



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, बेलार्ड एस्टेट,
मुंबई-400001.

दूरध्वनि-22757401 फैक्स-22757402

ई-मेल: adjn-commr-imp1nch@gov.in

फा.सं. : S/26-Misc-61/17-18/Gr.V

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

आदेश दिनांक: 31.07.2023
जारी दिनांक: 03.08.2023

सी.ए.ओ. क्रमांक : 33/2023-24/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I)
DIN No. 2023087700000000DC15

मूल आदेश

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



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

Tel. No. 22757401 Fax No. 22757402

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

F.No. : S/26-Misc-61/17-18/Gr.V

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

Date of Order: 31.07.2023
Date of Issue: 03.08.2023

C.A.O. No.: 33/2023-24/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I)
DIN No. 2023087700000000DC15

ORDER-IN-ORIGINAL

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

Subject: - Adjudication of Show Cause Notice¹ issued vide F.No. DRI/MZU/E/8/2011 dated 19.12.2012 read with Corrigendum dated 05.05.2015 issued by ADG, DRI, Mumbai Zonal Unit, regarding evasion of Customs Duty by M/s Mallesh & Co.² by undervaluation in the import of old and used Cranes.

Brief Facts of the Case

An Intelligence was gathered by the Directorate of Revenue Intelligence, Mumbai Zonal Unit that a large number of crane importers were involved in evasion of Customs duty by resorting to gross undervaluation in the import of cranes. The intelligence also indicated that importers were getting the import invoices prepared by working out the value of the crane in the range of Rs.25 to 40/- per Kg. of the weight of the crane which was close to the scrap value of steel, when freight was deducted, at the relevant time, as against the actual transaction value of the said cranes. In addition to the above, importers were also suppressing the freight charges paid to the shipping line. The import invoices were got prepared to show the value of the cranes as on "CIF basis" whereas the purchase was mostly on "FOB basis". The said importers were also getting the 'Bills of Lading' prepared to show the freight as prepaid with the assistance of the Shipping Agents. Briefly stated, modus operandi was to evade payment of duty on the cost as well as the freight component of the import value of the cranes as the freight of the crane formed a sizeable chunk of the CIF value of the crane. Intelligence further suggested that M/s Mallesh & Co. (IEC No 0305086286) had also indulged in such undervaluation and evasion of customs duty.

2. Pursuant to the said intelligence, inquiries were made about several such importers of crane. In the course of the said inquiry, it came to notice that one M/s. Mallesh & Co., a proprietary firm of one **Shri Rahul Gangaram Kanakallu**³, (IEC number 0305086286 and PAN No ALEPK 1983F) imported many old and used cranes wherein significant undervaluation/suppression of declared transaction value was suspected.

3. **Search of premises:** - On the basis of the intelligence, the premises of M/s Mallesh & Co. located at 2nd Floor, Block No. 203, S. P. Road, 12 lane, Kamathipura, Mumbai Central, Mumbai-400008 was searched on 07.02.2011 and certain incriminating documents relating to sale and purchase of cranes were seized under Panchanama.

4. Statements of the concerned persons recorded by the DRI: -

4.1.1 On being summoned and questioned about imports of old and used cranes made by him, Shri Rahul Gangaram Kanakallu in his statement dated 07.02.2011, recorded under Section 108 of the **Customs Act 1962**⁴, has interalia stated that-

¹ Also referred to as said SCN or the notice

² Also referred to as the importer or Noticee - 1

³ Also referred to as Noticee - 2

⁴ Also referred to as the Act



Virek
31.07.2023

- (i) Since 2006, he is in the business of procuring second hand cranes, from abroad and importing the same into India in the name of his firm i.e. M/s Mallesh & Co. During the said period, he has imported about 23 cranes in the name of his firm.
- (ii) He purchased various cranes viz. crawler crane, lattice boom truck mounted cranes and telescopic boom cranes from various dealers located in Germany, Poland, Greece, Spain, Malaysia, Taiwan, Canada and Dubai on CIF basis;
- (iii) He developed contacts at different places with different persons namely Nassem and Nashrat in Netherland, Mr. Steven in Taiwan and Mr. Muthuswami in Malayasia to locate and purchase the old cranes from abroad;
- (iv) These persons worked on commission basis for him in identifying the cranes to be purchased at the respective places, negotiating their prices, making arrangement for their purchase, receiving money through the bank and through Hawala channels from him preparing suppressed / undervalued invoice on the basis of which the cranes were dispatched by them to India in his firm's name;
- (v) He used to telephonically negotiate and finalize the purchase price after perusing the photographs available from internet in respect of the small cranes imported by him. He personally visited the places abroad from where the bigger cranes were to be purchased and negotiated their price with the suppliers of those cranes. The prices shown in the invoices accompanying the consignment were of lesser value than what were actually paid by him to the overseas suppliers to purchase the cranes:
- (vi) He discharged the Customs Duty on the basis of the undervalued invoice;
- (vii) **Madan Lalwani**⁵ of M/s M. Dharamdas was fully aware about the undervaluation being done in import of second hand cranes. The CHA used to charge him 5% of the Invoice value as commission charges plus Rs. 10,000/- as Chartered Engineers Fees for valuation of the crane. The Chartered Engineers were arranged by the CHA himself;
- (viii) He remitted the amount shown on the invoice to the seller through proper Banking channels and the undervalued amount through Hawala route;
- (ix) He had sent the said money through one Hawala operator named **Brijesh Gala**⁶. He had paid an amount of approx Rs.2.5 to 3 crores to Brijesh for sending the same abroad to the supplier during last five years through the Hawala route;
- (x) He had imported the cranes for trading purposes only. He used to charge commission/ profit over and above the price negotiated with the foreign supplier. His commission was paid partly through cheque and partly through cash;

⁵ Also referred to as CHA, CB & Noticee - 10

⁶ Also referred to as Noticee - 3

(xi) He agreed to pay the duty and interest due on the undervalued cranes.

4.1.2 In his further statement dated 08.02.2011, 10.02.2011 and 25.02.2011 recorded under Section 108 of the Act, Rahul Gangaram Kanakallu interalia submitted the details of the cranes imported by him, the actual CIF value of these cranes, the price at which these cranes were subsequently sold and the details of the persons/firms to whom these cranes were sold. The summary of these details are tabulated in the Table - I as below: -

Table – I

Sr. No	Description of Old and Used Cranes	Bill of Entry No. and Date	Declared Invoice Value (in USD / Euro)	Currency	Actual Transaction value (CIF) (in USD / Euro)	Value at which cranes sold by Mallesh & Co. (Rs.)	Party to whom cranes sold in India
1.	Gottwald Year 1979 Chasis NO. 127020	677398 23.05.2006	34000	US\$	62000	3800000	Paras Jain, Bhilai
2.	TM275 – LP SOBRE BARAZAB AL	719385 31.10.2006	16000	Euro	20500*	1700000	Kamat, Goa
3	P&H M: 9170TC Sr. No. J17406, YOM : 1980	996201 15.12.2006	42261	US\$	275000	14200000	Sawanth M/s Babush Crane Service
		996675 16.12.2006					
4	Demag B410C Sr. No. 4930 YOM – 1980	731387 18.12.2006	22686	Euro	24000	2000000	Asis Cranes (High Sea Sale)
5	P&H 9125 Sr. No. J 9453 YOM 1989	610159 29.12.2006	47912	US\$	180000	9500000	Nilesh Transport, Seized by bank. Further sold to Amar of Bharkat Cranes
		736890 10.01.2007					
6	Gottwald M.K. 150 YOM 1965	781735 24.07.2007	65408	US\$	65408	3600000	Chakargiri Transport, Huderabad

	Sr. No. 1941U969	775795 26.06.2007					
7	RB, Model SC 600 Super Crane, YOM 1990	928813 28.09.2007	90000	US\$	90000	5100000	Sajid Khan, Bhandra Seized by bak, Present owner not known
8	T. C. Demag 120 Crane, Serial No – 10996, YOM 1987	805787 16.11.2007	35599	US\$	35599	2000000	Papu transport Seized by bank, Present owner not known
		811173 12.12.2007					
9	Clark Model No. 736 CM, SR No. 107376600	832859 04.04.2008	32821	US\$	36000	2000000	Minar Crane, Hyderabad
10	Krupp Model NO. 75 GMT, Sr No. 206380 YOM 1996	833701 09.04.2008	55388	US\$	125000	6200000	Durga Cranes,Hyder abad
		833987 10.04.2008					
11	P & H Type T 450 XL, Sr No. 221144, YOM 1983	840061 15.05.2008	41540	US\$	41540	2300000	Venkateshwas Lifters, Kalamboli
12	Liebbhera L 1040 Chasis No. 44035 – 10 – 3337 YOM 1986	656563 23.10.2008	34500	US\$	34500	2200000	Venkateshwas Lifters, Kalamboli
13	Demag HC40 Crane 1977 Sr. No. 2836M	877250 15.01.2009	10950	Eur o	14500	1300000
14	Luna GT 25/28 Crane 1988 Sr. No.	882216 10.02.2009	17000	Eur o	17000	1500000
15	Demag TC – 280 Serial No. 12/2502103	910093 04.09.2009	60326	US\$	100000	6000000	York Cranes, Hyderabad
		713378 08.10.2009					

16	Krupp 140 GMT, Sr. NO. 208054	926031 18.12.2009 787482 02.12.2009	106135	US\$	180000	10400000	Dhakshnamur thi, Kanyakumari
17	Accessories of Crawler Crane P & H 440, P & H 325	815981 21.12.2009	5300	US\$	16000	950000	Latif Bhai, Kalamboli
18	1988 Crawler Crane Model NO. P & H 325, Serial No. J - 17421	816202 21.12.2009	22791	US\$	37000	2000000	Latif Bhai, Kalamboli
19	1987 Crawler Crane Model No. P & H 440 Serial No. J - 18172	816198 21.12.2009	29626	US\$	53000	2900000	Latif Bhai, Kalamboli
20	1986 Crawler Crane Model No. P & H 325 Serial No. J - 13529	606846 23.04.2010	19500	US\$	27000*	1700000	Power Tech Ajmal Ladha, Mumbai
21	1990, Hydros Coles Crane Model No. Coles 105, Serial NO. 104756	948366 14.05.2010	62087	US\$	185000	9725000	Triveni Earth Movers, Orissa
22	1990, Hydros Coles Crane, Model No. Coles 45, Serial No. - 288073	952551 09.06.2010	45587	US\$	48000	3000000	Ajj Bhai Coimbatore

23	Used Grove TM 800 Mobile Crane 1990	966496 13.09.2010	35500	Eur o	75000	5400000	Durga Cranes, Baruch
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(* In these two cases the admitted value is equal to the value which had been loaded at the time of clearance by customs.)

