



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, बेलाई एस्टेट,
मुंबई-400001.

दूरध्वनि-22757401 फैक्स-22757402

ई-मेल: adjn-commr-imp1nch@gov.in

फा.सं. : S/26-MISC-450/02 VB & S/10-20 (Commr-I-7)2006 VB

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

आदेश दिनांक: 30.04.2023

जारी दिनांक: 02.05.2023

सी.ए.ओ. क्रमांक : 05/2023-24/CAC/CC(IMPORT-1)/VP/ADJ(IMP-1)
DIN No. 20230577000000666CE0

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 अपील 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)
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F.No. S/26-MISC-450/02 VB & S/10-20 (Commr-I-7)2006 VB

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

Date of Order: 30.04.2023

Date of Issue: 02.05.2023

C.A.O. No.: 05/2023-24/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I)
DIN No. 20230577000000666CE0

ORDER-IN-ORIGINAL

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

Subject: - Second Round Adjudication of Show Cause Notice¹ dated 08.01.2004 issued vide F.No. DRI/BZU/F/11/2003 regarding evasion of Customs Duty of Rs. 21,67,015/- by M/s Japonica International Pvt. Ltd. by undervaluation in the import of electronic goods.

BRIEF FACTS

An intelligence was gathered by the Directorate of Revenue Intelligence, Mumbai Zonal Unit² that certain importers were importing branded electronic goods viz Car CD / VCD players, its Mounted Printed Circuit Board / Components and other parts³ by mis-declaring the value. One such importer in respect of whom the intelligence gathered was, M/s Japonica International Pvt. Ltd⁴ having IEC number 0200010239.

2. Investigations into the matter revealed that M/s Japonica International Pvt. Ltd, having address at 14, first floor, Indraprastha Arcade, Khanvel Road, Silvassa, had imported a consignment of CD / Cassette players, speakers and mounted PCBs and had filed Bill of Entry No. 299570 dated 07.10.2002 through Custom House Agent, M/s S.K. Mehra Clearing and Forwarding (CHA No.11/121) for its clearance. The goods were supplied by M/s Jacky's Gulf FZE, Dubai, vide Invoice No. JGF/1173/02 dated 24/09/02 and were stuffed inside container No. TRIU 3791443. In the bill of entry/invoice/packing list, goods were declared of 'SONY' or 'KENWOOD' brands and the country of origin as Indonesia and Malaysia. The clearance was sought under OGL as freely importable goods. The Bill of Entry was assessed by enhancing some items' value. The declared value in the invoice was Rs.8,18,472/ CIF (Rs 8,26,657/ assessable value), this was enhanced to Rs 14,73,734/. The importer had paid the duty and the goods were pending for examination. As per the Bill of Entry, the details of the goods along with declared value and assessed value are as follows:

Details as mentioned in B/E No.299570 dated 07.10.2002

Table-1

Sr. No.	Description	Model No.	Quantity	Declared CIF Value in INR	Assessed Value in INR
1	Stuffed Ldd PCB for Hi Fi Mu Sy (Set of 06 pcs)	SONY R39D	20	17010.00	17180.10
2	Stuffed Ldd PCB for Hi Fi Mu Sy (Set of 05 pcs)	SONY CRV6	99	64953.90	65603.44

¹ Also referred to as said SCN or the notice

² Also referred to as DRI, MZU or DRI

³ Also referred to as the imported goods or the said goods

⁴ Also referred to as the importer or Noticee-1



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30.4.23

3	Stuffed Ldd PCB for Hi Fi Mu Sy (Set of 04 pcs)	SONY CRV6	200	116640.00	117806.40
4	Stuffed PCB for CCPW/Radio	KENWOOD CRV6	750	291600.00	294516.00
5	6", 5" & 2" speakers for R/Hi Fi Mu. Sy (Set of 02 pcs)	SONY SS-RSV-8	44	54529.20	55074.49
6	Car Radio Cassette Player 'Kenwood'	CPX-M4030	10	17010.00	17180.00
7	Car Amplifier 'Kenwood'	KAC-649S/KA C-749S	300	510300.00	515403.00
8	Car CD Player 'Kenwood'	KDC-717	87	126846.00	128114.46
9	Car Amplifier 'Kenwood'	KDC-849	102	173502.00	175237.02
10	Car CD Player 'Kenwood'	KDC-CPS89M P	51	86751.00	87618.51

3. On perusal of the invoice, packing list and bill of entry it was further observed that in respect of items 1 to 4 of the bill of entry, the brand of the product was not declared in the invoice, though it was declared in the packing list and bill of entry. The descriptions of item no. 01 to 04 mentioned in the invoice were: -

"Stuffed/Loaded P.C. Boards for Radio- VCD-DVD- Hi-Fi Music System

Set of 6 pcs-20 set

Set of 5 pcs-99 set

Set of 4 pcs-200 set

Set of one pc for car Radio cassette Player-750 pcs".

3.1 However, in the packing list and bill of entry along with the description and quantity of the goods, the model of the product of which these PCBs were parts, was also declared. A discrepancy was also noticed in respect of the description of goods appearing at serial numbers 2, 3, 4, 5 and 6 of the bill of entry vis-à-vis packing list. It was also noticed that in the invoice 'PCBs' were declared as stuffed loaded PCB but in the packing list these were declared as 'PCB'. Details of the description of these goods as given in the Bill of Entry and the packing list are as follows:

Table-2

As declared in Bill of Entry			As Declared in Packing List	
Sr. No.	Description	Qty	Description	Qty
1	Stuffed Ldd PCB for R Hi Fi Mu Sy (Set of 05 pcs) Sony MHC RV6	99	PCB for Sony VCD MHC RV7	99
2	Stuffed Ldd PCB for R Hi Fi Mu Sy (Set of 04 pcs) Sony MHC RV6	200	PCB for Sony VCD MHC RV6	100
			PCB for Sony VCD MHC RV5	50
			PCB for Sony VCD MHC RV2	50
3	Stuffed PCB for CCPW/Radio-Kenwood KRC-265	750	PCB for Kenwood car stereo model KRC-265	300
			PCB for Kenwood car stereo model KRC-365	300
			PCB for Kenwood car stereo model KRC-665	150
4	Car Radio Cassette Player Kenwood CPX-M4030	10	Car Radio Cassette Player Kenwood DPX-M4030	10
5	Car Amplifier Kenwood KAC-649S-749S	300	Car Amplifier Kenwood KAC-649S	150
			Car Amplifier Kenwood KAC-749S	150

3.2 Further the packing list showed that each PCB declared was a set of PCBs; for example, PCB for SONY HCR S9D was a set of 7 PCBs namely, (1) M PCB (Amp unit), (2) M PCB (Tuner Unit), (3) Processor PCB (Tuner Unit), (4) M PCB (Cassette unit), (5) M PCB (CD unit) (6) Power supply PCB (CD unit), and (7) Video PCB (CD unit). Similarly, PCB for Sony VCD MHC RV-6 was a set of 4 PCBs, namely, (1) M PCB, (2) Video PCB, (3) Power Amplifier PCB and (4) Display PCB.

4. The goods were examined on 30.10.2002 by the officers of customs in the presence of officers of DRI and representatives of the Custom House Agent. The goods description was not the same in the invoice, packing list and bill of entry. On examination, the country of origin of Kenwood brand goods was found as Indonesia and the country of origin of SONY brand goods was found as Malaysia (but these were not separately mentioned in the

invoice). The Kenwood brand goods and SONY brand speakers were packed in original manufacturer corrugated cartons and stuffed/loaded PCB declared as of SONY brand in the B/E (but not in the invoice), were found as per declaration in the B/E and were packed in specially prepared cartons with the inscription 'HANDLE WITH CARE' on them. During the examination, it was also noticed that all the PCBs (both the 'KENWOOD' brand as well as the 'SONY' brand) were fully mounted PCBs with connecting wires. Representative samples of the following items were drawn for further investigation:

- (1) PCB Sony Hi-fi system-set of 4 pcs.
- (2) PCB for car radio cassette player
- (3) Kenwood car amplifier KAC 749S
- (4) Kenwood car amplifier KAC 849S.

4.1 Pending investigation into the matter the goods were permitted to be stored in a warehouse under Section 49 of the Customs Act, 1962⁵. The Importer / CHA, however, did not choose to avail of this option.

5. Statement of Shri K.B. Bhandari, Director of M/s S.K. Mehra Clearing and Forwarding (CHA No. 11/121), was recorded on 25.11.2002 under Section 108 of Customs Act, 1962. In his statement, Shri K.B. Bhandari inter-alia stated that:

- (i) One Shri Gajra of M/s Japonica International Pvt. Ltd., approached him through one of his existing clients M/s Nishimitzu Electronics, Silvassa for clearance of their import consignments;
- (ii) He had cleared about 12 consignments so far on behalf of M/s Japonica International;
- (iii) Shri Gajra is having his office at M/s Japonica International Pvt. Ltd., Vasundhara, Office No.7, seventh floor, 2/7 Sarat Bose Road, Calcutta-20;
- (iv) M/s Japonica International also had an office/Shop at Silvassa;
- (v) He used to get the import documents by courier and sometimes personally;
- (vi) After clearing the consignments from customs the same were sent to Silvassa, except in one or two cases, where these were sent to Calcutta, as instructed by the importer;

⁵ Also referred to as the Act

(vii) He used to receive the Customs duty by pay order and his clearing charges through check/ draft;

(viii) Normally he used to contact Shri Gajra at his Calcutta office.

6. Statement of Shri Premkumar Gajra⁶, Director of M/s Japonica International Pvt. Ltd., was recorded under Section 108 of the Customs Act, 1962 on 02.12.2002. In his statement, he inter-alia stated that:

(i) He is one of the Directors of M/s Japonica International and the other director is Smt. Boni Gajra, his wife;

(ii) Only he is responsible for the business dealings of M/s Japonica International as the business dealings are managed by him and his wife is only a dormant Director of the company;

(iii) Their company is involved in local trading as well as import of electronic goods;

(iv) He was in Singapore for several years and was dealing in electronic goods;

(v) During that time he had developed contacts with Dubai Electronic market;

(vi) About two years back he started his company in India;

(vii) He used to import goods from Dubai and Singapore;

(viii) Those contact abroad used to offer him their stock lots;

(ix) He used to visit Dubai / Singapore to inspect the stock lots offered to him;

(x) Before Dipavali (2002) he received an offer from Dubai in which supplier agreed to give the goods on discount price;

(xi) He took the entire consignment comprising of odd quantities of Sony components, spares and Kenwood car audio;

(xii) The offer was on stock lot basis for full quantity;

⁶ Also referred to as Noticee-2

(xiii) After getting the offer he worked out costing after taking expenses into account and negotiated the price with them further and placed the order and requested them to ship the goods to Mumbai and send the documents to their bank at Kolkatta;

(xiv) On receiving the intimation about the arrival of documents he instructed their bankers to debit the amount and released the documents and forwarded the same to his CHA in Mumbai;

(xv) He normally deals in trading of electronics components, parts and peripheral;

(xvi) In the instant case he had negotiated purchase of Sony components, as the consignment did not fill a container load, he was thinking of purchasing some other items as well to fill the container;

(xvii) As per the price offered by the supplier he felt that it was a rejected stock lot and he did not physically verify the lot, that he is not aware of the difference between the offered price and the manufacturer's sale price, however, regarding local market price, he said that the offer price of Kenwood items were at a throwaway price as his supplier was anxious to clear the goods as stock lot;

(xviii) Regarding Sony music system components there is a market for PCB and its components for repair and replacements;

(xix) He is not aware how and from where his supplier get these components;

(xx) He was not having any access to any documents like manufacturer/supplier invoice / price list of the items he had imported;

(xxi) He is not a specialist dealer, he is only a dealer dealing with stock lot and sell them as is where is basis;

(xxii) He did not know whether the items he imported were serviceable or defective;

(xxiii) He had imported the goods on the assumption that they are serviceable;

(xxiv) He did not know exactly their condition, as he did not inspect the goods nor did the supplier give any assurance in this regard;

(xxv) It is his first import of this kind of electronic items; normally he used to import components of air conditioners and occasionally PCBs for Hi-fi systems and micro ovens etc.

7. Pending investigation in the matter, the importer M/s Japonica International executed a PD Bond backed by Bank Guarantee of Rs.25,30,000/- vide File No. S/5-62/02 VB dated 26.12.2002 and took the provisional release of the goods.

8. Inquiry regarding the value of different types of "Kenwood" products was made with M/s Nippon Audiotronix⁷, D-8, Sector X, Noida, the sole distributor of M/s Kenwood in India. Vide their letter- dated 12.11.2002, M/s Audiotronix furnished the CIF price of all imported Kenwood items. They stated that M/s Kenwood has quoted these prices to them. They further stated that they were not importing these models except model KDC-C 717 and that M/s Kenwood had quoted these prices to them as the sole distributor of Kenwood in India and that market price in India should be at least 15-20% more than the price quoted to them. M/s Audiotronix had furnished a copy of the Bill of Entry under which model No. KDC-C717 was imported by them. On scrutiny of the said Bill of Entry, it was found that the price quoted by M/s Audiotronix tallied with the value mentioned in the Bill of entry. The price of different Models of Kenwood of Indonesia origin as quoted to M/s Nippon Audiotronix is as follows:

Table-3

Sr. No.	Description of Kenwood brand item	Model Number	Price (in USS)
1	Amplifier	KAC 649S	92
2	Amplifier	KAC 749S	107
3	Amplifier	KAC-849	120
4	CD Changer	KDC 717	97.29
5	Car Radio Cassette Player	DPX-M4030	202
6	Car CD Player	KDC-CPS89MP	128
7	Cassette Receiver	KRC-265	60
8	Cassette Receiver	KRC-365	69
9	Cassette Receiver	KRC-665	97

8.1 M/s Nippon Audiotronix Ltd. further stated that they had not imported PCBs for items at serial no 7 to 9 above and **vide letter dated 27.10.02, they had already**

⁷ Also referred to as M/s Audiotronix or sole distributor of 'Kenwood' brand in India

forwarded copies of Bills of Entry No.342150 dated 02.08.2002, 36430 dated 07.03.2002, 3253608 dated 08.04.02 along with invoices showing the value of CD Changer KDC 717 and Populated Printed Circuit Boards for radio cum car cassette receiver Model KRC 288 and 489. On comparison of the prices, i.e. furnished by M/s Nippon Audiotronix, which was directly quoted by the manufacturer, with that declared by M/s Japonica International, which is based on the invoice given by Dubai based supplier, it was observed that there is a huge difference in the two prices. Comparison of values as declared by M/s Japonica, assessed by Custom House and furnished by M/s Nippon Audiotronix are as follows:

Table-4

Sr. No.	Description	Model No.	Declared Price in US\$ per unit	Assessed Price in US\$ per unit	Value quoted by the sole distributor in US\$ per unit	Difference in Assessed value & Value quoted by the sole distributor	Difference in Rs @ 1S = 48.6 Rs. Per unit
1	Car Radio Cassette Player	CPX-M 4030	23	35	202	167	8116.20
2	Car Amplifier	KAC-64 9S	13.5	35	92	57	2770.20
3	Car Amplifier	KAC-74 9S	13.5	35	107	72	3499.20
4	Car CD Player	KDC-7 17	15	30	97.29	67.29	3270.29
5	Car Amplifier	KAC-84 9	15	35	120	85	4131.00
6	Car CD Player	KDC-CP S89 MP	18	35	128	93	4519.80

