



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. : GEN/ADJ/COMM/89/2020-ADJN-IMP-I& DRI/AZU/D/INV-12/2008

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

आदेश दिनांक: 30.03.2023
जारी दिनांक: 30.03.2023

सी.ए.ओ. क्रमांक : 99/2022-23/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I)

DIN:20230377000000333C18

मूल आदेश

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



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

Tel. No. 22757401 Fax No. 22757402

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

F. No.: GEN/ADJ/COMM/89/2020-ADJN-IMP-I& DRI/AZU/D/INV-12/2008

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

Date of Order: 30.03.2023
Date of Issue: 30.03.2023

C.A.O. No.: 99/2022-23/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I)
DIN: 20230377000000333C18

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: Second round of adjudication in respect of Show Cause Notice¹ issued vide F. No. DRI/AZU/INV-11/2008 dated 02.12.2011 by DRI, Ahmedabad Zonal Unit, alleging evasion of customs duty by M/s. Gururaj Steel (IEC:0304007277) , by undervaluation in the import of Stainless Steel Secondary/Defective Seamless Pipes of different grades - reg.

The said SCN was adjudicated in first round vide Order-in-Original No. 107/2013/CAC/CC(I)/AB/Gr.IV dated 29.08.2013. The noticees preferred an appeal against the said OIO in CESTAT. Hon'ble CESTAT disposed of the said appeal vide Final Order No. A/94502-94503/16/CB dated 29.11.2016 and observed: "*In our considered view adjudicating authority has to consider the details of contemporaneous imports produced by the appellant and deal with it in impugned order. In view of the foregoing, we are of the considered view that the issue needs reconsideration by the adjudicating authority. Without expressing any opinion on the merits of the case, keeping all issues open, we set aside the impugned order and remand the matter back to adjudicating authority to come to a conclusion after following the principles of natural justice; and appellant is also directed to produce the documents on which he wishes to reply upon to defend his case*". In pursuance of the said Hon'ble Tribunal's Order, the said SCN is pending before me for adjudication.

Brief facts of the case

- 2 The factual matrix of the case, as contained in the SCN is detailed below : -
 - 2.1 An intelligence was received that M/s. Gururaj Steel², having their office address at 144/164, TP Street, 6 Kumbharwada, Mumbai, (IEC-0304007277), engaged in the import and sale of 'Secondary/Defective Stainless Steel Seamless Pipes, Welded Pipes etc', is evading customs duty by misdeclaring the description of goods and by resorting to undervaluation of the said goods.
3. Based on the aforesaid intelligence, a search was carried out by DRI officers on 11.06.2008 in the office premises of M/s. Gururaj Steel, at 144/164, TP Street, 6 Kumbharwada, Mumbai, in the presence of independent panchas and Shri Pravin Shah³, co-founder of M/s. Gururaj Steel. During the course of search, import documents namely, bills of entry, invoices, bills of lading, insurance documents etc. relating to the import of 'Secondary/Defective Stainless Steel Pipes, Welded Pipes etc.' maintained by M/s. Gururaj Steel, along with one laptop Computer were recovered under panchnama dated 11.06.2008.
4. Further, the Commissioner of Customs (Import), Mumbai was requested to inform about live consignments of Stainless Steel Pipes/Tubes, if any, imported by M/s. Gururaj Steel, pending for clearance at Mumbai Port.



Virek
30.03.23

¹ Also referred to as the said SCN or the SCN
² Also referred to as the importer or Noticee-1
³ Also referred to as Noticee-2

4.1. The Additional Commissioner of Customs, SIIB (Import), Mumbai vide letter F. No.SG/Misc-75/DC/2008/SIIB(I) dated 11.09.2008 forwarded copies of two commercial invoice no. QCS08024 and QCS08026 both dated 17.05.2008 in the name of foreign supplier, M/s. Shanghai Qichang Stainless Steel Group Co. Ltd., Shanghai, alongwith copy of B/L. No. CNLCSHA080501200 & CNLCSHA080501199 and other related documents, and informed that these two consignments of 'Secondary/Defective Stainless Steel Seamless Pipes' weighing 21.787 MT and weighing 23.119 MT respectively, consigned to M/s. Gururaj Steel, from Shanghai to Mumbai, is lying at Mumbai port for clearance. It was further informed that M/s. Gururaj Steel vide two separate letters both dated 21.07.2008 had informed that they were not interested in clearing the said consignments, stating reason as 'the cargo had arrived beyond schedule'; that they would have absolutely no claim for these consignments; that they had also communicated that they have no objection, if anyone files the bill of entry for said consignments or the shipper re-books these consignments back to China. Subsequently, the shipping company, M/s. NLS Agency (India) P Ltd., vide letter dated 18.08.08, and CHA, M/s. Haytrans (India) P. Ltd, vide letter dated 28.08.08 requested for re-export of the cargo back to the shipper.

4.2. On perusal of the invoices of these live consignments, it was detected by DRI that Goods 'Stainless Steel Secondary/Defective Seamless pipes' in commercial invoice no.QCS08024 dated 17.05.2008, valued for Grade-304 at 4520 US\$/MT and 7350 US\$/MT for Grade-316 and in commercial invoice no. QCS08026 dated 17.05.2008, valued at 4700 US\$/MT for Grade-304 and 7400 US\$/MT for Grade-316, whereas the identical goods of the same grade in the previous bills of entry in close proximity of time have been cleared from Customs at much lower price as mentioned in Table-1 below:

| TABLE-1 | | | |
|---------|--|----------|------------------|
| S. No. | Description of goods | Rate PMT | Period of Import |
| 1 | Stainless Steel Secondary/Defective Seamless Pipes Grade-304 | 2100 USD | June, 08 |
| 2 | Stainless Steel Secondary/Defective Seamless Pipes Grade-304 | 2100 USD | May, 08 |
| 3 | Stainless Steel Secondary/Defective Seamless Pipes Grade-304 | 2100 USD | April, 08 |
| 4 | Stainless Steel Secondary/Defective Seamless Pipes Grade-316 | 2750 USD | April, 08 |

5. However, in the invoices of two live consignments, the rate of 'Stainless Steel Secondary/Defective Seamless Pipes Grade-304' have taken in the relevant Commercial invoices are as 4520 USD/MT and 4700 USD/MT and for Grade-316 as 7350 USD/MT and 7400 USD/MT. These rates appear to be correct and actual. Whereas, it has been revealed in the investigation that the importer has cleared the imports of similar goods in close proximity of time as detailed below in table at much lower price per MT, leading to less payment of Customs duty:

| TABLE-2 | | | | | | |
|---------------------|--|-----------------------------|-----------|------------------|---------------|----------------------|
| B/E. No &Dt. | Description of Goods | Invoice No.&Dt. | Qty. (MT) | Declar CIF (USD) | Rate (USD/MT) | Actual Rate (USD/MT) |
| 844780/ 09.06.08 | SS Sec. Def. Seamless pipe grade-304 | QCS08015/1 dtd. 24.04.08 | 22.730 | 47725 | 2100 | 4700 |
| 844829/ 09.06.08 | SS Sec. Def. Seamless pipe grade-304L | QCS08015/2 dtd. 24.04.08 | 4.950 | 10395 | 2100 | 4700 |
| 841223/ 21.05.08 | SS Sec. Def. Seamless pipe grade-TP304 | QCS08012 dtd. 08.04.08 | 20.212 | 42445.2 | 2100 | 4700 |
| 834826/ 16.04.08 | SS Sec. Def. Seamless pipe grade-316 | QCS08008 dtd. 06.03.08 | 2.286 | 6286.5 | 2750 | 7400 |
| | SS Sec. Def. Seamless pipe grade-304 | | 18.260 | 38346 | 2100 | 4700 |
| 833890/ 10.04.08 | SS Sec. Def. Seamless pipe grade-304 | QCS08001/2 dtd. 19.02.08 | 22.520 | 47292 | 2100 | 4700 |
| 833938/ 10.04.08 | SS Sec. Def. Seamless pipe grade-304 | QCS08001/1 dtd. 19.02.08 | 23.589 | 49536.9 | 2100 | 4700 |

6. Further, the laptop computer recovered from the premises of the importer recorded under Panchnama dated 11.06.2008, was forwarded to the Directorate of Forensic Sciences, Gandhinagar (DFS) for retrieval of data from the computer data storage device. The Deputy Director, DFS, Gandhinagar vide letter dated 16.01.2010 forwarded the report alongwith 21 pages of printouts of fragmented data retrieved from the data storage device of the said laptop computer, which has revealed potentially substantive facts proving undervaluation and misdeclaration of description.

6.1 The fragmented text at sr. no. 1 of page no. 1 of the DFS report, contains a commercial invoice no. NBSW07016-TO4 dated 03.09.2007 issued by supplier, M/s. Zhejiang Nanbo Steel Industry Co. Ltd., and furthermore, it contains some details of invoice, i.e. Description of the goods 'Stainless steel Seamless Pipe'; 'ASTM A312, 316L, Total USD 32114, 'From Ningbo, China' '(CIF) Nhava Sheva Port,' To Gururaj Steel' etc. These details were correlated with the import data of M/s. Gururaj Steel, found to be exactly matched with import details of B/E. No.958546 dated 19.10.2007, having been filed in Customs at CIF USD 14300 based on invoice

no.NBSW07016-T04 dated 03.09 2007 raised by M/s. Zhejiang Nanbo Steel Industry Co. Ltd., detailing the goods as quantity 5.5MT, description 'Secondary/Defective Stainless Steel Seamless Pipe' Grade-316. Thus, it is evident that a proxy invoice at lower CIF value (USD 14300) was created by the importer as proven that all the details matched even invoice no NBSW07016-T04 dated 03.09.2007 except value, with the invoice details retrieved by forensic laboratory. Furthermore, two other bills of entry, namely 955546 dated 19.10.2007, 889327 dated 27.08.2007 & 869327 dated 27.08.2007 cleared at much lower rate USD 2500/MT, under the same description as secondary/defective stainless steel seamless pipe Grade 316' from the same supplier, M/s. Zhejiang Nanbo Steel Industry Co Ltd., and paid less Customs duty.

6.2 Similarly the fragmented text at sr. no. 4 of page no. 3 of the report of DFS, contains details of invoice no. NBSW1017-T07 dated 22.12.2007 of M/s. Zhejiang Nanbo Steel Industry Co. Ltd., includes details such as 'Description of the goods, Stainless steel 'Seamless Pipe ASTM A312, 316L, 304L, Total', 'USD 178974', 'From Ningbo, China, (CIF) Nhava Sheva Port, To: Gururaj Steel etc. These details were exactly matched with the contents of B/E No. 817949 dated 17.01.2008 filed based on invoice no. NBSW1017-TO7 dated 22.12.2007, except CIF value. Text 'USD178974' mentioned in the end of the said page appeared to be the CIF value of the said invoice.

6.3 The fragmented text at Sr. no.13 of page no. 9 of the report, contains contents of invoice no. PYE071208 dated 06.01.2008 such as 'Description', 'Specification', 'Grade', 'Quantity', 'Unit Price(USD) Amount (USD), Total', 'Stainless steel Pressure Pipes, TP316L, 7350 USD/TON, 'US Dollar Three Hundred Thirty Eight Thousand and One Hundred', 'Load Port Ningbo Destination: Mumbai CIF, To: Gururaj Steel' etc. These details were correlated vis-à-vis with the content of B/E. No.824764 dated 20.02.2008 filed based on invoice no. PYE071208-1 dated 06.01.2008 (21.350MT) & 825451 dated 25.02.2008 based on invoice no. PYE071208-2 dated 06.01.2008 (21.250MT). From the analysis, it has been apprehended that invoice no. PYE071208 dated 06.01.2008 figuring in the forensic laboratory report is strongly linked with the invoice no. PYE071208-1 and PYE071208-2 both dated 06.01.2008 because it appears that PYE071208 dated 06.01.2008 was further split into two proxy invoices, 'PYE071208-1 dated 06.01.2008' and 'PYE071208-2 dated 06.01.2008' valuing at USD2025/MT instead of USD 7350/MT at the time of documentation with Customs for clearance of goods. The rate of USD 7350/MT is also supported by the DFS report at sr. no. 4 of page no. 15 to page no. 17, through sales contract no. PYE071208 dated 08.12.2007 figuring therein, raised between the Seller, M/s. Zhejiang Pengye Stainless Steel Tube Industry Co. Ltd., and the buyer, M/s. Gururaj Steel, having the description of the goods as 'Stainless Steel Seamless Tube ASTM A312', quantity 89 Tons and total contract value of USD 649700 (649700/89=7300).

STATEMENTS

7. A statement of Shri Pravin Shah, Partner of M/s. Gururaj Steel, Mumbai, was recorded under Section 108 of Act, on 26.12.2008 in his own handwriting, wherein he inter alia stated that:

7.1 M/s. Gururaj Steel Mumbai, was a partnership firm with Shri Mukesh Shah; he has studied till eleventh class; his father was broker of Stainless Steel Pipes; after study, he joined his father's business of brokershship of 'Stainless Steel Pipes';

7.2 In the year 1998, he started a partnership firm in the name of M/s. Gururaj Steel with Shri Mukesh Shah, engaged in trading of Stainless Steel Pipes procured from the local market at Mumbai; he looked after entire business activities of M/s. Gururaj Steel;

7.3 In the year 2007, he started importing Stainless Steel Pipes; around November 2006, he participated in the Wires & Tubes World Trade Fair, organized in Shanghai, China, where he met persons of different cities of the world, who were associated with steel manufacturing and trading; he accompanying the other businessmen who came from India in World Trade Fair, he got the information about the businessmen of different cities of the world and business of Steel and he started the import of products of Stainless Steel;

7.2 He imported the Secondary Stainless Steel Pipes from the following companies, namely; 1)Foshan Huifeng Enterprises, China, 2) Sinosteel Shenzhen Co., China, 3) Wenzhou Jiangtian SS Co. Ltd, China, 4) Zhejiang Nanba Steel Industries Co. Ltd., China, 5) Zhejiang Pengye SS Industries Co. Ltd., China, 6) Shangai Qichang Stainless Steel Group Co. Ltd., China.

7.5 Imported Stainless Steel products of different grades such as 202, 304, 316, 201 etc; these grades were based on the percentage of other metals such as Nickel, Molybdenum, Chromium etc., present in the stainless steel; he was not aware about the percentage of these metals present in stainless steel pipes of grade 201, 202, 304, & 316 etc;

7.6 He confirmed that the panchnama dated 11.06.2008, drawn during the search of the premises of M/s. Gururaj Steel, Mumbai; He accepted that forty two files shown in Annexure enclosed to the said panchnama and the documents contained in these files were related to the business of his firm M/s. Gururaj Steel, Mumbai;

7.7 On being asked about M/s. Shangai Qichang Stainless Steel Group Co. Ltd., China, he stated that he came to know about the said firm through a diary that he got from the Wires & Tubes World Trade Fair which contains the details of companies such as address, telephone numbers and other contact details etc.; he rang the given numbers and told to communicate to export Manager, Ms. Fiyona on telephone no. 00862168068899; he spoke to her on the given number about purchase of the said goods and placed the order accordingly.

7.8 Thereafter, he used to place orders telephonically with Ms. Fiyona, and she used to prepare the contract of the order and send it to his firm's email id: gururajsteel@hotmail.com; that he used to download the said contract and sent a signed printout to Ms. Fiyona; that after shipment of the consignment Ms. Fiyona used to send him the relevant invoice through mail and accordingly, he filed the bill of entry through his CHA who look after Customs clearance related work.; that the invoices were signed by Ms. Fiyona and sometimes by Ms. Diana who was senior to Ms. Fiyona.

7.9 He made the payment of goods imported from M/s. Shangai Qichang Stainless Steel Group Co. Ltd., through Bank of CHINA Shanghai Nanhui Branch, BNFS A/c No: 8650-12921908001014, Swift Code BKCHCNBJ300.

7.10 On being asked, he stated that in the month of February,2008, he got an offer from Ms. Fiyona for purchase of 200MT of said goods of Grade-304/316, which he accepted and placed order for the same. Accordingly, consignment under invoice no QCS08024 dated 17.05.2008 and QCS08026 dated 17.06.2008 was shipped by M/s. Shangai Qichang Stainless Steel Group Co. Ltd.; that in one or two earlier consignments the quality of the goods was not good therefore, he had refused to take the goods covered under the above-said two invoices; that he did not pay anything in advance for these consignments covered under said two invoices, and he has no idea about advance payment of USD 23000 shown on each of these invoices.

7.11 He had seen file no. 28 recovered from his office premises on 11.06.2008 during search action recorded under panchnama dated 11.06.2008, that he had put his signature on each page and found the details on each pages as under:

7.11.1 Page no.1 contained details of bank account number, name of bank and SWIFT Code of their overseas supplier, M/s. Zhejiang Pengye Stainless Steel Tube Industries Co. Ltd;

7.11.2 Page no.3 contained details of bank account number, name of bank and SWIFT Code of their overseas supplier, M/s. Winner Machinery Enterprise Company Ltd;

7.11.3 Page no.5-contained details of bank account number, name of bank and SWIFT Code of their overseas supplier. M/s. Wenzhou Jiangtian Stainless Steel Co. Ltd.;

7.11.4 Page no 7-contained details of bank account number, name of bank and SWIFT Code of their overseas supplier, M/s. Zhejiang Nanbo Steel Industries Co. Ltd;

7.11.5 Page no 9, 11 & 13 contained details of bank account number, name of bank and SWIFT Code of their overseas supplier, M/s. Sinosteel Shenzhen Company;

7.11.6 Page no 15-contained details of bank account number, name of bank and SWIFT Code of some company and from the details, it appeared that it was details of M/s. Anriga Co. but he did not have any business transaction with this company;

7.11.7 Page no. 17.19 & 21-contained details of bank account number, name of bank and SWIFT Code of their overseas supplier, M/s. Shangai Qichang Stainless Steel Group Co. Ltd.; that on these pages words DAVID were written and after this words some amount was written, which was struck-off that he did not remember in what context it was so written;

7.11.8 Page no. 25-contained details of bank account number, name of bank and SWIFT Code of their overseas supplier, M/s. Outstanding International Group Investment Ltd. . in this regard, he stated that the said bank details were given by their overseas supplier M/s. Foshan Outstanding Stainless Steel Co. Ltd., with a direction to deposit the payment in the said account; that he did not remember on the meaning of GR in the words GR 77300 written on this page;

7.11.9 Page no. 27-contained bank details of their overseas supplier, M/s. Zhejiang Penge Stainless Steel Tube Industries Co Ltd which was as per detail given on page 1;

7.11.10 Page no 29 & 31- contained bank details of their overseas supplier. M/s. Shangai Qichang Stainless Steel Group Co. Ltd., which was as per detail given on page 9.

7.12 On being asked, he stated that M/s. Gururaj Steel sold the imported Stainless Steel Pipes to domestic buyers, namely Shreeji Engineering, Mumbai, Bhawal Metal Corporation, Mumbai, Prakash Steel Industries, Pune, Beem Industries, Nasik, Ridhi Sidhi Steel Corporation, Mumbai.

7.13 He was shown the Diary 2008, which was recovered during the course of search of his office premises under panchnama on 11.08.2008 by the officers of DRI. He accepted that the same belonged to him, that he had seen page no 141 of the said diary and stated that the details written on this page were in his own handwriting, that on this page words 54000 advance was written and on the above this words container 1 & 2 was written; that on being asked in this regard, he stated that he did not remember the name of overseas supplier to whom he had given this advance.

7.14 He was shown the details mentioned on page no. 142 wherein words F/77405 was written, he accepted that this was written by him, that the words "F/77405' was written on the page no 142 did not mean that he had made payment of 77405 USD to M/s. Foshan Outstanding Stainless Steel Co. Ltd., details of which were mentioned on page no. 25 of file no.28;

8. Shri Pravin Shah, Partner of M/s. Gururaj Steel, appeared on 11.07.2011 to give his voluntary statement under Section 108 of the Act, wherein he interalia stated that as follows:

8.1 M/s. Gururaj Steel, 144/164, TP Street, 6th Kumbharwada, Mumbai is a partnership firm; that he and Shri Mukesh Shah are the Partners; that Shri Mukesh Shah was a sleeping partner in as much as he did not take part in the day to day activities, however he helped in business activities, when needed.

8.2 After search action of DRI, AZU, he stopped importing Secondary/Defective Stainless Steel Seamless Pipe and presently engaged in trading of Secondary Defective Stainless Steel Seamless Pipes, purchased from Mumbai local market.