4.1.3 In his further statement dated 11.09.2012, recorded under Section 108 of the Act, Rahul Gangaram Kanakallu stated interalia-

(i) The Bill of Entry No. 815981 dated 21.12.2009 (at Sr.No.17 of Table-1) was for import of parts of cranes viz. P&H 325 & P&H 440 Crawler Crane imported vide Bill of Entry No. 816202 & 16198 resp. both dated 21.12.2009 (at Sr. No. 18 and 19 of Table-I above) and that he had imported 22 cranes in all.

(ii) The two cranes viz. Demag HC40 & Luna GT 25/28 (at Sr.No.13 and 14 of Table I above) were purchased by him on high sea sale basis from M/s. R. S. Cranes, Nagpur and that he did not recollect the parties to whom the said cranes were further sold.

(iii) He had not undervalued the cranes mentioned at Sr.No. 6, 7, 8, 11, 12 and 14 of Table I above. The cranes imported vide Bill of Entry No. 719385 dated 31.10.2006 and Bill of Entry No. 606843 dated 26.04.2010 (at Sr.No. 2 and 20 of Table-I above), were assessed to duty by loading the declared value at the time of clearance, hence there is no further undervaluation. (While for the crane imported vide Bill of Entry No. 719185 dated 31.10.2006 the importer had declared an assessable value of Euro 16,000 the same was assessed to duty at Euro 20,500. While the crane imported vide Bill of Entry No. 606843 dated 26.04.2010 the importer had declared an assessable value of \$ 19,500 the same was assessed to duty at \$27,000.)

4.1.4 During the course of Investigation, freight details pertaining to the cranes imported by M/s Mallesh & Co. were obtained from various shipping lines such as NMT, CONTI-LINES, CMA-CGM, United Liner Agencies of India (Pvt.) Ltd., Seapol Lines (I) Pvt. Ltd., Prudential Shipping Agencies Pvt. Ltd., United Arab Shipping Agency Co. (I) Pvt. Ltd., Nordic logistics Pvt. Ltd. It was found that the freight amount paid to CONTI-LINES, CMA CGM, NMT for the import of the cranes namely Gottwald m.k.150, Demag T.C.120. Clark Model 736CM and P&H Type T 450XL (at Sr.No.6, 8, 9 and 11 of Table-1) was a major part of the CIF value of the cranes. When confronted with the said facts, Rahul Gangaram Kanakallu in his statement dated 11.12.2012 stated that all the said cranes were not in proper working condition and they had also some parts missing. For the said reason the cranes were bought at a lower cost from the foreign supplier. Hence freight formed a major part of their cost of import. Apart from the above four cranes, he also stated that the crane Liebherr 1040 imported vide Bill of Entry No. 656563 dated 23.10.2008 (at Sr.No.12 of Table-1) had a faulty engine due to which the same was also

purchased at a lower value from the foreign supplier. He further stated that these cranes were imported by him for small crane operators who had limited financial resources.

4.2 On being summoned and questioned about purchase of old and used cranes from M/s. Mallesh & Co., **Janardhan Vishram Sawant**⁷ in his statement dated 08.02.2011, recorded under Section 108 of the Act, interalia stated that-

(i) He had started a crane hiring service company by the name of M/s. Babush Crane Service in his son's name who is the proprietor but he is looking after the day to day affairs of the company.

(ii) He had imported the crane namely P & H 9170 TC Sr. No. 117406 (at Sr. No 3 of Table I above) through Rahul Gangaram Kankallu of M/s Mallesh & Co. The crane was offered to him by Rahul Gangaram Kankallu for Rs.1,45,00,000/- including freight and duty and the traveling expense of Rs.3 lakh paid by him towards his Taiwan visit.

(iii) He had paid an amount of Rs.80 Lakhs by cheque and Rs.47 lakhs by cash to Rahul Gangaram Kankallu of M/s. Mallesh & Co. towards purchase of the crane, also the demurrage charges and customs duty incurred was borne by him (Sawant).

4.3 On being summoned and questioned about purchase of old and used cranes from M/s Mallesh & Co., **Nilesh Vijay Kale**⁸ in his statement dated 15.02.2011. recorded under Section 108 of the Act, interalia stated that -

(i) He is the proprietor of the firm M/s Nilesh Crane Service which was operational for the last fifteen years.

(ii) He had purchased a crane namely P& H 9125 Sr. No. 1 9453 (at Sr. No. 5 of Table I above) from M/s Mallesh & Co. for a total value of Rs. 95 Lakhs inclusive of freight and customs duty.

(iii) The crane was seized by finance company i.e. Kotak Mahindra after he defaulted on paying the installments. The crane was then transferred to Ms Barkat Hiring Co. owned by Amar Bedi who had arranged for the default amount to be paid to Kotak Mahindra.

4.4 On being summoned and questioned about purchase of the above mentioned crane purchased from Nilesh Vijay Kale, (para 4.3 refers) Manamar Singh Bedi, (Alias Amar Bedi), Partner in M/s Barkat Hiring Co. in his statement dated 17.02.2011, recorded under Section 108 of the Act, interalia stated that-

⁷ Also referred to as Noticee-4

⁸ Also referred to as Noticee-9

(i) The subject crane was owned by Nilesh Kale of M/s Nilesh Crane Service. The said crane was hypothecated to M/s Kotak Mahindra Bank and the same was seized by the bank for non-payment of 4-5 installments.

(ii) He arranged for payment of Rs.45 Lakhs to the Bank with the understanding that if Nilesh Kale failed to pay the same to him within two months, the crane would be transferred in the name of his company and accordingly he came to possess the crane.

(iii) He was not aware of the import transaction of the crane and on being pointed out to him that the crane was undervalued at the time of import by M/s.Mallesh & Co., and that is the crane was in his possession he agreed to pay the differential duty short paid.

4.5 On being summoned and questioned about purchase of old and used cranes from M/s Mallesh & Co., **Latif Bhai Ismail Bote**⁹, in his statement dated 25.02.2011, recorded under Section 108 of the Act, interalia stated that.

(i) He had purchased two cranes namely P&H 325 Crawler Crane and P&H 440 Crawler Crane (at Sr.No. 18 & 19 of Table-I above) from M/s. Mallesh & Co.

(ii) He paid for a P&H 325 Crawler crane (at Sr. No.18 of Table -I above) an amount of Rs.16 lakhs in cash and Rs.9 lakhs in cheque and the customs duty of Rs. 1,90,548/-.

(iii) For the crane P&H 440 (at Sr.No.19 of Table - I above) he paid an amount of Rs.20 Lakhs in cheque and Rs.9 Lakhs in cash.

4.6 On being summoned and questioned about purchase of old and used cranes from M/s. Mallesh & Co. A Kandasamy, DGM, of M/s Thriveni Earthmovers Pvt. Ltd. in his statement dated 08.03.2011, recorded under Section 108 of the Act interalia stated that -

(i) They had purchased one crane viz. Used Hydros Coles Crane, Model No. 105, Sr. No.104756 (at Sr. No 21 of Table-I above) with complete standard accessories from M/s Mallesh & Co.

(ii) After negotiation, the purchase order was raised for Rs 97.25 Lakhs inclusive of taxes and insurance charges. The payment was made through SBI. Joda Branch, Orissa through e- transfer facility:

(iii) He was unaware of undervaluation done by M/s Mallesh & Co. They had purchased the crane directly from M/s Mallesh & Co.

(iv) As he was made aware of the undervaluation done by M/s.Mallesh & Co. while importing the crane and as they were in possession of the crane he agreed to pay the differential duty with interest.

⁹ Also referred to as Noticee-5

4.7 On being summoned and questioned about purchase of old and used cranes from M/s Mallesh & Co., **R Shrinivasa Rao**¹⁰ of M/s Durga Crane Services, Hyderabad, in his statement dated 11.03.2011, recorded under Section 108 of the Act, interalia stated that -

(i) He had purchased one crane Old and used Krupp Crane Model No. 75 GMT Sr. No. 206380 YOM 1996 (at Sr. No.10 of Table - 1 above) from M/s Mallesh and Co for which the agreed price was Rs.52 lakhs and was further enhanced to Rs 65 lakhs due to heavy demurrage charges imposed by the Port Authorities.

(ii) He agreed to the undervaluation done by M/s.Mallesh & Co and to pay the differential duty with interest.

4.8 On being summoned and questioned about purchase of old and used cranes from M/s Mallesh & Co., **Paras Jain**¹¹, Director M/s Nakoda Transport Co. Pvt. Ltd., in his statement dated 23.03.2011, recorded under Section 108 of the Act, interalia stated that -

(i) He has imported one second hand used crane make: Gottwald, YOM 1979, Chasis No. 127020 capacity 80 tons with 100 feet boom (at Sr.No.1 of Table-I above) which had been already imported by M/s Mallesh & Co. vide Hill of Entry No. 677398 dated 23.05.2006.

(ii) He had initially paid an amount of Rs.41 Lakhs by way of loan facilitated by M/s Dhahdapani Finance Company directly to M/s Mallesh & Co. and Rs.7 Lakhs through company account The value was inclusive of Customs duty. Port charges, Shipping charges etc.

(iii) As the crane was not in working condition and an expense of Rs.15 lakhs was expected for repair of the crane the final price of the crane was renegotiated to Rs 38 lakhs and Rs.10 Lakhs was returned by Rahul Gangaram Kankallu after 18 months;

(iv) He agreed to the undervaluation done by M/s.Mallesh & Co and to pay the differential duty with interest.

4.9 On being summoned and questioned about purchase of old and used cranes from M/s Mallesh & Co., **Aziz A.R. Ladha**¹², Propreitor, M/s York Cranes, in his statement dated 11.05.2011, recorded under Section 108 of the Act, interalia stated that -

(i) He had purchased an old and used crane model DEMAG TC-280 (Main Unit) Sr.No.12/2502103 with Boom, Counterweight and Hook YOM 1986 (at Sr.No.15 of Table-I above) imported vide Bill of Entry No. 910093 dated 04.09.2009 and 713378 dated 08.10.2009 from M/s.Mallesh & Co.

