



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

फा.सं. : S/10-Adjn-135/Gr. V/2012-13

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

आदेश दिनांक: 01.03.2024
जारी दिनांक: 01.03.2024

सी.ए.ओ. क्रमांक : 78/2023-24/CAC/CC(IMPORT-1)/VP/ADJ(IMP-1)
DIN No. 2024037700000000F667

मूल आदेश

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



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

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F.No. : S/10-Adjn-135/Gr.V/2012-13

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

Date of Order: 01.03.2024
Date of Issue: 01.03.2024

C.A.O. No.:78/2023-24/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I)
DIN No. 2024037700000000F667

ORDER-IN-ORIGINAL

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

Subject: 2nd round adjudication consequent to CESTAT's remand Order No. A/91449-91450/17 Dated 11.12.2017 & CESTAT Order no. A/85083-85106/2023 dated 24.01.2023 against Order-in-Original No. 19/RT/PC/2016-17 dated 31.03.2017 on the SCN F. No. DRI /MZU/B/Inv-11/2010-11 dated 24.09.2012 issued by ADG, DRI, Mumbai Zonal Unit regarding undervaluation in import of used cranes by M/s Eastman Logistics and Infrastructure Pvt Ltd and its group companies at Mumbai Port resulting in evasion of duty of Rs. 1,11,96,859/-

Brief facts of the case

This is the second round of adjudication of the said SCN after the Hon'ble Tribunal vide order No. A/91449-91450/17 dated 11.12.2017 remanded back the said OIO dated 31.03.2017 and ordered that " 12. by following the ratio laid down by the Hon'ble High Court of Delhi in the case of BSNL (Supra) as well as by considering the totality of facts and circumstances, we set aside the impugned order and remand the matter to the original adjudicating authority to first decide the issue of jurisdiction after the availability of the Hon'ble Supreme Court decision in the case of **Mangali Impex Ltd.** and then on the merits of the case but by providing an opportunity to the assessee of being heard. Till the final decision, the **status quo** will be maintained.

13. In the result, appeals filed by the assessee are allowed by way of remand.

4. In line with the above decision of the Tribunal, I remand the matters for fresh decisions and both sides have agreed to it.

5. In the result, appeals stand disposed of accordingly."

2. Also, Hon'ble Tribunal vide order No. A/85083-85106/2023 dated 24.01.2023 held that "6. Miscellaneous applications filed by Mrs. Meena Madan Lalwani, widow of Appellant M.A. Lalwani are allowed. All appeals of deceased Appellant Late Madan Lalwani abate under Rule 22 of the CESTAT (Procedure) Rules, 1982. COD applications are infructuous and rejected."

3. The facts of the present case are that the officers of DRI, MZU gathered intelligence that several syndicates of crane importers were involved in evasion of customs duty by undervaluing the said imports. They had been submitting invoices to customs authorities prepared on the weight of the cranes @ Rs. 28/- to 40/- per Kg. as against the actual transaction value of these cranes. Further, they had been suppressing the freight charges paid to the shipping lines. The import invoices were prepared to show the value of cranes as on 'CIF basis' whereas purchases were mostly on 'FOB basis'. The differential amount of the suppressed value and the freight component were being remitted by the importers overseas through non-banking channels.

4. One of the crane importers whose name figured in the above stated intelligence was **M/s. Eastman Logistics and Infrastructure Pvt Ltd¹**, (IEC No.0306047144) having office at Kilfire House, 1st floor, C-17, Dalia Industrial Estate, Off New Link Road, Andheri (W), Mumbai-53. It was gathered that the person controlling the affairs of the company was **Shri Narender Madan²**, who was operating from the aforesaid office of the company. It was also gathered that Shri

¹ Also referred to as Noticee 1

² Also referred to as Noticee 5



Virek
01.03.24

Narender Madan has caused import of used cranes in the names of the following companies also (i) **M/s Heavy Cargo Movers**³ (IEC No. 0308028562) (ii) **M/s G.R. Infrastructure and Leasing Pvt Ltd**⁴ (IEC No 0305012410) (iii) **M/s G.R. Engineering Works Ltd**⁵ (IEC No.0388031972).

4.1 Acting on the above intelligence, investigations were initiated against major importers of cranes figuring in the intelligence, including M/s. Eastman Logistics and Infrastructure Pvt Ltd, Mumbai and its group companies.

4.2 The office premises of (i) M/s. Eastman Logistics and Infrastructure Pvt Ltd. and (ii) M/s G.R. Infrastructure Pvt Ltd., situated at Kilfire House, 1st Floor, C-17, Dalia Industrial Estate off New Link Road, Andheri (West), Mumbai-400053 were searched under panchanama on 19.11.2010. The search was carried out in the presence of Shri Mohit Madan, one of the directors of the said company. During the course of the search, numerous documents relating to the import of used cranes were recovered and taken over under a panchanama.

4.3 The office premises of M/s G.R. Engineering Pvt Ltd., situated at 202, A Wing, Poonam Chambers, Dr Annie Besant Road, Worli, Mumbai-400018 were also searched on 19.11.2010. During the course of the search, import documents relating to a few cranes were recovered from the said premises, which were taken over under a panchanama.

4.4 The office premise of M/s G.R. Infrastructure and Leasing Pvt Ltd, situated at Room No. 39, 4th Floor, 159, Shroff Bhavan, Dr. P.D'Mello Road, Carnac Bunder, Mumbai, was also searched in presence of independent panchas on 19.11.2010. From the said premises, a group company of Shri Narender Madan viz. M/s Eastern Tours and Travels Pvt Ltd, was operating. However, during the search of the said premises, certain documents relating to the import of cranes by M/s G.R. Infrastructure Pvt Ltd were recovered.

5.1 Earlier, the residential and office premises of **Shri Madan Lalwani**⁶, who was attending to the clearance of cranes by filing bills of entry through M/s. M. Dharamdas & Co. (CHA 11/100)] were searched. A 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 Rs. 23,39,500/- were also taken over for further investigations.

5.2 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] were also searched. During the course of the search for incriminating documents, Indian currency of Rs. 10.5 lakhs and foreign currency of 5,000 UK pounds (equivalent to Rs. 3.5 lakh) were taken over under panchanama dated 21.10.2010.

³ Also referred to as Noticee 4

⁴ Also referred to as Noticee 2

⁵ Also referred to as Noticee 3

⁶ Also referred to as Noticee 22

6. During the course of investigations, statements of following persons were recorded under the provisions of Section 108 of the **Customs Act, 1962**⁷.

6.1 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 Janghiani, partner in M/s M. Dharamdas & Co. (CHA no. 11/100) started business of customs clearing;

(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 a 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, pertaining 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.

6.2 Statement of Shri Brijesh Manilal Gala was recorded on 21.10.2010 under the provisions of Section 108 of the Customs Act, 1962, wherein he *inter alia* stated that after leaving college he had joined his father in the business of silverware at 39/41, Dhanji Street, Hem Bhavan, Mumbai; that since business at that time was not doing well they had started money transfer business side by side; that by money transfer, he meant that someone can pay them money in Mumbai and have it collected in major metros; that likewise money can be delivered in the major metros and collected from them here at Mumbai; that they get a commission of Rs. 300/- per lakh of such money transferred; that after his father retired, the entire business of money transfer was handled by him only; that his business was conducted in his personal name i.e. 'Brijesh'; that in this business, the entire activity was on word of mouth and trust; that no documents like

⁷ Also referred to as the Act

formal receipt was either made or delivered; that his daily turnover was not fixed; that for example, on some days there was no money transfer; that on some days the amount goes up to Rs. 40 to 50 lakhs; that 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; that copy of the panchnama was given to him; that 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 search of the shop premises; that during the search, the officers found cash in Indian currency of Rs. 10.5 Lakh, GBP 5000 and certain tax invoices of different goods; that the same were also taken over by the officers under a panchanama; that copy of the panchnama of the search of the shop was also given to him; that 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; that sometimes, some people especially those who make foreign trips require extra cash; that such people buy foreign currency at a small premium; that tax invoices found in his shop relate to cheque discounting; that he also does business in cheque discounting; that he had known Shri Mahesh Aggarwal of M/s. Avi Trexim and Shri Sanjay Soni of M/s. R.S. Cranes very well; that all the above persons were in the business of import and sale / hiring of cranes; that those persons had been transferring money through him in India as well as abroad; that whenever those persons wanted their cash money to be paid in India or abroad, they sent the money to him; that thereafter, as per their instructions, the money was remitted and delivered at the destination that they wanted; that for transmitting money anywhere in the world, he had a contact by name of Pappu bhai (whom he addressed as 'Uncle') in Dubai; that he had money transfer business with Pappu bhai; that 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; that the rate of exchange and his commission was decided on telephone; that upon receipt of money and after deducting his commission, he called up Pappu bhai and conveyed the details for remitting the money; that the details namely bank account number, name of the party, name of the bank etc. were faxed by him to Pappu bhai; that thereafter, Pappu bhai transmitted the money as per those details; that 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; that he did not have the complete postal address of Pappu bhai; that his contact with Pappu Bhai and entire business was conducted on phone; that the telephone number of Pappu bhai was 00971503846212.

6.3 Further statement of Shri Brijesh Gala was recorded on 25.10.2010 under the provisions of Section 108 of the Customs Act, 1962, wherein he inter alia stated that in his statement dated 21.10.2010 (which was shown to him) certain details were not revealed by him; that he had done money transfer for many persons who were engaged in the business of cranes; that 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); that 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; that he wished to clarify that the amounts indicated by him were approximate amounts stated by him from knowledge; that he had not kept any records of the above stated money transfer; that in his business no such record was maintained and the entire business runs on trust and confidence; that once the deal was confirmed, whatever paper / chit containing the details of money transfer was prepared, it was immediately destroyed; that Pappu, mentioned in his statement dated 21.10.2010 was popularly referred as 'Uncle'; that in fact, Pappu bhai was Dubai counterpart of Akhil who was having a Full Fledged Money Changer business in the name of A.N. Forex near GPO, Mumbai; that the contact details of Akhil were Office - 22610799, 22665936, Mobile No. 9821798722, 9004706224; that whenever any money was to be transferred abroad, he checked the prevalent rate of exchange from Akhil; that after the rate was fixed he gave confirmation of certain amount to Akhil; that 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; that two persons of Akhil viz Babu (Cell Phone No. 98705 28211) and Asif (Cell PhoneNo. 9821175848) generally came to his shop to collect the money from him; that 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); that likewise, he had another contact in Dubai by name of Ashok whose contact details were Mobile No. 00971506269842 and fax 0097142352513; that Ashok was an associate of Jeetu Patel who has a shop in Kamathipura, Mumbai. The contact number of Jeetu Patel was 9664044977; that for transferring money abroad, he also checked the prevalent rate of exchange with Jeetu Patel; that generally, he settled the deal between the better rate quoted by either Akhil or Jeetu Patel; that 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; that Jeetu Patel did not get into the hassles of transferring details once the amount and rate was fixed with him; that Jeetu Patel wanted him to directly send the details to Ashok through fax and confirm the delivery of the message to him (Jeetu Patel); that persons of Jeetu Patel used to collect the Indian equivalent money from him for the business done through Jeetu Patel; that his entire business of overseas money transfer was done by him with Pappu (through Akhil) and with Ashok (through Jeetu Patel); that on 21.10.2010, he was scared to reveal the name of Akhil and Jeetu Patel fearing retaliation from them: that 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. Accordingly, he decided to reveal all the details; that the contact details given by him above were all stated in his cell phone; that he had transferred an amount of Rs. 1 crore (approximately) abroad on behalf of Shri Narender Madan of M/s Eastman Logistics and Infrastructure Pvt Ltd.

6.4 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 Customs Act, 1962, who confirmed the facts stated by Shri Brijesh Gala in his above statements.

7.1 Statement of Shri Narender Madan was recorded on 29.11.2010 under section 108 of the Customs Act, 1962 wherein he inter alia stated that in the year 2004, he had established a transport company in the name and style of M/s Eastman Logistics and Infrastructure Pvt Ltd with him and his son Mohit as directors; that he was carrying out the business of import and hiring of cranes in the name of 4 companies viz. (i) M/s Eastman Logistics and Infrastructure Pvt Ltd (ii) M/s G.R. Infrastructure and Leasing Pvt Ltd (iii) M/s G.R. Engineering Pvt Ltd (iv) M/s Heavy Cargo Movers; that initially i.e in the year 2005, the job of clearance of our cranes from customs was assigned by them to Custom House clearing agent **M/s Manilal Patel**⁸ (CHA No. 11/90) having office at Kamer Building, 3rd Floor, 38, Cawasji Patel street, Fort, Mumbai-400001; that initially, he used to interact with Shri Bipin bhai; that after death of Bipin bhai, he was interacting with Jayesh bhai for work relating to clearance of cranes; that with passage of time they realized that M/s Manilal Patel were not giving prompt service; that therefore, from the beginning of the year 2009, the job of clearance of their cranes was being assigned to Shri Madan Lalwani of M/s M. Dharamdas & Co. (CHA 11/100) having office at Carnac Bunder, P. D'Mello Road, Mumbai.

7.2 During his above statement, Shri Narender Madan was shown typed charts in which details of cranes which have been imported in the name of the above four companies were entered. After going through these charts, Shri Narender Madan inter alia stated that they have imported about 77 cranes in the name of the aforesaid 4 companies; that out of these 77 cranes, 61 cranes have been imported and cleared by him in the name of his group companies and the remaining 16 cranes were sold by him on high sea sale basis to other importers. On being informed that the values of the cranes declared to customs were understated, Shri Narender Madan inter alia stated that some of the cranes imported in the name of the above companies were cleared on understated values due to business compulsions and to remain competitive in market; that the differential amounts were sent to the overseas supplier through Brijesh Gala who was into the business of money transfer.

8. During the investigation, Shri Narender Madan made the following voluntary duty payments favouring the Commissioner of Customs, NCH, Mumbai, towards their Customs duty liability arising out of import of cranes on understated values in the names of (i) M/s. Eastman Logistics and Infrastructure Pvt Ltd (ii) M/s Heavy Cargo Movers (iii) M/s G.R. Infrastructure And Leasing Pvt Ltd and (iv) M/s G.R. Engineering Works Ltd:

⁸ Also referred to as Noticee 21

TABLE-1

Sr No	Pay order No.	Bank	Amount(in Rs)	Remarks
1	668408 dated 29.11.2010	Indian Overseas Bank	50,00,000/-	Deposited in the Government Treasury at New Custom House, Mumbai vide TR-6 Challan dated 16.12.2010
2	668409 dated 29.11.2010	Indian Overseas Bank	25,00,000/-	
3	812549 dated 17.06.2011	Bank of Maharashtra	30,00,000/-	Deposited in the Government Treasury at New Custom House, Mumbai vide TR-6 Challan dated 30.06.2011
4	660154 dated 20.06.2011	Indian Overseas Bank	5,00,000/-	
5	660155 dated 20.06.2011	Indian Overseas Bank	5,00,000/-	
		Total	1,15,00,000/-	

9. Further statement of Shri Narender Madan was recorded on 07.06.2012 under section 108 of the Customs Act, 1962 wherein he interalia furnished details of 5 cranes sold by him on high sea sale basis to other importers.

10.1 Further statement of Shri Narender Madan was recorded on 03.08.2012, wherein he interalia stated that he had appeared in DRI office earlier and given his statements in the ongoing investigations into undervalued import of cranes; that he had voluntarily paid Rs. 1.15 crore towards their differential duty liability in respect of the cranes which were cleared on understated values in the name of their group companies viz (i) M/s Eastman Logistics and Infrastructure Pvt Ltd (ii) M/s G.R. Infrastructure and Leasing Pvt Ltd (iii) M/s Heavy Cargo Movers (iv) M/s G.R. Engineering Works Ltd.; that he had requested that the amount of Rs. 1.15 crores paid by them may be appropriated against their liability in respect of all the above companies; that subsequently he had appeared on two occasions and given his statements in relation to cranes imported by them and subsequently sold on high sea sale basis to other importers.

10.2 Under his statement, Shri Narender Madan was asked to furnish details in respect of 7 cranes sold by him on high sea sale basis to some other importers. In reply, Shri Narender Madan interalia stated that on receipt of DRI summons the previous day, he had deliberated on the matter once again; that he had also discussed the matter with his family and friends; that he did not want to conceal any information from DRI in relation to the cranes imported by them; that he had decided to furnish information / actual transaction values in respect of all the cranes which were imported by them either in the name of their group companies or which have been sold on high sea sale basis to other importers; that on his request charts containing details of all the cranes /accessories, imported by them in the names of their group companies, as well as sold by them on high sea sale had been given to him: that he had mentioned the correct CIF /FOB price of each of the crane in those charts.

10.3 During his statement, Shri Narender Madan submitted these charts under his dated signatures and further interalia stated that he had already deposited an amount of Rs. 1.15 crore towards their duty liability in respect of the above imports; that the amount of Rs. 1.15 crore may be appropriated against their duty liability in respect of the above imports, detailed in those charts. On being asked to furnish documents / correspondences exchanged by them with their overseas suppliers in relation to the above imports, Shri Narender Madan Stated that he did not have any documents

10.4 During his above statement, Shri Narender Madan furnished actual values of all the cranes imported by them in the name of their group companies as well as sold by them on high sea sale basis. A summary of the details furnished by Shri Narender Madan in his above statement, in a tabular form, is furnished below:

TABLE -2

Sr. No.	Name of the Importer	Number of Cranes imported	Number of cranes cleared on understated values
1	M/s Eastman Logistics and Infrastructure Pvt Ltd	22	17
2	M/s G.R. Infrastructure and Leasing Pvt Ltd	32	11
3	M/s G.R. Engineering Works Ltd	1	1
4	M/s Heavy Cargo Movers	5	4
5	M/s G.R. Infrastructure	1	0
	Sub Total	61	33
6	Various importers to whom M/s Eastman Logistics & Infrastructure Pvt Ltd sold the cranes on high sea sale basis.	9	7
7	Various importers to whom M/s G.R. Infrastructure and Leasing Pvt Ltd sold the cranes on high sea sale basis.	4	2
8	M/s G.R. Engineering Works Ltd sold the cranes on high sea sale basis.	1	1
9	M/s Heavy Cargo Movers sold the cranes on high sea sale basis.	2	2
	Sub Total	16	12
	Grand Total	77	45

Investigations with respect to High Sea Sale buyers:

11. During the course of ongoing investigations, statements of the following persons, who had purchased cranes from M/s Eastman Logistics & Infrastructure Pvt Ltd / M/s G.R. Infrastructure Pvt Ltd on High Sea Sale Basis were recorded.

