect of bill of entry no. 823973 dated 15.02 2008 and 834082 dated 11.04.2008, M/s Hiya International, its proprietor Shri Rakesh Shashikant Patel and Shri Amarjeet Singh Mago alias Babloo to show cause as to:-

- (i) why the value of the goods declared under the above two bills of entry should not be rejected under the provisions of Section 14 (1) of the Customs Act, 1962 read with the provisions of Rule 12(1) of the Customs Valuation Rules, 2007.
- (ii) why the value of the goods declared under the above two bills of entry for the purpose of Section 14 (1) of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation Rules, 2007, should not be redetermined combinedly as Rs. 79,41,015/- (Rupees Seventy nine lakhs forty one Thousand and fifteen Only) on the basis of the CIF value of Rs 78,62,390/- as ascertained from the declarations filed by the overseas supplier with the Hong Kong authorities;
- (iii) why differential duty amounting to Rs 22.42,121/- leviable on the basis of the above stated value of Rs 79,41,015/- which had not been paid due to collusion, willful misstatement and suppression of facts should not be demanded and recovered under the provisions of Section 28 of the Customs Act, 1962, with interest under the provisions of Section 28AB (28AA from 08.04 2011) of the Customs Act, 1962;
- (iv) why amount of Rs 16,00,000/- paid voluntarily by Shri Amarjeet Singh Mago alias Babloo during investigation should not be appropriated against the above stated differential duty leviable on the said goods;
- (v) why goods of the declared value of Rs 4,51,865/- CIF (redetermined CIF value Rs 78,62.391/-) should not be held liable for confiscation under Section 111(d) of the Custom Act, 1962 (read with Rules 11, 14 (1) and 14 (2) of Foreign Trade (Regulation )Rules, 1993) and under Section 111 (m) of the Customs Act, 1962)
- (vi) why penalty under Section 112 (a). Section 112 (b). Section 114A and Section 114AA of the Customs Act, 1962 should not be imposed on them, in relation to the above goods.

(b) S/ Shri Vijay Kumar Choithramani and Ashwanil Dham were called upon to show cause as to why penalty under Section 112 (a). Section 112 (b) and Section 114AA of the Customs Act, 1962 should not be imposed on them, in relation to the above goods

II. (a) in respect of bills of entry nos 821451 dated 04.02.2008 and 833040 dated 07.04.2008, M/s Magfour Electronics, its proprietor Shri Darshan Yeshwant Dave, Shri Amarjeet Singh Mago alias Babloo and Shri Rakesh Sashikant Patel were called upon to show cause as to:-

- (i) why the value of the goods declared in the above two bills of entry should not be rejected under the provisions of Section 14 (1) of the Customs Act, 1962 read with the provisions of Rule 12(1) of the Customs Valuation Rules, 2007.



- (ii) why the value of the goods declared in the above two bills of entry for the purpose of Section 14 (1) of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation Rules, 2007, should not be redetermined combinedly as Rs 3,01,87,118/- (Rupees Three Croresy One Lakh Eighty seven Thousand One Hundred eighteen Only) on the basis of the CIF value of Rs.2,98,88,235/- as ascertained from the declaration filed by the overseas supplier with the Hong Kong authorities;
- (iii) why differential duty amounting to Rs 91,76,500/- leviable on the basis of the above stated value of Rs 3,01,87,118/- which had not been paid due to collusion, willful misstatement and suppression of facts should not be demanded and recovered under the provisions of Section 28 of the Customs Act, 1962 with interest under the provisions of Section 28AB (28AA from 08.04.2011) of the Customs Act, 1962;
- (iv) why amount of Rs 1,25,00,000/- paid voluntarily by Shri Amarjeet Singh Mago alias Babloo during investigation should not be appropriated against the above stated differential duty leviable on the said goods;
- (v) why goods of the declared value of Rs 20,85,678/- (redetermined CIF value Rs 2,98,88,236/-) should not be held liable for confiscation under Section 111(d) of the Custom Act, 1962 (read with Section 7 of the Foreign Trade (Development & Regulation) Act, 1992 read with Rules 2 (c) and 12 of the Foreign Trade (Regulations) Rules 1993, further read with provisions of para 2.12 of the Foreign Trade Policy and Para 2.8 of the Hand Book of Procedure) and under Section 111 (m) of the Customs Act, 1962;
- (vi) why penalty under Section 112 (a). Section 112 (b), Section 114A and Section 114AA of the Customs Act, 1962 should not be imposed on them, in relation to the above goods.

(b) S/Shri Vijay Kumar Choithramani and Ashwanii Dham were called upon to show cause as to why penalty under Section 112 (a), Section 112 (b) and Section 114AA of the Customs Act, 1962 should not be imposed on them in relation to the above goods.

III (a) In respect of bill of entry no. 780026 dated 17.07.2007, M/s MEPL Trade International, its proprietor Shri Prashant Shashikant Sawant. Shri Amarjeet Singh Mago alias Babloo and Shri Rakesh Sashikant Patel were called upon to show cause as to:-

- (i) why the value of the goods declared under above bill of entry should not be rejected under the provisions of Section 14 (1) of the Customs Act, 1962 read with the provisions of Rule 12(1) of the Customs Valuation Rules, 2007;
- (ii) why the value of the goods declared under above bill of entry for the purpose of Section 14 (1) of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation Rules, 2007, should not be redetermined as Rs 75,97,998/- (Rupees Seventy five Lakhs Ninety seven Thousand Nine Hundred Ninety eight Only) on the basis of CIF value of Rs 75,22,771/- as ascertained from the declaration filed by the overseas supplier with the Hong Kong authorities;
- (iii) why differential duty amounting to Rs 27,03,629/- leviable on the basis of the above stated value of Rs 75,97,998/- which had not been paid due to collusion, willful misstatement and





- suppression of facts should not be demanded and recovered under the provisions of Section 28 of the Customs Act, 1962, with interest under the provisions of Section 28AB (28AA from 08.04.2011) of the Customs Act, 1962;
- (iv) why amount of Rs 24,00,000/- paid voluntarily by Shri Amarjeet Singh Mago alias Babloo during investigation should not be appropriated against the above stated differential duty leviable on the said goods;
- (v) why goods of the declared value of Rs 3,29,160/- (redetermined CIF value Rs 75,22,771/-) should not be held liable for confiscation under Section 111(d) of the Custom Act, 1962 (read with Section 7 of the Foreign Trade (Development & Regulation) Act, 1992 read with Rules 2 (c) and 12 of the Foreign Trade (Regulations) Rules 1993, further read with provisions of para 2.12 of the Foreign Trade Policy and Para 2.8 of the Hand Book of Procedure) and under Section 111 (m) of the Customs Act, 1962;
- (vi) why penalty under Section 112 (a), Section 112 (b). Section 114A and Section 114AA of the Customs Act, 1962 should not be imposed on them.
- (b) S/ Shri Vijay Kumar Choithramani and Ashwanii Dham were called upon to show cause as to why penalty under Section 112 (a), Section 112 (b) and Section 114AA of the Customs Act, 1962 should not be imposed on them.
- IV. (a) In respect of bill of entry no. 799194 dated 16.10.2007, M/s. Automart Accessories, its proprietor Prutesh J. Rupani, Shri Amarjeet Singh Mago alias Babloo and Shri Rakesh Sashikant Patel were called upon to show cause as:-

- (i) why the value of the goods declared under the above bill of entry should not be rejected under the provisions of Section 14 (1) of the Customs Act, 1962 read with the provisions of Rule 12(1) of the Customs Valuation Rules, 2007;
- (ii) why the value of the goods declared under the above bill of entry for the purpose of Section 14 (1) of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation Rules, 2007, should not be redetermined as Rs 1,44,73,349/- (Rupees One Crore Forty four Lakhs Seventy three Thousand Three Hundred Forty nine Only) on the basis of CIF value of Rs 1,43,30,048/- as ascertained from the declaration filed by the overseas supplier with the Hong Kong authorities;
- (iii) why differential duty amounting to Rs 46,15,719/- leviable on the basis of the above stated value of Rs 1,44,73,349/- which had not been paid due to collusion, willful misstatement and suppression of facts should not be demanded and recovered under the provisions of Section 28 of the Customs Act, 1962, with interest under the provisions of Section 28AB (28AA from 08.04.2011) of the Customs Act, 1962;
- (iv) why amount of Rs 33,00,000/- paid voluntarily by Shri Amarjeet Singh Mago alias Babloo during investigation should not be appropriated against the above stated differential duty leviable on the said goods;
- (v) why goods of the declared value of Rs 8,67,964/- (redetermined CIF value Rs 1,43,30,048/-) should not be held liable for confiscation under Section 111(d) of the Customs Act, 1962 (read with Section 7 of the Foreign Trade (Development & Regulation)



Act, 1992 read with Rules 2 (c) and 12 of the Foreign Trade (Regulations) Rules 1993, further read with provisions of para 2.12 of the Foreign Trade Policy and Para 2.8 of the Hand Book of Procedure) and under Section 111 (m) of the Customs Act, 1962;

(vi) why penalty under Section 112 (a), Section 112 (b), Section 114A and Section 114AA of the Customs Act, 1962 should not be imposed on them in relation to the above goods;

(b) S/ Shri Vijay Kumar Choithramani and Ashwanii Dham were called upon to show cause as to why penalty under Section 112 (a), Section 112 (b) and Section 114AA of the Customs Act. 1962 should not be imposed on them in relation to the above goods.

5. The above said Show Cause notice was adjudicated vide Order-in-Original No. C.A.O. No. 81/2013/CAC/CC(I)/AB dtd. 24.06.2013 issued vide F.No. S/26-Misc-235/2012 VB;S/10-Adj-44/2012VB and further Corrigendum dated 19.08.2013 whereby the demand under section 28(4) alongwith interest under section 28AA of the Customs Act 1962 was confirmed as detailed below:-

TABLE-2.1

Sr. No.	Bill of Entry No. & Dt.	Importer name	Differential duty confirmed	Demanded from whom
1	M/s Hiya International	823973/15.02.2008 834082/11.04.2008	22,42,121/-	M/s Hiya International
2	M/s. Magfour Electronics	821461/04.02.2008 833040/07.04.2008	91,76,500/-	Shri Amarjeet Singh Mago Shri Rakesh S. Patel M/s. Magfour Electronics
3	M/s. MEPL Trade International	780026/17.07.2007	27,09,629/-	Shri Amarjeet Singh Mago Shri Rakesh S. Patel M/s. MEPL Trade International
4	M/s. Automart Accessories	799194/16.10.2007	46,15,719	Shri Amarjeet Singh Mago Shri Rakesh S. Patel M/s. Automart Accessories

5.1. The Mandatory penalty was also imposed in all cases equal to the duty alongwith applicable interest under section 114A of the Custom Act 1962 on Shri Amarjeet Singh Mago in all cases.

