



## भारत सरकार

वित्त मंत्रालय/ राजस्व विभाग  
केंद्रीय अप्रत्यक्ष कर एवं सीमाशुल्क बोर्ड – मुंबई अंचल-1, भारतीय सीमाशुल्क  
**आयुक्त सीमाशुल्क (आयात-1) का कार्यालय**  
द्वितीय मंजिल, नवीन सीमाशुल्क भवन, शूरजी वल्लभदास मार्ग, बेलार्ड एस्टेट,  
मुंबई-400001.

दूरध्वनि-22757401 फैक्स-22757402

ई-मेल: [adjn-commr-imp1nch@gov.in](mailto:adjn-commr-imp1nch@gov.in)

फा.सं. : S/10-Adjn-64/Gr.V/2012-13

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

आदेश दिनांक: 31.07.2023  
जारी दिनांक: 14.08.2023

सी.ए.ओ. क्रमांक : 32/2023-24/CAC/CC(IMPORT-1)/VP/ADJ(IMP-1)  
DIN No. 20230877000000018016

### 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)**  
2<sup>nd</sup> FLOOR, NEW CUSTOM HOUSE, SHOORJI VALLABHDAS ROAD, BALLARD ESTATE,  
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F.No. : S/10-Adjn-64/Gr.V/2012-13

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

Date of Order: 31.07.2023  
Date of Issue: 14.08.2023

C.A.O. No.: 32/2023-24/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I)  
DIN No. 20230877000000018016

**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.

**Sub: Second round of adjudication in respect of Show Cause Notice dated 11.07.2012<sup>1</sup> issued vide F.No. DRI/MZU/B/Inv-13 /2010-11/11250 by DRI, MZU to M/s. Gopalji Heavy Lifters & others regarding evasion of customs duty by undervaluation in the import of 'used cranes' -regarding.**

This is the second round of adjudication of the said SCN after the Hon'ble Tribunal vide Order vide **Order No. A/93798-93800/16/CB dated 15.11.2016<sup>2</sup>** remanded back the 1st OIO dated 04.09.2014 and ordered that *"The lack thereof requires rectification by the original authority for which purpose we set aside the impugned order. We direct that the matter be heard afresh with opportunity afforded to noticees for cross-examination of deponents. The original authority is also directed to bear in mind the specific acts of omission and commission that has been held to be outside the authority of law. With these directions, we allow the appeals by way of remand."*

#### **Brief Facts of the case**

2. Intelligence was gathered by the **Directorate of Revenue Intelligence (DRI), Mumbai Zonal Unit<sup>3</sup>** that several syndicates of crane importers were involved in evasion of customs duty by undervaluing the said imports. The intelligence also indicated that importers were getting the import invoices prepared by working out the value of the crane @28 to 40 per Kg. of the weight of the crane as against the actual transaction value of the said cranes. In addition to the above, importers were also suppressing the freight charges paid to the shipping line. The import invoices are prepared to show the value of the cranes as "on CIF basis" whereas the purchase was mostly on "FOB basis". The said importers were also getting the 'Bills of Lading' prepared to show the freight as prepaid in collusion / connivance with the Shipping Agents. Briefly stated, modus operandi was to evade payment of duty on the cost as well as the freight component of the import value of the cranes as the freight of the crane formed a sizable chunk of the CIF value of the crane. The differential amount pertaining to the suppressed value and the freight component was being remitted by the importers overseas through non banking channels; that the bills of entry for clearance of the said cranes from Mumbai / Nhava Sheva port were filed by one **Shri Madan Lalwani<sup>4</sup>** through M/s. M. Dharamdas & Co. (CHA 11/100).

3. One of the crane importers whose name figured in the above stated intelligence was **M/s. Gopalji Heavy Lifters<sup>5</sup>**, (IEC No. 0305052101) having office at 17/18, Kashiram Jamnadas Building, 5, P.D.Mello Road, Mumbai-400 009. It was gathered that the person controlling the affairs of the company was **Shri Jitesh Shankarlal Vador<sup>6</sup>**, who was operating from the aforesaid office of the company. It was also gathered that Shri Jitesh

<sup>1</sup> Also referred to as the SCN

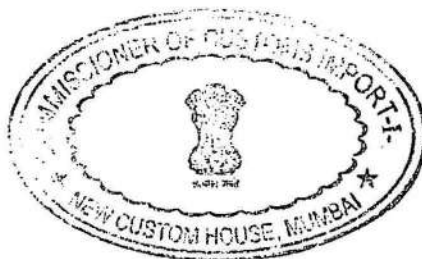
<sup>2</sup> Also referred to as the Remand Order

<sup>3</sup> In short DRI

<sup>4</sup> Also referred to as Noticee-4

<sup>5</sup> Also referred to as importer or Noticee-1

<sup>6</sup> Also referred to as Noticee-3



Vinod  
31.07.23

Shankarlal Vador has caused import of used cranes in the name of **M/s Dhanlakshmi Cranes**<sup>7</sup> (IEC No. 0307030237).

**3.1** Acting on the above intelligence, investigations were initiated against major importers of cranes figuring in the intelligence, including M/s. Gopalji Heavy Lifters, Mumbai.

**3.2** The office premises of M/s. Gopalji Heavy Lifters situated at 17/18, Kashiram Jannadas Building, 5, P.D Mello Road, Mumbai- 400 009 was searched in the presence of independent panchas (witnesses) and Shri Jitesh Vador. During the course of search of the above premises, certain documents and a Central Processing Unit (CPU) of a computer were taken over under panchanama dated 19.11.2010.

**4.1** Earlier, the residential and office premises of Shri. Madan Lalwani, who was attending to clearance of cranes by filing bills of entry through M/s. M. Dharamdas & Co. (CHA 11/100)] were searched. Large number of incriminating documents indicating clearance of cranes undertaken on behalf of various importers were taken over for investigations under panchanama dated 21.10.2010. Blank cheques for huge amounts issued by various parties and cash amounting to 23,39,500/- were also taken over for further investigations.

**4.2** Likewise, the residential and office premises of Shri Brijesh Gala [who was engaged in transferring money overseas through unofficial means (hawala) on behalf of various crane importers] was also searched. During the course of search, incriminating documents, Indian currency of Rs. 10.5 lakhs and foreign currency of 5,000 UK Pounds (equivalent to Rs. 3.5 lakhs) were taken over under panchanama dated 21.10.2010.

**4.3** The office premises of M/s. NMT Shipping Pvt. Ltd. (The Shipping lines which had transported a few of the cranes imported by M/s Gopalji Heavy Lifters from overseas to India) at 1st Floor, Ilaco House, Sir P.M.Road, Fort, Mumbai- 400 001 was searched. During the course of search, certain documents relating to imports and an external hard disk of computer containing data, were recovered under panchanama dated 21.10.2010.

**5.** Statements of following persons were recorded on 21.10.2010 under the provisions of section 108 of the **Customs Act, 1962**<sup>8</sup>.

**5.1** Statement of Shri Madan Lalwani was recorded on 21.10.2010, wherein he inter alia stated as under:-

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

<sup>7</sup> Also referred to as Noticee-2

<sup>8</sup> Also referred to as the Act



- (ii) his understanding with Shri Vikram Janghiani was that he (i.e. Madan) would bring business into the company and Vikram Janghiani would pay him 20% commission on profits;
- (iii) from the year 1985, he was in to Customs clearance of imported goods;
- (iv) as regards his status in M/s. Dharamdas & Co., there are 3 different types of accounts in the firm, namely: (a) account no. 1 all the import clearance work relating to M/s. J.K. Industries: (b) account no 2-import clearance work of machinery, PTA, second-hand cranes etc. (c) account no 3 all export clearance related work. The account no. 2 was under his exclusive control.
- (v) all the importers of cranes, interact with him only, for the clearance of the cranes imported by them;
- (vi) the cash amount of Rs. 23,39,500/- found in his residence, pertained to his business.
- (vii) Shri Vikram Janghiani is not aware of the cash amount of Rs. 23,39,500/- as he does not inform him about cash transactions, in connection with Customs clearance work;
- (viii) he advises the importers that if price of the 'crane' is less than Rs. 40/- per kg. of its weight, then Customs authorities will not accept it;
- (ix) most of the importers follow the bench mark and calculate the value at the rate of Rs. 40/- per kg. of the weight of the crane.

5.2 Statement of Shri Brijesh Manilal Gala was recorded on 21.10.2010 under the provisions of Section 108 of the Act wherein he interalia stated that:

- (i) after leaving college he had joined his father in the business of silverware at 39/41, Dhanji Street, Hem Bhavan, Mumbai;
- (ii) since business at that time was not doing well they had started money transfer business side by side; by money transfer, he meant that someone can pay them money in Mumbai and have it collected in major metros; likewise money can be delivered in the major metros and collected from them here at Mumbai;
- (iii) they get a commission of Rs. 300/- per lakh of such money transferred;
- (iv) after his father retired, the entire business of money transfer was handled by him only;
- (v) his business was conducted in his personal name i.e. 'Brijesh'; in this business, the entire activity was on word of mouth and trust;
- (vi) no documents like formal receipt was either made or delivered;

(vii) his daily turnover was not fixed; for example, on some days there was no money transfer; that on some days the amount goes upto 40 to 50 lakhs;

(viii) he was at home in the morning when his residence was searched by DRI officers in the presence of two witnesses, that during the search, some documents were recovered, which were taken over by the officers under a panchanama; copy of the panchanama was given to him;

(ix) after completion of the search of his residence, he accompanied the officers to his shop at 39/41, Dhanji Street, that there also, the DRI officers conducted a search of the shop premises;

(x) during the search, the officers found cash in Indian currency of Rs. 10.5 Lakhs, GBP 5000 and certain tax invoices of different goods;

(xi) the same were also taken over by the officers under a panchanama; copy of the panchanama of the search of the shop was also given to him;

(xii) the Indian currency was his rolling cash in the business of money transfer, that the foreign currency of GBP 5000 was recently obtained by him with a view to sell it on some profit, say a profit of Rs. 0.50 per pound; some times, some people especially those who make foreign trips require extra cash; such people buy foreign currency at a small premium;

(xiii) tax invoices found in his shop relate to cheque discounting; he also does business in cheque discounting;

(xiv) he had known Shri Mahesh Aggarwal of M/s. Avi Trexim and Shri Sanjay Soni of M/s. R.S. Cranes very well;

(xv) all the above persons were in the business of import and sale / hiring of cranes; those persons had been transferring money through him in India as well as abroad;

(xvi) whenever those persons wanted their cash money to be paid in India or abroad, they sent the money to him; thereafter, as per their instructions, the money was remitted and delivered at the destination that they wanted;

(xvii) for transmitting money anywhere in the world, he had a contact by name of Pappu bhai (whom he addressed as 'Uncle') in Dubai; he had money transfer business with Pappu bhai; whenever any person (including the above stated persons), wanted to send money abroad, they sent the money in Indian rupees to him in his office; the rate of exchange and his commission was decided on telephone; upon receipt of money and after deducting his commission, he called up Pappu bhai and conveyed the details for remitting the money; the

details namely bank account number, name of the party, name of the bank etc. were faxed by him to Pappu bhai;

(xviii) thereafter, Pappu bhai transmitted the money as per those details; likewise, whenever any NRI desired to receive the money in India, he handed over the money to Pappu bhai in Dubai and on receipt of message from Pappu bhai, he delivered the money here in India at his office; he did not have the complete postal address of Pappu bhai; his contact with Pappu bhai and entire business was conducted on phone; the telephone number of Pappu bhai was 0097150 3846212.

**5.3** Statement of Shri Anandkumar Manath, Director, M/s. N.M.T. Shipping Pvt. Ltd. (NMT for short), Mumbai was recorded on 21.10.2010 under the provisions of Section 108 of the Act, 1962, wherein he interalia stated as under:-

(i) M/s NMT Shipping P.Ltd, Mumbai were in the business of freight forwarding and logistics. They specialise in RO/RO (Roll On and Roll Off) shipments. Their clients can be broadly classified under the following categories:-

- (a) car and vehicle manufacturers,
- (b) earth moving equipment buyers/sellers,
- (c) heavy lift equipment buyers/sellers,
- (d) auctioneers,
- (e) personal goods viz cars,
- (f) various other containerized shippers;

(ii) Some of their clients are referred to them by their principals / other group offices, while some are developed by their local team. Their duties include looking after the shipments of the clients generated by them and also any shipment consigned to them by NMT offices worldwide;

(iii) A consignment booked by their counterpart abroad is released by them in India after receipt of release instructions from the concerned offices;

(iv) When the cargo is booked with their counterparts abroad, they issue a gate pass or the necessary local documents which allows the cargo to be carted inside the terminal. Once the cargo is loaded, the load port office issues the bill of lading on the basis of instructions from the shipper. The terms of payment from the shipper are either FOB or CIF. In either case, the shipper or his representative gives the instructions for preparation of the bill of lading. The consignee can also comment and have the changes requested;

(v) In case of FOB shipments, the bill of lading is given to the consignee after collection of freight, whereas, in the case of CIF shipments, the bill of lading is handed

over to the shipper after receipt of payment or in the alternative, deemed surrender and release instructions are sent by the overseas offices;

(vi) As per the procedure followed on 'Freight collect shipments', they collect freight locally and remit the same overseas while in case of 'Freight prepaid shipments', they release cargo on the basis of release instructions received from the overseas office;

(vii) Since the freight to the final carrier is paid by the overseas offices, the freight amount is remitted overseas;

(viii) NMT India collects a local endorsement fee and requests the final carrier to release the cargo in India on the basis of the above stated instructions. They were also paid 2.5% of the freight charges for the services rendered by them;

(ix) The cargo booking and leads are given by the consignees, or shippers or brokers. After shipment, instructions are passed to the overseas offices whether the shipments are freight collect or freight prepaid. In some cases, the shipper bears the freight, while in some cases, the importer pays the freight. In some cases, the importer expresses his desire to pay freight abroad in return for a bill of lading indicating that the consignment is a freight prepaid consignment. In such cases, the importer is asked to make the payment to their Dubai Office, who in turn, raises invoices on such importers or shippers. The payment is then made by the importer to NMT LLC bank account in Dubai. For the sake of convenience, the invoices are sometimes physically prepared in their Mumbai Office. On receipt of payment confirmation from their Dubai office, they release the bill of Lading to the concerned importer;

(x) He has seen page numbers 192 and 193 in the box file marked 1 which was taken over from their office. The document at page number 193 was the invoice raised by their Dubai office to M/s RS Cranes in respect of a LUNA GT 160 crane shipped under Bill of Lading dated 12.1.2008. The document at page number 192 contained two mails exchanged between their Mumbai Office and Dubai Office. M/s RS Cranes was the importer of the crane reflected in the said invoice. M/s RS Cranes chose to make the payment in Dubai in return for a bill of lading indicating the freight to be prepaid. On the request of M/s RS Cranes, an invoice was raised in their Dubai Office with a request to confirm receipt of the payment. On receipt of confirmation from their Dubai office, they endorsed the bill of lading for release of cargo from the shipping line;

(xi) He has seen page numbers 108 and 109 of the box file marked 1. The document at page 109 was an invoice dated 28.2.2009 on M/s Appolo Cranes Pvt. Ltd for the shipment of GODDWALD Crane under Bill of Lading dated 28.1.2009 while the mails at page 108 indicated that the invoice was sent from their Mumbai Office to their Dubai Office, who confirmed receipt of AED 118000;

(xii) All the importers of cranes into India, who had opted for freight at Dubai in the manner explained by him above, were issued bills of lading by NMT India indicating the freight to be pre -paid;

(xiii) As a shipping company, they treated their clients who had made the payment abroad as 'pre-paid clients' and those clients, who had paid the same in India as freight collect clients'.