8.3 He was using a Lenovo Make laptop for bussiness activities seized by DRI, AZU during search action recorded under Panchnama data 11.06.08; that he did not have much knowledge about how to operate the laptop, and therefore Shri Rahul Jain, his employee would operate this laptop for sending business related mails to their overseas supplier using firm's e-mail Id: gururajsteel@hotmail.com; further he stated that Shri Rahul Jain has left the job and know nothing about his present whereabouts.

8.4 On being shown report dated 16.01.2010, by forensic laboratory (DFS), Gandhinagar, he put his dated signature as a token of having seen the report alongwith all the attached printouts containing 21 pages;

8.5 On being asked about fragmented text of sr. no. 1 of page no.1 of the said report, he stated that the printed details were found in fragmented texts as under:

8.5.1 In the first and second line... 'Description of the goods'..... was printed; in the fifth (5) and sixth (6) line ZHEJIANG NANBO STEEL INDUSTRY CO LTD and after these lines 'http://www.nonbo-steel.com' was printed; that Zhejiang Nanbo Steel Industry Co Ltd., was one of his overseas supplier from whom he was purchasing and importing Secondary/Defective Stainless Steel Seamless Pipe and <http://www.nanto-steel.com> was website of this company;

8.5.2 In the seventh line after <http://www.nanbo-steel.com>, 'CO' and after this line 'MMERCIAL INVOICE' was printed, on merging of words of both lines, 'COMMERCIAL INVOICE' formed;

8.5.3 '312' and '316L' were printed in the 11th and 12th lines, which were grade of secondary/ Defective Seamless Pipe;

8.5.4 In the next line 'PORT NHAVA SHEVA' and '6TH KUMBHAWADA, MUMBAI-400004' were printed, and in next one line 'TO: GURURAJ STEEL' was printed and in next line 'ADD 144/164, TRIMBAR PARSURAM STREET' was printed; that in this regard, he stated that GURURAJ STEEL was the name of his firm and 144/164, TRIMBAR PARSURAM STREET, 6TH KUMBHARWADA, MUMBAI-400004 was its address;

8.5.5 In its 16th and 17th line 'From:Ningbo, China' was printed; that Ningbo, China was the load port, from where goods of his overseas supplier M/s Zhejiang Nanbo Steel Industry Co. Ltd, were loaded;

8.5.6 In the 19th & 20th line details like Invoice No NBSW07016-704 and in 21st & 22nd line Date: AUGUST 21, 2007 were printed;

8.5.7 From 23rd line to 27th line Tel: 0086-(0) 577- 86052988 Fax: 0086-(0) 577-86050988 Add..... Food&Machinery Industrial Park, shacheng Town, Longwan District, Wenzhou City, Zhejiang, China' were printed; that this was telephone number,

fax number and address of his overseas supplier, M/s. Zhejiang Nanbo Steel Industry Co. Ltd., that in the last line of this detail USD32114 was printed;

8.5.8 He has been shown commercial invoice no.NBSW07016-T04 dated 03.09.2007 of M/s. Zhejiang Nanbo Steel Industry Co. Ltd, and put his signature on it; that data printout at sr. no. 1 of page no.1 of the report compared with import invoice no.NBSW07016-T04 dated 03.09.2007 and stated that name of overseas supplier, telephone no., fax no, address, invoice no and name of his firm & its address were found to tally with details mentioned in his import invoice;

8.5.9 However, invoice date 21.08.2007 & value USD 32114.00 printed on the data printouts did not tally with the invoice date 03.09.2007 & value USD 14300.00 shown on this import invoice and weight of the goods was also not printed on data printouts; that he had imported 5.5 MT of the said goods of Grade-316L under invoice no. NBS07016-TO4 dated 03.09.2007 issued by M/s. Zhejiang Nanbo Steel Industry Co. Ltd. and value of the said goods was USD 14300, and not imported said goods of Grade-312 under invoice no. NBSW07016-TO4 dated Sep 3, 2007 as shown in 11th line of the said data printouts;

8.5.10 As regards to the invoice value USD 32114.00 printed in the last line of the aforesaid printout of the data, he stated that the actual import value was only USD 14300, not USD32114.

8.6 He stated about fragmented data of sr. no. 4 of page no.3 of the report dated 16.01.2010, as follows:

8.6.1 In the first, second and third line 'http://www.nanbo-steel.com' was printed; its ninth (9th) & from eleventh (11th) line to thirteenth (13th) line 'Tel: 0086-(0) 577- 86052988 Fax: 0086-(0) 577-86050988..... Add: Food & Machinery Industrial Park, shacheng Town, Longwan District, Wenzhou City, Zhejiang, China' were printed; that in thirty eighth (38th) and thirty ninth (39th) line 'ZHEJIANG NANBO STEEL INDUSTRY CO. LTD' was printed; that this was name, website, telephone no fax no and address of his overseas supplier, M/s. Zhejiang Nanbo Steel Industry Co. Ltd.,

8.6.2 In thirteenth (13th) and fourteenth (14th) line of this detail, 'TO GURURAJ STEEL' in sixth (6th) & seventh (7th) line '6 TH K UMBHARWADA, MUMBAI 400004' and in seventeenth (17th) line 'ADD 144/164, TRIMBAR PARSURAM STREET' was printed, that this was his firm M/s. Gururaj Steel name and address;

8.6.3 In third & forth line of this detail 'COMMERCIAL INVOICE' was printed; in eighth line 'From Ningbo, China' and twentieth (20th) line 'To: (CIF) Mumbai PORT printed: that Ningbo, China was the load port, from where goods of his overseas supplier M/s. Zhejiang Nanbo Steel Industry Co. Ltd., were loaded and Mumbai was port of import;

8.6.4 In the fifteenth (15") and sixteenth (16) line of this detail Invoice No. NBSW1017- T07 was printed;

8.6.5 In eighteenth (18th) line 'Da & nineteenth (19th) line te Dec 22, 2007 was printed, that on merging of words of both lines, it could be read as 'Date: Dec 22, 2007;

8.6.6 In the twenty second (22nd) line of this detail '23.85*12.7..... ASTM A 312 316L STAINLESS STEEL SEAMLESS', in twenty third (23rd) line 'PIPE.....'," '....., in twenty fourth (24th) line '.....DESCRIPTION OF THE GOODS.....273.05*12.15.....', in twenty fifth (25th) line.....219.1*12.7', in twenty sixth (26) line.....ASTM A312 304L STAINLESS STEEL SEAMLESS', in twenty seventh (27th) line ' PIPE..... 355.6', in twenty eighth (28) line '*11..... 273.0* 12.7 and in thirty first (31) line '.....323.89 12.7.....' were printed;

8.6.7 In thirty fourth (34), thirty fifth (35) and thirty sixth (36) line '... TOTAL..... USD 178974.....' was printed;

8.6.8 He was shown a commercial invoice no. NBSW01017-T07 dated Dec 22, 2007 of M/s. Zhejiang Nanbo Steel Industry Co. Ltd., on which he put his signature; that he compared data printout at sr. no 4 of page no.3 of the report with his import invoice no.NBSW01017-T07 dated Dec 22, 2007 shown to him, and stated that name of overseas supplier, telephone no., fax no., address, invoice no. & its date and name of his firm & its address tallied with details mentioned in his import invoice, shown to him. However, value USD 178974 printed on the data printouts did not tally with the value USD 47469.38 shown on his import invoice, also weight of the goods was not printed anywhere on data printouts; that he imported 12.480MT (Grade-316) and 12.33 MT (Grade-304L) of the said goods under invoice no. NBSW01017-T07 valued USD 47469.38 dated Dec 22, 2007 of M/s. Zhejiang Nanbo Steel Industry Co. Ltd., shipped from port Ningbo, China and port of import was 'Mumbai port'.

8.6.9 He had not imported Stainless Steel Seamless Pipe (Secondary/Defective) Grade-312 from M/s. Zhejiang Nanbo Steel Industry Co. Ltd., under invoice no.NBSW01017-T07 dated Dec 22, 2007 as shown in twenty second (22) and twenty sixth (26) line of the said data printouts;

8.6.10 On being asked whether the USD178974 printed in the last line of the aforesaid printout of the data, was the actual value of the above-said consignment, he stated that the actual import value was only USD 47469.38;

8.7 On being asked about data printout at sr. no. 13 of page no. 9 of the report dated 16.01.2010, he joined the broken data and helped out to DRI to make sense out as following:

8.7.1 In the first, second and third line 'ZHEJIANG PENGYE STAINLESS STEEL TUBE INDUSTRIAL CO LTD.,... Tel: 086-57786656878 Fax 086-577- 66656876..... No.2, Baisan West Road Songyang Industrial Zone, Lishui, China was printed, in this regard, he joined data of

these lines and made sense out it as Zhejiang Pengye Stainless Steel Tube Industry Co Ltd., was also one of his overseas suppliers from whom he was purchasing and Importing Secondary/Defective Stainless Steel Seamless Pipe; that in the first, second and third lines of the printouts name, telephone no., fax no., and address of the said overseas supplier were mentioned. in its fifth (5th) line 'COMMERCIAL INVOICE' was printed;

8.7.2 In its sixth (6th) line 'LORD PORT NING' and in seventh (7th) line 'BO' was printed; that on combining the words of both lines, 'LORD PORT NINGBO' was formed; that Ningbo was port of loading from where goods of his overseas supplier, M/s. Zhejiang Pengye Stainless Steel Tube Industrial Co. Ltd. was loaded; in its thirteenth (13) line 'DESTINATION MUMBAI' was printed;

8.7.3 In its twenty first (21st) line 'TO: gururaj stee....., 144/164 trimbak parsuram', in twenty second (22nd) line 'street 6th Khumbha' and in twenty third (23rd) line 'rwada..... Mumbai 400004' were printed; that in this regard he stated that on merging the words of all three lines his firm's name-'GURURAJ STEEL' and its address '144/164, TRIMBAR PARSURAM STREET, 6TH KUMSHARWADA MUMBAI-400004' were formed;

8.7.4 In its twenty seventh (27th) line '.....TP316L.....' was printed, which was grade of secondary and Defective Seamless Pipe;

8.7.5 In its twenty third (23rd) line '.....INVOICE NO.' and twenty forth (24th) line 'PYE071208'.....' were printed; that on merging of words of both lines 'INVOICE No.PYE071208' was formed; in its nineteenth (19th) line '.....'DATE 2008-1' and in twentieth (20th) line '6.....' were printed; that on merging of words of both lines 'DATE 2008-1-6' was formed;

8.7.6 In its nineteen (19th) line 'STAINLESS STEEL..... PRESSURE PIPES' was printed; in its twenty forth (24th) line '..... 7350' and in twenty fifth (25) line 'usd/ton.....' was printed; that on merging of words of both lines '7350 usd/ton was formed; in its twenty fifth (25th) and twenty sixth (26th) line 'US DOLLAR:THREE HUNDRED THIRTY EIGHT THOUSAND AND ONE HUNDRED was printed;

8.7.7 On being shown the commercial invoice no. PYE071208-1 dated 2008-1-6 and PYE071208-2 dated 2008-1-6 presented with Customs, he put his dated signature as a token of having seen. On comparing the details of these invoices with data printout at sr. no.13 of page no.9 of the report, he asserted that the overseas supplier name, telephone no., fax no., address, invoices no and name of his firm & its address was exactly matching with that of these invoices. The details of goods imported vide these invoices are as follows:

| TABLE-3 | | | | |
|---------|-----------------------------|---|------------|-------------------|
| S.No | Invoice No.&Dt. | Description of goods | Weight(MT) | Total Value (USD) |
| 1 | PYE071208-1 Dtd 2008-1-6 | Secondary/Defective Stainless Steel Seamless Pipe Grade-316 | 21.250 | 43031.25 |
| 2 | PYE071208-2 Dtd 2008-1-6 | —do— | 21.350 | 43233.75 |
| | | Total | 42.60 | 86265.00 |

8.7.8 He had imported total 42.600 MT of 'Secondary/Defective Stainless Steel Seamless Pipe Grade-316L', under above-said both invoices and value of the said goods was USD 86265.00;

8.7.9 The load port of the said consignment was Ningbo, China and port of import was Nhava Sheva;

8.7.10 In respect of STAINLESS STEEL PRESSURE PIPES' printed in nineteenth (19th) line of said data printouts, he stated that some overseas supplier also called Stainless Steel seamless Pipes as Pressure Pipes;

8.7.11 He further stated that total USD 338100 printed in data printouts does not tally with total value USD 86285.00 (USD 43031.25, USD 43233.75) mentioned on his import invoices no. PYE071208-1 dated 2008-1-6 and PYE071208-2 dated 2008-1-6 shown to him;

8.7.12 On being asked about USD338100.00 printed in the last line of the aforesaid printout of the data as to whether it was the actual value of the above-said both consignments, he stated that the actual import value of both the consignments was only USD 86265.00.

8.8 On being shown, the details printed on Sr. no. 4 of page no. 15 of the said data printouts report dated 16.01.2010, which was printed from lower portion of page-15 to upper portion of page-17; that in this regard he stated that it was printed in fragmented texts; that on combining the words of second line to fourteenth (14) line of page no. 16, it could be read as follows:

"SALE CONTRACT NO. PYE071208 Dato:2007-12-08
SELLER Zhepang Pengye Stainless Steel Tube Industrial Co. Ltd.
ADD No. 2, Beisan West Road, Songyang Industrial Zone, Lishui City,
Tel: 0086-577-86656878, Fax: 0577-86656876
BUYER Name: Gururaj Steel.

THE CONTRACT IS ENTERED INTO BETWEEN THE SELLER WHO AGREES TO SELL AND THE BUYER WHO AGREES TO BUY ON THE FOLLOWINGS GOODS ON THE TERMS AND CONDITIONS AS SET FORTH BELOW:

"TOTAL 89 TONS

\$649,700 TOTAL: US DOLLARS SIX HUNDRED FORTY-NINE THOUSAND AND SEVEN HUNDRED ONLY (ACCORDING TO THE FACTUAL WEIGHT)

2. TOLERANCE THICKNESS 6%,
3. Chemical Component of TP 316 L Component % C, Mn, Si, Cr, Ni,
4. PAYMENT by TT 10% in advance and the balance before shipment
5. DELIVERY TIME 3 CONTAINERS SHALL BE DONE BEFORE 28 JUAN, AND OTHER CONTAINER BE DONE WITHIN 30 DAY AFTER CHINESE NEW YEAR.
6. LOADING PORT: NINGBO OR SHANGHAI PORT CHINA .
7. PACKING PLASTIC BAG AND IN BUNDLES.
8. ESTIMATED TRANSPORTATION TIME: 30 DAYS AFTER DELIVERY.

THE BUYER
(SIGNATURE)

THE SELLER
(SIGNATURE)

"1. DESCRIPTION OF THE GOODS STAINLESS STEEL SEAMLESS TUBE ASTM A312 LENGTH 5-5.8 MTR NB.LENGTH QTY OF (TON), GRADE CIF MUMBAI (usd/ton). AMOUNT 5.8M 2. TP316L. 7300 14600, 1/2".

8.9 That by combining the words of third line to twenty fourth (24th) line of page no.17 it could be read as a sales contract between his firm, M/s. Gururaj Steel & M/s. Zhejiang Pengye Stainless Steel Tube Industrial Co., Ltd., related to import of Stainless Steel Secondary/Defective Seamless Pipe Grade-316, under his import invoices no PYE071208-1 dated 2008-1-6 and PYE071208-2 dated 2008-1-6; he stated that he had imported Stainless Steel Secondary/Defective Seamless Pipe Grade-316 from M/s. Zhejiang Pengye Stainless Steel Tube Industrial Co., Ltd. but he had never signed any contract with M/s. Zhejiang Pengye Stainless Steel Tube Industrial Co. Ltd., for import of Stainless Steel Secondary/Defective Seamless Pipe Grade-316;

8.10 It may have happened that M/s. Zhejiang Pengye Stainless Steel Tube Industrial Co. Ltd, would have mailed him this contract but he had never signed this contract/or any other contract with them;

8.11 In respect of total quantity 89 Tons and total value USD 649,700, shown in the above details, he stated that as he remembered, he had imported only two consignments of Stainless-Steel Secondary/Defective Seamless Pipe Grade 316, from M/s. Zhejiang Pengye Stainless Steel Tube Industrial Co. Ltd, under import invoice no. PYE071208-1 dated 2008-1-6 and PYE071208-2 dated 2008-1-6; that the total weight and total value of those consignments were 42.600 Tons and USD 86265.00 respectively;

8.12 He clarified that in eleventh (11th) and twelfth (12th) line of data printouts of report dated 16.01.2010 STAINLESS STEEL SEAMLESS TUBE ASTM A312 was printed but he had

never imported STAINLESS STEEL SEAMLESS TUBE ASTM A312 from M/s. Zhejiang Pangye Stainless Steel Tube Industrial Co. Ltd.; that he had only imported Stainless Steel Secondary/Defective Seamless Pipe of Grade-316 from M/s. Zhejiang Pangye Stainless Steel Tube Industrial Co. Ltd.;

8.13 On being asked, he further, stated that Tube and Pipe are one and same item that some suppliers called it Tube while some others called it Pipe;

8.14 In respect of all the above said data printouts shown to him, he stated that all these mails were old and were printed in fragment texts, he did not remember these email correspondences;

8.15 He had been shown his earlier statement dated 26.12.2008 and had put his dated signature on it, that in his said statement at page no. 4, he had stated that he had refused to take consignments of M/s. Shanghai Qichang Stainless Steel Co. Ltd., which had arrived under commercial invoice no. QCS06024 dated 17.05.2008 and commercial invoice no. QC508026 dated 17.05.2008 because quality of goods in the earlier one or two consignments of said company was not good;

8.16 On being shown the 'No Objection' Certificates' dated 21.07.2008 related to above-said consignment given by him to the Assistant Commissioner of Customs and put his signature on them, wherein he had given the reason for declining to accept the consignments which had arrived under commercial invoice no. QCS08024 dated 17.05.2008 and commercial invoice no QCS06026 dated 17.05.2008 as delay in shipment;

8.17 On being asked as to how he had given two different reasons for disowning the two live consignments from the overseas consignor, M/s. Shanghai Qichang Stainless Steel Co. Ltd. before the Mumbai Customs the reason given was in shipment and in his statement dated 26.12.2008, he had given the reason for same as quality of goods to earlier one or two consignments of said company was not good in this regard he informed that shipment of both the said consignments from Shanghai to Mumbai was done by shipping company, M/s. NLS Agency (India) Pvt. Ltd.; that after he refused to take both the said consignments, M/s. Shanghai Qichang Stainless Steel Co. instructed M/s. NLS Agency (India) Pvt. Ltd. to re- export the said consignments; that M/s. NLS Agency was given the job to complete the process of re-export to CHA, M/s. Haytrans (1) Pvt. Ltd.; that M/s. Haytrans (1) Pvt Ltd. had mentioned the reason in the certificate as delay in shipment and at the time of signing, he had not read the same, however, the reason stated in his statement dated 26. 12.2008 was true;

8.18 On being shown, he has seen commercial invoice no. QCS08024 dated 17.05.2008 & commercial invoice no. QCS08026 dated 17.05.2008 and put his signature on them; it was explained that in the commercial invoice no. OCS06024 dated 17.05.2008 of M/s. Shanghai Qichang Stainless Steel Co. Ltd., the per ton rate of Stainless Steel Secondary Defective

Seamless Pipe Grade 304L was USD 4520 and the per ton rate of Stainless Steel Secondary Defective Seamless Pipe Grade-316L was USD 7350; that similarly, in commercial invoice no. QCS08026 dated 17.05.2008, the per ton rate of Stainless Steel Secondary Defective Seamless Pipe Grade 304L, was USD 4700 and the per ton rate of Stainless Steel Secondary Defective Seamless Pipe Grade 316L was USD 7400;

8.19 On being asked that whether he had refused to take possession of said both consignments, since in both the above-said commercial invoices the actual rates of Stainless Steel Secondary Defective Seamless Pipe Grade 304 and Grade 316 was mentioned, which were USD 4520-4350 and USD 7350-7400 respectively, he stated that this was not true;

8.20 On being shown all the invoices of all the consignments imported by him from M/s. Shanghai Qichang Stainless Steel Co. Ltd., on which he put his signature as token of seen; that he found details of consignments imported from M/s. Shanghai Qichang Stainless Steel Co. Ltd., were as under:

| TABLE-4 | | | | | |
|----------------|-------------|-------------|--|-----------|-----------------------------------|
| S.N. | Invoice No. | Invoice Dt. | Description of goods | Qty. (MT) | Per Ton Rate as per invoice (USD) |
| 1 | QCS08015/1 | 24.04.08 | Stainless Steel Secondary Defective Seamless pipe Grade-304 | 22.726 | 2100 |
| 2 | QCS08015/2 | 24.04.08 | Stainless Steel Secondary Defective Seamless pipe Grade-304L | 4.950 | 2100 |
| 3 | QCS08012 | 08.04.08 | Stainless Steel Secondary Defective Seamless pipe Grade-304 | 20.212 | 2100 |
| 4 | QCS08008 | 06.03.08 | Stainless Steel Secondary Defective Seamless pipe Grade-304 | 2.286 | 2750 |
| 5 | QCS08001/1 | 19.02.08 | Stainless Steel Secondary Defective Seamless pipe Grade-304 | 23.589 | 2100 |
| 6 | QCS08001/2 | 19.02.08 | Stainless Steel Secondary Defective Seamless pipe Grade-304 | 22.520 | 2100 |

8.21 He stated that under all the above-said invoices, he had imported Stainless Steel Secondary/Defective Seamless Pipe Grade-304 and Grade-316 from M/s. Shanghai Qichang Stainless Steel Co. Ltd. and rate of the same were USD 2100/ton and USD 2750/ton respectively; that this was the actual rates of grade 304 and grade 316 and on this rate only, he had made import; that he did not know why M/s. Shanghai Qichang Stainless Steel Co., had shown rate of Stainless Steel Secondary Defective Seamless Pipe of Grade-304L and Grade-316 as USD 4520-4350 per ton and USD7350-7400 per ton in their commercial invoice no.QCS08024 dated 17.05.2008 and QCS08026 dated 17.05.2008 respectively;

8.22 He stated that he had not made any advance payment of USD 23000 as reflected in the invoice no. QCS08024 dated 17.05.2008 and QCS08026 dated 17.05.2008, and he has no idea as to why the supplier, 'M/s. Shanghai Qichang Stainless Steel Co.' had mentioned the said advance payment in these invoices; that he further mentioned that no such advance payment were not reflected in the copies of commercial invoice no. QCS08024 dated 17.05.2008 and QCS08026 dated 17.05.2008 issued by M/s. Shanghai Qichang Stainless Steel Co. to M/s NLS Agency (India) Pvt. Ltd., for re-export.