5.2. Although the goods were confiscated but redemption fine was not imposed in any of the case.

5.3. The following penalties under section 112(a), 112(b) and 114AA of the Customs Act 1962 were imposed as detailed below:-

TABLE-2.2

Sr. No.	Bill of Entry No. & Dt.	Importer name	Penalty/ under section	Imposed on
1	M/s Hiya International	823973/15.02.2008 & 834082/11.04.2008	800000 / 114A	Shri Rakesh S. Patel & M/s Hiya International

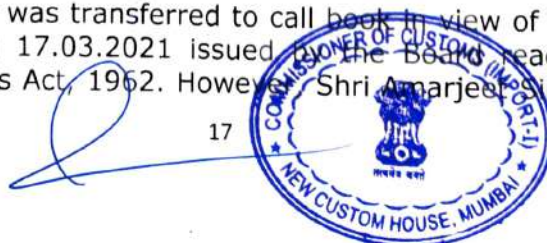


			800000 / Shri Amarjeet Singh 114AA Mago
			800000 / Sh. Vijay Kumar 112(a) Choithramani
2	M/s. Magfour Electronics	821461/04.02.2008 & 833040/07.04.2008	3000000 / Shri Rakesh S. Patel 112(a)&(b)
			500000 / Shri Darshan 112(a)&(b) Shashikant Dave
			500000 / Sh. Ashwanii Dham, 112(a) CHA M/s. Sai Dutta Clearing Agency
			3000000 / Shri Rakesh S. Patel 114AA
			3000000 / Shri Amarjeet Singh 114AA Mago
			800000 / Sh. Vijay Kumar 112(a) Choithramani
3	M/s. MEPL Trade International	780026/17.07.2007	800000 / Shri Rakesh S. Patel 112(a)&(b)
			500000 / Shri Prashant 112(a)&(b) Shashikant Sawant
			500000 / Sh. Ashwanii Dham, 112(a) CHA M/s. Sai Dutta Clearing Agency
			800000 / Shri Rakesh S. Patel 114AA
			800000 / Shri Amarjeet Singh 114AA Mago
			500000 / Sh. Vijay Kumar 112(a) Choithramani
4	M/s. Automart Accessories	799194/16.10.2007	1500000 / Shri Rakesh S. Patel 112(a)&(b)
			500000 / Shri Prutesh J Rupani 112(a)&(b)
			500000 / Sh. Ashwanii Dham, 112(a) CHA M/s. Sai Dutta Clearing Agency
			1500000 / Shri Rakesh S. Patel 114AA
			1500000 / Shri Amarjeet Singh 114AA Mago
			500000 / Sh. Vijay Kumar 112(a) Choithramani

6. Subsequent to issuance of Order-in-Original all the proprietors of the firms alongwith Sh. Amarjeet Singh Mago and Sh. Ashwanii Dham preferred an appeal before the CESTAT. CESTAT vide order No. A/880-887/14/STB/C-I, S/527-534/14/CSTB/C-I & M/1063-1069/14/CSTB/C-I dated 03.06.2014 passed the following order:-

*"In the Impugned order, although the value of the goods have been rejected and duty has been determined but the duty has not been demanded from a specified person therefore, the impugned order lacks merit. In the circumstances, the Impugned order is set aside and the appeals are allowed by way of remanded to the adjudicating authority to decide the issue first from whom the duty is to be demanded and thereafter, if required, impose the penalties. The adjudicating authority is directed to adjudicate the matter afresh within 90 days of the receipt of this order after giving reasonable opportunity to the appellants to presert their case."*

7. The said matter was transferred to call book in view of the instruction No. 04/2021-Cus dtd 17.03.2021 issued by the Board read with section 28(9A) of the Customs Act, 1962. However, Shri Amarjeet Singh Mago filed



a Writ Petition No. 2490 of 2021 dtd. 06.10.2021 before Hon'ble High Court. Honb'le High Court of Bombay vide order dtd. 29.03.2022 directed that the Respondent Authority to adjudicate upon the Show cause Notice as directed by the Competent Authority (CESTAT) preferably within two months.

PERSONAL HEARING

8.1. Accordingly, the Noticees were given an opportunity for personal hearing on 25.04.2022, 09.05.2022 and 10.05.2022. The details of the said personal hearing dated 10.05.2022 are as under:-

8.2. Shri Ashok Kumar Singh, Advocate, on behalf of Noticee No. 01 to 05 attended the Personal Hearing held on 10.05.2022 before me, wherein they inter alia stated that:

- a) The case should be dropped as there is delay in terms of section 28(9) of the Customs Act 1962.
- b) There is no bar that lending of IEC cannot be done for import purpose.
- c) All IEC holder were available and they are importer.
- d) Export declaration is not matching with import declaration and procedure for obtaining export declaration was not followed. Section 138C of the Customs Act was not followed regarding admissibility of document.
- e) Noticee 1 is financier and Noticee No. 2 to 5 are importers.
- f) Remittance evidence regarding differential payment not produced.
- g) Duty cannot be levied from financier.
- h) There is no misdeclaration of value as alleged.
- i) Section 114AA penalty can be imposed only in case of Export.
- j) In remand proceeding, penalty under section 112(a)/112(b) cannot be imposed, if not imposed earlier.

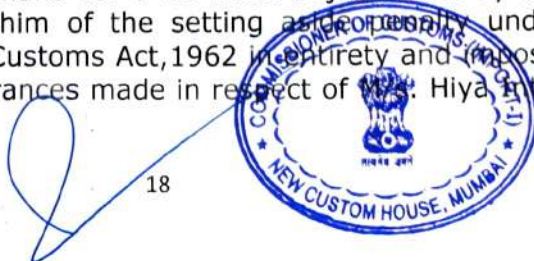
8.3. Shri D.H. Nadkarni, Advocate, on behalf of Noticee No. 06 i.e. Shri Ashwanii Dham, attended the Personal Hearing held on 10.05.2022 before me, wherein it was inter alia stated that:

- a) The case should be dropped as there is delay in terms of section 28(9) of the Customs Act 1962.
- b) Written submission submitted.
- c) There is no evidence that CHA was involved in undervaluation. Thus penalty under any section should not be imposed.

WRITTEN SUBMISSIONS

9. Shri D.H. Nadkarni, Advocate, on behalf of Noticee No. 06 i.e. Shri Ashwanii Dham, vide their written submission submitted during personal hearing stated that they had already filed a Reply dated 9-10-2012 to the Show cause notice.

9.1. That an order of remand for a de novo adjudication by the Hon'ble Tribunal will not deprive him of the setting aside penalty under Section 112(b) and 114AA of the Customs Act, 1962 in entirety and imposition of no penalty as regards to clearances made in respect of M/s. Hiya International



in erstwhile Order dated 24-6-2013 passed in the previous order. In this regard, they have relied upon judgements/ decisions as follows:

1. Page 2 of 3 Banshi Dhar Lachhman Prasad & Anr - 1978 (2) E.L.T. (J 385) (S.C.)
2. SPL Industries Limited – 2003(159) ELT 720(T)
3. Gautam Diagnostic Centre – 2003(159) ELT 6789T)

9.2. That the proper officer of Customs assessed the goods and allowed clearance of the goods. Their firm undertook clearance work based on the documents i.e. invoice, packing list etc., supplied to them by the Importer. The proper officer after verifying the documents and after satisfying himself as to description, value etc., allowed the clearance of the goods. Hence, there is no violation of Customs Act,1962 or any other law for the time being in force and the proposal to impose penalty is not sustainable.

9.3. The entire case is based on declarations of FOB value said to be made to Hong Kong Customs by the supplier in Hong Kong. Only after investigations and after procurement of restricted documents such as declarations, an allegation of undervaluation was made. They were not aware about the FOB declarations made at Hong Kong and in the absence of knowledge of alleged undervaluation proposal to impose penalty on the Noticee is not sustainable.

9.4. In the impugned proceedings, an allegation was made that interest in the imported goods was shown by persons other than IEC holder. It is relevant to note that statements of IEC holder was recorded during investigations and they were found in existence. In the matter of PROPRIETOR, CARMEL EXPORTS & IMPORTS reported in 2012 (276) E.L.T. 505 (Ker.), it was held that I.E. Code holder can import goods in normal course of business on strength of contract either with consumer or trader who eventually sells imported goods to consumers and such transaction is neither illegal nor prohibited by law i.e. Sections 2(e) and 7 of Foreign Trade (Development and Regulation) Act, 1992.

9.5. The Noticee in his statement dated 10-11-2009 stated that in connection with import of electronic goods there is a general trend of undervaluation and wherever there has been any undervaluation in imports handled by his firm, he ensures that differential duty along with applicable interest is paid forthwith. That he is not an expert on valuation of electronic goods and the statement dated 10-11-2009 made by him was general in nature. Their firm advised their client, wherever possible to declare the price of imported goods as per documents, invoices handed over to them.

9.6. The Noticee submits that based on the Reply dated 9-10-2012 filed on 9-10-2012 and present Written Submissions, it is prayed to drop penal proposal initiated under Section 112(a) of the Customs Act,1962 (on the Noticee).

10. Shri Ashok Kumar Singh, Advocate, on behalf of Noticee Noticee No. (1) Shri Amarjeet Singh Moga (2) Shri Rakesh Shashikant Patel, Proprietor, M/s. Hiya International, (3) Shri Darshan Yeswant Dave, Proprietor, M/s. Magfour Electronics. (4) Shri Prasant Shashikant Sawant, Proprietor, M/s. MEPL Trade International. (5) Shri Prutesh J. Rupani, Proprietor, M/s. Automart Accessories vide reply dated 13.05.2022 inter alia denied all the allegations in the notice and submitted the following



10.1. That the Noticee No.1 preferred a Writ Petition before Hon'ble High Court of Judicature at Bombay and the Hon'ble High Court vide its order dated 29.03.2022 directed the Respondent to adjudicate upon the Show Cause Notice within 2 months. That except Noticee No. 1 none of the other Noticee approached the Hon'ble High Court and as such extension of time consequence to the Hon'ble High Court order is applicable to the Noticee No. 1 only.

10.2. That, the present Show Cause Notice is issued on 29.02.2012 therefore would require the completion of adjudication proceeding as per the unamended Section 28(9). Since this case falls under sub-section 28(9)(b), this could be extended by one year from the date of issue of the impugned Show Cause Notice dated 29.02.2012. Thus, there is an embargo in the present decision to the proceeding to determine the issue in the Show Cause Notice.

10.3 That reliance was placed on various judgments with respect to the issue pertaining to limitation under Section 28 (9) such as:

- a. **J.Sheik Parith Vs Commissioner of Customs (Seaport-Exports), Chennai [2020 (374) ELT 15 (Mad.)]**
- b. **Nelco Limited Vs Union of India [2002 (144) ELT 56 (Bom)]**
- c. **Bhatinda District Co-op Milk P. - 2007 (217) ELT 325 (SC).**
- d. **Vineetaz Exports (P) Ltd - 2019 (367) ELT 751(Del)**

Therefore in this case also the differential duty demands are barred by limitation of sub-section 28(9) as applicable.

10.4. In view of the aforesaid submission, the demand in the Show Cause Notice should be dropped on this ground only. That a preliminary order on the issue of limitation and on an estoppel on these proceeding may be passed in accordance with law.