**5.4** Further statement of Shri Brijesh Gala was recorded on 25.10.2010 under the provisions of Section 108 of the Act wherein he inter alia stated that

(i) In his statement dated 21.10.2010 (which was shown to him) certain details were not revealed by him;

(ii) He had done money transfer for many persons who were engaged in the business of cranes;

(iii) he had made a list in his own handwriting of all such parties from the contact details available in his cell phone number 98330 84450 (Nokia handset model N72);

(iv) He had also indicated the name of the person and the contact number as also the approximate amount that he had transferred overseas for these parties;

(v) He wished to clarify that the amounts indicated by him were approximate amounts stated by him from knowledge;

(vi) He had not kept any records of the above stated money transfer, in his business no such record was maintained and the entire business runs on trust and confidence;

(vii) Once the deal was confirmed, whatever paper / chit containing the details of money transfer was prepared, it was immediately destroyed;

(viii) Pappu, mentioned in his statement dated 21.10.2010 was popularly referred as 'Uncle';

(ix) In fact, Pappu bhai was the Dubai counterpart of Akhil who was having a Full Fledged Money Changer business in the name of A.N. Forex near GPO, Mumbai;

(x) The contact details of Akhil were Office -22610799, 22665936, Mobile No. 9821798722, 9004706224;

(xi) whenever any money was to be transferred abroad, he checked the prevalent rate of exchange from Akhil;

(xii) After the rate was fixed he gave confirmation of certain amount to Akhil;



- (xiii) The Indian equivalent money, after retaining his commission, was handed over to the persons of Akhil or was delivered by him as per instructions of Akhil;
- (xiv) Two persons of Akhil viz Babu (Cell Phone No. 98705 28211) and Asif (Cell Phone No. 9821175848) generally came to his shop to collect the money from him; as per instructions of Akhil, the details, where money was to be transferred, were conveyed by him to Akhil as well as to Pappu bhai on cell phone numbers viz. Akhil (9821798722, 9004706224) and Pappu (00971503846212);
- (xv) Likewise, he had another contact in Dubai by name of Ashok whose contact details were Mobile No. 00971506269842 and fax 0097142352513;
- (xvi) Ashok was an associate of Jeetu Patel who has a shop in Kamathipura, Mumbai. The contact number of Jeetu Patel was 9664044977;
- (xvii) For transferring money abroad, he also checked the prevalent rate of exchange with Jeetu Patel;
- (xviii) Generally, he settled the deal between the better rate quoted by either Akhil or Jeetu Patel, in the case of Jeetu Patel, the details (i.e the name of the beneficiary party, account no, amount etc.,) where the money was to be transferred overseas, was forwarded by him to Ashok at Dubai on his fax no. 0097142352513 through Aakashwani Communication Center, Khara Kua, Zaveri Bazaar;
- (xix) Jeetu Patel did not get into the hassles of transferring details once the amount and rate was fixed with him;
- (xx) Jeetu Patel wanted him to directly send the details to Ashok through fax and confirm the delivery of the message to him (Jeetu Patel);
- (xxi) Persons of Jeetu Patel used to collect the Indian equivalent money from him for the business done through Jeetu Patel;
- (xxii) His entire business of overseas money transfer was done by him with Pappu (through Akhil) and with Ashok (through Jeetu Patel),
- (xxiii) On 21.10.2010, he was scared to reveal the name of Akhil and Jeetu Patel fearing retaliation from them, however, after he reached home on 21.10.2010 and talked to his parents and his wife, he was asked to close this business and extend full cooperation to the department.
- (xxiv) Accordingly, he decided to reveal all the details; the contact details given by him above were all stated in his cell phone; he had transferred an amount of Rs. 2 crores (approximately) abroad on behalf of Shri Jitesh Vador of M/s Gopalji Heavy Lifters.

5.5 Both Shri Aquil Fruitwala and Shri Jeetu Patel, who were named by Brijesh Gala in his above statements, were summoned and their statements were recorded under section 108 of the Act who confirmed the facts stated by Shri Brijesh Gala in his above statements.

5.6 Further statement of Shri Madan Lalwani was recorded on 27.10.2010 under the provisions of Section 108 of the Act wherein he inter alia provided the procedure that was followed in his office right from the stage of receipt of the job for clearance upto the stage of final clearance/delivery of cargo along with the name of his employee (with details of documentation handled by them) in following that procedure. Shri Madan Lalwani further inter alia stated that

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

6.1 Statement of Shri Jitesh Vador was recorded under section 108 of the Act 1962 on 19.11.2010 wherein he inter alia stated that:

- (i) He joined his family business of hiring of cranes in the year 2000;
- (ii) In the year 2005, after family partition, they floated a partnership firm viz. M/s Gopalji Heavy Lifters;
- (iii) In this firm, there are five partners viz. Shri Shankarlal Vador (i.e. his father), Shri Chhaganlal Vador (his uncle), Jitesh Vador, Rahul Vador (his brother), Gaurang Vador (his cousin, son of Chhagan Vador);
- (iv) He was the managing partner of the firm;
- (v) The bank account of his firm was maintained at Mahanagar Cooperative bank Ltd, Camac Bunder branch and RBS Bank, Nariman Point branch, HDFC bank, Crawford Market branch;

- (vi) In the year 2005, the business of Gopalji Heavy Lifters was hiring of cranes;
- (vii) Those cranes (15 in numbers) came into their possession as their share from the family business which was partitioned, they also purchased some used cranes from the local market;
- (viii) They imported their first crane in the name of Gopalji Heavy Lifters somewhere in the beginning of the year 2007;
- (ix) Two used Coles cranes were imported by them from M/s Crane and Equipment Ltd, Jabel Ali,
- (x) Thereafter they had imported about 14 cranes;
- (xi) Somewhere in the middle of the year 2007, floated a partnership firm in the name of 'Dhanlakshmi Cranes';
- (xii) In that firm he himself, his daughter Dhvani, his mother-in-law Smt Preeti Bhanushali and HUF of his father-in-law Shri Purushottam Bhanushali were partners;
- (xiii) M/s Dhanlakshmi Cranes was also managed by him; he had imported one Gottwald AMK crane from Malta in the name of that company.

6.2 During the above statement, Shri Jitesh Vador was shown a typed chart containing the details of the used cranes which had been imported in the name of his firms viz. M/s Gopalji Heavy Lifters as well as M/s Dhanlakshmi Cranes. He was also shown a bunch of job dockets of the clearing agent M/s M. Dharamdas & Co (CHA No 11/100) and was informed that those job dockets contained documents pertaining to the import and clearance of the cranes, details of which were mentioned in the typed chart. He was asked to go through the documents contained in the job dockets and compare the same with the details mentioned in the typed chart to satisfy himself that the details were correctly recorded. After satisfying himself, Shri Jitesh Vador interalia stated that the details were correctly mentioned in the typed chart; that they had imported 15 cranes in the name of Gopalji Heavy Lifters and 1 crane in the name of Dhanlakshmi Cranes; that in addition, they had imported one Gottwald AMK crane, the bill of entry for clearance of which was filed through CHA Damani Shipping Pvt Ltd.; the said crane was imported by them somewhere in May/ June 2010; the said crane was purchased by him on high sea sale basis from Shri Sanjay Vijan of Ashtavinayak Cranes; one Krupp KMK 6255 crane had been imported by them from USA; they had filed a Bill of entry for clearance of the same through CHA M/s M. Dharamdas & Co. (CHA No 11/100); the said crane was pending clearance in docks.

6.3 During the above statement, Shri Jitesh Vador indicated the extent of under valuation in respect of cranes imported by them and further stated that the cranes imported

by them in the name of M/s Gopalji Heavy Lifters as well as M/s Dhanlakshmi Cranes were imported and cleared by them for hiring purpose only and not for trading; in M. Dharamdas & Co. (CHA 11/100), he had always dealt with Madan Lalwani for the clearance of the above cranes; that they were paying Madan Lalwani 5% of the value of the cranes in addition to usual service (agency charge) of 1 % as his clearing charges; that Shri Madan Lalwani was charging this amount for advising on the value to be declared in the import invoice and for taking care of the Customs officers for smooth clearance of the cranes imported by them; that earlier, he used to work out the value by multiplying the weight of the crane with 25/- to 28/-; that lately, the said value was worked out at the rate of 40/- or so of the weight of the crane (i.e. depending on the condition and its vintage).

6.4 During the above statement, **Shri Jitesh Vador submitted a chart (prepared in his own handwriting) showing the undervaluation against each crane which was imported by them and further stated that differential amounts were sent to the overseas suppliers through Brijesh Gala who was into the business of money transfer; that he used to contact Brijesh Gala on his mobile no. 9833084450 or on his telephone no. 23441826 for transferring the money abroad; that Brijesh Gala used to quote the rate at which he would accept the transfer; that upon agreement, the bank details of the overseas supplier were telephonically communicated to Brijesh Gala and equivalent money in Indian rupees including his (Brijesh) commission was reached to him in advance; that all the partners in both their firms have already reflected on the aspect of undervaluation; that they all were aware that investigations into import of cranes were initiated by DRI in the last month and beans were spilled by Shri Madan Lalwani and Brijesh Gala; that pending quantification of the duty evaded and finalization of investigation, he was willing to make a voluntary deposit of 1 crore.**

7. During the investigation, **M/s Gopalji Heavy Lifters made the following voluntary duty payments favouring the Commissioner of Customs towards their Custom duty liability** arising out of import of cranes on understated values:

**Table-1**

Sr. No.	Pay Order No. / Cheque no.	Bank	Amount(Rs.)	Remarks
1	Pay order no. 112785 dated 20.11.2010	HDFC bank Crawford Market Branch, Mumbai	50,00,000/-	Deposited in the Government Treasury at New Custom House, Mumbai vide TR-6 Challan dated 29.11.2010
2	Pay order no. 114900 dated 20.12.2010	The Mahanagar Coop Bank Ltd, Carnac Bunder, Mumbai	50,00,000/-	Deposited in the Government Treasury at New Custom House, Mumbai vide TR-6

				Challan dated 28.12.2010
		<b>Total</b>	<b>1,00,00,000/-</b>	

**8.1** Under letter F.No.S/26-Misc-217/2010 VA (Part) dated 21.01.2011, the Deputy Commissioner of Customs, Appraising Group VA, New Custom House, Mumbai forwarded a bill of entry no. 966400 dated 13.09.2010 filed by M/s Gopalji Heavy Lifters for clearance of a used Krupp KMK 6275 crane on declared value of USD 5,35,000/- CIF.

**8.2** During the ongoing investigations, Shri Jitesh Vador had admitted that the actual transaction value of this crane was USD 5,90,000/- CIF. Under letter of even number dated 28.01.2011, the Commissioner of Customs (Imports), New Custom House, Mumbai was informed about the above facts with request for clearance of the aforesaid crane on provisional basis.

**8.3** The aforesaid Krupp KMK 6275 crane covered under bill of entry no. 966400 dated 13.09.2010 was provisionally assessed to duty on the admitted value of **USD 5,90,000/- CIF** and duty of Rs. **67,27,903/-** was paid by the importer. In addition, to safeguard the interest of revenue a bank guarantee of Rs. **28,16,000/-** was furnished by the importer alongwith a Bond/Legal Undertaking.

**9.1** Further statement of Shri Jitesh Vador was recorded under section 108 of the Act on 05.07.2012 wherein he interalia stated that:

(i) He had earlier appeared in DRI office and given his statement in relation to cranes imported by him in the name of their partnership firms M/s Gopalji Heavy Lifters and M/s Dhanlakshmi Cranes;

(ii) **Admitting undervaluation in import of those cranes, he had deposited an amount of 1 crore towards his customs duty liability;**

(iii) The facts stated by him in his statement dated 19.11.2010 were true; however, in his statement, the extent of undervaluation admitted by him was not correct;

(iv) He did not give the actual price of these cranes, as he was scared of arrest by DRI;

(v) His CHA Shri Madan Lalwani and a few importers of cranes were already arrested by DRI;

(vi) However, since then his conscience had been biting him; he did not want to hold back any facts from DRI; he had appeared in DRI office to inform the correct prices on which he had purchased those cranes from his overseas suppliers;

(vii) He had imported 16 used cranes and one consignment of used accessories for a Coles LT 120 Lattice Boom crane in the name of his firm M/s Gopalji Heavy Lifters;



(viii) The main unit of the Coles crane was not supplied by the supplier till date; the aforesaid accessories were lying at his yard;

(ix) He had also imported one crane in the name of his firm M/s Dhanlakshmi Cranes;

(x) **On his request, a chart containing details of all the 18 cranes / accessories had been given to him; he had mentioned the correct CIF price of each of the crane in the chart and submitting the chart under his dated signatures;**

(xi) He had already deposited an Amount of 1 crore towards his duty liability in respect of the aforesaid 18 consignments; that **the above amount of 1 crore may be appropriated against his duty liability in respect of the aforesaid 18 consignments.**

9.2 During his above statement, Shri Jitesh Vador furnished actual values of the aforesaid 18 consignments imported by him. The said details are furnished below:

Table-2

Sr. No	B/E NO	B/E DATE	DESCRIPTION OF THE CRANE	CURRENCY	INV PRICE (FOB, C&F& CIF)	INVOICE VALUE	Actual CIF price admitted
1	702404	25/08/2006	Used Krupp 140GMT Mobile Crane 1984 Sr.No. 6007	USD	CIF	65000	USD 1,65,000/-
2	737399	11/1/2007	Used Coles 36/40 TSC Rough Terrain Crane With Accessories 1989 Sr.No. 38675	USD	C&F	27600	USD 55,000/-
3	737457	11/1/2007	Used Coles 36/40 TSC Rough Terrain Crane With Accessories 1989 Sr.No.40376	USD	C&F	27600	USD 55,000/-
4	779393	12/7/2007	Used Demag TC 400 Lattice Boom Mobile Crane with Accessories 1989 Sr. No. 29380525	Euro	CIF	56000	EURO 1,04,000/-
5	791821	11/9/2007	Used Coles OCTAG 80/70 Telescopic Boom Hyd Mobile Crane With Accessories Sr.No. 37389	Euro	CIF	62000	EURO 92,000/-

6	792184	12/9/2007	Used Coles T 30 Telescopic Boom Hyd Mounted Crane With Accessories Sr.No. 29903	Euro	CIF	20000	EURO 36,000/-
7	793548	18/9/2007	Used Coles T 30 Telescopic Boom Hyd Mounted Crane With Accessories Sr.No. 423218	Euro	CIF	20000	EURO 36,000/-
8	793627	18/9/2007	Used Grove TMS 180 Telescopic Boom Hyd Mounted Crane With Accessories Sr.No. 56252	Euro	CIF	15000	EURO 20,000/-
9	793544	18/9/2007	Used P&H T 750 Telescopic Boom Hyd Mounted Crane With Accessories Sr.No. 41570	Euro	CIF	50000	EURO 60,000/-
10	793546	18/9/2007	Used Coles T 300 Telescopic Boom Hyd Mobile Crane With Accessories Sr.No. 423577	Euro	CIF	15000	EURO 37,000/-
11	793553	18/9/2007	Used Coles T 30 Telescopic Hyd Mounted Crane With Accessories Sr.No. 33277	Euro	CIF	20000	EURO 36,000/-
12	794454	21/09/2007	Used Kato NK 140 Telescopic Boom Hyd Mounted Crane with Accessories Sr.No. K1021-20049	Euro	CIF	15000	EURO 16,500/-
13	794484	22/09/2007	Used Accessories for Coles LT 120 Lattice Boom Mobile Crane	Euro	CIF	19351	EURO 40,351/-

14	839600	13/05/2008	Used Demag TC 1200 Conventional Lattice Boom Mobile Crane with Accessories	USD	CIF	300000	USD 4,00,000/-
15	868713	3/11/2008	Used Demag TC 1200 Lattice Boom Mobile Crane with Accessories	USD	CIF	300000	USD 3,50,000/-
16	950573 (not underval ued)	28/05/2010	Old&Used S.H.Telescopic Boom Mobile Crane Gottwald AMK 306/83 with Sr.No. 182032;	Euro	CIF	500000	EURO 5,00,000/-
17	966400 (provisio nally cleared on 31.03.20 11)	13/09/2010	Used Krupp KMK 6275 All Terrain Crane with Accessories Sr.No. 62002701	USD	CIF	535000	USD 5,90,000/-
18	792116	11/9/2007	Used Gottwald AMK 85- 63 Telescopic Boom Hyd Mobile Crane with Accessories Sr.No. 933663	Euro	CIF	40000	EURO 88,000/-

**9.3** Scrutiny of the above details revealed that **except** one used Gottwald AMK 306/83 crane Sr.No. 182032, covered under bill of entry no. 950573 dated 28/05/2010, **all the aforesaid 17 consignments were cleared from Customs on understated values.**

#### **Summary of investigations**

**10.** From the foregoing investigations, it appears that a conspiracy was hatched by Shri Jitesh Vador (Managing partner of M/s Gopalji Heavy Lifters / M/s Dhanlakshmi Cranes), Shri Madan Lalwani and others to defraud the Public revenue by causing import of used cranes by resorting to fraudulent means, which included inter alia mis-declaration of the transaction value of the cranes so imported. Pursuant to the said conspiracy, Shri Jitesh Vador started importing cranes and clearing them from customs on the strength of manipulated invoices showing highly understated value of the crane with the motive of evading payment of appropriate custom duty. Shri Jitesh Vador caused import of as many as 15 used cranes and one consignment of used accessories of Coles LT 120 crane in the

name of M/s Gopalji Heavy Lifters and cleared the same on understated values. Shri Jitesh Vador also caused import of one used crane in the name of M/s Dhanlakshmi Cranes and cleared the same by resorting to undervaluation. He has remitted the differential value (i.e. the difference between the actual value of the crane and the declared manipulated invoice value) through unofficial channels (hawala) to the overseas suppliers.