¹⁰ Also referred to as Noticee-6

¹¹ Also referred to as Noticee-7

¹² Also referred to as Noticee-8

(ii) The total value of the crane was Rs.60 Lakhs inclusive of freight and duty. He paid Rs.15 lakhs in cash and remaining Rs.45 Lakhs by cheque.

(iii) He agreed to the undervaluation done by M/s Mallesh & Co and to pay the differential duty with interest.

4.10 The statements of the possessors of the remaining cranes could not be recorded as some of them could not be located.

4.11 Statement of Brijesh Gala was recorded under Section 108 of the Act, on 12.09.2012. During the course of recording of his statement, Brijesh Gala was shown statement of Rahul Gangaram Kanakallu recorded on 07.02.2011, under Section 108 of the Act. Brijesh Gala put his dated signature on the said statement in token of his having read the said statement. He confirmed the said statement to be true and correct Brijesh Gala in his statement interalia, stated that -

(i) He is in the business of money transfer.

(ii) With regard to money transfer business, when a person viz. 'A' in Mumbai has his cash amount lying at a major city say Ahmedabad with a person viz: "B", then "A" approaches him to get the money delivered to 'A' presently lying in the possession of 'B' in Ahmedabad. He accordingly, would give "A" the contact number of a person viz. 'C' residing at Ahmedabad and ask 'A' to inform "B" to deliver the said cash amount lying in his possession to the said contact No. of 'C. When the cash amount is delivered by 'B' to "C" at Ahmedabad and he would receive the conformation of same, and then approach the C's person in Mumbai to take delivery of the said cash amount and later deliver it the "A"

(iii) Similarly, when a person (A) wants to send across money to a person "B" residing at some other place say major cities like New Delhi, Ahmedabad, Kolkatta. Hyderabad etc on the same day and at shortest possible of time, "A delivers the cash to him and be through his contacts, immediately arranges to deliver the said cash amount to the person viz. 'B' residing at the respective major cities in the shortest possible of time.

(iv) This kind of arrangement for transfer of money is done only for known persons as the entire business runs on trust and confidence. In order to secure the cash amount transaction and that cash amount does not get delivered to wrong person, either the mobile number of the parties are verified or cross verified on the basis of the serial number mentioned on a ten rupee note given by the sender.

(v) He used to earn on an average of about Rs. 100/- per Rs 1 Lakh transaction. Later he expanded this money transfer business to foreign destination too, viz., Singapore, Dubai, U.S.A., etc.

(vi) When a person approaches him to transfer a cash amount to a foreign destination, he would take the said cash amount in Indian currency and name of the account holder say a company and its Bank Details such Bank A/c. No., Name of Bank etc and in turn he would deliver the said cash amount and bank details to person, viz., Jeethu Patel or Akhil after taking his commission, who thereupon arranges to either credit the said amount in the said Bank A/c. No. or hand over the same in cash in their respective foreign currency

(vii) He has not dealt in the transfer of cash amounts directly to a foreign destinations and have always dealt it through Jeethu Patel or Akhil. For transferring the money abroad, he also checks the prevalent rate of exchange.

(viii) Generally, he would settle the deal between the better rate quoted by Jeethu Patel or Akhil. He does not maintain any records for this kind of money transfer transactions. All records are normally destroyed once the money transfer transaction is completed.

(ix) He is aware that the entire money transfer operations carried out by him was illegal in law and regret for the same.

(x) Rahul Gangaram Kanakallu had approached him to transfer cash amounts to foreign destinations. On seeing the statement dated 07.02.2011 of Rahul Gangaram Kanakallu. recorded under Section 108 of the Act, he confirmed to have transferred the amounts on behalf of Rahul Gangaram Kanakallu to various persons located outside India.

4.12 Scrutiny of the Bills of Entry and connecting import documents of M/s Mallesh & Co and the statement dated 07.02.2011 of Rahul Gangaram Kanakallu revealed that Madan Lalwani of M/s M. Dharamdas & Co. had assisted him in customs clearance. The role of Madan Lalwani of M/s M. Dharamdas & Co in the undervaluation of cranes had come to notice of DRI, MZU during investigation of other crane importers. It was revealed that he had advised these crane importers to grossly undervalue the cranes and assured smooth clearance of the same through customs. He had also charged a higher commission of 5% on the clearance of the goods, in addition to normal CHA charges.

4.12.1 Statement of Madan Lalwani recorded on 21.10.2010 in relation to undervaluation of cranes, is also relevant to this case. In his statement dated 21.10.2010, he had inter alia stated that-

(i) Somewhere in the year 1985, he started his own business of Customs clearing in association with one Vikram Janghiani, partner in M/s M. Dharamdas & Co. (CHA no. 11/100).

(ii) His understanding with Vikram Janghiani was that he (i.e. Madan) would bring business into the company and Vikram Janghiani would pay him 20% commission on profits.

- (iii) From the year 1985, he was into Customs clearance of imported goods.
- (iv) As regards his status in M/s Dharamdas & Co., there are 3 different types of accounts in the firm, namely: (a) account no. 1 - all the import clearance work relating to M/s J.K. Industries: (b) account no 2 - import clearance work of machinery, PTA. second-hand cranes etc. (c) account no 3 - all export clearance related work, that the account no. 2 was under his exclusive control.
- (v) All the importers of cranes, interacted with him only, for the clearance of the cranes imported by them; that the cash amount of Rs. 23,39,500/- found in his residence, pertained to his business, that Vikram Janghiani was not aware of the cash amount of Rs. 23,39,500/- as he did not inform him about cash transactions, in connection with Customs clearance work.
- (vi) He used to advice the importers that if price of the 'crane' was less than Rs. 40/- per kg of its weight, then Customs authorities would not accept it.
- (vii) Most of the importers followed the bench mark and calculated the value at the rate of Rs. 40/- per Kg of the weight of the crane.

4.12.2 In his further statement dated 27.10.2010, under Section 108 of the Act, Madan Lalwani interalia provided the procedure that was followed in his office right from the stage of receipt of the job for clearance upto the stage of final clearance / delivery of cargo along with the name of his employee with details of documentation handled by them. Madan Lalwani had further stated that

- (i) In M. Dharamdas & Co. there were approximately 18 employees who were under him i.e. for account no. 2, as stated by him in his statement dated 21.10.2010; in the entire activity of clearance work, he kept himself in the loop; each and every staff gave him updates on daily basis, he regularly interacted with the parties on day to day basis pertaining to the above clearances handled by them;
- (ii) All the clearances of the cranes covered by each and every job dockets which had been taken over under panchanama dated 21.10.2010 or which had been submitted in DRI office, were handled under his direct supervision as part of the allocation of work under account no.2, as clarified by him in his statement dated 21.10.2010.

4.13 During the course of investigation of cranes sold on High Sea Sales by M/s Mallesh & Co., it was found that the crane DEMAG B410C (at Sr.No.4 of Table-I above) was, actually sold to M/s Asis Overseas on High Sea basis. The investigation with respect to the said crane was carried out separately. Hence the said crane was not a part of the show cause notice.

5. Summary of Investigation made the DRI MZU: - On the basis of evidence collected and discussed above, it appears that:

5.1 M/s. Mallesh & Co., is a proprietorship firm based in Mumbai, and is engaged in the business of importing old and used cranes and reselling them in India. Rahul Gangaram Kanakallu is the proprietor of the firm and controls the affairs of the firm

5.2 M/s Mallesh & Co. had imported old and used cranes as detailed in Table - I above by undervaluing most of the cranes at the time of importation. Rahul Gangaram Kanakallu in the statements recorded under Section 108 of the Act has admitted to the undervaluation. He also admitted that the amount over and above the invoice value was remitted by using the Hawala channel and for the same he used the services of the Hawala operator, Brijesh Gala. The same was confirmed by Brijesh Gala in his statement dated 12.09.2012

5.3 Investigations have revealed that all the cranes which were imported by M/s Mallesh & Co. were subsequently sold to other crane operators. This reveals that Rahul Gangaram Kanakallu of M/s Mallesh & Co. was importing the cranes for trading purpose only. He used to charge commission/profit over and above the price negotiated with the foreign suppliers from the crane operators to whom he subsequently sold the cranes. Investigation has further revealed that these crane operators were actually aware of the undervaluation being carried out by Rahul Gangaram Kanakallu of M/s Mallesh & Co as they had paid part of the amount of the agreed purchase value in cash, except M/s. Trevini Earth Movers Pvt. Ltd., who had made the whole payment for the crane by cheque to M/s. Mallesh & Co.

5.4 While admitting to having resorted to undervaluation in the import of 13 cranes. (Sr.No. 1, 3, 5, 9, 10, 13, 15, 16, 18, 19, 21, 22 and 23 of Table - I above), and the accessories of Two cranes viz. P&H325 and P&H440 (Sr. No. 17 of Table-1) Rahul Gangaram Kanakallu of Ms.Mallesh & Co. in his statement dated 09.02.2011 voluntarily disclosed the actual transaction value at which he purchased the cranes from the foreign suppliers and the value at which he subsequently sold the cranes to the crane operators (Sr No. 17 of Table-1 above refers to accessories imported for the cranes, mentioned at Sr.No. 18 and 19: hence the same have been tagged with these two cranes at part -IV of Annexure-A) In respect of all these cranes, M/s Mallesh & Co. through its Proprietor Rahul Gangaram Kanakallu conspired to evade payment of appropriate amount of customs duty by suppressing the actual transaction value of the imported goods. He got into an understanding with the foreign suppliers wherein he used to get suppressed value invoices issued by the foreign suppliers. These suppressed value invoices accompanied the consignments at the time of import and were subsequently used for the purpose of assessment and payment of duty. As per the modus operandi, the payment to the overseas suppliers of the imported cranes was done at two levels; the part of the value which was declared to the Customs Department i.e. the value as per the undervalued invoices was remitted to the overseas supplier through proper banking channels, whereas the differential amount between the actual transaction value and invoice value was delivered by Rahul Ganaram Kanakallu to Brijesh Gala who used to transfer the same to the foreign suppliers through Hawala channel.