10.5. That there is no violation of provision of Section 7 of Foreign Trade (Development & Regulation) Act, 1992 read with Rule 2 (c) and 12 of the Foreign Trade (Regulation) Rules, 1993 as alleged in Show Cause Notice. That the goods are imported by an existing IEC holders i.e. Noticee No. 2 to 5. That Noticee No. 2 to 5 duly participated in the investigation and their statements are also recorded under Section 108 of the Customs Act. The allegation in the Show Cause Notice that the IEC of Noticee No. 2 to 5 were lent to the Noticee No. 1 to 2 is a misnomer and there is no violation in using the IEC as alleged. In this regard, reliance is placed upon the following decision:

- a. **Proprietor, Carmel Exports & Imports Vs Comm. of Cus, Cochin [2012 (276) E.I.T 505 (Ker)].**
- b. **Atul D. Sonpal Vs Commissioner of Cus (ACC & Import), Mumbai [2012 (275) E.I.T 248 (Tri.Mum)]**
- c. **Hamid Fahim Ansari Vs Commr. of Cus. (Import), Nhava Sheva [2009 (241) E.I.T 168 (Bom)].**

10.6. That there can be no case made out on under valuation of the impugned goods under import, due to the reasons that:



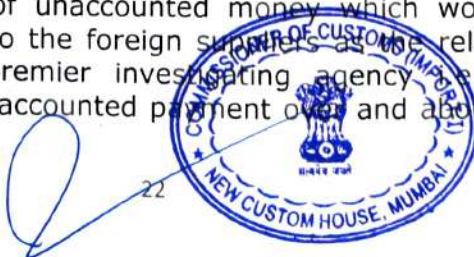
- (i) There is no allegation regarding mis-declaration of quantity and quality of the goods as per the import documents filed and accepted by the proper officer.
- (ii) The Revenue has build up its case upon a Trade Declaration filed before Hongkong customs. The said declaration would show that there is mis-match between the description of the goods in the Bill of Entry and the Trade Declaration. The Bill of Entry was prepared on the basis of invoice, packing list and Bill of Lading. The description in all the 3 documents is in consonance with each other and verified during the examination and the assessment of the goods. The Trade Declaration were filed subsequent to the export of the goods and have not been verified and not supported by the any export documents these export declarations are not signed by the exporter nor the same is supported by an Affidavit of Consulate General of India.
- (iii) The export declaration is given in the form of information. There is no evidence that the said declarations on the said documents were verified, accepted and approved by the Hong Kong Customs.
- (iv) Hon'ble Tribunal in the matter of **Tele Brands (India) Pvt. Ltd Vs Commissioner of Cus. (Import), Mumbai [2016 (336) ELT 97 (Tri.Mum)]** more specifically in para 7.7. The Hon'ble Tribunal refused to rely upon the Hong Kong Declaration filed by the exporter as there was mismatch in the description, quantity and the unit price. This decision of the tribunal also relies upon the Caveat found on the Honk Kong declaration that it could not be shown copies to the third party or used in any proceeding. In the present case also as elaborated above there is mismatch in the description between the import documents and the Hong Kong Declaration and also there is a Caveat in the Hong Kong Declaration that it cannot be used before any court of law. In view of the aforesaid it is therefore submitted that the Hong Kong Declaration has no evidentiary value and cannot be used for the purpose of rejection of declared value and for re-determining the assessable value.
- (v) The Proper Officer of Customs in India in the Appraising Group and in the Dock Examination Shed, have assessed and found the goods as per the packing list and the Proper Officer has assessed the goods at levels much higher than the declared value in the invoices depending on various brands and the country of origin. This exhibits an application of mind and any re-assessment of the said valuations as now proposed cannot be ordered and upheld since the assessment are a quasi-judicial function as held in catena of decisions.
- (vi) The admission in the statement of various person relied to establish undervaluation cannot be a rule of valuation approved under the Customs Valuation Rule and the notes thereunder. There is no material brought on contemporaneous higher level of valuation to be in existence and found and disclosed in the Show Cause Notice. The transaction value is therefore required to be accepted.
- (vii) The Bill of Entry of M/s. Magfour Electronics and M/s. Automart are for the import of unbranded Metal Cabinet Fitted



with PCB and CDM for car CD Player (China). Detail submission were made on the price established for assessment purpose in the Custom House during the year 2007 and 2008 at USD 6 and 6.5 per piece respectively. Reliance was also placed on the decision of CESTAT in the case of **C.C. Goa Vs John Miranda 2013 (298) ELT 724 (Tri. Mum)** as recorded in para 21V of the impugned order.

- (viii) The Sales effected of the goods after imports and copies of invoice Nos. 91 dated 15.03.2008, 92 dated 15.03.2008, 94 dated 18.03.2008, 95 dated 26.03.2008, 96 dated 04.04.2008, 97 dated 13.04.2008, 101 dated 03.06.2008, 102 dated 18.06.2008, 106 dated 11.10.2008 for front panels and remote control along with VAT and CST payments of M/s. Hiya International were produced to show that the front panels have been sold at the rate of Rs. 95/- to Rs. 105/- and upto Rs. 150/, while remote controls have been sold at the price of Rs. 50/- to Rs. 60/- per piece upto Rs. 100/- maximum. For the Bill of Entry No. 8323973 of Hiya International if the values as declared on Hong Kong documents are taken for the total quantities of front panel and divided by the number of pieces as per the packing list then the average value of a front panel works out to HKD 132.76 FOB. Taking the average rate of conversion at Rs. 8/-per HKD the value works out to Rs. 1052.14. On this if freight and other charges as proposed in the SCN are added then after duty the landed price will be in the region of Rs. 2000/- each for the front panel. M/s. Hiya International have sold the complete CD receivers at the rate of Rs. 2,000/-each as per the copy of invoice No. 131 dated 10.03.2009 produced before the earlier Ld. Adjudicator. This sale of 5 pieces as per the records of M/s. Hiya International is a resale of purchase from another importer of a full set. It was also submitted that DRI in another case has conducted market survey and found the prices of these goods ranging from Rs.3050 to Rs. 6700 in retail while their dealing was in wholesale. It was submitted that the copy of this market report has been submitted to the adjudicator in another case where it was relied by the Mumbai DRI Zonal Unit officers in a show cause notice issued. Reliance was placed on the said report to submit that the market value of the front panel cannot be around Rs. 2000/-.
- (ix) With regard to import of M/s. Hiya International, Noticee No. 2 sales invoice of imported goods sold were submitted during the first round of litigation before the adjudicating authority in order to prove the sales price of the imported goods are in commensurate with the declared and assessed value and not with the Hong Kong Declaration. Working out the sale prices by taking the Hong Kong Documents declared prices to be value for assessment and therefore paying duty on those level and keeping out profit margin the valuation of the entire would be the valuation of the entire set and not part of the said sell.

10.7. There is no material available and relied in the Show Cause Notice about the huge amount of unaccounted money which would have been collected and repatriated to the foreign suppliers as the relevant premises were searched by the premier investigating agency. DRI and no transaction of any such unaccounted payment over and above the declared





levels in the transaction documents for the said import have been found. The transactional value is therefore to be accepted.

10.8. With regard to the admissibility of a statement recorded Under Section 108 is concerned, the question is whether the authorities can act on such statements alone in the absence of any corroborating material to substantiate the contents of such statements. Therefore, the admissibility of an evidence cannot and could not be taken to mean its acceptability as well. Reliance is placed on para 14 of the decision in the case of **Sainul Abideen Neelam – 2014 (300) ELT 342 (Mad)** to submit that the relied upon statements are required to be tested with corroborative material and cross examination is a must to enhance. The declarations in this case has been made as per the orders placed and the quantities and other declarations has not been found to be incorrect in any fashion. There is no corroboration of additional amounts being remitted through other than banking channels as got recorded in these statements.

10.9. As regard the allegation in the Show Cause Notice of redetermination of RSP for part of the goods in two Bill of Entry to determine the level at which addition duty of customs under Section 3 of the Customs Tariff Act is to be levied it is submitted that there is no rule to re-determine the RSP at the redetermination at the relevant time in the Customs Tariff Act.

10.10. When there is no material to establish mis-declaration under Customs Act and under DGFT Act relying on **Proprietor, Carmel Exports & Imports (Supra)** there can be no reason to arrive at confiscation of the goods under the provision of Section 111 of the Customs Act to call for any penalty under Section 112 (a) or 112 (b). As regard penalty under Section 114A, since no undervaluation or mis-declaration can be upheld under the provision of Section 28(2) of the Customs Act, 1962, and the notice No.1 has not been imposed any penalties under Section 112(a) or/and 112(b) indicating that he is not found to be responsible or connected with any act mentioned in these Sections qua imported goods. Then provisions of Section 114A cannot be invoked against the Noticee.1. Section 114A cannot be invoked against the Noticee No. 1 as the provision is applicable to an importer or his agent. Noticee No. 1 is not the importer, the importers are the IEC holders, and the Noticee No. 1 being the financier cannot be an agent for the importers. He is also not found concerned with the acts qua imported goods as mandated in Section 112(a) or/and 112(b).

10.11. Similarly Noticee No. 2 to 5 have been imposed penalty under Sections 112(a) and 112(b). Such an invocation cannot be upheld as per the settled law on the subject.

10.12. As regard the penalty under Section 114AA, reliance is placed on the decision of Parliamentary Committee Report of Taxation Amendment Bill 2005 by which Section 114AA was introduced wherein after Ministry of Finance explanation on the insertion behind enactment of Section 114AA was to plug the rampant trade or misuse of export incentive scheme of Government of India. The Parliamentary Committee approved the same with the rider that the enactment is harsh and cannot be a source of harassment to other importer to which the ministry will provide suitable safeguard. Thus, an assurance was given to the parliamentary committee by the Ministry of Finance under which CBIC and Customs department function to administered the Customs Act, the Customs Authorities are bound by executive estoppel by the 'determine of export incentive estoppel'. Reliance is placed in the case of **Spentex Industries Ltd - 2015 (324) ELT 686**. The



same concept has been accepted by Tribunal in the matter of **Comm. of Customs, Sea, Chennai Vs Sri Krishna Sounds & Lighting [2019(370) ELT 594]** more specifically in para 6. Therefore, the penalty under Section 114AA cannot be invoked on any Noticee under the present matter.

10.13. It is submitted that no penalty under Section 112 (a) and/or 112(b) have been imposed upon Noticee No. 1 and as such in denovo remand proceedings no penalty under Section 112 (a) and/or 112(b) could be imposed upon Noticee No. 1 as held by the Apex Court in the matter of **Banshi Dhar Lachhman Prasad & Anr Vs Union of India [1978 (2) ELT (J385) SC]** more specifically in para 14, which categorically held that an order of remand for a denovo adjudication by the Collector will not deprive an appelland of the favorable directions obtained by him from the adjudication officer and would not have the effect of subjecting him to a greater penalty than has been adjudged against him in the original decision or order.

### DISCUSSION AND FINDINGS

11. I have carefully gone through the impugned SCN, O-i-O, written submissions made by the noticees records of the case and the submission made by Noticees in reply to the Show Cause and heard the noticees in person.

11.1. I find that, the main directions of the CESTAT is to decide that from whom the differential duty is to be demanded and thereafter if required, to impose the penalties. However, the Adjudicating Authority was directed to adjudicate the matter afresh after giving reasonable opportunity to the appellants to present their case. I find that in the earlier Order-in-Original, demand was confirmed and there after order was given for recovery of the said amount from different persons. I find that, for the import done by M/s. Hiya International, recovery was ordered from M/s. Hiya International. However, for M/s. MEPL Trade International, M/s. Magfour Electronics and M/s. Automart Accessories, recovery was ordered to be done from M/s. Amarjeet Singh Mago, Mr. Rakesh S.Patel and the concerned importer combinedly. The CESTAT has remanded for limited purpose to decide from whom differential duty needs to be demanded and there after imposing penalty. **Therefore, earlier order of reason for confirmation of demand has not been set aside.**

11.2. I find that, all the Noticees during the personal hearing held on 10.05.2022 have argued that demand should be dropped as there is delay in adjudication in terms of Section 28(9) of the Customs Act, 1962. I find that, present case is a remand case and time limit for adjudication of remanded case is not covered under Section 28(9) of the Customs Act, 1962. Further, as per the Hon'ble High Court order dtd.29.03.2022, the said remanded case has to be adjudicated preferably in two months. Once Hon'ble High Court has given the direction of adjudication, it will be applicable for adjudication for all concerned noticees for whom the case has been remanded by CESTAT. Therefore argument of the Noticees regarding dropping of demand in terms of Section 28(9) of the Customs Act, 1962 is not sustainable.