#### **Redetermination of value of cranes under Customs Valuation Rules**

**11.1** From the investigations, it appears that the value of the 15 consignments (14 used cranes and one consignment of used accessories of Coles LT 120 crane), imported and cleared in the name of M/s Gopalji Heavy Lifters (details as per **Annexure-A-1** to the SCN) as well as the 1 used crane, imported and cleared in the name of M/s Dhanlakshmi Cranes, (details as per **Annexure-A-2** to the SCN) declared before Indian Customs, is not the actual / true transaction value in terms of section 14(1) of the Customs Act, 1962 read with provisions of Rule 4(1) of the **Customs Valuation Rules, 1988<sup>9</sup>** (for the period of import upto 10.10.2007) or Rule 3(1) of the **Customs Valuation Rules, 2007<sup>10</sup>** (for the period of import from 10.10.2007 onwards) (as the case may be ) for the following reasons:

(a) all the aforesaid consignments were imported by Shri Jitesh Vador and cleared from Customs on the strength of bogus / manipulated invoices indicating grossly understated price of the consignments, which did not represent the correct transaction value, as evident from statements dated 19.11.2010 and 05.07.2012 of Shri Jitesh Vador.

(b) Shri Madan Lalwani (who had undertaken the job of clearance of the aforesaid consignments from customs) in his statements dated 21.10.2010, 27.10.2010 and 2.11.2010 admitted that he got all the cranes cleared through customs on predetermined values suggested by him on weight basis ( 28 to 40/Kg) being just above the scrap value during those periods, rather than actual transaction value. This fact is evident from column no. 15 of Annexure A-1 to Annexure A- 3 to the SCN wherein ratio of declared value to weight is mentioned and this price is sometimes even less than the scrap value of steel when freight element is deducted.

(c) Shri Jitesh Vador himself admitted deliberate undervaluation of the used cranes/accessories and procurement of bogus invoices from his overseas suppliers, in support of such undervaluation. Shri Jitesh Vador admitted that the aforesaid 17 consignments imported in the name of his firms viz. M/s Gopalji Heavy Lifters / M/s Dhanlakshmi Cranes were cleared from Customs by resorting to undervaluation and also furnished the actual value of transaction.

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<sup>9</sup> In short CVR 1988

<sup>10</sup> In short CVR 2007

(d) Shri Jitesh Vador in his statements admitted that he had remitted differential amounts (i.e. the difference between the actual value of cranes and the invoice value) abroad through Brijesh Gala.

(e) Shri Brijesh Gala in his statement dated 25.10.2010 admitted that he had transferred money in hawala for Shri Jitesh Vador and that an amount of Rs 2 crores (approx) has been sent abroad through non banking channels illegally (Hawala) on behalf of Shri Jitesh Vador.

(f) The Chartered Engineer's certificate (available in the job dockets), issued at the load port certifying technical specifications, make, present value, **estimated FOB value of a new machine in the year of manufacture**, etc. appears to be manipulated to suit the price declared at the time of import, as the requirement is to indicate the actual FOB value and not an estimated one.

Consequently, (i) the declared value of **4,94,78,611/- CIF** (Rupees four crore ninety four lakhs seventy eight thousand six hundred and eleven only), in respect of the 15 consignments imported and cleared in the name of M/s Gopalji Heavy Lifters (details as per **Annexure-A- 1** to the SCN) and (ii) the declared value of **22,62,000/- CIF** (Rupees twenty two lakhs and sixty two thousands), in respect of the 1 consignment imported and cleared in the name of M/s Dhanlakshmi Cranes (details as per **Annexure-A-2** to the SCN) appears to be liable for rejection in terms of the provisions of Section 14(1) of the Act read with provisions of Rule 10 A of the CVR 1988 or Rule 12 of the CVR 2007, as the case may be.

**11.2** Similarly, for the reasons cited above, the declared value of **2,52,78,750/-** in respect of a used Krupp KMK 6275 crane, sr. no. 62002701, imported and cleared under bill of entry no. 966400 dated 13.09.2010, in the name of **M/s Gopalji Heavy Lifters**, (Details as per **Annexure-A-3** to the SCN) cannot be the transaction value thereof in terms of section 14(1) of the Customs Act, 1962 read with provisions of Rule 3(1) of the Customs Valuation Rules, 2007 and merits to be rejected in terms of the provisions of Section 14(1) of the Act read with provisions of Rule 12 of the CVR 2007;

**12.** In order to determine the value of the aforesaid used cranes, recourse had to be made to the provisions of the Customs Valuation Rules, 1988 (**for the period of import upto 10.10.2007**) or the Customs Valuation Rules, 2007 (**for the period of import from 10.10.2007 onwards**). In the instant case, the investigations as detailed above reveals a planned conspiracy to evade customs duty in an organized manner, where the importer and the Custom House agent colluded to defraud the revenue by mis-declaring the value of the "used cranes". However, during the course of investigations, Shri Jitesh Vador admitted the actual transaction values in respect of all the 17 consignments. In respect of the above **17 consignments** imported and cleared in the name of M/s Gopalji Heavy Lifters / M/s



Dhanlakshmi Cranes (details as per **Annexure-A-1** to **Annexure-A-3** to the SCN) the CIF values admitted by the importer are more or less same as the values of these cranes ascertained during the investigations. During investigations, the market values of these cranes were ascertained on the basis of statements of various importers recorded in the case. On analysis of the inputs provided by these importers, it appears that the market value of the used cranes depends upon the make, year of manufacture, lifting capacity, usage etc of the cranes and that these cranes are generally sold in the range of 80,000/- to 1,20,000/- per ton of lifting capacity, when they are more than 15-20 years old. Therefore, it is proposed to accept the values admitted by the importer as the transaction values in terms of section 14(1) of the Customs Act, 1962 read with provisions of Rule 4(1) of the Customs Valuation Rules, 1988 (for the period of import up to 10.10.2007) or Rule 3(1) of the Customs Valuation Rules, 2007 (for the period of import of the said goods from 10.10.2007 onwards), as the case may be. Accordingly, the actual CIF values of these 17 consignments are as under:

(i) **Importer: M/s Gopali Heavy Lifters**

**Table-3**

Sr. No	B/E NO	B/E DATE	DESCRIPTION OF THE CRANE	CURRENCY	INV PRICE (FOB, C&F& CIF)	INVOICE VALUE	Admitted/ True Transaction value
1	702404	25/08/2006	Used Krupp 140GMT Mobile Crane 1984 Sr.No. 6007	USD	CIF	65000	USD 1,65,000/-
2	737399	11/1/2007	Used Coles 36/40 TSC Rough Terrain Crane With Accessories 1989 Sr.No. 38675	USD	C&F	27600	USD 55,000/-
3	737457	11/1/2007	Used Coles 36/40 TSC Rough Terrain Crane With Accessories 1989 Sr.No. 40376	USD	C&F	27600	USD 55,000/-
4	779393	12/7/2007	Used Demag TC 400 Lattice Boom Mobile Crane with Accessories 1989 Sr. No. 29380525	Euro	CIF	56000	EURO 1,04,000/-

5	791821	11/9/2007	Used Coles OCTAG 80/70 Telescopic Boom Hyd Mobile Crane With Accessories Sr.No. 37389	Euro	CIF	62000	EURO 92,000/-
6	792184	12/9/2007	Used Coles T 30 Telescopic Boom Hyd Mounted Crane With Accessories Sr.No. 29903	Euro	CIF	20000	EURO 36,000/-
7	793548	18/9/2007	Used Coles T 30 Telescopic Boom Hyd Mounted Crane With Accessories Sr.No. 423218	Euro	CIF	20000	EURO 36,000/-
8	793627	18/9/2007	Used Grove TMS 180 Telescopic Boom Hyd Mounted Crane With Accessories Sr.No. 56252	Euro	CIF	15000	EURO 20,000/-
9	793544	18/9/2007	Used P&H T 750 Telescopic Boom Hyd Mounted Crane With Accessories Sr.No. 41570	Euro	CIF	50000	EURO 60,000/-
10	793546	18/9/2007	Used Coles T 300 Telescopic Boom Hyd Mobile Crane With Accessories Sr.No. 423577	Euro	CIF	15000	EURO 37,000/-
11	793553	18/9/2007	Used Coles T 30 Telescopic Hyd Mounted Crane With Accessories Sr.No. 33277	Euro	CIF	20000	EURO 36,000/-

12	794454	21/09/2007	Used Kato NK 140 Telescopic Boom Hyd Mounted Crane with Accessories Sr.No. K1021-20049	Euro	CIF	15000	EURO 16,500/-
13	794484	22/09/2007	Used Accessories for Coles LT 120 Lattice Boom Mobile Crane	Euro	CIF	19351	EURO 40,351/-
14	839600	13/05/2008	Used Demag TC 1200 Conventional Lattice Boom Mobile Crane with Accessories	USD	CIF	300000	USD 4,00,000/-
15	868713	3/11/2008	Used Demag TC 1200 Lattice Boom Mobile Crane with Accessories	USD	CIF	300000	USD 3,50,000/-
16	966400	13/09/2010	Used Krupp KMK 6275 All Terrain Crane with Accessories Sr.No. 62002701	USD	CIF	535000	USD 5,90,000/-

(ii) **Importer: M/s Dhanlakshmi Cranes**

**Table-4**

Sr. No	B/E NO	B/E DATE	DESCRIPTION OF THE CRANE	CURRENCY	INV PRICE	INVOICE VALUE	Admitted/True Transaction value
1	792116	11/9/2007	Used Gottwald AMK 85-63 Telescopic Boom Hyd Mobile Crane with Accessories Sr.No. 933663	Euro	CIF	40000	EURO 88,000/-

**13. Differential Duty Liability:**

**13.1** The duty leviable in respect of the above imports is computed on the basis of the values re-determined as above. The comparative details of the duty leviable, duty paid at the time of clearance of the impugned cranes and the duty short paid on the said cranes, in respect of the aforesaid imports are as under:

**Table-5**

Sr. No.	Name of the Importing firm	Duty leviable On the re-Determined Value (in Rs.)	Duty paid at The time of Clearance (in Rs.)	Duty short Paid (in Rs.)	Remarks
1	2	3	4	5	6
1	M/s Gopalji Heavy Lifters	2,29,27,195/-	1,51,72,434/-	77,54,761/-	Details as Per Annexure- A-1 to the SCN
2	M/s Dhanlakshmi Cranes	15,58,683/-	7,08,492/-	8,50,191/-	Details as Per Annexure- A-2 to the SCN
3	M/s Goaplji Heavy Lifters (Live consignment)	67,27,903/-	67,27,903/-	Nil	Details as Per "Annexure- A-3 to the SCN"
	<b>Total</b>	<b>3,12,13,781</b>	<b>2,26,08,829/-</b>	<b>86,04,952/-</b>	

**14.** From the evidences gathered during investigations, as discussed above and legal position, as discussed above, it appears inter alia as under that:-

(i) A criminal conspiracy was hatched by Shri Jitesh Vador (Managing partner, M/s Gopalji Heavy Lifters / M/s Dhanlakshmi Cranes), Shri Madan Lalwani and others unknown to defraud the Government of India of its legitimate revenue by causing import of used cranes by resorting to fraudulent means, which included mis-declaration of the transaction value of the cranes so imported;

(ii) Pursuant to the said conspiracy, Shri Jitesh Vador started importing used cranes and clearing them from customs on the strength of manipulated invoices showing highly understated value of the crane with the motive of evading payment of appropriate custom duty.;

(iii) Upon arrival of the cranes imported in the name of his firm viz. M/s Gopalji Heavy Lifters / M/s Dhanlakshmi Cranes, Shri Jitesh Vador arranged for filing of bills of entry for clearance of the said cranes through Shri Madan Lalwani, who was operating under the CHA (Custom House Agent) licence of CHA M/s M. Dharamdas & Co. (CHA No. 11/100), the facts admitted by Shri Madan Lalwani in his statement dated 21.10.2010;

(iv) Manipulated import invoices/documents and false declarations were submitted by Shri Jitesh Vador in respect of cranes imported in the name of M/s Gopalji Heavy Lifters/ M/s Dhanlakshmi Cranes to hoodwink the customs authorities; that the cranes covered under the bills of entry so filed got assessed to lower duty on the basis of suppressed value, which were declared in the manipulated invoices and the declarations submitted under the respective bills of entry;

(v) In the said manner, 15 consignments (14 used cranes and one consignment of accessories) were imported and cleared in the name of M/s Gopalji Heavy Lifters (**Details as per Annexure-A-1 to the SCN**) and one used crane (**Details as per Annexure-A-2 to the SCN**) was imported and cleared in the name of M/s Dhanlakshmi Cranes;

(vi) As a part of continuing conspiracy, as aforesaid, one more crane viz. used Krupp KMK 6275 crane (**Details as per Annexure-A-3 to the SCN**) was imported by Shri Jitesh Vador in the name of M/s Gopalji Heavy Lifters. This crane was pending clearance at Mumbai port when action against the importer was initiated on 19.11.2010. As the importer admitted undervaluation in respect of this crane, the same was cleared provisionally by the Customs authorities on payment of duty on the admitted values and on furnishing of bank guarantee/ bond;

(vii) During the investigations, while admitting that he had mis-declared the transaction values of the aforesaid cranes while seeking their clearance from Mumbai port, Shri Jitesh Vador furnished the actual transaction values of the aforesaid 17 consignments (16 used cranes and one consignment of accessories) imported in the name of his partnership firms viz. M/s Gopalji Heavy Lifters/ M/s Dhanlakshmi Cranes;

(viii) For the reasons cited in detail in foregoing paras, (i) the declared value of **Rs. 4,94,78,611/- CIF** (Rupees four Crore ninty four lakhs seventy eight thousand six hundred and eleven only), in respect of the 15 consignments imported and cleared in the name of M/s Gopalji Heavy Lifters (details as per **Annexure-A-1** to the SCN) and (ii) the declared value of **Rs. 22,62,000/- CIF** (Rupees twenty two lakhs and sixty two thousands), in respect of the 1 consignment imported and cleared in the name of M/s Dhanlakshmi Cranes (details as per **Annexure-A-2** to the SCN) appears to be liable for rejection in terms of the provisions of Section 14(1) of the Customs Act, 1962 read with provisions of Rule 10 A of the Customs Valuation Rules, 1988 or Rule 12 of the Customs Valuation Rules, 2007, as the case may be.

