



भारत सरकार

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

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फा.सं. : S/10-108(Commr.I-25)/2007 VB

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

आदेश दिनांक: 16.02.2024
जारी दिनांक: 16.02.2024

सी.ए.ओ. क्रमांक : 71/2023-24/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I)
DIN No. 2024027700000000E860

मूल आदेश

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



GOVERNMENT OF INDIA
MINISTRY OF FINANCE/ DEPARTMENT OF REVENUE
CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS, INDIAN CUSTOMS - MUMBAI ZONE - I
OFFICE OF THE COMMISSIONER OF CUSTOMS (IMPORT-I)
2nd FLOOR, NEW CUSTOM HOUSE, SHOORJI VALLABHDAS ROAD, BALLARD ESTATE,
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F.No. : S/10-108(Commr.I-25)/2007 VB

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

Date of Order: 16.02.2024
Date of Issue: 16.02.2024

C.A.O. No.:71/2023-24/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I)
DIN No. 2024027700000000E860

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.

Final OIO Subject: Second round of adjudication of Show Cause Notice dated 09.02.2007 issued vide F.No. 50D/19/2005-C.I. by ADG DRI Headquarter, New Delhi to M/s Maurya Traders and others, in pursuance of the Hon'ble CESTAT's Remand Order No. A/90199-90202/17/CB dated 11/10/2017, regarding evasion of customs duty of Rs. 54,42,714/- in the import of components of Digital Satellite Receiver by under-valuation.

Brief facts of the case

This is the second round of adjudication of the **SCN dated 09.02.2007** issued vide F.No. 50D/19/2005-C.I.¹ after the **Hon'ble Tribunal vide Order No. A/90199-90202/17/CB dated 11/10/2017²** remanded back the 1st OIO dated 28.03.2008 issued vide F.No. S/10-108(Commr.I-25)/2007 VB³ and ordered that "3. Revenue although confirms above proposition, says that Hon'ble High Court of Bombay in the case of Sunil Gupta Vs. Union of India - 2014-TIOL-1949-HC-MUM-CUS and Hon'ble High Court of Andhra Pradesh in the case of Vuppalamritha Magnetic Components Ltd. Vs. DRI (Zonal Unit), Chennai - 2017 (345) ELT 161 (AP) have held contrary to the aforesaid decision. It may be stated that when an appeal is admitted, order or judgment of lower court is in jeopardy and judgment of Apex Court shall bring the matter to finality as has been held by Apex Court in the case of Union of India Vs. West Coast Paper Ltd. - 2004 (164) ELT 375 (SC). Therefore, as a rule of consistency, this matter may also go back to the adjudicating authority for appropriate decision on the basis of outcome of the Apex Court judgment in the case of Mangali Impex (supra).

4. As we have not touched the merit of the case, while making fresh adjudication on the basis of outcome of Apex Court decision, as stated herein before, appellants shall be granted reasonable opportunity of hearing to argue both on facts and law as well as on merit before learned adjudicating authority. That authority, recording pleading as well as evidence, shall pass a reasoned and speaking order.

5. In the result, appeals are remanded to the adjudicating authority."

2. The facts of present case are that an information was received by the **Directorate of Revenue Intelligence Hqrs, New Delhi⁴** that several Delhi based importers were regularly importing 'Components of Digital Satellite Receiver' of Chinese origin in the form of a kit which is part of an assembly popularly known as DTH (Direct to Home); that the goods were imported from Hong Kong port as well as some other Chinese ports also and that components of **Digital Satellite Receiver⁵** consists, among others, of five main items viz.,

(i) Main PCB board

(ii) Power Board

¹ Also referred to as the notice or the SCN

² Also referred to as the Tribunal Remand Order

³ Also referred to as 1st OIO

⁴ Also referred to as DRI Hqrs

⁵ Also referred to as DSR



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(iii) Front Panel with PCB

(iv) Remote Control and

(v) Wires and cables.

2.1 Information was also collected that these importers were importing one of the components- Main PCB Board- at grossly undervalued price and that whole kit was cleared at a value of 6 to 6.5 US \$ per kit (CIF value), whereas the value of the Main PCB Board alone was more than 16 USD/pc. Names of certain Delhi based importers who were engaged in the business of import of the above said items were mentioned in the information. On the basis of the aforementioned information, investigations were initiated into import of **Main PCB Board for Digital Satellite Receiver**.

2.2 Technical details of a DSR (Digital Satellite Receiver):

A Digital Satellite Receiver is essentially an Integrated Receiver Decoder also known as a Set Top Box. The Wikipedia definition of an Integrated Receiver Decoder (taken from the website - <http://www.answers.com/topic/integrated-receiver-decoder>) is:

"An electronic device used to receive a radio-frequency signal and decode the digital information contained in it"

As per the Dept. of Information Technology (in terms of their letter dated 24.11.2004 addressed to the Dy. Commissioner Customs, Nhava Sheva, Mumbai); an Integrated Receiver Decoder (IRD), can be classified into following types, depending upon the modulation technique used:

- (1) Terrestrial Digital (Modulation: COFDM i.e., Coded Orthogonal Frequency Division Multiplexing)
- (2) Satellite Digital (Modulation: QPSK i.e., Quadrature Phase Shift Keying)
- (3) Cable Digital (Modulation: QAM i.e., Quadrature Amplitude Modulation)

2.3. The product in question i.e., the said goods, in the current case is the second one mentioned above i.e. the Digital Satellite Integrated Receiver decoder or the Digital Satellite Receiver (DSR). Thus, a DSR receives the digital signals transmitted by the satellites, decodes the digital information contained in them and converts them into analogue signals which are then fed into the television for viewing. The main component of a DSR is the Main PCB Board. While other components include the Power Board, Wires & Cables, Remote & the Front Panel with PCB which caters to the display. The Main PCB Board, in turn, consists of primarily, the following components:

i) Tuner which receives QPSK modulated L band signals (950-2150 MHz) from LNBF (Low Noise Block Down Converter) and converts it into I.F. Frequency and demodulates the signal into MPEG-2 digital transport streams (Digital signal).

ii) The decoder in IRD (MPEG-2 decoder chip) carries out the function of decoding the MPEG-2 digital transport streams and provides video/audio analogue signals for use in TV sets.