8.2 As regards mounted PCB for CCPW/Radio- Kenwood KRC 265, 365 and 665, M/s Nippon Audiotronix stated that they had not imported these PCB, however, they submitted copies of bills of entry and invoice in respect of import of mounted PCBs of Indonesian origin for model KRC 288 and 489. As per these documents, the CIF value of mounted/stuffed PCBs for these models was US\$ 27.18 and US\$ 34.75, per piece, respectively, and the CIF price of the complete car amplifier KRC 489 was US\$ 73.49. Thus, the value of the mounted PCB for model KRC 489 was 47.28% (say 47%) of the complete unit. As M/s Nippon Audiotronix had furnished the CIF price of the complete CCPW/Radio- Kenwood KRC- 265, 365 and 665, it appeared reasonable to take 47% of the CIF value of the complete unit as the CIF value of mounted PCB for these models. Based on the above CIF price furnished by M/s Nippon Audiotronix, the value of different

types of mounted PCBs of Kenwood brand imported by M/s Japonica International Pvt. Ltd, appeared to be as follows: -

Table-5

Sr. No.	Description / Model No.	Declared Price in US\$ per unit	Assessed Price in US\$ per unit	47% of value quoted by M/s Audiotronix(CIF in US\$ per unit)	Difference in assessed value and 47% of value quoted by M/s Audiotronix(in US\$)
1	Stuffed PCB for CCPW/Radio-Kenwood KRC-265	4.8	8	28.2	20.2
2	Stuffed PCB for CCPW/Radio-Kenwood KRC-365			32.43	24.43
3	Stuffed PCB for CCPW/Radio-Kenwood KRC-665			45.59	37.59

9. Efforts were made to obtain the value of components / PCB of Sony Music system imported by M/s Japonica International Pvt. Ltd., from M/s SONY India Pvt. Ltd, New Delhi. However, vide their letter dated 13.12.2002, M/s SONY India Pvt. Ltd.^{*}, New Delhi, supplied the CIF value of Sony brand DVD HCR S9D prevailing in Dec 2002 as US\$ 378.94 and also informed that Sony manufacturing companies do not sell any mounted PCBs / components and therefore there are no prices for mounted PCBs/components. Hence, they are unable to provide any price list for stuffed PCBs. As M/s Sony was unable to provide the price list of PCBs/Components, they were requested on 9.12.2003 to provide the percentage of the cost of the mounted PCBs from the standard cost of production. In response to the said request, M/s Sony vide letter dated 26.12.2003 provided the manufacturing cost of PCBs as follows: -

Model-wise standard cost % of PCBs of AU Models

1. MHC RV2 32.24%
2. MHC RV5 31.15%
3. MHC RV6 28.56%
4. MHC RV7 30.31%
5. MHC RV8 29.39%

^{*} Also referred to as M/s Sony

10. M/s Sony India Ltd had stated that Sony manufacturing companies do not sell any mounted PCBs / components. Yet mounted PCB for different types of SONY products, as detailed in para 2 above, had been imported by M/s Japonica International. It was also seen that the importer had claimed the import of these products under OGL as new goods. It would, therefore, be reasonable to presume that these mounted PCBs had been imported after disassembling complete Units. As these mounted PCBs had been imported by disassembling complete units, it appeared reasonable to arrive at the value of these units as % of the value of complete units. Therefore, the value of the complete Unit of respective models of the Sony brand was obtained from the website of Sony, Malaysia. It was also confirmed from M/s Sony's website that the speaker system SS-RSV8 is supplied along with the Sony brand music system MHC RV8. The value of these models was procured from the website in the month of Dec 2003, although imports in the instant case had taken place during Oct 2002. However, considering that in the case of electronic goods value shows a declining trend due to the passage of time and due to introduction of new models, it appeared reasonable to take 75% of the value shown on the website of M/s SONY, Malaysia, as CIF value of these units if purchased as a complete unit. This was also consistent with the export value of model HCR S9D as stated by M/s Sony which during December 2002 was US\$ 378.94 equivalent to Rs. 18,416/- whereas the value of the same on M/s SONY's website was shown as 899.99 Singapore \$ equivalent to Rs 24,569.73 (Exchange rate of 1 Singapore \$ = Rs 27.30 as per notification no. 74/2002-Cus (NT) dated 26.11.2002). Thus, the export price of this model during December 2002 appeared to be 75% of the value of this item shown on the M/s SONY Malaysia website. The value of the different products as obtained from the website of M/s SONY is as follows:

Table-6

Sr. No.	Description	Price in Ringets as per Sony website per unit	In Indian Rs. (1 Ringet= Rs. 12.70)	75% of MRP taken as CIF value
1	VCD Model No. Sony MHC RV2	1188.00	15087.60	11315.70
2	VCD Model No. Sony MHC RV5	1348.00	17119.60	12839.70
3	VCD Model No. Sony MHC RV6	1668.00	21183.60	15887.70
4	VCD Model No. Sony MHC RV7	1888.00	23977.60	17983.20
5	DVD Player Model No. Sony MHC RV8	2188.00	27787.60	20840.70

10.1 M/s SONY had already given data showing the % of the value of mounted PCB for these models vis-à-vis values of the complete unit. Based on the above, the value of the Sony brand mounted PCBs and speaker system appeared to be as follows. Enquiries in the matter revealed that some of these brands were also being manufactured by M/s Sony India. The price of these brands is also indicated for ease of reference:

Table-7

Sr. No.	Description	Retail Price in Indian Rs.	Price in Malaysia in Ringets as per Sony Website	In Indian Rs. (1 Ringet= Rs. 12.70)	75% of MRP taken as AV in Rs.	% Cost Of PCB of manufacturing cost quoted by manufacturer for complete unit	Determined CIF value of PCB in Rs.	Declared value in Rs.
1	VCD Model No. Sony MHC RV2	15990	1188.00	15087.60	11315.70	32.24	3648.18	583.20
2	VCD Model No. SONY MHC RV5	18990	1348.00	17119.60	12839.70	31.15	3999.57	583.20
3	VCD Model No. SONY MHC RV6	21990	1668.00	21183.60	15887.70	28.56	4537.53	583.20
4	VCD Model No. SONY MHC RV7	25990	1888.00	23977.60	17983.20	30.31	5450.71	656.10
5	VCD Model No. SONY MHC RV8	24543	2188.00	27787.60	20840.70	29.39	6125.08	Not imported
6	DVD Player Model No. SONY HCR S9D in US\$ (1US\$=Rs. 48.6)		378.94	18416.484 (CIF Value of M/s Sony)		28.56	5259.75	850.50

7	6", 5" & 2" Speakers SS-RSV8 for R/Hi Fi Mu. Sy SONY (Set of 2 pcs)	24543	2188.00	27787.60	20840.70	28.56	5952.10	1239.30
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11. From the above facts revealed during the investigations and evidence collected as discussed, the overall picture that emerged was that misdeclaration of value had been resorted to by M/s. Japonica International in respect of all goods covered by the bill of entry no. 299570 dated 7-10-2002, irrespective of brands and models, and when asked to explain how, in the face of comparatively high ruling import prices, they were able to import goods at much lower prices, Shri Premkumar Gajra, Director of M/s. Japonica International took a plea that he had purchased odd lots of 'Sony' and 'Kenwood' Components and Spares and tried to mislead the investigations. When asked to produce the price list/invoice from the manufacturer he failed to produce the same.

12. From the aforesaid facts it appeared that M/s. Japonica International and its Director, Shri Premkumar Gajra had suppressed the real nature of his transactions, actual correspondence with his foreign suppliers, and other relevant details like actual import prices of the goods. Further, by the illegal nature of his dealings with foreign suppliers, he managed to get the invoices at the under-declared prices in order to evade the correct Customs duty. It appeared that the under-valuation was resorted to by M/s. Japonica International in the import of all their imports irrespective of brands and models, and the prices declared in the invoices did not represent the correct transaction prices.

13. Value declared by M/s Japonica International was found to be barely 10% to 15% of the value of the goods stated by the Indian distributors i.e. M/s Kenwood and M/s Sony. Shri Premkumar Gajra, Director of M/s Japonica International Pvt. Ltd., in his statement dated 02.12.2002 stated that he had purchased/imported the goods from Dubai as the supplier agreed to give the goods at a discounted price. That he took the entire consignment consisting of odd quantities of Sony components, spares and Kenwood car audio and he did not know the market price of the goods and neither he had any evidence in this regard. Vide DRI's letter No DRI/BZU/F/Misc-30 dated 08.10.2003, M/s Japonica International Pvt. Ltd. were again requested to produce the manufacturer's invoices/manufacturer's price list. However, no reply was received from them. Thus, in the absence of a response from the importer and also in view of the overwhelming evidence suggesting that the truth and accuracy of the value declared by the importer were doubtful, the price declared by the importer which was only 10 to 15% of the value could not be accepted as the true and correct value of the goods or the transaction value as envisaged

under Rule 4(1) of the Customs Valuation (Determination of Price of Imported goods) Rules, 1988⁹, and the same is liable to be rejected in terms of Rule 10A of the Rules *ibid*.

14. In the case of the 'KENWOOD' brand Car CD players KDC-717, import of identical goods had been made by M/s Nippon Audiotronix, Noida, the sole distributor of the Brand 'Kenwood' for the foreign brand owner. Hence the value of CD player KDC-717 imported by M/s Japonica International is proposed to be determined in terms of Rule 5 of Valuation Rules *ibid*. In respect of other goods imported under the subject bill of entry, no data was available for ascertaining their value under Rules 5, 6, 7 and 7A of Rule *ibid*. Hence it was proposed to determine their value in terms of Rule 8 of Valuation Rules *ibid* by working out the CIF/ Assessable values with reference to the evidence provided by M/s Nippon Audiotronix, the sole distributor of M/s Kenwood in India and M/s Sony India Pvt. Ltd. Based on the above, it appeared that the value in respect of the goods covered by the bill of entry no. 299570 dated 07.10.2002, which was declared as 16841.50 US\$(CIF) equivalent to Rs 8,18,472/- CIF and Rs 8,26,657/- assessable value, which was enhanced to Rs. 14,73,733.52/- (assessed value as per B/E) by Mumbai Customs, was misdeclared. The correct assessable value, redetermined as above appears to be Rs. 59,57,298.85/- and it further appears that importer M/s Japonica International had mis-declared value to evade Customs duty of Rs. 22,88,308/-.(As per Annexure A of the SCN)

15. From the facts as revealed by the investigation as discussed above it appeared that Shri Premkumar Gajra, Director of M/s Japonica International, with an intention to defraud the Government exchequer of duty amounting to Rs. 22,88,308/-, had willfully, mis-declared the value of the imported goods, which made the goods liable to confiscation under section 111(m) of the Customs Act, 1962. Hence Shri Premkumar Gajra, Director of M/s Japonica International Pvt. Ltd., also appeared liable to penalty under Section 112 of the Customs Act, 1962.

16. Therefore,

A) M/s. Japonica International IE code No.0200010239, having declared address at 14, first floor, Indraprastha Arcade, Khanvel Road, Silvassa and

B) Shri Premkumar Gajra, Director of M/s Japonica international Pvt. Ltd. having his office at M/s Japonica International Pvt. Ltd., Vasundhara, Office No.7, seventh floor, 2/7 Sarat Bose Road, Calcutta-20,

were called upon to show cause vide Show Cause Notice¹⁰ dated 08.01.2004 issued vide F.NO. DRI/BZU/F/11/2003 to the Commissioner of Customs (Imports) having his office at New Custom House, 2nd Floor, Ballard Estate, Mumbai- 400 038 as to why -

⁹ In short CVR 1988 or the Valuation Rules

¹⁰ Also referred to as SCN or Notice

- (i) the value declared by them in the said Invoice No. and bill of entry No. 299570 dated 07.10.2002 should not be rejected under Rule 10A of the Customs Valuation (Determination of Price of Imported goods) Rules, 1988 and (a) The value of 'KENWOOD' brand goods declared as 11,633 US\$(CIF value) and Rs. 12,18,069/- (enhanced assessable value) should not be determined as Rs. 41,29,592/- (assessable value) in terms of Rule 5 and 8 of the Rules ibid and (b) The Value of 'SONY' brand PCBs/Components declared as US\$ 5208.5(CIF value) should not be determined as Rs. 18,27,707/- in terms of Rule 8 of the valuation rules, as detailed in para 8,9 and 10 above and Annexure A of the notice.
- (ii) The bill of entry should not be finally assessed on the basis of the value so re-ascertained and they should not be held liable to pay a differential duty of Rs. 22,88,308/-
- iii) The said goods having re-determined Value of Rs 59,30,737/- should not be confiscated under Section 111(m) of the Customs Act, 1962.
- iv) penalty should not be imposed under Section 112 of Customs Act 1962;
- v) As the goods have already been released against PD Bond/Bank Guarantee of Rs. 25,30,000/-, why the differential duty, fine and penalty if any should not be recovered from the said guarantee.

Record of Personal Hearing

17. Personal Hearing Memorandums dated 18.10.2022 and 21.11.2022 were issued to Noticees-1 & 2 to appear on 01.11.2022 and 25.11.2022 respectively. Representative of the noticees Shri Roshil Nichani, Advocate attended the same.

Summary of submissions of Noticees-1 & 2

18. Shri Roshil Nichani, Advocate, representative of Noticees-1 & 2 submitted their submission dated 01.11.2022 & 24.11.2022 on 'Jurisdiction of DRI officers to issue SCN' and 'on merits of the case' respectively.

18.1 Noticees-1 & 2 submitted their submissions on the following points:-

- (i) **Jurisdiction of DRI Officers to issue SCN.**

(a) Issue of the jurisdiction of the DRI to issue SCNs for finalisation of assessment is yet pending consideration before the higher courts and has not been settled. The Hon'ble Delhi High Court, vide its judgment in *Mangali Impex v. Union of India*, 2016 (335) ELT 605 (Del.), held that the Department cannot rely upon Section 28(11) of the Act to validate SCNs or proceedings pursuant thereto in relation to non-levy, short-levy etc. for the period prior to 08.04.2011. The Union of India, subsequently, filed Special Leave Petition (Civil) No.24873 / 2016 before the Hon'ble Supreme Court against the said judgment. The Court, *while granting leave* in the said SLP filed by the Department, stayed the operation of the said judgment, which has been reported in 2016 (339) ELT A49 (SC). In other words, the question as to whether the DRI is the 'proper officer' within the meaning of Section 2(34) of the Act is yet pending consideration before the Hon'ble Supreme Court. Subsequently, the Hon'ble Supreme Court, in *Canon India Pvt. Ltd. v. CC*, 2021 (376) ELT 3 (SC), after referring to various decisions, held that DRI officers were not 'proper officers' within the meaning of Section 2(34) of the Act and consequently held that the proceedings initiated by the Additional Director General (ADG), DRI was without authority of law. The Department, vide Review Petition Nos.400-403/2021, sought review of the said decision, which is yet pending consideration by the Hon'ble Supreme Court. The legislature, in order to remove the basis of the judgment of *Canon India*, retrospectively amended the Act so as to make the officers of DRI as 'proper officers' and put them at par with the customs officers. In other words, through the Finance Act, 2022, vide Section 97 thereof, the Legislature retrospectively sought to include officers of the DRI as 'proper officers' within the meaning of Section 2(34) of the Act. The said retrospective provisions introduced in the Customs Act, vide the Finance Act, 2022 have also been challenged before the Hon'ble Delhi High Court on the ground that though it is open for the Legislature to amend the Act retrospectively to make a judgment of the Court ineffective, however, it is not open to the Legislature to straightaway say that the judgment of a Court shall be deemed to be ineffective and the interpretation of law shall be otherwise than as declared by the Court. From the above, the issue as to whether the officers of DRI are 'proper officers' within the meaning of Section 2(34) of the Act for the purpose of issuing SCNs, is yet to be decided by the Hon'ble Supreme Court and by the Hon'ble Delhi High Court (to the extent of challenge pertaining to the retrospective provisions made by the Finance Act, 2022). It is, therefore, requested that the adjudication of the captioned notice be kept in abeyance in order to give full effect to the CESTAT's order dated 02.05.2018 until the said issue is finally decided by the Hon'ble Supreme Court and Delhi High Court.