11 A.1 Statement of Ashok Kumar Wadhwa, Executive Director, M/s Pratibha Industries Ltd (buyer of two cranes viz. (i) Used P & H 335 AS crawler crane (BE No. 805539 /15.11.2007) and (ii) Used Kato NK300 mobile crane ((BE No. 805540 / 15.11.2007) on high sea sale basis), was recorded on 18.04.2012 under the provisions of section 108 of the Customs Act, 1962, wherein he interalia stated that they had imported two old and used cranes viz. (i) Used P & H

335 AS crawler crane and (ii) Used Kato NK300 mobile crane, in the name of their company; that both the said cranes were offered to him for sale by Shri Narender Madan of M/s Eastman Logistics; that they were shown photographs of the cranes by Mr Narender Madan: that Shri Narender Madan informed him that he would sell those crane to them on high sea sale basis as the cranes were already dispatched from his (Narender's) supplier in the name of his company viz. M/s Eastman Logistics and Infrastructure Pvt Ltd and were mid-stream; that the deal for the P&H 335 crawler crane was finalized for Rs.16,00,000/- CIF. However, Shri Narender Madan informed them that the overseas supplier had raised an invoice showing the value of the crane as USD 19,000/- CIF; that he (Narender) informed him that on documents, the High Sea sale value for this crane would be shown as Rs. 8,00,000/- CIF and the remaining amount of Rs. 8,00,000/- would have to be paid in cash to him (Narender); that his company was not inclined to make any payment in cash to anybody; that however, as they were in dire need of cranes, they requested Shri Narender Madan to accept the entire payment by cheque; that after a lot of persuasion, Narender Madan agreed to take the entire payment in cheque but stated that the high sea sale agreement would be for Rs.8,00,000/- CIF only; that they purchased the above crane from Narender Madan on high sea sale basis on above terms and conditions; that the other crane viz. Kato NK 300 was also purchased from Narender Madan on high sea sale basis; that the deal for the Kato NK 300 crane was finalized for Rs. 15,00,000/- CIF; that Narender Madan informed them that his (Narender's) overseas supplier had raised an invoice showing the value of the crane as USD 18,000/- CIF; that Narender informed him that on documents, the High Sea sale value for the crane would be shown as Rs. 7,50,000/- CIF; that he agreed to accept the remaining amount of Rs. 7,50,000/- also by way of cheque; that a payment of Rs. 31,00,000/- was made to M/s Eastman Logistics and Infrastructure Pvt Ltd by way of cheque towards purchase price of the two cranes; that Narender Madan had made it clear that the job of clearance of the above crane from Mumbai Customs would be assigned to CHA M/s Manilal Patel Clearing and Forwarding Pvt Ltd.; that on arrival of the cranes at Mumbai port, Narender Madan handed over the import documents of the cranes such as the bill of lading, Invoice, packing list etc to CHA M/s Manilal Patel Clearing and Forwarding Pvt Ltd.; that the custom duty for the two cranes (i.e Rs 2,66,798/- for P & H crane and Rs. 2,34,911/- for Kato crane) and the clearing charges of Rs. 2 lakhs per crane, were borne by them; that after assessment and payment of duty, the delivery of the cranes was taken by them.

11A.2 In support of his above statement, Shri Ashok Kumar Wadhera submitted import documents of the aforesaid two cranes alongwith bank statement of Bank of Baroda (showing debits of the above amounts in favour of M/s Eastman Logistics and Infrastructure Pvt Ltd) and a copy of their ledger relating to M/s Eastman Logistics and Infrastructure Pvt Ltd.

11A.3 Under letter dated 19.04.2012, M/s Pratibha Industries Ltd made a voluntary payment of Rs. 4,69,215/- towards their Custom duty liability arising in respect of the above imports. A gist of the aforesaid statement as regards to the details of cost, payments made etc. is tabulated as under: -

TABLE-3

Sr No.	Name of the High Sea buyer	Date of the statement	Description of the crane	Bill of Entry no. & Date	CIF Cost Shown in the HSS agreement (Rs)	Actual Payment made towards cost of the crane through cheque (Rs.)
1	M/s. Pratibha Industries Ltd	18.04.12	Used P&H 335 AS crawler crane	805539/15.11.07	8,00,000/- CIF	16,00,000/-CIF
2	M/s. Pratibha Industries Ltd		Used Kato NK 300 mobile crane	805540/15.11.07	7,50,000/- CIF	15,00,000/-CIF

11B Similarly, statements of other buyers, who had purchased cranes from M/s Eastman Logistics & Infrastructure Pvt Ltd / M/s G.R. Infrastructure Pvt Ltd, on High Sea Sale basis were recorded. The statements of all the high sea sale buyers were enclosed as relied upon document to the notice. The gist of the aforesaid statements as regards to cost, payments in cash and cheque is tabulated as under: -

TABLE - 4

Sr No.	Name of the High Sea buyer	Date of the statement	Description of the Crane purchased on high sea	B/E No/date	CIF cost at which purchased (Rs)	Payment made through cheque(Rs) (i.e the value declared)	payment made by cash to Shri Narendra Madan (Rs) (under stated value)
1	Shri Hemant Soneta, Authorised Signatory, M/s. Parag Roadiines	15.05.12	Used P&H 435 truck crane SR No. J18198	763938/3.05.06	16,50,000/-	7,50,000/-	9,00,000/-
			Used P&H 335 truck crane SR No. J17547	835587/21.04.08	18,00,000/-	11,00,000/-	7,00,000/-
2	Shri Rajesh Dhila, Proprietor, M/s. Pankaj	11.05.12	Used P&H 440 S crawler crane	766791/16.05.06	20,00,000/-	8,80,000/-	11,20,000 /-

	Transport, Mumbai						
3	Shri Zulfikar Vadsaria, Managing Partner, M/s S.V. Crane Service	17.07.12	Used Linkbelt LS 518J crane	794620/ 24.09.07	73,00,000/-	43,00,000/-	30,00,000 /-
4	Shri Bharat Mohanlal Rajal, Authorised signatory M/s R R Carriers, Mumbai	14.05.12	Used P&H 440 crawler crane	836961/ 28.04.08	24,00,000/-	18,75,000/-	5,25,000/-
5	Shri Amarjeet Lamba Proprietor, M/s Shiv Kripa Roadways, Mumbai	12.07.12	Used P&H 435 crawler crane	780350/ 17.07.07	16,00,000/-	7,00,000/-	9,00,000/-
6	Shri Latif Ismail Boat, M/s Ahfreen Roadways, Navi Mumbai	19.07.12	Used P&H 335 S crane	803172/ 2.11.07	17,00,000/-	8,25,000/-	8,75,000/-
7	Shri Sidharth Bhoir Authorised Signatory M/s Bhoir Offshore Pvt Ltd, Mumbai	24.05.12	Used Manitow c M4 10052 crawler crane with accessorie s 1979	949573/ 21.05.10	1,34,75,503 /- (USD 3,00,000)	92,56,809/-	42,18,694 /-
8	Shri Sadru Ajani, M/s. Empire Equipment s, Mumbai	18.07.12	Used P&H 335 AS crane	910520/ 07.09.09	20,00,000/-	12,00,000/-	8,00,000/-
			Used P&H 335 AS crane	910521/ 07.09.09	20,00,000/-	12,00,000/-	8,00,000/-

11 C During the ongoing investigations, the aforesaid high sea sale buyers of cranes made the following voluntary payments towards their customs duty liability in respect of the cranes purchased by them from Shri Narender Madan on high sea sale basis:

TABLE - 5

Sr. No	Name of the buyer	Description of the crane	B/E No./Date	Differential duty paid during investigation (Rs)
1	Shri Rajesh Dhila, Proprietor, Pankaj Transport, Mumbai	Used P&H 440 S crawler crane	766791/ 16.05.06	6,23,671/-
2	Shri Bharat Mohanlal Rajal, Authorised signatory M/s R R Carriers, Mumbai	Used P&H 440 crawler crane	836961/ 28.04.08	1,50,000/-
3	Shri Sidharth Bhoir, Authorised Signatory M/s. Bhoir Offshore Pvt Ltd, Mumbai	Used Manitowoc M4 10052 crawler crane with accessories 1979	949573/ 21.05.10	10,26,000/-
4	Shri Hemant Soneta, Authorised Signatory, M/s. Parag Roadlines	Used P&H 435 truck crane SR. No. J18198	763938/ 3.05.06	6,81,000/-
		Used P&H 335 truck crane SR. No. J17547	835587/ 21.04.08	
5	Shri Amarjeet Lamba Proprietor, M/s Shiv Kripa Roadways, Mumbai	Used P&H 435 crawler crane	780350/ 17.07.07	3,00,000/-
6	Shri Zulfikar Vadsaria, Managing Partner, M/s S.V. Crane Service	Used Linkbelt LS 518J crane	794620/ 24.09.07	10,00,000/-
7	Shri Sadru Ajani, M/s Empire Equipments, Mumbai	Used P&H 335 AS crane	910520/ 07.09.09	3,50,000/-
		Used P&H 335 AS crane	910521/ 07.09.09	

12.1 Statement of Shri Tukaram Bandiwadekar, Director of M/s Manilal Patel Clearing & Forwarding Pvt Ltd was recorded on 27.08.2012 under section 108 of the Customs Act, 1962 wherein he interalia stated that in the year 1969, he joined his family business of Custom House Agency, which was being carried out in the name of M/s Manilal Patel & Co., that in the year 1977, he became a partner in the company; that in the year 1990, M/s Manilal Patel & Co. (a partnership firm) was converted into a private limited company; that he was made a director in the company; that he continues to be a director in the company; that he was looking after the clearance of import consignments of their clients through Air cargo Complex, Sahar; that he was aware that their Company was attending to import clearance of used cranes imported by Shri Narender Madan; that however, the said job was looked after by other director of the company viz. Shri Jayesh Marfatia; that Jayeshbhai would be in a better position to give information about

imports of Shri Narendra Madan; that Jayeshbhai had resigned as director of their company since November, 2011 and was doing his independent business; that Jayeshbhai was available on mobile number 9821072887.

12.2 Statement of Shri Jayesh Marfatia, Ex-Director of M/s Manilal Patel Clearing & Forwarding Pvt Ltd was recorded on 27.08.2012 under section 108 of the Customs Act, 1962 wherein he interalia stated that in the year 1979, he joined M/s Manilal Patel & Co., (Custom House Agents) as an Import Assistant; that he used to report to Shri Bipin Patel, who was the senior partner in M/s Manilal Patel & Co.; that in the year 1990, M/s Manilal Patel & Co. (a partnership firm) was converted into a private limited company; that he was made a director in the said company; that he was looking after the administration and clearance of import consignments of clients of his company through sea ports of Mumbai and Nhava Sheva; that in the year 2011, he resigned as director of M/s Manilal Patel Clearing & Forwarding Pvt Ltd. due to personal reasons; that M/s Manilal Patel Clearing & Forwarding Pvt Ltd. were attending to import clearance of used cranes imported by Shri Narendra Madan; that Shri Narendra Madan was importing cranes in the names of M/s Eastman Logistics and Infrastructure Pvt Ltd, M/s G.R. Infrastructure and Pvt Ltd, M/s G.R. Infrastructure, M/s G.R. Engineering Works, M/s Heavy Cargo Movers etc.; that in addition, they had have also attended to clearance of cranes which were sold by Mr Narendra Madan on high sea sale basis to other importers; that in all the cases, their agency charges in respect of all the above cases were paid by Shri Narendra Madan; that somewhere in the month of November / December, 2010, they had submitted all the dockets pertaining to import of used cranes by Shri Narendra Madan in the name of his group companies/ his high sea buyers. During the above statement, Shri Jayesh Marfatia was informed that in the ongoing investigations, Shri Narendra Madan had admitted that he had imported used cranes on understated values and had voluntarily deposited an amount of Rs 1.15 crore towards his differential duty liability. Shri Jayesh Marfatia was asked to offer his comments on the above aspect. In reply Shri Jayesh Marfatia stated that he did not wish to say anything in this regard.

13. Admittedly, Shri Narendra Madan had fraudulently imported and cleared the following 45 cranes from Customs by resorting to undervaluation:

(i) List of cranes imported by M/s Eastman Logistics and Infrastructure Pvt. Ltd by mis-declaring the values:

TABLE - 6

Sr. No.	B/E No./ Date	Description	Currency	Inv. Terms (FOB, C&F & CIF)	Declared invoice value	Admitted value
1	750885/ 07.03.06	Used P&H 540 Crawler Crane Sr. No. J24505	SGD	CIF	40000	75000
2	750884/ 07.03.06	Used P&H 540 Crawler Crane Sr. No. J21273	SGD	CIF	40000	75000

3	763939/ 03.05.06	Used P&H 440S Crawler Crane Sr. No. J19003	USD	CIF	20000	50000
4	763940/ 03.05.06	Used P&H 435TC Truck Crane with accessories Sr. No. J19227	USD	CIF	17500	40000
5	741716/ 30.01.07	Used P&H 430TC Truck Crane with accessories Sr. No. J20497	USD	CIF	17000	32000
6	786170/ 14.08.07	Used P&H 8100 at Mechanical Truck Crane Sr. No. J19508	SGD	C&F	95000	170000
7	801827/ 26.10.07	Used Hitachi KH70 Crane Sr. No. 220073	USD	C&F	21050	42000
8	808336/ 28.11.07	Used P&H 335AS Crawler Crane Sr. No. J-19041	USD	CIF	19000	39000
9	808337/ 28.11.07	Used Kato NK200A Mobile Crane Sr. No. 4TW20-1613	USD	CIF	14000	28000
10	803924/ 03.12.07	Used Tadano G451 Mobile Crane Chassis No. KGS0T-0066	USD	CIF	32500	61500
11	810095/ 06.12.07	Used P&H 670 WLC Crawler Crane Sr. No. 46018	USD	CIF	54000	88000
12	818532/ 18.01.08	Used Tadano TG451 Mobile Crane Chassis No. 400310 Engine No. RD8-00588	USD	CIF	32500	60000
13	820532/ 30.01.08	Used Tadano TL200L Mobile Crane Chassis No. 4TW17C-1416, Engine No. UD4-330088N	USD	CIF	14500	26500
14	823102/ 11.02.08	Used P&H Omega Rough Terrain Crane Sr. No. 48798	USD	C&F	26800	54000
15	826328/ 29.02.08	Used Grove All Terrain Crane S. No. 71084	USD	C&F	17000	41000
16	826328/ 29.02.08	Used P&H CN 122 Rough Terrain Crane	USD	C&F	15700	29000
17	846956/ 20.06.08	Used Lorain MC 790TC Truck Cranes Chassis No. 8TVW70C-0075	SGD	CIF	95000	150000

TABLE - 7

(ii) List of Cranes imported by M/s. G.R. Infrastructure and Leasing Pvt Ltd By mis-declaring the values:

Sr. No.	B/E No./ Date	Description	Currency	Inv. Terms (FOB, C&F & CIF)	Declared invoice value	Admitted value
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1	659328/ 20.03.06	Used P&H 440S Crawler Crane C/W 24M Boom and Hook Sr. No. FJ0900	USD	CIF	36000	45000
2	659907/ 21.03.06	Used P&H 335AS Crawler Crane C/W 24M Boom & Hook Sr. No. J23514	USD	CIF	26500	35000
3	678571/ 26.05.06	Used P&H 335AS Crawler Crane C/W 24M Boom and Hook Sr. No. J22968	USD	CIF	22800	35000
4	678572/ 26.05.06	Used P&H 335AS Crawler Crane C/W 24M Boom and Hook Sr. No. J18832	USD	CIF	23000	35000
5	678574/ 26.05.06	Used P&H 335AS Crawler Crane C/W 24M Boom and Hook Sr. No. J19320	USD	CIF	23000	35000
6	744566/ 09.02.07	Used Hitachi KM125-2 Crawler Crane Sr. No. 1850253	USD	CIF	36000	46000
7	839639/ 13.05.08	Used American 4250 Crawler Crane Sr. No. GS 14699W 35 Ton Crane	USD	C&F	22000	45000
8	839639/ 13.05.08	Used American 4250 Crawler Crane Sr. No. GS11171W 35 Ton Crane	USD	C&F	22000	45000
9	839639/ 13.05.08	Used American 399 BC Sr. No. A67000 20 Ton Crane	USD	C&F	15500	26000
10	839639/ 13.05.08	Used American 399 BC Sr. No. G4111 20 Ton Crane	USD	C&F	15500	26000
11	839639/ 13.05.08	Used American 399 BC Sr. No. GS14456 20 Ton Crane	USD	C&F	15500	26000

TABLE -8

(iii) List of Cranes imported by M/s. G.R. Engineering Works Ltd by mis-declaring the values:

Sr. No.	B/E No./ Date	Description	Currency	Inv. Terms (FOB, C&F & CIF)	Declared invoice value	Admitted value
1	826552/ 18.03.08	Used Bucyrus Erie 30B Conventional Truck Crane Sr. No. 11056	USD	C&F	59000	80000

TABLE -9

(iv) List of cranes imported in the name of M/s Heavy Cargo Movers by mis-declaring the values:

Sr. No.	B/E No./ Date	Description	Currency	Inv. Terms (FOB, C&F & CIF)	Declared invoice value	Admitted value
1	854501/04.08.08	Used Kato NK200A Mobile Crane chassis No. K201-2683	USD	CIF	17500	25000
2	854502/04.08.08	Used P&H T270 Mobile Crane chassis No. K270-271	USD	CIF	22500	31000
3	855117/07.08.08	Used Tadano TG 400E-1 Truck Crane Sr. No.40811	USD	CIF	32500	49000
4	855963/13.08.08	Used P&H 440 Crawler Crane	USD	CIF	38000	45000

TABLE -10

(v) List of cranes imported by mis-declaring the values by various importers who had procured the cranes on high sea sales from M/s Eastman Logistics & Infrastructure Pvt Ltd:

Sr. No.	B/E No./ Date	Description	Currency	Declared invoice value (CIF)	Admitted CIF value(in Rs)	Name of the High Sea Buyer
1	763938/03.05.06	Used P&H 435TC Truck Crane with accessories Sr. No. J18198	USD	17500	16,50,000	M/s Parag Headlines
2	766791/16.05.06	Used P&H 440S Crawler Crane Sr. No. J19469	USD	20500	20,00,000	M/s Pankaj Transport, Mumbai
3	794620/24.09.07	Used Linkbelt LS518J Crawler Crane with accessories Sr. No. LS518-034	USD	100500	73,00,000	M/s S.V. Crane Service
4	805539/15.11.07	Used P&H 335AS Crawler Crane with accessories Sr. No. J-14449 Engine No. 6DB1-161379	USD	19000	16,00,000	M/s Pratibha Industries
5	805540/15.11.07	Used Kato NK300 Mobile Crane Sr. No. KG50T-00396	USD	18000	15,00,000	M/s Pratibha Industries
6	835587/21.04.08	Used P&H 335 Crawler Crane Sr. No. J-17547	USD	26000	18,00,000	M/s Parag Roadlines
7	836961/28.04.08	Used P&H 440S Crawler Crane Sr. No. J19841	USD	32000	24,00,000	M/s R. R Carriers, Mumbai

TABLE- 11

(vi) List of cranes imported by mis-declaring the values by various importers who had procured the cranes on high sea sales from M/s. G. R. Infrastructure and Leasing Pvt. Ltd.

Sr. No.	B/E No./ Date	Description	Currency	Declared invoice value (CIF)	Admitted CIF value(in Rs)	Name of the High Sea Buyer
1	780350/ 17.07.07	Used P&H 435TC Mobile Crane C/W Boom & Hook Sr. No. J12521	USD	16500	16,00,000/-	M/s Shiv Kripa Roadways, Mumbai
2	803172/ 02.11.07	Used P&H 335-S Crawler Crane Sr. No. J7914	USD	20000	17,00,000/-	M/s Ahfreen Roadways, Navi Mumbai

TABLE -12

(vii) List of cranes imported by mis-declaring the values by various Importers, who had procured the cranes on high sea sales from M/s. G.R. Engineering Pvt. Ltd.