9. A summons dated 11.07.2011 was issued to Shri Rahul Jain, an employee of M/s. Gururaj Steel, directing to appear before the investigating officer. The said summons was handed over to Shri Pravin Shah with a direction to serve the same to Shri Rahul Jain, since his only known address was the office address of M/s. Gururaj Steel, Mumbai, where he used to work. Shri Pravin Shah was also requested to get him present to this office for recording his statement. However, Shri Pravin Shah vide his letter dated 20.07.2011, informed that Shri Rahul Jain had left their company and he was no longer part of their company from 15.06.2008. He further informed that they had made efforts to contact him but they could not contact him.

DISCUSSION OF THE EVIDENCES:

10. From the aforesaid discussion, evidence and facts available in the matter/records, it appeared that M/s. Gururaj Steel was established in the year-1998, as a partnership firm by Shri Pravin Shah and Shri Mukesh Shah. They were engaged in the trading of Stainless Steel Seamless Pipes, Welded Pipes etc purchased from the local market and started their own imports since Dec, 2006, M/s. Gururaj Steel had imported various grades of Secondary/Defective Stainless Steel Seamless from China, Italy, USA, HongKong etc., and sold them in the local market during the period December, 2006 to June, 2008.

10.1 It has been apprehended from the above facts that M/s. Gururaj steel was involved in the act of undervaluation leading them to pay less Customs duty. The following material evidences substantiate the act of undervaluation:

10.1.1 M/s. Gururaj Steel had received two consignments of Secondary/Defective Stainless Steel Seamless Pipes Grade-304 & 316, shipped by M/s. Shanghai Qichang Stainless Steel

Group Co. Ltd., from Shanghai to Mumbai, under Commercial invoice no. QCS08024 dated 17.05.2008 and Commercial invoice no. QCS08026 dated 17.05.2008, in which the value per MT found to be mentioned in the invoices as 4520 USD and 4700 USD for Grade-304 and 7350 USD and 7400 USD for Grade-316, and which has been disowned by importer, stating two different reasons for abandonment, as to Customs authorities as **"the cargo had arrived beyond schedule"** and to DRI, AZU during his statement, as, **"quality of goods in the earlier one or two consignments of said company was not good"**., these two different versions of reply put forth by noticee-1 does not have any consistency, hence lacks credibility. Furthermore, under both the invoices of M/s. Shanghai Qichang Stainless Steel Group Co. Ltd, an amount of USD 23000 each, is shown as advance payment. Hence the legitimacy of the said Commercial invoice no. QCS08024 dated 17.05.2008 and Commercial invoice no QCS08026 dated 17.05.2008 is not in dispute and the same appeared to be correct and actual. Since the rates mentioned in these invoices were actual, however, Shri Pravin Shah, Partner of M/s. Gururaj Steel conveniently refused to take possession of said two consignments citing flimsy reasons as "the cargo had arrived beyond schedule" and "quality of goods in earlier one or two consignments of said company was not good to mislead the department. On verification of the import data of M/s. Gururaj Steel, it is revealed that M/s. Gururaj Steel had earlier imported 304 and 316 grade of Stainless Steel Secondary/Defective Seamless Pipes at much lower rates per MT at USD 2100 USD 2750 respectively, Hence these rates appeared to be undervalued rates when compared to the rates of USD4520 and USD4700 for Stainless Steel Secondary/Defective Seamless Pipes Grade-304 and USD7350 and USD7400 for the Stainless Steel Secondary Defective Seamless Pipes Grade 316. as under invoice no. QC508024 dated 17.05.2008 and invoice no QCS08026 dated 17.05.2008. Hence, the rate of USD4700 per MT for Stainless Steel Secondary/Defective Seamless Pipes Grade304 and rate USD7400 per MT for Stainless Steel Secondary/Defective Seamless Pipes Grade-316 as mentioned in invoice no, QCS08026 dated 17.05.2008 of M/s. Shanghai Qichang Stainless Steel Group Co. Ltd., appeared to be applicable in the contemporaneous imports for computation of the value for the purpose of assessment of duty on the imports made by M/s. Gururaj Steel during the relevant period from M/s. Shanghai Qichang Stainless Steel Group Co. Ltd., China.

10.1.2 Investigation has revealed that the goods covered under the following commercial invoices of M/s. Shanghai Qichang Stainless Steel Group Co. Ltd., China and cleared under following respective Bills of Entry were similar to the goods of the same overseas supplier shipped under the commercial invoice no. QCS08026 dated 17.05.2008. As they were imported at or about the same time, and there was no substantial change in international prices of such goods during the period, it could be considered to be a contemporaneous import of the similar goods. On comparison of the CIF price of USD 4700 PMT for Stainless Steel Secondary Defective Seamless Pipes Grade 304 and USD7400 PMT for Stainless Steel Secondary Defective Seamless Pipes Grade 316 as per invoice no. QCS08026 dated 17.05.2008 of

M/s. Shanghai Qichang Stainless Steel Group Co. Ltd., as discussed above, with the CIF value of the goods imported under the following Bill Of Entries, it appeared that M/s. Gururaj Steel had undervalued the goods in the import of following consignments and paid less customs duty amounting to Rs.39,79,612/- as detailed in Annexure-1:

| TABLE-5 | | | | | | |
|---------------------|--|-----------------------------|-----------|--------------------------|----------------------------------|---|
| B/E. No./Dt. | Description of goods | Invoice no. &Dt. | Qty. (MT) | Declared CIF value (USD) | Contemporaneous Rate per MT(USD) | Actual CIF value on the basis of contemporaneous Rate (USD) |
| 844780/ 09.06.08 | SS Sec. Def. Seamless pipe Grade-304 | QCS08015/1 dtd. 24.04.08 | 22.730 | 47725 | 4700 | 106831.0 |
| 844829/ 09.06.08 | SS Sec. Def. Seamless pipe Grade-304L | QCS08015/2 dtd. 24.04.08 | 4.95 | 10395 | 4700 | 23265.0 |
| 841223/ 21.05.08 | SS Sec. Def. Seamless pipe Grade-TP304 | QCS08012 dtd. 08.04.08 | 20.212 | 42445.2 | 4700 | 94996.4 |
| 834826/ 16.04.08 | SS Sec. Def. Seamless pipe Grade-316 | QCS08008 dtd. 06.03.08 | 2.286 | 6286.5 | 7400 | 16916.4 |
| | SS Sec. Def. Seamless pipe Grade-304 | | 18.260 | 38346 | 4700 | 85822.0 |
| 833896/ 10.04.08 | SS Sec. Def. Seamless pipe Grade-304 | QCS08001/2 dtd. 19.02.08 | 22.520 | 47292 | 4700 | 105844.0 |
| 833938/ 10.04.08 | SS Sec. Def. Seamless pipe Grade-304 | QCS08001/1 dtd. 19.02.08 | 23.589 | 49536.9 | 4700 | 110868.3 |

10.1.3 The sr. no. 1 on page 1 of the Data retrieved by DFS vide their report dated 16.01.2010, from the 'Laptop storage device' recovered from the premises of the importer contained fragmented details of invoice no. NBSW07016-T04 dated 03.09.2007 of M/s. Zhejiang Nanbo Steel Industry Co. Ltd., China. Under the said invoice, M/s. Gururaj Steel had imported 5.500 MT of Secondary/Defective Stainless Steel Seamless Pipe Grade-316. The goods covered under the said invoice were imported under Bill of Entry No. 958546 dated 19.10.2007, from the aforesaid details of the DFS report it appeared that the actual CIF value of the said consignment imported under said invoice was mentioned as USD32114.00, whereas in the invoice of same number produced with customs authorities by M/s. Gururaj Steel for clearance at the time of import, the CIF value of the said consignment was shown as USD14300.00. It therefore appeared

that the importer had suppressed the actual CIF value i.e. USD 32114.00 of the said consignment and declared lower CIF value i.e. USD 14300 at the time of import of the said consignment. Accordingly, it appeared that the value per MT of the said goods for Grade-316 is $USD32114/5.5MT = USD 5838.91/MT$. Investigations have also revealed that the goods covered under following invoices of M/s. Zhejiang Nanbo Steel Industry Co. Ltd., China and cleared under following Bills of Entry were similar to the goods of the same overseas supplier imported under the Bill of Entry No. 958546 dated 19.10.2007. As they were imported at or about the same time, and there was no substantial change in international prices of such goods during the period, it could be considered to be a contemporaneous import of the similar goods. Applying the contemporaneous price of US\$5838.91/MT as obtained from the Data printouts discussed supra, for Stainless Steel Secondary Defective Seamless Pipes Grade-316, the CIF value of the goods imported from M/s. Zhejiang Nanbo Steel Industry Co. Ltd., under the following Bills of Entry, it appeared that the declared CIF value by M/s. Gururaj Steel in the said Bill of Entries were much lower than the actual contemporaneous price. Thus, it appeared that M/s. Gururaj had undervalued the goods in the import of following consignments and paid less customs duty amounting to Rs. 10,76,111/-, as detailed under Annexure-IIA, IIB and IIC of SCN.

| TABLE-6 | | | | | | |
|---------------------|---|-----------------------------|-----------|--------------------|-----------------------------------|-----------------|
| B/E. No. & Dt. | Description of goods | Invoice no. & dt. | Qty. (MT) | Declared CIF (USD) | Contemporaneous rate per MT (USD) | CIF value (USD) |
| 958946/ 19.10.07 | Sec/Def. SS Seamless Pipe Grade-316 L | NBSW07016-T04/0 3.09.07 | 5.5 | 14300 | 5838.91 | 32114.0 |
| 889327/ 27.08.07 | | NBSW070521-T02/ 25.07.07 | 3.93 | 9825 | 5838.91 | 22946.91 |
| 817949/ 17.01.08 | | NBSW01017-T07/2 2.12.07 | 12.48 | 25269.98 | 5838.91 | 72869.6 |

10.1.4 Similarly, at Sr. no. 3 of page no.9 of the report dated 16.01.2010 of DFS are the fragmented details of invoice no. PYE071208 dated 08.01.2008 of M/s. Zhejiang Pengye Stainless Steel Tube Industry Co. Ltd., China. As per the said details the actual per ton rate of the consignment imported under the said invoice was printed as 7350USD/Ton. This rate USD 7350/MT is also corroborated by a sale contract no.PYE071208 dated 08.12.2007, which was obtained by the DFS on examination of the hard disk as discussed supra. The details of the fragmented text of the sale contract no. PYE071208 dated 08.12.2007 was reproduced at s no. 4 on the pages 15 to 17 of the said report of DFS. It appeared that the sale contract no. PYE071208 dated 08.12.2007 was made between M/s. Zhejiang Pengye Stainless Steel Tube Industry Co. Ltd. and M/s. Gururaj Steel for purchase of 89 MTs and the total contract value was shown as USD 649700. Accordingly the per MT rate is computed as $USD 6497.00/ 89 MTL USD 7300$ MT. The contents of the said contract retrieved from the storage device of the laptop of Shri Pravin Shah, Proprietor of M/s. Gururaj Steel are as under:

SALES CONTRACT RETRIEVED FROM SEIZED LAPTOP

"SALE CONTRACT No. PYE071208 Date:2007-12-08,

SELLER: Zhejiang Pengye Stainless Steel Tube Industrial Co., Ltd.

ADD: No. 2. Beisan West Road, Songyang Industrial Zone, Lishul City,

Tel: 0086-577-86656878, Fax: 0577-86656876

BUYER Name: Gururaj Steel

THE CONTRACT IS ENTERED INTO BETWEEN THE SELLER WHO AGREES TO SELL AND THE BUYER WHO AGREES TO BUY ON THE FOLLOWINGS GOODS ON THE TERMS AND CONDITIONS AS SET FORTH BELOW:

"1. DESCRIPTION OF THE GOODS STAINLESS STEEL SEAMLESS TUBE ASTM A312 LENGTH 5-5.8 MTR NB.LENGTH, QTY OF (TON). GRADE CIF MUMBAI (usd/ton) AMOUNT 1/2 sch10.5-5.8M 2 TP316L 7300, 14600 1/2", TOTAL 89 TONS.

\$6457.00 TOTAL US DOLLARS SIX HUNDRED FORTY NINE THOUSAND AND SEVEN HUNDRED ONLY (ACCORDING TO THE FACTUAL WEIGHT)

9. TOLERANCE THICKNESS 6%

10. Chemical Component of TP 318 L Component % C. Mn, St. Cr, Ni,

11. PAYMENT by TT 10% in advance and the balance before shipment,

12. DELIVERY TIME 3 CONTAINERS SHALL BE DONE BEFORE 28 JUAN AND OTHER CONTAINER BE DONE WITHIN 30 DAY AFTER CHINESE NEW YEAR,

13. LOADING PORT NINGBO OR SHANGHAI PORT CHINA,

14. PACKING: PLASTIC BAG AND IN BUNDLES,

15 ESTIMATED TRANSPORTATION TIME 30 DAYS AFTER DELIVERY

THE BUYER
(SIGNATURE)

THE SELLER
(SIGNATURE)"

10.1.5 The said Sale Contract was bearing no. PYE071208 and Date 2007-12-08 and wherein seller details are mentioned as M/s. Zhejiang Pengye Stainless Steel Tube Industrial Co. Ltd., and details of buyer are mentioned as 'M/s Gururaj Steel'. On perusal of import documents of M/s. Gururaj Steel, it is found that they had imported 21.350 MT and 21.250 MT of Secondary/Defective Stainless Steel Seamless Pipe Grade-316 vide invoice no. PYE071208-1 and PYE071208-2 both dated 06.01.2008, respectively. Both the invoices contain the number PYE071208 which is the same as in the above-said contract. The date of contract was 08.12.2007 and both the invoices dated 08.01.2008 appear to have been raised pursuant to the said contract. It therefore appeared that the consignments imported under invoice no. PYE071208-1 and PYE071208-2 both dated 06.01.2008 were shipped against the said contract no. PYE071208 and Date 2007-12-08. The goods covered under the said two invoices were imported under Bill of Entry No. 824764 dated 20.02.2008 and 825451 dated 25.02.2008. In both the said invoices the rate per MT was shown as USD 2025 PMT. It is therefore, appeared that M/s. Gururaj Steel had suppressed the actual per ton rate of 7350USD (as evident from the Sale contract and details of

invoices as found from the data stored on the hard disk and discussed above) in respect of consignments imported under above-said invoices and declared only USD2025 PMT at the time of import of the said consignments. It thus appeared that the declared CIF value of the goods imported by M/s. Gururaj Steel from Mis Zhejiang Pengye Stainless Steel Tube Industry Co. Ltd., under the following Bill of Entries was much lower than the actual value of the goods. Thus, it appeared that M/s. Gururaj Steel has undervalued the goods in the import of following consignments and paid less customs duty amounting to Rs.31,04,482/- details as per Annexure-III.

| TABLE-7 | | | | | | |
|---------------------|--|-------------------------------|-----------|-------------------|-----------------------------------|-----------------|
| B/E. No. &Dt. | Description of goods | Invoice no. & Dt. | Qty. (MT) | Declared CIF USD) | Contemporaneous rate per MT (USD) | CIF value (USD) |
| 824764/ 20.02.08 | Secondary/ Defective SS Seamless Pipe Grade-316 | PYE- 071208-1/ 06.01.08 | 21.350 | 43233.75 | 7350 | 155855 |
| 825451/ 25.02.08 | Secondary/ Defective SS Seamless Pipe Grade-316 | PYE- 071208-2/ 06.01.08 | 21.250 | 43031.25 | 7350 | 155125 |

11. From the above, it appeared that M/s. Gururaj Steel, Mumbai had suppressed the actual value of the consignments mentioned in para 9.2 above, in as much as they managed to obtain the invoice indicating lower value than the actual transaction value and wilfully mis stated the actual transaction value in the Bills of Entry filed by submitting the invoices indicating the lower value. By this act of undervaluation M/s. Gururaj Steel has short paid, and led evasion of Customs duty on the actual value of the goods. Thus, M/s. Gururaj Steel has short paid Customs Duty of Rs. 81,60,185/-, as detailed in Annexures-I, IIA, IIB, IIC & III, by way of undervaluation while presenting the bills of entry with the Customs Authorities.

12. The import consignments of the Pipes imported by M/s. Gururaj Steel, Mumbai were assessed by customs authorities at the port of import on the basis of the import documents viz. Invoice, packing list and bill of lading presented to them for assessment.

13. M/s. Gururaj Steel managed invoices with lower value and presented the same for assessment before the Customs Authorities at the material time of import. They never presented the actual import invoice before the Customs authorities and the bills of entry were filed on the basis of undervalued invoices. They also suppressed the payments of advances made by them to the overseas suppliers for the shipment of the goods over and above the transfer of differential amounts was also not made through any banking channel. In this way they had also suppressed the flow of additional amounts from the department.

14. It appeared that M/s. Gururaj Steel, the importer has contravened the provisions of Section 48 (4) of the Act, in as much as they failed to declare the true value of the goods while filing the declaration in the form of bill of entry seeking clearance at the time of the importation of the goods from Customs. The suppression and mis-statement of the value of goods was apparently done to evade the customs duty leviable thereon in contravention of Section 14 of the Act, read with the CVR, 2007 and the CVR, 1988. All these acts on the part of the importer rendered the respective goods liable to confiscation under the provisions of Sections 111(d) and 111(m) of the Act and the goods were liable to be treated as smuggled goods within the meaning of Section 2 (39) of the Act.

15. Further, in view of the above, the value of the goods declared at the time of importation by the importer, details of which are as per Annexure I, IIA, IIB, IIC & III attached with the SCN, therefore merits rejection under Rule 10A of the Customs Valuation Rules, 1988 and Rule 12 of the Customs Valuation Rules 2007, and needs to be re-determined according to the provisions thereof. It is settled law that the Department is not required to prove its case with mathematical precision. All that is required is the establishment of such a degree of probability that any prudent man on its basis, believes in the existence of the fact. Accordingly, the CIF value (as per Column- 12 of Annexures II A & III to this show cause notice) obtained from the data retrieved by DFS from the hard disc of laptop seized from the premises of M/s. Gururaj Steel figuring in the report dated 16.01.2010 of DFS was required to be taken as the correct transaction value in terms of Section 14 of the Act, read with Rule 3 of the Customs Valuation Rules 2007. Further, the CIF value (as per Column- 12 of Annexures I, IIB & IIC to this show cause notice) derived from the 'contemporaneous imports from the same overseas suppliers', is required to be considered as the correct transaction value in terms of Section 14 of the Act, under Rule 5, read with Rule 9 CVR, 2007 and Rule 6, read with Rule 8 CVR, 1988. Therefore, the assessable value in respect of the consignments of goods imported by M/s. Gururaj Steel, as detailed in the Annexures I, IIA, IIB, II C & III of the SCN is required to be re-determined under Section 14 of the Act, under CVR, 2007 and CVR, 1988 as applicable.