While some 'Main PCB Boards' have a built-in Tuner, others do not include the Tuner and include only the Decoder Assembly, in which case, the Tuner is a separate component.

2.4 In case of channels which are only Free-to-Air (FTA), a simple MPEG-2 decoder is used. While, in case of channels which are FTA & Pay TV (which have been encrypted/scrambled), the signal goes through MPEG-2 decoder and an additional interface circuit (smart Card/CI slot) which will decrypt (descramble) the pay TV channels into video /audio signal. Thus, Set Top Box (IRD) for satellite application can be further classified into two types:

a. Integrated Receiver Decoder (STB) for Free To Air (FTA) channels,

b. Integrated Receiver Decoder (STB) for FTA & Pay TV channels using CAS.

2.5 As per technical specification, both types of Integrated Receiver Decoder will decode MPEG-2 encoded signal and convert it from digital to analogue format using DAC (Digital to Analogue Converter) so that it can be recognized by a standard television. It extracts the individual channel from the larger satellite signal.

3. Further information was gathered that one Sh. Atul Gupta has imported the said goods in three firms viz., M/s. Maurya Traders, M/s. G.S. Enterprises and M/s. Vinayak Enterprises controlled by him. On being asked by DRI, M/s. Sai-Dutt Shipping Agency (P) Ltd, who had attended the clearances in respect of the said three firms, have supplied certain import documents in respect of the said three firms.

4. Scrutiny of the import related documents pertaining to M/s. Maurya Traders, 339, Triveni Apartments, Swayam Sewa Society, Opp. Central School, Jhilmil Colony, New Delhi- 110 095 indicated that:

4.1 M/s. Maurya Traders is a proprietorship firm owned by Sh. Ashwani Kumar Bhagat S/o Sh. M.P. Bhagat. M/s. Maurya Traders have imported Main Board for Digital Satellite Receiver, i.e., the 'said goods' declared as 'Unbranded Populated PCB for CATV Receiver (Set of 2)'. Thus, all these declarations refer to the 'said goods' only. The Customs Tariff Heading declared (85299090) in respect of all the imports is the same.

4.2 M/s. Maurya Traders had imported a total of 11 consignments comprising of 20068 pieces of the said goods during the period between January 2004 and July 2004. Out of these 11 consignments, three consignments of 1515 pieces each were supplied by M/s. Shenzhen Coship

Electronics Ltd, Shenzhen, China, three consignments of 1504, 2110 & 11809 pieces were supplied by M/s. Jiangsu Yinhe Electronics Co. Ltd., Jiangsu, China and remaining five consignments comprising of 2020 pieces each were supplied by M/s. Satedigital Technology Ltd., Hong Kong. All the 11 consignments were imported at New Custom House, Ballard Estate, Mumbai.

4.3 The CIF value of the said goods declared by M/s. Maurya Traders was 41 Hong Kong Dollars (HKD) per piece equivalent to 5.2/5.3 USD (app) for all the 11 consignments imported between January 2004 and July 2004.

4.4 All the 11 consignments were imported on payment of duty at the rate:

(i) BCD 20% and CVD 16% in respect of imports from 19th January 2004 to 21st June 2004 and

(ii) BCD-20%, CVD-16%, Cess 2% and Edu cess-2% in respect of one clearance made vide Bill of Entry dated 29th July, 2004.

5. Similarly, scrutiny of the import related documents pertaining to M/s. G.S. Enterprises, B-49, New Delhi South Extension Part-1, New Delhi-110 049 indicated that:

5.1 M/s. G.S. Enterprises is a proprietorship firm owned by Sh. Suresh Kumar Gupta, S/o. Late Sher Singh, E-75, South Extension Part -1, New Delhi-110 049. M/s. G.S. Enterprises have imported Main Board for Digital Satellite Receiver, i.e., the 'said goods' declared as 'Unbranded Populated PCB for CATV Receiver (Set of 2)'. Thus, all these declarations refer to the 'said goods' only. The Customs Tariff Heading declared (85299090) in respect of all the imports is the same.

5.2 M/s. G.S. Enterprises has imported a total of 5 consignments comprising of 9595 pieces of the said goods during the period November 2003 and December 2004. Out of these 5 consignments, two consignments comprising of 1515 pieces each were supplied by M/s. Shenzhen Coship Electronics Ltd, Shenzhen, China, one consignment of 1515 pieces was supplied by M/s. Satedigital Technology Ltd., Hong Kong and two consignments of 1414 pieces & 3636 pieces were supplied by M/s. Chenzhou Gospell Digital Technology Co. Ltd., Chenzhou, Hunan, China. All the 5 consignments were imported at New Custom House, Ballard Estate, Mumbai.

5.3 The CIF value of the said goods declared by M/s. G.S. Enterprises was 41 Hong Kong Dollars (HKD) per piece equivalent to 5.2/5.3 USD (app) for all the 5 consignments imported during November 2003 and December 2004.

5.4 All the five consignments were imported on payment of duty at the rate of

(i) BCD 25%, CVD 16% and SAD 4% in respect of imports made in the month of November 2003,

(ii) BCD-20%, CVD-16%, Cess 2% and Edu cess-2% in respect of remaining clearances made during August 2004 to December 2004.

6. Similarly, scrutiny of the import related documents pertaining to M/s. Vinayak Enterprises, B-41, Gali No. 3, North Chajjupur, Delhi indicated that:

6.1 M/s. Vinayak Enterprises is a proprietorship firm owned by Sh. Yogendra Sharma, S/o. J.N.Sharma, 284/13N, Brahman Gali, Vishwas Nagar, Delhi- 110 032. M/s. Vinayak Enterprises has imported a single consignment of Main Board for Digital Satellite Receiver, i.e., the 'said goods' declared as 'Unbranded Populated PCB for CATV Receiver (Set of 2)'. Thus, the declaration refers to the 'said goods' only.