Sr. No.	B/E No./ Date	Description	Currency	Declared invoice value (C&F)	Admitted CIF value (USD)	Name of the High Sea Buyer
1	949573/ 21.05.10	Used Manitowoc M410052 Crawler Crane with accessories 1979 Sr. No. 41628	USD	202000	300000	M/s Bhoir Offshore Pvt Ltd, Mumbai

TABLE -13

(viii) List of cranes imported by mis-declaring the values by various importers who had procured the cranes on high sea sales from M/s Heavy Cargo Movers:

Sr. No.	B/E No./ Date	Description	Currency	Declared invoice value (CIF)	Admitted CIF value(in Rs)	Name of the High Sea Buyer
1	910520/ 07.09.09	Used P&H 335AS Crawler Crane with accessories 1982 Sr. No. J21774	USD	24000	20,00,000/-	M/s Empire Equipments, Mumbai
2	910521/ 07.09.09	Used P&H 335AS Crawler Crane with accessories 1982 Sr. No. J21587	USD	24000	20,00,000/-	M/s Empire Equipments, Mumbai

14. From the foregoing investigation, it appeared that a conspiracy was hatched by Shri Narender Madan in association with his overseas suppliers, his custom house agents, high sea sale buyers and others to defraud the exchequer 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 Narender Madan started importing cranes and clearing them from customs on the strength of manipulated invoices showing highly understated value of the cranes with the motive of evading payment of appropriate custom duty. Shri Narender Madan caused import of 33 used cranes in the name of his group companies and cleared the same on understated values. Apart from this Shri Narender Madan sold 12 used cranes on high sea sale basis to other importers. These 12 used cranes were also cleared on understated values from customs on the strength of the manipulated invoices arranged by Shri Narender Madan through his overseas suppliers. To mask the extent of undervaluation, Shri Narender Madan has collected understated amounts, in cash, from the high sea sale buyers towards the purchase price of these cranes. Shri Narender Madan 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 Custom Valuation Rules:

15.1 From the investigations, it appears that the value of the aforesaid 45 used cranes, imported and cleared in the names of the 4 group companies of Shri Narender Madan and 12 high sea sale buyers thereof (details as per "Annexure-A-1" to "Annexure-A-8" to the show cause notice) declared before Indian Customs, is not the actual / true transaction value under the provisions of section 14(1) of the Customs Act, 1962, for the following reasons:

- (a) All the aforesaid consignments were imported by Shri Narender Madan /high sea sale buyers and cleared from Customs on the strength of manipulated invoices indicating grossly understated price of the consignments, which did not represent the correct transaction value, as evident from statements dated 29.11.2010 and 03.08.2012 of Shri Narender Madan;
- (b) Shri Narender Madan in his statements admitted that he had remitted differential amounts (i.e. the difference between the actual value of cranes and the invoiced value) abroad through illegal channels by using services of Brijesh Gala;
- (c) Shri Brijesh Gala in his statement dated 25.10.2010 admitted that he had transferred money in hawala for Shri Narender Madan and that an amount of Rs 1 crore (approx) has been sent abroad through non-banking channels illegally (Hawala) on behalf of Shri Narender Madan;
- (d) The importers of 12 used cranes who have purchased the said cranes from Shri Narender Madan on high sea sale basis have admitted in their respective statement that they have paid huge amounts, in cash, to Shri Narender Madan towards cost of the said cranes;

(e) In respect of almost all the cranes, the per kilogram value of cranes declared before customs at the time of clearance work out to be less than the value of scrap of stainless steel / heavy metal in the international market at the material time.

15.2 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, hence cannot be relied upon to determine the values.

15.3 Consequently, the following declared values of the aforesaid 45 cranes, appear to be liable for rejection in terms of the 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) read with Section 14(1) of the Customs Act, 1962.

TABLE-14

Sr No	Name of the importing firm	No. of cranes imported	Declared CIF value (in Rs)	Remarks (details as per)
1	M/s Eastman Logistics and Infrastructure Pvt Ltd	17	2,12,67,676/-	Annexure-A-1 to the SCN
2	M/s G.R. Infrastructure and Leasing Pvt Ltd	11	1,26,59,417/-	Annexure-A-2 to the SCN
3	M/s G.R. Engineering Works	1	23,72,665/-	Annexure-A-3 to the SCN
4	M/s Heavy Cargo Movers	4	50,31,672/-	Annexure-A-4 to the SCN
5	M/s Parag Roadlines	2	19,90,969/-	Annexure-A-5 to the SCN
6	M/s Pankaj Transport	1	8,80,000/-	Annexure-A-5 to the SCN
7	M/s S.V. Crane Service	1	43,00,000/-	Annexure-A-5 to the SCN
8	M/s Pratibha Industries	2	16,01,805/-	Annexure-A-5 to the SCN
9	M/s R. R. Carriers	1	16,33,663/-	Annexure-A-5 to the SCN
10	M/s Shiv Kripa Roadways	1	8,31,770/-	Annexure-A-6 to the SCN
11	M/s Ahfreen Roadways	1	8,84,775/-	Annexure-A-6 to the SCN
12	M/s Bhoir Offshore Pvt Ltd	1	92,56,809/-	Annexure-A-7 to the SCN
13	M/s Empire Equipments	2	24,11,280/-	Annexure-A-8 to the SCN
	Total	45	6,51,22,501/-	

16.1 In order to determine the value of the aforesaid 45 used cranes, recourse had to be made to the provisions of the Customs Valuation Rules, 1988 (for the period of import up to 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, his overseas suppliers, his

custom house agents, high sea sale buyers and others colluded to defraud the revenue by mis-declaring the value of the "used cranes". However, during the course of investigations, Shri Narender Madan admitted the actual transaction values in respect of the 45 used cranes. In respect of the above 45 used cranes (details as per "Annexure-A-1 " to "Annexure-A-8" to the show cause notice) the CIF values admitted by the importer are at par with the values ascertained on the basis of prevailing market prices of similar cranes. Therefore, it is proposed to accept the values admitted by the importer as the transaction values under the provisions of Rule 3(i) 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, read with section 14(1) of the Customs Act, 1962. Accordingly, the actual CIF values of these 45 used cranes are re-determined on the basis of the admissions given by the importer (details as per "Annexure-A-1" to"Annexure- A-8" to the show cause notice).

16.2 A summary picture of comparative details of the declared CIF value and the admitted CIF values in respect of the aforesaid 45 used cranes imported by Shri Narender Madan in the names of his group companies or by high sea sale buyers thereof is as under:

TABLE-15

Sr . No	Name of the importing firm	No. of cranes imported	Declared CIF value (in Rs)	Admitted CIF value (in Rs.)	Remarks (details as per)
1	M/s Eastman Logistics and Infrastructure Pvt Ltd	17	2,12,67,676/-	3,73,53,875/-	Annexure-A-1 to the SCN
2	M/s G.R. Infrastructure and Leasing Pvt Ltd	11	1,26,59,417/-	1,67,01,300/-	Annexure-A-2 to the SCN
3	M/s G.R. Engineering Works	1	23,72,665/-	32,16,865/-	Annexure-A-3 to the SCN
4	M/s Heavy Cargo Movers	4	50,31,672/-	63,82,500/-	Annexure-A-4 to the SCN
5	M/s Parag Roadlines	2	19,90,969/-	34,50,000/-	Annexure-A-5 to the SCN
6	M/s Pankaj Transport	1	8,80,000/-	20,00,000/-	Annexure-A-5 to the SCN
7	M/s S.V. Crane Service	1	43,00,000/-	73,00,000/-	Annexure-A-5 to the SCN
8	M/s Pratibha Industries	2	16,01,805/-	31,00,000/-	Annexure-A-5 to the SCN
9	M/s R. R. Carriers	1	16,33,663/-	24,00,000/-	Annexure-A-5 to the SCN
10	M/s Shiv Kripa Roadways	1	8,31,770/-	16,00,000/-	Annexure-A-6 to the SCN
11	M/s Ahfreen Roadways	1	8,84,775/-	17,00,000/-	Annexure-A-6 to the SCN

12	Bhoir Offshore Pvt Ltd	1	92,56,809/-	1,34,75,503/-	Annexure-A-7 to the SCN
13	M/s Empire Equipments	2	24,11,280/-	40,00,000/-	Annexure-A-8 to the SCN
	Total	45	6,51,22,501/-	10,26,80,043/-	

17. Differential Duty Liability.

The duty leviable in respect of the above imports is computed on the basis of the values admitted 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 -16

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 (details as per)
1	M/s Eastman Logistics and Infrastructure Pvt Ltd	1,15,79,263/-	65,85,677/-	49,93,586/-	Annexure-A-1 to the SCN
2	M/s G.R. Infrastructure and Leasing Pvt Ltd	55,28,845/-	41,76,347/-	13,52,498/-	Annexure-A-2 to the SCN
3	M/s G.R. Engineering Works	9,30,497/-	6,86,308/-	2,44,189/-	Annexure-A-3 to the SCN
4	M/s Heavy Cargo Movers	18,46,176/-	14,55,441/-	3,90,735/-	Annexure-A-4 to the SCN
	Sub Total	1,98,84,781/-	1,29,03,773/-	69,81,009/-	
5	M/s Parag Roadlines	10,37,465/-	5,78,833/-	4,58,632/-	Annexure-A-5 to the SCN
6	M/s Pankaj Transport	6,26,430/-	2,75,629/-	3,50,801/-	Annexure-A-5 to the SCN
7	M/s S.V. Crane Service	22,86,469/-	13,46,824/-	9,39,645/-	Annexure-A-5 to the SCN
8	M/s Pratibha Industries	9,70,967/-	5,01,709/-	4,69,258/-	Annexure-A-5 to the SCN
9	M/s R. R. Carriers	6,94,214/-	4,72,547/-	2,21,667/-	Annexure-A-5 to the SCN
10	M/s Shiv Kripa Roadways	5,01,144/-	2,60,523/-	2,40,621/-	Annexure-A-6 to the SCN
11	M/s Ahfreen Roadways	5,32,465/-	2,77,125/-	2,55,340/-	Annexure-A-6 to the SCN
12	Bhoir Offshore Pvt Ltd	32,52,152/-	22,39,050/-	10,13,102/-	Annexure-A-7 to the SCN
13	M/s Empire Equipments	8,69,517/-	6,02,732/-	2,66,785/-	Annexure-A-8 to the SCN
	Sub Total	1,07,70,823/-	65,54,972/-	42,15,851/-	
	Grand Total	3,06,55,604/-	1,94,58,745/-	1,11,96,859/-	

Findings of Investigation

18. From the evidences gathered during investigations, it appears inter alia as under:-

(i) that a criminal conspiracy was hatched by Shri Narender Madan, his overseas suppliers, his custom house agents, high sea sale buyers 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) that pursuant to the said conspiracy, Shri Narender Madan 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) that upon arrival of the cranes imported in the name of his companies, Shri Narender Madan arranged for filing of bills of entry for clearance of the said cranes through Shri Jayesh Marfatia, Director, M/s Manilal Patel Clearing And Forwarding Pvt Ltd (CHA No. 11/90) / Shri Madan Lalwani, who was operating under the license of CHA M/s M. Dharamdas & Co. (CHA No.11/100);

(iv) that manipulated import invoices / documents and false declarations were submitted by Shri Narender Madan in respect of cranes imported in the name of his companies to hoodwink the customs authorities; some of the cranes imported by Shri Narender Madan were sold by him on high sea sale basis to other importers, who also submitted manipulated documents to evade the duty; 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) that in the said manner, 45 used cranes were imported and cleared in the name of the group companies of Shri Narender Madan / his high sea sale buyers (Details as per "Annexure-A-1" to "Annexure-A-8" to the show cause notice);

(vi) that 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 Narender Madan furnished the actual transaction values of the aforesaid 45 used cranes imported and cleared in the names of his group companies or in the name of high sea sale buyers;

(vii) that for the reasons cited in detail in foregoing paras, the following declared values appear to be liable for rejection in terms of the 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) read with Section 14(1) of the Customs Act, 1962.

TABLE -17

Sr	Name of the importing firm	No. of cranes imported	Declared CIF value (in Rs)	Remarks (details as per)
No				

1	M/s Eastman Logistics and Infrastructure Pvt Ltd	17	2,12,67,676/-	Annexure-A-1 to the SCN
2	M/s G.R. Infrastructure and Leasing Pvt Ltd	11	1,26,59,417/-	Annexure-A-2 to the SCN
3	M/s G.R. Engineering Works	1	23,72,665/-	Annexure-A-3 to the SCN
4	M/s Heavy Cargo Movers	4	50,31,672/-	Annexure-A-4 to the SCN
5	M/s Parag Roadlines	2	19,90,969/-	Annexure-A-5 to the SCN
6	M/s Pankaj Transport	1	8,80,000/-	Annexure-A-5 to the SCN
7	M/s S.V. Crane Service	1	43,00,000/-	Annexure-A-5 to the SCN
8	M/s Pratibha Industries	2	16,01,805/-	Annexure-A-5 to the SCN
9	M/s R. R. Carriers	1	16,33,663/-	Annexure-A-5 to the SCN
10	M/s Shiv Kripa Roadways	1	8,31,770/-	Annexure-A-6 to the SCN
11	M/s Ahfreen Roadways	1	8,84,775/-	Annexure-A-6 to the SCN
12	Bhoir Offshore Pvt Ltd	1	92,56,809/-	Annexure-A-7 to the SCN
13	M/s Empire Equipments	2	24,11,280/-	Annexure-A-8 to the SCN
	Total	45	6,51,22,501/-	

(viii) that the amount of duty leviable on the aforesaid 45 used cranes, computed on the basis of the values admitted as above, the customs duty paid at the time of clearance of the aforesaid 45 used cranes and the amount of custom duty short paid in respect of these 45 used cranes, while seeking their clearance from Customs, is as under;

TABLE -18

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 (details as per)
1	M/s Eastman Logistics and Infrastructure Pvt Ltd	1,15,79,263/-	65,85,677/-	49,93,586/-	Annexure-A-1 to the SCN
2	M/s G.R. Infrastructure and Leasing Pvt Ltd	55,28,845/-	41,76,347/-	13,52,498/-	Annexure-A-2 to the SCN
3	M/s G.R. Engineering Works	9,30,497/-	6,86,308/-	2,44,189/-	Annexure-A-3 to the SCN
4	M/s Heavy Cargo Movers	18,46,176/-	14,55,441/-	3,90,735/-	Annexure-A-4 to the SCN
	Sub Total	1,98,84,781/-	1,29,03,773/-	69,81,009/-	
5	M/s Parag Roadlines	10,37,465/-	5,78,833/-	4,58,632/-	Annexure-A-5 to the SCN

6	M/s Pankaj Transport	6,26,430/-	2,75,629/-	3,50,801/-	Annexure-A-5 to the SCN
7	M/s S.V. Crane Service	22,86,469/-	13,46,824/-	9,39,645/-	Annexure-A-5 to the SCN
8	M/s Pratibha Industries	9,70,967/-	5,01,709/-	4,69,258/-	Annexure-A-5 to the SCN
9	M/s R. R. Carriers	6,94,214/-	4,72,547/-	2,21,667/-	Annexure-A-5 to the SCN
10	M/s Shiv Kripa Roadways	5,01,144/-	2,60,523/-	2,40,621/-	Annexure-A-6 to the SCN
11	M/s Ahfreeen Roadways	5,32,465/-	2,77,125/-	2,55,340/-	Annexure-A-6 to the SCN
12	M/s. Bhoir Offshore Pvt Ltd	32,52,152/-	22,39,050/-	10,13,102/-	Annexure-A-7 to the SCN
13	M/s Empire Equipments	8,69,517/-	6,02,732/-	2,66,785/-	Annexure-A-8 to the SCN
	Sub Total	1,07,70,823/-	65,54,972/-	42,15,851/-	
	Grand Total	3,06,55,604/-	1,94,58,745/-	1,11,96,859/-	

The appropriate customs duty leviable on the aforesaid 45 used cranes, cleared from Mumbai port was not levied at that time by reason of collusion, wilful misstatement and suppression of facts regarding the actual value of the said goods by Shri Narender Madan and high sea sale buyers, acting in conspiracy with overseas suppliers of the cranes, and his Custom House Agents viz. Shri Jayesh Marfatia / Shri Madan Lalwani, (who had undertaken the job of clearance of the aforesaid cranes from customs) and others unknown.

(ix)(a) that, out of the above stated short paid duty amount of Rs. 49,93,586/-, in respect of 17 cranes, imported in the name of M/s Eastman Logistics and Infrastructure Pvt Ltd. (details as per "Annexure-A-1" to the show cause notice), the short paid duty amount of Rs. 21,39,186/- in respect of cranes at serial number 1 to 6 mentioned in "Annexure- A-1" to the show cause notice, is beyond the period of five years. However, the short paid duty amount of Rs. 28,54,401/-, in respect of the remaining cranes (details as per Sr. No. 7 to 17 of "Annexure-A-1" to the show cause notice), 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 Customs Act, 1962, as it existed at the material time (under section 28AA from 08.04.2011 onwards):

(ix)(b) that, similarly, out of the above stated short paid duty amount of Rs.13,52,498/-, in respect of 11 used cranes, imported in the name of M/s G.R. Infrastructure and Leasing Pvt Ltd (details as per "Annexure-A-2" to the show cause notice), the short paid duty amount of Rs. 8,71,095/- in respect of cranes mentioned at serial number 1 to 6 of "Annexure- A-2" to the show cause notice, is beyond the period of five years. However, the short paid duty amount of Rs. 4,81,403/-, in respect of the remaining cranes (details as per Sr. No. 7 to 11 of "Annexure-A- 2" to the show cause notice), 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

Customs Act, 1962, as it existed at the material time (under section 28AA from 08.04.2011 onwards);

(ix)(c) that, likewise, the following short paid duty amounts, in respect of cranes imported by Shri Narender Madan and sold on high sea sale basis to other importers are beyond the period of five years.

TABLE -19

Sr. No	Name of the importing firm	B/E No./ Date	Duty short Paid (in Rs.)	Remarks (details as per)
1	M/s. Parag Roadlines, Navi Mumbai	763938/ 03.05.06	2,81,894/-	Sr. No. 1 'Annexure-A-5' to the SCN
2	M/s Pankaj Transport	766791/ 16.05.06	3,50,801/-	Sr. No. 2 'Annexure-A-5' to the SCN
3	M/s Shiv Kripa Roadways, Thane	780350/ 17.07.07	2,40,621/-	Sr. No. 1 'Annexure-A-6' to the SCN

However, the short paid duty amount in respect of the remaining 5 cranes mentioned at serial number 3 to 7 of "Annexure- A-5" to the show cause notice; the remaining 1 crane mentioned at serial number 2 of "Annexure A-6" to the show cause notice and all the 3 cranes detailed in "Annexure-7" and "Annexure-8" to the show cause notice, 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 Customs Act, 1962, as it existed at the material time (under section 28AA from 08.04.2011 onwards);

(x) Section 28 of the Customs Act, 1962, 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 up to 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 Customs Act, 1962, 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.