(ii) Declared value already having been enhanced, notice could not have been issued:

(a) The notice, in para 2 thereof, admits that after the filing of the Bill of Entry, our initial declared value of Rs.8,18,472/- was loaded and the same was enhanced to

Rs.14,73,734/- by the proper officer. The duty was assessed with reference to the loaded /enhanced value. This assessment order was not challenged by the Revenue by way of review and therefore the Notice could not have been issued without first taking steps to challenge the assessments made on the Bills of Entry.

(b) In other words, once the assessment order had become final, no SCN could have been issued. Reliance is placed upon the decision of this Hon'ble Tribunal in the case of CC v. Lord Shiva Overseas, 2005 (181) ELT 213 (T) and Agarwal Metals & Alloys v. CC, 2021 (278) ELT 155 (T) for the same. We also rely upon the judgment of the Hon'ble Tribunal in Naresh Kumar v. CC, 2017 (357) ELT 383 (T) wherein, in the context of import of mixed lot of goods, it was held that since the first enhanced value was accepted and paid, there was no reason to further reject the assessed value and again enhance the transaction value of goods.

(iii) Notice could not have been issued when the Bill of Entry was provisionally assessed:-

(a) The Notice also contains a proposal to finally assess the Bill of Entry based on the re-ascertained values and consequently, makes a differential duty demand of Rs.22,88,308/-. We submit that the captioned Notice could not have been issued to us when the Bill of Entry filed by us was provisionally assessed, without there having been any final assessment in respect thereof. It is settled law that Section 28 read with Section 124 of the Act deals with the recovery of duty not levied or short levied etc. In order to invoke these provisions, the duty must either not be levied or short levied. No Notice for short levy / non-levy can be issued when there is no final assessment of the Bill of Entry since it is only after this exercise that there can be any determination of short levy or non-levy. Reliance is placed upon the judgment of the Hon'ble Supreme Court in Commissioner v. ITC Ltd., 2006 (203) ELT 532 (SC) and of the Hon'ble Calcutta High Court in Jain International v. CC, 2019 (366) ELT 74 (Cal.). The Notice is liable to be withdrawn for this reason also.

(iv) Valuation of the stock lot goods is required to be done on the basis of transaction value

(a) No evidence has, however, been produced by the DRI to show that the goods were not bought on stock lot basis or to the effect that the goods purchased by us were of prime quality / latest models. Also there is nothing on record to show that the transaction value which has been entered into between us and the supplier can be discarded. The goods which were imported were purchased as stock lot on as is where is basis and the transaction value, which is the contract value between the parties, cannot be rejected

merely because the same was purchased as stock lot. We rely upon the judgment of the Hon'ble Tribunal in Kelvin Infotech P. Ltd. v. CC, 2015 (316) ELT 146 (T) and Hindustan Pencils Ltd. v. CC, 1999 (108) ELT 307 (T) for the same.

(v) Prices of contemporaneous imports being available during the relevant period - declared values cannot be enhanced

(a) DRI ought to have conducted investigations as to the existence of contemporaneous imports into India. There is no evidence whatsoever on record to suggest, let alone prove, that the DRI made efforts to first find out the values at which contemporaneous imports were made.

(b) Now we are providing the list of contemporaneous imports to prove our *bona fides*, which clearly shows that imports of similar / identical goods were made by other importers near about the same values at which the goods were imported by us. The said list is annexed to the present reply as "Exhibit-A". The same contains invoices, Bills of Entry, packing lists etc. of other importers. For instance, serial no.13 of the said list shows the import of Kenwood CD changer (model no.KDC-717) by M/s Echo Vision Electronics at \$25 (200 units). This is evidenced from Bill of Entry No.350703 dated 22.04.2003. We had shown the declared value of \$15 and assessable value of \$30. The DRI has, however, on the basis of Nippon's letter dated 12.11.2002, assigned a value of \$97.29 to the same goods, which is without any basis.

(vi) Values cannot be enhanced merely because certain discrepancies may have been found in the import documents

(a) Our values cannot be rejected merely because the brand of the goods imported by us may not have been declared in the invoice, though the Notice admits the fact that the brand was declared in the packing list and Bill of Entry. Further, the values can also not be rejected because the Revenue may have found a discrepancy in the description of the goods in the Bill of Entry vis-à-vis the packing list. It is submitted that even if there is any discrepancy, the same is nothing but technical in nature and values cannot be enhanced only on this basis. Reliance is placed upon Kelvin Infotech P. Ltd. v. CC, 2015 (316) ELT 146 (T) for the same.

(vii) Undervaluation, if any, is required to be proved with evidence

(a) It is submitted that for the DRI to prove undervaluation in terms of the CVR and the settled law, they are required to prove, with evidence, existence of various circumstances such as flow back of funds from the foreign supplier, existence of parallel invoices, extra payments to foreign suppliers through hawala etc. None of these circumstances have been brought out in the facts of the present case. Further, even Mr.

Gajra was never questioned about the existence of such circumstances. In other words, in the absence of any iota of evidence to prove the charge of undervaluation, the declared values cannot be enhanced. Reliance is placed upon the judgment of the Hon'ble Tribunal in Classic Marbles Co. Pvt. Ltd. v. CC, 2020-TIOL-1422-CESTAT-MUM for the same.

(viii) Valuation of 'Kenwood' goods imported by us

(i) *Valuation of Cassette receivers, CD changers etc.:*

(a) It is submitted that admittedly, Nippon has not imported any models except KDC-717, as is evident from Nippon's letter dated 12.11.2002. In the absence of actual imports at the prices quoted by Kenwood to Nippon, such prices cannot be relied upon under Section 14 of the Act read with the CVR since Rules 5 and 6 of CVR deal with cases of actual imports of identical / similar goods.

(b) Further, Rule 8 of the CVR cannot be arbitrarily and unreasonable invoked since, in order to resort to the residual method, the assessable value can only be based on the prices at which such like (identical or similar) goods are imported. It cannot be based on fictional prices, at which no imports have taken place. In fact, Rule 8 of the CVR expressly prohibits determination of values on the basis of fictional prices, i.e. prices at which no imports have taken place.

(c) It is submitted that in any event, the prices at which Nippon imported the goods as a sole distributor cannot be compared to the prices at which we imported the goods, since the goods imported by us were on a stock lot basis.

(ii) *Valuation of PCBs imported by us:*

(a) Furthermore, even insofar as the valuation of PCBs are concerned, the prices furnished by Nippon under various invoices and Bills of Entry cannot be relied upon. The Bills of Entry furnished by Nippon show that the same is in respect of different model numbers from those imported by us. In other words, the invoices and Bill of Entry pertaining to those invoices furnished by Nippon are in respect of PCB model no. KRC 283-489 whereas we have imported model nos. KRC 265, 365 and 665.

(b) The said invoices and Bills of Entry cannot be relied upon for enhancing our declared values since there is no material on record to show that PCBs having model nos. KRC 265, 365 and 665 imported by us are similar to the model no.KRC 283/489 in respect of which prices have been furnished by Nippon. Since the imports made by Nippon are not contemporaneous imports, the prices furnished by them cannot be relied upon. In other words, the invoices and Bills of Entry furnished by Nippon are not relevant and cannot be relied upon for enhancing the declared values.

(iii) Method of valuation of PCBs adopted in Notice is incorrect:

(a) The method adopted by the Notice to determine the value of the goods imported by us is concerned, there is no basis for assuming or presuming that the CIF price of model nos. KRC 265, 365 and 665 is 47% of the CIF value of the complete unit. Such a method to determine the values is alien to Section 14 of the Act and the CVR. The law does not provide for such a method of valuation. To say the least, such method of determining the values is nothing but fictitious and arbitrary, which is expressly prohibited under Rule 8 of the CVR.

(ix) Valuation of 'Sony' goods imported by us

(a) It is submitted that the value of Sony goods is sought to be re-determined by adopting the method of taking the value of complete articles and thereafter, taking the percentage of the value of complete articles as the value of the components imported by us. This is on the basis that according to Sony India, the manufacturers of Sony brand articles, i.e. Sony Malaysia, does not sell mounted PCBs.

(b) It is submitted that the method of determining the price of PCBs based on the alleged ratio thereof to the total cost of production of the cassette player / music system is arbitrary and alien to the provisions of Section 14 of the Act read with the CVR. The value of items cannot be determined based on the ratio thereof to the cost of production of the complete article. Such a method is unknown to law.

(c) Further, without the Notice having made any efforts to find out the price of contemporaneous goods under Rules 5 and 6 of the CVR, the Notice could not straightaway apply Rule 8 of the CVR (residual method) for determination of the values. In other words, the Revenue was required to show that efforts were made to find out contemporaneous imports at higher prices, failing which there is absolutely no warrant or justification for determining the value of these goods based on inquiries with Sony India. As has been explained in the previous paragraphs, since the prices of contemporaneous imports were available (*as shown in Exhibit-A to the present reply*), the question of resorting to Rule 8 of the CVR does not arise. Reliance is placed upon the judgment of the Hon'ble Supreme Court in the case of Commissioner of Customs, Calcutta v. South India Television (P) Ltd., reported in 2007 (214) E.L.T. 3 (S.C.) for the same.

(x) Internet prices cannot be relied upon to enhance declared values

(a) The Revenue has further, in para 10 of the Notice, relied upon prices from the website/internet to enhance the declared values. At the outset, we submit that such prices cannot be relied upon to enhance the declared values. Reliance is placed upon the judgments of Aggarwal Distributors (P) Ltd. v. CC, 2000 (117) ELT 49 (T), affirmed by

the Hon'ble Supreme Court in 2000 (122) ELT A121 (SC) and Naresh Lokumal Serai v. CC, 2006 (203) ELT 580 (T), as affirmed by the Hon'ble Supreme Court in 2010 (256) ELT A19 (SC).

(xi) Non-availability of Price List/quotation of the manufacturer is not a ground for enhancement of declared values

(a) The Notice has, in para 14 thereof, drawn an adverse inference against us on the ground that Mr. Gajra was not able to produce the manufacturer's invoices/manufacturer's price list, as a result of which the declared values were liable to be rejected in terms of the CVR. We submit that the declared values, in the present case, could not have been enhanced merely because the Mr. Gajra could not produce the manufacturer's invoices/manufacturer's price list. The same is irrelevant for the determination of the values since the goods, in the first place, were not imported from the manufacturer but from a trader based in Dubai. Merely because the goods are purchased from a trader and not the manufacturer, in the normal course of business, does not mean that the goods imported by us cease to be a stock lot. Reliance is placed upon Naresh Kumar (supra) for the same.

(b) Even otherwise, the manufacturer's price list is no more than a general quotation because such manufacturer is not precluded from providing discounts from the prices mentioned in the such price list, which may be for a variety of reasons such as distress sale, stock clearance etc. Reliance is placed upon the judgment of the Hon'ble Supreme Court in Eicher Tractors Ltd. v. CC, 2000 (122) ELT 321 (SC) and of the Hon'ble Tribunal in Auto & Hardware Enterprises v. CC, 2003 (151) ELT 330 (T).

(xii) Goods cannot be confiscated under Section 111(m) of the Act

(a) For the reasons stated above, we submit that since the goods correspond in respect of value with the entry made under Section 46 of the Act, no confiscation is warranted under the provisions thereof. No confiscation can be made since we had rightly declared the values and there was no undervaluation whatsoever, as has been explained above.

(xiii) Penalty cannot be imposed under Section 112 of the Act

(a) We submit that as has been explained in the foregoing paragraphs since we have not done any act or omitted to do any Act or omission which have rendered the goods imported by us liable to confiscation under Section 111 of the Act, the question of imposition of penalty does not arise.

(xiv) Review of Assessment Order before issuance of the Notice.

(a) The Notice, in para 2 thereof, admits that after the filing of the Bill of Entry, our initial declared value of Rs.8,18,472/- was loaded and the same was enhanced to Rs.14,73,734/- by the proper officer. The duty was assessed with reference to the loaded/enhanced value. This assessment order was not challenged by the Revenue by way of review and therefore the Notice could not have been issued without first taking steps to challenge the assessments made on the Bills of Entry. In other words, once the assessment order had become final, no SCN could have been issued. Reliance is placed upon the decision of this Hon'ble Tribunal in the case of CC v. Lord Shiva Overseas, 2005 (181) ELT 213 (T) and Agarwal Metals & Alloys v. CC, 2021 (278) ELT 155 (T) for the same. We also rely upon the judgment of the Hon'ble Tribunal in Naresh Kumar v. CC, 2017 (357) ELT 383 (T) wherein, in the context of the import of mixed lot of goods, it was held that since the first enhanced value was accepted and paid, there was no reason to further reject the assessed value and again enhance the transaction value of goods. The Notice is, therefore, liable to be withdrawn on this ground alone.

(xv) Issuance of the Notice when the Bill of Entry was provisionally assessed.

(a) It is submitted that the Notice also contains a proposal to finally assess the Bill of Entry based on the re-ascertained values and consequently, makes a differential duty demand of Rs.22,88,308/-. We submit that the captioned Notice could not have been issued to us when the Bill of Entry filed by us was provisionally assessed, without there having been any final assessment in respect thereof. It is settled law that Section 28 read with Section 124 of the Act deals with the recovery of duty not levied or short levied etc. In order to invoke these provisions, the duty must either not be levied or short levied. No Notice for short levy / non-levy can be issued when there is no final assessment of the Bill of Entry since it is only after this exercise that there can be any determination of short levy or non-levy. Reliance is placed upon the judgment of the Hon'ble Supreme Court in Commissioner v. ITC Ltd., 2006 (203) ELT 532 (SC) and of the Hon'ble Calcutta High Court in Jain International v. CC, 2019 (366) ELT 74 (Cal.).

(xvi) Valuation of Goods.

(a) There is nothing on record to show that the transaction value which has been entered into between us and the supplier can be discarded. The goods which were imported were purchased as a stock lot on as is where is basis and the transaction value, which is the contract value between the parties, cannot be rejected merely because the same was purchased as a stock lot. In the present case, the offer was made by the supplier during Diwali (of the year 2002), which is a season when high discounts are offered. Since we were purchasing an entire stock lot which consists of many goods of different brands sold

together, we were offered a quantity discount on further negotiation since higher quantities of goods were bought by us. Merely because there may have been import of a single consignment of similar models of electronic goods at higher prices by other parties is no ground to reject our transaction value since the values, in such cases, are not comparable. We rely upon the judgment of the Hon'ble Tribunal in Kelvin Infotech P. Ltd. v. CC, 2015 (316) ELT 146 (T) and Hindustan Pencils Ltd. v. CC, 1999 (108) ELT 307 (T) for the same.

(b) Prices of contemporaneous imports being available during the relevant period, the declared values could not have been enhanced. There is no evidence whatsoever on record to suggest, let alone prove, that the DRI made efforts to first find out the values at which contemporaneous imports were made. We are now providing the list of contemporaneous imports to prove our *bona fides*, which clearly shows that imports of similar / identical goods were made by other importers near about the same values at which the goods were imported by us. The said list is annexed to the present reply as "Exhibit-A". The same contains invoices, Bills of Entry, packing lists etc. of other importers. For instance, serial no.13 of the said list shows the import of Kenwood CD changer (model no.KDC-717) by M/s Echo Vision Electronics at \$25 (200 units). This is evidenced from Bill of Entry No.350703 dated 22.04.2003. We had shown the declared value of \$15 and assessable value of \$30. The DRI has, however, on the basis of Nippon's letter dated 12.11.2002, assigned a value of \$97.29 to the same goods, which is without any basis.