6.2 M/s. Vinayak Enterprises has imported a single consignment comprising of 4040 pieces of the said goods vide Bill of Entry dated 01.12.2004. The supplier of the said single consignment was M/s. Satedigital Technology Ltd., Hong Kong and was cleared at New Custom House, Ballard Estate, Mumbai.

6.3 The CIF value of the said goods declared by M/s. Vinayak Enterprises was 41 Hong Kong Dollars (HKD) per piece equivalent to 5.3 USD.

6.4 The said single consignment was imported on payment of duty at the rate of BCD 20%, CVD 16%, Cess 2% and Edu cess 2%.

7. During the course of investigations, detailed enquiries were conducted to ascertain the actual value of the 'said goods' imported in India. The outcome of these enquiries is discussed in the following paras:

7A. Contemporaneous imports by other companies:

Enquiries with respect to the prices declared before Indian Customs at which the other contemporaneous importers had imported the said goods were initiated. It was found that certain importers were declaring prices in agreement with the information received due to which these importers clearly came under the ambit of undervaluation. Thus, it was noticed that M/s. A.G. Incorporation, M/s. Overseas Business Corporation, M/s. Coir Cushions Ltd., M/s. F.M. Communications, M/s. Gardiner Exim Private Limited, M/s. H.R. Electronics, M/s. Laxmi Radios, M/s. Paras Electronics, M/s. JKM Enterprise and M/s. Jitin Electronics among others had imported the said goods declaring CIF value in the range of 2.7 USD/21HKD to 5.6 USD/43.5HKD per piece. These are indicative of the prices at which these importers were importing the said goods by resorting to undervaluation. Thus, broadly speaking, the range of value in respect of these importers was observed to be 2.5 USD to 6 USD/ piece. Suitable investigations have been initiated separately into the imports undertaken by these importers as well and on completion of investigations, Show Cause Notices have been issued to M/s. A.G. Incorporation, M/s. Overseas Business Corporation, M/s. Coir Cushions Ltd., M/s. F.M.

Communications and M/s. Gardiner Exim Private Limited, demanding Customs duty evaded by them.

However, certain other contemporaneous importers were found to be declaring relatively higher CIF values (USD 10.5 to USD 27.25/piece), which appeared to be correct in light of the said information. The imports of the said goods made by some of these importers are discussed as under:

7A-1 Imports by M/s. MCBS, Ahmedabad

It was gathered that M/s. Modern Cable and Broadcasting Services (MCBS) based at Ahmedabad were importing Main Board of DSR for assembly of Digital Satellite Receivers and were selling the same to Doordarshan, New Delhi and that they have imported Main Board for DSR for FOB value of 15.25 USD per unit to 22.5 USD per unit. Sh. Gyan Chand Jain, Managing Director of the said firm was summoned and his statement under Section 108 of **the Customs Act, 1962**⁶ was recorded on 26.2.2005, wherein Sh. Gyan Chand Jain stated, interalia, that his firm is engaged in the manufacture of Communication Broadcasting Equipment and were importing various components viz., tuner, remote units, decoder unit (main PCB), front panel with PCB from China/ Hong Kong for the assembly of Set Top Box (Direct to Home-DTH); that the approximate price of main PCB ranges from US\$ 7-12, depending upon the chipset used which could be of different IT solutions; that the price of tuner is US\$ 6-9 depending upon the brand and that they are selling their assembled Set top Box along with LNB and Dish Antenna @ Rs.2300-2500 per unit. On being asked, he also stated that the popular IT solutions used in the manufacturing of Main PCB / Board are of Haer, Fijutsu, NEC and ST, which were generally imported by the traders of this item in India.

Subsequently, M/s MCBS submitted Bills of Entry vide which they imported the said goods. Perusal of those documents reveals that:

- i) For the goods- 'Populated PCB for Digital Satellite Receiver', they have declared FOB value of 14 USD per piece, in their imports made during the year 2004. (It may be noted that as per Shri Jain, these PCBs imported do not include the Tuner, which they were importing separately.)
- ii) The FOB value declared for 'Tuner' was USD 8.5 per piece over the same period.
- iii) Thus, the value of the Decoder Unit and the Tuner taken together as imported by them would be FOB value of USD 22.5 /unit over the period in question.
- iv) All the consignments were of Chinese origin and the quantity imported in a single Bill of Entry was in the range of 2000 pieces to 10,000 pieces.

7A-2 Imports by M/s Electronic Enterprises:

⁶ Also referred to as the Act

Similarly, it was gathered that M/s Electronic Enterprises, F-49, Moti Nagar, New Delhi had also imported the said item, Sh. Ravi Madan, Proprietor of M/s. Electronic Enterprises was summoned under Section 108 of Customs Act, 1962 and his statement was recorded on 4.4.2005. In his aforesaid statement, Sh. Ravi Madan interalia stated that in his said firm, he had imported one consignment of Parts of Satellite Receiver i.e., Main PCB, from China and that the consignment was from stock lot and was based on two different ICs namely Fujitsu and Haier Solutions. The documents furnished by Sh. Ravi Madan indicated that the said consignment of 5050 pieces of 'Main Board for Satellite Receiver' was supplied by M/s. New Everest Trading Company, Kowloon, Hong Kong at the rate of 10.5 USD (CIF) per piece. The goods were of Chinese origin and classified under CTH 85229000.

7A-3 Imports by M/s Catvision Products Limited:

M/s. Catvision Products Ltd, 5 E-14-15, Sector-8, Noida, UP were found to have imported about 11 consignments of the said goods-Main Board for Digital Satellite receiver/ Main PCB for Digital Satellite receiver, during the period November 2003 to November 2004. It was observed that during the said period of one year, FOB value for the said goods was in the range of 10.75 USD to 18 USD/unit. The country of origin was China in all these consignments, identical to the consignments imported by M/s. Maurya Traders, M/s. G.S. Enterprises and M/s. Vinayak Enterprises.