(xi)(a) Shri Narender Madan had voluntarily made a payment of Rs.1,15,00,000/-, during the course of investigation, as detailed at para 7. This Amount is accordingly adjusted against the duty and interest of Rs. 46,82,967/-, payable on the cranes which are beyond 5 years (details given in the table below):

TABLE -20

Sr. No	Name of the importing firm	Details of crane	Duty short paid (in Rs.)	Interest payable (in Rs.)
1	M/s Eastman Logistics Infrastructure Pvt Ltd	Sr. No. 1 to 6 of 'Annexure-A-1' to the SCN	21,39,186/-	11,61,251/-
2	M/s G.R. Infrastructure and Leasing Pvt Ltd	Sr. No. 1 to 6 of 'Annexure-A-2' to the SCN	8,71,095/-	5,11,435/-
	Total		30,10,281/-	16,72,686/-

(xi)(b) The remaining differential duty of Rs. 39,70,728/- (Rs. 69,81,009/- minus Rs. 30,10,281/-) computed on the basis of re-determined values in respect of the cranes mentioned below needs to 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);

TABLE -21

Sr. No	Name of the importing firm	Details of crane	Duty short paid (in Rs.)	Remarks (details as per)
1	M/s Eastman Logistics and Infrastructure Pvt Ltd	Sr. No. 7 to 17 of 'Annexure-A-1' to the SCN	28,54,401/-	'Annexure-A-1' to the SCN
2	M/s G.R. Infrastructure and Leasing Pvt Ltd	Sr. No. 7 to 11 of 'Annexure-A-2' to the SCN	4,81,403/-	'Annexure-A-2' to the SCN
3	M/s G.R. Engineering Works	'Annexure-A-3' to the SCN	2,44,189/-	'Annexure-A-3' to the SCN
4	M/s Heavy Cargo Movers	'Annexure-A-4' to the SCN	3,90,735/-	'Annexure-A-4' to the SCN
	Total		39,70,728/-	

(xi)(c) Likewise, in respect of the cranes originally imported by Shri Narender Madan and subsequently sold on high sea basis, the amounts paid by the respective importers, during the course of investigations (refer para 10 supra) are accordingly adjusted against the duty and interest payable on the said cranes (mentioned below) and which are beyond 5 years:

TABLE -22

Sr. No	Name of the importing firm	BE No/ date	Duty short (in Rs.)	Amount paid by the importer during investigations (in Rs.)	Remarks (details as per)
1	M/s Parag Roadlines, Navi Mumbai	763938/03.05.06	2,81,894/-	6,81,000/-	Sr. No. 1 'Annexure-A-5' to the SCN
2	M/s Pankaj Transport	766791/16.05.06	3,50,801/-	6,23,671/-	Sr. No. 3 of 'Annexure-A-5' to the SCN
3	M/s Shiv Kripa Roadways, Thane	780350/17.07.07	2,40,621/-	3,00,000/-	Sr. No. 1 of 'Annexure-A-6' to the SCN

(xii) The differential duty computed on the basis of re-determined values in respect of the cranes, procured on high sea sale basis from Shri Narender Madan by the importers mentioned below needs to 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):

TABLE -23

Sr. No	Name of the importing firm	B/E No./ Date	Duty payable (in Rs.)	Remarks (details as per)
1	M/s. Parag Roadlines, Navi Mumbai	835587/21.04.08	1,76,739/-	'Annexure-A-5' to the SCN
2	S.V. Crane Service Navi Mumbai	794620/24.09.07	9,39,645/-	'Annexure-A-5' to the SCN
3	Pratibha Industries Ltd, Thane	805539/15.11.07	2,34,346/-	'Annexure-A-5' to the SCN
4	Pratibha Industries Ltd, Thane	805540/15.11.07	2,34,912/-	'Annexure-A-5' to the SCN
5	R. R. Carriers, Navi Mumbai	836961/28.04.08	2,21,667/-	'Annexure-A-5' to the SCN
6	Afhreen Roadways, Navi Mumbai	803172/02.11.07	2,55,340/-	'Annexure-A-6' to the SCN
7	Bhoir Offshore P. Ltd, Belapur	949573/21.05.10	10,13,102/-	'Annexure-A-7' to the SCN
8	Empire Equipments, Kalamboli	910520/07.09.09	1,33,365/-	'Annexure-A-8' to the SCN
9	Empire Equipments, Kalamboli	910521/07.09.09	1,33,419/-	'Annexure-A-8' to the SCN
	Total		33,42,535/-	

(xiii) that, consequently the 45 used cranes imported and cleared in the name of 04 group companies of Shri Narender Madan & 09 high sea sale buyers thereof (Details as per "Annexure-A-1" and "Annexure-A-8" to the show cause notice) are liable to confiscation under the provisions of section 111 (m) of the Customs Act, 1962.

(xiv) that, admittedly, the above stated 45 used cranes were imported and cleared by resorting to mis-declaration of the value on the strength of manipulated invoices. Out of the 45 used cranes, 33 used cranes were cleared by Shri Narender Madan in the name of his group companies and 12 used Cranes were cleared in the name of high sea buyers, by adopting fraudulent means, as discussed earlier. The bills of entry for clearance of the aforesaid consignments were filed by Shri Jayesh Marfatia / Shri Madan Lalwani (as the case may be). 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. In respect of the cranes originally imported by Shri Narender Madan in the name of his group companies and subsequently sold on high sea sale basis to other importers, Shri Narender Madan collected huge amounts in cash towards the purchase price of these cranes to 'mask' the extent of undervaluation resorted to by him at the time of importation of the said cranes. 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 Customs Act, 1962 have rendered Shri Narender Madan, Shri Jayesh Marfatia / Shri Madan Lalwani (as the case may be) have rendered themselves liable to penalty, under section 112(a) Customs Act, 1962.

(xv) that, duty amount of Rs. 39,70,728/- (details as per para (xi) (b) supra was not levied or short levied in respect of 21 used cranes, imported and cleared by Shri Narender Madan in the name of his group companies viz. (i) M/s Eastman Logistics and Infrastructure Pvt Ltd (ii) M/s G.R. Infrastructure And Leasing Pvt Ltd (iii) M/s G.R. Engineering Works and (iv) M/s Heavy Cargo Movers, from Mumbai port by reason of collusion, willful misstatement and suppression of facts regarding the actual value of the above stated 21 used cranes by Shri Narender Madan. Accordingly, Shri Narender Madan, M/s Eastman Logistics and Infrastructure Pvt Ltd, M/s G.R. Infrastructure and Leasing Pvt Ltd, M/s G.R. Engineering Works and M/s Heavy Cargo Movers are liable to penalty, equal to the amount of duty short paid in respect of the cranes imported in their respective names, under the provisions of section 114A of the Customs Act, 1962;

(xvi) that, in relation to the aforesaid 45 used cranes, imported and cleared by Shri Narender Madan in the name of his group companies viz. (i) M/s Eastman Logistics and Infrastructure Pvt Ltd (ii) M/s G.R. Infrastructure and Leasing Pvt Ltd (iii) M/s G.R. Engineering Works and (iv) M/s Heavy Cargo Movers, and the high sea buyers, each of Shri Narender Madan, M/s Eastman Logistics and Infrastructure Pvt Ltd, M/s G.R. Infrastructure and Leasing Pvt Ltd, M/s G.R. Engineering Works, M/s Heavy Cargo Movers, Shri Jayesh Marfatia, M/s Manilal Patel Clearing & Forwarding Pvt Ltd 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 used cranes, which they knew or had reason to believe were false or incorrect. Accordingly, each of Shri Narender Madan, M/s Eastman Logistics & Infrastructure Pvt Ltd, M/s G.R. Infrastructure and Leasing Pvt Ltd, M/s G.R. Engineering Works, M/s Heavy Cargo Movers, Shri Jayesh Marfatia, M/s Manilal Patel Clearing & Forwarding Pvt Ltd and Shri Madan Lalwani have rendered themselves liable to penalty under section 114AA of the Customs Act, 1962, in relation to the aforesaid cranes;

(xvii) that (a) Shri Hemant Soneta, Authorised Signatory, M/s Parag Roadlines (b) Shri Rajesh Dhila, Proprietor, M/s Pankaj Transport, Mumbai, (c) Shri Zulfikar Vadsaria, Managing Partner, M/s S.V, Crane Service (d) Shri Ashok Wadhera, Executive Director, M/s Pratibha Industries (e) Shri Bharat Mohanlal Rajal, Authorised signatory, M/s R. R. Carriers, Mumbai, (f) Shri Amarjeet Lamba, Proprietor, M/s Shiv Kripa Roadways, Mumbai (g) Shri Latif Ismail Boat, Proprietor, M/s Ahfreen Roadways, Navi Mumbai (h) Shri Sidharth Bhoir, Authorised Signatory, M/s Bhoir Offshore Pvt Ltd, Mumbai and (i) Shri Sadru Ajani, Proprietor, M/s Empire Equipments, Mumbai, have in relation to the used cranes (purchased by them on high sea sale basis from Shri Narender Madan and cleared in the name of their firm/ company) have done or omitted to do acts, which have rendered the cranes imported and cleared by them, in the above manner, liable to confiscation under section 111 (m) of the Customs Act, 1962, as aforesaid and have rendered each of the above liable to penalty under section 112 (a) of the Customs Act, 1962.

(xviii) that, appropriate duty was not levied or short levied in respect of the aforesaid 9 used cranes (refer Table 23), imported and cleared from Mumbai Port by reason of collusion, willful misstatement and suppression of facts regarding the actual value of the above stated used cranes by their respective importers, Accordingly, each of (a) Shri Hemant Soneta (b) M/s Parag Roadlines (c) Shri Rajesh Dhila, (d) Shri Zulfikar Vadsaria (e) M/s S.V. Crane Service (f) Shri Ashok Wadhera, (g) M/s Pratibha Industries (h) Shri Bharat Mohanlal Rajal, (i) M/s R. R. Carriers, (j) Shri Amarjeet Lamba (k) Shri Latif Ismail Boat (l) Shri Sidharth Bhoir (m) M/s Bhoir Offshore Pvt Ltd, and (n) Shri Sadru Ajani, are liable to penalty, equal to the amount of duty short paid in respect of the cranes imported in their respective names, under the provisions of section 114A of the Customs Act, 1962;

(xix) that, in relation to the aforesaid used cranes, imported and cleared from Mumbai port, each of (a) Shri Hemant Soneta (b) M/s Parag Roadlines (c) Shri Rajesh Dhila, (d) Shri Zulfikar Vadsaria (e) M/s S.V. Crane Service (f) Shri Ashok Wadhera, (g) M/s Pratibha Industries (h) Shri Bharat Mohanlal Rajal, (i) M/s R. R. Carriers, (j) Shri Amarjeet Lamba (k) Shri Latif Ismail Boat (l) Shri Sidharth Bhoir (m) M/s Bhoir Offshore Pvt Ltd, and (n) Shri Sadru Ajani 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 used cranes, which they knew or had reason to believe were false or incorrect. Accordingly, each one of them has rendered himself liable to penalty under section 114AA of the Customs Act, 1962, in relation to the aforesaid cranes;

19.1 In view of above, Shri Narendra Madan and the importers (persons / legal entities) as mentioned at column B of the table given below-

TABLE -24

Sr. No	Name of the importer	No. of cranes imported	Declared CIF value (in Rs)	Admitted CIF value (in Rs.)	Differential duty demand u/s28 of CA, 1962 (in Rs.)	Balance amounts available for appropriation (in Rs.)
A	B	C	D	E	F	G
1	M/s Eastman Logistics and Infrastructure Pvt Ltd	6	73,09,099/-	1,41,48,483/-	***	68,17,033/-
		11	1,39,58,577/-	2,32,05,392/-	28,54,401/-	
2	M/s G.R. Infrastructure and Leasing Pvt Ltd	6	75,10,905/-	98,88,500/-	***	
		5	51,48,512/-	68,12,800/-	4,81,403/-	
3	M/s G.R. Engineering Works	1	23,72,665/-	32,16,865/-	2,44,189/-	
4	M/s Heavy Cargo Movers	4	50,31,672/-	63,82,500/-	3,90,735/-	
5	Shri Hemant Soneta & M/s Parag Roadlines	1	8,01,980/-	16,50,000/-	***	1,77,217/-
		1	11,88,989/-	18,00,000/-	1,76,739/-	
6	M/s Pankaj Transport	1	8,80,000/-	20,00,000/-	***	--
7	Shri Zulfikar Vadsaria & M/s S.V. Crane Service	1	43,00,000/-	73,00,000/-	9,39,645/-	10,00,000/-
8	Shri Ashok Wadhera & M/s Pratibha Industries	2	16,01,805/-	31,00,000/-	4,69,258/-	4,69,215/-
9	Shri Bharat Mohanlal Rajal & M/s R.R. Carriers	1	16,33,663/-	24,00,000/-	2,21,667/-	1,50,000/-
10	M/s Shiv Kripa Roadways	1	8,31,770/-	16,00,000/-	***	--
11	M/s Ahfreen Roadways	1	8,84,775/-	17,00,000/-	2,55,340/-	--
12	Shri Sidharth Bhoir & M/s Bhoir Offshore Pvt Ltd	1	92,56,809/-	1,34,75,503/-	10,13,102/-	10,26,000/-
13	M/s Empire Equipments	2	24,11,280/-	40,00,000/-	2,66,785/-	3,50,000/-
	Total	45	6,51,22,501/-	10,26,80,043/-	73,13,264/-	

(*** Differential duty of these cranes being beyond 5 years period, are beyond time period under Section 28 of the Customs Act, 1962. However, differential duty having been deposited voluntarily, the same have been adjusted against duty evaded (para 17(ix) to 17(xi) refer)).

were called upon to show cause, in writing, to the Adjudicating Authority namely the Commissioner of Customs (Import), New Custom House, Ballard Estate, Mumbai, as to why:

- (a) the respective declared value of the goods as mentioned in column 'D' of the Table 24 ibid (further details at "Annexure-A-1" to "Annexure-A-8" to the show cause notice) should not be rejected under Rule 10A/ Rule 12 of the Custom Valuation Rules 1988/2007 and the value should not be re-determined as the value mentioned in column 'E' of the Table 24 ibid (being the true transaction value as per admissions), under Rule 3 / Rule 4 of the Custom Valuation Rules 1988/ 2007 read with section 14 of the Customs Act, 1962 (as applicable);
- (b) the respective imported goods having re-determined value as mentioned in column 'E' of the Table 24 ibid (further details at "Annexure-A-1" to "Annexure-A-8" to the show cause notice) should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962;
- (c) the respective differential duty as mentioned in column 'F' of the Table 24 ibid (further details at "Annexure-A-1" to "Annexure-A-8" to the show cause notice) should not be demanded under the provisions 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);
- (d) penalty should not be imposed upon them under Section 112(a) and / or Section 114A of the Customs Act, 1962;
- (e) penalty should not be imposed upon them under Section 114AA of the Customs Act, 1962;
- (f) the respective amounts paid by the importers during the ongoing investigations, as mentioned in column 'G' of the Table 24 ibid 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 cranes as mentioned in column 'C' of the Table 24;

19.2 Shri Jayesh Marfatia and M/s Manilal Patel Clearing & Forwarding Pvt Ltd (CHA No. 11/90) were required to show cause to the adjudicating authority as to why:

- (a) penalty should not be imposed upon them under Section 112(a) of the Customs Act, 1962 in relation to the aforesaid 42 cranes, imported and cleared from Mumbai port (details as per "Annexure A-1" and "Annexure A-6" to the show cause notice);
- (b) penalty should not be imposed upon them under Section 114AA of the Customs Act, 1962 in relation to the aforesaid 42 cranes, imported and cleared from Mumbai port (details as per "Annexure A-1" and "Annexure A-6" to the show cause notice);

19.3 Shri Madan Lalwani was required to show cause to the adjudicating authority as to why:

- (a) penalty should not be imposed upon him under Section 112(a) of the Customs Act, 1962 in relation to the aforesaid 3 cranes, imported and cleared from Mumbai port (details as per "Annexure A-7" and "Annexure A-8" to the show cause notice);

(b) penalty should not be imposed upon him under Section 114AA of the Customs Act, 1962 in relation to the aforesaid 3 cranes, imported and cleared from Mumbai port (details as per "Annexure A-7" and "Annexure A-8" to the show cause notice);

20. Order of Settlement Commission

20.1 Consequent to the show cause notice, the noticees 1, 2, 4, 5, 6, 7, 8, 9,10, 11, 12, 17 and 18 viz. M/s. Eastman logistics & Infrastructure Pvt. Ltd., M/s. G.R. Infrastructure Pvt. Ltd. (formerly known as M/s. G.R. Infrastructure & Leasing Pvt. Ltd.), M/s. Heavy Cargo Movers, Shri Narendra Madan (as co-applicant), M/s Parag Roadlines, Shri Hemant Soneta, Shri Rajesh Dhila, M/s. S.V. Crane Service, Shri Zulfikar Vadsaria, M/s Pratibha Industries, Shri Ashok Wadhera, M/s Bhoir Offshore Pvt. Ltd., Shri Sidharth S. Bhoir approached the Settlement Commission. Out of these, the applications filed by M/s. Pratibha Industries and Shri Ashok Wadhera, Executive Director of M/s Pratibha Industries were dismissed since they are not entitled to apply for settlement under section 127L of the Customs Act, 1962. The details of duty settled, fine and penalty imposed on each of the applicants by the settlement Commission, are as given below:

Sr No	Name of the applicant	Settlement commission order No./ Date	Duty (In Rs.)	Interest (In Rs.)	Fine imposed (In Rs.)	Penalty imposed (In Rs.)
1	Eastman logistics & Infrastructure Pvt. Ltd.	151/FO/CUS/G TP/2013 Dtd. 31.10.13	49,93,587	22,16,964	---	1,50,000
2	Narendra Madan (Co-appl)		---	---	---	30,000
3	G.R. Infrastructure Pvt. Ltd.	138/FO/CUS/G TP/2013 Dtd. 25.10.13	13,52,498	7,82,710	---	10,000
4	M/s. Parag Roadlines	137/FO/CUS/G TP/2013 Dtd. 25.10.13	4,58,632	3,12,076	---	5,000
5	Shri. Hemant Soneta (co-appl.)		---	---	---	Full immunity
6	Rajesh Dhila	214/FO/CUS/S K/2013 Dtd. 20.12.13	3,50,801	2,47,031	---	10,000
7	M/s. S.V. Crane Service	213/FO/CUS/S K/2013 Dtd. 20.12.13	9,39,645	6,43,244	---	50,000
8	Zulfikar Vadsaria		---	---	---	10,000
9	Bhoir Offshore Pvt. Ltd	189/FO/CUS/G TP/2013 Dtd. 18.08.14	10,13,102	3,18,733	---	40,000
10	Siddhart S. Bhoir		---	---	---	10,000
11	Heavy Cargo Movers	161/FO/CUS/K NA/2013 Dtd. 31.10.13	3,90,735	1,49,890	1,00,000	10,000
12	Pratibha Industries	56/FO/CUS/JL/ 2014	Rejected			

13	Ashok Wadhwa	Dtd. 24.03.14	
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20.2 The findings of the Settlement Commission in its Order no. 151/FO/CUS/GTP/2013 dated 31.10.13 in respect of M/s. Eastman Logistics & Infrastructure Private Limited (Shri Narendra Madan as co-applicant) are reproduced below:

“9.1 The Bench has gone through the applications filed by the applicant and the co-applicant, the reports received from Revenue and the oral submissions made by both parties at the time of personal hearing on 05.09.13.

*9.2 The applicant in this case had imported 17 used cranes on understated value. **The applicant and co-applicant have admitted the undervaluation and have voluntarily deposited the amount of Rs. 75,00,000/- during investigation against the duty liability.** The SCN dated 24.09.2012 alleged gross undervaluation in the import of these cranes and interalia, demanded differential duty of Rs.49,93,587/- in respect of these cranes.*

9.3 The applicant has accepted and paid the total duty amount of Rs. 49,93,587/-along with interest of Rs. 22,16,964/-(Total Rs. 72,10,551/-)

9.4 The DRI, Mumbai vide their letter dated 25.09.2013 confirmed that the applicant have already deposited an amount of Rs.75,00,000/- during the investigation as against the duty and interest amounting to Rs.72,10,551/- and as such there is an excess amount of Rs.2,89,449/- paid by the applicant after appropriation of the said duty and interest and requires to be refunded as requested by the applicant in his application.

9.5 The Bench also observes that Shri Narendra Madan, Co-applicant, who is an employee (Director) of the main applicant and involved in the illicit import of used Cranes by understated value is liable for penalty.

*9.6 **The Bench observes that while there was gross undervaluation in the import of used cranes by the applicant and co-applicants, they have co-operated during investigation and in the proceedings before this Commission. They have admitted and paid the entire duty liability along with interest including differential duty whose recovery had become time barred.***

10. In view of the foregoing and taking into consideration the circumstances of the case in their entirety, the following order for settlement of this case is passed under Sub section 5 of Section 127 C of the Customs Act, 1962.”

20.3 The Settlement Commission in the orders has stated that these orders settle the cases against the applicants therein only and revenue is free to take action against other noticees in the show cause as per law.