11.3. Further, in the matter of M/s. Canon India Private Limited Vs. Commissioner of Customs wherein, the Hon'ble Supreme Court of India has given judgment that the Additional Director General of DRI not being "the" proper officer to exercise the power conferred under Section 28(4) of the Customs Act, 1962 and the initiation of the recovery proceeding were set aside. In consequence of the above said judgment, proceeding of the



Hon'ble Supreme Court of India, the Board vide Letter F. No. 450/72/2021-Cus-IV had issued an instruction No. 04/2021-Customs dated 17.03.2021 to keep the SCNs pending in the call book which have been booked and investigated by DRI. Later in the Finance Act, 2022 dated 30.03.2022, several changes were made in the Customs Act, 1962 and demand notice issued by DRI prior to the Finance Act 2022 was validated by section 97 of the Finance Act 2022. Accordingly, demand notice was taken out from the Call Book. Thus, as per Section 28(9) read with section 28(9A) of the Customs Act, the time period for adjudication for cases retrieved from call-book is one year from the date from when reason for retrieval from Call book ceases to exist. Thus the present adjudication order is issued within the time-limit as per Section 28(9) r/w Section 28(9A) i.e. after the retrieval from call-book.

11.4. I find that the allegations in the SCN is that Sh. Amarjeet Singh Mago along with Sh. Rakesh Shashikant Patil, Proprietor, M/s. Hiya International hatched the conspiracy with the help of overseas supplier Shri Vijay Kumar Choitramani, stated to be the owner of M/s Chee Lin Exports and Cosmos Trading at Hong Kong, to under-declare the value with the help Shri Ashwanii Dham, Director of M/s Sai Dutt Clearing Agency. It is also alleged that Shri Amarjeet Singh Mago and Shri. Rakesh Sashikant Patel had understanding with the proprietor of 1) M/s Magfour Electronics 2) M/s MEPL Trade International and 3) M/s Automart Accessories for allowing them to import in their name by making use of the IECS obtained in the name of the firms. It is also alleged that the difference between declared value and actual value was paid through payment of cash in India to a representative of the overseas supplier in India.

11.5. I find that several goods like Pioneer/Sony/JVC Front Panel "Face" for Car stereo, Unbranded metal cabinet fitted with PCB & CDM with wire and screw for Car CD Player were imported by 4 proprietorship concerns against 6 Bills of Entry as detailed below:-

TABLE-3.1

Sr. No.	Name of the Importer	Bill of Entry No. & Dt.	Declared CIF Value (in Rs.)
1	M/s Hiya International	823973/15.02.2008	2,08,012/-
2		834082/11.04.2008	2,43,853
3	M/s. Magfour Electronics	821461/04.02.2008	9,80,908
4		833040/07.04.2008	11,04,770
5	M/s. MEPL Trade International	780026/17.07.2007	3,29,160
6	M/s. Automart Accessories	799194/16.10.2007	8,67,964

11.6. I find that during investigation, the overseas enquiry was conducted with regard to trade declaration at the time export from supplier country. Detailed reference of the trade declaration is as detailed below:-

TABLE-3.2

A) Exporter in Hong Kong (M/s Cosmo Trading)

Sr. No.	Name of the Importer	Bill of Lading No.	Container No.	FOB Value Declared (in HKD)
1	M/s Hiya International	HLCUHKG0801AVLZ2	HLXU6391394	647568.48
2		HKINBOM8C027	CAIU8030934	87218.45
3	M/s. MEPL Trade International	HKINBOM7F035	HDMU6353481	1414311.6
4	M/s. Automart Accessories	HDMUHKBA0193460	HLXU6372572	2743228.8



B) Exporter in Hong Kong (M/s Chee Lin Exports)

Sr. No.	Name of the Importer	Bill of Lading No.	Container No.	FOB Value Declared (in HKD)
1	M/s. Magfour	HDMUHKBA0219915	CAXU6520370	2582224.3
2	Electronics	HDMUHKBA0230616	HDMU2508820	3136373.76

A sample copy of the trade declaration is reproduced below:-



香港海關



HONG KONG  
 CUSTOMS AND EXCISE DEPARTMENT

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**CERTIFICATE VERIFYING  
 A COMPUTER PRODUCED DOCUMENT**

I, Wong Kwong, Senior Trade Controls Officer of the Customs and Excise Department HEREBY CERTIFY that :

- (1) I occupy a responsible position in relation to the operation of the Department's computer system, namely the Government TDEC System and I am duly authorised by the Commissioner of Customs and Excise to certify on his behalf that the document annexed to this certificate and marked "A" is a document produced by the said computer system.
- (2) This document is a copy of a document produced from the Department's computer system.
- (3) (a) The said computer was used to store, process or retrieve information for the purposes of the activities carried on by the Department;  
 (b) the information contained in the statement in the document reproduces, or is derived from, information supplied to the computer in the course of the activities of the Department; and  
 (c) while the computer was so used in the course of those activities :  
 (i) appropriate measures were in force for preventing unauthorised interference with the computer; and  
 (ii) the computer was operating properly, or if not, that any respect in which it was not operating properly or was out of operation was not such as to affect the production of the document or the accuracy of its contents.

(4) I give the following explanation of the nature and contents of the document :

that this document is a true copy of the record of the information sent using services provided by a specified body within the meaning of the Import and Export Ordinance, Cap. 60 which is an import/export declaration required to be lodged under the said Ordinance in relation to the importation/exportation of the articles mentioned in the document; and

that according to the document, COSMO TRADING CO on 11/02/2008 informed the Department that it had on 25/01/2008 exported from Hong Kong:

1. 8 CARTON CONTAINING 144.000 KG COMPONENTS FOR CAR STEREO, FRONT PANEL (FACES) valued at \$84,598.80
2. 13 CARTON CONTAINING 231.840 KG COMPONENTS FOR CAR STEREO, FRONT PANEL (FACES) valued at \$163,506.41
3. 9 CARTON CONTAINING 162.000 KG COMPONENTS FOR CAR VCD PLAYER, FRONT PANEL (FACES) valued at \$103,693.20
4. 1 CARTON CONTAINING 21.600 KG COMPONENTS FOR CAR DVD PLAYER, FRONT PANEL (FACES) valued at \$22,754.16

*Wong Kwong*  
 23/1/12

23/1/12



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5. 4 CARTON CONTAINING 81,000 KG COMPONENTS FOR CAR STEREO, FRONT PANEL (FACES) valued at \$44,752.50
6. 7 CARTON CONTAINING 100,800 KG COMPONENTS FOR CAR DVD PLAYER, FRONT PANEL (FACES) valued at \$129,417.60
7. 10 CARTON CONTAINING 2,120,000 NO. COMPONENTS FOR CAR STEREO/CAR VCD PLAYER/CAR DVD PLAYER, REMOTE CONTROL (INFRA - RED RAYS) valued at \$43,655.04
8. 10 CARTON CONTAINING 1,998,000 NO. COMPONENTS FOR CAR STEREO/CAR DVD PLAYER, REMOTE CONTROL (INFRA - RED RAYS) valued at \$53,178.37
9. 35 CARTON GIFT BOX valued at \$1,029.60
10. 14 CARTON PUBLICITY MATERIALS - MANUALS valued at \$982.80

to India.

(5) All of the above is stated to the best of my knowledge and belief.

Dated: 28/01/2011  
SIGNED BY: WONG KWONG  
in Hong Kong  
in the presence of: LI KWOK YING  
(Trade Controls Officer)

*[Signature]*

*[Handwritten signatures and dates: 21/1/12, 23/1/12]*

11.7. I find that, the container number and Bill of Lading number declared in the trade declaration of exporting country and Bill of Entry filed are same as detailed below:-

TABLE-3.3

Sr. No.	Name of the Importer	Bill of Entry No. & Dt.	Bill of Lading No.	Container No.
1	M/s Hiya International	823973/15.02.2008	HLCUHKG0801AVLZ 2	HLXU6391394
2		834082/11.04.2008	HKINBOM8C027	CAIU8030934
3	M/s. Magfour Electronics	821461/04.02.2008	HDMUHKBA021991 5	CAXU6520370
4		833040/07.04.2008	HDMUHKBA023061 6	HDMU2508820
5	M/s. MEPL Trade International	780026/17.07.2007	HKINBOM7F035	HDMU6353481
6	M/s. Automart Accessories	799194/16.10.2007	HDMUHKBA019346 0	TRLU3725739

11.8. I find that the above depicted sample trade declaration (from RUD No. 16-21) has been given by Trade Controls Officer, Customs & Excise Department of Hong Kong. I find that, each document has been signed by Hong Kong customs authorities. Further, they have given the information

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*[Handwritten signature]*

with regard to number of cartons with total weight for each individual product with their value. In addition to that, they have given exporter's name, their address, port of discharge, consignee name and address, bills of lading No. and Container number. **I find that, when bills of lading number and Container number are tallying with respect to the trade declaration at Hong Kong and bill entry filed in India it has to be inferred that the details submitted by the Hong Kong customs and excise department is only with regard to declaration made by the said four importers through above mentioned bills of entry.**

11.9. I find that, from above on comparison it may be ascertained that the value of goods declared as CIF was much much lesser than the value declared in the Export country in FOB. The comparison is detailed below:-

**TABLE-3.4**

Sr. No.	Name of the Importer	Bill of Entry No. & Dt.	FOB Value Declared (in HKD)	Declared CIF Value (in Rs.)
1	M/s Hiya	823973/15.02.2008	647568.48	2,08,012/-
2	International	834082/11.04.2008	87218.45	2,43,853
3	M/s. Magfour	821461/04.02.2008	2582224.3	9,80,908
4	Electronics	833040/07.04.2008	3136373.76	11,04,770
5	M/s. MEPL Trade International	780026/17.07.2007	1414311.6	3,29,160
6	M/s. Automart Accessories	799194/16.10.2007	2743228.8	8,67,964

11.10. I find that, thus the document available at the time of Exporting country of same consignment clearly proves that the said 4 firms had undervalued the goods. Since, the declared value at exporting country were at FOB value, the shipping agents M/s Console Shipping. M/s LCL Logistix (India) P Ltd. and M/s Hyundai Merchant Marine India P Ltd submitted the details of the freight charges, in respect of the goods covered by each of the above stated bill of lading as below:

**TABLE-3.5**

Sr. No.	Name of the Importer	Bill of Entry No. & Dt.	Bill of Lading No.	Freight paid (USD)
1	M/s Hiya International	823973/15.02.2008	HLCUHKG0801AVLZ2	208.47
2		834082/11.04.2008	HKINBOM8C027	165.1
3	M/s. Magfour Electronics	821461/04.02.2008	HDMUHKBA0219915	1070
4		833040/07.04.2008	HDMUHKBA0230616	881
5	M/s. MEPL Trade International	780026/17.07.2007	HKINBOM7F035	343.53
6	M/s. Automart Accessories	799194/16.10.2007	HDMUHKBA0193460	1075

11.11. I find that, accordingly, the value was re-determined after considering insurance at the rate of 1.125% as below:-

**TABLE-3.6**

Sr. No.	Name of the Importer	Bill of Entry No. & Dt.	Re-determined CIF Value (in Rs.)	Redetermined Assessable value (in Rs.)
1	M/s Hiya International	823973/15.02.2008	3348029	3381510
2		834082/11.04.2008	4514361	4559505
3	M/s. Magfour Electronics	821461/04.02.2008	13493578	13493578
4		833040/07.04.2008	1652825	16693540



5	M/s. MEPL Trade International	780026/17.07.2007	7522771	7597998
6	M/s. Automart Accessories	799194/16.10.2007	14330048	14473349