(c) Values cannot be enhanced merely because certain discrepancies may have been found in the import documents.

Discussion & Findings

19. The present SCN dated 08.01.2004 was issued to the following 02 noticees:

Noticee-1: M/s Japonica International

Noticee-2: Shri Premkumar Gajra (Director: M/s Japonica International)

20. The said SCN was adjudicated in the first round by Commissioner of Customs (Import), Mumbai vide Order in Original No. 66/2006/CAC/CC(I)AKP dated 28.03.2006 in respect of Noticees-1 & 2. Noticees-1 & 2 preferred an appeal in the Hon'ble CESTAT against the said OIO. Hon'ble CESTAT vide Order No. A/86253-86254/2018 dated 02/05/2018 remanded back the matter to Adjudicating Authority with the directions that "*considering the criticality of competence to issue show cause notice, the ends of justice will be appropriately met if the impugned order is set aside and the matter remanded back to the adjudicating authority to be decided afresh after the question of jurisdiction of*

officers of Directorate of Revenue Intelligence to issue notice for finalisation of assessment is settled". Therefore, in view of the above and pursuance of the said Hon'ble CESTAT order, the present SCN is before me for afresh adjudication in respect of Noticees-1 & 2.

21. Personal hearings have been duly conducted with both the noticees. I have gone through the said Show Cause Notice, case records and replies/submissions of the noticees made during the personal hearings.

22. The said SCN was issued by ADG, DRI Mumbai Zonal Unit alleges undervaluation in import of electronic goods imported at Mumbai port vide Bill of Entry No. 299570 dated 07.10.2002 by M/s Japonica International Pvt. Ltd. I find that the following issues arise for determination in this adjudication:

- i. **Issue of the jurisdiction of DRI officers to issue SCN.**
- ii. **Review of Assessment Order before issuance of the Notice.**
- iii. **Issuance of the Notice when the Bill of Entry was provisionally assessed.**
- iv. **Rejection and Re-determination of the value of the goods imported by M/s Japonica International Pvt. Ltd.**
- v. **Confiscation of goods and imposition of penalty.**

23. Issue of the jurisdiction of DRI officers to issue SCN.

23.1 Noticees have argued that the Hon'ble Supreme Court, in **Canon India Pvt. Ltd.**¹¹ after referring to various decisions, held that DRI officers were not 'proper officers' within the meaning of Section 2(34) of the Act and consequently held that the proceedings initiated by the Additional Director General (ADG), DRI was without authority of law and further the Department, vide Review Petition Nos.400-403/2021, sought a review of the said decision, which is yet pending consideration by the Hon'ble Supreme Court, therefore, adjudication of the captioned Notice be kept in abeyance until the said issue is finally decided by the Hon'ble Supreme Court.

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

¹¹ Canon India Pvt. Ltd. v. CC, 2021 (376) ELT 3 (SC)

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)*;

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

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

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

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

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

88. In section 5 of the Customs Act,— (a) after sub-section (1), the following sub-sections shall be inserted, namely:— “(1A) Without prejudice to the provisions contained in sub-section (1), the Board may, by notification, assign such functions as it may deem fit, to an officer of customs, who shall be the proper officer in relation to such functions. (1B) Within their jurisdiction assigned by the Board, the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, may, by order, assign such functions, as he may deem fit, to an officer of customs, who shall be the proper officer in relation to such functions.”; (b) after sub-section (3), the following sub-sections shall be inserted, namely:— “(4) In

specifying the conditions and limitations referred to in sub-section (1), and in assigning functions under sub-section (1A), the Board may consider any one or more of the following criteria, including, but not limited to— (a) territorial jurisdiction; (b) persons or class of persons; (c) goods or class of goods; (d) cases or class of cases; (e) computer assigned random assignment; (f) any other criterion as the Board may, by notification, specify.

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

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

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

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

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

23.3 In view of the aforementioned amendments in Section 3 of the Customs Act, 1962 and validation of action taken under the Customs Act, 1962 vide Finance Act, 2022, I find that the issue of jurisdiction of DRI officers to issue SCNs under Section 28 of the Act, stands settled as of now. In this regard, I rely upon the judgement of the Hon'ble High Court in the matter of **N. C. Alexander**¹², wherein the validity of SCNs issued by DRI was challenged through various writ petitions after **Canon India(supra)** judgement and enactment of the Finance Act, 2022. Hon'ble High Court while disposing of the said writ petitions held that pursuant to the amendment of Section 3 of the Customs Act, 1962 by Finance Act, 2022, officers from the Directorate of Revenue are explicitly recognized as Officers of Customs and Show Cause Notices issued by officers of DRI cannot be assailed

¹² N. C. Alexander vs Commissioner of Customs and others-2022 (381) E.L.T. 148 (Mad.)

in view of validation in Section 97 of Finance Act, 2022 to pending proceedings. Relevant paras of the said judgement are reproduced below for reference:

“ 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. 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)

23.4 In view of the above, I find that the noticees argument that the said SCN be kept in abeyance until the said issue is finally decided by the Hon’ble Supreme Court in respect of Review Petition Nos.400-403/2021 filed by the Department seeking review of Canon India Judgement, is without any grounds or legality.

24. Review of Assessment Order before issuance of the Notice.

24.1 Noticees have argued that the said Bill of Entry was assessed by the proper officer therefore before issuing the notice the department should have challenged the assessment order by way of review. Noticees have also argued that declared value enhanced once

cannot be enhanced again. In this regard, they relied upon the case law of **Naresh Kumar**¹³ wherein, in the context of the import of mixed lot of goods, it was held that since the first enhanced value was accepted and paid, there was no reason to further reject the assessed value and again enhance the transaction value of goods

24.2 I find that a notice for demand of duty can be issued after the assessment of the bill of entry without reviewing the 'Assessment Order' if something adverse is found on investigation of the goods. In this regard, I reproduce hereinbelow Section 28 and Section 124 of the Customs Act, 1962 at the relevant time:

Section 28. Notice for payment of duties, interest, etc. - (1) When any duty has not been levied or has been short-levied or erroneously refunded, or when any interest payable has not been paid, part paid or erroneously refunded, the proper officer may,-

(a) in the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, within one year;

(b) in any other case, within six months,

from the relevant date, serve notice on the person chargeable with the duty or interest which has not been levied or charged or which has been so short-levied or part paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

For the purposes of sub-section (1), the expression 'relevant date' means,

(a) in case where duty is not levied, or interest is not charged, the date on which the proper officer makes an order for the clearance of the goods;

(b) in a case where duty is provisionally assessed under Section 18, the date of adjustment of duty after the final assessment thereof;

(c) in a case where duty or interest has been erroneously refunded, the date of refund;

(d) in any other case, the date of payment of duty or interest."

Section 124. Issue of show cause notice before confiscation of goods, etc. -

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

¹³ Naresh Kumar v. CC, 2017 (357) ELT 383 (T)

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter :

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

24.3 On perusal of Section 124 above, it is very much clear that a notice under Section 124 can be issued to the owner of the goods informing him in writing the grounds on which it is proposed to confiscate the goods or to impose a penalty and also I find that in Section 124, no condition has been prescribed which links the issuance of notice in any way with the assessment of the goods. Therefore, it may be presumed that a notice under Section 124 of the Act can be issued before assessment, after assessment and also when the goods are provisionally assessed. On perusal of Section 28 above, it can be said that a notice under Section 28 of the Act for payment of Customs duties not levied can be issued subsequent to the clearance under Section 47 of the Act. Also, I find that in Section 28 no condition has been prescribed that a notice can be issued only after review of 'assessment order' or 'clearance order'. Therefore, it can be presumed that a notice under Section 28 can be issued without reviewing/appealing the 'Assessment Order' or 'Clearance Order' of the said goods. Further, in this regard, I rely upon the case laws of **Commr. of Cus. vs. S.V. Technologies**¹⁴ and **UOI v. Jain Shudh Vanaspati**¹⁵

24.4 Hon'ble Tribunal in the case of **S.V. Technologies Pvt. Ltd.(supra)** has held that '6. *We have considered the arguments by Learned DR and perused the records. The short point to be decided is whether the First Appellate Authority was correct in holding that the lower authority cannot raise a demand under Section 28 of the Customs Act without first challenging the assessment done in the bill of entry relying on the judgment of Priya Blue (supra) and Flock India (supra). We find that the judgment of Priya Blue and Flock India of the Hon'ble Apex Court are on the point of refund claim by the assessee without challenging the assessment order in the bill of entry. The present case is different. It is a case where after assessment and clearance of the goods is completed by issue of order under Section 47 of the Customs Act, 1962, within the normal period of limitation, the Deputy Commissioner has raised a demand under Section 28. While raising the demand he issued a show cause notice proposing re-classification of the imported goods and gave an opportunity to the respondent to present their case and considered their submissions.*

¹⁴ Commr. of Cus., C. Ex. & S.T., Hyderabad-II vs. S.V. Technologies Pvt. Ltd.-2019 (369) E.L.T. 1631 (Tri. - Hyd.)

¹⁵ UOI v. Jain Shudh Vanaspati-1996 (86) E.L.T. 460 (S.C)

Thereafter, he confirmed the demand. The First Appellate Authority also agrees with the re-classification done by the Deputy Commissioner on merits. He, however, held that the Deputy Commissioner again raised the demand without first challenging or asking the Commissioner to review his own assessment of the bill of entry. This is not the ratio laid down by the Hon'ble Apex Court in the case of *Priya Blue (supra)* or *Flock India (supra)*. Cases pertaining to issue of demand under Section 28 after clearance of the case under Section are covered by the judgment of the Hon'ble Apex Court in the case of *Jain Shudh Vanaspati Ltd., (supra)* which clearly held that a demand can be raised under Section 28 even after clearance of the case under Section 47'

24.5 Hon'ble Supreme Court in the case of **Jain Shudh Vanaspati (supra)** at para 5 and 6 has held that '5. It is patent that a show cause notice under the provisions of Section 28 for payment of Customs duties not levied or short-levied or erroneously refunded can be issued only subsequent to the clearance under Section 47 of the concerned goods. Further, Section 28 provides time limits for the issuance of the show cause notice thereunder commencing from the "relevant date": "relevant date" is defined by sub-section (3) of Section 28 for the purpose of Section 28 to be the date on which the order for clearance of the goods has been made in a case where duty has not been levied; which is to say that the date upon which the permissible period begins to run is the date of the order under Section 47. The High Court was, therefore, in error in coming to the conclusion that no show cause notice under Section 28 could have been issued until and unless the order under Section 47 had been first revised under Section 130'. '6. The case of the appellants in the show cause notices is that the stainless steel containers in which the said oil was imported were banned, that the stainless steel containers were deliberately camouflaged by painting them to resemble mild steel containers, and that this was done with a view to enabling their clearance. A clearance order under Section 47 obtained by fraudulent means such as this (if it, in fact, be so) cannot debar the issuance of a show-cause notice for confiscation of goods under Section 124.'

24.6 Therefore, in view of the above, I find that a demand notice under Section 28 and Section 124 of the Act can be issued without reviewing / appealing the 'Assessment Order' and/or 'Clearance Order' respectively made under Sections 17 & 47 of the Act.

24.7 Noticees argued that value once enhanced or loaded cannot be enhanced or loaded again. They relied upon the case law of **Naresh Kumar(supra)** and **Hitaishi Fine Crafts Industries¹⁶**. In the case of **Naresh Kumar**, the Hon'ble Tribunal held that the *first assessment after examination already accepted the enhancement of value, so there is no reason to further enhance it*. In this case, the consignment consisted of various pairs and

¹⁶ Hitaishi Fine Crafts Industries Pvt Ltd Vs Commr. 2002(148) ELT 364 Tribunal

components of the car audio system manufactured by different entities imported as stock lot. The brand of the various products was mentioned in the bill of entry. In the present case, it is on record that the brand name was not mentioned in the bill of entry and invoice and the goods were not declared as stock lot. The claim of stock lot is only an afterthought of the importer. Hence, the **Naresh Kumar** ratio would not apply to the present case.

24.8 In the case of **Hitaishi Fine Crafts Industries(supra)**, the Hon'ble Tribunal held that *when the Commissioner had already decided a value after following the due process of law then a junior officer like the Additional Commissioner could not interfere with the said price and enhance it further.* In this case, at the time of assessment, the value, as per the order of Commissioner of Customs was enhanced to US \$ 600 per ton from US \$ 480 declared and further after investigation by DRI, a show-cause notice was issued on 16-10-98 and the same was adjudicated by the Addl. Commissioner of Customs. In the present case, the Commissioner of Customs did not order enhancement of value at the time of assessment. Therefore, I find that the facts of Hitaishi Fine Crafts Industries are different from the present case.

24.9 I find that a value-enhanced or loaded at the time of assessment can be enhanced or loaded again if any discrepancy in respect of the subject goods is found after the first enhancement of the value. In this regard, I rely upon the case laws of **A.G. Incorporation**¹⁷ and **Union of India Vs R.C. Fabrics**¹⁸

(i) Hon'ble Tribunal in **A.G. Incorporation(supra)** has held that '*17. The Counsel for appellants submits that the values of the consignments were once loaded by the Customs Authorities at the time of import and hence the Revenue authorities cannot load it again through another proceeding. The said argument if made an absolute rule it can turn out to be one of the best means to evade customs duty with impunity. All what is required is to declare a substantially low price in bill of Entry and somehow get the customs officer to load the value a bit. That single action of an appraising officer will give impunity from any further proceedings regarding mis-declaration of value. It appears that the provisions in Customs Act are not that weak to protect the interest of the state. This argument canvassed is not based on any provisions in statute and appears to be not consistent with Section 28 of the Customs Act and appears to be canvassed a judge made law.*'

(ii) Hon'ble Supreme Court in **Union of India Vs R.C. Fabrics (supra)** held that *once some new facts come to light on the basis of investigations past assessments can be opened and the case adjudicated afresh.*

¹⁷ A.G. Incorporation vs Commissioner of Customs, Delhi-2013 (287) E.L.T. 357 (Tri. - Del.)

¹⁸ Union of India Vs R.C. Fabrics (P) Ltd [2002(ELT)12 (SC)]

24.10 In view of the above, I conclude that value enhanced or loaded once, can be enhanced or loaded again if any discrepancy in respect of the subject goods is found after the first enhancement of the value.

25. Issuance of the Notice when the Bill of Entry was provisionally assessed.

25.1 Noticees have argued that the notice could not have been issued to them when the Bill of Entry filed by them was provisionally assessed, without there having been any final assessment in respect thereof and noticees further argued that it is settled law that Section 28 read with Section 124 of the Act deals with the recovery of duty not levied or short levied etc. In order to invoke these provisions, the duty must either not be levied or short levied. Noticees in this regard relied upon the case laws of **ITC Ltd.**¹⁹ and **Jain International**²⁰.