21. Details of first round of Adjudication and Orders of the Hon’ble CESTAT

21.1 The said SCN dated 24.09.2012 was adjudicated in first round vide Order in Original No. No. 19/RT/PC/2016-17 dated 31.03.2017 issued under F. No. S/10-Adj-135/Gr. V/2012-13

confirming the duty, interest and penalty. Operative portion of the said order is reproduced below:

“(I) In respect of noticees 1, 2, 4, 6, 7, 8, 9, 10, 17 & 18 viz. M/s. Eastman logistics & Infrastructure Pvt. Ltd. (Shri Narendra Madan as co-applicant), M/s. G.R. Infrastructure and Leasing Pvt. Ltd, M/s. Heavy Cargo Movers, M/s. Parag Roadlines, Shri Hemant Soneta, Shri Rajesh Dhila, M/s. S.V. Crane Service, Shri Zulfikar Vadsaria, M/s. Bhoir Offshore Pvt. Ltd and Shri Sidharth S. Bhoir:

As the Settlement Commission has settled the case against the aforesaid noticees in terms of sub-section (5) of section 127 (c) of the Customs Act, 1962, as detailed below, I do not pass any order against them.

<i>Sr No.</i>	<i>Name of the Applicant</i>	<i>Settlement Commission Order no./Date</i>	<i>Duty</i>	<i>Interest</i>	<i>Fine Imposed</i>	<i>Penalty Imposed</i>
<i>1</i>	<i>Eastman logistics & Infrastructure Pvt. Ltd.</i>	<i>151/FO/C US/GTP/1 3 dated 31.10.13</i>	<i>49,93,587</i>	<i>22,16,964</i>	<i>—</i>	<i>1,50,000</i>
<i>2</i>	<i>Narendra Madan (Co-appl)</i>		<i>—</i>	<i>—</i>	<i>—</i>	<i>30,000</i>
<i>3</i>	<i>G.R Infrastructure Pvt. Ltd.</i>	<i>138/FO/C US/GTP/1 3 dtd 25.10.13</i>	<i>13,52,498</i>	<i>7,82,710</i>	<i>—</i>	<i>10,000</i>
<i>4</i>	<i>M/s. Parag Roadlines</i>	<i>137/FO/C US/GTP/1 3 dtd 25.10.13</i>	<i>4,58,632</i>	<i>3,12,076</i>	<i>—</i>	<i>5,000</i>
<i>5</i>	<i>Shri Hemant Soneta(co-appl.)</i>		<i>—</i>	<i>—</i>	<i>—</i>	<i>Full Immunity</i>
<i>6</i>	<i>Rajesh Dhila</i>	<i>214/FO/C US/SK/13 dtd 20.12.13</i>	<i>3,50,801</i>	<i>2,47,031</i>	<i>—</i>	<i>10,000</i>
<i>7</i>	<i>M/s. S.V. Crane Service</i>	<i>213/FO/C US/SK/13 dtd 20.12.13</i>	<i>9,39,645</i>	<i>6,43,244</i>	<i>—</i>	<i>50,000</i>
<i>8</i>	<i>Zulfikar Vadsaria</i>		<i>—</i>	<i>—</i>	<i>—</i>	<i>10,000</i>
<i>9</i>	<i>Bhoir Offshore Pvt. Ltd.</i>	<i>189/FO/C US/GTP/1 3 dtd 18.08.14</i>	<i>10,13,102</i>	<i>3,18,733</i>	<i>—</i>	<i>40,000</i>
<i>10</i>	<i>Siddhart S Bhoir</i>		<i>—</i>	<i>—</i>	<i>—</i>	<i>10,000</i>
<i>11</i>	<i>M/s. Heavy Cargo Movers</i>	<i>161/FO/C US/KNA/ 13 dtd 31.10.13</i>	<i>3,90,735</i>	<i>1,49,890</i>	<i>1,00,000</i>	<i>10,000</i>

(II) (A) In respect of noticee 3 viz. G. R. Engineering Works Ltd.

(i) I reject the declared CIF value Rs. 23,72,665/- (declared assessable value Rs. 23,96,392/-) in respect of noticee 3 namely G. R. Engineering Works Ltd. (as detailed in Annexure "A-3" to the show cause notice) under the provisions of Rule 10A / Rule 12 of the Customs Valuation (Determination of value of Imported Goods) Rules, 1998 / 2007 read with the provisions of section 14(1) of the Customs Act, 1962 and re-determine the same as Rs. 32,16,865/- CIF value (re-determined assessable value Rs.32,49,034/-), as per the provisions of Rule 4 / Rule 3 of the Customs Valuation (Determination of value of Imported Goods) Rules, 1988/2007, read with the provisions of section 14(1) of the Customs Act, 1962.

(ii) I hold the said used crane imported and cleared by noticee 3 namely G. R. Engineering Works Ltd. (as detailed in Annexure "A-3" to the show cause notice) with a declared CIF value of Rs.23,72,665/- and re-determined CIF value of Rs. 32,16,865/- liable to confiscation under Section 111(m) of the Customs Act, 1962. However, since the goods have already been cleared and are not physically available for confiscation, I refrain from imposing any redemption fine on the importer.

(iii) I confirm the differential duty of Rs. 2,44,189/- for consignment of the said used crane imported by the noticee 3 namely G. R. Engineering Works Ltd. (as detailed in Annexure "A-3" to the show cause notice), on the basis of the re-determined CIF value of Rs. 32,16,865/-, under the provisions 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) I impose penalty of Rs. 2,44,189/- (Rs. Two Lakh Forty-Four Thousand One Hundred Eight Nine only) equal to duty evaded plus the interest leviable 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) on noticee 3 viz. G. R. Engineering Works Ltd., under Section 114A of the Customs Act, 1962. If the duty and interest as demanded above is paid within 30 days of communication of this order, the amount of penalty imposed would be 25% of the duty and interest as per first proviso to Section 114A ibid subject to the condition that the amount of penalty so determined is also paid within the said period of thirty days.

(v) I impose penalty of Rs. 25,000/- (Rupees Twenty-Five Thousand only) on Narendra Madan, distinct and separate legal entity of G. R. Engineering Works Ltd. under Section 112 (a) of the Customs Act, 1962, who had knowingly committed the acts of evasion of Customs duty by reasons of collusion, wilful mis-statement and suppression of facts with the importers as well as abetting the doing or omission of such acts which he rendered the impugned goods liable to confiscation under Section 111(m) of Customs Act, 1962.

(vi) I Impose penalty of Rs. 50,000 /- (Rupees Fifty Thousand only) on noticee 3 namely G. R. Engineering Works Ltd. under section 114AA of the Customs Act, 1962, in relation to the aforesaid one consignment of used crane imported by them. (Details as per "Annexure-A-3" to the show cause notice).

(vii) I impose penalty of Rs. 35,000/- (Rupees Thirty-Five Thousand only) on noticee 5 namely Narendra Madan for impugned import and clearance of the said used crane in the name of noticee 3, namely G. R. Engineering Works Ltd., under section 114AA of the Customs Act, 1962. (Details as per "Annexure-A-3" to the show cause notice).

(viii) I appropriate the amount of Rs. 68,17,033/-, paid by the noticee 5 Narendra Madan during the ongoing investigations against differential duty and interest in respect of the consignment of the said used crane, imported by noticee 5. (Details as per "Annexure-A-3" to the show cause notice).

(II) (B) In respect of noticee 5 namely Narendra Madan:

(i) I impose penalty of Rs. 4,50,000/- (Rupees Four Lakh Fifty Thousand only) on noticee 5, Narendra Madan, distinct and separate legal entity of his group of companies viz. noticee 1, 2, 3 and 4 under Section 112 (a) of the Customs Act, 1962, who had knowingly committed the acts of evasion of Customs duty by reasons of collusion, wilful mis-statement and suppression of facts with the importers as well as abetting the doing or omission of such acts which he rendered the impugned 22 consignments of used cranes (imported and cleared in the name of noticee 2 and imported, sold on high sea sale basis and cleared in the name of high sea buyers, as discussed in para 24 supra) liable to confiscation under Section 111 (m) of Customs Act, 1962.

(ii) I impose penalty of Rs. 4,50,000/- (Rupees Four Lakh Fifty Thousand only) on noticee 5 namely Narendra Madan, in relation to the aforesaid 22 consignments of used cranes, imported and cleared in the name of noticee 2 and imported, sold on high sea sale basis and cleared in the name of high sea buyers, under section 114AA of the Customs Act, 1962.

(iii) I appropriate the balance amount, if any, paid by noticee 5, Narendra Madan towards duty and interest for his group of companies i.e. noticee 1 to 4 during investigation of the cases towards penalties imposed him.

(II) (C) In respect of noticees 11 and 12 viz. Pratibha Industries Ltd. and Ashok Wadhera

(i) I reject the declared CIF value Rs. 16,01,805/- (declared assessable value Rs. 16,17,823/-) in respect of the said used cranes purchased on high sea sale basis and cleared by noticee 11, namely Pratibha Industries Ltd. (as detailed in Annexure "A-5" to the show cause notice) under the provisions of Rule 10A /Rule 12 of the Customs Valuation (Determination of value of Imported Goods) Rules, 1998 / 2007 read with the provisions of section 14(1) of the Customs Act, 1962 and re-determine the same as Rs. 31,00,000/- - CIF value (re-determined assessable value Rs.31,31,000/-), as per the provisions of Rule 4 /Rule 3 of the Customs Valuation (Determination of value of Imported Goods) Rules, 1988/2007, read with the provisions of section 14(1) of the Customs Act, 1962.

(ii) I hold the said used cranes purchased on high sea sale basis and cleared by noticee 11 namely Pratibha Industries Ltd. (as detailed in Annexure "A-5" to the show cause notice) with a declared CIF value of Rs. 16,01,805/- and re-determined CIF value of Rs. 31,00,000/- liable to confiscation under Section 111(m) of the Customs Act, 1962. However, since the said goods have already been cleared and are not physically available for confiscation, I refrain from imposing any redemption fine on the importer.

(iii) I confirm the differential duty of Rs. 4,69,258/- for consignments of the said used cranes purchased on high sea sale basis and cleared by the notice 11, namely Pratibha Industries (details as per Annexure- A-5 to the show cause notice), on the basis of the re-determined CIF value of Rs. 31,00,000/-, under the provisions 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) I impose penalty of Rs. 4,69,258/- (Rs. Four Lakh Sixty-Nine Thousand Two Hundred Fifty-Eight only) equal to duty evaded plus the interest leviable 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) on noticee 11 viz. Pratibha Industries Ltd., under Section 114A of the Customs Act, 1962. If the duty and interest as demanded above is paid within 30 days of communication of this order, the amount of penalty imposed would be 25% of the duty

and interest as per first proviso to Section 114A ibid subject to the condition that the amount of penalty so determined is also paid within the said period of thirty days.

(v) I impose penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on Ashok Wadhera, Executive Director of Pratibha Industries Ltd. under Section 112 (a) of the Customs Act, 1962, who had knowingly committed the acts of evasion of Customs duty by reasons of collusion, wilful mis-statement and suppression of facts with the importers as well as abetting the doing or omission of such acts which he rendered the impugned goods liable to confiscation under Section 111(m) of Customs Act, 1962.

(vi) I impose penalty of Rs. 40,000/- (Rupees Forty Thousand only) on noticee 11 namely Pratibha Industries Ltd., in relation to the aforesaid consignments of used cranes, purchased on high sea sale basis and cleared by them, under section 114AA of the Customs Act, 1962. (Details as per "Annexure-A-5" to the show cause notice).

(vii) I impose penalty of Rs. 40,000/- (Rupees Forty Thousand only) on noticee 12 namely Ashok Wadhera, in relation to the aforesaid consignments of used cranes, purchased on high sea sale basis and cleared by them, under section 114AA of the Customs Act, 1962. (Details as per "Annexure-A-5" to the show cause notice).

(viii) I appropriate the amount of Rs. 4,69,215/-, paid by the noticee 11, Pratibha Industries Ltd. during the ongoing investigations against differential duty and interest in respect of the aforesaid consignments of used cranes, imported by the noticee 11. (Details as per "Annexure-A-5" to the show cause notice).

(II) (D) In respect of noticees 13 and 14 viz. M/s R. R. Carriers and Bharat Mohanlal Rajal

(i) I reject the declared CIF value Rs. 16,33,663/- (declared assessable value Rs. 16,50,000/-) in respect of the said used crane purchased on high sea sale basis and cleared by noticee 13, namely R. R. Carriers (as detailed in Annexure "A-5" to the show cause notice) under the provisions of Rule 10A / Rule 12 of the Customs Valuation (Determination of value of Imported Goods) Rules, 1998/2007 read with the provisions of section 14(1) of the Customs Act, 1962 and re-determine the same as Rs. 24,00,000/- CIF value (re-determined assessable value Rs. 24,24,000/-), as per the provisions of Rule 4/ Rule 3 of the Customs Valuation (Determination of value of Imported Goods) Rules, 1988/2007, read with the provisions of section 14(1) of the Customs Act, 1962.

(ii) I hold the said used crane purchased on high sea sale basis and cleared by noticee 13 namely R. R. Carriers (as detailed in Annexure "A-5" to the show cause notice) with a declared CIF value of Rs. 16,33,663/- and re-determined CIF value of Rs. 24,00,000/- liable to confiscation under Section 111(m) of the Customs Act, 1962. However, since the said goods have already been cleared and are not physically available for confiscation, so I refrain from imposing any redemption fine on the importer.

(iii) I confirm the differential duty of Rs. 2,21,667/- for consignments of the said used crane purchased on high sea sale basis and cleared by the notice 13, namely R. R. Carriers (details as per Annexure- A-5 to the notice), on the basis of the re-determined CIF value of Rs.24,00,000/-, under the provisions 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) I impose penalty of Rs. 2,21,667/- (Rs. Two Lakh Twenty One Thousand Six Hundred Sixty Seven only) equal to duty evaded plus the interest leviable in terms of section 28AB of the Customs Act, 1962, as it existed at the material time (under section 28AA from 8.04.2011 onwards) on noticee 13 viz. R. R. Carriers, under Section 114A of the Customs

Act, 1962. If the duty and interest as demanded above is paid within 30 days of communication of this order, the amount of penalty imposed would be 25% of the duty and interest as per first proviso to Section 114A ibid subject to the condition that the amount of penalty so determined is also paid within the said period of thirty days.

(v) I impose penalty of Rs. 25,000/- (Rupees Twenty-Five thousand only) on noticee 14, Bharat Mohanlal Rajal, Authorised Signatory of R. R. Carriers under Section 112 (a) of the Customs Act, 1962, who had knowingly committed the acts of evasion of Customs duty by reasons of collusion, wilful mis-statement and suppression of facts with the importers as well as abetting the doing or omission of such acts which he rendered the impugned goods liable to confiscation under Section 111(m) of Customs Act, 1962.

(vi) I impose penalty of Rs. 25,000/- (Rupees Twenty-Five Thousand only) on noticee 13 namely R. R. Carriers, in relation to the aforesaid the said consignment of used crane, purchased on high sea sale basis and cleared by them, under section 114AA of the Customs Act, 1962. (Details as per "Annexure-A-5" to the show cause notice).

(vii) I impose penalty of Rs. 25,000/- (Rupees Twenty-Five Thousand only) on noticee 14 namely Bharat Mohanlal Rajal, Authorised Signatory of R. R. Carriers, in relation to the aforesaid consignments of used cranes, purchased on high sea sale basis and cleared by them, under section 114AA of the Customs Act, 1962. (Details as per "Annexure-A-5" to the show cause notice).

(viii) I appropriate the amount of Rs. 1,50,000/-, paid by the noticee 13, R. R. Carriers during the ongoing investigations against differential duty and interest in respect of the aforesaid consignment of used crane, imported by the notice 13. (Details as per "Annexure-A-5" to the show cause notice).

(II) (E) In respect of noticee 15 namely Amarjeet Lamba, Proprietor Shiv Kripa Roadways

(i) I reject the declared CIF value Rs. 8,31,770/- (declared assessable value Rs. 8,31,770/-) in respect of the said used crane purchased on high sea sale basis and cleared by noticee 15, namely Amarjeet Lamba (as detailed in Annexure "A-6" to the show cause notice) under the provisions of Rule 10A/ Rule 12 of the Customs Valuation (Determination of value of Imported Goods) Rules, 1998 / 2007 read with the provisions of section 14(1) of the Customs Act, 1962 and re-determine the same as Rs. 16,00,000/- CIF value (re-determined assessable value Rs.16,16,000/-), as per the provisions of Rule 4/Rule 3 of the Customs Valuation (Determination of value of Imported Goods) Rules, 1988/2007, read with the provisions of section 14(1) of the Customs Act, 1962.

(ii) I hold the said used crane purchased on high sea sale basis and cleared by noticee 15 namely Amarjeet Lamba (as detailed in Annexure "A-6" to the show cause notice) with a declared CIF value of Rs.8,31,770/- and re-determined CIF value of Rs. 16,00,000/- liable to confiscation under Section 111(m) of the Customs Act, 1962. However, since the said goods have already been cleared and are not physically available for confiscation, so I refrain from imposing any redemption fine on the importer.

(iii) I confirm the differential duty of Rs. 2,40,621/- for consignments of the said used crane purchased on high sea sale basis and cleared by the noticee 15, namely Amarjeet Lamba (details as per Annexure- A-6 to the notice), on the basis of the re-determined CIF value of Rs. 16,00,000/-, under the provisions 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) I impose penalty of Rs. 2,40,621 /- (Rs. Two Lakh Forty Thousand Six Hundred Twenty-One only) equal to duty evaded plus the interest leviable 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) on noticee 15 viz. Amarjeet Lamba, under Section 114A of the Customs Act, 1962. If the duty and interest as demanded above is paid within 30 days of communication of this order, the amount of penalty imposed would be 25% of the duty and interest as per first proviso to Section 114A ibid subject to the condition that the amount of penalty so determined is also paid within the said period of thirty days.

(v) I impose penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on noticee 15 namely Amarjeet Lamba, in relation to the aforesaid consignment of used crane, purchased on high sea sale basis and cleared by them, under section 114AA of the Customs Act, 1962. (Details as per "Annexure-A-6" to the show cause notice).

(vi) I appropriate the amount of Rs. 3,00,000/-, paid by the noticee 15, Amarjeet Lamba during the ongoing investigations against differential duty and interest in respect of the aforesaid consignment of used crane, imported by the noticee 15. (Details as per "Annexure-A-6" to the show cause notice).

(II) (F) In respect of noticee 16 namely Latif Ismail Boat Proprietor Ahfreen Roadways

(i) I reject the declared CIF value Rs. 8,84,775/- (declared assessable value Rs. 8,93,623/-) in respect of the said used crane purchased on high sea sale basis and cleared by noticee 16, namely Latif Ismail Boat, proprietor Ahfreen Roadways (as detailed in Annexure "A-6" to the show cause notice) under the provisions of Rule 10A/ Rule 12 of the Customs Valuation (Determination of value of Imported goods) Rules, 1998 / 2007 read with the provisions of section 14(1) of the Customs Act, 1962 and re-determine the same as Rs. 17,00,000/- CIF value (re-determined assessable value Rs. 17,17,000/-), as per the provisions of Rule 4 / Rule 3 of the Customs Valuation (Determination of value of Imported Goods) Rules, 1988/2007, read with the provisions of section 14(1) of the Customs Act, 1962.

(ii) I hold the said used crane purchased on high sea sale basis and cleared by noticee 16 namely Latif Ismail Boat, proprietor of M/s Ahfreen Roadways (as detailed in Annexure "A-6" to the show cause notice) with a declared CIF value of Rs.8,84,775 /- and re-determined CIF value of Rs. 17,00,000/- liable to Confiscation under Section III(m) of the Customs Act, 1962. However, since the said goods have already been cleared and are not physically available for confiscation, I refrain from imposing any redemption fine on the importer.