(ix) For the reasons cited above, the declared value of **2,52,78,750/-** in respect of a used Krupp KMK 6275 crane, sr. no. 62002701, imported and cleared under bill of entry no. 966400 dated 13.09.2010, in the name of **M/s Gopalji Heavy Lifters**, (Details as per **Annexure-A-3** to the SCN) cannot be the transaction value thereof in terms of section 14(1) of the Customs Act, 1962 read with provisions of Rule 3(1) of the Customs Valuation



Rules, 2007 and merits to be rejected in terms of the provisions of Section 14(1) of the Customs Act, 1962 read with provisions of Rule 12 of the Customs Valuation Rules, 2007;

(x) The amount of duty leviable on the aforesaid 17 consignments, computed on the basis of the values determined as above, the customs duty paid at the time of clearance of the aforesaid 17 consignments and the amount of custom duty short paid in respect of these 17 consignments, while seeking their clearance from Customs, is as under.

**Table 6**

Sr. No.	Name of the Importing firm	Duty leviable On the re-Determined Value (in Rs.)	Duty paid at The time of Clearance (in Rs.)	Duty short Paid (in Rs.)	Remarks
1	2	3	4	5	6
1	M/s Gopalji Heavy Lifters	2,29,27,195/-	1,51,72,434/-	77,54,761/-	Details as Per Annexure- A-1 to the SCN
2	M/s Dhanlakshmi Cranes	15,58,683/-	7,08,492/-	8,50,191/-	Details as Per Annexure- A-2 to the SCN
3	M/s Goaplji Heavy Lifters (Live consignment)	67,27,903/-	67,27,903/-	Nil	Details as Per Annexure- A-3 to the SCN
	<b>Total</b>	<b>3,12,13,781</b>	<b>2,26,08,829/-</b>	<b>86,04,952/-</b>	

The appropriate customs duty leviable on the aforesaid said 17 consignments cleared from Mumbai port was not levied at that time by reason of collusion, willful misstatement and suppression of facts regarding the actual value of the said goods by Shri Jitesh Vador, acting in conspiracy with his overseas suppliers of the cranes, Shri Madan Lalwani, (who had undertaken the job of clearance of the aforesaid cranes from customs) and others unknown.

(xi) Out of the above stated short paid duty amount of 77,54,761/-, in respect of 15 consignments, (details as per **Annexure-A-1** to the SCN), the short paid duty amount of 26,27,103/- in respect of cranes at serial number 1 to 3 mentioned in Annexure- A-1 to the SCN, is beyond the period of five years. However, the short paid duty amount of 51,27,658/-, in respect of the remaining cranes / consignment of accessories (details as per Sr. No. 3 to 15 of **Annexure-A- 1** to the SCN), can be demanded under the extended period available in terms of section 28 of the Customs Act, 1962, along with interest in terms of section 28AB of the Act as it existed at the material time (under section 28AA from 08.04.2011 onwards);

(xii) Section 28 of the Act provides that where an importer has by reasons of collusion or any willful misstatement or suppression of facts, had not paid any duty which has not been levied or has been short levied or erroneously refunded, or any interest payable has not been paid or part paid or erroneously refunded, then the demand could be issued upto five years from relevant date. However, it does not bar voluntary deposit of self-admitted duty for any imports beyond five years to be adjusted for duty and interest leviable against the said imports. The limitation with respect to the time only bars the department from issuing demand notice under Section 28 of the Act, it does not bar the importer to pay back the duty evaded on his own. Thus the duty amount and interest amount deposited voluntarily by the importer is therefore adjustable against the duty and interest recoverable even for the period beyond five years. This proposition has been upheld in the case of **India Cements Ltd. Vs CCE, Madras [1984(18)E.L.T.499 (TRB)]** the Special Bench of CEGAT, New Delhi. M/s. Gopalji Heavy Lifters had voluntarily made a payment of 1,00,00,000/-, during the course of investigation, as detailed at para 7. This is accordingly adjusted against the duty and interest payable on the cranes at serial number 1 to 3 mentioned in Annexure- A-1 to the SCN, which are beyond five years and which comes to Rs. 40,13,812/- (duty of Rs. 26,27,103/- + interest of Rs. 13,86,709/-). The differential duty of Rs. 51,27,658/-, computed on the basis of re- determined values in respect of the remaining 12 consignments imported in the name of M/s Gopalji Heavy Lifters (details as per Annexure-A-1 to the SCN) and the differential duty of Rs. 8,50,191/- in respect of one crane, imported and cleared in the name of M/s Dhanlakshmi Cranes (details as per Annexure-A-2 to the SCN), needs to be demanded under the extended period available in terms of section 28 of the Act along with interest in terms of section 28AB of the Act as it existed at the material time (under section 28AA from 08.04.2011 onwards);

(xiii) Consequently the 16 consignments imported in the name of M/s Gopalji Heavy Lifters (**Details as per Annexure-A-1 and Annexure-A-3 to the SCN**) and one consignment imported in the name of M/s Dhanlakshmi Cranes (**Details as per Annexure-A- 2 to the SCN**) are liable to confiscation under the provisions of section 111(m) of the Customs Act, 1962.

(xiv) In relation to the aforesaid 17 consignments, Shri Jitesh Vador and Shri Madan Lalwani have done or omitted to do acts, which have rendered the above stated 17 consignments liable to confiscation under section 111(m) of the Act as aforesaid. Admittedly, the above stated 17 consignments were imported and cleared by resorting to misdeclaration of the value on the strength of manipulated invoices. All the above stated 17 consignments were cleared by Shri Jitesh Vador in the name of his partnership firm viz. M/s Gopalj Heavy Lifters / M/s Dhanlakshmi Cranes, by adopting fraudulent means, as discussed earlier. The bills of entry for clearance of the aforesaid consignments were filed by Shri Madan Lalwani, who had 'suggested' the values to the importer for raising manipulated invoices. Shri Madan Lalwani had charged an amount of 5% of the value of

the crane, in cash, in addition to his agency charges for facilitating such irregular clearances. The invoice value of the cranes was remitted through the bank accounts of the importer. The differential amounts i.e. the difference between the actual value of the crane and the invoice value was apparently transmitted to the overseas suppliers through hawala route. The various acts of commission and omission as discussed above in relation to import of the cranes, as aforesaid, which have rendered the said cranes liable for confiscation under section 111(m) of the Act, has rendered Shri Jitesh Vador and Shri Madan Lalwani liable to penalty under section 112 (a) of the Act. Shri Jitesh Vador acquired possession of and was concerned in removing, selling or purchasing of the aforesaid 17 consignments, which he knew or had reason to believe were liable to confiscation under section 111(m) of the Act, as aforesaid. Consequently, Shri Jitesh Vador has in relation to the aforesaid 17 consignments of the declared value of Rs. **7,70,19,361/- CIF (re-determined value Rs. 10,62,96,574/- CIF-** details as per Annexure-A-1 to Annexure-A-3 to the SCN), rendered himself liable to penalty, under section 112(a) and section 112 (b) of the Act. Shri Madan Lalwani was concerned in dealing with the aforesaid 17 consignments which he knew or had reason to believe were liable to confiscation under section 111(m) of the Act, as aforesaid. Accordingly, Shri Madan Lalwani has rendered himself liable to penalty under section 112 (a) and/or 112 (b) of the Act.

(xv) Duty amount of **51,27,658/-** (details as per Annexure-A-1 to the SCN) was not levied or short levied in respect of 12 consignments, imported and cleared in the name of M/s. Gopalji Heavy Lifters, from Mumbai port by reason of collusion, willful misstatement and suppression of facts regarding the actual value of the above stated 12 consignments by Shri Jitesh Vador, the Managing partner of M/s. Gopalji Heavy Lifters. Accordingly, M/s. Gopalji Heavy Lifters and Shri Jitesh Vador are liable to penalty, equal to the above stated duty amount, under the provisions of section 114A of the Customs Act, 1962;

(xvi) In relation to the aforesaid 12 consignments, imported and cleared in the name of M/s. Gopalji Heavy Lifters, each of M/s Gopalji Heavy Lifters, Shri Jitesh Vador and Shri Madan Lalwani have knowingly and intentionally made, signed or caused to be made or signed and used, the declarations for the purposes of seeking Customs clearance of the aforesaid 12 consignments, which they knew or had reason to believe were false or incorrect. Accordingly, each of Ms. Gopalji Heavy Lifters, Shri Jitesh Vador and Shri Madan Lalwani, have rendered themselves liable to penalty under section 114AA of the Customs Act, 1962, in relation to the aforesaid 12 consignments;

(xvii) Duty amount of Rs. 8,50,191/- (details as per Annexure-A-2 to the SCN) was not levied or short levied in respect of 1 used crane, imported and cleared in the name of M/s. Dhanlakshmi Cranes, from Mumbai port by reason of collusion, willful misstatement and suppression of facts regarding the actual value of the above stated 1 used crane by Shri

Jitesh Vador, the Managing partner of M/s. Dhanlakshmi Cranes. Accordingly. M/s. Dhanlakshmi Cranes and Shri Jitesh Vador are liable to penalty, equal to the above stated duty amount, under the provisions of section 114A of the Customs Act, 1962;

(xviii) In relation to the aforesaid 1 used crane, imported and cleared in the name of M/s. Dhanlakshmi Cranes, each of M/s. Dhanlakshmi Cranes, Shri Jitesh Vador and Shri Madan Lalwani have knowingly and intentionally made, signed or caused to be made or signed and used, the declarations for the purposes of seeking Customs clearance of the aforesaid 1 used crane, which they knew or had reason to believe were false or incorrect. Accordingly, each of M/s. Dhanlakshmi Cranes, Shri Jitesh Vador and Shri Madan Lalwani, have rendered themselves liable to penalty under section 114AA of the Customs Act, 1962, in relation to the, aforesaid 1 used crane.

15. Accordingly, a Show Cause Notice dated 11-07-2012 was issued vide F.No. DRI /MZU/B/Inv-13 /2010-11/11250 by DRI, Mumbai Zonal Unit to M/s. Gopalji Heavy Lifters and others.

#### **Charging para of the SCN**

15.1 Vide the said SCN, each of **M/s. Gopalji Heavy Lifters, Ms. Dhanlakshmi Cranes, Shri Jitesh Vador and Shri Madan Lalwani** were called upon to show cause in writing to the Adjudicating Authority namely Commissioner of Customs (Import), New Custom House, Ballard Estate, Mumbai, as under:

**(A)(I) M/s. Gopalji Heavy Lifters and Shri Jitesh Vador** were required to show cause to the adjudicating authority as to why:

(i) the declared value of **Rs. 4,94,78,611/- CIF** in respect of the **15 consignments**, imported and cleared in the name of M/s. Gopalji Heavy Lifters, from Mumbai port (**details as per Annexure-A-1 to the SCN**) should not be rejected under the provisions of Rule 10 A/Rule 12 of the CVR 1988/ CVR 2007 (as applicable) read with section 14(1) of the Act;

(ii) the value of the aforesaid 15 consignments, imported and cleared in the name of M/s. Gopalji Heavy Lifters, from Mumbai port, should not be taken as **Rs. 7,34,42,674/ CIF** (details as per Annexure-A-1 to the SCN), **being the actual transaction values, as admitted by the importer** in terms of the provisions of section 14 of the Act and the rules made thereunder;

(iii) differential duty amounting to **Rs. 51,27,658/-** leviable on the aforesaid 12 consignments, imported and cleared in the name of M/s. Gopalji Heavy Lifters, on the basis of the re- determined values of **Rs. 6,07,37,674/- CIF** (calculation details as per **Annexure-A-1** to the SCN) should not be demanded under the extended period available

in terms of section 28 of the Customs Act, 1962, along with interest in terms of section 28AB of the Customs Act, 1962, as it existed at the material time (under section 28AA from 08.04.2011 onwards);

(iv) the aforesaid 15 consignments of cranes and accessories, imported and cleared in the name of M/s. Gopalji Heavy Lifters, from Mumbai port (details as per **Annexure-A-1** to the SCN) with a declared value of **Rs. 4,94,78,611/- CIF** (actual value of **Rs. 7,34,42,674/- CIF**) should not be confiscated under Section 111(m) of the Act.

(v) penalty under Section 114A of the Act equivalent to the duty amount of **Rs. 51,27,658/-**, which was evaded in respect of the aforesaid 12 consignments (details as per Annexure-A-1 to the SCN), should not be imposed on M/s Gopalji Heavy Lifters and Shri Jitesh Vador;

(vi) penalty under Section 112(a) and / or section 112(b) of the Act in relation to the aforesaid 15 consignments, imported and cleared in the name of M/s Gopalji Heavy Lifters, (details as per Annexure-A-1 to the SCN) rendered liable to confiscation under section 111(m) of the Act as aforesaid should not be imposed on each of them.

(vii) penalty under Section 114AA of the Act in relation to the aforesaid 15 consignments, imported and cleared in the name of M/s Gopalji Heavy Lifters, from Mumbai port (details as per Annexure-A-1 to the SCN), should not be imposed on each of them.

(viii) the amount of **Rs. 59,86,188/-** paid by M/s Gopal Heavy Lifters during the ongoing investigations should not be appropriated against differential duty and interest that may be adjudged under section 28(2) of the Act in relation to the aforesaid 12 consignments;

**(A)(II) M/s. Dhanlakshmi Cranes and Shri Jitesh Vador** are required to show cause to the adjudicating authority as to why:

(i) the declared value of **Rs. 22,62,000/- CIF** in respect of **1 used crane**, imported and cleared in the name of M/s. Dhanlakshmi Cranes, from Mumbai port (**details as per Annexure-A-2 to the SCN**) should not be rejected under the provisions of Rule 10A of the CVR 1988 read with section 14(1) of the Act;

(ii) the value of the aforesaid 1 used crane, imported and cleared in the name of M/s. Dhanlakshmi Cranes, from Mumbai port, should not be taken as **Rs. 49,76,400/- CIF** (details as per Annexure-A-2 to the SCN), **being the actual transaction values, as admitted by the importer** in terms of the provisions of section 14 of the Act and the rules made thereunder;

(iii) differential duty amounting to **Rs. 8,50,191/-** leviable on the aforesaid 1 used crane, imported and cleared in the name of M/s. Dhanlakshmi Cranes, on the basis of the re-



determined values of **Rs. 49,76,400/- CIF** (calculation details as per Annexure-A-2 to the SCN) should not be demanded under the extended period available in terms of section 28 of the Act along with interest in terms of section 28AB of the Act as it existed at the material time (under section 28AA from 08.04.2011 onwards);

(iv) the aforesaid 1 used crane imported and cleared in the name of M/s. Dhanlakshmi Cranes from Mumbai port (details as per Annexure-A-2 to the SCN) with a declared value of **Rs. 22,62,000/- CIF** (re-determined value of **Rs. 49,76,400/- CIF**) should not be confiscated under Section 111(m) of the Act;

(v) penalty under section 114A, equivalent to the duty amount of **Rs. 8,50,191/-**, which was not levied or short levied in respect of the aforesaid 1 used crane, imported and cleared in the name of M/s. Dhanlakshmi Cranes, from Mumbai port (details as per Annexure-A-2 to the SCN), should not be imposed on M/s. Dhanlakshmi Cranes and Shri Jitesh Vador;

(vi) penalty under section 112(a) and / or section 112(b) of the Act in relation to the aforesaid 1 used crane, imported and cleared in the name of M/s. Dhanlakshmi Cranes, (details as per Annexure-A-2 to the SCN) rendered liable to confiscation under section 111(m) of the Act as aforesaid should not be imposed on each of them;

(vii) penalty under section 114AA of the Act in relation to the aforesaid 1 used crane, imported and cleared in the name of M/s. Dhanlakshmi Cranes, from Mumbai port (details as per Annexure-A-2 to the SCN), should not be imposed on each of them;

(viii) the amount of **Rs. 59,86,188/-** paid by M/s Gopalji Heavy Lifters during the ongoing investigations should not be appropriated against differential duty and interest that may be adjudged under section 28(2) of the Customs Act, 1962 in relation to the aforesaid 1 used crane;

**(A)(III) M/s. Gopalji Heavy Lifters and Shri Jitesh Vador** are required to show cause to the adjudicating authority as to why:

(i) the declared value of **Rs. 2,52,78,750/- CIF** in respect of the **used Krupp KMK 6275 Crane**, imported and cleared **provisionally** in the name of M/s. Gopalji Heavy Lifters, from Mumbai port (details as per Annexure-A-3 to the SCN) should not be rejected under the provisions of section 14(1) of the Act read with the provisions of Rule 12 of the CVR 2007;

(ii) the value of the aforesaid used Krupp KMK 6275 crane, imported and cleared in the name of M/s. Gopalji Heavy Lifters, should not be re- determined as **Rs. 2,78,77,500/- CIF** (details as per Annexure-A-3 to the SCN);

(iii) duty amounting to **Rs. 67,27,903/-** paid at the time of clearance of the aforesaid used Krupp KMK 6275 crane, imported in the name of M/s. Gopalji Heavy Lifters, which

was seized and released provisionally on the basis of the re-determined value of **2,78,77,500/- CIF** (assessable value of **2,81,56,275/- CIF**), should not be appropriated towards the duty liability in respect of the aforesaid used Krupp KMK 6275 crane (details as per Annexure-A-3 to the SCN), after finalization of the assessment;

(iv) the bank Guarantee of **Rs. 28,16,000/-** furnished at the time of seeking provisional release of the aforesaid crane from Customs, should not be appropriated against adjudication liabilities that may arise in relation to the aforesaid crane;

(v) used Krupp KMK 6275 crane, imported and cleared in the name of M/s. Gopalji Heavy Lifters, from Mumbai port (details as per Annexure-A-3 to the SCN) with a declared value of **2,52,78,750/- CIF** (re-determined value of **2,78,77,500/- CIF**) should not be confiscated under Section 111(m) of the Act;

(vi) penalty equivalent to the duty evaded / attempted to be evaded under section 114A of the Act in relation to the aforesaid used Krupp KMK 6275 crane, should not be imposed on each of them;

(vii) penalty under section 112(a) and / or section 112(b) of the Act as aforesaid, should not be imposed on each of them;

(viii) penalty under section 114AA of the Act in relation to the aforesaid used Krupp KMK 6275 crane, imported and cleared in the name of M/s. Gopalji Heavy Lifters, from Mumbai port (details as per Annexure-A-3 to the SCN) as aforesaid, should not be imposed on each of them;

**A(IV) Shri Madan Lalwani** is required to show cause to the adjudicating authority as to why penalty under section 112(a) and / or section 112(b) and section 114AA of the Act in relation to the aforesaid 17 consignments, imported and cleared in the name of M/s. Gopalji Heavy Lifters / M/s Dhanlakshmi Cranes, from Mumbai port (details as per Annexure-A-1 to Annexure-A- 3 to the SCN), should not be imposed on him.

#### **Details of first round of Adjudication and Order of the Hon'ble CESTAT**

16. The said SCN dated 11.07.2012 was adjudicated in first round vide **Order in Original No. 92/2014/CAC/CC(I)/AB/Gr.V dated 04.09.2014<sup>11</sup>** confirming the duty , interest and penalty. Noticees preferred an appeal against the said OIO. **Hon'ble CESTAT vide Order no. A/93798-93800/16/CB dated 15.11.2016<sup>12</sup>** disposed of the said appeal and made following observations in respect of OIO dated 04.09.2014:

(i) The imposition of penalties twice on the importer under Section 114A of the Act has no rationale. Likewise, the imposition of penalties on the individuals under Section

<sup>11</sup> Also referred to as the said OIO dated 04.09.2014

<sup>12</sup> Also referred to as the Hon'ble Tribunal Order dated 15.11.2016

114A of the Act is without authority of law as that provision is liable to be invoked only against 'the person liable to pay the duty under Section 28' which has been held by the adjudicating authority to be M/s. Gopalji Heavy Lifters and M/s. Dhanlaxmi Cranes.

(ii) Demand of differential duty upon finalization of provisional assessment under section 28 of Customs Act, 1962 is improper and liable to set aside:

A. Section 28 of Customs Act, 1962 can be invoked only when assessment has led to short-levy or non-levy of duty. If provisional assessment is made, the process needs to be taken to its logical conclusion before demanding differential duty under section 28. This has been the stand of the Tribunal as is evident in *Finolex Industries Ltd v. Commissioner of Customs* [2003 (159)ELT 949 (Tri-Mumbai)] that relied upon the decision of Hon'ble High Court of Bombay in *Union of India v. Godrej & Boyce Manufacturing* [1989 (44) ELT 3].

(iii). There is no legal sanctity to voluntary payment of duty during the pendency of investigation in respect of time barred bills of entries.

A. In the matter of confirmation of demand of duty on the 14 cranes and one lot of accessories of a crane, it is admitted that three of the imports pertain to bills of entry filed prior to 12th July 2007, i.e ., more than five years before the issue of show cause notice dated 11th July 2012. There is no legal sanctity to voluntary payment of duty during the pendency of investigation. There is no scope for adjustment or for retention of such money that has not been paid by the appellant towards discharge of duty short-levied on those three specific assessments. We have perused the decision in *re India Cements* cited by the adjudicating authority in support of the adjustment. That decision was of a Special Bench which, consisting as it then did of three members, decided by a majority of two-to-one that the demand would sustain. The demand was against a Central Excise assessee who, as a manufacturer, was a regular payer of duties.

B. It is apparent that the adjudicating authority has either not read the decision supra and was misguided into believing what was impressed upon him or, being aware of its inapplicability, deliberately avoided citing the relevant extract in the hope that the citation would pass suffice to convince. The facts could not be more startlingly at variance: a Central Excise assessee, on being served with a demand, paid the amount so demanded without ever raising the issue of limitation of time at any stage except in oral arguments before the Tribunal. It was, consequently, held that duty paid, with complete awareness, and acceptance, of a demand is not liable to be returned even if the mechanism for recovery was absent. Here no demand had been issued when the amount was 'voluntarily' paid by M/s Gopalji Heavy Lifters and the notice had been contested on limitation before the original authority. So too before us and so assertively pressed by Learned Counsel for appellant. Consequently, we affirm the position in law that 'adjustment' is but a euphemism

for 'appropriation' and, just as equally, without legal sanctity. We hold that the adjudicating authority has exceeded his powers in adjusting Rs. 26,27,103/- and interest of Rs. 13,86,709/- from the voluntary deposit.

(iv) Re-determination of assessable value of the imports fails the test of law:

A. Rejection of declared value must be followed by sequential application of rule 5 onwards appears to have been disregarded. We have perused the impugned order and as she has pointed out. The re-determination has not cited any rule that has been applied; nor do we perceive any attempt at determining the value in accordance with the prescription in the Rules.

(v) Opportunity to noticees for cross examination of deponents:

B. It would appear that Revenue prefers to ignore the test of relevancy of statements in section 138B (2) of Customs Act, 1962 as it applies to adjudication proceedings

D. The statements recorded under section 108 of Customs Act, 1962, purportedly admitting to undervaluation, has, apparently, elicited the prevailing price and also essayed the manner in which the additional consideration has been routed to suppliers. These are valuable inputs acquire sanctity only in the tempering heat of challenge and survival. Credibility is accorded only in cross-examination which, though demanded by appellant at the adjudication stage, was refused on the ground that there was no need to do so. Indubitably, the Indian Evidence Act, 1872 has been interpreted to accord evidentiary value to statements recorded by officers of Customs in contradistinction to that recorded before police officers. That, however, is no claim to infallibility or imposition in the absence of corroboration. That the law deigns to allow introduction of a statement in proceedings does not whittle down the requirement to prove the contents in the deposition. Section 138B of Customs Act, 1962 mandates that each statement be proved in the proceedings. Having failed to do so, reliance on the statements is bereft of legal validity. A conclusion arrived at from invalidated statements suffers the stigma of invalidity.

E. The lack thereof requires rectification by the original authority for which purpose we set aside the impugned order. We direct that the matter be heard afresh with opportunity afforded to noticees for cross- examination of deponents.

#### **PERSONAL HEARING AND SUBMISSIONS OF THE NOTICEE**

17. Personal hearings were granted to noticees on 09.11.2022, 22.12.2022 and 14.04.23, however no one appeared for the hearing. Further last opportunity for personal hearing was granted on 23.06.2023. On this occasion, representative of Noticee-1,2 & 3 Shri Vinit Dubey (Advocate), virtually attended the personal hearing and reiterated their

written submission / defence reply and requested for cross examination of Shri Brijesh Gala, which was allowed.

18. In response to the PH MEMO issued to Shri Madan Lalwani (Noticee-4), his wife appeared in the office and informed that her husband (Shri Madan Lalwani) has expired on 28.01.2022 due to multiple health issues and covid-19 illness. She also submitted death certificate of Shri Madan Lalwani of Municipal Corporation of Greater Mumbai as an evidence of the death along with copy of OIA bearing number Mum-Cus-KV-Imp-24 to 46/2022-23 NCH dated 30.05.2022 passed in the case of Shri Madan Lalwani, and in the said OIA, appellate authority has given his findings that as Shri Madan Lalwani has expired, therefore, penalty imposed on Shri Lalwani may be considered as abated.

19. Shri Anish Ashok Desai, Advocate for Noticee-1, 2 & 3 conducted cross examination of Shri Brijesh Manilal Gala on 28.06.2023, record of the same is reproduced below:

*Q.1 Please read these statements dated 21-10-2010 and 25-10-2010 carrying your signatures and confirm whether these are your statements.*

*Ans. Yes these are my signatures and these are statements given by me.*

*Q.2 Please state as to whether in any part of these statements, name of our clients, M/s Gopalji Heavy Lifters or Mr. Jitesh Vador are mentioned?*

*Ans. No*

*Q.3 Please see your statement dated 25-10-2010 wherein you have mentioned on page 1 that you are submitting a handwritten list. Have you infact submitted the said list to the officers of DRI?*

*Ans Don't remember.*

*Q.4 Can you confirm whether you have included the name of our clients as persons for whom you have carried out business in the said list?*

*Ans. Don't remember.*

#### **Summary of submissions of Noticee-1, 2 & 3**

20. Shri Vinit Dubey (Advocate), Representative of Noticee-1,2 & 3 during personal hearing reiterated their written submission / defence reply submitted earlier, summary of the same is as follows:



**20.1 Statements recorded by DRI cannot be relied upon:**

(i). The evidence which are relied upon by the Department are in the form of panchanama and statements which are recorded in the course of the investigations. The panchanama and the statements, are provided to our clients along with the said show cause notice however certain documents which are specifically referred to in the said statements as well as the panchanama have not been provided.

**Statement of Shri Jitesh Vador (Noticee-3)**

(i). Demand is raised on the basis of certain statements, more specifically the statements of Shri. Jitesh Vador said to be voluntary and true. The said statements, which are recorded on 19-11-2010 and 05-07-2012, the said statements are neither true nor voluntary. The said statements are recorded by putting the partner/director of our clients under undue pressure, coercion and undue influence.

(ii). The said statements also cannot be taken as true and voluntary and cannot be used even for the purpose of corroboration. In the present case, there is no corroboration of any kind whatsoever other than the statements. This is in spite of the fact that in the case of demands raised on certain other importers, certificates issued by the Chartered Engineers have been discarded and fresh certificates were obtained from different engineers. Such certificates are relied upon for the purpose of re-determination of the value even where the importers had admitted to the mis-declaration of value and the extent of such undervaluation.

(iii). In the case of our clients the certificates issued by the Chartered Engineers approved by the Department who also are approved by the DGFT were submitted at the time of examination and assessment. It is on the basis of the said certificates that many of the consignments were permitted clearance while in some cases the value had been enhanced without giving any basis or reasons. None the less the same had been accepted by our clients which cannot be construed as admission of any mis-declaration of value by our clients.

**Statement of Shri Madan Lalwani**

(i). Shri. Madan Lalwani in his statement dated 21-10-2010 have stated that he advised that Customs authorities will not accept if the value of the crane is less than Rs.40/- per Kg of its weight. The relevant portion of the said statement reads as under:

*"I can be informed that in the ongoing investigations, instances have come to notice where gross undervaluation has been noted in the case of import of "Cranes especially in the name of M/s. Avi Trexim Private Ltd and where the clearance has been done by M/s. M. Dharamdas & Co. On being asked to clear my position I say*

*that I generally advise the importers that if the price of the 'Crane' is less than Rs.40 per kg by its weight then Customs authorities will not accept it. Most of the importers followed this benchmark of declaring the price of the Crane Calculated at the rate of Rs.40 per kg by its weight. By following this methodology, if they have suppressed the assessable value at which the 'Crane' was purchased, I would not be in a position to comment on the same. On being asked I admit that for the purposes of Customs Tariff Act, the duty is to be paid on the price actually paid or payable for the goods. I said appeared again whenever directed."*

(ii). Though this is what is mentioned in the said statement, nowhere it is mentioned that our clients have been specifically informed of such practice. Irrespective of whether our clients have been informed of any such benchmark, it is the submission of our clients that our clients did not follow any such practice but rather the records ensure that our clients cleared the correct transaction value of the cranes and that the transaction value is totally varying inasmuch as that the value at which our clients purchased the said cranes varies considerably.

(iii). While in respect of some of the crane's be much less than the benchmark of Rs.40/- per kg, in respect of some of the crane's, the value is much higher than the said benchmark when calculated in terms of weight of each of the cranes. Value of the Crane is not based on its weight but is dependent upon the actual condition of the Crane and the manner in which the same is negotiated. The value of the crane, especially a second-hand crane, depends on various other factors including the fact that such second-hand cranes have no use in the country of the exporter.

(iv). Irrespective of what has been stated by the said Shri. Lalwani, nowhere in the show cause notice it is explained as to how the said rate on weight basis is relevant. Nonetheless, the value of the crane and the weight were available before the proper officers of the Department at the time of assessment and the fact also remains that even in cases where the value of the crane is less than Rs. 40 by its weight, yet, clearance has been permitted by the proper officer of the Department after due examination and assessment on the basis of the various documents including the certificate issued by the Chartered Engineer.

#### **Statement of Shri Brijesh Gala**

(i). Two statements dated 21-10-2010 and 25-10-2010 of Shri Brijesh Gala are referred to and relied upon in the said show cause notice, to say that our clients have made payments of the differential amounts to the foreign suppliers of the cranes through him. In the said statements, nowhere it is mentioned that he had transferred any money in any manner for our clients. In the said statement he has not made any mention about our clients or about any such transactions of remittance of money to any place outside India.

(ii). In his 2nd statement dated 25-10-2010, he makes a different statement saying that, he has been informed that in the ongoing investigations it is seen that a large amount of money has been transferred overseas as well as locally through him on behalf of various persons engaged in import of cranes. Apparently after going through his earlier statement, he adds that he has done such money transactions for many persons who are engaged in the business of cranes. He apparently made a list in his own handwriting of all such parties along with the approximate amount of money transferred for each of the importers. However, since no such material is provided to our clients, inspite of the specific communication sent by our clients the obvious conclusion is that no such information has been provided by him regarding our clients.

(iii). In view of these submissions it is most humbly submitted that the said statements of Shri Brijesh Gala cannot be taken as evidence for the purpose of the corroboration of the statements of our clients or for that matter any other person or purpose.

20.2 Demand of Rs. 26,27,102.69/- which relates to the cranes which are imported more than 5 years before the date on which the show cause notice is issued, time barred:

(i). In this regard they relied upon following judgements:

A. M. Square Chemicals vs. Commissioner Of Central Excise, Ahmadabad, reported at 2002(146) E.LT.322 (Tri. Mum). This judgment of the Honble Tribunal is upheld by the Hon'ble Supreme Court reported in 2008 (231) ELT 194 (SC).

B. Commissioner of Central Excise., Surat vs. Nutan Texturiser, Reported in 2007 (291) E.L.T.199 (Tri-Mumbai) in this judgement the Tribunal has upheld the judgement of The Commissioner of (Appeals) and held that the demand raised after maximum period of 5 years provided under the law, is hopelessly barred by the limitation.