16. It also appeared that the importer, M/s. Gururaj Steel had not declared the actual collective value of Rs.4,03,19,168,94/- (Re-determined Value) at the time of clearance of the said goods in the Bills of entry as detailed in the Annexures-I, IIA, IIB, IIC & III of the Show Cause Notice. Accordingly, Customs duty amounting Rs.81,60,185/- payable on the said goods was short paid by the importer. It appears that they had consciously undervalued the said goods with an intent to evade Customs Duty leading to contravene the relevant statutes of the Act, and the Rules made thereunder as discussed above. Hence, invocation of Section 28(4) of the Act invoking the extended period for demand of duty is applicable in the instant case. M/s. Gururaj Steel, Mumbai were also liable to pay interest at the applicable rates under the provisions of Section 28 AA(1) of the Act. The said goods detailed in Annexures I, II A, IIB, IIC & III of the SCN are also liable for confiscation under Section 111(m) of the Act. Though the goods were not available for confiscation, a redemption fine in lieu of confiscation was liable to be imposed in terms of Section 125 of the Act.

17. The aforesaid acts of wilful mis-statement and suppression of facts by M/s. Gururaj Steel has led to short levy of duty of Rs.81,60,185/- which constitutes an offence of the nature described in Section 114A of the Act. Thus, M/s. Gururaj Steel have rendered themselves liable for penalty under Section 114A of the Act., as they mis-stated the value to the department by presenting invoices with lower value (instead of actual value) for assessment with an intent to evade payment of duty as detailed in the Annexures I, IIA, IIB, IIC & III to this notice as discussed above.

18. M/s. Gururaj Steel, Mumbai had deliberately suppressed the value and mis-stated the description of the said goods with an intention to evade Customs duty, which rendered the goods liable for confiscation under the provisions of Section 111(d) and 111 (m) of the Act. Also this act of omission and commission of M/s. Gururaj Steel, Mumbai has rendered them liable for penal action under the provisions of Section 112 (a) of the Act.

19. It is on record that Shri Pravin Shah, Partner of M/s. Gururaj Steel, Mumbai was deliberately involved in the act of undervaluation with a mala-fide intention to evade Customs Duty, which rendered the goods liable for confiscation under Section 111(d) (1) & (m) of the Act. For this act of omission and commission, Shri Pravin Shah, Partner of M/s. Gururaj Steel, Mumbai has rendered himself liable for penal action under the provisions of Section 112 (b) of the Act.

20. M/s. Gururaj Steel situated at 144/164, TP Street, 6th Kumbharwada, Mumbai were called upon to show cause to the Commissioner of Customs (Import). New Custom House, Ballard Estate, Mumbai, as to why:

- a) The declared value of Rs.1,00,47,427.85/-, Rs.10,14,526.32/- and Rs.34,58,967.70/- of the goods as detailed in Annexure-I, IIC & III respectively to this show cause notice, should not be rejected under Rule-12 of the Customs Valuation (Determination of Value of Imported Goods) Rules,2007 and re-determined as Rs.2,26,00,035.34/-, Rs.29,25,532.14/- and Rs.1,25,54,771.67/- respectively in terms of Rule-3 and Rule-5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, read with Section-14 of the Customs Act, 1962;
- b) The goods as detailed in Annexure-I, IIC & III to the show cause notice, collectively valued at Rs.3,80,80,339.15 should not be confiscated under Section 111(d) and Section 111(m) of the Act..Since the goods are not available for confiscation, why the fine in lieu of confiscation should not be imposed on them under Section 125 of the Customs Act, 1962;
- c) The Customs duty amounting to Rs.77,36,314/- as detailed and worked out in the Annexure I, IIC & III to the show cause notice should not be demanded and recovered from notice-1 under provisions of Section-28 (4) of the Customs Act, 1962, by invoking the extended period;

- d) Interest should not be recovered from them on the amount of duty short levied short paid as at para (e) above in terms of Section 28AA(1) of the Customs Act, 1962;
- e) Penalty should not be imposed on them under Section 114A of the Customs Act, 1962t;
- f) Penalty should not be imposed on them under Section 112(a) of the Customs Act, 1962.

21. M/s. Gururaj Steel situated at 144/164, TP Street, 6th Kumbharwada, Mumbai were called upon to show cause to the Commissioner of Customs (Import), Jawaharlal Nehru Custom House, Nhava Sheva, Raigad, Mumbai, as to why:

- a) the declared value of Rs. 5,78,442.15 of the goods as detailed in Annexure-IIA to the show cause notice, should not be rejected under Rule-12 of the Customs Valuation Rules 2007 and re-determined as Rs 12,99,027.36 in terms of Rule-3 of Customs Valuation Rules, 2007 read with Section 14 of the Customs Act, 1962;
- b) the declared value of Rs 4,18,483.30 of the goods as detailed in Annexure-IIB to the show cause notice, should not be rejected under erstwhile Rule-10A of the Customs Valuation Rules, 1988 and re-determined as Rs 9,39,802.43 in terms of erstwhile Rule 5 of Customs Valuation Rules 1988 read with Section 14 of the Customs Act 1962;
- c) The goods as detailed in Annexure-IIA&IIB to the show cause notice, collectively valued at Rs.22,38,829.79/- should not be confiscated under Section 111(d) and Section 111(m) of Customs Act, 1962 Since the goods are not available for confiscation, why the fine in lieu of confiscation should not be imposed on them under Section 125 of the Customs Act 1962;
- d) The Customs duty amounting to Rs.4,23,871/-, as detailed and worked out in the Annexure II-A & II-B to the show cause notice should not be demanded and recovered from M/s Gururaj Steel, Mumbai under provisions of Section 28 (4) the Customs Act, 1962 by invoking the extended period;
- e) Interest should not be recovered from them on the amount of duty short levied/short paid as at para (c) above in terms of Section 28AA(1) of the Customs Act, 1962;
- f) Penalty should not be imposed on them under Section 114A of the Customs Act, 1962;
- g) Penalty should not be imposed on them under Section 112 (a) of the Customs Act, 1962;

22. Shri Pravin Shah, Partner of M/s. Gururaj Steel, Mumbai situated at 135/141, TP Street. 6 Kumbharwada, Mumbai were called upon to show cause to the Commissioner of Customs, New Custom House, Ballard Estate, Mumbai and the Commissioner of Customs Import), Jawaharlal Nehru Custom House, Nhava Sheva, Post- Uran, Dist.-Raigad, Maharashtra -400707 as to why penalty should not be imposed upon him under Section 112(b) of the Customs Act, 1962 for his acts of omission and commission as discussed above.

23. As the Bills of Entry pertain to two Customs Ports (Mumbai Port and JNCH, Nhava Sheva), The Commissioner of Customs (Import), New Customs House, Ballard Estate, Mumbai was appointed as the Common Adjudicating Authority by the Board, CBIC vide Order No. 437/02/2012-Cus.IV dated 02.02.2012 to adjudicate the impugned Show Cause Notice.

REPLY OF THE NOTICEE:

24. Advocate, M/s. V. M. Doiphode & Co. on behalf of noticees (1-M/s. Gururaj Steel, 2-Shri Pravin Shah, co-founder of M/s. Gururaj Steel) submitted defence reply dated 05.12.2012, wherein, they inter-alia stated that:

24.1 they had not heard anything from the office of the ADG, DRI, Ahmedabad in reply to letter dated 13.01.2012, 17.07.2012, 05.11.2012 and 20.11.2012 in connection with the subject matter;

24.2 it had been alleged that M/s. Gururaj Steels, had wilfully suppressed the actual value of the imports in respect of secondary/defective stainless steel seamless pipes of various grades as detailed in the SCN, and by virtue of this they had short paid customs duty to the tune of Rs. 81,00 185/-;

24.3 it had also been alleged that their clients, M/s. Gururaj Steels managed invoices with lower value and presented them for assessment to the Customs Authority at the time of import instead of actual import invoice and filed Bills of Entry declaring lower value, and they had also suppressed the payments of advances made by them to the overseas suppliers for the shipment of goods and also that transfer of differential amounts was not made through any banking channel and by doing this, they also suppressed the flow of additional amounts from the Department;

24.4 it had been alleged that M/s. Gururaj Steels had contravened the provisions of section 46(4) of the Act, read with section 11 of the Foreign Trade (Development & Regulation) Act, 1992 and Rule 11 and 14 of the Foreign Trade (Regulation) Rules, 1993 by not declaring the correct value of the goods while filing the declaration in the form of Bill of Entry seeking clearance at the time of importation of the said goods with an intention to evade customs duty.

24.5 the entire demands raised vide the subject Show Cause Notice was based on presumption and assumption, it was seen that the duty demanded to the tune of Rs. 39,79,612/- as indicated in Annexure-I to the SCN was computed on the basis of prices indicated in two live invoice no.QCSO8024 and QCSO8026 both dated 17.05.2008, issued by M/s. Sanghai Qichang Stainless Steel Co. Ltd. Sanghai, whereas no Bill of Entry was filed for the clearance of these goods, and therefore no import clearance had taken place against the aforesaid two invoices. In view of the prices indicated in the subject two invoices cannot be considered as prices of contemporaneous imports and accordingly prices as computed in the impugned SCN and indicated at Annexure-I cannot be considered as prices of contemporaneous imports as proposed in the SCN.

24.6 As regards the duty demand of Rs. 2,45,941/-, as detailed in Annexure-IIA of the SCN, which appeared to be based on the report dated 13.01.2010 from DFS Gandhinagar. Further, the Annexure-A consisting-21 pages attached to the said DFS report dated 13.01.2010 marked as AFS-EE-2009-CF-48 did not indicate any nexus with the laptop seized from the premises of M/s. Gururaj Steel, there was no indication regarding status of the person signing the said covering letter dated 13.01.2010, it was also seen that the aforesaid Annexure-A consisting of 21 pages are unsigned. In view of these facts, the said demand bears no judicious ground.

24.7 it was stated that the fragmented data purportedly pertaining to the goods covered under Invoice No.NBSW-07016-T04 dated 03.09.2007 indicates two grades namely 316L and 312, whereas the goods imported under the Bill of Entry No.958546 dated 19.10.2007 covered under the same invoice No. was in respect of only material of grade 316L; there was no indication of total weight of the material purportedly supplied under the said invoice purportedly incorporated in the fragmented data supplied by the DFS; it has been seen by them that the date of invoice in print out of fragmented data was August 21, 2007 as against the actual invoice date September 3, 2007; that the statement dated 11.7.2011 of their client has clearly pointed out the above discrepancies and affirmed that the value of the goods imported under the said invoice was USD14300 and not USD32114 as mentioned in the SCN on fragmented data.

24.8 there was a proposal to recover the duty amounting to Rs. 1,77,930/- in respect of bill of Entry No.889327 dated 21.7.2007 and goods covered under Invoice No.NBSWO70521T02 dated 25.7.2007 as detailed in Annexure-IIB to the SCN, as well as duty demand of Rs.6,52,240/- in respect of Bill of Entry No.8179419 dated 17.01.2008 and invoice no. NBSW-1017-T07 dated 22.12.2007 as detailed in Annexure-IIC; the proposal in the SCN for re-determination of value was based on the contemporaneous import treating import under Bill of Entry No.958546 dated 19.10.2007; under these two Bill of Entry the goods imported were of grade 316L as against purportedly contemporaneous invoice discussed as per print out of fragmented data which does not indicate the total weight of the material supplied under the invoice "NBW070 16-T04 dated 21.8.2007 which indicates supply of material of grade 312 and 316L, whereas, in those two cases there was no import of grade 312.

24.9 the proposal for recovery of duty amounting to Rs.31,04,482/- in respect of goods cleared under Bill of Entry No.824764 dated 20.02.2008 and No 825451 dated 25 02 2008 a indicated in Annexure-III to the SCN, had been raised on the basis of printout of fragmented data appearing on page 9 Sr. No 13 which indicated in 26 line Three Hundred Thirty Eight thousand and one Hundred only, however, there was no indication of the total weight of the material in the said printout of fragmented data, purportedly received from the DFS; that Shri Pravin Shah in his statement dated 11.7.2011 had clearly affirmed that the total value of those two consignments was US\$86265 only;

24.10 in term of statutory provisions regarding valuation of the impugned goods, the requirement was to proceed sequentially through Rule 4 onwards of the Customs Valuation

Rules, 2007, demonstrating that identical/similar goods have been imported during the contemporaneous period at particular prices and in this regard, Rule-4, as well as Rule-5 of the said valuation Rule envisaged the lowest contemporaneous values. In the present case, the Department had not supplied a complete list of the imports demonstrating the various prices of the identical or the similar goods during the contemporaneous period. In view of the proposal to re-determine the value of the subject goods as indicated in Annexure-I, IIA, IIB IIC & III can't survive.

24.11 Notice has placed reliance on the case laws namely Motor Industries Co. Ltd., Elcher Tractors Ltd., South India Television Pvt. Ltd. to argue that in the absence of any specific or extraordinary reason, transaction value cannot be rejected.

24.12 Notice argued by referring Rule 4(3) and 5(3) of the CVR, 2007 that the lowest contemporaneous price is required to be accepted in terms of the case having been placed reliance upon case laws which are V. M. Traders⁴ and Dimple Overseas⁵.

24.13 there was no admission regarding undervaluation by their client Shri Pravin Shah, the duty demanded in the SCN pertaining to imports made during the period August, 2007 to June 2008, whereas the SCN was issued on 02.12.2011 and the entire duty demand was time barred.

24.14. they requested to call for the complete data relating to contemporaneous import of the identical/ similar goods with a view to adopt correct pricing and to provide a copy of such contemporaneous data to them to make further submissions on behalf of the notice.

24.15 They further requested to drop the proceedings initiated by the said SCN.

25. In response to the letter dated 05.11.2012 submitted by M/s. V. M. Doiphode & Co. Advocate on record, the requisite documents viz. copy of letter dated 14.12.2009 of Deputy Commissioner of Customs, SIIB(I), NCH, Mumbai and copy of Panchnama dated 23.12.2008 as desired vide their letter dated 13.01.2012 have been provided by the DRI, Ahmedabad vide letter dated 19.12.2012.

26. Vide letter dated 07.01.2013, M/s. V. M. Doiphode & Co., Advocate of M/s. Gururaj Steel has acknowledged the documents mentioned, and asked to provide the copies of letter F. No. DRI/AZU/INV-11/1656 dated 08.09.2009 & 31.12.2008 and letter of M/s. Haytrans (India) Ltd. dated 18.4.2009, to provide the copies of Bills of Entry under which the subject goods have been assessed and cleared by the Customs to provide the contemporaneous data of import of identical/similar goods to their client to accept the lowest transaction value if transaction value is rejected, and asked for another personal hearing in this matter.

RECORD OF PERSONAL HEARINGS

⁴ 2007 (215) ELT 85(Tri. Mumbai)-CC Vs V. M. Traders

⁵ 2007(220) ELT 103(Tri Mumbai)-CC Kandis Vs. Dimple Overseas

PH held during the period 2012-13 (first round of adjudication)

27. Personal hearing was fixed on 29.11.2012 and subsequent personal hearing on 05.12.2012 in which Shri S. D. Pradhan, consultant for M/s. V. M. Doiphode & Co., advocate on record on behalf of noticee-1 appeared and filed an interim reply.

27.1 Another Personal Hearing was fixed on 07.03.2013, in which Shri S. D. Pradhan, Consultant of M/s. V. M. Diphode, appeared for a personal hearing who reiterated that certain documents sought have not been provided yet by DRI, Ahmedabad.

27.2. Another Personal Hearing was held on 14.06.2013 in which Shri S. P. Mathew, Advocate on behalf of notice-1&2 appeared and made submissions stating as follows:

27.2.1 two (2) invoices were forwarded by SIIB(I), NCH to DRI, Ahmedabad, and that forms the basis of allegation of undervaluation but the noticee has disowned the consignment and as such this cannot be relied upon for charge of undervaluation.

27.2.2 invoices parallel to the invoices presented to the Customs for clearance found in seized computer & forensic laboratory report of DFS, Gandhinagar, became another basis of charge of undervaluation. However, in those invoices defective secondary description was not mentioned.

27.2.3 DRI should be directed to give data of contemporaneous imports of the similar/identical goods.

27.2.4 they wanted to conduct a cross examination of the Scientific Officer who certified the retrieval of data for the seized computer.

PH held during 2019-23 (second round of adjudication):

28. Personal hearing held on 24.10.2019 in which Advocate, Shri Kiran Doiphode, appeared on behalf of noticee-1&2 and reiterated request to provide contemporaneous import data and auction value in respect of goods covered under invoice no. QCS08024 & QCS08026 both dated 17.05.08.

28.1 Personal hearing was fixed on 30.03.2021 in response to which M/s. V. M. Doiphode & Co., Advocate & Solicitors on behalf of noticee made submission vide letter dated 19.03.2021 wherein it was claimed to drop the SCN in line with the Hon'ble Supreme Court Judgment in the matter of M/s. Canon India Pvt. Ltd.⁶.

28.2 Personal hearing was scheduled on 19.08.2022, after taking the case out from the Call Book, in response to which M/s. V. M. Doiphode & Co., Advocate & Solicitors on behalf of noticee-1&2 made submission vide letter dated 20.08.2022 wherein it was requested to drop the

⁶ M/s. Canon India Pvt. Ltd. V/s. Commissioner of Customs reported in 2021-TIOL-123-SC-CUS.-LB

SCN in accordance with the Hon'ble Apex Court Judgment in the matter of M/s. Canon India Pvt. Ltd.

28.3 Personal hearing was scheduled on 08.09.2022 & 14.11.2022 in response to which M/s. V. M. Doiphode & Co., Advocate & Solicitors on behalf of noticee made submission vide letter dated 06.09.2022 wherein it was reiterated to provide contemporaneous data.

28.4 Personal hearing was held on 14.11.2022 in which Dr. Sanjay Kalra, Advocate appeared on behalf of noticee who demanded to provide contemporaneous data they needed for preparing final defense.

28.5 Personal hearing was held on 20.12.2022 in Dr. Sanjay Kalra, Advocate appeared on behalf of noticee who mentioned following rebuttal in respect of the impugned SCN and OIO:

28.5.1 Laptop data was relied upon without following Section 138(c) of the Act.

28.5.2 Reliability of fragmented data is questionable especially in case where quantity is not mentioned.

28.5.3 Noticee has provided 5 bills of entry pertaining to third party import of Stainless Steel Secondary Seamless Pipes Grade-304/316.

28.5.4 Two invoices relied upon by DRI, AZU were not assessed and therefore cannot be considered contemporary import price.