(iii) I confirm the differential duty of Rs. 2,55,340/- for consignments of the said used crane purchased on high sea sale basis and cleared by the noticee 16, namely Latif Ismail Boat, Proprietor Ahfreen Roadways (details as per Annexure- A-6 to the notice), on the basis of the re-determined CIF value of Rs. 16,00,000/-, under the provisions 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) I impose penalty of Rs. 2,55,340/- (Rs. Two Lakh Fifty Five Thousand Three Hundred Forty only) equal to duty evaded plus the interest leviable 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) on noticee 16 viz. Latif Ismail Boat, Proprietor Ahfreen Roadways, (Details as per Annexure- A-6 to the show cause notice), under Section 114A of the Customs Act, 1962. If the duty and interest as demanded above is paid within 30 days of communication of this order, the amount of penalty imposed would be 25% of the duty

and interest as per first proviso to Section 114A ibid subject to the condition that the amount of penalty so determined is also paid within the said period of thirty days.

(v) I impose penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on noticee 16 namely Latif Ismail Boat, in relation to the aforesaid consignment of used crane, purchased on high sea sale basis and cleared by them, under section 114AA of the Customs Act, 1962. (details as per "Annexure-A-6" to the notice).

(II) (G) In respect of noticee 19 namely Sadru Ajani, Proprietor Empire Equipments

(i) I reject the declared CIF value Rs. 24,11,280/- (declared assessable value Rs. 8,31,770/-) in respect of the said used cranes purchased on high sea sale basis and cleared by noticee 19, namely Sadru Ajani, Proprietor of Empire Equipments (as detailed in Annexure "A-8" to the show cause notice) under the provisions of Rule 10A / Rule 12 of the Customs Valuation (Determination of value of Imported Goods) Rules, 1998 / 2007 read with the provisions of section 14(1) of the Customs Act, 1962 and re-determine the same as Rs.40,00,000/- CIF value (re-determined assessable value Rs.40,40,000/-), as per the provisions of Rule 4 / Rule 3 of the Customs Valuation (Determination of value of Imported Goods) Rules, 1988/ 2007 read with the provisions of section 14(1) of the Customs Act, 1962.

(ii) I hold the said used cranes purchased on high sea sale basis and cleared by noticee 19 namely Sadru Ajani, Proprietor of Empire Equipments (detailed in Annexure "A-8" to the show cause notice) with a declared CIF value of Rs.24,11,280/- and re-determined CIF value of Rs. 40,00,000/- liable to Confiscation under Section 111(m) of the Customs Act, 1962. However, since the said goods have already been cleared and are not physically available for confiscation, I refrain from imposing any redemption fine on the importer.

(iii) I confirm the differential duty of Rs. 2,66,785/- for consignments of the said used cranes purchased on high sea sale basis and cleared by the notice 19, namely Sadru Ajani, Proprietor of Empire Equipments (details as per Annexure- A-8 to the notice), on the basis of the re-determined CIF value of Rs.24,11,280/-, under the provisions 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) I impose penalty of Rs. 2,66,785/- (Rs. Two Lakh Sixty-Six Thousand Seven Hundred Eighty-Five only) equal to duty evaded plus the interest leviable 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) on noticee 19 viz. Sadru Ajani proprietor of Empire Equipments, under Section 114A of the Customs Act, 1962. If the duty and interest as demanded above is paid within 30 days of communication of this order, the amount of penalty imposed would be 25% of the duty and interest as per first proviso to Section 114A ibid subject to the condition that the amount of penalty so determined is also paid within the said period of thirty days.

(v) I impose penalty of Rs. 50,000/- (Rupees Fifty Thousand only) on notice 19 namely Sadru Ajani, Proprietor of Empire Equipments, in relation to the aforesaid consignment of used cranes, purchased on high sea sale basis and cleared by them, under section 114AA of the Customs Act, 1962. (Details as per "Annexure-A-8" to the show cause notice).

(vi) I appropriate the amount of Rs. 3,50,000 /-, paid by the noticee 19, namely Sadru Ajani during the ongoing investigations against differential duty and interest in respect of

the aforesaid consignment of used crane, imported by the noticee 19. (Details as per "Annexure A-8" to the show cause notice).

(III) (A) In respect of noticee 20 namely Jayesh Marfatia, Director Manilal Patel Clearing and Forwarding Pvt. Ltd.

(i) I impose penalty of Rs. 5,00,000/- (Rupees Five Lakh only) on noticee 20 namely Jayesh Marfatia, under Section 112 (a) of the Customs Act, 1962, who had knowingly committed the acts of evasion of Customs duty by reasons of collusion, wilful mis-statement and suppression of facts with the importers as well as abetting the doing or omission of such acts with the aforesaid 42 consignments of used cranes, imported and cleared from Mumbai Port (details as per "Annexure-A-1" to "Annexure-A-6" to the show cause notice), which he rendered liable to confiscation under Section 111(m) of Customs Act, 1962.

(ii) I impose penalty of Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand only) on noticee 20 namely Jayesh Marfatia, under Section 114AA of the Customs Act, 1962 in relation to the aforesaid 42 consignments of used cranes (Details as per "Annexure-A-1" to "Annexure-A-6" to the show cause notice).

(III) (B) In respect of noticee 21 namely Manilal Patel Clearing and Forwarding Pvt. Ltd.

(i) I impose penalty of Rs. 5,00,000/- (Rupees Five Lakh only) on noticee 21 namely Manilal Patel Clearing and Forwarding Pvt. Ltd., under Section 112 (a) of the Customs Act, 1962, who had knowingly committed the acts of evasion of Customs duty by reasons of collusion, wilful mis-statement and suppression of facts with the importers as well as abetting the doing or omission of such acts with the aforesaid 42 consignments of used cranes, imported and cleared from Mumbai Port (details as per "Annexure-A-1" to "Annexure-A-6" to the show cause notice), which he rendered liable to confiscation under Section 111(m) of Customs Act, 1962.

(ii) I impose penalty of Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand only) on noticee 21 namely Manilal Patel Clearing and Forwarding Pvt. Ltd., under Section 114AA of the, customs Act, 1962 (details as per "Annexure-A-1" to "Annexure-A-6" to the show cause notice).

(III) In respect of noticee 22 namely Madan Lalwani

(i) I impose penalty of Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand only) on noticee 22 namely Madan Lalwani, under Section 112 (a) of the Customs Act, 1962, who had knowingly committed the acts of evasion of Customs duty by reasons of collusion, wilful mis-statement and suppression of facts with the importers as well as abetting the doing or omission of such acts with the aforesaid 3 consignments of used cranes, imported and cleared from Mumbai Port (details as per "Annexure-A-7" and "Annexure-A-8" to the show cause notice, which he rendered liable to confiscation under Section 111(m) of Customs Act, 1962.

(ii) I impose penalty of Rs. 1,00,000/- (Rupees One Lakh only) on noticee 22 namely Madan Lalwani, under Section 114AA of the Customs Act, 1962 (details as per "Annexure-A-7" and "Annexure-A-8" to the show cause notice).

21.2 Noticee 20, Shri Jayesh Marfatia & Noticee 21, M/s Manilal Patel Clearing & Forwarding Pvt Ltd preferred an appeal against the said OIO before the Hon'ble CESTAT challenging that DRI is not a competent authority as per the ratio laid down by the Hon'ble Delhi High Court in the case of Mangali Impex Ltd. Vs UOI dated 03.05.2016. Hon'ble CESTAT vide

Order No. A/91449-91450 dated 11.12.2017 disposed of the said appeals and remanded the matter back to the original Adjudicating Authority for fresh decisions.

The relevant part of the CESTAT Order dated 11.12.2017 is reproduced below:

"2. During the course of hearing, both the sides have agreed that the notices have been issued by the DRI which resulted in the impugned orders. According to both the parties, the DRI is not a competent authority as per the ratio laid down by the Hon'ble Delhi High Court in the case of Mangali Impex Ltd. Vs UOI dated 03.05.2016. Presently, the matter is sub judice before the Hon'ble Supreme Court.

3. In this connection, I note that similar issues have been dealt with in various cases by the Tribunal recently. The decision of the Tribunal in one such case vide Final Order No. 53941-53942 of 2017 dated 12/06/2017 is reproduced below :

"During the course of arguments, the appellant's counsel has raised the preliminary plea that the show cause notice in the instant case was issued by the Directorate of Revenue Intelligence (DRI). The Hon'ble High Court of Delhi in the case of Mangali Impex Ltd. Vs. UOI dated 03.05.2016 has observed that the DRI is not competent to issue the show cause notices. Hence, the request is being made to set aside the present proceedings where the notice was issued by the DRI.

2. On the other hand, learned Counsel for the Department has justified the notice issued by DRI and made a request to decide the matter on merit.

3. We have heard both the parties at length and gone through the material available on record.

4. From the record, it appears that the preliminary issue emerges in the present appeal is regarding the jurisdiction of the DRI Officers to issue the show cause notice under the Customs Act. The assessee-Appellant had taken a stand that in terms of the Hon'ble Apex Court decision in the case of Commissioner of Customs vs. Sayed Ali, 2011 (265) 17 (S.C.)], the DRI officers were not proper officers in terms of section 2(34) of the Customs Act, 1962.

5. It is also seen that after the declaration of law by the Hon'ble Supreme Court (Supra), the provisions of section 28 of the Customs Act, 1962 were amended with effect from 08.04.2011 vide Finance Act, 2011.

6. It is also noticed that in order to overcome the situation created by the judgment of Hon'ble Supreme Court in the case of Sayed Ali (supra), Notification No. 44/2011-Cus (NT), dated July 6, 2011 was issued by the CBEC, assigning the functions of the proper officer to various officers (including Additional Director General, DRI) mentioned in the notification, for the purposes of Section 28 of the Act. Thus, w.e.f. July 6, 2011, the Additional Director General, DRI was prospectively appointed as 'proper officer' for the purpose of Section 28 of the Customs Act. Hence, from 06/07/2011 ADG-DRI has been empowered to issue demand notice under Section 28.

7. Subsequently, sub-Section (11) was inserted under Section 28 of the Customs (Amendment and Validation) Act, 2011 dated 16/09/2011, assigning the functions of proper officers to various DRI officers with retrospective effect.
 8. Later on, i.e. for the period subsequent to the amendment, the matter i.e. the DRI officers having the proper jurisdiction to issue the SCN or not had come up before the Hon'ble Delhi High Court in the case of *Mangali Impex Ltd. vs. Union of India* [2016 (335) E.L.T. 605 (Del.)], and the High Court inter-alia, held that even the new inserted Section 28 (11) does not empower either the officers of DRI or the DGCEI to issue the SCN for the period prior to 08/04/2011. Thus, it is seen that the said order of the Hon'ble Delhi High Court is in favour of the assessee and against the Revenue.
 9. However, it is further noticed that the said issue was also the subject matter of Hon'ble Mumbai High Court in the case of *Sunil Gupta vs. Union of India* [2015 (315) E.L.T. 167 (Bom)] as also of the Hon'ble High Court of Telangana and Andhra Pradesh in the case of *Vuppalamritha Magnetic Components Ltd. vs. DRI (Zonal Unit), Chennai* [2017 (345) E.L.T. 161 (AP)], taking a view contrary to the one taken by the Hon'ble Delhi High Court.
 10. Being conflicting decisions of various High Courts (Supra), finally the matter reached to Hon'ble Supreme Court who on 07/10/2016 granted the stay of operation of the judgment passed by the High Court of Delhi. Thus the issue is sub-judice before the Hon'ble Supreme Court [2016-TIOL-173-SC-CUS / 2016 (339) ELT A 49 (SC)].
 11. It may be mentioned that recently, the Hon'ble High Court of Delhi in the case of *BSNL Vs. UOI* vide writ petition no. C/4438/2017 and CM No. 19387/2017 has dealt with the identical issue where the notice was also issued by DRI. The Hon'ble High Court of Delhi has considered the judgment in the case of *Mangali Impex Ltd. Vs. UOI* which is stayed by the Hon'ble Supreme Court reported as 2016 (339) E.L.T. A 49 (SC). Finally the Hon'ble High Court has granted liberty to the petitioner by observing that "petitioner is permitted to review the challenge depending on the outcome of the appeals filed by the UOI in the Supreme Court against the judgment of the Court in the case of *Mangali Impex Ltd.*"
 12. By following the ratio laid down by the Hon'ble High Court of Delhi in the case of *BSNL* (Supra) as well as by considering totality of facts and circumstances, we set aside the impugned order and remand the matter to the original adjudicating authority to first decide the issue of jurisdiction after the availability of Hon'ble Supreme Court decision in the case of *Mangali Impex Ltd.* and then on merits of the case but by providing an opportunity to the assessee of being heard. Till the final decision, the status quo will be maintained.
 13. In the result, appeals filed by the assessee are allowed by way of remand".
4. In line with the above decision of the Tribunal, I remand the matters for fresh decisions and both sides have agreed to it.

5. *In the result, appeals stand disposed of accordingly.*”

21.3 The said order of Hon’ble CESTAT was accepted by the Commissioner of Customs on 12.01.2018 and the said case file was transferred to the Call Book subsequently. Further, after certain amendments in the Act vide Finance Act, 2022, the said case file was taken out of the Call Book on 30.11.2022.

21.4 Noticee-22, Shri Madan Lalwani also preferred an appeal before the Hon’ble Tribunal against the said OIO. The Hon’ble Tribunal vide order No. A/85083-85106/2023 dated 24.01.2023 held that “6. *Miscellaneous applications filed by Mrs. Meena Madan Lalwani, widow of Appellant M.A. Lalwani are allowed. All appeals of deceased Appellant Late Madan Lalwani abate under Rule 22 of the CESTAT (Procedure) Rules, 1982. COD applications are infructuous and rejected.*”

Details of personal hearing

22. As per the direction of Hon’ble Tribunal, fresh Personal Hearings were granted to Noticees 20 and 21 viz. Jayesh Marfatia and M/s. Manilal Patel Clearing & Forwarding Pvt. Ltd respectively. Details of Personal Hearing Memorandums are as under:

Details of Personal Hearing Memorandums issued		
Date of issuing PH memo	Date of Personal Hearing	Details
Noticee 20 Jayesh Marfatia		
03.05.2023	11.05.2023	Advocate Shradha Pawar attended PH on 04.07.2023 and stated that she will submit written submission on 25.07.2023. Again Advocate Mohit Prabhakar appeared on 19.07.2023 and submitted copy of the final defence brief already submitted on 09.06.2023.
05.06.2023	14.06.2023	
26.06.2023	04.07.2023	
11.07.2023	19.07.2023	
Noticee 21 Manilal Patel Clearing & Forwarding Pvt. Ltd.		
03.05.2023	11.05.2023	No one appeared for personal hearing
05.06.2023	14.06.2023	
26.06.2023	04.07.2023	
11.07.2023	19.07.2023	

Summary of submissions by noticee

23. Noticee-20, Shri Jayesh Marfatia filed his reply through Advocate vide letter dated 09.06.2022 submitted on 09.06.2023 for the noticee, which is summarized below:

23.1 No knowledge of Under-valuation:

23.1.1 Noticee-20 i.e. Shri Jayesh Marfatia submitted that he had no knowledge of undervaluation of value of used cranes. The import clearance of the impugned cranes as imported by Noticee No. 5 i.e., Narendra Madan was in the name of his group companies i.e., Noticees 1 to 4 and also divulged that they had also attended to clearance of cranes sold by Noticee No. 5 on high sea sale basis to other importers and that in all these cases, their agency charges in respect of all the above cases were paid to by Noticee no. 5. This evidences that all the import documents required for clearance of the cranes were provided by Noticee No. 5 to his agent. Therefore, if any counterfeit documents such as invoice or Chartered Engineer certificate is submitted by the importer to the agent, without prejudice to the liability of the importer, the same have been submitted by the agent as deemed importer in the instant case, since after high sea sale the high sea buyer is the importer. However, in this case even after high sea sale the actual importer has played the role of the importer and the agent without any reservations has accepted the documents from the actual importer than the high sea seller.

23.1.2 The Noticee further submitted that, there is absolutely no material on record to show that he knew or was party to the alleged conspiracy to understate the value of the imported used cranes.

23.2 Penalty not imposable under section 114AA of the act:

23.2.1 Noticee submitted that the penalty under Section 114 AA of the Act is imposable only in those situations where importer or exporter had presented forged documents. But in this matter the Noticee has not done declaration at all. Bills of entry were prepared on the basis of documents provided by the importer.

23.2.2 The Noticee further submitted that he had performed his duties in his capacity of a CB/CHA/Clearing & forwarding agent/ representative and presented the Bills of entry documents to the customs. The allegations leveled in the matter by the department are based on statements forcibly recorded without any corroborative evidence. The Noticee had not signed any documents which are false or incorrect in any material particular, in the transaction of any business for the purpose of the Act. Also, the department has not produced any such import document signed by the Appellant to prove their case.

23.2.3 The Noticee relied on the following Case laws for establishing their case:

- I. CESTAT, Principal Bench, New Delhi in the matter Brijesh International Vs. Commissioner of Customs (Import & General), New Delhi [2017 (352) E.L.T. 229 (Tri. - Del.)]
- II. Giavudan Indian Pvt. Ltd Vs. Commissioner of Customs, Bangalore [2010 (261) E.L.T. 975 (Tri. - Bang.)], affirmed in [2016 (337) ELT A42 (Supreme Court)]
- III. Commissioner of Customs, (Import) Vs. Trinetra Impex Pvt. Ltd [2020 (372) E.L.T. 332 (Del.)]
- IV. WCI Shipping Pvt Ltd Vs. Commissioner of Customs, Chennai [2020 (372) E.L.T. 369 (Tri. - Chennai)]

- V. Access World Wide Cargo Vs. Commissioner of Customs, Bangalore [2022 (379) E.L.T. 120 (Tri - Bang.)]
- VI. Savithri Jewellers Pvt Ltd Vs. Commissioner of Customs, Mumbai-II [2020 (374) E.L.T. 754 (Tri. - Mumbai)]
- VII. G. Narayan & Co. Vs. Commissioner of Customs, Mangalore [2021 (378) E.L.T. 298 (Tri. - Bang.)]

23.3 **Penalty under section 112(a) not leviable:**

23.3.1 The Importer/Noticee submitted that no case of misdeclaration of contumacious conduct on part of the importer is made out by the department. The goods had already been imported more than approximately 3 to 5 years back and these are not available for confiscation. When the importer had neither committed nor omitted to do anything which would render the goods liable for confiscation under Section 111 of the Customs Act, 1962, the question of penalty should not arise.

23.3.2 The Noticee relied on the following case laws:

- I. Lewek Altair Shipping Pvt Ltd Vs. Commissioner of Customs, Vijayawada [2019 (366) E.L.T. 318 (Tri. - Hyd.)]
- II. Agarwal Industrial Corporation Ltd. Vs Commissioner of Customs, Mangalore [2020 (373) E.L.T. 280 (Tri.-Bang.)]

23.4 **DRI officer was not the proper officer:**

23.4.1 Noticee submitted that the DRI Officer was not the proper officer to issue show cause notice in this matter under section 28 of the Customs Act, 1962.

Discussion & findings

24. I find that the present Show Cause Notice dated 24.09.2012 was issued to the following 22 noticees: -

- Noticee 1 : M/s. Eastman Logistics & Infrastructure Pvt. Ltd,
- Noticee 2 : M/s. G.R. Infrastructure and Leasing Pvt. Ltd,
- Noticee 3 : M/s. G. R. Engineering Works Ltd,
- Noticee 4 : M/s. Heavy Cargo Movers,
- Noticee 5 : Shri Narender Madan,
- Noticee 6 : M/s. Parag Roadlines,
- Noticee 7 : Shri Hemant Soneta,
- Noticee 8 : Shri Rajesh Dhila,
- Noticee 9 : M/s. S.V. Crane Service,
- Noticee 10 : Shri Zulfikar Vadsaria,
- Noticee 11 : M/s. Pratibha Industries,
- Noticee 12 : Shri Ashok Wadhwa,
- Noticee 13 : M/s R. R. Carriers,
- Noticee 14 : Shri Bharat Mohanlal Rajal,
- Noticee 15 : Shri Amarjeet Lamba,
- Noticee 16 : Shri Latif Ismail Boat,

Noticee 17 : M/s. Bhoir Offshore Pvt. Ltd.,
Noticee 18 : Shri Sidharth S. Bhoir,
Noticee 19 : Shri Sadru Ajani,
Noticee 20 : Shri Jayesh Marfatia,
Noticee 21 : M/s. Manilal Patel Clearing & Forwarding Pvt. Ltd.
Noticee 22 : Shri Madan Lalwani

25. Out of 22 noticees, cases against 10 noticees i.e 1, 2, 4, 6, 7, 8, 9, 10, 17 and 18 viz. M/s. Eastman Logistics & Infrastructure Pvt. Ltd. (Shri Narender Madan as co-applicant), M/s. G.R. Infrastructure and Leasing Pvt. Ltd, M/s. Heavy Cargo Movers, M/s. Parag Roadlines, Shri Hemant Soneta, Shri Rajesh Dhila, M/s. S.V. Crane Service, Shri Zulfikar Vadsaria, M/s. Bhoir Offshore Pvt. Ltd and Shri Sidharth S. Bhoir were settled by the Settlement Commission.