25.2 In the case of **Jain International (supra)**, the Department had changed its stand twice regarding classification of goods which were power energy drinks. In that context, the Tribunal held that there is no need of SCN when goods were provisionally assessed. In the case of **I.T.C Ltd. (supra)** which is related to the issue of manufacture of cigarettes by a job worker who was related to the manufacturer. Department sought to add the cost of corrugated fibre containers in the manufacturing cost. In this context, the Apex Court ruled when the central excise assessment of the goods was provisional, the SCN could not have been issued under Section 11A of Central Excise Act, 1944. I find that both the above cases were of technical nature whereas the present case is of misdeclaration and gross undervaluation(upto 8 to 10 times) of goods by way of not declaring the brand name of the goods on the bill of entry & invoice and claiming stock lot benefit even when the goods were never declared as stock lot at the time of import . Because of these elements of gross undervaluation, fraud & suppression, I find the present case to be different from **ITC and Jain International (supra)**. Further, I rely upon the Judgement of the Hon'ble High Court in the matter of **Gujarat Narmada Valley Fertilizers**²¹. Relevant paras of the said judgement are reproduced below :

“6. Learned counsel Shri Trivedi for the petitioner, however, submitted that in the present case the petitioner has raised a contention not previously raised by the other importers namely that there has been no finalisation of the provisional assessment and that therefore, no duty demand could have been raised. In this context, he relied on a decision of the Supreme Court in the case of Serai Kella Glass Works Pvt. Ltd. v. CCE, (1997) 4 SCC 641 = 1997 (91) E.L.T. 497 (S.C.) in which it was observed as under :

¹⁹ Commissioner vs. ITC Ltd., 2006 (203) ELT 532 (SC)

²⁰ Jain International v. CC, 2019 (366) ELT 74 (Cal.)

²¹ Gujarat Narmada Valley Fertilizers & Chem. Ltd. vs. Commr. Of Customs-2014 (305) E.L.T. 72 (Guj.)

"17. Section 11-A deals with recovery of duty not levied or not paid or short-levied or short-paid or erroneously refunded. Proceedings under Section 11-A have to be commenced with a show cause notice issued within six months from the relevant date. 'Relevant date' has been defined under sub-section 3(ii) to mean in a case where duty of excise is provisionally assessed under this Act or the rules made thereunder, the date of adjustment of duty after the final assessment thereof.

18. After final assessment, a copy of the order on the return filed by the assessee has to be sent to him. Duty has to be paid by the assessee on the basis of the final assessment within ten days' time from the receipt of the return. No question of giving any notice under Section 11-A arises in such a case. It is only when even after final assessment and payment of duties, it is found that there has been a short-levy or non-levy of duty, the Excise Officer is empowered to take proceedings under Section 11-A within the period of limitation after issuing a show cause notice. In such a case, limitation period will run from the date of the final assessment. The scope of Section 11A and Rule 173-I is quite different. In this case, the provisional assessment earlier made by the proper officer has been quashed and pursuant to the direction of the High Court, the proper officer has made the final assessment. No question of failure of issuance of show cause notice under section 11-A arises in this case. Even otherwise, we do not find any infirmity in the order of the Tribunal."

Our attention was also drawn to a decision of the Supreme Court in the case of Commissioner, Central Excise & Customs v. ITC Ltd., (2007) 1 SCC 62 = 2006 (203) E.L.T. 532 (S.C.) in which relying on the decision in the case of Serai Kella Glass Works Pvt. Ltd. (supra) and referring to the relevant provisions of the Central Excise Act and the Rules thereunder, the Supreme Court observed that the amount becomes payable only in the event the assessee does not deposit the amount levied within a period of 10 days from the date of completion of the order of assessment. Recourse to provisional assessment is resorted to only when the conditions laid down therein are satisfied, viz. where the assessee is found to be unable to produce any document or furnish any information necessary for assessment of duty on any excisable goods. It was, therefore, observed that :

"24. Whereas provisional duty is levied in terms of sub-rule (1) of Rule 9-B, final assessment is contemplated under sub-rule (5) thereof by reason of which the duty provisionally assessed shall be adjusted against the duty finally assessed and in event the duty provisionally assessed falls short of or is in excess of the duty finally assessed, the assessee will pay the deficiency

or will be entitled to a refund, as the case may be. Ultimately, thus, the liability of the assessee would depend upon the undertaking of exercise by the assessing Officer to complete the assessment proceeding as contemplated under the Rules."

7. In the present case, facts are substantially different. The notice as reproduced hereinabove, first and foremost proposes to adopt certain classification which, in the opinion of the department, would be correct for the imported goods rejecting the classification canvassed by the petitioner. It is in this context that in para 24(1) of the notice calls upon the petitioner show cause why the classification of the imported goods under Heading 2701 19 20 should not be rejected and why the same should not be re-classified under the Heading 2701 12 00 of the First Schedule to the Customs Tariff Act, 1975. Further proposals are only consequential in nature and includes proposal for adopting correct classification and quantifying the differential customs duty on 37,000 MT of coal imported by the petitioner. Proposal is also for recovery of the differential customs duty with interest.

*8. In our opinion, this is not a case where recovery of duty under Section 28 of the Act is preceded the finalisation of the classification. As a matter of fact, **the very notice issued is for finalization of the classification on the basis of the proposal and the prima facie opinion of the department rejecting the classification presented by the petitioner. We do not find that the same is without jurisdiction.***

25.3 On perusal of the aforementioned paras, it is evident that the ratio decided in the matter of **Gujarat Narmada Valley Fertilizers (supra)** is directly applicable in the present case as in this case also the notice has proposed finalization of the Bill of Entry on the basis of re-ascertained value and recourse to provisional assessment was also done by the Department on the ground of valuation when the importer had not declared the brand name of many items in the import documents.

25.4 Further, it is to be noted that the said Bill of Entry was once assessed on 14/10/2002; however pursuant to the request of the DRI, MZU the status of the said Bill of Entry was changed from final to provisional and the goods were released provisionally after taking bond and BG from the importer. This was done due to ongoing investigation by the DRI, which was yet to be concluded. The relevant screenshots of the bill of entry are shown below:

(E-Signature)

Master Invoice Items Dept comments Exam order Queries IGM Cont eXAm Inst Keefee dity Grp7 dutyfy Others Close Window

09/05/2023 Indian Customs EDI System - Imports V1.5 01:26:45 pm
NEW CUSTOM HOUSE, BALLARD ESTATE, MUMBAI - 400038 V 2.0.0.1

VIEW Dept Cont

Enter BE No: 22591 Date: 01/03/2002 IC: 8 Type: a
Importer: JAPONICA INTERNATIONAL PVT. LTD. AC: 59 First Chk: 8

Colour

PL KEEP LOW AS CATALOGUE IS PUT UP FOR PERUSAL.
By PKEDIA on 11/10/2002 at 07:08P.M.
BE was Once Assessed On : 14/10/2002 PKEDIA
Audited On : 14/10/2002 UBHASKAR
Approved By AC On : 14/10/02 ARUN

-System
Marked By VISINGH dated 24/12/2002 at 05:26P.M.
Reappraisal approval
DRI INSTRUCTIONS
by SACHANS on 26/12/2002 05:50
BE has been assessed provisionally for DRI INVESTIGATION AS PER DRI'S LETTER F.NO.DRI/BZU/F/MISC-30/2002/7547 DTD. 4.12.02. PARTY HAS GIVEN P.D.BOND FOR RS. 22,11,000/- (150% OF B/E VALUE OF RS. 14.73 LAKH) AND BANK GUARANTEE OF RS. 25,30,000/- (125% OF RS. 20.22 LAKH-DUTY DIFFERENCE AS SUGGESTED BY DRI) AS PER ORDER IN FILE NO. S/26-MISC-450/02-VB, P/D BOND
& BANK GUARANTEE ACCEPTED IN FILE NO. S/5-PD-62/02-VB/26.12.02.
By PKEDIA on 26/12/2002 at 06:09P.M.
BE has been assessed provisionally for DRI INVESTIGATION AS PER DRI'S LETTER F.NO.DRI/BZU/F/MISC-30/2002/7547 DTD. 4.12.02. PARTY HAS GIVEN P.D.BOND FOR RS. 22,11,000/- (150% OF B/E VALUE OF RS. 14.73 LAKH) AND BANK GUARANTEE OF RS. 25,30,000/- (125% OF RS. 20.22 LAKH-DUTY DIFFERENCE AS SUGGESTED BY DRI) AS PER ORDER IN FILE NO. S/26-MISC-450/02-VB, P/D BOND
& BANK GUARANTEE ACCEPTED IN FILE NO. S/5-PD-62/02-VB/26.12.02.
By PKEDIA on 26/12/2002 at 06:09P.M.
BE has been assessed provisionally for DRI INVESTIGATION AS PER DRI'S LETTER F.NO.DRI/BZU/F/MISC-30/2002/7547 DTD. 4.12.02. PARTY HAS GIVEN P.D.BOND FOR RS. 22,11,000/- (150% OF B/E VALUE OF RS. 14.73 LAKH) AND BANK GUARANTEE OF RS. 25,30,000/- (125% OF RS. 20.22 LAKH-DUTY DIFFERENCE AS SUGGESTED BY DRI) AS PER ORDER IN FILE NO. S/26-MISC-450/02-VB, P/D BOND
& BANK GUARANTEE ACCEPTED IN FILE NO. S/5-PD-62/02-VB/26.12.02.
By PKEDIA on 26/12/2002 at 06:11P.M.
WRONG ENTRY
By SACHANS on 27/12/2002 at 11:00A.M

OK Cancel Search

Record ID: List of values

Windows Taskbar: Type text to search | 10:50 AM | 09-05-2023

25.5 In view of the above, I find that the notices claim that the notice could not have been issued to them when the Bill of Entry filed by them was provisionally assessed, is wrong and unacceptable.

26. Rejection and Re-determination of the value of the goods imported by M/s Japonica International Pvt. Ltd.

26.1 Rule 10A of the Customs Valuation (Determination of price of imported goods) Rules, 1988²² is reproduced hereinbelow for reference:

[10A. Rejection of declared value. — (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in

²² Also referred to as CVR 1988 or the valuation rules

the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 4.

26.2 On perusal of the aforementioned Rule 10A, it can be inferred that when the proper officer has reasonable doubt about the truth or accuracy of the value so declared, it shall be considered that the value of said imported goods cannot be ascertained in accordance with the provisions set forth in sub-rule (1) of Rule 4 of the CVR 1988.

26.3 In the present case, the relevant invoice having no. JGF/1173/02 dated 24.9.2002 does not mention the brand name of all the products. There was a mismatch between the particulars of various items declared in the invoice, bill of entry and the packing list. The brand name has been mentioned only in the case of goods of Kenwood make. **There is no mention of the brand name in respect of stuffed loaded printed circuit boards (PCBs).** In the case of stuffed PCBs for the Car Radio Cassette player, the invoice indicates the quantity as 750 implying thereby that it relates to a single model, whereas in the packing list, the said quantity of 750 is made up of stuffed PCBs of 03 different models of Kenwood Car Stereo, namely Model KRC -265(300 Pcs), KRC 365(300 pcs) and KRC -665(150 pcs). Further, 99 stuffed PCBs were declared in the B/E as those meant for the Hi-Fi Music System of Sony Model MHCRV6. The brand details were not mentioned in the Invoice for the said item however in the packing list these 99 pcs were mentioned of a Sony VCD player Model MHCRV7, not of a Hi-Fi Music system. Similarly, for the 200 sets of stuffed PCBs indicated in the invoice, the B/E was filed showing it to be of Hi Fi Music System of Sony Brand Model MHCRV6, whereas, as per the packing list, these were again found to be of VCD players of 03 different models. Further, in the Bill of Entry the stuffed PCBs were declared in numbers or pieces whereas, as per the packing list they were declared in sets of 3,5, 6 and 7. Thus, the invoice did not indicate the correct/full particulars of the goods and, therefore, it was liable to be rejected. In this regard, I rely upon the case laws of **Vikas Shipping Agency²³, Collector of Customs Madras Vs Universal Synthetics²⁴, Prasant Glassware Pvt Ltd.²⁵ and Mohan Sales India²⁶ and Collector of Customs vs Sanjay Chandiram²⁷.**

(i) In **Vikas Shipping Agency(supra)**, it was decided that *once goods are misdeclared, department has a right to reject transaction value and revalue them.*

²³ Vikas Shipping Agency vs CC, Mumbai -2005(185) ELT95(Tri-Mum)

²⁴ Collector of Customs Madras Vs Universal Synthetics [2000 (117) ELT 534 (SC)

²⁵ Prasant Glassware Pvt Ltd Vs Collector-1996 (87) ELT 518 (Trib)

²⁶ Mohan Sales India vs Commr. CX., Mumbai reported in 2004(170)ELT 552(Tri-Delhi)

²⁷ Collector of Customs vs Sanjay Chandiram 1995(77)ELT241 (SC)

(ii) In **Collector of Customs Madras Vs Universal Synthetics**, it was decided that *in the absence of particulars like index number and strength of the imported goods, the transaction value can be rejected and the appropriate value can be placed on the imported goods.*

(iii) In **Prasant Glassware Pvt Ltd.(supra)**, it was decided that *the value to be attached to invoice price may depend on a variety of circumstances. Inadequate, incomplete or incorrect or misleading description may affect the reliability of the invoice price. It must be appreciated that customs authorities do not inspect and examine all the goods imported and conduct only sample checks. Incorrect, inadequate or incomplete description in cases where the goods are not inspected and checked may mislead customs officers. It may depending on the facts and circumstances, also indicate a deliberate design to suppress the true state of affairs and to mislead customs officers. In such cases the invoice and the price declared in the invoice will have very little weight and the Department is not required to show that the invoice price is defective and cannot be accepted and the same has been affirmed by the Hon'ble Supreme Court²⁸.*

(iv) In **Mohan Sales India (supra)**, it was decided that *the documents produced by the appellant could be taken only as issued with vague particulars to facilitate misdeclaration of the goods and under-valuation. Customs authorities were therefore, entirely justified in rejecting the declared value and in re-assessing the goods based on the prices noted by them.*

(v) In **Collector of Customs vs Sanjay Chandiram (supra)**, it was decided that *the transaction value of goods is not acceptable when the certificate of origin of the goods is found to be false or forged.*

26.4 Noticees have argued that non-availability of the price list / quotation of the manufacturer is not a ground for enhancement of declared values and in this regard they relied upon the case laws of **Eicher Tractors Ltd.**²⁹ and **Auto & Hardware Enterprises**³⁰.

26.5 I find that the importer did not provide an accurate description of the goods on the invoice, packing list, and bill of entry; therefore they were repeatedly asked to submit the manufacturer's invoice/price list. Despite multiple requests, the importer failed to produce the requested documents. In **Eicher Tractors supra** there was no misdeclaration of the goods imported , it was one time sale of 5 year old stock and no reason was given by the AC for rejecting the transaction value. In those circumstances , the Hon'ble Apex Court

²⁸ 1997 (89) E.L.T. A179 (S.C)

²⁹ Eicher Tractors Ltd. v. CC, 2000 (122) ELT 321 (SC)

³⁰ Auto & Hardware Enterprises v. CC, 2003 (151) ELT 330 (Trib-Mum)

ruled that existence of the price list of the foreign manufacturer cannot be the sole reason to reject the transaction value. In the present case, there is clear misdeclaration of the goods as discussed in para 26.3 above. Therefore, the ratio of **Eicher Tractors Ltd.** is not applicable to the present case.

26.6 Further, in the case of **Auto & Hardware Enterprises (supra)**, the Hon'ble Tribunal observed "*4. We note the contention of the Departmental Representative that the provisions of Rule 10A of the Customs Valuation Rules will apply. This rule will apply where the assessing officer has reason to doubt the correctness of the transaction value. Such a doubt that he raises therefore must be based on some reason. We agree that a quotation of the manufacturer showing its factory F.O.B. prices to be higher than the declared value may constitute a reason to doubt the value declared by the importer. This however would not be conclusive evidence of the incorrectness of that value. The proper officer would be at liberty to call upon the importer to furnish further information or evidence. We therefore leave it to the Commissioner to entertain this line and value in accordance with law.*" Thus in **Auto & Hardware Enterprises**, the manufacturer's quotation was available which was showing F.O.B. prices to be higher than the declared value and on the basis of the same, the Hon'ble Tribunal observed that it may be a reason to doubt the value declared by the importer. However, in the present case, the importer, despite multiple requests failed to produce the same. This sets it apart from the case relied upon by the noticees.