11.12. I find that, in view of the evident misdeclaration of value discussed above, the Retail Sale Price (RSP) which was declared in the bill of entry no. 823973 dated 15.02.2008 filed in the name of M/s Hiya International and bill of entry No. 780026 dated 17.07.2007 filed in the name of M/s. MEPL Trade International for the purpose of levy of additional Customs duty (CVD) were also misdeclared. That to arrive at RSP in respect of bills of entry no 823973 dated 15.02.2008 loading of about 251% (2.51 times of the value) was made in the import value to the value declared in the said bill of entry filed in the name of M/s. Hiya International. Similarly, loading of about 273% to 277% (2.73 to 2.77 times of the value) was made in the import value to the values declared in the bill of entry No. 780026 dated 17.07.2007, filed in the name of M/s MEPL Trade International. Since the import value itself had been misdeclared, the retail sale price determined by loading thereon was also vitiated. I reject the said retail sale prices and redetermine taking into consideration the percentage of loading at the RSPs, the revised RSPs of the goods based on the redetermined CIF value is as under:

**TABLE-3.7**

Importer - M/s Hiya International

Bill of entry No	Item	Redetermined value Rs.	% of RSP to value	Redetermined RSP value
823973 dated 15.02.2006	JVC 3.5 Front panel faces( with screen) for Car CD player	469899	251	1179446

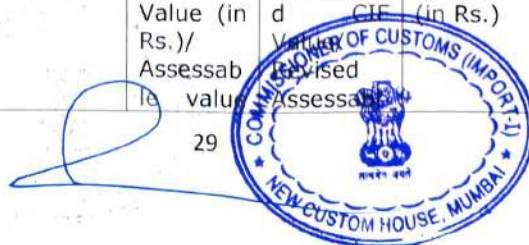
Importer M/s MEPL Trade International

Bill of entry No	Item	Redetermined value Rs.	% of RSP to value	Redetermined RSP value
780026 dated 17.07.2007	JVC KW-AVX706 Car DVD Player	1552309	277	4299896
	JVC KW-AVX700 Car DVD Player	638171	277	1767734
	Pioneer AVH-P6850DVD Car DVD Player	287465	273	784779
	Pioneer AVH-P5750DVD Car DVD Player	958215	273	2615927

11.13. Accordingly, the position of the differential duty i.e. duty not levied or paid on account of the above stated misdeclaration in value and the misdeclaration of RSP in the bill of entry as stated in the above said tables are detailed as under.

**TABLE-3.8**

Sr. No	Name of the Importer	Bill of Entry No. & Dt.	Declared CIF Value (in Rs.)/ Assessable value	Redetermined CIF Value/ Revised Assessable value	Differential value (in Rs.)	Differential Duty (in Rs.)



			(Rs.)	e value (in Rs.)		
1	M/s Hiya International	823973/15.02.2008	208012 ----- 552756	3348029 ----- 3381510	2828754	1007382
2		834082/11.04.2008	243853 ----- 666770	4514361 ----- 4559505	3892735	1234739
3	M/s. Magfour Electronics	821461/04.02.2008	980908 ----- 990717	13359978 ----- 13493578	12502861	4267315
4		833040/07.04.2008	1104770 ----- 1208803	16528257 ----- 16693540	15484737	4909185
5	M/s. MEPL Trade International	780026/17.07.2007	329160 ----- 614680	7522771 ----- 7597998	6983318	2709629
6	M/s. Automart Accessories	799194/16.10.2007	867964 ----- 949697	14330048 ----- 14473349	13523652	4615719
<b>TOTAL</b>						<b>1,87,43,969</b>

11.14. I find that the value declared by the overseas supplier at Hong Kong in the respective trade declaration are much higher than the values of the same goods shown in the invoice submitted by the Importers submitted in the respective Bill of Entry before Indian Customs.

11.15. I find that, the prices indicated in the trade declaration reflect the actual value of the goods in the country of export, the same represent true and correct transaction value of the goods as declared in the respective Bill of Entry was not the true transaction value of the said goods in terms of provision of section 14(1) of the Customs Act read with the provisions of Custom Valuation Rules (Determination of value of Imported goods) Rules, 2007 and therefore the declared transaction value are rejected as actual transaction value shall be considered for the purpose of Custom duty.

11.16. I find that in the present case transaction value has been ascertained from the trade declaration given to the Hong Kong Customs Authorities. Rule 3(1) of the said Custom Valuation Rules (Determination of value of Imported goods) Rules, 2007 is reproduced below:-

*"Rule 3. Determination of the method of valuation . -*

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

*(2)....."*

The transaction value as declared by the importers is rejected as discussed above. However in this case actual transaction value has been ascertained from the trade declaration filed by the overseas supplier with the Hong Kong authorities. Thus new actual ascertained value declared by the overseas supplier is the actual value of the imported goods and shall be the transaction value adjusted in accordance of Rule 10 in terms of Rule 3(1) of Customs Valuation (Determination of value of Imported goods) Rules, 2007. As per declaration submitted by overseas supplier payment terms of the delared value was in F.O.B. basis. Therefore in terms of Rule 10(2) cost of transport and insurance as discussed above needs to be added to the FOB value to arrive at CIF value. In view of the above discussion I





find that the amount of demand as raised in the Show cause Notice is sustainable.

11.17. I find that all the noticees have argued that there is mismatch of description and quantity of goods in the bills of entry and trade declarations, they have also argued that the quantity is not declared in the Hong Kong declaration in pieces. The weight as per Bill of lading and Hong Kong document do not exactly match. **I find that as long as container number and bill of lading is matching in both the cases it has to be inferred that the goods declared in Hong Kong trade declaration were same as the declaration in bills of entry filed in India.** They have also argued that the declarations at Hong Kong is not at their control. I find that, when bills of lading and container numbers are tallying for each importer along with other information then invoice value declared by the exporter has to be considered the actual value. Moreover, they are supposed to produce the invoice value as prepared by the exporter and as declared in exporting country and not manipulated invoice filed in India. Since they have submitted manipulated invoice in India, information as available in manipulated invoices compared to Exporter's invoice shall definitely mismatch. Since the invoice as produced in the exporting country is not produced in India, it has to be inferred that the declared invoice in India is manipulated. Therefore argument of noticee regarding not acceptability of trade declaration made at Hong Kong is not sustainable.

11.18. I find that. Noticee No. 1-5 have argued that the Trade Declaration was filed subsequent to export of goods and not supported by export document. Moreover, such document were not signed by the exporter and the document is not supported by Affidavit of Consulate General of India. I find that, these are documents submitted by Hong Kong Customs and Excise department and the same have been certified by Senior Trade Control Officer of Hong Kong Custom and Excise Department. In addition to certificate verifying computer based document they have also enclosed trade declaration print out where details of each item has been given. In each case a declaration is also certified by the exporter. Thus, exporter has certified that particular given in the declaration are accurate and complete. Therefore, there is no reason to reject certificate given by Hong Kong Customs and Excise Department. All these document are signed by concerned authorities. The Noticees have also argued that export declaration is in the form of information and there is no evidence that document are verified, accepted and approved by Hong Kong Customs. I find that, argument of the Noticees is not sustainable as each document forwarded by Hong Kong customs is certified.

11.19. The Noticees have also argued that admission regarding undervaluation in the statement of various persons cannot be a rule of valuation approved by Customs Valuation Rules. I find that, the mastermind for importation of the goods in the present case was Shri Amarjeet Singh Mago. I find that, Shri Amarjeet Singh Mago, during his statement under section 108 recorded on 10.11.2009 admitted regarding undervaluation of the goods. Further, Shri Rakesh Patel who was helping Shri Amarjeet Singh Mago in the importation of the said goods has also accepted the under



valuation of the goods. Infact during this period they quantified the duty liability and paid in the name of different firms. The statement, under section 108 of the Customs Act, of Shri Amarjeet Singh was again recorded on 23.01.2012 and all the facts regarding under valuation was again re-confirmed in his statement after a gap of 2 years. Further, Shri Rakesh Shashikant Patel again in his statement dated 24.01.2012 again reconfirmed his earlier statement and confirmed regarding under valuation of the goods. There is no dispute that both of them were importing in the name of different IECs and they were the main persons behind importation of the goods. Even during the Personal Hearing, the lending of IEC has been accepted by Advocate of the Noticees. **Thus, the entire evidences, in the form of statement of Shri Amarjeet Singh and Shri Rakesh Patel supported by statement of the Proprietors are substantial to prove undervaluation of the goods. These evidences also prove the mens rea of under valuation for evasion of custom duty. Therefore, argument of Notice No. 1-5 that statement is not sufficient document to prove under-valuation is not sustainable. I find that, the differential duty was self quantified and paid by various firms on 18/11/2009. I find that the overseas enquiry was conducted and report was signed in the year 2012 and differential duty as per the trade declaration and self quantification by Shri Amarjeet Singh Mago along with different proprietors are almost same. Thus, argument placed by the Noticees for not accepting confirmed statement for under valuation is not sustainable.**

11.20. I find that, Noticee No.1-5 have argued that there is no material evidence regarding the repatriation of the unaccounted money to the foreign supplier. I find that, Shri Amarjeet Singh Mago and Shri Rakesh Patel both in their statements under section 108 of the Customs Act, have confirmed that differential value i.e. difference between actual value and value declared to Indian customs was remitted to the overseas supplier through Hawala channel. I find that, where the main person behind the importation, had accepted regarding transfer of differential value through the Hawala channel, the same is sufficient evidence regarding under valuation of the goods.

11.21. I find that, Noticee No.1-5 have argued that proper officer of customs had assessed the bills of entry at higher much higher rate than the declared value depending upon various brands and Country of Origin. Therefore, re-assessment of the said valuation cannot be ordered as assessment is a Quasi-judicial function. I find that, assessment by the custom officer is being done under section 17 of the Customs Act. Re-assessment includes assessment which is also done under section 17(4) of the Customs Act. However, in the present case action has been taken under section 28 of the Customs Act which states that where duty has been short levied due to reasons of collusion or any will full mis-statement or suppression of facts, demand can be the raised within five years from the relevant date. Thus, the present action is under section 28(4) of the Customs Act, which has been rightly taken.



11.22. I find that, Notice No. 1-5 have stated that their domestic sales price are in line with declared invoice value to support their argument. I find that present investigation is limited to undervaluation of goods at the time of importation and undervaluation has been fully established. Issuance of domestic invoice which may also be under valued cannot be a ground to support their case.

11.23. I find that, the present goods have been imported through 4 IECs with different proprietorship concerns. The details of such proprietorships is as below:-

TABLE-3.9

Sr. No.	Importer name (Proprietorship Concerns)	IEC	Name (proprietor)
1	M/s Hiya International	0307078698	Rakesh S. Patel
2	M/s. Magfour Electronics	0307080323	Darshan Dave
3	M/s. MEPL Trade International	0306020912	Prutesh Rupani
4	M/s.Automart Accessories	0306020971	PJ.Rupani

11.24. I find that there is no dispute that the importation in the name of M/s. Hiya International was actually done by Rakesh Shashikant Patel, Proprioter, of the said firm. Although Shri Amarjeet Singh Mago has helped the propeitor of M/s. Hiya International for the purposes of importation, but the fact remains that the firm was in his name and he was the sole proprietor of the said firm and therefore entire responsibility for payment of duty lies with the proprietor of the firm Sh. Rakesh S. Patel for M/s. Hiya International.

11.25. I find that, Shri Amarjeet Singh Mago with the help of Shri Rakesh S. Patel had obtained three more IECs from three different other persons for the purpose of impotation these firms are as per the table given below:-

TABLE-3.10

Sr. No.	Importer name (Proprietorship Concerns)	IEC	Name (proprietor)
1	M/s. Magfour Electronics	0307080323	Darshan Dave
2	M/s. MEPL Trade International	0306020912	Prutesh Rupani
3	M/s.Automart Accessories	0306020971	PJ.Rupani

11.26. I find that, the demand was has been proposed under section 28 (4) of the Custom Act 1962, which reads as under:

"(4) Where any duty has not been <sup>10</sup>[levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

(a) collusion; or

(b) any wilful mis-statement; or



(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been <sup>11</sup>[so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice."