26. I find that the said SCN was adjudicated by the then adjudicating authority vide Order in Original No. 19/RT/PC/2016-17 dated 31.03.2017 issued vide F. No. S/10-Adj-135/Gr.V/2012-13 for the remaining 12 noticees i.e. 3, 5, 11, 12, 13, 14, 15, 16, 19, 20, 21 & 22 viz. M/s. G.R. Engineering Works Ltd, Shri Narender Madan, M/s. Pratibha Industries Ltd., Shri Ashok Wadhera, M/s R. R. Carriers, Shri Bharat Mohanlal Rajal, Shri Amarjeet Lamba, Shri Latif Ismail Boat, Shri Sadru Ajani, Shri Jayesh Marfatia, M/s. Manilal Patel Clearing & Forwarding Pvt. Ltd and Shri Madan Lalwani respectively.

27. Aggrieved with the said Order in Original, Noticee 20(Shri Jayesh Marfatia), Noticee 21(M/s. Manilal Patel Clearing Forwarding Pvt. Ltd) & Noticee 22 (Shri Madan Lalwani) have preferred appeals before the Hon'ble Tribunal against the said OIO. The Hon'ble Tribunal vide Order No. A/91449-91450 dated 11.12.2017 in respect of noticees 20 & 21 remanded back the said OIO dated 31.03.2017 and ordered that "2. *During the course of hearing, both the sides have agreed that the notices have been issued by the DRI which resulted in the impugned orders. According to both the parties, the DRI is not a competent authority as per the ratio laid down by the Hon'ble Delhi High Court in the case of Mangali Impex Ltd. Vs UOI dated 03.05.2016. Presently, the matter is sub judice before the Hon'ble Supreme Court.*

3. *In this connection, I note that similar issues have been dealt with in various cases by the Tribunal recently. The decision of the Tribunal in one such case vide Final Order No. 53941-53942 of 2017 dated 12/06/2017 is reproduced below :*

"During the course of arguments, the appellant's counsel has raised the preliminary plea that the show cause notice in the instant case was issued by the Directorate of Revenue Intelligence (DRI). The Hon'ble High Court of Delhi in the case of Mangali Impex Ltd. Vs. UOI dated 03.05.2016 has observed that the DRI is not competent to issue the show cause notices. Hence, the request is being made to set aside the present proceedings where the notice was issued by the DRI.

2. *On the other hand, learned Counsel for the Department has justified the notice issued by DRI and made a request to decide the matter on merit.*

3. *We have heard both the parties at length and gone through the material available on record.*
4. *From the record, it appears that the preliminary issue emerges in the present appeal is regarding the jurisdiction of the DRI Officers to issue the show cause notice under the Customs Act. The assessee-Appellant had taken a stand that in terms of the Hon'ble Apex Court decision in the case of Commissioner of Customs vs. Sayed Ali, 2011 (265) 17 (S.C.), the DRI officers were not proper officers in terms of section 2(34) of the Customs Act, 1962.*
5. *It is also seen that after the declaration of law by the Hon'ble Supreme Court (Supra), the provisions of section 28 of the Customs Act, 1962 were amended with effect from 08.04.2011 vide Finance Act, 2011.*
6. *It is also noticed that in order to overcome the situation created by the judgment of Hon'ble Supreme Court in the case of Sayed Ali (supra), Notification No. 44/2011-Cus (NT), dated July 6, 2011 was issued by the CBEC, assigning the functions of the proper officer to various officers (including Additional Director General, DRI) mentioned in the notification, for the purposes of Section 28 of the Act. Thus, w.e.f. July 6, 2011, the Additional Director General, DRI was prospectively appointed as 'proper officer' for the purpose of Section 28 of the Customs Act. Hence, from 06/07/2011 ADG-DRI has been empowered to issue demand notice under Section 28.*
7. *Subsequently, sub-Section (11) was inserted under Section 28 of the Customs (Amendment and Validation) Act, 2011 dated 16/09/2011, assigning the functions of proper officers to various DRI officers with retrospective effect.*
8. *Later on, i.e. for the period subsequent to the amendment, the matter i.e. the DRI officers having the proper jurisdiction to issue the SCN or not had come up before the Hon'ble Delhi High Court in the case of Mangali Impex Ltd. vs. Union of India [2016 (335) E.L.T. 605 (Del.)], and the High Court inter-alia, held that even the new inserted Section 28 (11) does not empower either the officers of DRI or the DGCEI to issue the SCN for the period prior to 08/04/2011. Thus, it is seen that the said order of the Hon'ble Delhi High Court is in favour of the assessee and against the Revenue.*
9. *However, it is further noticed that the said issue was also the subject matter of Hon'ble Mumbai High Court in the case of Sunil Gupta vs. Union of India [2015 (315) E.L.T. 167 (Bom)] as also of the Hon'ble High Court of Telangana and Andhra Pradesh in the case of Vuppalamritha Magnetic Components Ltd. vs. DRI (Zonal Unit), Chennai [2017 (345) E.L.T. 161 (AP)], taking a view contrary to the one taken by the Hon'ble Delhi High Court.*
10. *Being conflicting decisions of various High Courts (Supra), finally the matter reached to Hon'ble Supreme Court who on 07/10/2016 granted the stay of operation of the judgment passed by the High Court of Delhi. Thus the issue is sub-judice before the Hon'ble Supreme Court [2016-TIOL-173-SC-CUS / 2016 (339) ELT A 49 (SC)].*

11. *It may be mentioned that recently, the Hon'ble High Court of Delhi in the case of BSNL Vs. UOI vide writ petition no. C/4438/2017 and CM No. 19387/2017 has dealt with the identical issue where the notice was also issued by DRI. The Hon'ble High Court of Delhi has considered the judgment in the case of Mangali Impex Ltd. Vs. UOI which is stayed by the Hon'ble Supreme Court reported as 2016 (339) E.L.T. A 49 (SC). Finally the Hon'ble High Court has granted liberty to the petitioner by observing that "petitioner is permitted to review the challenge depending on the outcome of the appeals filed by the UOI in the Supreme Court against the judgment of the Court in the case of Mangali Impex Ltd."*

12. *By following the ratio laid down by the Hon'ble High Court of Delhi in the case of BSNL (Supra) as well as by considering totality of facts and circumstances, we set aside the impugned order and remand the matter to the original adjudicating authority to first decide the issue of jurisdiction after the availability of Hon'ble Supreme Court decision in the case of Mangali Impex Ltd. and then on merits of the case but by providing an opportunity to the assessee of being heard. Till the final decision, the status quo will be maintained.*

13. *In the result, appeals filed by the assessee are allowed by way of remand".*

4. *In line with the above decision of the Tribunal, I remand the matters for fresh decisions and both sides have agreed to it.*

5. *In the result, appeals stand disposed of accordingly."*

28. Therefore, in view of the above, the remand by the Hon'ble Tribunal is for making fresh adjudication after the availability of Hon'ble Supreme Court decision in the case of Mangali Impex Ltd.

29. Further, in respect of Noticee-22(Shri Madan Lalwani), the Hon'ble Tribunal vide order No. A/85083-85106/2023 dated 24.01.2023 held that "6. *Miscellaneous applications filed by Mrs. Meena Madan Lalwani, widow of Appellant M.A. Lalwani are allowed. All appeals of deceased Appellant Late Madan Lalwani abate under Rule 22 of the CESTAT (Procedure) Rules, 1982. COD applications are infructuous and rejected.*"

30. Therefore, as only the noticees 20, 21 & 22 had preferred appeal against the said Order in Original dated 31.03.2017, hence, only the said noticees are to be considered in this second round of adjudication of the said SCN and the Order In Original dated 31.03.2017 pertaining to the noticees 3, 5, 11, 12, 13, 14, 15, 16 & 19 has attained finality.

31. Moreover, Noticee-22 (Shri Madan Lalwani) has expired as per death certificate registration no. D-2022:27-90269-000886 dated 09.02.2022 issued by Sub Registrar (Birth & Death), Municipal Corporation of Greater Mumbai K-East Ward. There was no duty demand, only penalties under sections 112(a) and 114AA were imposed on him. Therefore, these penal proceedings against him stand abated in view of the ratio laid down by the Hon'ble Supreme

Court in **Shabina Abraham**⁹. Hence, only 2 noticees-20 & 21 are present before me in this adjudication.

32. I have carefully gone through the SCN, records of the case, submissions of the noticees and records of personal hearing held before me. Noticee- 21 did not appear for the personal hearings given to them. Therefore, I am deciding the case instituted against Noticee-21 ex-parte on the basis of available records. Authorized representatives appeared on behalf of Noticee-20 and also submitted their written submission on 09.06.2023.

33. I find that the issue in the case of *Mangali Impex* was the jurisdiction of DRI officers to issue SCNs under Section 28 of the Act. Similar issue came up later before the Hon'ble Supreme Court in *Canon India* case, wherein the Hon'ble Court ruled that DRI officers do not have power to issue SCN under section 28 of the Act. It is clear that the remand by the Tribunal is on the limited issue of jurisdiction of DRI officers to issue SCN. So the only issue before me is the legality of the SCN with respect to **Mangali Impex**¹⁰ judgement of the Hon'ble Delhi High Court and **Canon India**¹¹ judgement of the Hon'ble Supreme Court.

34. Let me deal with this issue now:

34.1 I find that certain amendments were made in the Customs Act, 1962 vide Finance Act, 2022. The relevant sections are reproduced below for reference:-

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

*(a) Principal Chief Commissioner of Customs or Principal Chief Commissioner of Customs (Preventive) or **Principal Director General of Revenue Intelligence**;*

*(b) Chief Commissioner of Customs or Chief Commissioner of Customs (Preventive) or **Director General of Revenue Intelligence**;*

*(c) Principal Commissioner of Customs or Principal Commissioner of Customs (Preventive) or **Principal Additional Director General of Revenue Intelligence** or **Principal Commissioner of Customs (Audit)**;*

*(d) Commissioner of Customs or Commissioner of Customs (Preventive) or **Additional Director General of Revenue Intelligence** or **Commissioner of Customs (Audit)**;*

(e) Principal Commissioner of Customs (Appeals);

(f) Commissioner of Customs (Appeals);

⁹ Shabina Abraham vs Collector of Central Excise and Customs 2015 (322) E.L.T. 372 (S.C.).

¹⁰ Mangali Impex vs. Union of India-2016 (335) ELT 605 (Del.)

¹¹ Canon India Pvt. Ltd. vs Commissioner of Customs-2021 (376) E.L.T. 3 (S.C.)

(g) *Additional Commissioner of Customs or Additional Commissioner of Customs (Preventive) or **Additional Director of Revenue Intelligence** or Additional Commissioner of Customs (Audit);*

(h) *Joint Commissioner of Customs or Joint Commissioner of Customs (Preventive) or **Joint Director of Revenue Intelligence** or Joint Commissioner of Customs (Audit);*

(i) *Deputy Commissioner of Customs or Deputy Commissioner of Customs (Preventive) or **Deputy Director of Revenue Intelligence** or Deputy Commissioner of Customs (Audit);*

(j) *Assistant Commissioner of Customs or Assistant Commissioner of Customs (Preventive) or **Assistant Director of Revenue Intelligence** or Assistant Commissioner of Customs (Audit);*

(k) *such other class of officers of customs as may be appointed for the purposes of this Act.*” (emphasis added)

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

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

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

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

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

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

34.2 In view of the above, I find that the Finance Act 2022 overrides the judgement of the Hon'ble Delhi High Court in Mangali Impex and Judgement of the Hon'ble Supreme Court in Canon India. The aforementioned amendments in Section 3 of the Customs Act, 1962 and the validation of action taken under the Customs Act, 1962 vide Finance Act, 2022 have not been stayed by any Court of Law.

34.3 I also refer to the judgement of the Hon'ble Madras High Court in the matter of **N. C. Alexander**¹² wherein the validity of SCNs issued by DRI was challenged through various writ petitions in the wake of Canon India (supra) Judgement and after enactment of the Finance Act, 2022. Hon'ble High Court while disposing of the said writ petitions held that pursuant to the amendment in Section 3 of the Act by Finance Act 2022, officers from the Directorate of Revenue Intelligence are explicitly recognized as Officers of Customs and Show Cause Notices issued by officers of DRI cannot be assailed in view of validation in Section 97 of the Finance Act 2022 to pending proceedings. Relevant paras of the said judgement are reproduced below:

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

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

298. Insofar as completed proceedings i.e. where proceedings have been dropped prior to passing of Finance Act, 2022 is concerned, the proceedings cannot be revived.

¹² N.C.. Alexander Vs. Commissioner of Customs and others-2022 (381) ELT 148 (Mad.)

However, the pending proceedings have to be decided in the light of the validation in Section 97 of the Finance Act, 2022.

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

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

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

34.4 I find that the N.C. Alexander Judgement (supra) has not been dissented/stayed by the Hon'ble Supreme Court in any proceedings so far. Therefore, in view of the above, I find that the SCN issued by ADG DRI, is legal and proper.

35. On examining the rest of the issues raised in the SCN dated 24.09.2012 and the submissions of noticees, I find that my predecessor Pr. Commissioner in the paras 30 & 31 of the 1st OIO dated 31.03.2017 has dealt in detail all the issues / submissions / arguments raised by the noticees. I find his findings on the issues raised as reasonable and just and the same are reproduced below:

*"30. As regards, noticee 20, Shri Jayesh Marfatia, Director, Manilal Patel Clearing & Forwarding Pvt. Ltd. (worked till 2011), he in his written submission has denied knowledge of undervaluation of value of used cranes, whereas in his statement recorded under section 108 of the Customs Act, 1962 he denied to spill the beans. The noticee admitted the import clearance of the impugned cranes imported by noticee 5, Narendra Madan in the name of his group companies i.e. noticee 1 to 4 and also divulged that they have also attended to clearance of cranes sold by noticee 5 on high sea sale basis to other importers and that in all these cases, their agency charges in respect of all the above cases were paid to us by noticee 5. This evidences that all the import documents required for clearance of the cranes were given by noticee 5 to his agent. Therefore, if any counterfeit documents such as invoice or chartered engineer certificate is submitted by the importer to the agent, without prejudice to the liability of the importer, the same have been submitted by the agent as deemed importer. In the instant case, after high sea sale the high sea buyer is the importer. **However, in this case even after a high sea sale the actual importer has played the role of the importer and the agent without any reservations has accepted the documents from the actual importer than the high sea seller.** The noticee when asked about the act of undervaluation of the importer, he exercised the freedom of expression of wishfulness than confessing the truth. Thus, it can be squarely construed that the noticee 20, Jayesh Marfatia have assentio mentium with the importer Narendra Madan in the act of mis-declaration and undervaluation of the impugned goods by getting manipulated import invoices against the actual transaction value. However, the noticee preferred to make pretence before the investigation. The legal*

*maxim says **Fraus est celare fraudem** mean "it is fraud to conceal fraud", to be silent another. As far as noticee's argument that there is absolutely no material on record to show that he knew or was party to the alleged conspiracy to understate the value of the imported used cranes. I reiterate the case of **National Boards Vs. Commissioner of Central Excise, Calicut[2014(313)E.L.T.113(Tri, -Bang.]**, wherein on the argument by the revenue that no systematic record of evidence is left by persons engaging in transactions involving evasion, the Hon'ble Tribunal held that*

"We find that evaders are always clever and ingenious in executing their criminal design."

In the light of the above and in foregoing paras, thus construed that the noticee for the impugned goods which do not correspond in respect of value with the indicated bills of entry filed under the act and thus held the goods liable for confiscation under section 111(m) of the Customs Act, 1962 and which resulted in short levy of duty by reasons of collusion, wilful mis-statement and suppression of facts with the importers and thus the noticee 20 is liable for penalty under section 112 (a) of the Customs Act, 1962. Moreover, as the notice No. 20 has intentionally made, signed and caused to be made, signed declaration, statement or documents which were false or incorrect in respect of value in the transaction of his normal business for the purpose of the act has hold himself liable to penalty for use of false and incorrect material under section 114AA of the Customs Act, 1962.

31. As regards noticee 21, Manilal Patel Clearing & Forwarding Pvt. Ltd they were the CHA company and has denied all allegations levelled against the company and submitted that the company acted as a Custom House Agent and based upon the documents received by them they filed bills of entry which were assessed by the Proper officer. That for all the goods the bills of entry were filed on first check examination basis and therefore the noticee had no role to play in the alleged evasion of duty. That in respect of each and every crane imported by the importer, they had received a Chartered Engineer's certificate showing the age and the value of the used crane. That they filed bills of entry on the basis of invoice, bill of lading, packing list, Chartered Engineer's certificate and therefore the noticee had no occasion to doubt the same being accepted by the department. That during the whole investigation the department has not brought on record any evidence as to the prior knowledge about the alleged undervaluation of the goods by the importer and no single document has been relied upon in the show cause notice. Accordingly, the provisions of section 112(a) and 114AA cannot be made applicable to the noticee. The noticee has relied on case laws mentioned in the submission at para 19.7 supra.

31.1 As far as noticee's reliance on the case law of Him Logistics Pvt. Ltd. Vs CC, New Delhi [2016(338) ELT 721 (tri-Del), I find the issue the subject case was of misclassification of food supplements whereas the issue in the present case is of undervaluation in the invoice and its conformation in the Chartered Engineer certificate presented in support of invoice value. Due to a dissimilar set of facts, the subject case law outweighed. As far as noticee's reliance on the case law in the case of Pankaj Babu Saini Vs. Commissioner of Customs, Ghaziabad [2015(316) E.L.T. 164 (Tri.-Del.)], I find the goods in the case were stuffed for export in the factory and the CHA was not present there. On the contrary, in the impugned case, the goods were examined before the CHA and on the basis of fraudulent documents tendered to the customs by the CHA. Hence this case law also doesn't deem suitable. On the identical ground, I do not accept precedence of the case laws in the case of Indian Acrylics Ltd. Vs. Commissioner of Customs, Kandla [2015 (325) E.L.T. 753 (Tri.-Ahmd.)]. In the case of Commissioner of Customs, Kolkata Vs. Mahendra Patni (2004 (164) E.L.T. 259 (Tri.-Kolkata)] the noticee denied his

involvement in the misdeclaration of goods in any way, whereas in the present case the noticee 20, who played active role in the case on behalf of the company didn't deny the undervaluation but remained mute. Therefore, as the undervaluation of the goods have been accepted before the Settlement Commission by the importer with whom the noticee 20 has dubiously dealt with, I find the given case law is also not suitable.