28.5.5. He requested for sharing NIDB data of the said period.

29. During the PH on 30.01.2023, it was explained to the party that Hon'ble Tribunal's Order has directed the adjudicating authority to consider the details of contemporaneous imports produced by the appellant, So, they (noticees) were expected to produce the contemporary data from their side before the adjudicating authority. In compliance of the same, Dr. Sanjay Kalra, Advocate vide letter F. No.KPS/03/2008(A&B)/2022-23 dated 08.02.2023 (received by email) submitted the contemporaneous import data (19 BEs of grade 304 and 22 BEs of grade 316 of the period 2007 & 2008) in support of the value declared in the said Bills of Entry by the noticees:

| TABLE-8 | | | | |
|---|----------|----------|---------------|--------------------|
| Item: Stainless Steel Secondary/Defective Seamless Pipe Grade-304 | | | | |
| S.No. | B/E. No. | B/E. Dt. | Importer | Assessed (USD/PMT) |
| 1 | 802748 | 01.11.07 | Keystone Inc. | 1534.64 |
| 2 | 803003 | 02.11.07 | Keystone Inc. | 1534.64 |
| 3 | 811117 | 12.12.07 | AMES India | 1635.70 |
| 4 | 811116 | 12.12.07 | AMES India | 1635.70 |
| 5 | 815746 | 04.01.08 | Keystone Inc. | 1482.77 |

| | | | | |
|--|--------|----------|-----------------------------|---------|
| 6 | 823926 | 15.02.08 | Steelite Metal & Tubes | 1769.72 |
| 7 | 826310 | 29.02.08 | Anupam Metals (India) | 1415.78 |
| 8 | 826765 | 04.03.08 | Taaranga Tubes (India) | 1964.93 |
| 9 | 826750 | 04.03.08 | Steelite Metal & Tubes | 1767.93 |
| 10 | 834828 | 16.04.08 | AMES India | 2145.39 |
| 11 | 837554 | 30.04.08 | Steelite Metal & Tubes | 2145.39 |
| 12 | 837383 | 30.04.08 | Steelite Metal & Tubes | 2145.39 |
| 13 | 838752 | 08.05.08 | Kinnari Steel Corporation | 2072.97 |
| 14 | 842526 | 28.05.08 | Steelite Metal & Tubes | 2043.79 |
| 15 | 842528 | 28.05.08 | Steelite Metal & Tubes | 2043.79 |
| 16 | 840829 | 19.05.08 | Top Honest Inc. | 1946.46 |
| 17 | 848374 | 30.06.08 | AMES India | 2136.36 |
| 18 | 735593 | 06.03.08 | Bhavna Steel | 1717.41 |
| 19 | 828902 | 14.03.08 | Taaranga Tubes (India) | 2172.04 |
| Item: Stainless Steel Secondary/Defective Seamless Pipe Grade-316 | | | | |
| 1 | 804056 | 07.11.07 | Keystone Inc. | 1688.1 |
| 2 | 802984 | 02.11.07 | Keystone Inc. | 1793.19 |
| 3 | 807654 | 26.11.07 | AMES India | 1841.56 |
| 4 | 811562 | 13.12.07 | Keystone Inc. | 1737.93 |
| 5 | 809671 | 05.12.07 | Keystone Inc. | 1737.93 |
| 6 | 636693 | 19.12.07 | Anupam Metals (India) | 2050.76 |
| 7 | 815744 | 04.01.08 | Prakash Steelage Ltd. | 1738.42 |
| 8 | 815745 | 04.01.08 | Prakash Steelage Ltd. | 1738.42 |
| 9 | 823317 | 12.02.08 | AMES India | 2042.53 |
| 10 | 824736 | 20.02.08 | Rajendra Steel Centre | 1820.17 |
| 11 | 826763 | 04.03.08 | Keystone Inc. | 1919.45 |
| 12 | 835900 | 22.04.08 | Top Honest Inc. | 2554.04 |
| 13 | 843545 | 01.06.08 | Top Honest Inc. | 2744.70 |
| 14 | 852444 | 24.07.08 | Niton Steels & Alloys | 2601.35 |
| 15 | 826747 | 04.03.08 | Keystone Inc. | 1919.45 |
| 16 | 826762 | 04.03.08 | Keystone Inc. | 1919.45 |
| 17 | 838346 | 06.05.08 | Sunrise Tradewings Pvt.Ltd. | 2557.2 |
| 18 | 841655 | 23.05.08 | Steelite Metal & Tubes | 2627.71 |
| 19 | 841809 | 23.05.08 | Top Honest Inc. | 2530.34 |
| 20 | 842903 | 29.05.08 | Top Honest Inc. | 2530.34 |
| 21 | 840022 | 14.05.08 | Top Honest Inc. | 2530.34 |
| 22 | 843005 | 29.05.08 | Top Honest Inc. | 2530.34 |

30. Vide this office letter dated 21.02.23, this office requested DRI, AZU to offer comments over the noticee's letter dated 08.02.23 with enclosed contemporaneous import data. In this regard, DRI, AZU vide letter dated 24.02.2023, reiterated the grounds of the SCN.

DISCUSSIONS AND FINDINGS

31. The case involves 2 noticees : Noticee-1 (M/s. Gururaj Steel) & Noticee-2 (Shri Pravin Shah, Active Partner). I have gone through the SCN, defense reply of the noticees and their submissions made during the personal hearings.

31.1 This is the second round of adjudication in this case. The subject SCN was adjudicated vide Order-in-Original No. 107/2013/CAC/CC(AA)/AB/Gr.IV dated 29.08.2013 by Commissioner of Customs, Import-I, New Customs House, Mumbai, as a Common Adjudicating Authority appointed by the Board, CBIC vide Order dated 02.02.2012 issued vide F. No. 437/02/2012-Cus.IV dated 02.02.2012 . Aggrieved with the said OIO dated 29.08.2013, the noticees appealed against the said Order in Hon'ble Tribunal, Mumbai. vide Appeal No. C/89811 & 89812/13. Hon'ble Tribunal vide Final Order No.A/94502-94503/16/CB dated 29.11.2016 remanded the case back to the original adjudicating authority with directions to consider the details of contemporaneous imports to be produced by the appellant to come to a conclusion after following the principles of natural justice. In compliance of the directions imparted by Hon'ble Tribunal, the matter is now being taken up for denovo adjudication.

32. The SCN alleges evasion of customs duty by undervaluation of stainless steel secondary/defective seamless pipe imported from August 2007 to June 2008, under 11 bills of entry⁷ processed at Mumbai Port and JNCH, Nhava Sheva Port, as detailed in Table-9 below:

| TABLE-9 | | | |
|------------------------------------|----------|----------|-----------------|
| S.N. | B/E. No. | B/E. Dt. | Diff Duty (INR) |
| Annexure-I (Mumbai Port) | | | |
| 1 | 844780 | 09.06.08 | 815715 |
| 2 | 844829 | 09.06.08 | 177616 |
| 3 | 841223 | 21.05.08 | 681498 |
| 4 | 834826 | 16.04.08 | 752023 |
| 5 | 833896 | 10.04.08 | 758380 |
| 6 | 833938 | 10.04.08 | 794380 |
| Annexure-II C (Mumbai Port) | | | |
| 7 | 817949 | 17.01.08 | 652240 |
| Annexure-III (Mumbai Port) | | | |
| 8 | 824764 | 20.02.08 | 1555875 |
| 9 | 825451 | 25.02.08 | 1548587 |

⁷ The impugned consignments or the impugned BEs

| | | | |
|--------------------------------------|---------------------------------|----------|--------------------|
| A | Total Diff. duty (1-9) | | 77,36,314/- |
| Annexure-IIA (JNCH) | | | |
| 10 | 958546 | 19.10.07 | 245941 |
| Annexure-IIB (JNCH) | | | |
| 11 | 889327 | 21.08.07 | 177930 |
| B | Total Diff. duty (10-11) | | 4,23,871/- |
| Total Differential Duty (A+B) | | | 81,60,185/- |

Based on the submissions of the noticees and in the light of the contemporaneous import data produced by the noticees, the following issues arise for determination in this adjudication:

- I. Whether the recovery of data from seized laptop followed the mandatory procedure prescribed under Section 138C(2) of the Act, 1962 ?
- II. Whether cross examination of the Scientific Officer who certified the retrieval of data from the seized computer should be allowed or not ?
- III. Relevancy of contemporary import data of steel from China provided by the noticees and whether redetermination of value proposed in the SCN is proper or not ? Whether the two invoices of live consignments (invoice no. QCS08024 dated 17.05.08 & QCS08026 dated 17.05.08) disowned by the importer and not cleared from the port, can be considered as contemporary data for the purpose of redetermination of value ?
- IV. Confiscation of goods and penal action against the Noticees.
- V. Validity of SCN issued by DRI & time limitation under section 28 of the Act.

Now let me take up the issues one by one:

33. Whether the recovery of data from seized laptop followed the mandatory procedure prescribed under Section 138C(2) of the Act. ?

33.1 On the importer's opposition to the recovered data on the ground that it has not followed the procedure laid down in Section 138C(2) of the Act, I find that the Section 138C of the Act relates to the admissibility of micro films, facsimile, copies of documents and computer printouts as documents and as evidence. Four conditions specified for admissibility of a computer printout specified in section 138C(2) are:

- I. The computer printout was **taken from a computer** which was **used regularly** to store or process information of the activities of the person having lawful control over the use of the computer.
- II. During the said period, the said information was **being supplied regularly** to the computer in the ordinary course of the said activities.
- III. Throughout that period the computer was **operating properly**.
- IV. The said information is **derived from the information supplied** to the computer in the ordinary course of the said activities.

33.2 In this regard, I find that a Panchnama dated 11.06.2008 has recorded the details of the search action carried out by DRI officers at the office premises of M/s. Gururaj Steel in the presence of Shri Praveen Shah, Partner of the said firm. The Panchnama records that Laptop (Lenovo), having model number 0768 and serial number L3-HC82407/03 was found there. The said laptop was shut down/switched off at 12:54 hours and was seized by the DRI officers from the business premises. This Panchnama has also been signed by the noticee-1 and two independent panchas.

33.3 I find that RUD-9/2 is the letter dated 13.01.2010 of the Directorate of Forensic Science, Gandhinagar (ISO certified Lab) issued to DD, DRI, Ahmedabad, stating that a sealed parcel of Lenovo laptop Model: 0768 S/N: L3-HC82407/03 was duly received and its hard disk examined by them. RUD-9/1 is the letter dated 16.01.2010 of the Director, Directorate of Forensic Science (DFS), Gandhinagar issued to DD DRI, Ahmedabad enclosing report number DFS-EE-2009-CF-48 dated 13.01.2010. All these letters /reports have been signed by the noticee on 11.07.11, as proof of having seen the original.

33.4 In his voluntary statement dated 11.07.2011 recorded under Section 108 of the Act, Shri Praveen Shah, Partner of the said firm has accepted that he was using a Lenovo make laptop for his business; that he did not have full knowledge about operating the laptop; that one Shri Rahul Jain, his employee, would operate this laptop; that on his directions, Rahul Jain used to send business related mails to their overseas supplier, and that he said laptop was seized by the officer of DRI, AZU during the search dated 11.06.2008. In the same statement, he has also accepted that he was shown the report dated 16.01.2010 of the Independent ISO accredited Forensic Lab DFS Gandhinagar along with printouts derived from data storage device of his Lenovo laptop; that he has signed the printouts from page 1 to 21 as proof of having seen them. Thus, I find that the noticee has not only accepted the authenticity of the data obtained from the laptop but has also explained the fragmented text in detail. The nature of these statements show that the information disclosed by him could have only been known by him, and in many places he has refused to answer certain questions of DRI which point out towards the voluntary nature of his statement. The statements, panchnama, etc. have never been retracted or questioned by the noticees .

33.5 I find that the panchnama dated 11.06.08, forensic lab report signed by independent expert and voluntary statements of the noticee dated 26.12.2008 & 11.07.2011 together satisfy all the 4 conditions of Section 138C(2). It has to be noted that the Panchnama is a legal document equivalent to a certificate signed by two independent panchas as well as the owner of the laptop. The data recovery has taken place in an independent forensic laboratory and the report has been signed by an independent expert. Both the documents have been accepted in the statement voluntarily by the noticee. The noticee has explained in detail as to how the information derived was regularly fed into the laptop by one of his employees in the normal course of his business. He has never claimed that the laptop was not functioning properly during the said period or the

information derived is not related to his business. Therefore, I find that the requirements of Section 138C(2) are fully satisfied.

33.5.1 It is settled law in taxation matters that a document has to be read as a whole. It is the intention of the parties behind a document that matters rather than mere nomenclature or form. Even though a formal certificate under section 138C is not there, the documents mentioned above read together fulfill all the substantive provisions of section 138C.

33.6 I find that noticees relied upon the case law of '**S. N. Agrotech**⁸ to argue the point that the case of undervaluation established through computer printouts taken out from the laptops and other electronic devices seized from the residential premises of the importer without following Section 138C(2) of the Act, is not legal and proper. In this regard, I find that in the case of **S. N. Agrotech (supra)**, no documents were produced before the Tribunal that satisfies the requirements of Section 138C(2). In the present case, the Panchanama dated 11.06.08 with clear recording of the fact that the laptop was owned by the importer and was operational during the relevant period for the business of import of by the importer alongwith the laboratory report dated 13.01.2010 of DFS, Gandhinagar, which is an independent agency and the statement of the importer having accepted all the data as being the correct data reflecting his business amounts to full compliance of Section 138C(2). This was not present before the Tribunal in the case of **S. N. Agrotech** and therefore, ratio of the case in this case is not applicable. Thus, I conclude that recovered data from the seized laptop in the present case holds evidentiary value.

34. Whether cross examination of the Scientific Officer who certified the retrieval of data from the seized computer should be allowed or not ?

34.1 Noticee no. 1 had sought the cross-examination of the Scientific Officer of DFS which was disallowed as his statement was never recorded during the case. In this regard, I rely on the following judgments:

34.2 Hon'ble CESTAT, Mumbai in the matter of **Everest Diamond Tools**⁹ has held that "*Appellant's contention that they were not allowed to cross-examine investigating officers without basis as statements of such officers never recorded*". It is to be noted that the said case was further affirmed by the Hon'ble Supreme Court as reported in 2015 (321) E.L.T. A207 (S.C.).

34.3 Hon'ble High Court of Kerala at Ernakulam in the matter of **N.S. Mahesh**¹⁰ has held that *the investigating unit has developed the case on the basis of documents recovered during investigation and other evidences and not relied on statements of any officers who examined/audited/assessed the consignment. Moreover, said officers have discharged these functions as part of their official duty, based on documents provided by the importer. Further noticee No. 2 has not given any reasons for examining the said officer, nor the evidences sought*

⁸ S. N. Agrotech V/s. Commissioner of Customs, New Delhi [2018(361) E.L.T. 761(Tri.-Del.)]

⁹ Everest Diamond Tools Versus Commissioner of C. Ex., Visakhapatnam - 2007 (211) E.L.T. 327 (Tri. - Mumbai)

¹⁰ N.S. Mahesh Vs. Commissioner of Customs, Cochin as reported in 2016 (331) E.L.T. 402 (Ker)

to be brought out from them. It is also learnt that the dockets of the bills of entry relied upon by investigation have already been supplied along with the show cause notice. However, if required, noticee No. 2 can obtain additional set of copies of documents from SIIB, under prior intimation to undersigned. Accordingly, the request for cross-examining all officers who assessed/audited/examined the impugned consignments cannot be acceded to."

34.4 In the matter of **JSW Steels Ltd.**¹¹, the Hon'ble Tribunal has held that *"the Commissioner adjudicated the classification dispute on the basis of relevant facts ascertained from the assessee. Further, it was held that denial of cross-examination of departmental officer has not violated natural justice as such officers do not contribute to judicial determination of classification."*

34.5 In the case of **Kanungo**¹², Hon'ble Supreme Court has held that *for proceedings under Act, the right to compliance to the principles of natural justice does not cover the right to cross examination witnesses.*

34.6 In the case of **Tallaja Impex**¹³, it was held that *"In a quasi-judicial proceeding, strict rules of evidence need not to be followed. Cross examination cannot be claimed as a matter of right."*

34.7 In the case of **Patel Engg. Ltd.**¹⁴, Hon'ble Bombay High Court has held that *"right of cross-examination cannot be asserted in all inquiries and which rule or principle of natural justice must be followed depends upon several factors - Further, even if cross-examination is denied, by such denial alone, it cannot be concluded that principles of natural justice had been violated."*

34.8 Hon'ble Tribunal in its decision in **Sridhar Paints**¹⁵ has held that *"denial of cross-examination of witnesses/officers is not a violation of the principles of natural justice, we find that the Adjudicating Authority has reached his conclusions not only on the basis of the statements of the concerned persons but also the various incriminating records seized. We hold that the statements have been corroborated by the records seized"*.

34.9 Thus, I find that denial of cross examination of the Scientific Officer of DFS does not lead to violation of principles of natural justice in the present case.

35. Relevancy of contemporary import data of steel from China provided by the noticees and whether redetermination of value proposed in the SCN is proper or not ? Whether the two invoices of live consignments (invoice no. QCS08024 dated 17.05.08 & QCS08026 dated 17.05.08) disowned by the importer and not cleared from the port, can be considered as contemporary data for the purpose of redetermination of value ?

¹¹ JSW Steels Ltd. Vs Commissioner of C. Ex., Belgaum as reported in 2010 (254) E.L.T. 318 (Tri. - Bang.)

¹² Kanungo & Co. Vs. Collector of Customs, Calcutta & Others [1993(13) E.L.T. 1486 (S.C.)]

¹³ Commissioner of Customs, Hyderabad V. Tallaja Impex reported in 2012(279) ELT 433 (Tri.)

¹⁴ Patel Engg. Ltd. vs UOI reported in 2014 (307) ELT 862 (Bom.)

¹⁵ Sridhar Paints v/s Commissioner of Central Excise, Hyderabad reported as 2006(198) ELT 514 (Tri-Bang)

35.1 The case of under-valuation made by DRI against the noticees and the demand of duty can be understood from the five (05) Annexures of the SCN, labeled as I, IIA, IIB, IIC and III, being explained as follows:

35.1.1 **Annexure-I** labeled as "*Calculation of differential duty on the basis of contemporaneous imports made through Mumbai Port*", covers six (06) Bills of Entry of supplier, M/s. Shangai Qichang Stainless Steel Group Co, where the declared value of Grade-304 steel was enhanced from 2100 to 4700 USD per MT and of Grade-316 steel from 2750 to 7400 USD per MT, on the basis of the remark given at the bottom of the table of Annexure-I as "*contemporaneous rates as per invoice no. QCS08026 dated 17.05.2008 of M/s. Shangai Qichang Stainless Steel Co.*".

35.1.2 **Annexure-IIA** labeled as "*Differential Duty in respect of imports made through JNCH Nhava Sheva, calculated on the basis of invoice value as obtained from the data retrieved by DFS from the hard disc*" covers one (01) Bill of Entry of supplier M/s. Zhejiang Nanbo Steel Industry Co. Ltd. whose declared value has been enhanced from 2600 to 5838.9 USD per MT on the basis of *invoice value as obtained from the data retrieved by DFS from the hard disc.*

35.1.3 **Annexure-IIB** labeled as "*Calculation of Differential Duty on the basis of above contemporaneous Import made through JNCH Nhava Sheva*" covers one (01) Bill of Entry of supplier, M/s. Zhejiang Nanbo Steel Industry Co. Ltd., whose declared value has been enhanced from 2500 to 5838.9 USD per MT on the basis of the comment given below the table as "*The duty against entry at Sr. no. 2 and 3 are computed considering the contemporaneous rate of USD 5838.91 MT for Grade-316 as found in the case of invoice at Sr. no. 1*".

35.1.4 **Annexure-IIC** labeled as "*Calculation of Differential Duty on the basis of above contemporaneous Import made through JNCH Nhava Sheva*" covers one (01) Bill of Entry of supplier, M/s. Zhejiang Nanbo Steel Industry Co. Ltd. whose declared value has been enhanced from 2025 to 5838.9 USD per MT on the basis of remarks given below the table as "*The duty against entry at sr. no. 2 and 3 are computed considering the contemporaneous rate of USD 5838.91 MT for 316 Grade as found in the case of invoice at Sr. no. 1*".