7B. Quotation obtained from M/s N Shin Exports:

Information received also contained a quotation by a dealer of the said goods based in Hong Kong by the name of M/s. N. Shin Exports, Flat No. D3, 14th Floor, Tsim Sha Mansion, 87 Nathan Road, T.S.T., Kowloon, Hong Kong. Vide quotation of M/s N Shin Exports dated 07.02.2005, the said goods of Haier solution was offered for 16.25 USD per piece to M/s. S.S. Enterprises, Shop No. 302, M No. 2884, Shopping Plaza, H.S.Road, Karol Bagh, Delhi. The said firm, M/s N Shin Exports, had also offered the said goods of 'Fujitsu solution' for USD 16.50 / piece. Thus, there was a price difference of only USD 0.25 between the Main Boards based on the Haier solutions and that based on Fujitsu solutions.

7C Cost of Manufacturing by BEL, Bangalore:

Enquiries were made with M/s. Bharat Electronics Limited, Bangalore and a request was made for a comprehensive report on the production cost of Main Boards used in Digital Satellite Receivers. In their report dated 16.03.2005, M/s. Bharat Electronics Limited, Bangalore have stated that they are a leading manufacturer of Digital Satellite Receiver/ Set Top Boxes and have established a reputation for economical pricing of the said product. It was also specified by them that they have investigated design and engineering aspects of Chinese made products in detail and that it was found by them that to sell the said product at their current market prices is impossible if the importers have followed all the legal channels correctly i.e., by paying the

duties as per law. Cost of the main components used in the imported PCB board was estimated to be 10 USD, 15 USD and 18 USD for Haier, Fujitsu and ST Micro types, respectively by them after evaluating the component parts used in the main PCB board of Chinese origin. It was also reported that the material cost (purchase price) of imported components used in assembling of the indigenously manufactured Main PCB Board was approximately 30 USD.

7D Landing Cost for TVS Electronics Limited, Chennai

Enquiries were also made with TVS Electronics Limited, Chennai. In their report dated 31.03.2005, the said company stated that Mother Board consists of Controller, Tuner, Memory card, Electronics parts and Connectors and major cost for Set Top Box was of controller and tuner; that the popular controllers used were ST, Fujitsu, IBM, Zoran, LSI and Philips; that the price of the controller varied from USD 8 to USD 13/pc depending upon the make and volume off-take and that landed cost of PCB board was estimated at Rs. 2054.00. It was also categorically mentioned that Set Top Boxes were available in the market in the range of USD 25 to USD 30/unit and the cost of Mother board (read Main Board) was around 70% of the product value, which worked out to USD 17.5 to USD 21.

8. Thus, in light of the above enquiries it is evident that heavy undervaluation in the import of the said goods has been done by these three firms viz., M/s. Maurya Traders, M/s. G.S. Enterprises and M/s. Vinayak Enterprises,

9. Summons under Section 108 of the Customs Act, 1962 was issued to Sh. Atul Gupta s/o Sh. Suresh Gupta R/o. E-75, South Extension (Part I), New Delhi. In his statement recorded on 17.03.2005 under Section 108 of the Customs Act, 1962, Sh. Atul Gupta stated interalia that he studied B.Com in Delhi University; that after completion of the graduation he used to repair electronic items; that in the year 2004 he started his own business in trading of electronic items such as PCB boards and cable core and opened a shop by name M/s. Ganpati Electronics at No: 55D, Lajpat Rai Market, 1st Floor, Delhi 6; that he was the proprietor of the said shop; that thereafter he also started assisting his father in import of electronic items such as Main PCB for CTV Receiver (Digital Satellite Receiver/ Parts), front panel of CATV Receiver and cable core in the name of a firm M/s. G.S. Enterprises, situated at B-9, N.D.S.E.-I, New Delhi-49 at Ground Floor; that he started M/s. G.S. Enterprises about two years ago and his father Shri Suresh Kumar Gupta was made the proprietor; that he was looking after the day to day activities of M/s. G.S. Enterprises; that he also had utilized the firms M/s. Vinayak Enterprises situated at B-41, Gali No:3, North Chajjipur, Delhi 94 and M/s. Maurya Traders situated at 339, Triveni Apartments, Swayam Sewa Society, Opp. Jhilmil Colony, New Delhi for importing electronic items such Main PCB, Front Panel for CATV receiver and cable core; that he had taken full Consent from the persons concerned, i.e., Shri Ashwani Bhagat (Proprietor of M/s. Maurya Traders) and Shri Yogindra Kumar (Proprietor of M/s. Vinayak Enterprises) to import the above said items; that he had imported 9595 pcs of Main PCB for CATV Receiver vide 5 Bills of entry

in M/s. G.S. Enterprises, 20068 Pcs of Main PCB for CATV Receiver vide 11 Bills of Entry in M/s. Maurya Traders and 4040 Pcs of Main PCB for CATV Receiver vide 1 Bill of entry in M/s. Vinayak Enterprises; that all the imports of Main PCB were made through Mumbai (Sea Port) at approximate unit price of 41 HK\$ per piece; that he had imported Main PCB in the name of the above said firms from the overseas suppliers namely, M/s. Satedigital Technology Ltd, unit D/17/F Sea Bright Plaza, 9-23, North Point Hong Kong; M/s. Shenzhen Coship Electronics Co. Ltd, D-4/F Chungzhan centre, 6007 Shenaa Road, Tution District, Shenzhen China and M/s. Jiangsu YinYe Electronic Co. Ltd, 9 East Renmon Road, Tangiad, Hang jiang, Jianshu China; that he came in contact with the above said suppliers at an exhibition held at China; that he used to place orders verbally after negotiating the price of the goods and used to get confirmed the shipment schedule; that the documents such as invoice, Bill of Lading, Packing list etc. were sent to the Bank by the suppliers and after releasing the same, he used to attend to the clearance of imports; that payments were made either on credit basis or D/P (Document on presentation) basis; that he had imported Main PCB having components based on Haier/IC Solutions from the above said suppliers, who were the manufacturers and exporters of the said product.