5.5 However, Rahul Gangaram Kanakallu denied resorting to undervaluation in respect of cranes mentioned at St. 6, 7, 8, 11,12 and 14 of Table-1. Also during the course of investigation, no evidence could be gathered to reveal that there was any undervaluation in these cases. It was found that there was no further undervaluation in the cranes mentioned at Sr.No. 2 and 20 of Table-1 as the said cranes were already assessed to duty by loading the declared value over and above their invoice value at the time of their import. Further, as stated above, the crane appearing at Sr.No.4 was sold on High Sea basis, and therefore, was investigated separately.

5.6 From the above, it appears that M/s Mallesh & Co. through its proprietor Rahul Gangaram Kanakallu had intentionally conspired to undervalue the goods at the time of customs assessment and clearance and had consciously conspired with the foreign suppliers to defraud the government of its legitimate revenue. The details of the above mentioned thirteen (13) cranes wherein M/s.Mallesh & Co. had resorted to undervaluation are at Annexure "A" to the notice.

5.7 The possessors of the cranes namely Paras Jain of M/s Nakoda Transport Co., Janardhan Sawant of M/s Babush Crane Services, Nilesh Kale of M/s Nilesh Crane Service, Latif bhai Ismail Bote of M/s Afreen Roadways, R. Srinivasa Rao of M/s. Durga Crane Services, Aziz A. R. Ladha of M/s. York Cranes have in their statements (refer Para 4.2 to 4.9 above) have admitted that they were aware of the undervaluation resorted by Rahul Gangaram Kanakallu of M/s Mallesh & Co. This is further substantiated by the fact that all these possessors had made a substantial part of the payment for the cranes in cash.

5.8 During the course of investigation, the details of freight paid by the M/s Mallesh & Co to the various shipping companies namely NMT, CONTI-LINES, CMA-CGM, United Liner Agencies of India (Pvt.) Ltd., Scapol Lines (I) Pvt. Ltd., Prudential Shipping Agencies Pvt. Ltd. United Arab Shipping Agency Co. (I) Pvt. Ltd., Nordic logistics Pvt. Ltd. It was found that the freight amount paid to CONTI-LINES, CMA-CGM, NMT for the import of the cranes namely Gottwald m.k.150, Demag T.C.120, Clark Model 736CM and P&H Type T 450XI. (at Sr No.6, 8, 9 and 11 of Table - I) freight was a major part of the CIF value of the cranes. When confronted with this fact Rahul Gangaram Kanakallu in his statement dated 11.12.2012 stated that all the said cranes were not in proper working condition and they had some parts missing. For the said reason, the cranes were bought at a lower cost from the foreign supplier. Hence freight formed a major part of their cost of import. Apart from the above four cranes, he also stated that the crane Liebherr 1040 imported vide Bill of Entry No. 656563 dated 23.10.2008 (at Sr.No.12 of Table-I) had a faulty engine due to which the same was also purchased at a lower value from the foreign supplier. He further stated that these cranes were imported by him for small crane operators who had limited financial resources.

6. **Seizure of goods:** - In the light of the admissions and evidences discussed above, thirteen cranes (13) mentioned at Sr. No. 1, 3, 5, 9, 10, 13, 15, 16, 18, 19, 21, 22 and 23 at Table – I and the accessories for the two cranes mentioned at Sr.No.17 were found to be liable for confiscation

under Section 111(m) of the Act for suppression of the actual transaction value. The details of the confiscation / provisional release etc. are detailed at Annexure "B" to the notice.

7. Voluntary deposit of duty:

7.1 M/s Mallesh & Co. had voluntarily deposited an amount of Rs.49,16,351 /- (Rupees Forty Nine Lakhs Sixteen Thousand Three Hundred and Fifty One Only) towards payment of the differential customs duty evaded. The payment particulars and the date of deposit of challans in Government treasury are detailed as below: -

Table – II A

Sr. No.	Payment Particulars	Amount (Rs.)	Challan NO. & Date
1	Mallesh & Co. (P.O. No. 610777)	15,00,000/-	474 dated 11.02.2011
2	Mallesh & Co. (D.D. No. 665507)	10,00,000/-	661 dated 28.02.2011
3	Mallesh & Co. (D.D. No. 4807)	5,00,000/-	240 dated 18.03.2011
4	Mallesh & Co. (D.D. No. 4648)	10,00,000/-	274 dated 21.03.2011
5	Mallesh & Co. (P.O. No. 887895)	7,16,351/-	161 dated 19.05.2011
6	Mallesh & Co. (P.O. No. 887896)	2,00,000/-	161 dated 19.05.2011
	Total	49,16,351 /-	

7.2 The possessors of the cranes who had aided and abated with Rahul Gangaram Kanakalla of M/s Mallesh & Co. or were in possession of the undervalued cranes came forwarded and voluntarily deposited the amounts mentioned below towards differential customs duty and interest. The party wise payment particulars and the date of deposit of challans in Government treasury are detailed as below : -

Table – II B

Sr. No.	Party	Amount (Rs.)	Challan NO. & Date
1	Babush Crane Service	15,00,000/-	822 dated 11.02.2011
2	Babush Crane Service	15,00,000/-	581 dated 21.02.2011
3	Barkat Hiring Co.	18,85,000/-	617 dated 13.02.2011
4	Afreen Roadways	10,00,000/-	160 dated 11.03.2011
5	Thriveni Earthmovers Pvt. Ltd.	14,56,115/-	158 dated 11.03.2011
6	Nakoda Transport Co.	5,50,000/-	380 dated 28.03.2011
7	Nakoda Transport Co.	46,000/-	467 dated 31.03.2011
8	York Cranes	3,00,000/-	125 dated 13.06.2011
9	York Cranes	2,70,000/-	235 dated 23.06.2011
	Total	85,07,115 /-	

7.3 Thus the total voluntary deposit towards evaded duty in respect of cranes imported by M/s Mallesh & Co. was Rs.1,34,23,466 /-.

8. Redetermination of Assessable Value and quantification of duty evaded: -

8.1 Rahul Gangaram Kankallu has admitted that the value declared to the Customs department in respect of the import of 13 cranes and accessories for two cranes (mentioned at Sr.No.1, 3, 5, 9, 10, 13, 15, 16, 17, 18, 19, 21, 22 and, 23 of Table - I) imported by M/s Mallesh & Co., was suppressed. (Sr.No.17 pertains to import of accessories for the cranes mentioned at Sr.No.18 & 19 of Table -I). Further, the crane operators to whom he subsequently sold these cranes viz. Paras Jain of M/s Nakoda Transport Co., Janardhan Sawant of M/s Babush Crane Services, Nilesh Kale of M/s Nilesh Crane Service, Latifbhai Ismail Bote of M/s Afreen Roadways, R. Srinivasa Rao of M/s Durga Crane Services, Aziz A. R. Ladha of M/s. York Cranes also admitted to the undervaluation. During the course of investigation, Rahul Gangaram Kankallu has admitted that he had used fabricated documents in evade duty. Investigation revealed that he got the foreign suppliers issue fabricated documents. In view of the same, the Chartered Engineer's Certificate supporting the fabricated invoices, which were submitted at the time of customs assessment and clearance, also appears to be not representing the actual value of the goods.

8.2 Thus by own admission of Rahul Gangaram Kankallu, the value declared by M/s. Mallesh & Co. at the time of Customs clearance is not the value at which the thirteen (13) cranes and accessories for two cranes mentioned above were actually sold or available for sale at the time and place of importation and hence cannot be accepted as the true transaction value. Therefore, the value of these thirteen (13) cranes and accessories for two cranes declared by the importer is liable to be rejected in terms of Rule 10A / Rule 12A of the Customs Valuation (Determination of Imported Goods) Rules 1988 / 2007 (for imports prior to 10.10.2007 and on and after 10.10.2007 as applicable). The same has to be re-determined in terms of Rule 3 (i) and Rule 4 of the Customs Valuation (Determination of Price of Imported Goods) Rules 1988 read with the provision of Section 14 of the Act and Rule 3(1) of the Customs Valuation (Determination of Price of Imported Goods) Rules 2007 read with the provision of Section 14 of the Act, as applicable.

8.3 On the basis of the above, the re-determined assessable value in respect of these 13 cranes and accessories of two cranes are as under: -

Sr. No.	Bill of Entry No. and Date	Description of Old and Used Cranes	Value at which the goods were assessed (Rs.)	Re – determined Assessable Value	Port of Import
1.	677398 23.05.2006	Gottwald Year 1979 Chasis NO. 127020	2100035	2839817	NCH, Mumbai

2.	996201 15.12.2006	P&H M: 9170TC Sr. No. J17406, YOM : 1980	1933020	12484863	JNCH
	996675 16.12.2006				
3.	610159 29.12.2006	P&H 9125 Sr. No. J 9453 YOM 1989	2167091	8126460	NCH, Mumbai
	736890 10.01.2007				
4.	832859 04.04.2008	1986 Clark Model No. 736 CM, SR No. 107376600	1429907	1470762	NCH, Mumbai
5.	833701 09.04.2008	Krupp Model NO. 75 GMT, Sr No. 206380 YOM 1996	2451201	5113125	NCH, Mumbai
	833987 10.04.2008				
6.	877250 15.01.2009	Demag HC40 Crane 1977 Sr. No. 2836M	900188	995860	NCH, Mumbai
7.	910093 04.09.2009	YOM -1986 Demag TC – 280 Serial No. 12/2502103	3365096	4974250	NCH, Mumbai
	713378 08.10.2009				
8.	926031 18.12.2009	1988 Krupp 140 GMT, Sr. NO. 208054	5776589	8499150	NCH, Mumbai
	787482 02.12.2009				
	815981 21.12.2009	Accessories of two cranes Crane P & H 440, P & H 325 (parts of Sr. No. 9 & 10 Below)	250252	755480	JNCH
9.	816202 21.12.2009	1988 Crawler Crane Model NO. P & H 325, Serial No. J – 13529	826306	1747048	JNCH
10.	816198 21.12.2009	1987 Crawler Crane Model No. P & H 440 Serial No. J – 18172	1038785	2502528	JNCH
11.	948366 14.05.2010	1990, Hydros Coles Crane Model No. Coles 105, Serial NO. 104756	3000063	8389565	NCH, Mumbai
12.	952551 09.06.2010	1990, Hydros Coles Crane, Model No. Coles 45, Serial No. – 288073	2250513	2319768	NCH, Mumbai
13.	966496 13.09.2010	Used Grove TM 800 Mobile Crane 1990	2163849	4571513	NCH, Mumbai

Details of the above calculations are at Annexure 'A' to the notice.