*31.2 As far as noticee's reliance on the case laws with regard to the penalty on the managing director and in addition to penalty on the company viz. Kanohar Electricals Ltd. Vs. Commissioner of C.Ex Meerut [2005 (180) E.L.T. 129 (Tri.-Del.)], Conic Electronics (P) Ltd. Vs. Commissioner of Customs, Bangalore [2004 (173) E.L.T. 490 (Tri. Bang.)], Sanjay Gupta Vs. Commissioner of Customs, Hyderabad [2004 (172) E.L.T. 58 (Tri. -Bang.)], Commissioner of Customs, Kolkata Vs. Mahendra Patni [2004 (164) E.L.T. 259 (Tri.-Kolkata)] and Collector of C.Ex., New Delhi Vs. New Tobacco Company Ltd. 2001 [(134)E.L.T. 176 (Tri.-Kolkata)], I have relied upon the ratio of law laid down in the recent case of **Amritlakshmi Machine Works Vs Commissioner of Customs (Import) [2016(335)E.L.T. 225 (Bom.)]**.*

31.3 In view of the above, the noticee Manilal Patel Clearing & Forwarding Pvt. Ltd. has admittedly were attending to the import clearance of used cranes imported by noticee group of companies of Narendra Madan, however they have assigned the job to their then Director of company noticee 20, Jayesh Marfatia. As illustrated above at para 29 supra the noticee 20, who was working as a Director of the company and that the company was attending import clearance of used cranes by Narendra Madan, the allegations proved against the Director of the company are very well justified for the company, for an offence committed with the consent or connivance of or is attributable to any negligence on the part the Director is equitable for the company being the beneficiary of conspiracy against the exchequer. Therefore, in the light of the findings in the foregoing paras, it is construed that the impugned goods which do not correspond in respect of value with the indicated bills of entry filed under the act and thus are liable for confiscation under section 111(m) of the Customs Act, 1962 and as it has resulted in short levy of duty by reasons of collusion, wilful mis-statement and suppression of facts with the importers and thus the noticee 21, Manilal Patel Clearing and Forwarding Pvt. Ltd. is liable for penalty under section 112 (a) of the Customs Act, 1962. Moreover, notice No. 21 has intentionally been made, signed and caused to be made, signed declaration, statement or documents which were false or incorrect in respect of value in the transaction of his normal business for the purpose of the act, he has held himself liable to penalty for use of false and incorrect material under section 114AA of the Customs Act, 1962.”

36. I agree with the above findings of my predecessor Pr. Commissioner in the OIO dated 31.03.2017. In addition to the above findings, I find that the Noticee-20 in his written submissions, submitted some case laws in his defence. Let me deal these case laws now:

Case laws on Penalty

36.1 Noticee 20 has relied upon the following judgements

- i. **Brijesh International¹³- Order of Division Bench of CESTAT Delhi** - No evidence to show that CHA knew about incorrect classification and valuation of goods - CHA declared goods in Bills of Entry based upon information given to him by importer and not expected to investigate and find out correct classification or value of goods.

¹³ Brijesh International Vs. Commissioner of Customs (Import & General), New Delhi [2017 (352) E.L.T. 229 (Tri. - Del.)]

- ii. **Giavudan Indian Pvt. Ltd¹⁴**- Order of Division Bench of CESTAT Bengaluru - Investigation conducted by the authorities revealed that Givaudan suppressed the fact that such flavour compounds of Chapter Heading 33.02, of a kind used for the manufacture of beverages, contained more than 0.5% alcohol by volume in order to avail concessional rate of duty of 10% adv in terms of Sl. No. 119 of Notification No. 21/02-Cus., dated 1-3-02 as against the tariff rate of 100%. There was mis-declaration of goods rendering them liable to confiscation and functionaries of assessee-company were liable to penalty. Civil appeal by importer dismissed by Supreme court. Penalty on CHA - False details in import documents - Unless it is shown that CHA entered them knowingly, they cannot be held liable for abetment of misdeclaration of goods and be liable to penalty.
- iii. **Trinetra Impex Pvt. Ltd¹⁵ - Order of Delhi High Court-** Two SCNs were issued to the importer and CB which were based on import of the goods by M/s. Anurag Trading Company without payment of duty on the basis of forged Customs Duty Exemption Certificates. Department appealed against the order of Hon'ble CESTAT in the Hon'ble High Court of Delhi, wherein, it was held that *"12. In the present case, there is no element of mens rea or conscious knowledge which can be attributed to the CHA. The investigation carried out by the CBI and other facts reveal that the CHA acted bona fide and merely facilitated the imports on the strength of the documents which were handed over to him by the importer. There is no sufficient material on record to show that the CHA was actively involved in the fraudulent availment of the exemption by the importer, warranting levy of personal penalty."*
- iv. **WCI Shipping Pvt Ltd¹⁶ - Single Member Bench of CESTAT, Chennai-** The appellant who is a Customs Broker filed a Bill of Entry dated 12-9-2016 on behalf of the importer M/s. Greenway Communication for clearance of goods declared as screen guard, battery cover, mobile rechargeable battery and battery cell. D.R.I gathered specific intelligence that one Shri Thusindra Gnanaraj was importing electronic goods in the name of several IECs by resorting to misdeclaration of description, value, quantity and also importing goods without declaring to Customs in the Bill of Entry. When importer consciously conceals certain facts from Customs Broker, it cannot be presumed that Customs Broker abetted in such offense merely because he has not met importer face-to-face - Nothing to hold that appellant intentionally connived or abetted in non-declaration / concealment of the goods.
- v. **Access World Wide Cargo¹⁷ - Single Member Bench of CESTAT, Bengaluru-**Penalty on Customs House Agent (CHA) - Use of false and incorrect material - CHA only filing shipping bills pertaining to exports of mobile phones made by exporter - Denial of drawback benefit to exporter - Exporter contesting denial of drawback and matter sub judice - No penalty imposed on exporter - Ingredients of Section 114AA of Customs Act,

¹⁴ Giavudan Indian Pvt. Ltd Vs. Commissioner of Customs, Bangalore [2010 (261) E.L.T. 975 (Tri. - Bang.)]

¹⁵ Commissioner of Customs, (Import) Vs. Trinetra Impex Pvt. Ltd [2020 (372) E.L.T. 332 (Del.)]

¹⁶ WCI Shipping Pvt Ltd Vs. Commissioner of Customs, Chennai [2020 (372) E.L.T. 369 (Tri. - Chennai)]

¹⁷ Access World Wide Cargo Vs. Commissioner of Customs, Bangalore [2022 (379) E.L.T. 120 (Tri - Bang.)]

1962 not applicable to CHA the Department has failed to prove that there was a *mala fide* and wilful mis-representation by the Customs Broker.

- vi. **Savithri Jewellers Pvt Ltd¹⁸- Single Member Bench of CESTAT, Mumbai-** M/s. Savithri Jewellers Pvt. Ltd. (SGPL in short) filed Shipping Bill No. 11026 dated 26-5-2014 for export of 15290.330 gms. gold jewellery declaring it as “22 Carat Studded Gold Jewellery” with a total FOB value of Rs. 3,47,50,800/-. On re-examination of the goods, the gold content of the consignment was found to be less than the quantity of gold declared. Against the declared weight of gold of 13633.730 gms (22 Carat), it was found to be 3540 gms.it was held that no evidence adduced by Department to establish that CHA or his alleged employee had knowledge about misdeclaration of gold content of export consignment of gold jewellery. Papers/documents of export consignment were prepared by CHA/employee on the basis of declarations made by exporter.
- vii. **G. Narayan & Co.¹⁹- Single Member Bench of CESTAT, Bengaluru-** a passenger Mrs. Shahin Taj Begum returned to India from Dubai on 24-12-2016 and filed an unaccompanied baggage declaration under Section 77 of the Customs Act, 1962 on 2-1-2017 through CB for clearance of 128 packages as personal effects/household articles under the Baggage Rules, 2016. On examination, it was found that only 54 packages pertained to household articles and personal effects and the remaining 85 packages contained various cosmetic items in commercial quantity. Revenue has not been able to bring any evidence on record which shows that the appellant had prior knowledge regarding the violation. Penalty under Section 112(a) of the Act is not imposable on the CHA when no proceedings are initiated against him under the Customs Brokers Licensing Regulations, 2013.
- viii. **Lewek Altair Shipping Pvt Ltd²⁰- Order of Division Bench of CESTAT Hyderabad-** Vessels to support oil drilling platform - Primary function of the vessels is navigation with the help of dynamic positioning system - Loading or unloading goods or embarking or disembarking personnel merely incidental to the transportation - Therefore, vessels in question classifiable under Customs Tariff Item 8901 90 00-Claiming an incorrect classification or the benefit of an ineligible exemption notification not amounts to making a false or incorrect statement, it being not an incorrect description of goods or their value but only a claim made by assessee - Thus, even if the appellant makes a wrong classification or claims ineligible exemption, he will not be liable to penalty under Section 114AA of Customs Act, 1962.
- ix. **Agarwal Industrial Corporation Ltd²¹- Single Member Bench of CESTAT, Bengaluru-** Bitumen shipments loaded in Iran imported through Karwar Port but UAE declared as country of origin - the only allegation against the appellant in the present case is that in the bill of entry filed by them, they have wrongly mentioned the ‘country of

¹⁸ Savithri Jewellers Pvt Ltd Vs. Commissioner of Customs, Mumbai-II [2020 (374) E.L.T. 754 (Tri. - Mumbai)]

¹⁹ G. Narayan & Co. Vs. Commissioner of Customs, Mangalore [2021 (378) E.L.T. 298 (Tri. - Bang.)]

²⁰ Lewek Altair Shipping Pvt Ltd Vs. Commissioner of Customs, Vijayawada [2019 (366) E.L.T. 318 (Tri. - Hyd.)]

²¹ Agarwal Industrial Corporation Ltd. Vs Commissioner of Customs, Mangalore [2020 (373) E.L.T. 280 (Tri.-Bang.)]

origin' as "UAE" whereas in fact the 'country of origin' is from Iran. Nobody has spoken against the appellant that the appellant is in any way involved in the manipulation of changing the 'country of origin' documents. OIO set aside.

36.2 In the present case, the 2 noticees namely Shri Jayesh Marfatia (Noticee-20) and M/s Manilal Patel Clearing and Forwarding Pvt. Ltd. (Noticee-21) have facilitated the import fraud of undervaluation in old and used cranes perpetrated by the mastermind Shri Narendra Madan. The two noticees were involved in the improper clearance by undervaluation of 42 used cranes , some as importer and some as high sea seller , during the period March 2006 to August 2008, as shown in Table below.

Details of 42 consignments of undervalued cranes cleared by Noticee- 20 & 21 as Customs Broker

Name of the importer/ High Sea Seller firm/company	No. of cranes cleared as importer	No. of cranes sold as High Sea Seller	Position of Shri Narendra Madan in the firm/company
M/s. Eastman Logistics & Infrastructure Pvt. Ltd (Noticee-1)	17	7	Director
M/s. G.R. Infrastructure and Leasing Pvt. Ltd (Noticee-2)	11	2	Director
M/s. G. R. Engineering Works Ltd (Noticee-3)	1	0	No position
M/s. Heavy Cargo Movers (Noticee-4)	4	0	Proprietor
Total	33	9	Grand total-42

36.3 The 9 cranes which were sold on high seas sale to the noticees-6,8,9,11,13,15 & 16 and the crane imported by M/s. G. R. Engineering Works Ltd in which no position is held by Shri Narendra Madan, the customs brokers (noticee-20 & 21) have interacted only with Shri Narendra Madan and not with actual importers and have received service commission from Shri Narendra Madan only. Out of these 42 cranes, 33 cranes were imported in the name of 4 importer firms (noticees-1, 2, 3 & 4) controlled by Shri Narendra Madan. The remaining 9 cranes were sold by these four importer firms on high-sea sale basis to 7 other importers, namely noticees - 6, 8, 9, 11, 13, 15 & 16.

36.4 Evidence has been found that these two noticees (customs brokers) were only interacting with Shri Narendra Madan, who was paying them service commission for their services despite

being well aware that the cranes were sold to the other importers on high seas sale basis by Shri Narendra Madan and he is no longer associated with the import of these cranes after high seas sale. Evidence has also been found that the cranes were grossly undervalued and differential payments were being sent abroad through hawala operators. Shri Narendra Madan has admitted the undervaluation and the allegations before the Settlement Commission and the facts are recorded in the Order No. 151/FO/CUS/GTP/2013 dated 31.10.2013. Most of the importers of 42 cranes have accepted their offence before the Hon'ble Settlement Commission and accordingly settled their case. The others who have not gone before the Settlement Commission have kept quiet and have not preferred appeal after the first round of adjudication proceedings. It is common law that what is admitted need not be proved [Commr ICD, TKD, New Delhi Vs Sodagar Knitwear- 2018 (362) E.L.T. 819 (Tri. - Del.) affirmed by Hon'ble Supreme Court]

36.5 Shri Ashok Kumar Wadhera, Executive Director, M/s. Pratibha Industries Ltd. has stated that Shri Madan had made it clear that the job of clearance of the crane would be assigned to CHA M/s. Manilal Patel Clearing and Forwarding Pvt. Ltd and on arrival of the cranes at Mumbai Port, Shri Madan handed over the import documents of the cranes to CHA M/s Manilal Patel Clearing and Forwarding Pvt. Ltd. It is also evident from the statement of Shri Narendra Madan that he used to interact with Shri Bipin Bhai of M/s Manilal Patel Clearing and Forwarding Pvt. Ltd. for the clearance of the cranes and after his death, he was interacting with Shri Jayesh Bhai for clearance of the cranes. Further, in his statement dated 27.08.12, Noticee-20 when asked about the act of undervaluation of the importer, he exercised the freedom of expression of wishfulness rather than confessing the truth. As per Rules 13(d) & 13(o) the Customs House Agents Licensing Regulations, 2004, a customs broker is expected to interact only with the actual importer of goods and to ensure that imports are not done on dummy names controlled by persons not on official record. If the importers do not heed to the advice of the customs broker, the custom broker is duty-bound to inform the customs officers of such violation. In this case, both the noticees kept quiet while the import fraud took place for 2-3 long years and a large number of 42 cranes were cleared using their services and signatures on documents as customs broker. There is no evidence that they ever raised any objection or brought any malpractice to the notice of the customs officer. The previous Commissioner in the 1st OIO has observed that a person who keeps quiet observing a fraud also becomes accomplice of that fraud. Thus all circumstantial evidence and admission by the importers before the Settlement Commission point towards the complicity of 2 noticees in this massive import fraud . They have not only kept quiet but have participated and gained from the fraud done over 2-3 years . Hence, circumstantial evidence strongly suggests knowledge and mens rea on behalf of the 2 noticees thus making them liable for penal action under section 112(a) & 114AA of the Act. This is the fundamental difference distinguishing this case from all the above 9 case laws quoted by the noticees in their defence.

37. Further, in the light of evidence discussed above, I find that there are sufficient evidences in this case to establish that the noticees and Shri Narendra Madan were hands in glove in

perpetrating this import fraud by the act of undervaluation of the impugned goods by getting manipulated import invoices against the actual transaction value and clearing the goods from the Department. Penalty under section 112(a) is imposable on any person and not on the importer alone. The criteria for imposing penalty is any person who abets the doing of any action which renders the goods liable for confiscation. In this case, the two noticees have abetted the act of improper importation of goods by the importer firms. Therefore, they are liable for penal action under section 112(a) of the Act. They also had intentionally made, signed and caused to be made, signed declaration, statement or documents which were false or incorrect in respect of value in the transaction of any business for the purposes of this Act. Therefore, the noticees are liable for penal action under section 114AA of the Act also.

38. I also rely upon the Hon'ble CESTAT's judgment in the case of **Noble Agency**²² upheld by **Apex Court**²³, it was held that contraventions by CHAs have to be viewed seriously. The relevant para 12 of the judgment is reproduced below.

"The CHA occupies a very important position in the Custom House. The Customs procedures are complicated. The importers have to deal with a multiplicity of agencies viz. carriers, custodians like BPT as well as the Customs. The importer would find it impossible to clear his goods through these agencies without wasting valuable energy and time. The CHA is supposed to safeguard the interests of both the importers and the Customs. A lot of trust is kept in CHA by the importers/exporters as well as by the Government Agencies. To ensure appropriate discharge of such trust, the relevant regulations are framed. Regulation 14 of the CHA Licensing Regulations lists out obligations of the CHA. Any contravention of such obligations even without intent would be sufficient to invite upon the CHA the punishment listed in the Regulations."(emphasis added)

39. **Penalty in remand proceedings not to be enhanced:** I find that various Courts in the cases of **Banshi Dhar Lachhman Prasad**²⁴, **SPL Industries Limited**²⁵ and **Gautam Diagnostic Centre**²⁶ have held that remand proceedings ordered on a person's own appeal cannot be subjected to a greater penalty than that imposed on him in the original order unless specifically stated in the remand order. Therefore, I am inclined to agree with the first Adjudication Order-in-Original No. 19/RT/PC/2016-17 dated 31.03.2017 on the quantum of penalty to be imposed, which appears justified in the facts and circumstances of the case.

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

Order

40.1 With reference to their acts of omission and commission discussed above in clearance of 42 consignments of used cranes from Mumbai Port (**details as per "Annexure-A-1" to**

²² 2002 (142) E.L.T. 84 (Tri. - Mumbai)

²³ Approved in 2016 (332) ELT 15 (Supreme Court)

²⁴ Banshi Dhar Lachhman Prasad & Anr-1978 (2) E.L.T. (J 385) (S.C.)

²⁵ SPL Industries Limited vs Commissioner of Central Excise, New Delhi-II-2003(159) ELT 720(T)

²⁶ Gautam Diagnostic Centre vs Commissioner Of Customs, Mumbai-2003(159) ELT 678(T)

"Annexure-A-6" to the SCN), which they rendered liable for confiscation under Section 111(m) of Customs Act, 1962;

(i) I impose penalty of **Rs. 5,00,000/- (Rupees Five Lakhs only)** on noticee 20 namely Shri Jayesh Marfatia, under Section 112 (a) of the Act.

(ii) I impose penalty of **Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand only)** on noticee 20 namely Shri Jayesh Marfatia, under Section 114AA of the Act.

(iii) I impose penalty of **Rs. 5,00,000/- (Rupees Five Lakhs only)** on noticee 21 namely M/s. Manilal Patel Clearing and Forwarding Pvt. Ltd, under Section 112 (a) of the Act.

(iv) I impose penalty of **Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand only)** on noticee 21 namely M/s. Manilal Patel Clearing and Forwarding Pvt. Ltd, under Section 114AA of the Act.

41. This order is issued without prejudice to any other action that may be taken against the noticees or persons or imported goods under the provisions of the Customs Act 1962, or any other law for the time being in force in India.



Vivek
01.03.24
(Vivek Pandey)
आयुक्त सीमाशुल्क (आयात-I)
Commissioner of Customs (Import-I),
नवीन सीमाशुल्क भवन, मुंबई
New Custom House, Mumbai-01

To,

- 1) Shri Jayesh Marfatia,
E-3, Shiv Kutir, 5th Floor,
280, Veer Savarkar Marg,
Opp. Hotel Amigo & Catering College,
Mumbai-400028.
- 2) M/s Manilal Patel Clearing & Forwarding Pvt Ltd,
3rd Floor, Kamer Budding,
38, Cawasji Patel Street,
Fort, Mumbai-400001.

Copy to:

- 1) The Pr. Chief Commissioner of Customs (Imports) New Custom House, Ballard Estate,
Mumbai - 400 001.
- 2) The Pr. Additional Director General, Directorate of Revenue Intelligence, Mumbai Zonal
Unit, 13, Sir Vithaldas Thakersey Marg, New Marine Lines, Mumbai - 400 020.
- 3) ADG(CEIB), Central Economic Intelligence Bureau, Janpath Bhavan, B-Wing, 6th Floor,
New Delhi -110001.
- 4) The Deputy Commissioner of Customs, Group -V, Import - I, New Customs House,
Ballard Estate, Mumbai - 400 001.

- 5) The Deputy Commissioner of Customs, CHS Section, New Custom House, Mumbai.
(For display on notice board)
- 6) Office copy