35.1.5 **Annexure-III** labeled as "*Differential Duty in respect of Imports made through Mumbai Port, calculated on the basis on Invoice/Contract value as obtained from the data retrieved by DFS from the hard disc*" covers two (02) Bills of Entry of supplier, M/s. Zhejiang Pengye Stainless Steel Tube Ind. Co. Ltd., whose declared value has been enhanced from 2025 to 7350 USD per MT for Grade-316 and 4700 USD for Grade-304 as per *the Invoice/Contract value as obtained from the data retrieved by DFS from the hard disc.*

35.2 The redetermination of value proposed in the SCN and the evidence used in each case can be summarized in the form of Chart-I below. The Annexures have been shown in the order IIA,IIB,IIC,III & I

| CHART-I | | | | | | | | | |
|--|--|-------------------------|---|---|----------------|-----------------------------------|-------------------------|-------------------------|-------------------------|
| Tabulated summary of evidences relied upon in SCN to redetermine the value of impugned goods annexure wise | | | | | | | | | |
| Annexure-IIA | | | | | | | | | |
| Basis of redetermination of value is the parallel invoice retrieved from seized laptop | As declared by the importer to Customs | | | | | DRI's Action to redetermine value | | Valuation Rules applied | |
| | Invoice No. &Dt. | B/E. No. & Dt. | Invoice No. &Dt. | Description | Qty (MT) | Rate (US\$/MT) | Enhanced Rate (US\$/MT) | Differential duty (INR) | Valuation Rules applied |
| NBSW07016-T04/03.09.07 | 5838.91 (32114/5.5) | 958546/19.10.07 | NBSW07016-T04/03.09.07 | SS. Sec./Def. Stainless Steel Seam. pipe-316L | 5.5 | 2600 | 5838.91 | 245941 | Rule 3 of CVR, 2007 |
| Annexure-IIB | | | | | | | | | |
| Basis of redetermination of value is the parallel invoice of Annexure IIA | As declared with Customs by the importer | | | | | DRI's Action to redetermine value | | Valuation Rules applied | |
| | B/E. No. & Dt. | Invoice No. &Dt. | Description | Qty (MT) | Rate (US\$/MT) | Enhanced Rate (US\$/MT) | Differential duty (INR) | Valuation Rules applied | |
| No parallel invoice found | 889327/27.08.07 | NBSW070521-T02/25.07.07 | SS. Sec./Def. Stainless Steel Seam. pipe-316L | 3.93 | 2500 | 5838.91 | 177930 | Rule 5 of CVR1988 | |
| Annexure-IIC | | | | | | | | | |
| Basis of redetermination of value is the parallel invoices of Annexure IIA | As declared by the importer to Customs | | | | | DRI's Action to redetermine value | | Valuation Rules applied | |
| | B/E. No. & Dt. | Invoice No. &Dt. | Description | Qty (MT) | Rate (US\$/MT) | Enhanced Rate (US\$/MT) | Differential duty (INR) | Valuation Rules applied | |
| No parallel invoice found | 817949/17.01.08 | NBSW-1017-T07/22.12.07 | SS. Sec./Def. Stainless Steel Seam. pipe-316L | 12.48 | 2025 | 5838.91 | 652240 | Rule 4 of CVR 2007 | |
| Annexure-III | | | | | | | | | |

| Basis of redetermination of value are the parallel invoices, alongwith Sales Contract no. PYE017208 dated 08.12.2007, retrieved from seized laptop | | As declared by the importer to Customs | | | | | DRI's Action to redetermine value | | Valuation Rules applied |
|--|--------------------------------|--|-----------------------------|---|----------|----------------|-----------------------------------|-------------------------|-------------------------|
| Invoice No. &Dt. | CIF(US\$/MT) | B/E. No. & Dt. | Invoice No. &Dt. | Description | Qty (MT) | Rate (US\$/MT) | Enhanced Rate (US\$/MT) | Differential duty (INR) | Rule 3 of CVR, 07 |
| PYE071208/06.01.08 | 7350 | 825451/25.02.08 | PYE071208-1/06.01.08 | SS. Sec./Def. Stainless Steel Seam. pipe-316L | 21.25 | 2025 | 7350 | 1555875 | |
| | | 824764/20.02.08 | PYE071208-2/06.01.08 | SS. Sec./Def. Stainless Steel Seam. pipe-316L | 21.35 | 2025 | 7350 | 1548587 | |
| Annexure-I | | | | | | | | | |
| Basis of redetermination of value are the invoices of two live consignments pending at Mumbai Port, clearance not taken by importer | | As declared by the importer to Customs | | | | | DRI's Action to redetermine value | | Valuation Rules applied |
| Invoice No. & Dt. | Value(US\$/MT) | B/E. No. &Dt. | Invoice No. & Dt. | Description | Qty (MT) | Rate (US\$/MT) | Enhanced Rate (US\$/MT) | Differential duty (INR) | Rule-4 of CVR 2007 |
| QCS08026/17.05.08 | 7400 (G-316), 4700, G-304) | 844780/09.06.08 | QCS08015/1 Dtd. 24.04.08 | SS Sec. Def. Seam.pipe Grade-304 | 22.73 | 2100 | 4700 | 815715 | |
| QCS08024/17.05.08 | 7350 (G-316), 4520 (G-304) | 844829/09.06.08 | QCS08015/2 Dtd. 24.04.08 | SS Sec. Def. Seam.pipe Grade-304 | 4.95 | 2100 | 4700 | 177616 | |
| | | 841223/21.05.08 | QCS08012 Dtd. 08.04.08 | SS Sec. Def. Seam.pipe Grade-304 | 20.212 | 2100 | 4700 | 681498 | |
| | | 834826/16.04.08 | QCS08008 Dtd. 06.03.08 | SS Sec. Def. Seam.pipe Grade-316 | 2.286 | 2750 | 7400 | 137089 | |
| | | 833896/10.04.08 | QCS08001/2 Dtd. 19.02.08 | SS Sec. Def. Seam.pipe Grade-304 | 18.26 | 2100 | 4700 | 614934 | |
| | | 833938/10.04.08 | QCS08001/1 Dtd. 19.02.08 | SS Sec. Def. Seam.pipe Grade-304 | 22.52 | 2100 | 4700 | 758380 | |
| | | | | | 23.589 | 2100 | 4700 | 794380 | |

35.3 The above chart is further explained annexure-wise in the same order as depicted in chart above. **Annexure- IIA** of the SCN covers the BE. No.958546 dated 19.10.07, along with the invoice submitted by the importer labelled as 'NBSW07016-T04/03.09.07' for the goods declared as 'Secondary/Defective Stainless Steel Seamless Pipe-316L', where the CIF value was declared as 2600 USD per MT. On recovery of data from the seized laptop, an identical invoice of the same label as 'NBSW07016-T04/03.09.07' was found by the DRI officers of the same overseas supplier, M/s. Zhejiang Nanbo Steel Industries Co. Ltd., showing CIF value as 5838.91 USD/MT($5838.9=32114/5.5$), Accordingly the DRI relied upon this parallel invoice to reject the declared value and redetermine the value of this consignment under Annexure- IIA by invoking Rule 3 of CVR, 2007. **Annexure-IIB** covered the consignment under B/E. No. 889327 dated 27.08.007 with invoice no. NBSW070521-T02/25.07.07 of 'Secondary/Defective Stainless Steel Seamless Pipe-316L' with the declared CIF value as 2500 USD per MT. In the case of this consignment, no parallel invoice was found in the laptop, however since the goods of this consignment were identical to the consignment under **Annexure- IIA** where the value per MT in the invoice was found as 5838.9USD ($5838.9=32114/5.5$), much higher than the value of 2500 USD per MT declared in the bill of entry of Annexure-IIB. So the valuation of the consignment under Annexure- IIB was rejected and redetermined from 2500 USD/MT to 5838.91 USD/MT, applying Rule 5 of CVR,1988, as the consignment under **Annexure-IIA** (dated 9.10.2007) was in close proximity of time to Annexure-IIB(dated 27.08.2007) with identical goods and same supplier. **Annexure-IIC** covered the consignment under B/E. No. 817949 dated 17.01.08, with invoice no as NBSW-1017-TO7/22.12.07 for 'Secondary/Defective Stainless Steel Seamless Pipes-316L' of quantity 12.48 MT. The declared value of this consignment was rejected and re-determined from 2025 USD/MT to 5838.91 USD/MT under Rule 4 of CVR, 2007, as this consignment was in close proximity of time to consignment under Annexures- IIA (dated 19.10.2007) with identical goods and the same supplier. **Annexure-III** covered two B/Es No.825451 dated 25.02.08 and 824764 dated 20.02.08 with the respective invoices as PYE071208-1 dated 06.01.08 and PYE071208-2 dated 06.01.08, both of 'Secondary/Defective Stainless Steel Seamless Pipe-316L' of quantity 21.25 MT and 21.35 MT respectively with declared value as 2025 USD/MT. On the recovery of data from the seized laptop of the notices, it was found that there was a parallel invoice found numbered as 'PYE071208 dated 06.01.08' of the supplier's M/s. Zhejiang Pengye Stainless Steel Tube Industry Ltd, showing value as 7350 USD/MT, a Sales Contract No.PYE71208 dated 08.12.07 showing value as 7300 USD/MT was also found in the recovered data from the laptop. As the invoice number, date and supplier name were identical, the recovered invoice was considered as a parallel invoice for the same consignment and accordingly the valuation of this consignment was re-determined from 2025 USD/MT to 7350 USD/MT applying Rule 3 of CVR, 2007. **Annexure-I** of the said SCN covered six consignments under bills of entry, namely as '844780 dated 09.06.08', '844829 dated 09.06.08', '841223

dated 21.05.08', '834826 dated 16.04.08', '833896 dated 10.04.08' and '833938 dated 10.04.08', with invoices respectively as 'QCS08015/1 dated 24.04.08', 'QCS08015/2 dated 24.04.08', 'QCS08012 dated 08.04.08', 'QCS08008 dated 06.03.08' 'QCS08001/2 dated 19.02.08' and 'QCS08001/1 dated 19.02.08' respectively of 'Secondary/Defective Stainless Steel Seamless Pipe Grade-304 and Grade-316 and Grade-TP304', with declared value as 2100 USD/MT for Grade-304 and 2750 USD/MT for Grade-316. All the six consignments cleared from April 2008 to June 2008 period were found to be in close proximity to the two live consignments of the same supplier pending at Bombay Port during July, 2008 as they were attempted to be disowned by importer/noticee on trivial grounds. These two live consignments of the same supplier, were found to have the same invoice code 'QCS08026 dated 17.05.08' and 'QCS08024 dated 17.05.08' covering identical goods with much higher value of 7400 USD/MT for Grade-316, 4700 USD/MT for Grade-304 and 7350 USD/MT for Grade-316 and 4520 for Grade-304 respectively. As the goods and supplier were identical between the six consignments of Annexure-I and the live consignments of the two invoices provided by SIIB, by applying Rule 4 of CVR, 2007, the value of the six consignments under **Annexure-I** was sought to be re-determined from 2750 to 7400 for Grade-316 and 2100 to 4700 for Grade-304.

35.4 It is to be noted that the import details reflected in the Sales Contract no. PYE071208 dated 08.12.2007 obtained from the said report dated 13.01.2010 of the forensic laboratory were exactly matching with the import details of the invoice no. PYE071208-1 dated 06.01.08 under B/E. No.824764 dated 20.02.08 and invoice no. PYE071208-2 dated 06.01.08 under B/E. No.825451 dated 25.02.08., except value taken per metric ton. On comparison of the date of sales contract and both invoices, it appears that both the invoices dated 06.01.2008 have been raised pursuant to the said sales contract. In both the said invoices, the value per MT was taken as 2025 USD, whereas as per said sales contract, the value per metric ton was 7350 USD. Hence, it appears that the importer had suppressed the actual value.

35.5 The noticees-1 & 2 have questioned reliance on these two invoices of live consignments on the ground that the clearance from the port was not done, so the import value of these invoices did not attain finality. In this regard, I find that the notices have not disowned the invoices and data contained in it, they have only refused to take clearance on the pretext that the consignments were despatched late or the quality of previous consignments of the supplier was not good, which appear flimsy.

35.6 The SCN records two different grounds of abandonment. Firstly, Shri Pravin Shah, Partner of the firm, M/s. Gururaj Steel, vide letter dated 21.07.2008 labelled as 'No Objection Certificate', informed the Department that '*the supplier has dispatched the consignment beyond the scheduled time*' so they were not interested in clearing the consignment and so informed the supplier. Secondly, in his statement dated 26.12.2008, he stated that he had declined to receive the said consignment because '*quality of goods in the earlier one or two consignments of the said company was not good*'. It appears that the refusal to accept the consignments on 21.07.2008 is an afterthought after the DRI had initiated investigation against the noticee in June 2008. At sub

para A(i) of para 9.2 , the SCN states *“furthermore, under both the invoices of M/s. Shanghai Qichang Stainless Steel Group Co. Ltd., an amount of USD 23000 each is shown as advance payment, hence the legitimacy of the said commercial invoice no. QCS08026 dated 17.05.2008 and commercial invoice no. QCS08024 dated 17.05.2008 is not in dispute and the same appears to be genuine and actual.”* I find that the invoices showing advance payment made by the noticees to the supplier have not been disputed by the noticees. Once part consideration for goods has been paid, invoice has been issued and accepted by the noticees as genuine and goods have been dispatched from China, the sale of goods has taken place; both the invoices therefore reflect genuine transactions and their prices can be taken as the basis for redetermination of value.

35.7 Regarding the evidence of additional flow back of money on undervalued steel imported by the noticees, it is found that most of the invoices of the impugned consignments produced before customs mentioned 100% advance payment as mentioned in RUDs-3/3,4/3, 5/3,6/3, 7/3, 8/3, 11/3, 12/1, 13/1 & 14/1. But when inquired by DRI, the noticees could not explain or produce any proof of payment of advance made to the suppliers through the normal banking channel. This proves that the noticees were sending money through the illegal route for the undervalued imports.

35.8 I find that the Hon’ble Tribunal remanded this case essentially with the direction to the Department to consider the contemporaneous data produced by the appellant and deal with it in order. In compliance of the same, Shri Sanjay Kalra, advocate of noticees, vide his letter dated 08.02.2023 produced contemporaneous import data of 41 Bills of Entry (19 of 304 grade steel and 22 of 316 grade steel), claiming that the declared values in the impugned consignments are much higher than contemporary import data of various parties from China during the same period. The contemporary import data produced by the noticees is reproduced below:

| TABLE-10 | | | |
|---|-----------------|------------------------|-------------------------------|
| Item: Stainless Steel Secondary/Defective Seamless Pipe Grade-304 | | | |
| S.No. | B/E. No. | Importer | Assessed Unit price in USD/MT |
| 1 | 802748/01.11.07 | Keystone Inc. | 1534.64 |
| 2 | 803003/02.11.07 | Keystone Inc. | 1534.64 |
| 3 | 811117/12.12.07 | AMES India | 1635.70 |
| 4 | 811116/12.12.07 | AMES India | 1635.70 |
| 5 | 815746/04.01.08 | Keystone Inc. | 1482.77 |
| 6 | 823926/15.02.08 | Steelite Metal & Tubes | 1769.72 |
| 7 | 826310/29.02.08 | Anupam Metals (India) | 1415.78 |
| 8 | 826765/04.03.08 | Taaranga Tubes (India) | 1964.93 |
| 9 | 826750/04.03.08 | Steelite Metal & Tubes | 1767.93 |

| | | | |
|--|-----------------|-----------------------------|---------|
| 10 | 834828/16.04.08 | AMES India | 2145.39 |
| 11 | 837554/30.04.08 | Steelite Metal & Tubes | 2145.39 |
| 12 | 837383/30.04.08 | Steelite Metal & Tubes | 2145.39 |
| 13 | 838752/08.05.08 | Kinnari Steel Corporation | 2072.97 |
| 14 | 842526/28.05.08 | Steelite Metal & Tubes | 2043.79 |
| 15 | 842528/28.05.08 | Steelite Metal & Tubes | 2043.79 |
| 16 | 840829/19.05.08 | Top Honest Inc. | 1946.46 |
| 17 | 848374/30.06.08 | AMES India | 2136.36 |
| 18 | 735593/06.03.08 | Bhavna Steel | 1717.41 |
| 19 | 828902/14.03.08 | Taaranga Tubes (India) | 2172.04 |
| Item: Stainless Steel Secondary/Defective Seamless Pipe Grade-316 | | | |
| 1 | 804056/07.11.07 | Keystone Inc. | 1688.1 |
| 2 | 802984/02.11.07 | Keystone Inc. | 1793.19 |
| 3 | 807654/26.11.07 | AMES India | 1841.56 |
| 4 | 811562/13.12.07 | Keystone Inc. | 1737.93 |
| 5 | 809671/05.12.07 | Keystone Inc. | 1737.93 |
| 6 | 636693/19.12.07 | Anupam Metals (India) | 2050.76 |
| 7 | 815744/04.01.08 | Prakash Steelage Ltd. | 1738.42 |
| 8 | 815745/04.01.08 | Prakash Steelage Ltd. | 1738.42 |
| 9 | 823317/12.02.08 | AMES India | 2042.53 |
| 10 | 824736/20.02.08 | Rajendra Steel Centre | 1820.17 |
| 11 | 826763/04.03.08 | Keystone Inc. | 1919.45 |
| 12 | 835900/22.04.08 | Top Honest Inc. | 2554.04 |
| 13 | 843545/01.06.08 | Top Honest Inc. | 2744.70 |
| 14 | 852444/24.07.08 | Niton Steels & Alloys | 2601.35 |
| 15 | 826747/04.03.08 | Keystone Inc. | 1919.45 |
| 16 | 826762/04.03.08 | Keystone Inc. | 1919.45 |
| 17 | 838346/06.05.08 | Sunrise Tradewings Pvt.Ltd. | 2557.2 |
| 18 | 841655/23.05.08 | Steelite Metal & Tubes | 2627.71 |
| 19 | 841809/23.05.08 | Top Honest Inc. | 2530.34 |
| 20 | 842903/29.05.08 | Top Honest Inc. | 2530.34 |
| 21 | 840022/14.05.08 | Top Honest Inc. | 2530.34 |
| 22 | 843005/29.05.08 | Top Honest Inc. | 2530.34 |

35.9 The above contemporary import data of steel of various parties from China claimed by the noticees to be in their favour was examined. The Adjudication Section of Import-I

Commissionerate had also obtained NIDB data from DG valuation vide email dated 07.09.2022 (attached with earlier letter dated 18.02.2021), which was supplied vide email dated 07.09.2022 . The entries of noticees' import data were found to be matching with NIDB/DG-Val data. However, for better analysis of the contemporary data of the noticees, three columns were added to it, namely overseas supplier name, description of goods and quantity as shown in Table -11 below:

| TABLE-11 | | | | | | |
|----------|---------------------|------------------------|--------------------------------------|---|----------|---------------|
| S.N. | B/E. No. | Importer | Overseas Supplier | Description | Qty (MT) | Value USD/PMT |
| 1 | 802748/ 01.11.07 | Keystone Inc. | M/s. Shangdong Tianxing Railway Eng. | Stainless Steel Secondary Defective Seamless Pipe Grade-304 | 39.941 | 1534.64 |
| 2 | 803003/ 02.11.07 | Keystone Inc. | M/s. Shangdong Tianxing Railway Eng. | Stainless Steel Secondary Defective Seamless Pipe Grade-304 | 39.931 | 1534.64 |
| 3 | 811117/ 12.12.07 | AMES India | M/s. WenzhouJiangti an Stainless | Stainless Steel Secondary Defective Seamless Pipe Grade-304, Mix Size | 18.347 | 1635.70 |
| 4 | 811116/ 12.12.07 | AMES India | M/s. Zhejiang Pengye Stainless Steel | Stainless Steel Secondary Defective Seamless Pipe Grade-304, Mix Size | 39.373 | 1635.70 |
| 5 | 815746/ 04.01.08 | Keystone Inc. | M/s. Shanghai Qichang Stainless | Stainless Steel Secondary Defective Seamless Pipe Grade-304 | 99.539 | 1482.77 |
| 6 | 823926/ 15.02.08 | Steelite Metal & Tubes | M/s. Shenyang Debang Stainless Steel | Stainless Steel Secondary Defective Seamless Pipe Grade-304 | 18.846 | 1769.72 |
| 7 | 826310/ 29.02.08 | Anupam Metals (India) | M/s. H.K. Yongchang Stainless Steel | Stainless Steel Secondary Defective Seamless Pipe Grade-304 | 42.821 | 1415.78 |
| 8 | 826765/ 04.03.08 | Taaranga Tubes (India) | M/s. Wenzhou Hede Imp & Exp.Ltd. | Stainless Steel Secondary Defective Seamless Pipe Grade-304 | 22.88 | 1964.93 |
| 9 | 826750/ 04.03.08 | Steelite Metal & Tubes | M/s. Cangnan Jxin Import & Export | Stainless Steel Secondary Defective Seamless Pipe Grade-304 | 22.547 | 1767.93 |
| 10 | 834828/ 16.04.08 | AMES India | M/s. Wenzhou N.& A Foreign Trade Co. | Stainless Steel Secondary Defective Seamless Pipe Grade-304, Mix Size | 15.09 | 2145.39 |
| 11 | 837554/ 30.04.08 | Steelite Metal & Tubes | M/s. Shanghai Shengyang Fluid Equip | Stainless Steel Secondary Defective Seamless Pipe, | 24.339 | 2145.39 |