9.1 During the recording of the aforementioned statement, Sh. Atul Gupta was shown a price quotation of Main PCB board based on Haier Solution which shows the price of Main PCB at 16.25 US\$ & 16.75 US\$ per unit. He was asked to explain whether there was under valuation in respect of imports made by him at the unit price of 41 HK\$. Sh. Atul Gupta went through the quotation shown to him and put his dated signature on the same, in token of having seen it. He stated, interalia, that there was difference in price in respect of imports of Main PCB (made by him) and the price shown to him. He admitted that there was under valuation in the imports made by him. He further stated that he had imported Main PCB 'Unbranded Populated PCB Board for CATV Receiver (set of two)'; that he had imported Main PCB along with a jumper with a small PCB; that the price of a jumper with the small PCB was 0.25 USD (appr); that he had imported Main PCB only at the rate of USD 5.75 per piece, which amounts to doing under-valuation to the tune of 10.5 US \$ per piece; that he had so far imported 33703 pcs. (total) in the name of the above said three firms and that differential duty liable to be paid was to the tune of Rs. 67 lacs approx.

9.2 Sh. Atul Gupta voluntarily submitted two cheques for Rs. 25 lacs each bearing No: 209664 and 209663 dated 27th March, 2005 and 17th March, 2005 respectively towards differential duty to be paid by him. He undertook to produce demand draft for Rs. 25 lacs each in lieu of the said cheques. He also undertook to pay the remaining differential duty.

9.3 On being asked as to how he used to pay the extra amount to the overseas suppliers towards the differential value at the time of import, Sh. Atul Gupta stated interalia, that the overseas suppliers sometimes used to visit India and would ask him to pay the differential amount as the remittance to a contact person who used to be identified by telling the Indian currency Note Nos. and that in this manner a person by name of Guo Bin had earlier visited India

and had sent a person by name Sanjay who had informed him about the Note Number and that he had paid the money to the said Sanjay.

9.4 Sh. Atul Gupta has produced 4 samples of 'Main PCB' having Haier Solution configuration, said to be out of the goods imported by him in the above said three firms. The samples were kept in a cover and sealed with DRI seal on which Sh. Atul Gupta put his dated signatures.

9.5 Sh. Atul Gupta also undertook that he would direct, his father, Sh. Suresh Kumar Gupta, Shri Ashwani Bhagat and Shri Yoginder Kumar, Proprietors of the three firms to join the investigation and to produce all Bills of Entry along with invoices, Bill of Lading etc.

10. Summons under Section 108 was issued to Sh. Ashwani Kumar Bhagat, Prop. of M/s. Maurya Traders and his statement under the said Section was recorded on 12.04.2005 wherein Sh. Ashwani Kumar Bhagat stated, interalia, that after completion of his graduation, he worked in a copper scrap unit in Shahadra; that he had done many small time jobs and in the year 2000 he was working in a provisional store in Shahadra; that he came in contact with Sh. Atul Gupta through a common friend; that during the year 2003, Sh. Atul Gupta suggested him to open a firm and hand it over to him (Sh. Atul Gupta); that in good faith he agreed to the suggestion of Sh. Atul Gupta and opened a firm by name of M/s. Maurya Traders in October 2003; that Sh. Atul Gupta had taken a room on rent in the name of said firm at 339, Triveni Apartment, Swayam Seva Society, Jhilmil colony, Delhi for office purpose; that the said office was used only to open the said firm and to receive any letters; that the said firm started working from October, 2003 and he used to sign wherever and whenever told by Sh. Atul Gupta; that Sh. Atul Gupta told him that electronic goods were being imported in the said firm and all Govt. duty was paid correctly; that he never interfered in the affairs of this company; that since Sh. Atul Gupta was his good friend, he had not taken any monetary consideration.

10.1 Sh. Ashwani Kumar Bhagat was shown statement dated 17.03.2005 of Sh. Atul Gupta recorded under Section 108 of Customs Act, 1962. Sh. Ashwani Kumar Bhagat went through the said statement and after understanding the contents he stated that he fully agrees with the said statement of Sh. Atul Gupta and that he undertakes to pay differential duty in respect of imports made in his firm M/s. Maurya Traders. He also put his dated signatures on a copy of the statement of Sh. Atul Gupta in token of having seen it.

11. Summons under Section 108 of Customs Act, 1962 was issued to Sh. Yogendra Sharma, Prop. of M/s. Vinayak Enterprises and his statement under the said Section was recorded on 12.04.2005, wherein Sh. Yogendra Sharma stated, interalia, that after completion of his graduation, he worked as L.D.C. with the Institute of Chartered Accountants of India; that after working for three years in ICAI, he left the job and started business of packing material; that three years ago he was introduced to Sh. Atul Gupta by a common friend; that Sh. Atul Gupta suggested him to start a business of import of electronic goods for which he agreed and opened a

firm by name of M/s. Vinayak Enterprises; that Sh. Atul Gupta had obtained IEC no. for his firm in the month of April, 2004; that he had not made any imports in his said firm; that all imports were done by his friend Sh. Atul Gupta; that he used to sign the documents, cheques and any other documents as directed by Sh. Atul Gupta; that he knew that electronic goods were being imported in his firm by Sh. Atul Gupta; that he had lent his firm's name to Sh. Atul Gupta in good faith; that he had not taken or demanded any financial consideration from Sh. Atul Gupta; that Sh. Atul Gupta told him that all the imports were done following rules and as per law and all duties were paid in the imports made in his firm.

11.1 Sh. Yogendra Sharma was shown statement dated 17.03.2005 of Sh. Atul Gupta recorded under Section 108 of Customs Act, 1962. Sh. Yogendra Sharma went through the said statement and after understanding the contents he stated that he fully agreed with the said statement of Sh. Atul Gupta and he put his dated signature on a copy of the same in token of having seen it. He also undertook to produce all the documents and to pay differential duty in respect of imports made in his firm M/s. Vinayak Enterprises.