C. Shilachar Electronics Ltd V/s Commissioner Of Custom, Airport, Mumbai Reported in 2006 (205) E.LT 529 (Tri. Mumbai). In this judgement it is held that the Demand, even in case of suppression of fact, mis-statement, etc. can be issued within the maximum period of five years, and the demand is beyond the scope of the section and the impugned demand in the Show Cause Notice is set aside by the Hon'ble Tribunal.

#### **DISCUSSION AND FINDINGS**

21. I find that the present SCN is issued to the following four noticees:

Noticee-1: M/s. Gopalji Heavy Lifters,

Noticee-2: M/s. Dhanlakshmi Cranes,

Noticee-3: Shri Jitesh Vador (Managing partner of M/s. Gopalji Heavy Lifters and M/s. Dhanlakshmi Cranes),

Noticee-4: Shri Madan Lalwani (who had undertaken the job of clearance of the aforesaid consignments from customs and was operating under the CHA licence of M/s M. Dharamdas & Co. (CHA No. 11/100)

22. I have carefully gone through the SCN, records of the case, submissions of the noticees and records of personal hearing held before me.

23. Based on the questions raised by the Hon'ble Tribunal in its remand Order and the submissions of the notices, I find that the following issues arise for determination in this adjudication:

i. Whether statements recorded in this case under section 108 of the Act hold evidentiary value?

ii. Whether the declared value of the imported used cranes is liable for rejection under Rule 10A / Rule 12 of the CVR 1988 / CVR 2007 (as applicable) read with Section 14(1) of the Act and the same can be redetermined under Rule 4 of CVR 1988 / Rule 3 of CVR 2007 as applicable?

iii. Whether the imported used cranes are liable for confiscation under Section 111(m) of the Act?

iv. Whether the differential duty can be demanded under Section 28 of the Act in respect of provisionally assessed bill of entry no. 966400 dated 13/09/2010?

v. Whether the amount paid voluntarily by Noticee-1 during investigation can be appropriated against the short paid duty in respect of cranes mentioned at serial number 1 to 3 of Annexure- A-1 to the SCN in respect of which demand under section 28 of the Act was time barred at the time of SCN?

vi. Whether the differential duty in respect of used cranes mentioned at serial number 4 to 15 of Annexure- A-1 to the SCN and the crane mentioned in Annexure-A-2 to the SCN can be demanded under the extended period available in terms of provisions of Section 28 of the Act?

vii. Whether the noticees are liable for penal action?

24. I find that Hon'ble CESTAT remanded back the present case to original Adjudicating Authority with the directions that *"The lack thereof requires rectification by the original authority for which purpose we set aside the impugned order. We direct that the matter be heard afresh with opportunity afforded to noticees for cross-examination of deponents. The original authority is also directed to bear in mind the specific acts of omission and commission that has been held to be outside the authority of law. With these directions, we allow the appeals by way of remand"*. From the language of the Hon'ble CESTAT's Remand Order, it is clear that on two issues, the Hon'ble CESTAT has pronounced final judgement and leaving no room for me to decide. These two issues are:

Issue(iv) above : **Whether the differential duty can be demanded under Section 28 of the Act in respect of provisionally assessed bill of entry no. 966400 dated 13/09/2010?:** The Hon'ble CESTAT in respect of the said issue made final judgement as "*Section 28 has a specific role which does not run parallel to the assessment provisions but is enacted for invoking when assessment has led to short-levy or non-levy of duty. The impugned order makes so bold as to proceed to demand differential duty upon finalization of provisional assessment under Section 28 of Customs Act, 1962 which is improper and liable to set aside. The process initiated under Section 18 of Customs Act, 1962 needs to be taken to its logical conclusion as provided in Section 18*". (para 5 of the Order)

Issue(v) above : **Whether the amount voluntarily deposited by Noticee-3 during investigation can be appropriated against the bills of entry in respect of which demand under section 28 of the Act was time barred at the time of SCN?:** The Hon'ble CESTAT in respect of the said issue made final judgement as "*There is no legal sanctity to voluntary payment of duty during the pendency of investigation. There is no scope for adjustment or for retention of such money that has not been paid by the appellant towards discharge of duty short-levied on those three specific assessments. We affirm the position in law that 'adjustment' is but a euphemism for 'appropriation' and, just as equally, without legal sanctity. We hold that the adjudicating authority has exceeded his powers in adjusting Rs. 26,27,103/- and interest of Rs. 13,86,709/- from the voluntary deposit.*" (para 9 of the Order)

25. As the said Remand Order of the Hon'ble CESTAT stands accepted by the Department on 06.01.17, the judgement of the Hon'ble CESTAT on issue(iv) and issue(v) are final and binding on me with respect to the present case.

Now let me take up the issues one by one:

**26. Whether the statements made before DRI hold evidentiary value?**

26.1 I find that the SCN has relied upon statements of the following persons recorded by DRI officers under Section 108 of the Act:-

**Table-7**

Sr. No.	Name of the person (Shri)	Date of statement
1	Shri Madan Lalwani (Noticee-4)	21.10.2010, 27.10.2010
2	Shri Brijesh Manilal Gala	21.10.2010, 25.10.2010
3	Shri Anandkumar Manath, Director, M/s. N.M.T. Shipping Pvt. Ltd.	21.10.2010
4	Shri Jitesh Vador (Noticee-3)	19.11.2010, 05.07.2012

26.2 Noticees-1, 2 & 3 have argued that certain documents which are specifically referred to in the said statements as well as the panchanama have not been provided to them. On this issue, I find that the DRI has provided all the relied upon documents along with the SCN to all the noticees. Noticees arguments to provide non-relied upon



documents, appears to be a delaying tactic because these documents have neither been relied upon nor made basis for any allegation against the noticees in the SCN by DRI.

26.3 Noticee-1 has argued that statements made by Shri Jitesh Vador were obtained under pressure and undue influence and lack corroboration.

26.4 Noticee-1 has argued that Shri Madan Lalwani's statement suggests a benchmark of Rs. 40 per kg for crane imports, but it's unclear if the noticees were informed and also submitted that they did not follow this benchmark as the crane value varies considerably based on various factors beyond weight and also the show cause notice lacks explanation for the weight-based rate's relevance.

26.5 Noticee-3 has argued that the show cause notice relies on two statements of Shri Brijesh Gala to claim money transfers on behalf of them for crane imports. However, these statements do not mention any such transactions in respect of their imports. Gala's second statement lists transactions for various importers, but no evidence is provided in respect of their imports. Thus, these statements are deemed insufficient as evidence for corroboration.

26.6 I find that the very first statement of Shri Madan Lalwani, employee of the CHA firm M/s M. Dharamdas & Co. was recorded on 21.10.2010 and later on 27.10.2010. He appears to be the kingpin of this scam of undervaluation in the import of old and used cranes. In the first statement he has given the history of his work experience and family background. He started working with Shri Vikram Janghiyani, partner in the CHA firm M/s M. Dharamdas & Co. in 1985. He had exclusive control over account no. 2 of the firm, which dealt with import clearance work of secondhand cranes. There were 18 employees of the CHA firm who were working under him at that time for account no. 2. He used to advise the importers that if the price of the old crane is less than Rs. 40 per kg of its weight then customs authorities will not accept it. He also stated that most of the importers followed this benchmark and calculated the value at the rate of Rs. 40 per kg of the weight of the crane. In his voluntary statement dated 27.10.2010 he stated that he has given a list of a large number of importers of used cranes who used this modus operandi of undervaluation. From the list, it is seen that many importers have paid the duty and interest and got their cases settled. Some of such importers who got their cases settled are M/s Mallesh & Co, M/s Eastman Logistics and M/s Modern Equipment. The Noticee-3 in the present case has also written a letter dated 20.11.2010 to ADG, DRI accepting evasion of Customs Duty and making payment of Rs. 1 cr. towards the said liability. The statements of Shri Madan Lalwani are very detailed and contain details which could have only be known to him. As he has passed away; now he cannot be cross-examined to re-verify the facts. But the evidentiary value of his statements is strengthened by the fact that so many importers listed by him have accepted their dues (mentioned in the DRI's SCN) before the Hon'ble Settlement Commission **as their full and true disclosure of their duty liability under section 127B of the Act.** After the evidence of undervaluation was disclosed by

Madan Lalwani to the DRI in such a detailed manner and the same accepted by a large number of importers in the list, the burden of proof shifted to the noticees in the present case to justify that their declared values were correct. But it is relevant here to note that the Noticees-1, 2 and 3 (importers in the present case) till date could not produce any evidence or data to show that their import values were higher than at the rate of Rs. 40 per kg as suggested by Sh. Madan Lalwani in his statement.

**26.7** Instead of providing evidence to contradict the DRI's findings, Shri Jitesh Vador (Noticee-3) has already admitted deliberate undervaluation in the import of used cranes / accessories; procurement of bogus invoices from his overseas suppliers, in support of such undervaluation in various statements/communications taken over a period of 2 years from 2010 to 2012. Shri Jitesh Vador has admitted that the aforesaid 17 consignments imported in the name of his firms viz. M/s Gopalji Heavy Lifters / M/s Dhanlakshmi Cranes were cleared from the customs by resorting to undervaluation and also furnished the actual value of transaction. He admitted that he had remitted differential amounts (i.e. the difference between the actual value of cranes and the invoice value) abroad through Shri Brijesh Gala by way of 'Hawala' by stating that *'on your enquiry about the payment of differential amounts to the overseas supplier, I say that the same was reached to the overseas suppliers through Brijesh Gala who is into the business of money transfer. I used to contact Brijesh Gala on his mobile no. 9833084450 or on his telephone no. 23441826 for transferring the money abroad'*. I find that Shri Brijesh Manilal Gala in his voluntary statement dated 21.10.2010 before DRI stated that *"I have money transfer business with pappu bhai. Whenever any person (including the above persons), want to send money abroad, they reach the money in Indian rupees to me in my office. The rate of exchange and my commission is decided on telephone, with them. Upon receipt of money and after deducting my commission, I call up Pappu Bhai and convey the details for remitting the money. The telephone number of my office is 23441826"*. Shri Brijesh Gala in his statement dated 25.10.2010 has stated that *" I have made a list in my own handwriting of all such parties from the contact details available in my cell phone number 98330 84450 (Nokia handset model N72). I have also indicated the name of the person and the contact number as also the approximate amount that I have transferred overseas for these parties."* I find that the Shri Brijesh Gala in his cross examination dated 28.06.2023 has admitted that his statements dated 21-10-2010 and 25-10-2010, are carrying his signatures and confirmed that these are his true statements. On perusal of the above, it appears the statements of Shri Jitesh Vador and Shri Brijesh Gala recorded by DRI are corroborating with each other.

**26.8** Brijesh Gala was **cross-examined on 28.06.2023** by Shri Anish Ashok Desai, Advocate for Noticees-1, 2 and 3. In his Cross-Examination Brijesh Gala has stood by his statements dated 21.10.2010 and 25.10.2010 when he had admitted that he was transferring differential amounts abroad to the overseas suppliers of these crane importers. Therefore, I find that the noticees claim that the said statements are not corroborating, is not correct. It

is a 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.

**26.9** The Noticees-1, 2 and 3 have also tried to counter the strong evidence of undervaluation by relying upon a sentence in the statement of Shri Brijesh Gala dated 25.10.2010 wherein he has mentioned that he had made a list in his own handwriting of all such parties from the contact details available in his mobile phone. The Noticees have argued that this list has not been provided to them and they claim that their name does not figure in the said list. I find that after the said sentence mentioning about the list, Shri Brijesh Gala has qualified it by saying that the amounts indicated by him are approximate amounts stated by him by knowledge. He has not kept any records of the above stated money transfer. In his business no such record is maintained. The entire business runs on trust and confidence. Once the deal is confirmed, whatever paper/chit containing the details of money transfer is prepared, it is immediately destroyed. Thus, it appears that any such list, based on memory of Shri Brijesh Gala or the contact details of his mobile phone could not have been exhaustive when the import scam was spread over the period of a number of years. Mere non-production of this list by DRI to the noticees or in the SCN does not reduce the strength of detailed evidence and modus operandi unearthed through the statements of various persons and accepted by a large number of importers before the Settlement Commission as their full and true liability. The Noticees have never retracted their statements before DRI. In fact they have accepted the evasion and paid the duty on 20.11.2010. In this regard, it is relevant to quote Judgement of the Hon'ble Supreme Court in **System and Components**<sup>13</sup> wherein the Court has ruled that **what is admitted by the importers need not to be proved.**

**26.10** I find that Importer M/s Gopalji Heavy Lifters wrote a letter to the Commissioner of Customs (Import), NCH, Mumbai requesting clearance of the crane, arrived as per B/L No. TB145HOBM009 dated July 22, 2010 and the said letter received in the office on 20.12.2010. Vide said letter they stated : *"We are regular importers of cranes (old and used). We have imported one All Terrain Crane of 275 tons capacity with SI No 62002701 from M/s American Crane & Equipment Sales Inc. of USA which arrived as per the above said B/L. We submitted all the requisite documents before the proper Officers of the Customs and assessment and examination of the crane was completed and we were to pay the duty as per the assessment order. Since, the funds to be received from the banks were not received in time we could not pay the duty. Even before we could arrange for the funds, investigations were initiated by the DRI and clearance of the crane got held up. In these investigations our premises were searched and we were informed that the crane cannot be permitted to be cleared unless we deposit certain amounts. Statements of our partners were recorded indicating that we have misdeclared the value with an intention to evade payment*

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<sup>13</sup> Commissioner Of C. Ex., Madras Versus Systems & Components Pvt. Ltd.-2004 (165) E.L.T. 136 (S.C.)

*of duty. We submit that the statements recorded are not correct nor they are voluntary. We look for an opportunity to explain our position in this regard at an appropriate time and before appropriate authorities.”*

**26.11** I find that the said letter was written to the Commissioner of Customs(Import), NCH, Mumbai and **not to the investigation agency** i.e. DRI, MZU and therefore it cannot be considered as a proper retraction. I find that the said ‘All Terrain Crane’ of 275 tons capacity with SI. No. 62002701 imported vide B/E No. 966400 dated 13/09/2010 was released provisionally on 31/03/2011. Further, a statement of Shri Jitesh Vador was recorded on 05.07.2012 before DRI wherein he stated: *“today, I have appeared before you to inform you the correct prices on which I have purchased these cranes from my overseas suppliers. I have imported 16 used cranes and one consignment of used accessories for a Coles LT 120 Lattice Boom crane in the name of my firm M/s Gopalji Heavy Lifters. On being asked, I say that the main unit of this crane was not supplied by the supplier till date. The aforesaid accessories are lying at my yard. I have also imported one crane in the name of my firm M/s Dhanlakshmi Cranes. On my request a chart containing details of all these 18 cranes / accessories has been given to me. I have mentioned the correct CIF price of each of the cranes in this chart. I am submitting this chart under my dated signatures to you. I say that I have already deposited an amount of Rs 1 crore towards my duty liability in respect of the aforesaid 18 consignments. I say that the above amount of Rs 1 crore may be appropriated against my duty liability in respect of the aforesaid 18 consignments.”* I find that the said statement was recorded on 05.07.2012 whereas the crane imported vide B/E No. 966400 dated 13/09/2010 was already released provisionally on 31/03/2011. I find that the Noticee-3 has submitted that the statements given by him to DRI were not voluntary in nature because the same were given to clear the crane imported vide B/E No. 966400 dated 13/09/2010. The said argument of noticee does not hold substance because the said crane was already cleared provisionally on 31.03.2011 whereas the statement was recorded on 05.07.2012 (after one year of the clearance). Also no record is available to show that the Noticee-3 filed any retraction of the statement dated 05.07.2012 before DRI.

**26.12** Though the Noticees have issued a letter to the Commissioner of Customs, Import, NCH, Mumbai on 20.12.2010 (almost 2 months after their 1st statement before DRI) stating that their statements were not voluntary, but it is not clear as why this retraction letter was not sent to DRI. Later on 05.07.2012, Sh. Jitesh Vador, Noticee-3 has again given statement before the DRI accepting his earlier statements also accepting his duty evasion and requesting to appropriate the deposited duty amount of Rs. 1 cr. This statement taken 18 months after their retraction letter contradicts their earlier retraction letter.