8.4 Appropriate Customs Duty leviable on the goods covered under the said import consignments imported and cleared, was leviable under the provisions of Section 12 of the Act, on the assessable values (as per admitted Transaction Value by Rahul Gangaram Kanakallu) and as re-determined above. The due duty was evaded by reason of collusion, willful misstatement and suppression of facts with respect to the actual transaction value by M/s Malleesh & Co, through Rahul Gangaram Kanakallu in the respective bills of entry under which the aforesaid 13 cranes and accessories for two cranes were cleared. The appropriate differential customs duty payable on the imports of 10 Cranes and effected through New Custom House, Mumbai comes to Rs. 60,51,375/- and for 3 Cranes and accessories for two cranes effected through JNCH, Navi Mumbai comes to Rs.44,15,295/-. The details of the duty computed on the basis of the re-determined assessable value are detailed in Annexure A to the notice. Out of above the evaded duty in respect of following cranes -

- (i) 2 cranes (Sr. No. 1 & 3 of Table above) imported at Mumbai, involving evaded duty amount of Rs. 24,67,821 /- as detailed in Part-I of Annexures A.
- (ii) One crane (Sr.No.2 of Table above) imported at JNCH involving evaded duty amount of Rs.38,76,818 /- as detailed at Part-III of Annexure-A are beyond time period of 5 years, hence no demand notice for the same can be raised under Section 28, of the Act.

8.5 However, Section 28 of the Act does not bar voluntary deposit of self-admitted duty for any imports beyond five years to be adjusted for duty and interest leviable against the said imports. The limitation with respect to the time only bars the department to issue demand notice under Section 28 of the Act, it does not bar the importer to pay back the duty evaded on his own. Thus the duty amount and interest amount deposited voluntarily by the importer is therefore adjustable against the duty and interest recoverable even for the period beyond five years. This has been affirmed in the case of **India Cements**¹³.

8.6 As against the above evaded amount, M/s Malleesh & Co. and the possessors of the impugned cranes had voluntarily made a total payment Rs.1,34,23,466/- (Rupees One Crore Thirty Four Lakhs Twenty Three Thousand Four Hundred and Sixty Six Only) during the course of investigation as detailed at para-7 supra. This is accordingly adjusted against the duty and interest payable on the duty evaded in the import of three cranes mentioned at Part - I & III of Annexure - A to the notice, which are beyond five years and which comes to Rs. 95,87,548 /- (Duty of Rs. 63,44,639/- + Interest of Rs.32,42,909/-). The balance of Rs.38,35,918/- is available to be adjusted against the duty demanded under Section 28 of the Act for the import of cranes mentioned at Part - II & Part-IV of Annexure-A to the notice.

Findings of Investigation

9. From the evidence gathered during investigations, it appeared that: -

¹³ India Cements Vs CCE, Madras [1984(18) ELT 499 (TRB)] by the special bench of CEGAT, New Delhi.

9.1 A well thought out conspiracy was hatched by Rahul Gangaram Kanakallu in collusion with overseas suppliers/high sea sellers / agents to defraud the Government of India of its legitimate revenue by causing import of used cranes by resorting to fraudulent means, which include mis-declaration of the transaction value of the cranes imported.

9.2 Pursuant to the said conspiracy, Rahul Gangaram Kanakallu, through his proprietorship firm viz. M/s. Malleesh & Co. started importing used and second hand cranes and got the same cleared through customs on the strength of manipulated invoices showing highly understated values with the motive of evading payment of appropriate customs duty. The undervalued invoices were raised by the overseas suppliers at the instance of Rahul Gangaram Kanakallu of M/s.Malleesh & Co. False and fabricated invoices of the above stated overseas suppliers were submitted for seeking clearance of the aforesaid goods. M/s. Malleesh & Co. being the buyer and actual importer of the goods in the aforesaid consignments had not disclosed the true and actual value of the consignments to the Customs Authorities at the time of clearance of the aforesaid goods. As discussed above, it clearly indicates that fraudulent practices were employed by M/s Malleesh & Co. for the purpose of importing the above stated cranes.

9.3 Consequently, the thirteen impugned cranes (at Sr. No. 1, 3, 5, 9, 10, 13, 15, 16, 18, 19, 21, 22 and 23 of Table - I) and accessories for two cranes (Sr. No. 17 of table - I) imported by M/s Malleesh & Co. with the re - determined assessable value of Rs. 6,47,90,187/- details in Annexure-A to the notice), are liable to confiscation under the provisions of Section 111(m) of the Act.

9.4 Appropriate customs duty payable on the import of the three impugned cranes as detailed in Part-I & III to Annexure-A to this notice was not paid and that the duty was short paid by reason of fraud, collusion, willful misstatement and suppression of facts by M/s Malleesh & Co in the declarations made under the respective bills of entry filed for clearance of the said cranes.

9.5 During the investigation, M/s. Malleesh & Co. through its proprietor, Rahul Gangaram Kankallu and the possessors of the cranes have come forward and voluntarily paid Rs.1,34,23,466/- against the duty evaded by him. The differential duty evaded by M/s Malleesh & Co. in the import of three (3) cranes (para 8.6 refers) works out to Rs.63,44,639 /- and interest of Rs.32,42,909/- (as detailed in Part - I & III of Annexure - A to the notice) totally amounting to Rs. 95,87,548/-. This amount of Rs. 95,87,548/- is being adjusted against the voluntary deposit of Rs.1,34,23,466/-.

9.6 Differential Customs Duty payable on the import of the impugned ten (10) cranes and accessories for two cranes as detailed at Part - II & IV in Annexure - A to this notice was not paid and that the duty was short levied by reason of fraud, collusion, willful mis-statement and suppression of facts by M/s. Malleesh & Co. in the declaration made under the respective bills of entry filed for clearance of the said goods. Accordingly, M/s Malleesh & Co. is liable to pay the duty short levied under the provisions of Section 28 of the Act. The differential duty evaded by

M/s Mallesh & Co. in the import of the above mentioned ten cranes works out to Rs.41,22,031/- (as detailed in Part - II & IV of Annexure- A to the notice). M/s. Mallesh & Co. is also liable to penalty under Section 114A of the Act in relation to the said imports, for their omissions and commissions which had rendered the goods imported liable for confiscation.

9.7 M/s Mallesh & Co, through its proprietor viz Rahul Gangaram Kanakallu in collusion with the overseas suppliers had indulged in customs duty evasion by suppression of facts and willful misstatement to customs department at the time of import of above stated cranes. Rahul Gangaram Kanakallu played a pivotal role in the fraudulent import of these goods. The evidence brought on record, as discussed in the foregoing paragraphs, clearly indicate that all the aforesaid consignments were imported and cleared on the basis of misdeclaration of the documents and submission of manipulated documents. The role of Rahul Gangaram Kankallu in the import of the aforesaid consignments as discussed above, clearly indicate that he has indulged in various acts of commissions and omission, which have rendered the aforesaid consignments liable for confiscation under Section 111(m) of the Act. Further, M/s Mallesh & Co. have also acquired possession of and have harbored the duty evaded goods, which he knew or had reason to believe were liable to confiscation under the provisions of Section 111(m) of the Act. Consequently, M/s Mailesh & Co. and Rahul Gangaram Kankallu have rendered themselves liable to penalty under Section 112(a) and Section 112(b) of the Act, in relation to the said consignments.

9.8 M/s Mallesh & Co. and its proprietor Rahul Gangaram Kankallu knowingly and intentionally made or caused to be made false value declarations in the respective bills of entry filed for clearance of the goods imported along with suppressed value invoices, which they knew, was only part of the value and not the full transaction value. Accordingly, Rahul Gangaram Kankallu, proprietor of M/s Mallesh & Co, is liable to penalty under Section 114AA of the Act, in relation to the said goods.

9.9 Janardhan Sawant of M/s Babush Cranes, Nilesh Kale of M/s Nilesh Crane Services, Latif Ismail Bote of M/s Afreen Roadways, R. Srinivasa Rao of M/s Durga Cranes, Paras Jain of M/s Nakoda Transport Company, Aziz A. R. Ladha of M/s. York Cranes have in their statements (refer Para 4.2 to 4.9 above) admitted that they were aware of the undervaluation resorted to by Rahul Gangaram Kanakallu of M/s Mallesh & Co. This is further substantiated by the fact that all these possessors had made a substantial part of the payment of the impugned cranes in cash. Consequently, they appear to have aided and abetted in doing or omission of such acts, which have rendered the cranes liable to confiscation under Section 111(m) of the Act as aforesaid. They have further acquired possession of or were concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing or have dealt with these impugned cranes which they knew or had reasons to believe were liable to confiscation under Section 111(m) of the Act. Their active connivance in the offence has rendered them liable to penalty under Section 112(a) and Section 112(b) of the Act, in relation to the said goods.

9.10 Madan Lalwani of M/s Dharamdas & Co, the CHA knowingly and intentionally colluded with Rahul Gangaram Kankallu, proprietor of M/s. Mallesh & Co. and helped him to acquire and import the undervalued crane from the foreign supplier. He was always aware that the value declared to Customs at the time of assessment was not the actual value but the suppressed value. His active connivance in the offence has rendered himself liable for penalty under Section 112(a) and Section 112(b) of the Act.

9.11 Brijesh Gala, the Hawala operator knowingly and intentionally aided and colluded in the undervaluation of cranes with Rahul Gangaram Kankallu, proprietor of M/s Mallesh & Co. by facilitating the remittance of the suppressed and undervalued amount over and above the declared value from the importer to the foreign suppliers through hawala channel. He had thereby aided and abetted in the fraudulent practices being followed by Rahul Gangaram Kanakallu, proprietor of M/s Mallesh & Co. Consequently, he appears to have aided and abetted the doing or omission of such acts, which have rendered the cranes liable to confiscation under Section 111(m) of the Act as aforesaid. He has thus rendered himself liable to penalty under Section 112(a) of the Act in relation to the said goods.