26.7 I find that the Hon'ble Apex Court in the case of **CC vs Shibani Engineering Systems**³¹ has held that *if the transaction value is ridiculously low and totally unrealistic the same can be rejected, if the price list of manufacturer is not produced.* In this case also the manufacturer's price/invoice was not produced even though it was specifically asked for and also the declared prices/transaction values were barely 10 to 15% of the actual prices. (refer Table-4 above).

26.8 In view of the above, I find that as there are reasons to doubt the truth or accuracy of the value so declared by the importer therefore the same is liable for rejection under Rule 10A of CVR 1988.

26.9 Noticees on the point of redetermination of value argued that:-

(a) Valuation of the stock lot goods is required to be done on the basis of the transaction value and placed reliance upon the case laws of **Kelvin Infotech P. Ltd.**³² and **Hindustan Pencils Ltd.**³³

³¹ Collector of Customs, Bombay Shibani vs Shibani Engineering Systems [1996(86)ELT453(SC)]

³² Kelvin Infotech P. Ltd. v. CC, 2015 (316) ELT 146 (T)

³³ Hindustan Pencils Ltd. v. CC, 1999 (108) ELT 307 (T)

(b) Quotations cannot be utilized for valuation purposes. In this regard they relied upon the case law of **Puja Poly Plastics Pvt Ltd.**³⁴

(c) Prices of contemporaneous imports being available during the relevant period - declared values cannot be enhanced.

(d) Internet prices cannot be relied upon to enhance declared values and placed reliance upon the case laws of **Aggarwal Distributors (P) Ltd.**³⁵, **Naresh Lokumal Serai**³⁶.

(e) In the Valuation of 'Sony' goods imported by them, the question of resorting to Rule 8 of the CVR does not arise since the prices of contemporaneous imports were available and placed reliance upon the case law of **Commissioner of Customs, Calcutta v. South India Television (P) Ltd.**³⁷.

26.10 Ratio of **Kelvin Infotech(supra)** is that *value of stock lot of goods has to be done on the basis of contract entered into between supplier and importer* and the ratio of **Hindustan Pencils(supra)** is that *once it is accepted as stock lot, it is an accepted commercial practice in the international transactions, the price will be treated at a reduced one due to very nature of distressed sale. I find that in these cases there was a contract / letter between supplier and importer and in the said contract / letter it was mentioned that goods are stock lot 'as is where is basis' and the copy of the said contract / letter was provided to the department at the time of clearance of the goods. However, in the present case, the noticees did not produce any contract / letter which states that the goods will be imported in stock lot 'as is where is basis' and also the importer did not mention nowhere in the invoice, packing list and bill of entry that the imported goods are stock lot 'as is where is basis'. Copy of B/E, Invoice and Packing List are reproduced hereinbelow for reference :*

³⁴ Puja Poly Plastics Pvt Ltd vs Commissioner of Customs, Calcutta-2001(131)ELT200(T)

³⁵ Aggarwal Distributors (P) Ltd. v. CC, 2000 (117) ELT 49 (T)

³⁶ Naresh Lokumal Serai v. CC, 2006 (203) ELT 580 (T)

³⁷ Commissioner of Customs, Calcutta v. South India Television (P) Ltd.-2007 (214) E.L.T. 3 (S.C.)

Original (Customs copy)
Indian Customs EDI System - Imports (IGES/1)
New Customs House, Ballard Estate, Mumbai-400038

NEW CUSTOMS
FORM NO. 1

45

BILL OF ENTRY FOR HOME CONSUMPTION

003

Customs Ben: INBOM11 CHA: 11/0121 IS K MEHRA CLEARING & Forwarding p 11
BE No/Dt./cc/Typ: 299570 /07/10/2002/N/H

Importer Details: 0200010239 PAN: AAACJB649RFT001
JAPONICA INTERNATIONAL PVT. LTD.,
1: INDRAPRASTHA ARCADE, SHOP NO 14,
1ST FLOOR, TOKAR KHADA, KHAMVEL
MAIN ROAD, SILVASSA 396230

**Copy of B/E No.
299570 dated
07.10.2002**

IGN No: 12374/2002 29/09/2002 Port Of Loading: DUBAI
Entry Of Origin: INDONESIA Entry Of Consign.:
BL No: SXBBCH10492 H/BL No:
Date: 24/09/2002 Date:
No. Of Pkgs: 410 CTN Gross Wt.: 4,491 KGS

Inv No & Dt.: J07/1173/02 24/09/2002 JACKY'S GULF FZE,
Inv Val: 12841.50 USD TD: CIF P. O. BOX 16945,
Freight: 0.00 JEBEL ALI FREE ZONE,
Insurance: 0.00 DUBAI
Cust. House: U. A. E.
SVC Lead (Dty): HSB Lead Rate: 0.00% Amount: 0.00
Misc. Charges: 0.00

Item Details
Exchange rate: 1.00 USD = 48.6000 INR

Sino	RITC	Description	Unit Price	CTH	C. Natn	C. NSND	RSP	Lead	PRCM
Qty			Ass Val	CETH	E. Natn	E. NSND	Cus Dty Rt	BCD amt(Rs)	
Unit							Exc Dty Rt	CVD amt(Rs)	
1		35299000 STUFF./LDB.P.C.B. FOR R/HIFIMU.SYIS/O 6PCSISONY-HC							
R39D									
20.00		17.500000	352990				25.00 %	4295.00	
		Surcharge Duty/BCD:				026/2001	0.00 %	0.00	
PCS		17180.10	852900				16.00 %	3436.00	
		Spcl Additional Duty (SAD):					4.00 %	996.40	
2		35299000 STUFF./LDB.P.C.B. FOR R/HIFIMU.SYIS/O 5PCSISONY-HH							
C RVS									
99.00		13.500000	852940				25.00 %	16400.90	
		Surcharge Duty/BCD:				026/2001	0.00 %	0.00	
PCS		65603.44	852900				16.00 %	13120.70	
		Spcl Additional Duty (SAD):					4.00 %	3803.00	
3		35299000 STUFF./LDB.P.C.B. FOR R/HIFIMU.SYIS/O 4PCSISONY							
QV6									
100.00		12.000000	852990				25.00 %	29451.60	
		Surcharge Duty/BCD:				026/2001	0.00 %	0.00	
PCS		117806.40	852900				16.00 %	23561.30	
		Spcl Additional Duty (SAD):					4.00 %	6832.80	
Rs.		200389.94							

Page Total Rs. 101899.70

Declaration
I/We Certify that the above entries are correct.
I/We further declare that wherever the RSP is applicable same has been truthfully declared.

Importer
MEHRA CLEARING & Forwarding p 11 JAPONICA INTERNATIONAL PVT. LTD.,

Signature
continued on page 2

Handwritten signature

India Customs EDI System - Imports (ICES/I)
New Customs House, Ballard Estate, Mumbai-400008

NEW CUSTOMER
EDI Service
004

BILL OF ENTRY FOR HOME CONSUMPTION

CU No. In Bill: INBOM11 CHA: 11/0121 IS K MEHRA CLEARING & Forwarding P I
SE No. In Bill: 299570 /07/10/2002/N/H

Importer Details: 020001023Y PAN: AAACJ8649H1T001
JAPONICA INTERNATIONAL PVT. LTD.
Inv No & Dt: JGF/1173/02 24/09/2002 JAGGY'S GOLF FZE.

Sl. No.	HTS	Description	CTH	C. Ntdn	C. NEND	RSP	Load	PK
Unit	Unit Price	Ass Val	CTH	E. Ntdn	E. NEND	Exc Dty Rt	BCD	Exc Dty Rt
6	85279000	STUFF ZLDS P C S FOR C C P-W/RADIO-KENWOOD T						
750.00	8.000000	852790			25.00 %	70629.00		
	Surcharge Duty/SCD:				0.00 %	0.00		
	PCE	394514.00	852790	026/2001	16.00 %	58903.20		
	Spcl Additional Duty (SAD):				4.00 %	17081.90		
	85182900	6", 5" & 2" SPEAKER FOR R/HIFIMU BY SONY-(S/D 2PCS)						
44.00	33.500000	851829	022/2002	286	30.00 %	16982.36		
	Surcharge Duty/SCD:				0.00 %	0.00		
	PCE	39074.29	851829	026/2001	16.00 %	11453.30		
	Spcl Additional Duty (SAD):				4.00 %	3022.10		
	85271200	CAR RADIO CASSETTE PLAYERKENWOOD-CFX-H4030						RSP ITEM
15.00	35.000000	852712	026/2002	296	30.00 %	5184.00		
	Surcharge Duty/SCD:				0.00 %	0.00		
	PCE	17100.10	852712	026/2001	16.00 %	4160.00		
	Spcl Additional Duty (SAD):				4.00 %	1059.60		
7	85182900	CAR AMPLIFIERKENWOOD-KAC-6495-7495						
360.00	35.000000	851829			25.00 %	126890.70		
	Surcharge Duty/SCD:				0.00 %	0.00		
	PCE	319403.00	851829	026/2001	16.00 %	103080.60		
	Spcl Additional Duty (SAD):				4.00 %	26892.40		
8	85271200	CAR CD PLAYERKENWOOD-KDC-717 W						RSP ITEM
11.00	30.000000	852712	022/2002	286	30.00 %	26434.30		
	Surcharge Duty/SCD:				0.00 %	0.00		
	PCE	128116.44	852712	026/2001	16.00 %	24523.07		
	Spcl Additional Duty (SAD):				4.00 %	7521.20		

Copy of
B/E No.
299570
dated
07.10.2002

Declaration
1. I/We Certify that the above entries are correct.
2. I/We further declare that wherever the RSP is applicable same has been truthfully declared.
CHA: IS K MEHRA CLEARING & Forwarding P I
Importer: JAPONICA INTERNATIONAL PVT. LTD.
Signature: _____ Signature: _____
Continued on page 2

India Customs EDI System - Imports (ICES/I)
New Customs House, Ballard Estate, Mumbai-400008

NEW CUSTOMER
EDI Service
005

BILL OF ENTRY FOR HOME CONSUMPTION

CU No. In Bill: INBOM11 CHA: 11/0121 IS K MEHRA CLEARING & Forwarding P I
SE No. In Bill: 299570 /07/10/2002/N/H

Importer Details: 020001023Y PAN: AAACJ8649H1T001
JAPONICA INTERNATIONAL PVT. LTD.
Inv No & Dt: JGF/1173/02 24/09/2002 JAGGY'S GOLF FZE.

Sl. No.	HTS	Description	CTH	C. Ntdn	C. NEND	RSP	Load	PK
Unit	Unit Price	Ass Val	CTH	E. Ntdn	E. NEND	Exc Dty Rt	BCD	Exc Dty Rt
9	85182900	CAR AMPLIFIERKENWOOD-KDC-6495						
162.00	35.000000	851829			25.00 %	43639.30		
	Surcharge Duty/SCD:				0.00 %	0.00		
	PCE	179237.02	851829	026/2001	16.00 %	29047.40		
	Spcl Additional Duty (SAD):				4.00 %	10163.70		
10	85271200	CAR CD PLAYERKENWOOD-KDC-CF2899W W						RSP ITEM
51.00	35.000000	852712	022/2002	286	30.00 %	24283.40		
	Surcharge Duty/SCD:				0.00 %	0.00		
	PCE	97418.51	852712	026/2001	16.00 %	17584.00		
	Spcl Additional Duty (SAD):				4.00 %	5509.50		
74.	1475733.52							Page Total Rs. 770739.20
BCD	Rs.	1475733.52						BE Gross Total Rs. 770739.20
Exc Dty	Rs.	292032.70						Exc Dty Rs. 0.00
SCD	Rs.	301580.70						SCD Rs. 0.00
FTA	Rs.	0.00						FTA Rs. 0.00
		0.00						Spcl Additional Duty Rs. 84225.90

Copy of
B/E No.
299570 dated
07.10.2002

Duty Payable: *
Rs. Seven Lakh Seventy Thousand Seven Hundred and Thirty Nine only

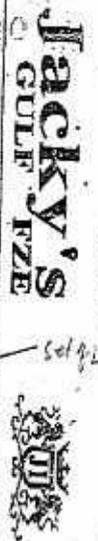
Container Details

1 12374 F TRIU379443

RSP Details

Sl. No.	Item No	Description of Item with Specification	NOU	RSP Rs./Unit	Ass Val
1	5		10	4000	40000
2	8		87	3000	258000
3	15		51	4000	204000
4	02-07	PANAD. 1			

Declaration
1. I/We Certify that the above entries are correct.
2. I/We further declare that wherever the RSP is applicable same has been truthfully declared.
CHA: IS K MEHRA CLEARING & Forwarding P I
Importer: JAPONICA INTERNATIONAL PVT. LTD.
Signature: _____ Signature: _____



جاکیس جلف فزے
41
007

S/No	Parts Description	Q/Unit	No of Qty	T/Qty	L	B	H	Vd	T. Vol	Wt	T. Wt	Ch No
1	Display PCB	9	1	9	0.565	0.365	0.555	0.1004	0.1004	0.07	6.07	58
2	Tuner PCB	99	1	99	0.4	0.35	0.41	0.2024	0.2024	7.0	7.0	59
3	15W Power Amplifier PCB	10	3	30	0.65	0.35	0.75	0.1045	1.0045	0.2	7.0	60
4	Power Amplifier PCB	9	1	9	0.69	0.39	0.79	0.1045	0.1045	7.38	7.38	61
SONY VCD, NICOME-QTY 10PCS												
S/No Parts Description Q/Unit No of Qty T/Qty L B H Vd T. Vol Wt T. Wt Ch No												
5	MAIN PCB	10	1	10	0.565	0.365	0.52	0.1204	1.204	10.8	10.8	62
6	Video PCB	100	1	100	0.65	0.4	0.61	0.162	0.162	12.2	12.2	63
7	15W Power Amplifier PCB	100	1	100	0.65	0.35	0.75	0.1045	0.1045	15.0	15.0	64
8	Jacky PCB	20	5	100	0.565	0.365	0.555	0.1004	0.1004	13.5	13.5	65
SONY DVD, HCR-961-QTY 30 PCS												
S/No Parts Description Q/Unit No of Qty T/Qty L B H Vd T. Vol Wt T. Wt Ch No												
9	3W PCB (Prep unit)	10	2	20	0.565	0.365	0.59	0.1204	0.2408	7.95	15.9	66
10	6W PCB (Tuner unit)	20	1	20	0.565	0.365	0.59	0.1204	0.2408	7.8	7.8	67
11	Processor PCB (Tuner unit)	20	1	20	0.4	0.35	0.41	0.2024	0.2024	3.7	3.7	68
12	11W PCB (Cassette unit)	20	1	20	0.4	0.35	0.41	0.2024	0.2024	10.4	10.4	69
13	5W PCB (CD unit)	20	1	20	0.4	0.35	0.41	0.2024	0.2024	6.13	6.13	70
14	17W Power supply PCB (CD unit)	20	1	20	0.4	0.35	0.41	0.2024	0.2024	3.5	3.5	71
15	18 Video PCB (CD unit)	20	1	20	0.35	0.2	0.24	0.024	0.024	3.31	3.31	72
SHIPPING MARK BRIDGE												
SONY BROWSER, SS-1V7, QTY 50 PCS												
S/No Parts Description Q/Unit No of Qty T/Qty L B H Vd T. Vol Wt T. Wt Ch No												
16	Product case with speakers	1	46	46	1	0.365	0.465	0.1923	0.003	24.1	100.4	95-98
TOTAL (Cm No: 614,636-644,427-448,575-581)												
S/No Parts Description Qty T/Qty Wt T. Wt												
1	10PPL 6400	4	10	0.17	31.3							
2	2KAC 6465	50	150	2.1	55.5							
3	3KAC 7465	50	150	2.7	67.5							
4	4KAC 640	34	102	2	64.8							
5	5KCC 717	87	87	1.51	267.1							
6	6KDC OPS 800P	51	51	0.91	226.8							
TOTAL 275 943 2271.9												

Handwritten notes: "Case file 2023/04/20" and "Case file 2023/04/20" are written vertically on the left side of the document.