**26.13** In the light of the above facts, the stand of the noticees during the present adjudication that they were coerced to accept undervaluation appears untrue as it is not supported by the circumstances and sequence of their actions, events and other evidence unearthed in the case. The relied upon statements of Shri Madan Lalwani, Shri Jitesh Vador



and Shri Brijesh Gala were never retracted by them before the investigation agency. Statement of Shri Brijesh Gala has also been confirmed in his cross-examination. All the statements have been recorded over a span of two years so noticees had ample time to retract the same in a proper manner. Also, it is relevant here to refer to some landmark judicial pronouncements on the issue of acceptability of statements recorded under provisions of section 108 of the Act.

i. The Hon'ble Supreme Court in the case of **Romesh Chandra Mehta**<sup>14</sup> and in the case of **Percy Rustomji Basta**<sup>15</sup> has held *"that the provisions of Section 108 are judicial provisions within which a statement has been read, correctly recorded and has been made without force or coercion. The provisions of Section 108 also enjoin that the statement has to be recorded by a Gazetted Officer of Customs and this has been done in the present case. The statement is thus made before a responsible officer and it has to be accepted as a piece of valid evidence"*.

ii. The Hon'ble Supreme Court in the case of **Badaku Jyoti Svant**<sup>16</sup> has decided that *"statement to a customs officer is not hit by section 25 of Indian Evidence Act, 1872 and would be admissible in evidence and in conviction based on it is correct"*.

iii. Hon'ble Supreme Court regarding the evidentiary value of statements under Section 108 under the Act in the case of **Duncan Agro Industries Ltd**<sup>17</sup> has decided that *"Section 108 of the Customs Act does not contemplate any magisterial intervention. The power under the said section is intended to be exercised by a gazetted officer of the Customs Department. Sub-section (3) enjoins on the person summoned by the officer to state the truth upon any subject respecting which he is examined. He is not excused from speaking the truth on the premise that such statement could be used against him. The said requirement is included in the provision for the purpose of enabling the gazetted officer to elicit the truth from the person interrogated. There is no involvement of the magistrate at that stage. The entire idea behind the provision is that the gazetted officer questioning the person must gather all the truth concerning the episode. If the statement so extracted is untrue its utility for the officer gets lost"*.

iv. Hon'ble Punjab and Haryana High Court in the case of **Jagjit Singh**<sup>18</sup> has decided that *"It is settled law that Customs Officers were not police officers and the statements recorded under Section 108 of the Customs Act were not hit by Section 25 of the Evidence Act. The statements under Section 108 of the Customs Act were admissible in evidence as has been held by the Hon'ble Supreme Court in the matter of Ram Singh<sup>19</sup>, in which it is held that recovery of opium was from accused by officers of Narcotic Bureau. Accused*

<sup>14</sup> Romesh Chandra Mehta vs the State of West Bengal (1969) 2 S.C.R. 461, A.I.R. 1970 S.C. 940

<sup>15</sup> Percy Rustomji Basta vs. the State of Maharashtra A.I.R. 1971 S.C. 1087

<sup>16</sup> Badaku Jyoti Svant Vs. State of Mysore [1966 AIR 1746 = 1978 (2) ELT J 323 (SC 5 member bench)

<sup>17</sup> Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro Industries Ltd. [(2000) 7 SCC 53]

<sup>18</sup> Jagjit Singh vs State Of Punjab And Another, Crl. Appeal No.S-2482-SB of 2009

<sup>19</sup> Ram Singh vs. Central Bureau of Narcotics, 2011 (2) RCR (Criminal) 850



*made confession before said officers. Officers of Central Bureau of Narcotics were not police officers within the meaning of Section 25 and 26 of the Evidence Act and hence, confessions made before them were admissible in evidence”.*

**26.14** In view of the foregoing discussion, I find that the statements recorded by DRI under the provisions of Section 108 of the Act cannot be held as coerced and are revealing correctly the facts of this huge import scam. They form a reliable evidence in the case supporting the charge of manipulation of import documents and gross undervaluation of used cranes.

**27. Whether the declared value of the goods imported by M/s. Gopalji Heavy Lifters and M/s. Dhanlakshmi Cranes , is liable for rejection under Rule 10A / Rule 12 of the CVR 1988 / CVR 2007 read with Section 14(1) of the Act and whether the same can be redetermined under Rule 4 of CVR 1988 / Rule 3 of CVR 2007 as applicable?**

**27.1** I find that the SCN proposed:

- i. Rejection of declared value of Rs. 4,94,78,611/- CIF in respect of the 15 consignments, imported and cleared by M/s. Gopalji Heavy Lifters, from Mumbai port (details as per Annexure-A-1 to the SCN) under the provisions of Rule 10 A/ Rule 12 of the CVR 1988/ 2007 (as applicable) read with section 14(1) of the Act.
- ii. Rejection of declared value of Rs. 2,52,78,750/- CIF in respect of the used Krupp KMK 6275 crane, imported and cleared **provisionally** by M/s. Gopalji Heavy Lifters, from Mumbai port (details as per Annexure-A-3 to the SCN) under the provisions Rule 12 of CVR 2007 read with section 14(1) of the Act.
- iii. Rejection of declared value of Rs. 22,62,000/- CIF in respect of 1 used crane, imported and cleared by M/s. Dhanlakshmi Cranes, from Mumbai port (details as per "Annexure-A-2" to the SCN) under the provisions of Rule 10 A of the CVR 1988 read with section 14(1) of the Act.

**27.2** Rule 10A of CVR 1988 and Rule 12 of CVR 2007 are reproduced below for reference:

**i. Rule 10A - Rejection of declared value**

*(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 4.*

**ii. Rule 12 - Rejection of declared value**

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

**27.3** As discussed above Shri Madan Lalwani's statement that there were several crane importers who were involved in evasion of Customs Duty by way of gross under-valuation of used cranes, by valuing the crane and accessories at around Rs. 28 to Rs. 40 per kg just above the scrap value was corroborated by various importers who disclosed the correct value of these used cranes to DRI and also accepted it as their full and true disclosure before the Hon'ble Settlement Commission under Section 127B of the Act. Shri Madan Lalwani's detailed version of the conspiracy hatched by his CHA firm and the importers is also corroborated by the statements of the hawala operator Shri Brijesh Gala whose services were used to transfer the additional and differential amounts abroad, Shri Brijesh Gala has confirmed his statements in cross-examination. The Importers/Noticees in the present case have also accepted their evasion and have paid the customs dues but they have not gone to the Settlement Commission. During adjudication, their attempt to retract their earlier statements appears without basis and consistency as discussed above.

**27.4** Thus, enough evidence had emerged during investigation for DRI to have a reasonable doubt over the declared values of these imported goods ( 16 BEs of M/s. Gopalji Heavy Lifters + 01 BE of M/s. Dhanlakshmi Cranes) and therefore their proposal in the said SCN of rejection of declared values of these goods imported by Noticee-1 and Noticee-2 under **Rule 10A / Rule 12 of the CVR 1988 / CVR 2007 (as applicable)** is reasonable and just.

**27.5** The SCN has proposed redetermination of value of these goods imported by the Noticees-1 & 2 under the provisions of Rule 4(1) of CVR 1988 / Rule 3(1) of CVR 2007 as applicable and the same are reproduced below for reference:

**i. Rule 4(1) of CVR 1988:** *The transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export to India, adjusted in accordance with the provisions of Rule 9 of these rules.*


**ii. Rule 3(1) of CVR 2007:** *Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10.*

**27.6** I find that the Hon'ble CESTAT vide order dated 15.11.2016 in respect of appeal filed against 1st OIO 04.09.2014 has observed that "*The decision in re Crown Lifters cited*

*supra on behalf of appellant, according to Learned Counsel, is also supportive of her arguments that the re-determination of assessable value of the imports fails the test of law. We are informed that section 14 of Customs Act, 1962 and the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 (and its successor Rules of 2007) were complied in their breach. The rejection of declared values is based on statements recorded under section 108 of Customs Act, 1962 just as the adoption of new values is. The requirement that rejection of declared value must be followed by sequential application of rule 5 onwards appears to have been disregarded. We have perused the impugned order and as she has pointed out. The re-determination has not cited any rule that has been applied; nor do we perceive any attempt at determining the value in accordance with the prescription in the Rules”.*


27.7 During the investigation by DRI when an employee of the CHA firm Shri Madan Lalwani disclosed the entire conspiracy and provided the list of importers who used the said modus operandi to evade the Customs Duty and when the Hawala Operator Shri Brijesh Gala also confirmed the said modus operandi; the DRI then approached the importers who admitted the under-valuation and the evasion of Customs Duty. They themselves disclosed the actual value of the used cranes and accessories while admitting that the declared value to Customs at the time of clearance was undervalued around the scrap value of steel (from Rs. 28 to Rs. 40 per kg). The Noticees-1, 2 and 3 were also the importers named in the list by Shri Madan Lalwani. The Noticees themselves disclosed the true value of cranes by submitting a chart reflecting the true/actual value of the 17 consignments. The Noticee-3 during investigation also voluntarily submitted Rs. 1,00,00,000/- (Rupees one crore only) vide letter dated 26.11.2010 toward duty evaded by him in the import of used cranes (copy of the same is reproduced below for reference).

AD/1824  
M.A.C. SR



**GOPALJI HEAVY LIFTERS**  
 AN ISO 9001 CERTIFIED COMPANY

(2)  
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Mumbai the 20<sup>th</sup> November, 2010

The Additional Director General,  
 Directorate of Revenue Intelligence,  
 Mumbai.

Respected Sir,

Sub: Enquiry into import of cranes by M/s. Gopalji Heavy Lifters - reg.

I have to submit that yesterday i.e. on 19.11.2010, I had appeared in DRI office, when my statement in relation to import of various cranes caused by me in the name of my above company was recorded.

I have since reflected on the Customs duty that has been evaded on the above stated imports. I have provided the details in my statement.

I hereby submit the following payments favouring the Commissioner of Customs voluntarily and unconditionally towards the above stated duty evaded by us.

Sr. No.	Pay Order no. /Cheque no.	Date	Bank	Amount (Rs.)
1.	Pay Order no. 112785	20.11.2010	HDFC Bank, Crawford Market branch, Mumbai	Rs. 50,00,000/-
2.	Cheque no. 738494	26.11.2010	The Maharashtra Co-op. Bank Ltd., Carnac Bunder, Mumbai.	Rs. 50,00,000

The above cheque of Rs.50 lakhs shall be good for payment on 26.11.2010. Alternatively, I shall submit a pay order in lieu of the above stated cheque.

I request that above stated payments may kindly be accepted. I shall give my full cooperation in your investigations.

Thanking you,

Yours faithfully,  
**For GOPALJI HEAVY LIFTERS**  
 (JITESH SRINIVAS LAL VADOR) Partner

3006  
5/21-11/10

17/18, KASHIARAM JANNADAS BUILDING, S. P. D'MELLO ROAD, MUMBAI-400 009, INDIA  
 TEL: 02277 2304 + 2377 2333 + 2377 2338 + 2377 5023 + 2340 6868 + FAX: (022) 2374 5731  
 E-MAIL: gopalji\_hl@yahoo.co.in + WEBSITE: www.gopalji.net

**27.8** In view of the above, I conclude that the values admitted / submitted through 'a chart' by Jitesh Vador (Noticee-3) in respect of 17 consignments imported by him in the name of firms M/s. Gopalji Heavy Lifters (Noticee-1) and M/s. Dhanlakshmi Cranes (Noticee-2) are the true / actual transactional value of these goods because they were actually paid or payable for the goods imported by him. Therefore, I find that the SCN has rightly proposed redetermination (As per Tables-3 & 4 above) of value of these 17 consignments imported by Noticees-1 & 2 **under the provisions of Rule 4(1) of the CVR 1988 / Rule 3(1) of the CVR 2007 (as applicable)** read with Section 14(1) of the Act. In respect of the Hon'ble CESTAT observations, I find that once Rule 4(1) of the CVR 1988 / Rule 3(1) of the CVR 2007 can be applied in a case to redetermine the value of imported goods then **there is no need to move forward to sequential rules for redetermination** of the value of the imported goods. In the present case, Noticee-3 itself provided the true / actual transaction value of the imported goods. When the true / actual transactional value of the imported goods is available, which is paid or payable in respect of imported goods then there is no need to move downward in application of rules of CVR 1988/2007 to redetermine the value of imported goods.

**27.9** I also rely upon the Judgement of the Hon'ble Supreme Court in **System and Components(supra)** and CESTAT Judgement in **Sodagar Knitwear<sup>20</sup>** (approved by the Hon'ble Supreme Court<sup>21</sup>) that when an importer himself admits a higher value before the Department which is corroborated by other evidences/statements, the department need not prove it again. Since the redetermination is in terms of Rule 4(1) of the CVR 1988 and Rule 3(1) of the CVR 2007, it is found to be in compliance with the sequential application of Valuation Rules.

**28. Whether the goods imported by M/s. Gopalji Heavy Lifters (Noticee-1) and M/s. Dhanlakshmi Cranes (Noticee-2) are liable for confiscation under Section 111(m) of the Act?**

**28.1** I find that the SCN has proposed confiscation of 16 consignments imported in the name of M/s Gopalji Heavy Lifters and one consignment imported in the name of M/s Dhanlakshmi Cranes under the provisions of section 111(m) of the Act. Section 111(m) of the Act, is reproduced hereinbelow for reference:

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

<sup>20</sup> Commr. Of Cus. (Import), Icd, Tkd, New Delhi Versus Sodagar Knitwear-2018 (362) E.L.T. 819 (Tri - Del.)

<sup>21</sup> 2018 (362) E.L.T. A213 (S.C.)



**28.2** On perusal of the above section, it is clear that any goods which do not correspond in respect of value with the entry made under the Act are liable for confiscation under Section 111(m) of the Act. In the present case, as discussed above, the noticees submitted false and manipulated invoices to the Customs at the time of clearance of goods, which were not reflecting the true / actual transaction value of the imported goods. Noticee-3 in his voluntary statements admitted deliberate undervaluation in the import of the aforementioned 17 consignments and also submitted a chart reflecting the true / actual transaction value of these consignments and further admitted they remitted differential amounts by way of 'hawala'. Therefore, I hold that the goods imported by Noticees-1 & 2 are liable for confiscation under Section 111(m) of the Act as they do not correspond in respect of value.

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

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

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

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

**28.4** I find that the Hon'ble High Court of Chennai, in the case of **Visteon Automotive Systems India Limited**<sup>22</sup>, has held that availability of goods is not necessary for imposing redemption fine. Vide the said order it was inter alia held that "...opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act ....., brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The

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<sup>22</sup> Visteon Automotive Systems India Ltd Vs CESTAT, Chennai-2018 (9) G.S.T.L. 142 (Mad.)



*redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act.”*

**28.5** I find that the above view of the Hon'ble Madras High Court was relied upon by Hon'ble Gujarat High Court in the case of **M/s. Synergy Fertichem Pvt. Ltd**<sup>23</sup>. Hon'ble Gujarat High Court at para 174 and 175 of the judgement held that “*We would like to follow the dictum as laid down by the Madras High Court in Para-23 in the case of Visteon Automotive Systems India Limited Vs CESTAT, Chennai*”. Therefore, in view of the above, I find that the goods imported by Noticees-1 & 2 are liable for redemption fine in lieu of confiscation even if the goods are not physically available at present .