12.1 Similarly, statement of Sh. Suresh Kumar Gupta, proprietor of M/s. G.S. Enterprises was recorded under Section 108 of Customs Act, 1962 on 12.04.2005 wherein he stated inter alia that he was a science graduate and after his degree he started business of electronic goods in old Lajpat Rai market; that he was doing trading as well as repairing of electronic goods; that his son Sh. Atul Gupta has worked with him and gained experience in electronic business; that he started M/s. G.S. Enterprises in the year 2003 and gave the said firm to his son Sh. Atul Gupta for making imports; that all the import business in the said firm was looked after by Sh. Atul Gupta and he did not interfere with the affairs of M/s. G.S. Enterprises; that he extended all co-operation such as signing of cheques for releasing of bank documents etc; that as Sh. Atul Gupta was his son, there was no monetary consideration in this regard.

12.2.1 Sh. Suresh Kumar Gupta was shown statement dated 17.03.2005 of Sh. Atul Gupta recorded under Section 108 of Customs Act, 1962. Sh. Suresh Kumar Gupta went through the said statement and after understanding the contents he stated that he fully agreed with the said statement of Sh. Atul Gupta and he put his dated signature on a copy of the same in token of having seen it. He also undertook to produce all the documents and to pay differential duty in respect of imports made in his firm M/s. G.S. Enterprises.

13.1 Vide his letter dated 21.03.2005, Sh. Atul Gupta has submitted five Demand Drafts amounting to Rs. 25,00,000/- (Rupees Twenty five lakh). Rs. Eleven lakh was in respect of differential duty arising out of imports by M/s. Maurya Traders, Rs. Nine lac was in respect of differential duty arising out of imports by M/s. G.S. Enterprises and Rs. Five lac was in respect of differential duty arising out of imports by M/s. Vinayak Enterprises. It was mentioned by Sh. Atul Gupta in the covering letter dated 21.03.2005 that the above payments were made by him towards differential duty arising out of the imports made by him in the above said three firms and

that the payments were made voluntarily as per his statement dated 17.03.2005 made under Section 108 of Customs Act, 1962. However, as the said Demand Drafts were not drawn properly, same were returned to Sh. Atul Gupta to get DDs reissued. This time Sh. Ashwani Kumar submitted three DDs amounting to Rs. Sixteen lac in respect of M/s. Maurya Traders, Sh. Suresh Kumar submitted three DDs amounting to Rs. fourteen lac in respect of M/s. G.S. Enterprises and Sh. Yogendra Sharma has submitted one DD for Rs. Five lac in respect of M/s. Vinayak Enterprises. Hence payment of Rs. 35,00,000/- was made towards differential duty as under:

Sr no.	Importer's name	Total amount paid
1	Maurya Traders	Rs. 16,00,000/-
2	G.S. Enterprises	Rs. 14,00,000/-
3	Vinayak Enterprises	Rs. 5,00,000/-
	TOTAL	Rs. 35,00,000/-

13.2 The above Demand Drafts were deposited in the Govt. account vide challan no. 58, 59 and 60 all dated 4.5.2005.

14. The investigations are summed up as under:

14.1 M/s. Modern Cable and Broadcasting Services (MCBS) of Ahmedabad (Contemporaneous importer of the said goods) have imported the Main Boards and the Tuners of Satellite Receivers, separately, at a total FOB value varying between USD 15.25 and USD 22.50/ unit (USD 9 and USD 14 / piece added with USD 6.25 to USD 8.5 / piece). The FOB value of the entire Satellite Receiver Kit imported by them varies between USD 34 and USD 48.5 /unit.

14.2 M/s. Electronic Enterprises, another contemporaneous importer have imported the said goods of Chinese origin at the rate of 10.5 USD (CIF) per piece.

14.3 M/s. Catvision Products Ltd also another contemporaneous importer have imported the said goods at the rate of 18 USD (FOB) per piece.

14.4 As per the quotation dated 07.02.2005 issued by M/s. N Shin Exports, the said goods were offered for sale between the CIF values of 16.25 USD/pc and 16.50 USD /pc to M/s. S.S. Enterprises of Delhi.

14.5 As per the report of M/s. Bharat Electronics Limited, Bangalore, cost of the said goods is in the range of USD 10 to USD 18 / piece.

14.6 As per the report of TVS Electronics Limited, Chennai, the Mother Board or the Main Board of the Satellite Receiver consists of the Controller and Tuner mainly and the price of the said goods (Main Board) varies from USD 17.5 to USD 21 /unit, which is approximately 70 % of the value of the entire Set Top Box.

14.7 It is also pertinent to mention that no brand name or name of the chipset used in the said goods was declared by any of the said three firms viz., M/s. Maurya Traders, M/s. G.S. Enterprises and M/s. Vinayak Enterprises. The invoices submitted by these three firms to the customs authority at the time of imports also did not mention any technical specifications of the said goods. The importers did not enter into any written contract with the supplier, rather negotiated the prices / orders verbally as also stated by Sh. Atul Gupta in his statement dated 17.03.2005.

14.8 The under-valuation was corroborated by Sh. Atul Gupta in his statement dated 17.3.2005 recorded under Customs Act 1962, wherein he admitted that there was under valuation in the imports of the Main Board in the said three firms. Sh. Atul Gupta stated the extent of undervaluation to the tune of USD 10.5 in the imports of the said goods done in the three companies by him. Further, he even gave details of payment of the extra amounts to the foreign suppliers, over and above the value declared to Indian Customs. In fact, realising the undervaluation done by him, he has voluntarily paid an amount of Rs 35 lakhs collectively towards the discharge of differential duty obligations of the said three firms controlled by him.

14.9 The under-valuation in M/s. Maurya Traders, M/s. G.S. Enterprises and M/s. Vinayak Enterprises was also admitted by Sh. Ashwani Kumar Bhagat, Sh. Suresh Kumar Gupta and Sh. Yogendra Sharma in their respective statements all dated 12.04.2005 wherein they stated that there was under-valuation in imports in the name of their respective firms and that it was Sh. Atul Gupta who had organized imports of the said goods in their firms.