| | | | | | | |
|----|---------------------|------------------------------|--|--|--------|---------|
| | | | | ASTM 312, Grade-304 | | |
| 12 | 837383/ 30.04.08 | Steelite Metal & Tubes | M/s. Shanghai Shengyang Fluid Equip | Stainless Steel Secondary Defective Seamless Pipe, ASTM 312, Grade-304 | 24.473 | 2145.39 |
| 13 | 838752/ 08.05.08 | Kinnari Steel Corporation | M/s. Sable Farest Limited | Stainless Steel Secondary Defective Seamless Pipe Grade-304 | 19.496 | 2072.97 |
| 14 | 842526/ 28.05.08 | Steelite Metal & Tubes | M/s. Zhejiang Pengye Stainless Steel | Stainless Steel Secondary/ Defective Seamless Pipe Grade-304 | 20.934 | 2043.79 |
| 15 | 842528/ 28.05.08 | Steelite Metal & Tubes | M/s. Zhejiang Pengye Stainless Steel | Stainless Steel Secondary/ Defective Seamless Pipe Grade-304 | 20.853 | 2043.79 |
| 16 | 840829/ 19.05.08 | Top Honest Inc. | M/s. Shanghai Qichang Stainless Steel | Stainless Steel Secondary/ Defective Seamless Pipe Grade-304 | 49.7 | 1946.46 |
| 17 | 848374/ 30.06.08 | AMES India | M/s. Shanghai Shengyang Fluid Equip | Stainless Steel Secondary Defective Seamless Pipe Grade-304, Mix Size | 20.924 | 2136.36 |
| 18 | 735593/ 06.03.08 | Bhavna Steel | M/s. Overseas Metal Trading | Stainless Steel Secondary Defective Seamless Pipe Grade-304 | 1.95 | 1717.41 |
| 19 | 828902/ 14.03.08 | Taaranga Tubes (India) | M/s. Wenzhou Hede Imp&Exp Ltd. | Stainless Steel Secondary/ Defective Seamless Pipe Grade-304 | 23.82 | 2172.04 |
| 20 | 804056/ 07.11.07 | Keystone Inc. | M/s. Wenzhou Jiangtian Stainless Steel | Stainless Steel Secondary /Defective Seamless Pipe Grade-304 | 20.299 | 1688.1 |
| 21 | 802984/ 02.11.07 | Keystone Inc. | M/s. Shangdong Tianxing Railway | Stainless Steel Secondary Defective Seamless Pipe Grade-304 | 19.94 | 1793.19 |
| 22 | 807654/ 26.11.07 | AMES India | M/s. Shanghai Jin Hang International | Stainless Steel Secondary Defective Seamless Pipe Grade-316L, Mix Size | 19.284 | 1841.56 |
| 23 | 811562/ 13.12.07 | Keystone Inc. | M/s. Zhejiang Jinxin Stainless | Stainless Steel Secondary Defective Seamless Pipe Grade-316 | 51.762 | 1737.93 |
| 24 | 809671/ 05.12.07 | Keystone Inc. | M/s.Zhejiang Jinxin Stainless | Stainless Steel Secondary Defective | 25.304 | 1737.93 |

| | | | Steel | Seamless Pipe Grade-316 | | |
|----|---------------------|-----------------------------|---------------------------------------|---|--------|---------|
| 25 | 636693/ 19.12.07 | Anupam Metals (India) | M/s. Shandong Tianxing Railway Eng. | Stainless Steel Secondary/ Defective Seamless Pipe Grade-316 | 1 | 2050.76 |
| 26 | 815744/ 04.01.08 | Prakash Steelage Ltd. | M/s. Wenzhou Boafeng Special Steel | Stainless Steel Secondary Defective Seamless Pipe Grade-316 | 20.554 | 1738.42 |
| 27 | 815745/ 04.01.08 | Prakash Steelage Ltd. | M/s. Wenzhou Boafeng Special Steel | Stainless Steel Secondary Defective Seamless Pipe Grade-316 | 21.393 | 1738.42 |
| 28 | 823317/ 12.02.08 | AMES India | M/s. Zhejiang Pengye Stainless Steel | Stainless Steel Secondary/ Defective Seamless Pipe Grade-316L, Mix Size | .025 | 2042.53 |
| 29 | 824736/ 20.02.08 | Rajendra Steel Centre | M/S. Jiaxing Metal Trade Co. Ltd. | Stainless Steel Secondary Defective Seamless Pipe Grade-304 | 11.181 | 1820.17 |
| 30 | 826763/ 04.03.08 | Keystone Inc. | M/s. Wenzhou Boafeng Special Steel | Stainless Steel Secondary Defective Seamless Pipe Grade-316 | 21.539 | 1919.45 |
| 31 | 835900/ 22.04.08 | Top Honest Inc. | M/s.Deo Gratias International Limited | Stainless Steel Secondary Defective Seamless Pipe Grade-316 | 18.115 | 2554.04 |
| 32 | 843545/ 01.06.08 | Top Honest Inc. | M/s. Yongchang Stainless Steel (HK) | Stainless Steel Secondary Defective Seamless Pipe Grade-316 | .014 | 2744.70 |
| 33 | 852444/ 24.07.08 | Niton Steels & Alloys | M/s. Wenzhou Hede Imp&Exp Ltd. | Stainless Steel Secondary Defective Seamless Pipe Grade-304 | 15.667 | 2601.35 |
| 34 | 826747/ 04.03.08 | Keystone Inc. | M/s. Yongchang Stainless Steel (HK) | Stainless Steel Secondary Defective Seamless Pipe Grade-316 | .025 | 1919.45 |
| 35 | 826762/ 04.03.08 | Keystone Inc. | M/s. Yongchang Stainless Steel (HK) | Stainless Steel Secondary Defective Seamless Pipe Grade-316 | 35.892 | 1919.45 |
| 36 | 838346/ 06.05.08 | Sunrise Tradewings Pvt.Ltd. | M/s. Tsingshan Holding Group | Stainless Steel Secondary Defective Seamless Pipe Grade-304L, | 7.583 | 2557.2 |
| 37 | 841655/ 23.05.08 | Steelite Metal & Tubes | M/s. Shanghai Shengyang Fluid Equip | Stainless Steel Secondary Defective Seamless Pipe | 24.93 | 2627.71 |

| | | | | | | |
|----|---------------------|-----------------|---------------------------------------|---|------|---------|
| | | | | Grade-316L | | |
| 38 | 841809/ 23.05.08 | Top Honest Inc. | M/s. Wenzhou Boafeng Special Steel | Stainless Steel Secondary Defective Seamless Pipe Grade-316 | .018 | 2530.34 |
| 39 | 842903/ 29.05.08 | Top Honest Inc. | M/s. Wenzhou Boafeng Special Steel | Stainless Steel Secondary Defective Seamless Pipe Grade-316 | .018 | 2530.34 |
| 40 | 840022/ 14.05.08 | Top Honest Inc. | M/s. Shanghai Qichang Stainless Steel | Stainless Steel Secondary Defective Seamless Pipe Grade-316 | .021 | 2530.34 |
| 41 | 843005/ 29.05.08 | Top Honest Inc. | M/s. Wenzhou Boafeng Special Steel | Stainless Steel Secondary Defective Seamless Pipe Grade-316 | .018 | 2530.34 |

35.10 From the above contemporary data produced by the noticees, the following points are noticed:

- (i) The bills of entry where the supplier is matching are seven in number namely Sr. No. 4, 5, 14,15,16,28 and 40 of the Table-11 above. These said seven entries are extracted from the Table-11 above and reproduced in Table-12 below:

| TABLE-12 | | | | | | |
|------------------------|---------------------|------------------------|--------------------------------------|---|----------|----------------|
| S.N. of Table-11 above | B/E. No. | Importer | Overseas Supplier | Description | Qty (MT) | Value US\$/PMT |
| 4 | 811116/ 12.12.07 | AMES India | M/s. Zhejiang Pengye Stainless Steel | Stainless Steel Secondary Defective Seamless Pipe Grade-304, Mix Size | 39.373 | 1635.70 |
| 5 | 815746/ 04.01.08 | Keystone Inc. | M/s. Shanghai Qichang Stainless | Stainless Steel Secondary Defective Seamless Pipe Grade-304 | 99.539 | 1482.77 |
| 14 | 842526/ 28.05.08 | Steelite Metal & Tubes | M/s. Zhejiang Pengye Stainless Steel | Stainless Steel Secondary/ Defective Seamless Pipe Grade-304 | 20.934 | 2043.79 |
| 15 | 842528/ 28.05.08 | Steelite Metal & Tubes | M/s. Zhejiang Pengye Stainless Steel | Stainless Steel Secondary/ Defective Seamless Pipe Grade-304 | 20.853 | 2043.79 |
| 16 | 840829/ 19.05.08 | Top Honest Inc. | M/s. Shanghai Qichang Stainless | Stainless Steel Secondary/ Defective Seamless Pipe | 49.7 | 1946.46 |

| | | | Steel | Grade-304 | | |
|----|---------------------|-----------------------|---|--|------|---------|
| 28 | 823317/ 12.02.08 | AMES India | M/s. Zhejiang Pengye Stainless Steel | Stainless Steel Secondary/ Defective Seamless Pipe Grade-316L, Mix Size | .025 | 2042.53 |
| 40 | 840022/ 14.05.08 | Top Honest Inc. | M/s. Shanghai Qichang Stainless Steel | Stainless Steel Secondary Defective Seamless Pipe Grade-316 | .021 | 2530.34 |

(ii) From these 07 bills of entry, it is seen that the quantity of 'Stainless Steel Secondary Defective Seamless Pipe Grade' are 39.37 MT, 99.539 MT, 20.9 MT, 20.8MT, 49.7 MT, 25 KGS, and 21 KGS respectively. The quantity in impugned 11 bills of entry are 5.5 MT, 3.93 MT, 12.48 MT, 21.35 MT, 21.25 MT, 22.73 MT, 4.95 MT, 20.212 MT, 21.12 (2.286 MT of Grade-316, 18.260 of Grade 304), 22.52 MT, 23.589 MT in the order as shown in Chart-I above. Hon'ble Tribunal in the case of **M/s. MIDAS IMPEX**¹⁶ has held *that the commercial level has to be the same for reliance on NIDB data. Imports 5 to 6 months prior to impugned import and much less in quantity cannot be relied upon for rejection of transactional value.*

(iii) The quantities 20.9 MT and 20.8 MT of consignments at sr. no. 14 & 15 in Table-11 above are found to be matching with impugned 02 consignments of Annexure-III of the said SCN where the quantities were 21.25 and 21.35 MT respectively and supplier is also the same. But at the same time, I find that this matching contemporary data cannot be applied as there is direct substantive evidence of parallel invoices found in respect of these consignments under Annexure-III of the SCN, wherein Rule 3 of CVR 2007 has been proposed by DRI which is found to be correct. Once Rule 3 is applied, going by the principle of sequential application of valuation rules, Rule 4 of CVR 2007 cannot be invoked.

(iv) To sum up, the contemporary data of 41 BEs produced by the noticees has been found to be not applicable to the impugned 11 consignments as in 34 BEs out of 41, the Chinese Supplier is not matching. Out of the remaining 7, the quantity of steel is not matching in 5. In remaining 2, where both supplier and quantity are matching, value has been redetermined through parallel invoices under Rule 3, and there is no need to go to Rule 4 or Rule 5. It is to be noted that direct evidence of parallel invoices between the same parties, wherever available will prevail over contemporary data. Hence, I find that there was sufficient evidence to reject the transaction value of the impugned 11 consignments and redetermine their values (as per Chart-I above) on the basis of direct substantive evidence revealed from the noticees' own laptop and admitted by them.

35.11 Further, the importer in his voluntary statement recorded under Section 108 of the Act, interalia stated that the import data recovered from the laptop pertains to the previous imports made by them, which includes supplier name, address, buyer name, address, telephone number,

¹⁶ M/s. MIDAS IMPEX Vs. COMM. OF CUSTOMS, Nhava Sheva 2009 (243) E.L.T. 444 (Tri. - Mumbai)

fax number, description of the goods. In the Hon'ble Tribunal Judgement in the case of **Sodagar Knitwear**¹⁷ affirmed by the Hon'ble Supreme Court, it has been held that *"It is a settled position of law that once, the importer has admitted the redetermination of value on record and has accepted the method of such valuation, he cannot subsequently challenge the same on the same ground."* What is admitted by the importer need not be proved again .

35.12 Hence, I find that the actual invoices recovered from laptop and two invoices of live shipment are matching exactly with the description given in the bills of entry and it is supported by Panchnama dated 11.06.2008, importer's statement dated 26.12.08 and the report of the Directorate of Forensic Science (DFS), Gandhinagar. Therefore, I find that the import value taken from the parallel invoices provided by SIIB(I), NCH and data retrieved from the laptop is more reliable and proper.

35.13 Further, it is settled law that NIDB data alone is not a good evidence of valuation, it has to be read with other evidences. NIDB records all import transactions through various ports in India, many import commodities like steel are prone to undervaluation and such low values get recorded in NIDB because no system is foolproof and every bill of entry cannot be investigated. NIDB data also does not indicate if any BE is under investigation or not. Moreover, the goods in the present case are secondary or defective pipes of stainless steel, of which proper valuation requires relevant documents such as certificate of analysis, material safety data sheet and end use. On the inadequacy of sole reliance on NIDB data, Hon'ble Tribunal in the case of **M/s. Modern Overseas**¹⁸, has held that *it is a settled law that the transaction value can be rejected on the basis of reasonable and cogent evidence of contemporaneous import of identical/similar goods, having the same country of origin and import at the same commercial level. In this case, it is not known whether the NIDB data is for identical goods, much less it does not reveal the same level of import. Therefore, this evidence suffers from basic flaws and can not be used as a legal ground for rejection of the transaction value.....Needless to stress that the onus is on the department to prove that the invoice value does not represent the true Commercial value in the international market."* Hon'ble Tribunal in the case of **Agarwal Marbles**¹⁹ has held *" In the case of Commissioner of Customs v. Modern Overseas [2005 (184) E.L.T. 65 (Tri.-Del.)] , NIDB data was held to be insufficient, in the absence of clarity about various parameters. List of such decisions is unending and it is sufficient to say that NIDB data has been held to be insufficient for enhancement of value, in the absence of any other independent evidence. Admittedly in the present cases, there is no such evidence produced by the Revenue except reference to the NIDB data"*. The Hon'ble Supreme Court in the case of **Hamilton Housewares**²⁰ has observed contemporary import data is applicable only when *1) they belong to the same supplier or, 2) the price mentioned therein meant for all the customers across the world or applicable to all customers in India.*

35.14 In the present case, the Department has discharged its initial onus of proving undervaluation

¹⁷ COMMR ICD, TKD, NEW DELHI Vs SODAGAR KNITWEAR- 2018 (362) E.L.T. 819 (Tri. - Del.)

¹⁸ M/s. Modern Overseas Vs. Commissioner of Customs, New Delhi, reported in 2005 (184) E.L.T. 65 (Tri. - Del.)

¹⁹ M/s. Agarwal Marbles India (P) Ltd. Vs. Commissioner of Customs, Jaipur, reported in 2017 (350) E.L.T. 262 (Tri. - Del.)

²⁰ Commissioner v. Hamilton Housewares Pvt. Limited -2019 (367) E.L.T. A239 (S.C.)'

by producing a parallel invoice from the noticees' laptop showing 2-3 times higher value and also showing advance payment of additional flow back. The same is accepted by the notices in their voluntary statements. Infact, the retrieved data from the seized laptop on recovery becomes broken up and difficult to read. It is the noticees' themselves who have joined the broken sentences and helped DRI officers to make sense out of it. The voluntary statements made under section 108 have not been even attempted to be retracted. In this scenario, the onus shifts to the noticee to disprove direct evidence found by the DRI. The Hon'ble Apex Court held in the case of **D. Bhurmal**²¹ that, *"the department would be deemed to have discharged its burden if it adduces only so much evidence, circumstantial or direct, as is sufficient to raise a presumption in its favour with regard to the existence of the fact sought to be proved"* Similarly the Tribunal in case of **Poonam Plastics Industries**²² has held that *"the Department was not required to prove actual value with mathematical precision and that reasonable help could be taken of the documents available and other circumstances to arrive at the correct value"*. The contemporary data produced by the noticees has a different supplier in 34 out of 41 BEs relied upon by the noticee and in 7 bills of entry where the supplier is also the same, the quantities are different. Moreover, in terms of these case laws, contemporary data cannot overrule direct evidence of undervaluation. NIDB or contemporary import data cannot be a complete evidence in itself, it can only have supplementary value, i.e. read with other evidences. In the event of a conflict between NIDB data and direct evidence of parallel invoice and invoices of live consignment, disowned by the noticees, the direct evidence shall prevail.

35.15 The Advocate on behalf of the noticees submitted that, in the absence of any specific or extraordinary reason, transaction value cannot be rejected, placing reliance on the case laws, namely, 1) **Motor Industries Co. Ltd.**²³, 2) **Eicher Tractors Ltd.**²⁴, 3) **South India Television Pvt. Ltd.**²⁵.

35.15.1 In **Motor Industries (supra)**, the Hon'ble Supreme Court observed that no special or extraordinary reasons have been recorded for rejecting the transaction value.

35.15.2 In **Eicher Tractors (supra)**, the Hon'ble Supreme Court observed: *"In the case before us, it is not alleged that the appellant has mis-declared the price actually paid. Nor was there a mis-description of the goods imported as was the case in Padia Sales Corporation. It is also not the respondent's case that the particular import fell within any of the situations enumerated in Rule 4(2). No reason has been given by the Assistant Collector for rejecting the transaction value under Rule 4(1) except the price list of vendor. In doing so, the Assistant Collector not only ignored Rule 4(2) but also acted on the basis of the vendor's price list as if a price list is invariably proof of the transaction value. This was erroneous and could not be a reason by itself to reject the transaction value. A discount is a commercially acceptable measure, which may be resorted to by a vendor for a variety of reasons including stock clearance. A price list is really no more than a*

²¹ Commissioner of Customs, Madras Vs. D. Bhurmal, [1983 (13) ELT 1546 (SC)]

²² Poonam Plastics Industries Vs CC, [1089 (30) ELT 634 (T)]

²³ 2009 (244) E.L.T. 4 (SC) Motor Industries Co. Ltd. Vs. Commissioner of Customs

²⁴ 2000(122) ELT 321(SC) Eicher Tractors Ltd Vs. Commissioner of Customs, Mumbai

²⁵ 2007 (214) ELT 3 (SC) Commissioner of Customs (Calcutta) Vs. South India Television Pvt. Ltd.,

general quotation. It does not preclude discounts on the listed price. In fact, a discount is calculated with reference to the price list. Admittedly in this case discount up to 30% was allowable in ordinary circumstances by the Indian agent itself."

35.15.3 In the present case, the values have been rejected on the ground that parallel invoices and sales contract with matching invoice number and date showing higher value(upto 2 to 3 times of declared value) have been recovered from the noticee's laptop and higher value has been admitted by the noticee in his voluntary statements. It is not a case of discount or general quotation. Hence, I find that both Motor Industries and Eicher Tractors case laws stand distinguished.

35.15.4 In **South India Television (supra)**, the Apex Court rejected the Revenue's case on the ground interalia that "*Importer relied upon contemporaneous imports from the same supplier which was not rebutted by Department*". In the present case, detailed findings rebutting the contemporary data relied upon by the noticees has been given in paras above. Thus, I find that the case laws relied upon by the noticees are not applicable to the facts and circumstances of the present case.

35.16 To summarize the above discussion on re-determination of value, it has been explained that impugned 11 Bills of Entries involved in the present case have been classified into five (5) Annexures, namely annexure-I, IIA, IIB, IIC & III, based on the nature of evidence used and valuation rule applied. Chart-I at para 35.2 above explains the process of application of evidence unearthed by DRI and how it has been used to re-determine the value of the consignment under these Annexures. Paras 35.3 and 35.4 explain the Chart-I in detail. Thereafter, in the light of the Tribunal's direction, the contemporary import data produced by the Noticees in their defense in Table-10, 11 and 12 above has been discussed, along with the various case laws regarding inadequacy of sole reliance on NIDB data. The forensic lab report dated 16.01.2010 is found to be legal and can be relied upon. The two invoices of the two live consignments not cleared from the port have to be treated as valid sale transactions having evidentiary value. Hence, the DRI's investigation in the case unearthed direct substantial evidence obtained from Noticee's own laptop and certified by forensic lab as well as the invoices of two live consignments which prove that the declared value in the impugned 11 consignments was grossly under-valued and hence is liable for rejection under Rule 10A of CVR, 1988 and Rule 12 of CVR 2007 respectively. Parallel invoices having the same number and date have been relied upon to re-determine value under Rule 3 of CVR 2007 in one consignment of Annexure IIA and two consignments of Annexure III. A sale contract has also been found in respect of consignments of Annexure III further substantiating the correct value. The re-determined value of Annexure IIA consignments has been taken as a contemporary value for the re-determination of values of consignments of annexure IIB and IIC applying Rule 5 of CVR 1988 and Rule 4 of CVR 2007 respectively which are pari materia. The values of 6 consignments of Annexure-I have been re-determined by taking the values of the invoices of two live consignments held at Mumbai Port by applying Rule 4 of CVR 2007 as these two live consignments were within one month gap of these six (6) consignments. The contemporary import data produced by the Noticee has been found to be not matching in terms of supplier and quantity in 39 entries and in 2 entries where the supplier and quantity matching, the entries cannot be applied

as there was direct evidence under rule 3 for re-determination of value against those matching 2 consignments.