From the above, I find that, if there is a short levy of duty by the importer, the notice has to be served to the importer requiring him to show cause as to why the said amount should not be paid by the notice.

11.27. I find that, the importer has been defined under section 2 (26) of the Customs Act of 1962, during the relevant period as below:-

" 'importer' in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer "

Therefore, on going through the definition of importer it is clear that importer maybe

- 1) owner of the goods or
- 2) any person holding himself out to be the importer

at the time between the impotation of the goods and clearance of the goods for home consumption.

11.28. I find that Hon'ble High Court of Bombay in the case of GAGANDEEP SINGH ANAND Vs COMMISSIONER OF CUS. (IMPORT), MUMBAI, 2019(367)ELT 212(Bom) inter alia held that Demand of duty can only be made from the Importer of the goods. The relevant part of the judgement is reproduced below:-

*"We have examined the rival contentions. From the facts, it is evident that the appellatant is the second buyer of the car. The importer of the car is one Mr. Dholakia who had cleared the said car from the Customs on payment of customs duty and thereafter sold to one Mr. Oberoi. The appellatant had purchased the said car from Mr. Oberoi in the year 2005. During the course of investigation by the DRI, the said car was seized on 30th August, 2007 and confiscated in 2008 with option to redeem the same. It is an admitted position that since then the said car is in possession of the DRI as the option to redeem has not been exercised. The importer of the said car is Mr. Dholakia who had filed the bill of entry and cleared the said car on payment of customs duty as assessed by the Officers of the customs. In fact, on identical fact situation, where the importer of the offending car was not traceable, this Court in VXL India Ltd. (supra) has held that the **differential duty, if any, is to be only recovered from the importer in terms of Section 28 of the Act and the same cannot be recovered from the buyer of such offended goods.**"*

11.29. I find that Hon'ble Tribunal in the case of INDERJIT NAGPAL Vs. COMMISSIONER OF CUS. & C. EX., GOA 2017 (323)ELT 1029 (Tri. - Mumbai) held that - Importer - Person chargeable with duty - Refers to person who by filing bills of entry has made himself liable to discharge duty liability



- Department has no authority to demand short-levied or non-levied from anyone other than importer - Person "believed" to be owner cannot be proceeded against - Where importer identifiable and have been put on notice, fastening of tax liability on appellant on ground that finance had flowed from appellant's firm without authority of law - Section 28(1)(a) of Customs Act, 1962.

11.30. I find that the Hon'ble Supreme Court in VELLANKI FRAME WORKS V/s Commercial tax officer, Visakhapatnam, as reported in 2021(375) ELT 289 (S.C.) at para 30 of the said judgement has held that importer is a person who imports goods into India. Further, the owner of the goods or person holding himself to be the owner shall also be regarded as importer during the period between importation of goods and clearance for home consumption. The relevant Para 30 of the said judgement is reproduced below:-

*"It is but apparent that that while bringing anything into India from a place outside India is generally regarded as "import" and the imported goods are those goods which are brought into India from a place outside but, when the goods are cleared for home consumption, they are no longer imported goods for the purpose of the Customs Act. Significantly, in the process of importation, the importer, in relation to any goods, includes any owner or any other person holding himself to be the importer but, only between the time of their importation and their clearance for home consumption. In other words, the net result of the expanded definition of the expression "importer" is that while any person who imports goods into India would be an importer but, the owner of the goods or a person holding himself to be an importer would also be regarded as an importer during the period between importation of goods and their clearance for home consumption. This crucial period would generally be that period when the goods have been warehoused after importation and are cleared from warehouse by a person other than the person who actually imported the goods."*

11.31. I find that Hon'ble Tribunal Kolkata COMMR. OF CUSTOMS (PORT), KOLKATA Vs RUDRA VYAPARCHEM PVT. LTD. 220(371) ELT 774 (Tri-Kolkata) inter alia held that:- *"In the present case is concerned, it is undisputed that the invoices and bill of lading are in the name of the respondent. It is true that in their statement, the respondent denied that they are not the importers, which is now being disputed by the respondent's Counsel. However, the key to decide who the owner of the goods in case of international trade is the bill of lading, which is the document of title. Since the Bill of Lading is in the name of the respondent, they are the owners of the goods. It does not matter whether they have already paid for the goods or have yet paid so. It also does not matter whether after import, they in turn, sells the goods to the indenters who placed orders on them. The goods have been imported by the respondent and the Bill of Lading is in their name and therefore, they are the owner of the goods. Therefore, the goods can be provisionally released to them under Section 110A of the Customs Act, 1962."*

11.32. **I find that in case of importation in the name of M/s Magfour Electronics, M/s. MEPL Trade International and M/s. Automart Accessories there is no dispute that bill of lading was in the name of proprietorship concern. Once the bill of lading is in the name of proprietorship concern they become the owner of the goods in terms of Hon'ble Kolkata Tribunal judgement in the case of COMMR. OF CUSTOMS (PORT) KOLKATA V/s RUDRA VYAPARCHEM**



**PVT. LTD. Reported in 220(371) ELT 774(Tri-Kolkata) discussed in above paras. There is no dispute that Bill of Entry was filed in the name of proprietorship concern. Once the Bill of Entry has been filed in the name of proprietorship concern than the said proprietorship concern becomes the Importer of the goods. Therefore, as per above mentioned case it is clear that Importer of the goods was proprietorship concern. As discussed in para 11.26 above the demand and recovery has to be made from the Importer of the goods. Therefore demand confirmed against each importer has to be paid by the concerned Importer only.**

11.33. I find that there is proposal for confiscation of the goods under Section 111(m) of the Customs Act 1962, on the grounds of deliberate, mis-declaration of the goods. As discussed above, there is difference of value of the goods declared in India and value of the goods declared at the country of export by way of manipulating the invoice leading to evasion of customs duty. I am reproducing the section 111(m) *ibid* below:

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

*(a)....*

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

Since the value declared in the Bill of Entry is much much less than the value declared by the exporter at the port of export goods, by way of using manipulated import invoice are liable for confiscation under section 111(m)*ibid*.

11.34. I find that the impugned goods were already released without seizure. I find that in terms of Section 125 of the Customs Act, 1962 there is an option to pay fine in lieu of confiscation. Section 125 is reproduced below for the sake of brevity:

*(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.***

*(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.]*

I find that the Hon'ble High Court of Chhattisgarh in the case of Visteon Automotive Systems India Limited Vs CESTAT, Chennai, 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.

11.35. I find that there is proposal to impose penalty under section 112(a),(b), section 114A and 114AA to the following persons as detailed below:

**TABLE-4**

Sr. No.	Importer name	Bill of Entry No. & Dt.	Proposal for imposition on	Penalty/ under section
1	M/s Hiya International	823973/15.02.2008 & 834082/11.04.2008	Shri Rakesh S. Patel	112(a), 112(b), 114A & 114AA
			M/s Hiya International	112(a), 112(b), 114A & 114AA
			Shri Amarjeet Singh Mago	112(a), 112(b), 114A & 114AA
			Sh. Ashwanii Dham, CHA M/s. Sai Dutta Clearing Agency	112(a), 112(b), & 114AA
2	M/s. Magfour Electronics	821461/04.02.2008 & 833040/07.04.2008	Shri Rakesh S. Patel	112(a), 112(b), 114A & 114AA
			Shri Darshan Shashikant Dave	112(a), 112(b), 114A & 114AA
			Sh. Ashwanii Dham, CHA M/s. Sai Dutta Clearing Agency	112(a), 112(b), & 114AA
			Shri Amarjeet Singh Mago	112(a), 112(b), 114A & 114AA
3	M/s. MEPL Trade International	780026/17.07.2007	Shri Rakesh S. Patel	112(a), 112(b), 114A & 114AA
			Shri Prashant Shashikant Sawant	112(a), 112(b), 114A & 114AA
			Sh. Ashwanii Dham, CHA M/s. Sai Dutta Clearing Agency	112(a), 112(b), & 114AA
			Shri Amarjeet Singh Mago	112(a), 112(b), 114A & 114AA
4	M/s. Automart Accessories	799194/16.10.2007	Shri Rakesh S. Patel	112(a), 112(b), 114A & 114AA
			Shri Prutesh J Rupani	112(a), 112(b), 114A & 114AA
			Sh. Ashwanii Dham, CHA M/s. Sai Dutta Clearing Agency	112(a), 112(b), & 114AA
			Shri Amarjeet Singh Mago	112(a), 112(b), 114A & 114AA

11.36. I find that Shri Darshan Yashwant Dave, proprietor of M/s Magfour Electronics vide statement recorded on 10.11.2009 under section 108 of Customs Act 1962 has agreed that he is the proprietor of M/s. Magfour Electronics and IEC is in the name of M/s. Magfour Electronics was obtained by him. Although importation was done in the name of M/s Magfour Electronics but such importation was done with the help of Shri



Rakesh Patel and sold in the market buy Shri Rakesh Patel only. He also accepted to pay the differential duty on account of M/s Magfour Electronics

11.37. I find that, Statement of Shri Prashant Shashikant Sawant was recorded under section 108 of customs act on 26.04.2011, wherein he stated that he has obtained IEC in the name of M/s. MEPL Trade International with the help of Shri Prutesh J Rupani (i.e. proprietor of M/s. Automart Accessories). That he had handed over blank signed letterhead of his firm M/s. MEPL Trade International to Shri Prutesh J. Rupani to import the goods in his proprietorship firm. Although he was not aware regarding quantum of importation done in the bill of entry filed under his IEC of proprietorship concern, but he is aware that Shri Rakesh Patel and Shri Amarjeet Singh Mago had imported the goods in the name of M/s. MEPL Trade International.

11.38. I find that, statement of Sri Prutesh J. Rupani, Proprietor, M/s. Automart Accessories was recorded under section 108 of the Customs Act on 23.08.2011. I find that he interalia agreed that he has obtained IEC in the name of his proprietorship firm M/s. Automart Accessories. That he had opened bank account and submitted blank signed letter heads in the name of M/s. Automart Accessories to Shri Rakesh Patel. That he had signed Import declaration to file Bill of Entry in the name of the his firm M/s. Automart Accessories and such Importation was done by Shri Rakesh Patel with the help of Shri Amarjeet Singh Mago.

11.39. I find that Shri Amarjeet Singh Mago in his statements dated 10.11.2009 and 23.01.2012 recorded under Section 108 of the Customs Act, 1962, had interalia stated that he was importing automobile parts in the name of M/s. Mago Exim Pvt. Ltd. which he handled himself. He also confirmed that he and Shri. Rakesh Patel had decided to import electronics goods from China and he would arrange the import and its clearance and Shri. Rakesh Patel would sell the goods in the local market, and since Shri. Ashwini Dham of M/s. Sai Dutt Clearing Agency and M/s Sai Dutt Shipping Agency was known to him, he arranged the clearance of the goods. Shri. Rakesh Patel had brought the IECs of M/s Magfour Electronics, M/s MEPL Trade International, M/s Automart Accessories as the proprietor of the firms were known to Shri Rakesh Patel. All the firms except M/s Hiya International wherein the proprietor was Shri Rakesh Patel, he was paying Rs. 25,000/- to Rs 30,000/- to the importer of the concerned firms for allowing them to import the goods in the name of the firm. All the import consignments were supplied by Shri Vijay Kumar Chaitramani a person of Indian origin from Hong Kong who was also the owner of M/s. Cosmos Trading and M/s. Chee Lin Exports. There was a understanding between them (him and Shri. Rakesh S. Patel) and Shri. Vijay Kumar Choitramani of M/s Cosmos Trading and M/s Chee Lin Exports would send them (him and Shri. Rakesh S. Patel) manipulated invoices showing lesser value, which would be then submitted to Customs authorities in India to save Customs duty.