**29. Whether demand of differential duty upon finalization of provisional assessment in respect of B/E No. 966400 dated 13/09/2010 can be made under section 28 of the Act?**

**29.1** As discussed in para 24 above, the Hon'ble Tribunal in its Remand Order has already decided this issue holding that differential duty cannot be demanded under Section 28 of the Act in respect of provisionally assessed bill of entry no. 966400 dated 13/09/2010. Hence in compliance of the Hon'ble Tribunal's Order, I hold that with respect to the provisionally assessed B/E No. 966400 dated 13/09/2010, natural justice has already been given to the noticees through this SCN and personal hearings. The said provisional assessment is now directed to be finalised under section 18 of the Act read with Regulation 6(3) of Customs (Finalisation of Provisional Assessment) Regulations, 2018 notified vide Notification No. 73/2018-CUS(NT) dated 14.08.2018. In terms of these provisions and in view of the evidences already discussed in paras above, I hold that in respect of this provisionally assessed BE, Noticee-1 is liable to pay differential duty / short paid duty amounting to **Rs. 67,27,903/-** (details as per Annexure-A-3 to the SCN). As section 28 will not be applicable for this particular consignment, extended period and penalty under section 114A will not be attracted. However, the provisions relating to confiscation, redemption and penalty for improper importation under section 112(a) will still be attracted.

**30. Whether the amount paid voluntarily by Noticee-1 during investigation can be appropriated against the short paid duty in respect of cranes mentioned at serial number 1 to 3 of Annexure- A-1 to the SCN in respect of which, duty demand has become time barred under section 28 of the Act?**

**30.1** As discussed in para 24 above, the Hon'ble Tribunal in its Remand Order has already decided this issue holding that “*the adjudicating authority has exceeded his*

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<sup>23</sup> M/s. Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.)

*powers in adjusting Rs. 26,27,103/- and interest of Rs. 13,86,709/- from the voluntary deposit". In compliance of the same, I decide that amount paid voluntarily by Noticee-1 during investigation cannot be appropriated against the short paid duty in respect of cranes mentioned at serial number 1 to 3 of Annexure- A-1 to the SCN in respect of which duty demand was time barred under section 28 of the Act at the time of SCN. The said amount may be appropriated against other dues that may arise from this Order.*

**31. Whether differential duty in respect of cranes mentioned at serial number 4 to 15 of Annexure- A-1 to the SCN and crane mentioned in Annexure-A-2 to the SCN can be demanded under the extended period available in terms of provisions of Section 28 of the Act?**

**31.1** As discussed above, it is amply clear that the noticees wilfully suppressed the actual invoices from the Department and knowingly submitted false and manipulated invoices to the Department with the intention to evade customs duty. Therefore, I hold that the SCN has rightly proposed a demand of differential duty in respect of 12 consignments (details as per sr. no. 4 to 15 of Annexure-A-1 to the SCN) imported in the name of M/s Gopalji Heavy Lifters and one crane, imported and cleared in the name of M/s Dhanlakshmi Cranes (details as per Annexure-A-2 to the SCN) under the extended period available in terms of section 28 of the Act.

**32. Whether the noticees are liable for penal action?**

**32.1** I find that the SCN has proposed penalty on the noticees in respect of the goods imported by Noticees-1 & 2 as per the following table:

**Table-8**

<b>Sr. No</b>	<b>Name of the Noticee</b>	<b>Penal Action in respect of goods imported by Noticee-1</b>	<b>Penal Action in respect of goods imported by Noticee-2</b>
1	M/s. Gopalji Heavy Lifters (Noticee-1)	Penalty under Section 114A, 112(a) and / or 112(b), 114AA of the Act,	
2	M/s. Dhanlakshmi Cranes (Noticee-2)		Penalty under Section 114A, 112(a) and / or 112(b), 114AA of the Act
3	Shri Jitesh Vador (Noticee-3)	Penalty under Section 114A, 112(a) and / or 112(b), 114AA of the Act	Penalty under Section 114A, 112(a) and / or 112(b), 114AA of the Act

4	Shri Madan Lalwani (Noticee-4)	Penalty under Section 112(a) and / or 112(b), 114AA of the Act	Penalty under Section 112(a) and / or 112(b), 114AA of the Act
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**32.2** From the evidences discussed above, it becomes clear that at the material time, Noticee-4, a senior employee of the well-known CHA firm, with his team of 18 staff, was in touch with large number of crane importers and was repeatedly importing used cranes at very low prices and was aware that these imports had corrupted the customs NIDB data. Therefore he knew that he could further conspire with importers to import old and used cranes at around scrap value, which was Rs.20 Rs.40 per kg at that time, without declaring the actual value to customs and justifying the values easily based on past NIDB data. The Noticee-4 had become powerful enough to control the entire account no.2 of the CHA firm which dealt with import of old and used cranes. Thus, Noticee-4 orchestrated this import scam and emerged as its kingpin.

**32.3** In the present case, he colluded with Noticees-1 & 2 to submit false and manipulated invoices to the Customs at the time of clearance of above mentioned consignments with the intention to profit from evasion of customs duty. Shri Jitesh Vador (Noticee-3) (managing partner in both the firms) was instrumental in mis-declaring the value of the goods in the import documents of both the firms by submitting false and manipulated invoices to Customs. Noticees-3 & 4 during their voluntary statements accepted deliberate undervaluation in the import of these 17 consignments. They knowingly or intentionally made, signed or used, or caused to be made, signed or used invoices which were false and manipulated. Thus, I hold Noticee-1 (for the goods imported by Noticee-1), Noticee-2 (for the goods imported by Noticee-2), Noticee-3 (for the goods imported by Noticees-1 & 2) and Noticee-4 liable for penal action under the provisions of Section 114AA of the Act.

**32.4** The goods imported by Noticees-1 & 2 are liable for confiscation under Section 111(m) of the Act, as discussed above. Hence, the Noticees-1, 2, 3 & 4 are also liable for penalty under Section 112(a) of the Act for the omissions and commissions (submission of manipulated invoices with lower value than the actual transaction value at the time of clearance of goods) they did in respect of these goods which renders the goods liable for confiscation.

**32.5** As discussed above, demand under the extended period available in terms of Section 28 of the Act is sustainable in the present case in respect of goods imported by the Noticees -1 & 2 (Details as per Annexure A-1, and A-2 to the SCN). Where demand is sustainable under the extended period in terms of Section 28 of the Act, penalty is imposable under Section 114A of the Act. Thus, I hold that Noticee-1 in respect of the goods (Details as per Annexure-A-1 to the SCN ) and Noticee-2 in respect of goods

(Details as per Annexure-A-2 to the SCN) are liable for penalty under Section 114A of the Act. Out of both penalties under Section 112 and 114A, only one can be imposed therefore I refrain from imposing penalty under Section 112(a) on Noticees-1 & 2.

**32.6** Further, it has come to my notice that Noticee-4 has left this world on 28.01.2022. I have seen the Death Certificate Registration No. D-2022:27-90269-000886 dated 09.02.2022 of Shri Madan Lalwani (Noticee-4) issued by Municipal Corporation of Greater Mumbai, submitted by his wife in this office. Since the case against him was only of imposition of penalty under Section 112(a), 112(b) and Section 114AA of the Act, the said case stands abated in view of the ratio laid down by the Hon'ble Supreme Court in **Shabina Abraham**<sup>24</sup> and by the Hon'ble CESTAT, New Delhi in **Manmohan Kaur Sehgal**<sup>25</sup>.

**32.7** Also, it is noticed that the Hon'ble Tribunal has observed in Para 4 of its Remand Order that penalty under Section 114A has been imposed twice on the importer; but on examination of the 1st OIO, I find that penalty under Section 114A has been imposed in Para 37(A)(vi) and Para 37(B)(vi) and 37(C)(vii) against the two importer firms, M/s Gopalji Heavylifters and M/s Dhanlaxmi Cranes, in respect of different consignments covered by Annexures A1, A2 and A3 to the SCN respectively. Since the consignments listed in different Annexures are different accordingly, penalties have been imposed separately for each consignment, I am unable to find any duplication of penalty in the above mentioned sub-paras of Para 37 of the said OIO. Also, the penalty under Section 114A of the Act has been demanded from the importer who is the person liable to pay duty under Section 28 of the Act and not from other co-noticees which is legal and proper.

**33.** In view of the above, I pass the following order.

#### **Order**

**33.1 In respect of goods imported by M/s. Gopalji Heavy Lifters(Noticee-1):**

**(A) For the 15 past consignments (details as per Annexure-A-1 to the SCN)**

**(i)** I reject the declared value of **Rs. 4,94,78,611/- CIF** under the provisions of Rule 10A/Rule 12 of the CVR 1988/ CVR 2007 (as applicable) and re-determine the same as **Rs. 7,34,42,674/- CIF** (details as per Annexure-A-1 to the SCN) under Rule 4 of CVR 1988 / Rule 3 of CVR 2007 as applicable read with Section 14 of the Act.

**(ii)** I confirm the demand and order for recovery of differential duty amounting to **Rs. 51,27,658/-** in respect of 12 consignments (details as per sr. no. 4 to 15 of Annexure-A-1 to the SCN), under the provisions of section 28(8) of the Act along with applicable interest in terms of section 28AA(erstwhile 28AB) of the Act.

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

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

(iii) I order to confiscate the 15 consignments (details as per Annexure-A-1 to the SCN) with a declared value of **Rs. 4,94,78,611/- CIF** (actual value of **Rs. 7,34,42,674/- CIF**) under the provisions of Section 111(m) of the Act. However, in lieu of the confiscation, I impose a redemption fine of **Rs. 16,00,000/- (Rupees sixteen lakh only)** under Section 125 of the Act.

(iv) In respect of 12 consignments (details as per sr. no. 4 to 15 of Annexure-A-1 to the SCN), I impose a penalty equal to the short paid duty and interest on M/s Gopalji Heavy Lifters 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.

(v) I impose a penalty of **Rs. 5,00,000/- (Rupees five lakh only)** on Shri Jitesh Vador under the provisions of Section 112(a) of the Act.

(vi) I impose a penalty of **Rs. 10,00,000 (Rupees ten lakh only)** on M/s Gopalji Heavy Lifters under the provisions of Section 114AA of the Act.

(vii) I impose a penalty of **Rs. 10,00,000/- (Rupees ten lakh only)** on Shri Jitesh Vador under the provisions of Section 114AA of the Act.

(viii) I refrain from imposing any penalty on Shri Madan Lalwani.

**(B) For the one used Krupp KMK 6275 crane, imported and cleared provisionally vide BE No. 966400 dated 13/09/2010 in the name of M/s. Gopalji Heavy Lifters, from Mumbai port (details as per Annexure-A-3 to the SCN)**

(i) I reject the declared value of **Rs. 2,52,78,750/- CIF** under the provisions of Rule 12 of the CVR 2007 and re-determine the same as **Rs. 2,78,77,500/- CIF** under Rule 3 of CVR 2007 read with Section 14 of the Act.

(ii) I order to finalise the provisional assessment under section 18 read with sections 17, 124 and 125(2) of the Act, and Regulation 6(3) of Customs (Finalisation of Provisional Assessment) Regulations, 2018; on the redetermined value (details as per Annexure-A-3 to the SCN). The concerned DC (Appraising Group V), NCH, Mumbai is directed to accordingly finalise the said BE on the ICES System.

(iii) I confirm the duty liability amounting to **Rs. 67,27,903/-** (details as per Annexure-A-3 to the SCN) under section 18 of the Act read with Regulation 6(3) of Customs (Finalisation of Provisional Assessment) Regulations, 2018. I order to appropriate the amount of **Rs. 67,27,903/-** paid at the time of clearance of the aforesaid used Krupp



KMK 6275 crane, towards the duty liability, after finalization of the assessment and order to enforce the Bank Guarantee of Rs. 28,16,000/- furnished at the time of seeking provisional release of the aforesaid crane towards the interest/fine/penalty liabilities.

(iv) I order to confiscate the said goods with a declared value of **Rs. 2,52,78,750/- CIF** (re-determined value of **Rs. 2,78,77,500/- CIF**) under the provisions of Section 111(m) of the Act. However, in lieu of the confiscation, I impose a redemption fine of **Rs. 13,00,000/- (Rupees thirteen lakh only)** under Section 125 of the Act.

(v) I impose a penalty of **Rs. 4,00,000/- (Rupees four lakh only)** on M/s Gopalji Heavy Lifters under the provisions of Section 112(a) of the Act.

(vi) I impose a penalty of **Rs. 4,00,000/- (Rupees four lakh only)** on M/s Jitesh Vador under the provisions of Section 112(a) of the Act.

(vii) I impose a penalty of **Rs. 17,00,000 (Rupees seventeen lakh only)** on M/s Gopalji Heavy Lifters under the provisions of Section 114AA of the Act.

(viii) I impose a penalty of **Rs. 17,00,000 (Rupees seventeen lakh only)** on Shri Jitesh Vador under the provisions of Section 114AA of the Act.

(ix) I refrain from imposing any penalty on Shri Madan Lalwani.

(C) I order to appropriate the amount of **Rs. 1,00,00,000/- (Rupees one crore only)** paid by M/s Gopal Heavy Lifters during the ongoing investigations towards differential duty, interest, fine and penalty arising from this Order.

### **33.2 In respect of goods imported by M/s. Dhanlakshmi Cranes (Noticee-2):**

(i) I reject the declared value of **Rs. 22,62,000/- CIF** of 1 used crane (details as per Annexure-A-2 to the SCN) under the provisions of Rule 10A of the CVR 1988 read with section 14(1) of the Act and re-determine the same as **Rs. 49,76,400/- CIF** (details as per Annexure-A-2 to the SCN) under Rule 4 of CVR 1988 read with section 14 of the Act.

(ii) I confirm the demand and order for recovery of differential duty amounting to **Rs. 8,50,191/-** on the aforesaid 1 used crane (details as per Annexure-A-2 to the SCN) under the provisions of Section 28 of the Act along with applicable interest in terms of section 28AB of the Act.

(iii) I order to confiscate the aforesaid 1 used crane (details as per Annexure-A-2 to the SCN), with a declared value of **Rs. 22,62,000/- CIF** (re-determined value of **49,76,400/- CIF**) under the provisions of Section 111(m) of the Act. However, in lieu of the confiscation, I impose a redemption fine of **Rs. 1,70,000/- (Rupees one lakh seventy thousand only)** under Section 125 of the Act.

(iv) In respect of aforesaid 1 used crane (details as per Annexure-A-2 to the SCN), I impose a penalty equal to the short paid duty and interest on M/s. Dhanlakshmi Cranes 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.

(v) I impose a penalty of **Rs. 80,000/- (Rupees eighty thousand only)** on Shri Jitesh Vador under the provisions of Section 112(a) of the Act.

(vi) I impose a penalty of **Rs. 1,00,000/- (Rupees one lakh only)** on M/s. Dhanlakshmi Cranes under the provisions of Section 114AA of the Act.

(vii) I impose a penalty of **Rs. 1,00,000/- (Rupees one lakh only)** on Shri Jitesh Vador (Noticee-3) under the provisions of Section 114AA of the Act.

(viii) I refrain from imposing any penalty on Shri Madan Lalwani.

34. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved, under the provisions of the Act, and/or any other law for the time being in force in the Republic of India.



Vivek  
31.07.23

( Vivek Pandey )

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

To,

- (i) M/s Gopalji Heavy Lifters,  
17/18, Kashiram Jamnadas Building, 5, P.D'Mello Road,  
Mumbai-400009.
- (ii) M/s Dhanlakshmi Cranes,  
Plot No. 920, Ground Floor at Kiravali,  
Rahinjan, Panchmahal warehouse,  
Taloja, Navi Mumbai 410208.
- (iii) Shri Jitesh Vador,  
17/18, Kashiram Jamnadas Building,  
5, P.D'Mello Road, Mumbai-400009

Copy to:

1. The Pr. Chief Commissioner of Customs, Mumbai Zone-I, New Custom House, Mumbai.
2. The ADG, DRI, MZU, 13, Sir Vithaldas Thakersey Marg, Opp. Patkar Hall, New Marine Lines, Mumbai-400020.
3. ADG(CEIB), Central Economic Intelligence Bureau, Janpath Bhavan, B-wing, 6th Floor, New Delhi-110001.
4. The Deputy Commissioner of Customs, Group-5, New Custom House, Mumbai
5. The Deputy Commissioner of Customs, CHS Section, New Custom House, Mumbai. (For display on notice board)
6. Office Copy.