26.11 On perusal of the above, it can be said that, the importer in the present case nowhere mentioned that goods are stock lot and also did not produce any documents which proves that the said goods are stock lot. Therefore, in view of the above, I find that the case laws of **Kelvin Infotech** and **Hindustan Pencils supra** do not help the noticees.

26.12 Noticees argued that quotations cannot be utilized for valuation purposes. In this regard they relied upon the case law of **Puja Poly Plastics Pvt Ltd.**³⁸. Ratio of **Puja Poly Plastics(supra)** is that *quotations cannot be a basis for enhancement of assessable value and the invoice price has to be first discarded before the declared value can be enhanced.* In the instant case, clear grounds have been given for rejection of the invoice price as discussed above. I find that in the present case, the SCN has proposed valuation of goods of 'Sony Brand' and 'Kenwood Brand' on the basis of prices obtained from M/s Sony India Pvt. Ltd. and M/s Nippon Audiotronics (Sole distributor of 'Kenwood' in India), who are responsible for marketing 'Sony Brand' and 'Kenwood Brand' products across India

³⁸ Puja Poly Plastics Pvt Ltd vs Commissioner of Customs, Calcutta-2001(131)ELT200(T)

respectively. It is important to note that the prices provided by M/s Sony India and M/s Nippon Audiotronix, are not just quotations, but they are the actual manufacturing / FOB prices of the imported goods. As M/s Sony India and M/s M/s Nippon Audiotronix both manufacture and market the goods, prices provided by them can be relied upon for the valuation of the imported goods. In this regard, I rely upon the case laws of **Sharp Business Machines Pvt Ltd.**³⁹, **Pan Asia Enterprises**⁴⁰, **Hind Industries**⁴¹, **HCL Office Automation**⁴² and **Mytri Enterprises**⁴³.

(i) Hon'ble Supreme Court in **Sharp Business Machines Pvt Ltd. (supra)** held that *there is nothing wrong if value for the purpose of Customs duty is determined on the basis of quotations, specially when the supplier has been the authorised Agent of the manufacturer and the prices given in the quotations were based on the prices given by the manufacturer. Thus, there cannot be a question of supplying the components on a lesser price than given by the manufacturers themselves.*

(ii) Hon'ble Tribunal in **Pan Asia Enterprises (supra)** held that *it has already been well settled principle of law that quotation for identical goods can be accepted to determine the transaction value for the purpose of assessment under Section 14 of the Customs Act, 1962 read with the Customs Valuation Rules, 1988. This case was affirmed in Hon'ble Supreme Court*⁴⁴.

(iii) Hon'ble Tribunal in **Hind Industries (supra)** held that *the value can be determined on the basis of the quotation. This case was maintained in Hon'ble Supreme Court*⁴⁵.

(iv) Hon'ble Tribunal in **HCL Office Automation (supra)** held that *We have heard the rival submissions on this issue, we find that no doubt Section 14 of the Customs Act was amended later, but here we are not considering the Valuation Rules. In the present case, we are considering the acceptability of a quotation for purpose of determining the transaction value. In the instant case the facts are identical only there is a longer time lag, but that does not make the quotation invalid inasmuch as only against that quotation the phased manufacturing programme was allowed and imports were effected in 1991. There is no evidence placed on record to show that the appellants had obtained another quotation in view of the time lag. In this view of the matter, we hold that the ratio of the decision of the Apex Court in the case of Sharp Business Machines is fully applicable to the facts of the instant case. This case was affirmed in Hon'ble Supreme Court*⁴⁶.

³⁹ Sharp Business Machines Pvt Ltd vs Collector of Customs - 1990(49)ELT640(SC)

⁴⁰ Pan Asia Enterprises vs Collector -1995 (79) E.L.T. 322 (Tribunal)

⁴¹ Hind Industries vs Commissioner of Customs -1997 (90) E.L.T. 499 (Tribunal)

⁴² HCL Office Automation Ltd vs Commissioner -2000 (126) E.L.T. 808 (Tribunal)

⁴³ Mytri Enterprises vs Commissioner of Customs, Mumbai -2004 (174) ELT 389 (Tri- Mumbai)

⁴⁴ Pan Asia Enterprises v. Collector - 1997 (94) E.L.T. A59 (S.C)

⁴⁵ Hind Industries v. Commissioner - 1998 (99) E.L.T. A55 (S.C)

⁴⁶ HCL Office Automation Ltd. v. Commissioner - 2001 (130) E.L.T. A266 (S.C)

(v) Hon'ble Tribunal in **Mytri Enterprises(supra)** held that *25.The Commissioner arrived at the value of the impugned goods on the basis of the lowest quotation offered by one of the dealers in Dubai and not the highest price given by other dealers. One cannot find fault with such a decision. This case was affirmed in the Hon'ble Supreme Court⁴⁷.*

26.13 In view of the above, I find that facts of each case are unique. In the instant case, the prices provided by M/s Nippon Audiotronix and M/s Sony India were not only quotations but the actual prices at which they were themselves importing or could have imported the goods from their principals. Therefore, these were not only quotations. A quotation is only an offer that can be further reduced through negotiations. Since the prices given by M/s Audiotronix and M/s Sony India were those relating to imports from their principals, these prices have sanctity and are not mere quotations. Therefore, in view of the above, I find that the noticees argument that quotations cannot be utilized for valuation purposes, does not hold ground.

26.14 Noticees-1 & 2 argued that internet prices cannot be relied upon to enhance the declared values. They relied upon the judgments of **Aggarwal Distributors⁴⁸** and **Naresh Lokumal Serai⁴⁹**.

26.15 I find that the ratio decided by the Hon'ble Tribunal in the **Aggarwal Distributors(supra)** is that *document displayed on internet not reliable being unsigned and nature of price not being indicated therein* and the ratio decided in **Naresh Lokumal Serai(supra)** is that *internet prices are not a reliable basis for determining value as they only refer to retail prices in the country of export and not the price for export to India.*

26.16 I find that, in the case in hand, the SCN clearly disclosed the source/website from where the values had been taken and also outlined the reasons for adopting it after giving a certain discount. Also, the nature of the price is clearly mentioned in the said document. The SCN has also clearly brought out that though all the articles mentioned in the website had not been imported into India by Sony India Pvt. Ltd, there was one particular model which was imported into India and its value was consistent with the price given on the website after giving the appropriate discount. Hence, in view of the above, I find that the case law of **Aggarwal Distributors and Naresh(supra)** is not applicable in the present case. In this regard, I rely upon the case of **Mytri Enterprises⁵⁰** wherein the Hon'ble Tribunal has held that *prices quoted on the website can be relied upon to establish undervaluation.* The said case was further affirmed by the **Hon'ble Supreme Court⁵¹**. In

⁴⁷ Mytri Enterprises v. Commissioner - 2016 (336) E.L.T. A35 (S.C.)

⁴⁸ Aggarwal Distributors (P) Ltd. v. CC, 2000 (117) ELT 49 (T)

⁴⁹ Naresh Lokumal Serai v. CC, 2006 (203) ELT 580 (T)

⁵⁰ Mytri Enterprises vs Commissioner of Customs, Mumbai -2004 (174) ELT 389 (Tri-Mumbai)

⁵¹ Mytri Enterprises v. Commissioner - 2016 (336) E.L.T. A35 (S.C.)

fact, the SCN in the instant case proposed a discount of 25% from the website prices, but the undersigned has allowed a discount of 50% for valuation purposes. Therefore, in view of the above, I find that internet prices can be relied upon for valuation purposes under Customs Valuation Rules.

26.17 Rule 4 to Rule 8 of Customs Valuation (Determination of Price of Imported goods) Rules, 1988 are reproduced hereinbelow for reference :

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

5. Transaction value of identical goods. — (1)(a) *Subject to the provisions of Rule 3 of these rules, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued.*

6. Transaction value of similar goods. — (1) *Subject to the provisions of Rule 3 of these rules, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued.*

[6A. Determination of value when transaction value is not available. — *If the value of imported goods cannot be determined under the provisions of rules 4, 5 and 6, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 7A : Provided that at the request of the importer, and with the approval of the proper officer, the order of application of rules 7 and 7A shall be reversed.]*

7. Deductive value. — (1) *Subject to the provisions of Rule 3 of these rules, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India*

[7A. Computed value. — *Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of :-*

(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;

(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;

(c) the cost or value of all other expenses under sub-rule (2) of rule 9 of these rules.]

8. Residual method. — *(1) Subject to the provisions of Rule 3 of these rules, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and sub-section (1) of Section 14 of the Customs Act, 1962 (52 of 1962) and on the basis of data available in India.*

26.18 I find that the Hon'ble CESTAT remanded back the matter to decide afresh after the question of jurisdiction of DRI officers to issue notice. Apart from the remand issue, the other issues remain the same as the noticees have not presented any new submission other than those presented earlier. After due examination of records and noticees' submissions, I find myself largely in agreement with the findings of my predecessor Commissioner as recorded in the 1st OIO dated 28.03.2006. The findings are discussed item-wise below.

Kenwood Brand Items

(i) **Car Radio Cassette Player CPXM 4030:** - In this case the value declared in the B/E was US\$ 23 per piece which was loaded to US\$ 35 per piece by Mumbai Customs before the intervention of DRI. From the documents submitted by the noticees, there is no instance of import of this item or similar items by any other importer. As such Rules 5 and 6 of the CVR 1988 cannot apply in this case and one has to go by the price received by M/s Nippon Audiotronix Pvt Ltd. from their foreign supplier at US\$ 202 per piece under Rule 8. Since M/s Nippon were the sole distributors of Kenwood products in India, the price indicated to them by their principles would obviously be the lowest and as such this price cannot be ignored. The price supplied by M/s Nippon was for Indonesian origin products and the party's goods of Kenwood brand were also found to be of Indonesian origin at the time of examination. (Refer para 4 above)

(ii) **Car Amplifier KAC 649 S:** - In this case, the assessable value declared was US\$ 13.5 per piece which was enhanced to US\$ 35 per piece by Mumbai Customs before the intervention by the DRI. In this case too, no contemporaneous imports have been cited by the noticee and therefore the price of US\$ 92 per piece indicated by M/s Nippon Audiotronix has to be accepted under Rule 8.

- (iii) **Car Amplifier KAC 749 S:-** For the same reasons as mentioned in the above two categories, the price of US\$ 107 per piece as indicated by M/s Nippon has to be accepted instead of the price of US\$ 13.5 per piece declared by the party.
- (iv) **Car CD player KDC-717:-** In this case, the party has produced an invoice dt. 14.4.2003 under which another importer, M/s Echovision Electronic, had imported identical goods vide B/E No 350703 dated 22.4.2003 at a declared value of US\$ 25 per piece. However, this cannot be considered to be contemporaneous imports as it relates to a period of more than 06 months after the imports effected in instant case vide B/E No.299570 dt 7.10.2002. As such Rules 5 and 6 of the CVR 1988 cannot apply in this case and one has to go by the price received by M/s Nippon Audiotronix Pvt Ltd. from their foreign supplier at US\$ 97.29 per piece. Since M/s Nippon were the sole distributors of Kenwood products in India the price indicated to them by their principles would obviously be the lowest and as such this price cannot be ignored. Hence the price of this model is taken as US\$ 97.29 per piece under Rule 8 of the Valuation Rules.
- (v) **Car Amplifier KDC 849:-** - On the same grounds as mentioned in respect of items mentioned at Sr No (i) to (iii) above, the price to be taken for this is US\$ 120 per piece as indicated by M/s Nippon Audiotronix against the price of US\$ 15 per piece declared by the party.
- (vi) **Car CD player KDC CPS 89 MP:-** - The party has produced an invoice dated 24.9.2003 of import of this item by another party, M/s Vaz Enterprises at US\$ 22 per piece under the B/E No. 761 dt 15.10.2003. For the same reasons as mentioned at Sr.No. (iv) above, this value cannot be accepted and one will have to adopt the price of US\$ 128 per piece which has been indicated by M/s Nippon Audiotronix.
- (vii) **Stuffed PCB for CCPW/Radio KRC 265:-** - The contemporaneous import cited by the party relates to their own case where imports were effected vide B/E No. 295689 dated 19.9.2002. Since it relates to their own case where the price of US\$ 4.80 per set declared by them was rejected and loaded to US\$ 8 per set, the same cannot be accepted because the declared price was rejected and the additional evidence now available as per DRI investigations were not available then. As such the loaded price of US\$ 8 per set at that time cannot be accepted for the instant consignment. In fact, when the importers were aware that their earlier price had been enhanced to US\$ 8 per set they should have declared at least this enhanced value in the present case since the earlier enhanced value became the transaction value in absence of any appeal filed by them against the said enhanced value. In this regard, I rely upon the case law of **Ganesh International**⁵² wherein Hon'ble Tribunal held that *"18.As per the contention, that the Commissioner ought not to have*

⁵² Ganesh international Vs Commissioner of Customs, Nagpur 2004 (169) ELT 284 (Trib. Mumbai)

taken the loaded value of the previous consignment for determining the value of the present one, we observe that the Commissioner adopted only that value which, on a previous occasion, was said to be the correct transaction value. If the argument is that loaded value should not have been the basis for the assessment of the impugned goods, the Commissioner could have still adopted the same price taking recourse to Rule 8 (best judgment method)". This is one more reason why the price of US \$ 4.50 per set declared in the instant case is liable for rejection. However, after rejecting this price, it is not possible to accept the earlier enhanced value of US\$ 8 per set since subsequent investigations have now revealed that even the enhanced value of US\$ 8 per set was too low. Since M/s Nippon Audiotronix Ltd could not give the prices of these PCBs, as they had not imported the same, Rule 5 of the CVR 1988 cannot be applied. One can then go to Rule 6 of the Valuation Rules and adopt the transaction value of similar goods. M/s Nippon Audiotronix Ltd has provided bills of entry and invoices for the imported mounted loaded PCBs (models KRC 288 and 489) for 'Radio Cum Car Cassette Player', priced at US\$ 27.18 and US\$ 34.75 per piece, respectively. Lowest value of these two, i.e. US\$ 27.18 per piece can be adopted as the value of the loaded PCB of Model KRC 265 under Rule 6 of CVR 1988.

(viii) **Stuffed PCBs for CCPW/Radio KRC 365** - The party has not provided particulars of any case of import of similar items earlier. As such, going by the lowest of the prices of stuffed PCBs of two similar models imported by M/s Nippon Audiotronix, the price can be taken as US\$ 27.18 per piece under Rule 6 of CVR 1988 for a loaded/stuffed PCB of Model KRC 365.

(ix) **Stuffed PCBs for CCPW/Radio KRC 665** - For the same reasons as mentioned at Sr. No. (vii) and (viii) above, the price of this can be taken as US\$ 27.18 per piece.