11.40. I find that Shri Rakesh S Patel in his statements dated 10.11.2009 and 24.01.2012 recorded under Section 108 of the Customs Act, 1962 had interalia stated that, with assistance of Shri. Amarjeet Singh Mago he obtained an IEC in the name of M/s. Hiya International, Shri. Armarjeet Singh Mago had also assisted him both financially and logistically for the import. Shri. Amarjeet Singh Mago negotiated with the foreign supplier of goods imported. He assisted Shri. Darshan Dave, Shri Shri Prutesh J. Rupani and Shri Prashant Shashikant Sawant to obtain the IEC in the name of M/s. Magfour Electronics, M/s. Automart Accessories and M/s. MEPL Trade International respectively. He had also assisted Shri. Amarjeet Singh Mago





in the clearance and sold of goods imported in the name of the other three firms namely: M/s. Magfour Electronics, M/s. Automart Accessories and M/s. MEPL Trade International. He and Shri Amarjeet Singh Mago had imported electronics goods from M/s. Cosmos Trading and M/s. Chee Lin Exports, in the name of a) M/s. Hiya International (b) M/s. MEPL Trade International and (c) M/s. Automart Accessories (d) M/s. Magfour Electronics, They (he and Shri. Amarjeet Singh Mago) handed over the differential import value (difference between actual transaction value and invoice) in cash to the representative of Shri. Vijay Kumar Choitramani in India.

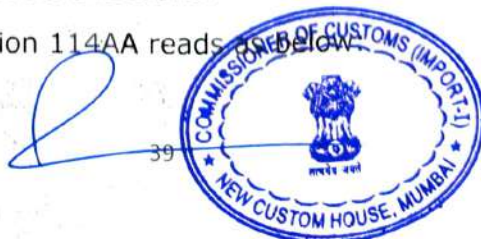
11.41. I find that undervaluation of imported goods has been already established as discussed in above paras. I find that, as per discussion above liability of confiscation of the goods has also been established. I find that, proprietor of all the four firms had obtained IEC as proprietorship firm and signed the documents pertaining to importation of the goods. It is already upheld that once the importation has been done in the proprietorship firm the entire responsibility of correct payment of duty due on importation of goods lies on the proprietor. They have obtained IEC, opened the bank account, signed the document pertaining to clearance of the goods. Thus, they have certified the correctness of contents of bill of entry as per section 46(4) of the customs act 1962. Section 46(4) is reproduced below

*" The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed."*

Thus it is clear that all the four proprietors have not given correct declaration and also filed Bill of Entry without verifying the document as the interaction with the suppliers was being done by Shri Amarjeet Singh Mago and Shri Rakesh Patel. The argument that they have only lended their IECs to Sri Amarjeet Singh Mago and Shri Rakesh Patel cannot absolve their liability with regard to improper importation as they have signed all the document required for clearance of the goods. Since the goods are liable for confiscation, all the four importers are liable to penalty. I find that, as discussed above demand under section 28(4) is sustainable under present case. Where demand is sustainable under section 28(4) penalty is imposable under section 114A of the Customs Act. Thus, I hold that penalty is imposable on all proprietor ship firms under section 114A. As per 5<sup>th</sup> proviso to section 114A, where any penalty is levied under section 114A no penalty shall be levied under section 112 or 114 of the Customs Act. Since penalty under section 114A is already imposed to the proprietorship firm, separate penalty to the proprietor under section 112(a) cannot be imposed. In this regard, I rely upon the judgment of Hon'ble High Court, Delhi in case of Anil Kumar Mahensaria Vs. Commissioner of Customs [2008(228) ELT 166 (Del.)] wherein the court has observed as under:

*"6. under the circumstances, we answer the substantial question of law in the negative, that is, in favour of the appellant and against the revenue. We hold that the only one set of penalty can be imposed against either the appellant Anil Kumar Mahensaria or the proprietorship firm M/s. B.G. Overseas Corporation. We further direct that since Mr. Anil Kumar Mahensaria is the appellant before us, the penalty amount is required to be paid by him and not by the proprietorship firm. The appeal and application are disposed with the aforesaid directions."*

11.42. I find that section 114AA reads as below



*"If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods"*

Thus, as per section 114AA, if any incorrect or forged document has been used knowingly or intentionally in the transaction of business under the Customs Act by any person, then they are liable for penalty under section 114AA. I find that, all the proprietors have admitted that they have lended their IEC to Shri Rakesh Patel and Shri Amarjeet Singh Mago for the purpose of importation and signed all documents without verifying the correctness of the documents. They signed the documents pertaining to the bills of entry and certified the correctness of the documents. By their act of certifying the blank documents which was used for importation purpose clearly evidences that they were knowingly using the incorrect document for the purpose of evasion of duty. Moreover Shri Rakesh Patel was himself involved in the importation of all goods directly. Therefore all the proprietors are subject to penalty under section 114AA.

11.43. I find that Shri Amarjeet Singh Mago and Shri Rakesh Patel in their statement under section 108 have agreed that they were the real persons involved in importation of goods of the above said four IECs wherein the IEC of Sri Rakesh Patel was used and three more IECs obtained with the help of Shri Rakesh Patel. Shri Amarjeet Singh Mago was the main financier of the imported goods and had understanding with the suppliers of the goods. Both, Shri Amarjeet Singh Mago and Shri Rakesh Patel, manipulated invoices and differential value was paid through cash through the supplier's intermediary. Thus, I find that, Shri Amarjeet Singh Mago and Shri Rakesh Patel, had assisted in obtaining the imported goods, manipulating the import invoice, clearance of the undervalued goods and financing the importation and transferring the differential amount. I find that, their statement have not been retracted at any time. I find that the statement was recorded twice and they have confirmed their activity as alleged in the show cause notice. Thus, it is upheld that they were actively involved in the manipulation of invoice by resorting to under valuation and clearance of the goods. Therefore, due to their actions, they are liable for penalty. I find that, both were responsible for getting manipulated invoices, getting IECs and clearance of undervalued goods and finally selling the same. Therefore, their action is covered under section 112(a) and (b) both and goods are made liable for confiscation. Therefore Shri Amarjeet Singh Mago is liable to penalty under section 112(a)&(b) under all IECs. Shri Rakesh Patel is also liable for penalty under section 112(a) & (b) for imports made in the case of (i) M/s Magfour Electronics, (ii) M/s MEPL Trade International and (iii) M/s Automart Accessories. Both, Shri Amarjeet Singh Mago and Shri Rakesh Patel shall be liable to penalty under section 114AA as they had knowingly used incorrect document in the transaction of the business for the Customs Act. However, Shri Rakesh Patel shall not be liable for penalty under section 112(a) & (b) as he is the proprietor there and penalty under section 114A is already imposed.

11.44. I find that following differential Customs duty has been paid on account of undervaluation of the goods imported by (i) M/s. Hiya International, (ii) M/s Magfour Electronics, (iii) M/s MEPL Trade International and (iv) M/s Automart Accessories which was deposited in government treasury under TR-6 Challans as per the following table produced below:-

TABLE 1.2

4



Sr. No	Name of the Firm	Amount	D.D. No. & Date	Challan No. & Date
1	M/s Hiya International	16,00,000	068328/18.11.2009	219/ 19.11.2009
2	M/s. Magfour Electronics	1,25,00,000	068194/10.11.2009	99/ 10.11.2009
3	M/s. MEPL Trade International	24,00,000	068326/18.11.2009	218/ 19.11.2009
4	M/s. Automart Accessories	32,00,000	068283/18.11.2009	184/ 17.11.2009
<b>TOTAL</b>		<b>1,97,00,000</b>		

In view of the same, I hold that, the said payment were made by the above said proprietorship firms which is liable to be appropriated to the respective differential duty and penalties arising out of this order.

11.45. Shri Ashwanii Dham, Custom Broker (Ms. Sai Dutta Clearing Agency) in his statement dated 10.11.2009 recorded under Section 108 of Customs Act, 1962 has confirmed that for the clearance of the goods in the name of (a) M/s. Hiya International (b) M/s. MEPL Trade International and (c) M/s. Automart Accessories, Shri. Rakesh Patel (Proprietor of M/s Hiya International), had approached him. In respect of the goods imported in the name of M/s. Magfour Electronics Shri Amarjeet Singh Mago, had approached him with Shri Rakesh Patel, that he had never met the proprietor of M/s. Magfour Electronics, M/s. MEPL Trade International and M/s. Automart Accessories and had always interacted either with Rakesh Patel or Amarjeet Singh Mago.

11.46. I find that Shri Ashwanii Dham has accepted that he has met Shri Amarjeet Singh Mago and Shri Rakesh Patel only for the clearance of the goods, that he had never met the Proprietor/Importer. I find that the Custom Broker who was associated with the clearance of the goods was under an obligation to examine the applicability of the genuineness of the documents claim/submitted by the importer with the Bill of Entry. I find that existence of proprietor is not in dispute, hteir statement are also recorded and they have also filed appeal before the judicial forum and appeared presently for adjudication purpose. Shri Ashwani Dham through his C.B. firm has failed in discharging the obligations as a Custom Broker as required under Regulation 13(d) of the Custom House Agents Licensing Regulations, 2004 by not verifying the antecedents, identity and functioning of the importer / IEC holder and his address by using reliable, independent authentic documents, data or information and instead dealt with Shri. Amarjeet Singh Mago and Shri Rakesh S Patel. Thus, Shri Ashwani Dham has failed to discharge the obligations under 13(o) of the Custom House Licensing Regulations, 2004. I find that he had also admitted that the subject goods were prone to undervaluation as discussed above, it is already held that the goods are liable for confiscation and his action has led to confiscation of the goods. Therefore, I hold that Shri Ashwinii Dham is liable to penalty under Section 112(a) of the Customs Act, 1962, in respect of the all the import clearances. I do not find any evidence against Shri Ashwinii Dham, Director, of M/s Sai Dutta Clearing Agency (CHA 11/978) for imposing under Section 112(b) and 114AA of the Customs Act, 1962.

12. Accordingly, I issue the following order:-

**ORDER**

12.1 I. In respect of bill of entry no. 823973 dated 15.02.2008 and 834082 dated 11.04.2008, of M/s Hiya International.

(i) I reject the value declared in the bill of entry no. 823973 dated 15.02.2008 and 834082 dated 11.04.2008 of M/s Hiya International; and



redetermined combinedly as Rs 79,41,015/- (Rupees Seventy nine lakhs forty one Thousand and fifteen Only).

(ii) I confirm the differential duty amounting to Rs 22,42,121/- (Rupees Twenty lakhs Eighty Forty Two Thousand One Hundred and Twenty One Only) leviable on the basis of the above stated value of Rs 79,41,015/- [details as per Annexure A-2 to the SCN] under the provisions of Section 28 of the Customs Act, 1962, with applicable interest under the provisions of Section 28AA of the Customs Act, 1962 and the same shall be recovered from M/s. Hiya International;

(iii) I appropriate the amount of Rs 16,00,000/- paid voluntarily by M/s. Hiya International against the above stated confirmed differential duty

(iv) I hold the goods of the declared value of Rs 4,51,865/- CIF (redetermined CIF value Rs 78,62,391/-) is liable to confiscation under Section 111(d) and under Section 111 (m) of the Customs Act, 1962. However, in lieu of the confiscation, I impose Redemption Fine of Rs.2,00,000/- (Rupees Two Lakhs only).

(v) I impose a penalty of Rs. 22,42,121/- (Rupees Twenty lakhs Eighty Forty Two Thousand One Hundred and Twenty One Only) plus the appropriate interest to M/s. Hiya International under Section 114A of the Customs Act, 1962. If the duty and interest as demanded above is paid within 30 days of communication of this order, the amount of penalty imposed would be 25% of the duty and interest as per first proviso to Section 114A ibid subject to the condition that the amount of penalty so determined is also paid within the said period of thirty days.