9.12 The impugned goods covered under the present investigation were imported at 2 ports namely Mumbai Port and Nhava Sheva Port. DRI, MZU initially issued the Show Cause Notice on 19.12.2012 making the noticees answerable only to the Commissioner of Customs, Import, New Customs House, Mumbai on the basis of CBIC Notification No. 15/2002 (N.T.) dated 07.03.2002 and Board's Clarification vide letter F. No. 437/107/2009-CUS.IV dated 26.08.2009 that the jurisdiction of Commissioner of Customs (Import), Mumbai and Commissioner of Customs (Import), Nhava Sheva is the same and the Show Cause Notice could be adjudicated by any one of the Commissioners. Since major portion of imports pertained to Mumbai Port, the Commissioner of Customs Import, Mumbai Zone - I was made the single adjudicating authority by the DRI. However, the jurisdiction of various offices of Customs got changed during the restructuring vide Notification No. 78/20014(N.T.) dated 06.09.2014. Thereafter, DRI issued Corrigendum dated 05.05.2015 making the noticees answerable to 2 adjudicating authorities namely Commissioner of Customs (Import), Mumbai Zone-I and Joint / Additional Commissioner of Customs, (Nhava Sheva - I), Mumbai Zone-II.

Charging Para of SCN dated 19.12.2012 read with Corrigendum dated 05.05.2015

10. Shri Rahul Gangaram Kankallu, Proprietor of M/s Mallesh & Co., Shri Janardan Sawant, Partner of M/s Babush Crane Services, Shri Nilesh Kale of M/s Nilesh Crane Services, Shri Latif Ismail Bote of M/s Afreen Roadways, Shri R.Srinivasa Rao of M/s Durga Cranes, Shri Paras Jain of M/s Nakoda Transport Co., Shri Aziz A. R. Ladha of M/s York Cranes for the respective imported cranes as detailed in Column R of Part – I to IV of Annexure A were called upon to show-cause in writing to the Adjudicating Authorities mentioned in Column (f) of the Table – 1 below, within 30 days of receipt of the notice.

Table - 1

Sr. No.	Port of Import	Declared value in Bill of Entry (Rs.)	Proposed to be re – determined CIF Value (Rs.)	Differential Duty Payable (Rs.)	Adjudicating Authority
(a)	(b)	(c)	(d)	(e)	(f)
1	Mumbai	(Part I Annexure A Beyond 5 Years)			Commissioner of Customs, (Import – I), Mumbai Zone – I having his office at New Custom House, Ballard Estate, Mumbai - 400001
		42,67,126	1,09,66,277	24,67,821	
		(Part II Annexure A Within 5 Years)			
		2,13,37,406	3,63,33,993	35,83,554	
2	Nhava Sheva	(Part III Annexure A Beyond 5 Years)			Joint / Additional Commissioner Office of the Principal Commissioner of Customs (Nhava Sheva – I), Mumbai Zone – II, having his office at JNCH, Nhava Sheva Uran, Raigad, Maharashtra.
		19,33,020	1,24,84,863	38,76,818	
		(Part IV Annexure A Within 5 Years)			
		21,15,343	50,05,055	5,38,477	
	Total	2,96,52,895	6,47,90,187	1,04,66,671	

as to why:

(i) The declared CIF value in respect of the impugned cranes and accessories imported by M/s Mallesh & Co. and consequently the declared assessable value as mentioned at column (c) in Table – 1 above for the imports made from New Customs House, Mumbai, and JNCH as detailed in Part I, II, III & IV of Annexure - A to the notice should not be rejected under Rule 10 / Rule 12 of the Customs Valuation (Determination of Price of Imported Goods) Rules 1988 / 2007 read with Section 14 of the Act, as applicable.

(ii) The value of the impugned cranes and accessories imported through NCH, Mumbai and JNCH by M/s. Mallesh & Co as mentioned at column (d) in Table – 1 above

for the imports made through Mumbai, and JNCH ports (as detailed in Part I, II, III & IV of Annexure - A to the notice) should not be re-determined under the provisions of Rule 3 (i) and Rule 4 of the Customs Valuation (Determination of Price of Imported Goods) Rules 1988 read with the provision of Section 14 of the Act and Rule 3(1) of the Customs Valuation (Determination of Price of Imported Goods) Rules 2007 read with the provision of Section 14 of the Act as applicable.

(iii) The above mentioned cranes imported by M/s Mallesh & Co, should not be confiscated under the provisions of Section 111(m) of the Act.

(iv) The differential duty of Rs. 41,22,031/- (Rupees Forty One Lakhs Twenty Two Thousand and Thirty One only) against the import of the impugned cranes and accessories imported through NCH. Mumbai & JNCH, by M/s Mallesh & Co. as detailed in Part – II & IV to Annexure 'A' to the Notice which have been evaded by collusion, willful misstatement and suppression of facts, should not be demanded and recovered from them, under the provisions of Section 28 of the Act along with interest under Section 28AB (Section 28AA after 08.04.2011) of the Act.

(v) The remaining voluntary deposit of Rs. 38,35,918 /- [Total voluntarily deposit of Rs.1,34,23,466/- less adjusted amount (Duty Rs.63,44,639/- and Interest Rs. 32,42,909 /-)] made by and on behalf of M/s. Mallesh & Co. should not be appropriated against the above duty demand.

(vi) Penalty under Section 112(a) and Section 112(b) or Section 114A, as the case may be of the Act should not be imposed on them for the respective imported cranes.

(vii) Penalty under Section 114AA of the Act, Should not be imposed on Rahul Gangaram Kankallu.

10.2 Brijesh Gala, the Hawala operator, was called upon to show cause to the adjudicating authorities as mentioned at column (f) in Table – 1 above as to why penalty under Section 112(a) of the Act should not be imposed on him.

10.3 Madan Lalwani of M/s Dharamdas & Co., for the imported cranes listed at Sr. No. 6 and 10 Part II of Annexure A was called upon to show cause to the Commissioner of Customs, (Import – I), Mumbai Zone – I, having his office New Customs House, Ballard Estate Mumbai – 400 001 as to why penalty under Section 112(a) and (b) of the Act, should not be imposed on them.

11. CBIC in exercise of powers conferred by sub-section (1) of section 4 and sub-section (1) of section 5 of the Act (52 of 1962) vide Sr. No. 11 of the Notification No. 26/2016 - Customs (N.T.) dated 16.02.2016 in the present case appointed the Commissioner of Customs, (Import - I), Mumbai Zone - 1 to act as a Common Adjudicating Authority to exercise powers and discharge duties conferred or imposed on Commissioner of Customs (Import - I), Mumbai Zone

- I, Joint / Additional Commissioner of Customs, Office of the Principal Commissioner of Customs, (Nhava Sheva - I), Mumbai Zone - II for purpose of adjudication of the show cause notice. Therefore, the said SCN in respect of the imports made as per part I, II, III and IV of the Annexure 'A' is being adjudicated by the undersigned as the Common Adjudicating Authority of the case appointed by the Board.

12. Shri Rahul Gangaram Kankallu Proprietor of M/s Mallesh & Co filed an application in the Hon'ble Settlement Commission, Additional Bench, Mumbai for settlement of dispute arising out of Show Cause Notice vide F.No. DRI/MZU/E/8/2011 dated 19.12.2012 read with corrigendum to SCN, F. No. DRI/MZU/E/8/2011 dated 05.05.2015 issued by the Additional Director General, DRI, MZU, Mumbai. The application was received in the Secretariat of the Settlement Commission on 10.04.2017 & was registered as 'SA (C) 138 / 2017'.

13. The Hon'ble Settlement Commission vide order No.115/Final Order / Cus / KNA/2017 dated 20.06.2017 held that: -

13.1 Customs Duty: - Bench settled the duty liability at Rs.41,22,031/- in respect of 10 cranes. The said amount is already paid and no further liability subsists on this account. Applicant has also paid voluntarily Rs.64,34,649/- towards duty on 3 cranes which were imported beyond five years.

13.2 Interest: - Applicant had paid Rs.42,22,492/- towards interest liability on duty demand of Rs.41,22,031/- and also on voluntarily paid time barred duty of Rs.64,43,649/-. As such no further interest liability subsists on this account.

13.3 Redemption Fine: -

(a) The 5 cranes which were not seized physically are held liable for confiscation but Bench refrained from imposing fine in respect of these cranes since they are not physically available for confiscation.

(b) The eight cranes valuing Rs. 4,64,68,450/- were confiscated but allowed to be redeemed on payment of redemption fine of Rs. 5,00,000/- (Rupees Five Lacs Only). The fine shall be paid within 30 days of receipt of this order.

13.4 Penalty: In view of above discussions, Bench granted full immunity from penalty to the applicant Shree Rahul Gangaram Kanakallu.

13.5 Prosecution: - Subject to payment of above adjudged dues within stipulated time, immunity was granted from prosecution to the applicant under the Act, so far as proceedings under the instant Show Cause Notice against them were concerned.

13.6 The above immunities to the applicant were granted under Section 127 H (1) of the Act. Their attention is also invited to the provisions of sub Section (2) and (3) of Section 127 H ibid. This order shall be void and immunities withdrawn if the Bench, at any time finds that the

applicant had concealed any particular material from the Commission or had given false evidence or had obtained this order by fraud or misrepresentation of facts.

13.7 The order was accepted by the Principal Additional Director General, DRI, Mumbai.

14. Shri Aziz A. R. Ladha, Proprietor of M/s York Cranes filed a Co – application in the Hon’ble Settlement Commission, Additional Bench, Mumbai for settlement of dispute arising out of Show Cause Notice vide F.No. DRI/MZU/E/8/2011 dated 19.12.2012 read with corrigendum to SCN, F. No. DRI/MZU/E/8/2011 dated 05.05.2015 issued by the Principal Additional Director General, DRI, MZU, Mumbai.

15. The Hon’ble Settlement Commission vide order No.133/FINAL ORDER/CUS/DRK/17 dated 24.08.2017 granted Shri Aziz A. R. Ladha immunity from penalty and prosecution. The order was accepted by the Principal Additional Director General, DRI, MZU, Mumbai.

16. The said SCN was transferred to Call Book on 26.06.2021 in the wake of the Hon’ble Supreme Court Judgement in the matter of **M/s Canon India**¹⁴. Further, the said case was retrieved from the Call Book on 25.07.2022, in view of the amendment made in the Act by the Finance Act 2022 overriding the Canon Judgement.