Sony Brand Items

A. M/s Sony India Pvt Ltd, who are responsible for marketing Sony brand products all over India, have clearly indicated that worldwide Sony does not sell any mounted PCB /components. Thus, it is clear, as mentioned in the SCN, that populated PCBs meant for Sony products have been procured by the party by dis-assembling or dismantling complete units. Since neither any contemporaneous imports of the PCBs are available nor are similar goods found in the Indian market, Rules 5 to 7 of the Valuation Rules cannot be applied. Rule 7A also cannot be applied since the cost of manufacture of these PCBs in the country of origin is not known. The only option, therefore, is to resort to the residual method under rule 8 in a manner which is consistent with the principles and general provisions of the Valuation Rules. Since PCBs have been procured by dismantling complete units, their price can be determined only as a percentage of the complete unit. M/s Sony India Pvt Ltd have supplied the ratio of the cost of the Populated PCBs to the corresponding complete unit.

For models for which this ratio has not been provided by Sony India, it can be taken as the lowest of the ratios provided. The valuation of each Sony make PCB is discussed below serially: -

(i) Stuffed/loaded PCB (set of 07 PCBs - refer para 3 above) for DVD Player

Model No HCR S9D- The party has produced a B/E No 408488 dt 13.11.2003 of M/s Vinayak Enterprises where the price of the PCB was US\$ 16 per set but was enhanced to US\$ 20 per set by the Customs. However, from the description given in the said B/E, it is seen that it relates to model WZ 8 (stated to be a new model of S9D) and consists of sets of 8 pieces of populated PCBs. Thus, these are not identical goods and not comparable. Furthermore, the imports were made more than a year after the case under investigation and, therefore, it cannot be treated as contemporaneous imports. For the complete unit contemporaneous import prices are available since Sony India themselves have imported it in India in December 2002 at US\$ 378.94 which, at the prevailing exchange rate of 1US\$= Rs 48.60, comes out to Rs. 18416.48/- per piece. For this Model Sony India could not supply the ratio of the cost of the PCB to the cost of the complete unit. In that case the lowest of the ratios (28.56%) provided can be adopted for this model. In that case the price of one set of PCBs of this type comes to 28.56% of Rs 18416.48 = Rs 5259.75.

(ii) Stuffed/loaded PCB (set of 05 PCBs) for VCD Model No MHC RV7- The party has not provided details of contemporaneous imports for this model of PCB. M/s Sony India did not provide the import price of the complete unit of this model. For ascertaining the price of the complete units whose import price in India could not be provided by Sony India Pvt Ltd, the website of Sony Malaysia has been rightly taken as the goods of SONY brand were found on examination to be of Malaysian origin (refer para 4 above). Department has proposed in the SCN a discount of 25% on the price given on the website for the complete unit. Keeping in mind the fact that the prices quoted on the website are retail prices, a discount of 50% on the website price would be more reasonable for arriving at the wholesale price of the complete unit. Taking the discount as 50% and the ratio of the cost of populated PCB to the complete unit as indicated by Sony India Ltd, the CIF value of this Sony brand stuffed/loaded PCBs would be 30.31 percent of the Malaysian website price of the complete unit reduced by 50%. Calculation given in the Table below.

Sr. No.	Description	Price in Malaysia in Ringets as per Sony website	In Indian Rs. (1 Ringet=Rs. 12.70	50% of MRP taken as CIF value	PCB as % of complete Unit	CIF value of stuffed PCB in Rs.

1.	VCD Model No. Sony MHC RV7	1888.00	23977.60	11988.80	30.31	3633.81
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(iii) **Stuffed/loaded PCB (set of 04 PCBs) for VCD Model No MHC RV5-** No contemporaneous imports have been indicated by the party and Sony India could not give the price of the complete unit. Hence, as discussed in sr. no (ii) above, the price of the PCB will be 31.15 percent of the Malaysian website price of the complete unit reduced by 50%. Calculation given in the Table below.

Sr. No.	Description	Price in Malaysia in Ringets as per Sony website	In Indian Rs. (1 Ringet=Rs. 12.70)	50% of MRP taken as CIF value	PCB as % of complete Unit	CIF value of stuffed PCB in Rs.
1.	VCD Model No. Sony MHC RV5	1348.00	17119.60	8559.80	31.15	2666.38

(iv) **Stuffed/loaded PCB (set of 04 PCBs) for VCD Model No MHC RV2-**No contemporaneous imports have been indicated by the party and Sony India could not give the price of the complete unit. Hence the price of the PCB will be 32.24 percent of the Malaysian website price of the complete unit reduced by 50%. Calculation given in the Table below.

Sr. No.	Description	Price in Malaysia in Ringets as per Sony website	In Indian Rs. (1 Ringet=Rs. 12.70)	50% of MRP taken as CIF value	PCB as % of complete Unit	CIF value of stuffed PCB in Rs.
1	VCD Model No. Sony MHC RV2	1188.00	15087.60	7543.80	32.4	2432.12

(v) **Stuffed/loaded PCB (set of 04 PCBs) for VCD Model No MHC RV6-** No contemporaneous imports have been indicated by the party and Sony India could not give the price of the complete unit. Hence the price of the PCB will be 28.56 percent of the Malaysian website price of the complete unit reduced by 50%. Calculation given in the Table below: -

Sr. No.	Description	Price in Malaysia in Ringets as per Sony website	In Indian Rs. (1 Ringet=Rs. 12.70)	50% of MRP taken as CIF value	PCB as % of complete Unit	CIF value of stuffed PCB in Rs.
3	VCD Model No. Sony MHC RV6	1668.00	21183.60	10591.80	28.56	3025.02

B. **6", 5" and 2" Speakers for Hi FI Music System (sets of 2 speakers)-** In this case, the price of the complete unit (speakers) have been taken from the Sony Malaysia website. From the calculations given in the show cause notice by DRI (refer para 10 above), it appears that the DRI has presumed that they were not complete speakers but the PCBs of speakers. This is factually not correct. Even the Bill of Entry filed by the party has declared these items as speakers and classified them under heading 8518 which relates to speakers. They have not claimed classification under heading 8529 which relates to parts of speakers (including loaded PCBs). The calculations done by DRI, therefore, treating these speakers as PCBs is not correct and what has to be taken is the correct CIF value of the complete speakers and not their PCBs. Since no contemporary imports have been noticed the price can be taken from the Sony Malaysia website by reducing it by 50% to take care of discounts and retail overheads/profits under Rule 8 of the Customs Valuation Rules, 1988. In this regard, I rely upon the judgement of the Apex Court in the case **Hind Industries**⁵³ wherein it has been held that valuation arrived at after giving suitable allowance on quotation price, is totally reasonable. The price on the website was 2188 Malaysian Ringets which comes to Rs. 27787.60 (1 Ringet Rs 12.70). 50% of this comes to Rs 13893.80 per set of two speakers.

26.19 In view of the above, I conclude that the redetermined assessable value of the goods imported by M/s Japonica International vide B/E No. 299570 dated 07.10.2002, is Rs. 55,51,744/- (Rupees fifty five lakh fifty one thousand seven hundred forty four only) as indicated in the Annexure-A to this Order.

27. Confiscation and Penalties.

27.1 Noticees have argued that since the goods correspond in respect of value with the entry made under Section 46 of the Act, no confiscation is warranted under the provisions thereof.

27.2 I find that charges of misdeclaration and undervaluation already stand established from the foregoing discussion in respect of goods imported vide Bill of Entry No 299570

⁵³ Hind Industries Vs Commissioner [1988 (99) ELT A55 (SC)]

dated 07.10.2002 by M/s Japonica International. Therefore, I find that said goods are liable for confiscation under Section 111(m) of the Act as the same do not correspond in respect of value and description with the entry made under the Act. Shri Prem Kumar Gajra, (Director: M/s Japonica International), was the human face of the company and was directly associated with the import and the misdeclaration. In fact he was the one who went abroad and negotiated the deal which resulted in the gross undervaluation. Therefore, I find that Noticees-1 & 2 are liable for penal action under Section 112(a) of the Act for their act of omission and commission which rendered the said goods liable for confiscation.

28. I also take note of the ratio contained in the judgements in the cases of **Banshi Dhar Lachhman Prasad⁵⁴**, **SPL Industries Limited⁵⁵** and **Gautam Diagnostic Centre⁵⁶** which states 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. 66/2006/CAC/CC(I)AKP dated 28.03.2006 on the quantum of penalty to be imposed, which appears justified in the facts and circumstances of the case.

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

ORDER

29.1 I hereby finalise the assessment of provisionally assessed BE No. 299570 dated 07.10.2002 under section 18 read with section 17 of the Customs Act, 1962 by determining the value of the said goods as shown in **Annexure-A** to this Order. The concerned DC (Appraising Group VB), NCH, Mumbai is directed to accordingly finalise the said BE on the ICES System.

29.2 I confirm the demand and order for recovery of differential duty of **Rs. 21,67,015/- (Rupees twenty one lakh sixty seven thousand fifteen only)** as indicated in the Annexure-A to this Order, under section 18 read with sections 17, 124 and 125(2) of the Customs Act, 1962. Since the goods have been released on execution of Bond with B/G, the differential duty should be recovered either by enforcing the Bond /Bank Guarantee or by any other means in accordance with law.

29.3 I order for confiscation of the goods imported vide BE No. 299570 dated 07.10.2002 having re-determined value of **Rs. 55,51,744/-** (as per the Annexure-A to this Order) under Section 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the above said goods on payment of Redemption Fine of **Rs.15,00,000 (Rupees fifteen lakh only)** under Section 125 of the Customs Act 1962. While imposing

⁵⁴ Banshi Dhar Lachhman Prasad & Anr-1978 (2) E.L.T. (J 385) (S.C.)

⁵⁵ SPL Industries Limited vs Commissioner of Central Excise, New Delhi-II-2003(159) ELT 720(T)

⁵⁶ Gautam Diagnostic Centre vs Commissioner Of Customs, Mumbai-2003(159) ELT 678(T)

the fine, it has also been kept in mind that the party has used the amount of duty saved in his business for all these years. Since the goods are no longer available, having been released on execution of Bond with B/G, the fine should be recovered either by enforcing the Bond Bank Guarantee or by any other process in accordance with law.

29.4 I impose a penalty of **Rs. 5,00,000 (Rupees five Lakh only)** on M/s Japonica International Pvt Ltd. under section 112(a) of the Customs Act, 1962.

29.5 I impose a penalty of **Rs. 1,00,000 (Rupees one lakh only)** on Shri Prem Kumar Gajra, Director of M/s Japonica International Pvt Ltd, under section 112(a) of the Customs Act, 1962.

Vivek
30.4.23

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



To

1. M/s Japonica International, 14, first floor, Indraprastha Arcade, Khanvel Road, Silvassa.
2. Shri Premkumar Gajra, Director of M/s Japonica International Pvt Ltd. Vasundhara, Office No.7, Seventh floor, 2/7, Sarat Bose Road, Calcutta -20

Copy to:

1. The Pr. Chief Commissioner of Customs, Mumbai Customs Zone-I, NCH, Mumbai.
2. The Pr. ADG, Directorate of Revenue Intelligence, MZU, Mumbai.
3. The Addl./Jt. Commissioner of Customs, Appraising Gr. VB, NCH, Mumbai.
4. The Dy./Asst. Commissioner of Customs, Appraising Gr. VB, NCH, Mumbai.
4. The Supdt./CHS, NCH, Mumbai – For Display on Notice Board.
5. Office Copy.

ANNEXURE-A TO ORDER IN ORIGINAL NO.: 05/2023-24/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I) DATED 30.04.2023

B/E NO. 299570 DATED 07/10/2002

IMPORTER: M/s JAPONICA INTERNATIONAL Pvt. Ltd.

IEC:0200010239

Sr. No.	Description	Model No.	Declared Value in USS	Assessed value in USS	Redetermined CIF value in USS by the Commissioner (Adjudicating Authority)	No. of PCS	Total Value in USS	Total Value in Rs. @15 = 48.6 RS.	Assessable Value in Rs.	BCD in Rs. @30/25%	CVD @ 16% in Rs.	SAD @ 4% in Rs.	Total duty in Rs.	Duty Assessed and paid in Rs.	Duty payable after re-assessment in Rs.
KENWOOD Brand															
*1	Car Radio Cassette Player	CPX-M4030	23	35	202	10	2020	98172	99153.72	29746.12	*25779.98	6187.19	61713.29	10373.8	51339.49
2	Car Amplifier	KAC-649S	13.5	35	92	150	13800	670680	677386.8	169346.7	135477.36	39288.43	344112.49	261824.7	482505.59
3	Car Amplifier	KAC-749S	13.5	35	107	150	16050	780030	787830.3	196957.58	157566.06	45964.16	400217.8		
*4	CAR CD Player	KDC-717	15	30	97.29	87	8464.23	411361.58	415475.19	124642.56	*99714.05	25593.27	249949.88	75497.5	174452.38
5	Car Amplifier	KDC-849	15	35	120	102	12240	594864	600812.64	150203.16	120162.53	34847.13	305212.82	89020.4	216192.42
*6	Car CD Player	KDC-CPS89MP	18	35	128	51	6528	317260.8	320433.41	96130.02	*76904.02	19738.7	192777.74	51209.1	141563.64
7	Stuffed PCB for CCPW/Radio-KENWOOD KRC-265		4.8	8	27.18	300	8154	396284.4	400247.24	100061.81	80049.45	23214.34	203325.6	149614.1	358699.9
	Stuffed PCB for CCPW/Radio-KENWOOD KRC-365				27.18	300	8154	396284.4	400247.24	100061.81	80049.45	23214.34	203325.6		
	Stuffed PCB for CCPW/Radio-KENWOOD KRC-665				27.18	150	4077	198142.2	200123.62	50030.91	40024.72	11607.17	101662.8		
Total KENWOOD Brand								3863079.38	3901710.17	1017180.66	815727.62	229654.73	2062298.02	637539.6	1424753.42
SONY brand In Rupees															
8	Stuffed Ldd PCB for DVD player (Set of 7 pcs) SONY HCR S9D		17.5	17.5	5259.75	20		105195	106246.95	26561.74	21249.39	6162.32	53993.45	8727	45246.45
9	Stuffed Ldd PCB for VVD player (Set of 5 pcs) SONY MHC RV7		13.5	13.5	3633.81	99		359747.19	363344.66	90836.17	72668.93	21073.99	134579.09	33326.6	151252.49
10	6" , 5" & 2" Speakers SS-RSV8 for R/HiFi Mu. Sy Sony (Set of 2 pcs)		25.5	25.5	13893.8	44		611327.2	617440.47	185232.14	128427.62	37244.01	350903.77	31299.9	319603.87



Virek
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11	Stuffed Ldd PCB for VCD player (Set of 4 pcs) SONY MHC RV5	12	12	2666.38	50		133319	134652.19	33663.05	26930.44	7809.83	68403.32	59845.7	226158.96	
	Stuffed Ldd PCB for VCD player (Set of 4 pcs) SONY MHC RV2	12	12	2432.12	50		121606	122822.06	30705.52	24564.41	7123.68	62393.61			
	Stuffed Ldd PCB for VCD player (Set of 4 pcs) SONY MHC RV6	12	12	3025.02	100		302502	305527.02	76381.76	61105.4	17720	155207.73			
Total SONY BRAND							1633696.39	1650033.35	443380.38	334946.19	97133.83	875480.97	133199.2	742261.77	
GRAND TOTAL							5496775.77	5551743.52	1460561.04	1150673.8	1	326788.56	2937778.99	770738.8	2167015.19

Note: 1) Re-determined CIF value indicated for items at SLNo. 8 to 11 are in Indian Rupees

*2) CVD calculated on the basis of Retail Sale Price (RSP) as abatement @35%, 40% & 40% was applicable for the item no. 1, 4 & 6.

Vinck
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