15. Methodology for determination of the Correct Value:

In light of the observations above, it is evident that **M/s. Maurya Traders, M/s. G.S. Enterprises and M/s. Vinayak Enterprises**⁷ have significantly undervalued the said goods on their imports. The determination of the correct value on which duty is liable to be paid by the noticee, shall be done in light of the statutory provisions on Valuation as contained in the Customs Act 1962 read with the Valuation Rules, 1988. Based on these provisions, the determination of the correct value is done as under:

⁷ hereinafter collectively referred to as the 'said three importers'.

15.1 As per Rule 3(i) of the Valuation Rules, 1988, the value of the goods shall be the 'Transaction Value' subject to Rule 10A. As per Rule 10 A of these rules, if the proper officer has reasons to doubt the truth of the value declared before the Customs, then the value (read 'Transaction Value') can be rejected.

15.2 Whereas, in the present case, enough reasons exist to reject the Transaction Value as per Rule 10A which are reiterated as under:

i) That no brand name of the said goods has been declared by the said importers in the Bills of Entry or any other documents presented before the Indian Customs. Thus, the valuation of goods which is not independent of the 'Brand' of the said goods, cannot be correctly ascertained.

ii) That the technical specifications have not been mentioned in the invoices issued by the suppliers to the said importers. Further, no written contracts were entered into laying down the technical specifications or prices of the said goods on record.

iii) That there were contemporaneous imports taking place of the said goods at values which were much higher than the values declared by the said importers in question to the Indian Customs.

iv) That an independent Price Quotation obtained from Hong Kong based firm, M/s N Shin Exports, at which the said goods were offered for sale to an Indian Company indicates a much higher value.

v) That M/s BEL Bangalore and M/s TVS Electronics Limited, Chennai have independently reported that the value of the said goods was significantly higher than the values declared by the importer in question.

vi) That the person who had control over all the three firms, Sh. Atul Gupta has, in his statement dated 17.03.2005, not just admitted to under-valuation in imports of the said goods, but has also indicated the extent of under-valuation and has even indicated the manner in which the differential value over and above the value declared to Indian Customs was being illegally sent to the overseas suppliers. This statement of Sh. Atul Gupta has been agreed to by the proprietors of the three firms in their statements.

Therefore, the Transaction Value is liable to be squarely rejected.

15.3 Thus, since the Transaction Value as declared by the said importers cannot be accepted, the value cannot be determined as per Rule 3(i) of the Valuation Rules. Therefore, as per Rule 3(ii), the value shall be determined by proceeding sequentially through the rules 5 to 8 of the Rules *ibid*. Reference is also invited to the judgment of the Honorable CESTAT which has in the case of Ruchi Associates Vs Commissioner of Customs [1992(59)ELT 155] held that "*where importer has not laid any basis for acceptance of invoice price as transaction value then the*

authorities are legally right to proceed to fix the price under Rule 3(ii) of the Customs Valuation Rules, 1988."

15.4 Now, the Rule 5 says that the Transaction Value of the goods shall be the value of identical goods being imported into the country. Identical goods as per the definition contained in Rule 2(c) implies that the goods should be same in all respects including physical characteristics, quality and reputation as the goods being valued. In the current case, it may be noted that the importer has not even declared the brand name of the goods being imported or the chipset used or the technical characteristics of the product. As such, to establish the identical nature of the goods imported with any other goods would be inappropriate. Therefore, the application of Rule 5 does not appear to be appropriate. As per Rule 3(ii), we now come to Rule 6 for determination of the correct value.

15.5 As per Rule 6, valuation of the imported goods in question can be done on the basis of value of 'similar goods' declared before the Customs. Now 'similar goods' as defined in Rule 2(e) of the Valuation Rules *ibid* should fulfill three conditions:

- i) That the goods though not alike in all respects should have like characteristics and like components; should perform the same functions and should be commercially interchangeable with goods being valued with respect to the reputation and quality.
- ii) Should be produced in the same country as the goods being valued.
- iii) Should be produced by the same person who produced the goods being valued; however in case no such goods are available, then goods produced by a different person.

15.6 Now as already discussed, goods identical to the imported goods in question cannot be ascertained; however many companies have imported 'similar goods' as the said goods in question. Hence, Rule 6 has been found to be squarely applicable. This is because:

- i) On perusal of the Bills of Entry filled by the said importers, it is found that the product has been described mainly as 'Unbranded Populated PCB Board for CATV Receiver'. As has already been discussed, this 'Unbranded Populated PCB Board for CATV Receiver' is also known as 'Main Board for Receiver' or Main Board for Digital Satellite Receiver (DSR) or Main Board for Direct to Home Box (DTH), or 'Populated PCB for CATV Receiver' etc in commercial parlance. All these product descriptions are for the same product which is the heart of the Digital Satellite Receiver. This Main Board consists of both the Tuner and the Controller, which together perform the function of converting the frequency band of the satellite signal received by the antenna into an appropriate frequency band, then decoding and demodulating it, and then finally providing an audio-video signal as output to be used by the Television sets. There were several importers who were importing goods which perform the same function as the 'said goods' that have been imported by M/s. Maurya Traders, M/s. G.S. Enterprises and M/s. Vinayak Enterprises.

ii) These goods that were imported by the contemporaneous importers referred to above have all been produced in China. As per the Bills of Entry filled by M/s. Maurya Traders, M/s. G.S. Enterprises and M/s. Vinayak Enterprises, the Country of Origin has been declared as China. Thus, the Country of Origin is also identical in both the 'said goods' as also the similar goods, satisfying the second condition mentioned in para 15.5 above.

iii) Further, since the goods produced by the same person who produced the 'said goods' imported by M/s. Maurya Traders, M/s. G.S. Enterprises and M/s. Vinayak Enterprises are not available, therefore the goods produced by a different person and imported by the contemporaneous importers as discussed above are acceptable as 'similar goods' as per the condition mentioned at para 15.5 (iii) also. Besides, the possibility of these 'similar goods' being produced by the same producers who produced the said goods imported by M/s. Maurya Traders, M/s. G.S. Enterprises and M/s. Vinayak Enterprises cannot also be ruled out. Either ways, the condition mentioned at sl.no. (iii) of para 15.5 is also satisfied.