Personal Hearing Memorandums

Details of Personal Hearing Memorandums		
(1) Issued to Shri Rahul Gangaram Kankallu, Proprietor of M/s Mallesh & Co		
Date of PH Memo	Date given to Noticee for appearing	Details
01.08.2022	30.08.2022	Noticee did not appear.
31.10.2022	16.11.2022	Noticee did not appear.
12.01.2023	19.01.2023	Noticee did not appear.
06.04.2023	27.04.2023	Noticee did not appear.
(2) Issued to Shri Brijesh Gala		
Date of PH Memo	Date given to Noticee for appearing	Details
01.08.2022	30.08.2022	Noticee requested for adjournment

¹⁴ 2021 (376) E.L.T. 3 (S.C.), Canon India Pvt. Ltd. Versus Commissioner Of Customs

31.10.2022	16.11.2022	Attended by the Noticee
12.01.2023	19.01.2023	written submission submitted by the Noticee
(3) For the noticee Shri Janardan Sawant, Partner of M/s Babush Crane Services		
Date of PH Memo	Date given to Noticee for appearing	Details
01.08.2022	30.08.2022	Noticee did not appear.
31.10.2022	16.11.2022	Noticee did not appear.
12.01.2023	19.01.2023	Attended by Consultant Shri Prashant Patankar, authorized by the legal heir due to death of the Noticee.
(4) For the noticee Shri Latif Ismail Bote of M/s Afreen Roadways		
Date of PH Memo	Date given to Noticee for appearing	Details
01.08.2022	30.08.2022	Noticee did not appear.
31.10.2022	16.11.2022	Noticee did not appear.
12.01.2023	19.01.2023	Noticee did not appear.
06.04.2023	27.04.2023	Noticee did not appear.
(5) Issued to Shri R. Srinivasa Rao of M/s Durga Cranes		
Date of PH Memo	Date given to Noticee for appearing	Details
01.08.2022	30.08.2022	Noticee did not appear.
31.10.2022	16.11.2022	Noticee did not appear.
12.01.2023	19.01.2023	Noticee did not appear.
06.04.2023	27.04.2023	Noticee did not appear.
(6) Issued to Shri Paras Jain of M/s Nakoda Transport Co.		
Date of PH Memo	Date given to Noticee for appearing	Details
01.08.2022	30.08.2022	Noticee did not appear.

31.10.2022	16.11.2022	Noticee did not appear.
12.01.2023	19.01.2023	Noticee did not appear.
06.04.2023	27.04.2023	Noticee did not appear.
(7) Shri Aziz A. R. Ladha of M/s York Cranes case was settled by the Settlement Commission in respect of the Noticee.		
(8) Issued to Shri Nilesh Kale of M/s Nilesh Crane Services		
Date of PH Memo	Date given to Noticee for appearing	Details
01.08.2022	30.08.2022	Noticee did not appear.
31.10.2022	16.11.2022	Noticee did not appear.
12.01.2023	19.01.2023	Noticee did not appear.
06.04.2023	27.04.2023	Noticee did not appear.
(9) Issued to Shri Madan Lalwani of M/s Dharamdas & Co.		
Date of PH Memo	Date given to Noticee for appearing	Details
01.08.2022	30.08.2022	Replied by wife of Noticee Mrs. Madan Lalwani that Shri Madan Lalwani Expired on 28.01.2022 due to Multiple Issues and Covid Positive. Death Certificate having registration No. D – 2022: 27-90269 – 000886 Submitted by her.

Summary of submissions of Noticees

17. Noticees 1,2,5,6,7,8,9 did not appear for personal hearing.

18. **Summary of submissions of Noticee - 3:** - Shri Brijesh Gala made his submissions dated 16.11.2022 and 19.01.2023. Noticee - 3 submitted : -

(i) The Noticee is not concerned with the importation of used cranes or any alleged evasion of duty by the importer and all his submissions made strictly viewed as defense against proposed penalty under section 112 of the Act. **He was not aware of any importation or any under valuation of the imports by M/s Mallesh & Company** or any other persons, and in the absence of any knowledge on his part, he cannot be an

abettor in the alleged under valuation of the imports made by M/s Mallesh & Company. The abetment presupposes the knowledge of the alleged offence and in the absence of knowledge the allegation of abetment cannot be sustained. Reliance in this regard was placed on the judgement of the Hon'ble Tribunal in the matter of **M. Vasi**¹⁵.

(ii) Noticee statements were not true and voluntary statements and he retracted the same vide letter dated 21.01.2013.

(iii) Noticee was never engaged in any illegal transfer of money from India to abroad and thus has not done any havala abroad on behalf of M/s Mallesh & Company or any other person named in the SCN. Noticee was not having any connection abroad and never acquired or dealt with any foreign currency on behalf of M/s Mallesh & Company who are the importer in the above mentioned SCN.

(iv) **Noticee statements were not corroborated in any manner independently with any evidence whatsoever** and thus the same are not admissible at all in the present proceedings. The statements refer that the money was transferred to the bank account numbers given by the importer but however not a single account number or any details of the transfer to the said account are brought on record and thus it may please be appreciated that the statements were totally uncorroborated and thus not admissible in the present proceedings.

(v) In the judgement of the Hon'ble Tribunal in the matter of **R. S. Travels**¹⁶ wherein the allegation of abetment / collusion to help the importer was set aside even though there was a statement of the importer to that effect. In the present case there being no evidence whatsoever of any abatement or collusion and the inference is based merely on doubt and suspicion and thus the SCN is erroneously issued and the same is required to be quashed.

(vi) Noticee has not dealt with import of any goods including cranes by M/s Mallesh & Company. He was not even aware that this party or its owner were engaged in the business of importation. He has not committed any acts or omission and or have not abetted in any omission or commission of any act which allegedly have rendered the goods liable to confiscation under section 111 of the Act, thus no penalty is imposable. Reliance in this regard was placed on the judgement in the matter of **Mukund Ltd.**¹⁷, **D. Ankineedu Chowdhary**¹⁸, **D. Ankineedu Chowdhary**¹⁹, **Pawan Kumar Gupta**²⁰, **Pawan Kumar Gupta**²¹, M. Vasi (supra), wherein it was held that once the person has not dealt with the goods, no penalty is imposable on him. Thus in view of these judgements no penalty be imposed on him.

¹⁵ M. Vasi 2003 (151) ELT 312 (Tri. Mumbai)

¹⁶ R. S. Travels 2007 (217) ELT 384 (Tri. Bang.)

¹⁷ Mukund Ltd. 2007 (218) ELT 120 (Tri. Mum.)

¹⁸ D. Ankineedu Chowdhary 2004 (178) ELT 578 (Tri. Chennai)

¹⁹ D. Ankineedu Chowdhary 2005 (182) ELT 206 (Tri. Chennai)

²⁰ Pawan Kumar Gupta 2002 (161) ELT 828 (Tri. Del.)

²¹ Pawan Kumar Gupta 2011 (271) ELT 10 (SC)

(vii) Hon'ble Commissioner of Customs (Appeals), Mumbai Custom Zone - I and the Hon'ble Commissioner of Customs (Appeals)-11, Mumbai-II has allowed various appeals filed by noticee by passing Order-In-Appeals (copies enclosed) in my favour in similar cases involving importation of cranes. Even the Hon'ble Jt. Commissioner of Customs, JNCH, Nhava Sheva has in its order dropped all the charges against me. The DRI has not appealed against any of the above appeals or orders.

(viii) Copy of Hon'ble CESTAT Order vide 2015 (3) TMI 553 – CESTAT Mumbai in matters of co – noticee Shri Vinod Tomar submitted by the noticee wherein it has been held that 'when the case against the main noticee has been settled by the Settlement Commission in that case penalty against the other co - noticees have also got settled.'

(ix) Noticee prayed to withdraw the SCN against him.

19. Summary of submissions of Noticee 4: - Shri Prashant Patankar, Partner, Patankar Legal Combine, authorized representative of the heir of Noticee 4 submitted his submissions on 19.01.2023. He argued that:-

(i) SCN Does not clarify the role of Mr. Sawant.

(ii) **All proceedings should abate following the death of the Noticee – 4:** - The SCN under reference has been issued to Janardan Sawant, who has passed away on 16/09/2018, Death Certificate of Noticee having registration no. D – 2018: 27-90264 – 007936 submitted. Reliance placed on (a) **Shabina Abraham**²², (b) **Manmohan Kaur Sehgal**²³, (c) A.S.A. Enterprises Vs Commissioner of Customs, New Delhi 2017 (358) E.L.T. 788 (Tri. -Del), (d) Bhootpurva Sainik Security & Detective Service Vs C.C.E. Allahabad reported in 2019 (21) G.S.T.L. 165 (Tri. -All), (e) Vivek Bhandare 2016 SCC Online CESTAT Mumbai 4626, (f) Anwar Karim Kar Vs CC (Adjn), Mumbai - 1 reported in 2009 (223) ELT 498 (Tri. Mumbai), (g) Rekha Umesh Shetty Vs CC (I) reported in 2015 (323) ELT 574 (Bom.) and (h) International Computers Indian Mfr. Ltd. Vs CC reported in 1990 (48) ELT 150 (Tribunal)

(iii) **Factual Error** - As understood by the son of the deceased Noticee, M/s Babush Crane Service was a proprietary concern of his mother (Mrs. Jaya Sawant, wife of the deceased Noticee Janardan Sawant) and Mr. Janardan Sawant was a Power of Attorney Holder of the said firm. Mr. Janardan Sawant was not a partner of Babush Crane Service, as erroneously referred to, in Para 10 of the SCN. The payment for the purchase of the subject imported crane was made from the account of the proprietary concern of Late Mrs. Jaya Sawant and two proprietary concerns of the Noticee Janardan Sawant. Probably the Noticee referred as 'partner' of Babush Crane Service as he was handling the business of his wife's proprietary concern. Mrs. Jaya Sawant, proprietress of Babush Crane Service

²² Shabina Abraham vs Collector of Central Excise and Customs 2015 (322) E.L.T. 372 (S.C.).

²³ Manmohan Kaur Sehgal Vs Commissioner of Customs, New Delhi reported in 2018 (363) ELT 258 (Tri. - Del)

has also died, much before the issuance of the subject SCN. There is no clarity as to whether the notice is directed against the individual Janardan Sawant, or Janardan Sawant as a partner of some partnership firm. In the circumstances, the legal heir will certainly not be liable for any dues after the death of the partner (his parent) as held in the decision in the case of 'Bhootpurva Sainik Security & Detective Service Vs C.C.E. Allahabad' cited supra.