35.17 In the facts and circumstances of this case, the valuation rules invoked above have also to be read with Rule 9 of CVR 2007 (which is pari materia with Rule 8 of CVR 1988²⁶). This Rule emphasizes on use of reasonable means consistent with the principles and general provisions of the Customs Valuation Rules and on the basis of data available in India.

35.18 In view of the foregoing discussion, I hold that these 11 impugned consignments are liable for rejection of declared value and re-determination of value as shown in Table-13 below:

| TABLE-13 | | |
|--------------------------|-------------------------|---|
| Annexure of the said SCN | Rejection Rules applied | Valuation Rule applied for Redetermination of value |
| Annexure -IIA | Rule 12 of CVR, 2007 | Rule 3 of CVR 2007, read with Rule 9 of CVR 2007 |
| Annexure -IIB | Rule 10A of CVR, 1988 | Rule 5 of CVR 1988 read with Rule 8 of CVR 1988 |
| Annexure -IIC | Rule 12 of CVR 2007 | Rule 4 of CVR 2007 read with Rule 9 of CVR 2007 |
| Annexure -III | -do- | Rule 3 of CVR 2007 read with Rule 9 of CVR 2007 |
| Annexure-I | -do- | Rule 4 of CVR 2007 read with Rule 9 of CVR 2007 |

36. Validity of SCN issued by DRI:

36.1 It is submitted by the Advocate of noticees that the "proper officer" to issue Show cause notice under Section 28 of the Act is the Officer who had assessed and cleared the goods at the first instance, as held by Hon'ble Apex Court in the case of **M/s. Canon India Pvt. Ltd.**²⁷, therefore DRI, AZU is not competent authority to issue show cause notice. Hence, the said show cause notice is liable to be dropped.

36.2 I find that certain amendments were made in the Customs Act, 1962 vide Finance Act, 2022. The said amendments are reproduced hereinbelow for sake of brevity:-

"87. For section 3 of the Customs Act, the following section shall be substituted, namely:— Classes of officers of customs. "3. There shall be the following classes of officers of customs, namely:—

²⁶ Customs Valuation (Determination of Price of Imported Goods) Rules, 1988

²⁷ M/s. Canon India Pvt. Ltd. V/s. Commissioner of Customs reported in 2021 (376) ELT 3(S.C.)

- (a) *Principal Chief Commissioner of Customs or Principal Chief Commissioner of Customs (Preventive) or Principal Director General of Revenue Intelligence;*
- (b) *Chief Commissioner of Customs or Chief Commissioner of Customs (Preventive) or **Director General of Revenue Intelligence;***
- (c) *Principal Commissioner of Customs or Principal Commissioner of Customs (Preventive) or **Principal Additional Director General of Revenue Intelligence** or Principal Commissioner of Customs (Audit);*
- (d) *Commissioner of Customs or Commissioner of Customs (Preventive) or **Additional Director General of Revenue Intelligence** or Commissioner of Customs (Audit);*
- (e) *Principal Commissioner of Customs (Appeals);*
- (f) *Commissioner of Customs (Appeals);*
- (g) *Additional Commissioner of Customs or Additional Commissioner of Customs (Preventive) or **Additional Director of Revenue Intelligence** or Additional Commissioner of Customs (Audit);*
- (h) *Joint Commissioner of Customs or Joint Commissioner of Customs (Preventive) or **Joint Director of Revenue Intelligence** or Joint Commissioner of Customs (Audit);*
- (i) *Deputy Commissioner of Customs or Deputy Commissioner of Customs (Preventive) or **Deputy Director of Revenue Intelligence** or Deputy Commissioner of Customs (Audit);*
- (j) *Assistant Commissioner of Customs or Assistant Commissioner of Customs (Preventive) or **Assistant Director of Revenue Intelligence** or Assistant Commissioner of Customs (Audit);*
- (k) *such other class of officers of customs as may be appointed for the purposes of this Act.”.*

88. *In section 5 of the Customs Act,— (a) after sub-section (1), the following sub-sections shall be inserted, namely:— “(1A) Without prejudice to the provisions contained in sub-section (1), the Board may, by notification, assign such functions as it may deem fit, to an officer of customs, who shall be the proper officer in relation to such functions. (1B) Within their jurisdiction assigned by the Board, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may, by order, assign such functions, as he may deem fit, to an officer of customs, who shall be the proper officer in relation to such functions.”; (b) after sub-section (3), the following sub-sections shall be inserted, namely:— “(4) In specifying the conditions and limitations referred to in sub-section (1), and in assigning functions under sub-section (1A), the Board may consider any one or more of the following criteria, including, but not limited to— (a) territorial jurisdiction; (b) persons or class of persons; (c) goods or class of goods; (d) cases or class of cases; (e) computer assigned random assignment; (f) any other criterion as the Board may, by notification, specify.*

(5) The Board may, by notification, wherever necessary or appropriate, require two or more officers of customs (whether or not of the same class) to have concurrent powers and functions to be performed under this Act.”.

97. Notwithstanding anything contained in any judgment, decree or order of any court, tribunal, or other authority, or in the provisions of the Customs Act, 1962 (hereinafter referred to as the Customs Act),— (i) anything done or any duty performed or any action taken or purported to have been taken or done under Chapters V, VAA, VI, IX, X, XI, XII, XIII, XIV, XVI and XVII of the Customs Act, as it stood prior to its amendment by this Act, **shall be deemed to have been validly done or performed or taken;**

(ii) any notification issued under the Customs Act for appointing or assigning functions to any officer shall be deemed to have been validly issued for all purposes, including for the purposes of section 6;

(iii) for the purposes of this section, sections 2, 3 and 5 of the Customs Act, as amended by this Act, shall have and shall always be deemed to have effect for all purposes as if the provisions of the Customs Act, as amended by this Act, had been in force at all material times.

Explanation.— For the purposes of this section, it is hereby clarified that any proceeding arising out of any action taken under this section and pending on the date of commencement of this Act shall be disposed of in accordance with the provisions of the Customs Act, as amended by this Act.” (emphasis added)

36.3 The aforementioned amendments in Section 3 of the Customs Act, 1962 and the validation of action taken under the Customs Act, 1962 vide Finance Act, 2022 have not been stayed by any court of law. I also refer to the judgment of the Hon’ble High Court in the matter of **N. C. Alexander**²⁸, wherein the validity of SCNs issued by DRI was challenged through various writ petitions after **Canon India(supra)** judgment and enactment of the Finance Act, 2022. Hon’ble High Court while disposing of the said writ petitions held that pursuant to the amendment in Section 3 of the Customs Act, 1962 by Finance Act, 2022, officers from the Directorate of Revenue are explicitly recognized as Officers of Customs and Show Cause Notices issued by officers of DRI cannot be assailed in view of validation in Section 97 of Finance Act, 2022 to pending proceedings. Relevant paras of the said judgment are reproduced below:

“295. Thus, officers from Group-B who are already from the Customs Department can be appointed as “Officers of Customs”. Similarly, the Officers of Directorate of Revenue Intelligence (DRI) are appointed as “Officers of Customs” under notification issued under Section 4(i) of the Customs Act, 1962.

297. Further, show cause notices issued under various provisions cannot be stified to legitimize evasion of Customs duty on technical grounds that the Officers from Directorate of Revenue Intelligence (DRI) were incompetent to issue notices and were not officers of customs.

²⁸N. C. Alexander vs Commissioner of Customs and others-2022 (381) E.L.T. 148 (Mad.)

298. Insofar as completed proceedings i.e. where proceedings have been dropped prior to passing of Finance Act, 2022 is concerned, the proceedings cannot be revived. However, the pending proceedings have to be decided in the light of the validation in Section 97 of the Finance Act, 2022.

299. In the light of the above discussion, the challenges to the impugned show cause notices and the Orders-in-Original on the strength of the decision of the Hon'ble Supreme Court in Canon India Private Limited v. Commissioner of Customs, 2021 (376) E.L.T. 3 (S.C.) fail.

308. Rest of the writ petitions in Table-II challenging the impugned show cause notices are dismissed by directing the jurisdictional adjudicating authority to pass appropriate orders on merits and in accordance with law preferably within a period 120 days from the date of receipt of a copy of this order."

312. Pending proceedings are directed to be completed in the light of the validations contained in Section 97 of the Finance Act, 2022." (emphasis added)

36.4 In view of the above, it can be concluded that the issue of jurisdiction of DRI officers to issue SCNs under Section 28 of the Act, stands settled as of now by the Finance Act 2022. Therefore, I find that the noticees' argument that the DRI, AZU is not competent authority to issue show cause notice cannot be accepted. The issuance of the said SCN by DRI is legal and proper.

37. Whether the said SCN is time barred on limitation ground under Section 28 of the Act?

37.1 Advocate on behalf of noticee has argued that the duty demand in the present show cause notice pertains to imports effected during the period August, 2007 to June, 2008, whereas the SCN has been issued on 02.12.2011, thus the entire duty demand is time barred. In this regards, I refer section 28 of the Act, the relevant portion is being extracted as below:

*"28(4) Where any duty has not been 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 11[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".*

"28(11) Explanation 1: For the purposes of this section, "relevant date" means,-

- (a) *In a case where duty is not levied or not paid or short-levied or short-paid or interest is not charged, the date on which the proper officer makes an order for the clearance of the goods;*
- (b) *In case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;*
- (c) *In a case where duty or interest has been erroneously refunded, the date of refund;*
- (d) *In any other case, the date of payment of duty or interest.*

37.2 I find that the said SCN has been issued on 02.12.2011 and the impugned bills of entry pertains to the period from 27.08.2007 to 17.01.2008. Evidence has been found that the importer has indulged in wilful misdeclaration and suppression of facts. Thus the said SCN was issued within the statutory time limit of five years provided in sub section 4 of section 28 of the Act. Hence, I find that the impugned SCN is not time barred.

38. Confiscation of imported goods and penal action against the Noticees:

- a) I find that M/s. Gururaj Steel, the importer, by their acts of omission and commission as discussed above have contravened the provisions of Section 46(4) of the Act, in as much as they failed to declare the true value of the goods while filing the bill of entry for clearance from Customs. The suppression and mis-statement of the value of goods was apparently done to evade the customs duty leviable thereon in contravention of Section 14 of the Act, read with the CVR, 2007 and CVR, 1988. All these acts on the part of the importer have rendered the said goods liable for confiscation under the provisions of 111(m) of the Act, 1962.
- b) I find that M/s. Gururaj Steel had failed to declare the actual value of Rs. 4,03,19,168.94/- (Re-determined Value) at the time of clearance of the said goods in the Bills of Entry as detailed in the Annexures I, IIA, IIB, IIC & III to the SCN. Accordingly, differential Customs duty amounting Rs. 81,60,185/- payable on the said goods was short paid by the importer. I find that they had deliberately and wilfully mis-declared the value of the goods and also suppressed the actual value of the goods in contravention of the various provisions of the Act and the Rules ibid made thereunder as discussed above with an intent to evade payment of Customs duty of Rs. 81,60,185/- as detailed in Annexures I, IIA, IIB, IIC & III to the SCN. Hence, the provisions of Section 28(4) of Act, invoking the extended period for demand of duty is applicable in the present case. M/s. Gururaj Steel, Mumbai is also liable to pay interest at the applicable rates under the provisions of Section 28 AA(1) of the Act.
- c) I find that the aforesaid acts of wilful mis-statement and suppression of facts by M/s. Gururaj Steel has led to short levy of duty of Rs.81,60,185/- which constitutes an offence of the nature described in Section 114A of the Act. Thus, M/s. Gururaj Steel has rendered themselves liable for penalty under Section 114A of the Act., in as much as the duty amounting to Rs.81,60,185/- was short levied by reason of wilful mis-statement and suppression of facts as

they mis-stated the value to the department by presenting Invoices of overseas suppliers reflecting a lower value than the actual transaction value for assessment, with an intent to evade payment of duty as detailed in the Annexures-I, IIA, IIB, IIC, & III to the SCN.

39. I find that M/s. Gururaj Steel, Mumbai have deliberately and knowingly indulged in mis-stating the value of goods imported by them with a view to evade payment of Customs duty, which renders the goods liable for confiscation under the provisions of Section 111 (m) of the Act., Thus, the above mentioned acts of omission and commission of M/s. Gururaj Steel, Mumbai, have rendered themselves liable to penal action under the provisions of Section 112 (a) of the Act. Since I am inclined to impose a penalty on them under Section 114A, I cannot impose a penalty under Section 112 in terms of the 5th proviso to Section 114A.

40. I find that the importer managed invoices with lower value and presented the same for assessment before the Customs Authorities at the material time of import. They never presented the actual import invoice before the Customs authorities and the bills of entry were filed based on undervalued invoices. They also suppressed the payments of advances made by them to the overseas suppliers for the shipment of the goods. Over and above, the transfer of differential amounts was also not made through any banking channel. In this way, they had also suppressed the flow of additional amounts from the department. I find that Shri Pravin Shah, Partner of M/s. Gururaj Steel, Mumbai has consciously and knowingly indulged in deliberate undervaluation of the goods imported by M/s. Gururaj Steel. His active and knowing involvement in undervaluation of the goods is clearly forthcoming from the evidence on record. Shri Pravin Shah has therefore, actively, and knowingly involved himself in evading Customs duty by resorting undervaluation of the goods imported, which renders the goods liable for confiscation under Section 111(m) of the Act. For the said acts of omission and commission, Shri Pravin Shah, Partner of M/s. Gururaj Steel, Mumbai has rendered himself liable for penal action under the provisions of Section 112 of the Act.

41. Redemption Fine is imposable even if goods are not available:

41.1 I find that the Hon'ble High Court of Chennai, in the case of **Visteon Automotive Systems India Limited**²⁹, has held that availability of goods is not necessary for imposing redemption fine, stating thereby as "*....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 the 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.*

²⁹ Visteon Automotive Systems India Ltd. Vs CESTAT, Chennai-2018 (9) G.S.T.L. 142 (Mad.)

41.2 I find that the above view of the Hon'ble Madras High Court was relied upon by Hon'ble Gujarat High Court in the case of **M/s. Synergy Fertichem Pvt. Ltd**³⁰. Hon'ble Gujarat High Court at para 174 and 175 held that "*We would like to follow the dictum as laid down by the Madras High Court in Para-23 in the case of Visteon Automotive Systems India Limited Vs. CESTAT, Chennai*".

41.3 Hence, I conclude that redemption fine is imposable on imported goods even if the impugned goods have been cleared from the customs port and are not presently available for confiscation.

42. Penalty in remand proceedings not to be enhanced:

42.1 I find that various Courts in the cases of **Banshi Dhar Lachhman Prasad**³¹, **SPL Industries Limited**³² and **Gautam Diagnostic Centre**³³ have held that remand proceedings ordered on a person's own appeal cannot be subjected to a greater penalty than that imposed on him in the original order unless specifically stated in the remand order.

42.2 I find that Hon'ble CESTAT remanded the present case to Adjudicating Authority for fresh adjudication with the directions that *as a rule of consistency, this matter may also go back to the adjudicating authority for appropriate decision on the basis of outcome of the Apex Court judgment in the case of Mangali Impex*. The Hon'ble CESTAT refrained from expressing any observations on the merits of the case. Hence, considering the aforementioned judgements, I am inclined to agree with the first Adjudication Order No. 73/2009/CAC/CC(I)/SHH/Gr.VA dated 06.05.2009 on the quantum of penalty imposed.

43. In view of the foregoing facts, I pass the following order:

ORDER

43.1 In respect to the demand raised vide Annexure-I, IIC & III to the SCN:

a) I reject the declared value of Rs. 1,00,47,428/- ; Rs. 10,14,526/- and Rs. 34,58,968/- of the goods as detailed in Annexure-I, IIC & III of the SCN respectively in terms of the provisions of Rule 12 and order for redetermination of assessable value as Rs.2,26,00,035/- ; Rs. 29,25,532/- and Rs.1,25,54,772/- , in terms of CVR 2007 and Section 14 of the Act as shown in Table-13 above.

b) I order for demand and recovery of differential duty of **Rs. 77,36,314/- (Rs. Seventy Seven Lakhs Thirty Six Thousand Three Hundred and Fourteen Only)** as detailed in the Annexure-I, IIC and III of the SCN in the matter of M/s. Gururaj Steel under Section 28 (4) of the Act by invoking the extended period.

³⁰ M/s. Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.)

³¹ Banshi Dhar Lachhman Prasad & Anr-1978 (2) E.L.T. (J 385) (S.C.)

³² SPL Industries Limited vs Commissioner of Central Excise, New Delhi-II-2003(159) ELT 720(T)

³³ Gautam Diagnostic Centre vs Commissioner Of Customs, Mumbai-2003(159) ELT 678(T)

c) I order to recover the interest as applicable on the amount of differential duty in terms of Section 28AA of the Act.

d) I order for confiscation of goods as detailed in Annexure-I, IIC and III to the SCN collectively redetermined value at Rs. 3,80,80,339/- under Section 111(m) of the Act. However, in lieu of confiscation, I hereby impose a redemption fine of **Rs.10,00,000/- (Rs. Ten Lakhs only)**, under Section 125 of the Act.

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

f) I impose a penalty of **Rs. 15,00,000/- (Rupees Fifteen Lakhs Only)** on Shri Pravin Shah, Partner of M/s. Gururaj Steel under section 112(a) of the Act.

43.2 In respect to the demand raised vide Annexure-IIA & IIB to the SCN:

a) I reject the declared value of Rs. 5,78,442/- of the goods as detailed in Annexure-IIA under the provisions of Rule-12, and order for redetermination of assessable value as Rs. 12,99,028/-, in terms of CVR 2007 and Section 14 of the Act as shown in Table-13 above.

b) I reject the declared value of Rs. 4,18,484/- of the goods as detailed in Annexure-IIB under the provisions erstwhile Rule 10A of CVR 1988, and order for redetermination of Rs. 9,39,803/-, in terms of CVR 1988 and Section 14 of the Act as shown in Table-13 above.

c) I order for demand and recovery of differential duty of **Rs. 4,23,871/- (Rs. Four Lakhs Twenty Three Thousand Eight Hundred and Seventy One only)**, as worked out in detail in the Annexure IIA & IIB to the show cause notice under Section 28(4) of the Act by invoking the extended period.

d) I order to recover the interest as applicable on the amount of differential duty in terms of section 28AA of the Act.

e) I order for confiscation of goods detailed in Annexure IIA & IIB to the Show Cause Notice collectively redetermined value at Rs. 22,38,830/-, under Section 111(m) of the Act. However, in lieu of confiscation, I hereby impose a redemption fine of **Rs.1,00,000/- (Rs. One Lakh only)** under section 125 of the Act.

f) I impose a penalty equal to the short paid duty and interest upon the importer, M/s. Gururaj Steel under Section 114A of the Act, provided that where such duty and interest is paid within thirty days from the date of the order of the proper officer determining such duty, the

amount of penalty liable to be paid under this section shall be twenty-five percent of the duty or interest, as the case may be, so determined. The benefit of reduced penalty shall be available subject to condition that the amount of penalty so determined has also been paid within the period of thirty days.

g) I impose a penalty of **Rs.1,00,000/- (Rupees One Lakhs only)** on Shri Pravin Shah , Partner of M/s. Gururaj Steel under section 112(a) of the Act.



Vivek
30.03.23
(Vivek Pandey)
आयुक्त सीमाशुल्क (आयात-I)
Commissioner of Customs (Import-I),
नवीन सीमाशुल्क भवनमुंबई-01
New Custom House, Mumbai-01

To,

1. M/s. Gururaj Steel,
135/141, T. P. Street,
6th, Kumbharwada, Mumbai-400004.
2. Shri Pravin Shah,
Partner, M/s. Gururaj Steel,
135/141, T. P. Street,
6th, Kumbharwada, Mumbai-400004.



Copy to:

- 1) The Pr. Chief Commissioner of Customs, New Customs House, Mumbai Zone-I, Mumbai-400001.
- 2) The Chief Commissioner of Customs, Jawaharlal Nehru Customs House, Nhava Sheva, Mumbai Zone-II-400707.
- 3) The Commissioner of Customs (Import), Jawaharlal Nehru Customs House, Nhava Sheva, Post: Uran, District: Raigad, Maharashtra-400707.
- 4) The Additional Director General, DRI, AZU, "Rupen Bungalow", Jain Merchant Society, Paldi, Ahmedabad-380007.
- 5) The Asstt. Commissioner of Customs, Gr.IV, NCH, Mumbai-400001.
- 6) The Deputy Commissioner of Customs, Adjudication Cell, NCH, Mumbai.
- 7) Office copy.