(vi) I impose a penalty of Rs.2,00,000/- (Rupees Two Lakhs Only) on Shri Rakesh S. Patel proprietor of M/s Hiya International under Section 114AA of the Customs Act, 1962.

(vii) I impose a penalty of Rs.1,00,000/- (Rupees One Lakh Only) under Section 112(a) and 112(b) and Rs.2,00,000/- (Rupees Two Lakhs Only) under Section 114AA of the Customs Act, 1962 on Shri Amarjeet Singh Mago.

(viii) I impose a penalty of Rs.10,000/- (Rupees Ten Thousand Only) on Shri Ashwanii Dham, C.B. M/s Sai Dutta Clearing Agency under Section 112(a) of the Customs Act, 1962.

II. In respect of bills of entry nos 821461 dated 04.02.2008 and 833040 dated 07 04 2008, of M/s Magfour Electronics,

(i) I reject the value declared in the bill of entry no. 821461 dated 04.02.2008, M/s Magfour Electronics, and redetermine combinedly as Rs 3,01,87,118/- (Rupees Three Crores One Lakh Eighty seven Thousand One Hundred eighteen Only).

(ii) I confirm the differential duty amounting to Rs 91,76,500/- (Rupees Ninety one Lakhs Seventy Six Thousand Five Hundred only) leviable on the basis of the above stated value of Rs. 3,01,87,118/- (Rupees Three Crores One Lakh Eighty seven Thousand One Hundred eighteen Only) under the provisions of Section 28 of the Customs Act, 1962, with applicable interest under the provisions of Section 28AA of the Customs Act, 1962, and the same shall be recovered from M/s Magfour Electronics.



(iii) I confiscate the goods of the declared value of Rs 20,85,678/- CIF (redetermined CIF value Rs 2,98,88,236/-) under Section 111(d) and under Section 111 (m) of the Customs Act, 1962. However, in lieu of the confiscation, I impose Redemption Fine of Rs.9,00,000/- (Rupees Nine Lakhs only).

(iv) I impose a penalty of Rs. 91,76,500/- (Rupees Ninety one Lakhs Seventy Six Thousand Five Hundred only) plus the appropriate interest to M/s Magfour Electronics, under Section 114A of the Customs Act, 1962. If the duty and interest as demanded above is paid within 30 days of communication of this order, the amount of penalty imposed would be 25% of the duty and interest as per first proviso to Section 114A ibid subject to the condition that the amount of penalty so determined is also paid within the said period of thirty days.

(v) I impose a penalty of Rs.9,00,000/- (Rupees Nine Lakhs Only) under Section 114AA of the Customs Act, 1962 on Shri. Darshan Shashikant Dave. Proprietor of M/s Magfour Electronics.

(vi) I appropriate the amount of Rs 1,25,00,000/- (Rupees One Crore Twenty Five Lakhs only) paid voluntarily by M/s Magfour Electronics against the above stated differential duty, interest and penalty.

(vii) I impose a penalty of Rs.5,00,000/- (Rupees Five Lakhs Only) under Section 112(a) & (b) and Rs. 9,00,000/- (Rupees Nine Lakhs Only) under Section 114AA of the Customs Act on Shri Rakesh S. Patel.

(viii) I impose a penalty of Rs.5,00,000/- (Rupees Five Lakhs Only) under Section 112(a) & (b) and Rs. 9,00,000/- (Rupees Nine Lakhs Only) under Section 114AA of the Customs Act on Shri Amarjeet Singh Mago.

(ix) I impose a penalty of Rs.10,000/- (Rupees Ten Thousand Only) on Shri Ashwanii Dham, C.B. M/s Sai Dutta Clearing Agency under Section 112(a) of the Customs Act, 1962.

III. In respect of bill of entry no. 780026 dated 17.07.2007, of M/s MEPL Trade International.

(i) I reject the value declared in the bill of entry no. 780026 dated 17.07 2007, M/s MEPL Trade International, and redetermine as Rs 75,97,998/- (Rupees Seventy five Lakhs Ninety seven Thousand Nine Hundred Ninety eight Only).

(ii) I confirm the differential duty amounting to Rs 27,09,629/- (Rupees Twenty Seven Lakhs Nine Thousand Six Hundred Twenty Nine only) leviable on the basis of the above stated value of Rs 75,97,998/- (Rupees Seventy five Lakhs Ninety seven Thousand Nine Hundred Ninety eight Only) details as per Annexure A-2 to the SCN) under the provisions of Section 28 of the Customs Act, 1962, with applicable interest under the provisions of Section 28AA of the Customs Act, 1962 and the same shall be recovered from M/s MEPL Trade International.



(iii) I appropriate the amount of Rs 24,00,000/- (Rupees Twenty Four Lakhs only) paid voluntarily by M/s MEPL Trade International against the above stated differential duty.

(iv) I confiscate the goods of the declared value of Rs Rs 3,29,160/- (redetermined CIF value Rs 75,22,771/-) under Section 111(d) and 111 (m) of the Customs Act, 1962; However, in lieu of the confiscation, I impose Redemption Fine of Rs.3,00,000/- (Rupees Three Lakhs only).

(v) I impose a penalty of Rs 27,09,629/- ( Rupees Twenty Seven Lakhs Nine Thousand Six Hundred Twenty Nine only) plus the appropriate interest on M/s MEPL Trade International under Section 114A of the Customs Act, 1962 If the duty and interest as demanded above is paid within 30 days of communication of this order, the amount of penalty imposed would be 25% of the duty and interest as per first proviso to Section 114A ibid subject to the condition that the amount of penalty so determined is also paid within the said period of thirty days.

(vi) I impose a penalty of Rs. 3,00,000/- (Rupees Three Lakhs Only) under Section 114AA of the Customs Act, 1962 on Shri Prashant Shashikant Sawant, Proprietor of M/s MEPL Trade International.

(vii) I impose a penalty of Rs.1,00,000/- (Rupees One Lakh Only) under Section 112(a) & (b) and Rs. 3,00,000/- (Rupees Three Lakhs Only) under Section 114AA of the Customs Act on Shri Rakesh S. Patel.

(viii) I impose a penalty of Rs.1,00,000/- (Rupees One Lakh Only) under Section 112(a) & (b) and Rs. 3,00,000/- (Rupees Three Lakhs Only) under Section 114AA of the Customs Act on Shri Amarjeet Singh Mago.

(ix) I impose a penalty of Rs.10,000/- (Rupees Ten Thousand Only) on Shri Ashwanii Dham, C.B. M/s Sai Dutta Clearing Agency under Section 112(a) of the Customs Act, 1962.

IV. In respect of bill of entry no 799194 dated 16.10.2007, of M/s Automart Accessories,

(i) I reject the value declared in the bill of entry 799194 dated 16.10.2007, M/s Automart Accessories, and redetermine as Rs.1,44,73,349/- (Rupes One Crore Forty Four Lakhs and Seventy Three Thousand Three Hundred Forty Nine only).

(ii) I confirm the differential duty amounting to Rs 46,15,719/- (Rupees Forty Six Lakhs Fifteen Thousand Seven Hundred Nineteen only) leviable on the basis of the above stated value of Rs 1,44,73,349 ( Rupes One Crore Forty Four Lakhs and Seventy Three Thousand Three Hundred Forty Nine only) details as per Annexure A-2 to the SCN] under the provisions of Section 28 of the Customs Act, 1962, with applicable interest under the provisions of Section 28AA of the Customs Act, 1962, from and the same shall be recovered M/s Automart Accessories.

(iii) I appropriate the amount of Rs 33,00,000/- ( Rupees Thirty Three Lakhs only) paid voluntarily by M/s Automart Accessories against the above stated differential duty.



(iv) I confiscate the goods of the declared value of Rs Rs 8,67,964/- (redetermined CIF value Rs 1,43,30,048/-) under Section 111(d) and 111 (m) of the Customs Act, 1962; However, in lieu of the confiscation, I impose Redemption Fine of Rs.5,00,000/- (Rupees Five Lakhs only).

(v) I impose a penalty of Rs. Rs 46,15,719/- ( Rupees Forty Six Lakhs Fifteen Thousand. Seven Hundred Nineteen only) plus the appropriate interest on M/s Automart Accessories, under Section 114A of the Customs Act, 1962. If the duty and interest as demanded above is paid within 30 days of communication of this order, the amount of penalty imposed would be 25% of the duty and interest as per first proviso to Section 114A ibid subject to the condition that the amount of penalty so determined is also paid within the said period of thirty days.

(vi) I impose a penalty of Rs. 5,00,000/- (Rupees Five Lakhs Only) under Section 114AA of the Customs Act, 1962 on Shri. Prutesh J. Rupani, Proprietor of M/s Automart Accessories.

(vii) I impose a penalty of Rs.2,00,000/- (Rupees Two Lakhs Only) under Section 112(a) & (b) and Rs. 5,00,000/- (Rupees Five Lakhs Only) under Section 114AA of the Customs Act on Shri Rakesh S. Patel.

(viii) I impose a penalty of Rs.2,00,000/- (Rupees Two Lakhs Only) under Section 112(a) & (b) and Rs. 5,00,000/- (Rupees Five Lakhs Only) under Section 114AA of the Customs Act on Shri Amarjeet Singh Mago.

(ix) I impose a penalty of Rs.10,000/- (Rupees Ten Thousand Only) on Shri Ashwani Dham, C.B. M/s Sai Dutta Clearing Agency under Section 112(a) of the Customs Act, 1962.

13. This order is issued without any prejudice to any other action that may be taken against the Noticee or any other person(s) concerned with the impugned goods under the provisions of Customs Act, 1962 or under any other law for the time being in force in the Republic of India.



  
3/6/2022  
(Manoj Kumar Kedia)

Commissioner of Customs, Import-II,  
New Custom House, Mumbai.

To,

1. Sh. Amarjeet Singh,  
Hicon Heights, 16th Floor,  
24th Road, Bandra(W), Mumbai-400 052.
2. Sh. Rakesh Shashikant Patel,  
Proprietor, M/s. Hiya International,  
101-, Asha Kiran, Lajpatrai Road,  
Vile Parle(W), Mumbai-400 056
3. Sh. Darshan Yeshwant Dave,  
Proprietor, M/s. Magfour Electronics,  
B-501, Shanta Ashis, Irla Lane,  
Vile Parle(W),  
Mumbai-400 056.
4. Sh. Prashant Shashikant Sawant,  
Proprietor, M/s. MEPL Trade International,  
A-Wing, 5/6 Shree Sadan Building,  
Near Nakoda Hospital, Devchand Nagar Road, Bhayender (W),  
Thane-401 101.

5. Sh. Prutesh J. Rupani,  
Proprietor, M/s. Automart Accessories,  
104, Shree Krishna Bhavan, Prakash Market Road,  
Bhayender (W), Thane-401 101.
6. Sh. Ashwanii Dham,  
Director, M/s. Sai Dutta Clearing Agency,  
201, Madhuban Building, 2nd Floor, 23 Cochin Street, Fort,  
Mumbai- 400 001.

**Copy for information and necessary action to:**

1. The Chief Commissioner of Customs, Mumbai Zone-I.
2. The Additional Director General, Directorate of Revenue Intelligence, MZU, Mumbai.
3. The Asstt./Dy. Commissioner of Customs, Grp VB, NCH, Mumbai.
4. The Asstt./Dy. Commissioner of Customs, Prosecution Cell, NCH, Mumbai.
5. The Asstt./Dy. Commissioner of Customs, Adjudication Cell, NCH, Mumbai.
6. Notice Board.
7. Office copy.