(iv) **All duty liability is on the importer. Noticee – 4 is not the importer:** - Sawant, not being the importer It may be appreciated that the Noticee Mr. Janardan Sawant or M/s Babush Crane Service (the proprietary concern of his wife at the relevant time) did not import the subject crane. It may be noted that the two subject bills of entry no. 996201 dated 15/12/2006 and 996675 dated 16/12/2006 as detailed in Part-III of Annexure-A were filed by M/s Mallesh & Co. and only the importer was responsible for the declarations in the bills of entry and the payment of duty. Section 28 of the Act provides for the demand of duty from the "person chargeable to duty" short levied or short paid at the time import. The duty can only be demanded only from the importer Mallesh & Co. and from nobody else.

(v) Demand barred by period of Limitation of 5 years under section 28.

20. Summary of submissions of Noticee 10: - wife of Shri Madan Lalwani submitted a letter dated 30.08.2022, wherein she submitted that her husband shri Madan Vishindas Lalwani was expired on 28.01.2022 in Seven Hills Hospital due to Multiple issues and Covid positive. She also attached the copy of the Death Certificate dated 09.02.2022 of Shri Madan Lalwani having registration No. D – 2022: 27 – 90269 – 000886.

Discussion & Findings

21. I find that the present Show Cause Notice dated 19.12.2012 read with Corrigendum dated 05.05.2015 was issued to the following 10 noticees: -

- | | | |
|------------|---|--|
| Noticee 1 | : | M/s Mallesh & Co. |
| Noticee 2 | : | Shri Rahul Gangaram Kankallu Proprietor of M/s Mallesh & Co. |
| Noticee 3 | : | Shri Brijesh Gala |
| Noticee 4 | : | Shri Janardan Sawant, Partner of M/s Babush Crane Services |
| Noticee 5 | : | Shri Latif Ismail Bote of M/s Afreen Roadways |
| Noticee 6 | : | Shri R. Srinivasa Rao of M/s Durga Cranes |
| Noticee 7 | : | Shri Paras Jain of M/s Nakoda Transport Co. |
| Noticee 8 | : | Shri Aziz A. R. Ladha of M/s York Cranes |
| Noticee 9 | : | Shri Nilesh Kale of M/s Nilesh Crane Services |
| Noticee 10 | : | Shri Madan Lalwani of M/s Dharamdas & Co |

22. The Show Cause Notice covers 10 Cranes cleared at Mumbai Port and 3 Cranes and Accessories cleared at Nhava Sheva Port during the period from 2006 to 2010 by the importer M/s Malleesh and Co. The entire case is before me as the common adjudicating authority appointed vide CBIC Notification No. 26 / 2016 – CUS (N.T.) Dated 16.02.2016 (Serial No. 11). The case against the importer Noticees no. 1 and 2 stands settled vide Settlement Commission's Order No. 115/FINAL ORDER /CUS/KNA/2017 dated 20.06.2017 issued vide F. No. 53/CUS/KNA/2017 – SC (MB), Application No. SA (C) 138/2017, all the dues have been paid by the main Noticees-1 and 2 and the said Settlement Commission's Order stands accepted by the Department. Also the case against Noticee-8 stands settled vide Settlement Commission's Order No. 133/FINAL ORDER/CUS/DRK/2017 dated 24.08.2017, all the dues have been paid by Noticee - 8 and the said Order stands accepted by the Department. So, the noticees that remain before me in this adjudication are only seven out of original ten, namely Noticees - 3, 4, 5, 6, 7, 9 and 10.

23. It has also come to my notice that Noticee - 4 and Noticee - 10 have expired. I have seen the Death Certificate Registration No. D-2018:27-90264-007936 dated 01.10.2018 of Shri Janardan Sawant (Noticee no. 4) and Death Certificate Registration No. D-2022:27-90269-000886 dated 09.02.2022 of Shri Madan Lalwani (Noticee no. 10). Since the case against them was only of imposition of penalty under Section 112 (a) and (b) or Section 114A of the Act, the said case stands abated in view of the ratio laid down by the Hon'ble Supreme Court in **Shabina Abraham**²⁴ and by the Hon'ble CESTAT, New Delhi in **Manmohan Kaur Sehgal**²⁵.

24. In the case of Noticee - 3 (Shri Brijesh Gala) the allegation in the Show Cause Notice is that "*Brijesh Gala, the Hawala operator knowingly and intentionally aided and colluded in the undervaluation of cranes with Rahul Gangaram Kankallu, proprietor of M/s, Malleesh & Co. by facilitating the remittance of the suppressed and undervalued amount over and above the declared value from the importer to the foreign suppliers through hawala channel. He had thereby aided and abetted in the fraudulent practices being followed by Rahul Gangaram Kanakallu, proprietor of M/s. Malleesh & Co. Consequently, he appears to have aided and abetted the doing or omission of such acts, which have rendered the cranes liable to confiscation under Section 111(m) of the Act as aforesaid. He has thus rendered himself liable to penalty under Section 112(a) of the Act, in relation to the said goods.*". I find that in similar case Commissioner (Appeals), Mumbai Zone - I vide OIA no. MUM-CUSTM-SMP-46,47 & 48/2017-18 dated 30.06.2017 and OIA no. MUM-CUSTM-SMP-60 to 65/2017-18 dated 25.07.2017 has found that Shri Brijesh Gala never dealt with imported goods and he was not aware that the money transferred was used to import undervalued cranes. The said OIAs have been accepted by the Department. In the present case, I find no evidence to deviate from the said findings of the Commissioner (Appeals), Mumbai Zone - I.

²⁴ Shabina Abraham vs Collector of Central Excise and Customs 2015 (322) E.L.T. 372 (S.C.).

²⁵ Manmohan Kaur Sehgal Vs Commissioner of Customs, New Delhi reported in 2018 (363) ELT 258 (Tri. - Del)

25. Out of these five Noticees - 3, 5, 6, 7 and 9, one is a hawala operator and the other four are buyers of the undervalued cranes from the main Noticee / importer. The allegation against them is directly related to the allegation against the main Noticee. I find that their offences if at all established are not independent in nature and directly related to the offences of the main Noticee.

25.1 In this regard I refer to the judgement of the Hon'ble 3 Member Bench of CESTAT, Mumbai in the case of **S. K. Colombowala**²⁶ wherein it has been ruled that "*The question as to who played the main role is irrelevant for the reason that once the case is settled by the Settlement Commission, it is settled in its entirety and such a case then cannot be adjudicated qua other co-noticees.*"

25.2 In the case of **Virender Bansal**²⁷ the Hon'ble CESTAT, Principal Bench, New Delhi ruled that "*Cases against appellants come to an end when case against main applicant settled before Settlement Commission. Penalties on appellants not imposable.*"

25.3 In the case of **Mahendra Kumar Darewala**²⁸ the Hon'ble CESTAT, Mumbai ruled that "*Cases against all co-noticees come to an end once order of settlement is passed in respect of the person entitled to file an application before the Settlement Commission, hence penalty imposed on appellant cannot be sustained*".

25.4 Applying the above ratio to the present case, I find that the charge against the co-noticees is directly related to the charge against the main noticee, whose case has already been settled; hence, no ground remains for imposing penalty on these co-noticees.

26. In view of the grounds discussed above, I find that no penalty is imposable on Noticees - 3, 5, 6, 7 and 9.

27. Accordingly, I pass the following Order :-

ORDER

27.1 I refrain from imposing any penalty on Shri Brijesh Gala, Shri Janardan Sawant, Shri Latif Ismail Bote, Shri R. Srinivasa Rao, Shri Paras Jain, Shri Nilesh Kale and Shri Madan Lalwani.



Vivek
31.07.23
(Vivek Pandey)
आयुक्त सीमाशुल्क (आयात-I)
Commissioner of Customs (Import-I)
नवीन सीमाशुल्क भवन, मुंबई
New Custom House, Mumbai-01

²⁶ 2007 (220) E.L.T. 492 (Tri. - Mumbai) S. K. Colombowala Versus Commissioner Of Cus (Import), Mumbai

²⁷ 2015 (317) E.L.T. 796 (Tri. - Del.), Virender Bansal Versus Commissioner Of Customs (Icd), New Delhi

²⁸ 2016 (340) E.L.T. 727 (Tri. - Mumbai), Commr. Of Cus. (Ex), Mumbai Versus Mahendra Kumar Darewala

To,

1. Shri Rahul Gangaram Kankallu, Proprietor of M/s Mallesh & Co.,
Flat no. 203, Vikas Darshan Building, S. P. Road, 12th Lane, Kamathipura,
Mumbai Central, Mumbai 400 008,
2. Shri Brijesh Gala,
Flat No. 1,3 & 4, New Sai Niketan Building, Opp. Vikrikar Bhavan, Mazgaon,
Mumbai - 400 010
3. Janardan Sawant, Partner of M/s Babush Crane Services,
19, Kanshiram Jamnadas Building, 5P. D'mello Road, Nr. Princess Dock
Mumbai-400 009,
4. Nilesh Kale of M/s Nilesh Crane Services,
3/159, Ground Floor, Shroff Bhavan, P. D. Mello Road, Carnac Bunder,
Mumbai – 400 001
5. R.Srinivasa Rao of M/s Durga Cranes,
327/2 RT S. R. Nagar
Hyderabad,
6. Paras Jain of M/s Nakoda Transport Co.,
231, Malaviya Nagar, Durga,
Chattisgarh
7. Aziz A. R. Ladha of M/s York Cranes,
Shop No. 10, Annu Estate, Shahpur Nagar, Jedemetla,
Hyderabad – 55,
8. Nilesh Kale of M/s Nilesh Crane Services,
3/159, Ground Floor, Shroff Bhavan, P. D. Mello Road, Carnac Bunder,
Mumbai – 400 001,
9. Madan Lalwani of M/s Dharamdas & Co.,
202, Kedarnath Towers, Sanjeev Enclave Building Lane, Seven Bungalows,
Andheri West, Mumbai – 400 061

Copy to:

1. The Pr. Chief Commissioner of Customs, Mumbai Customs Zone-I, NCH, Mumbai.
2. The Addl. Director General, Directorate of Revenue Intelligence, MZU, Mumbai.
3. The Addl./Jt. Commissioner of Customs, Nhava Sheva - I, JNCH, Mumbai.
4. The Addl./Jt. Commissioner of Customs, Appraising Gr. 5, NCH, Mumbai.
5. The Addl./Jt. Commissioner of Customs, Appraising Gr. 5, JNCH, Mumbai.
6. The Supdt./CHS, NCH, Mumbai – For Display on Notice Board.
7. Office Copy.