15.7 To conclude therefore, the 'Transaction Value' as declared by M/s. Maurya Traders, M/s. G.S. Enterprises and M/s. Vinayak Enterprises cannot be accepted as the value and the value has to be instead determined as per Rule 6, which is squarely applicable in the present case.

16. Determination of the Correct Value as per Rule 6:

16.1 Before we proceed further under Rule 6 for determination of the correct value, it may be noted that there are certain other conditions that need to be followed. These are:

i) That the similar goods should be imported at or about the same time in about the same quantities and at the same commercial level as the said goods in question.

ii) Where the above condition cannot be followed, then the value of similar goods imported at a different commercial level and in different quantities can be accepted, however, the value would need to be adjusted suitably.

iii) As per Interpretative Note no.1 to Valuation Rule no. 6 (Interpretative notes are applicable for interpretation of the Valuation Rules as per Rule no. 12 of the Rules), only that transaction value of similar goods is to be accepted, which has already been accepted under Rule 4 as the correct transaction value in it's own case.

iv) In case more than one correct Transaction Value is found, then the lowest of such Transaction values needs to be taken.

16.2 Now therefore, in order to ascertain the correct value in this case, values of similar goods imported by contemporaneous importers have been examined subject to the fulfillment of the conditions mentioned above. The values declared by various contemporaneous importers during the same period have been analysed. While many companies have been found to have effected

imports of the similar goods in the price range of 2.7 USD/21 HKD to 5.6 USD/43.5HKD per piece, these values cannot be accepted since undervaluation has been noticed in these cases as well. In fact suitable investigations have already been initiated into these imports including the issuing of an Alert Circular No. 6/2006 dated 04.04.2006 by the DRI. Hence, in view of the condition mentioned at serial no (iii) of para 16.1 above, these values cannot be accepted for the case in question.

16.3 Rather, the Transaction Values declared by the importers, M/s Catvision Products Limited and M/s MCBS, Ahmedabad have been found to be appropriate. It can therefore be seen that the goods imported by these two companies are from the same country as the one from which the goods have been imported by M/s. Maurya Traders, M/s. G.S. Enterprises and M/ S. Vinayak Enterprises i.e. China.

16.4 (i) It is observed that M/s. Maurya Traders have imported the said goods between January 2004 and July 2004 (the period of import) at a value of 41 HKD, equivalent to 5.2 or 5.3 USD (as per exchange rate). Here, the period of import can be taken as a single time zone i.e. the calendar year 2004. This is relevant, since for the purposes of determination of the correct value, contemporaneous imports in the same time zone shall be considered as per the discussions in para 16.1 (i) above. Secondly, M/s. Maurya Traders have imported the said goods in quantities varying between 1515 pieces to 2020 pieces. Further, on perusal of the details of imports, it is observed that the price declared was identical for import of 1515 pieces or 2020 pieces or 1809 pieces i.e., 41 HKD. It is therefore apparent that in the current case, the quantities imported do not have a strong correlation with the values declared by M/s. Maurya Traders.

16.4 (ii) Similarly, it is observed that M/s. G.S.Enterprises have imported the said goods in 2003 and in 2004 as well (the period of import) at a constant value of 41 HKD i.e., 5.2/5.3 US\$. Thus, the period of import can be divided into two time zones i.e. the calendar years 2003 and 2004. This is relevant, since for the purposes of determination of the correct value, contemporaneous imports in the same time zone shall be considered as per the discussions in para 16.1 (i) above. Secondly, M/s. G.S. Enterprises have imported the said goods in three quantities i.e., 1515, 1414 and 3636 pieces. Further, on perusal of the details of imports, it is observed in respect of all the five consignments, the values declared were similar i.e., 41 HKD. It is therefore apparent that the quantities imported do not really have a strong correlation with the values declared by M/s. G.S.Enterprises.

16.4 (iii) M/s. Vinayak Enterprises have imported a single consignment of 4040 pieces of the said goods, declaring FOB value of 5.3 US\$. In this case, the period of import is year 2004.

16.5 It may also be observed that the values of similar goods declared by the contemporaneous importers are often FOB values. So, while applying Rule 6 of the Valuation Rules in order to arrive at the correct transaction value of the said goods imported by M/s. Maurya Traders, M/s. G.S. Enterprises and M/s. Vinayak Enterprises, it is essential to convert the FOB value into CIF

value. In order to do so, the cost of freight, Insurance and the loading, unloading charges (wherever not ascertainable otherwise) have to be added to the FOB value as per the provisions of Rule 9 (2) of the valuation Rules, 1988. Thus, freight shall be 20% of the value; Insurance shall be 1.125% of the FOB value; while the loading, unloading and the handling charges shall be 1% of the FOB value plus the cost of Freight plus the cost of Insurance.

16.6 The values declared by the two contemporaneous importers (mentioned in para 15.3 above) and M/s. Maurya Traders, M/s. G.S.Enterprises and M/s. Vinayak Enterprises to the Indian Customs for the period of imports have been compared in below tables. Since, the entire period of imports is divided into three time zones (2003, 2004 and 2005), values declared in each of the time zones is discussed, one by one.

16.7 For the year 2003:

Table 1

Name of the Importer: M/s. G.S. Enterprises.

Sr no.	Bill of Entry no./date	Value (CIF) declared (in US\$)	Product Description	Quantity (no. of pcs) imported
1	409414/17.11.2003	5.3	Unbranded Populated PCB for CATV Receiver (Set of Two)	1515
2	413453/28.11.2003	5.3		1515

Table 2 (Contemporaneous imports)

Sr. No.	Bill of Entry no./date	Name of the Importer	Value (FOB) in USD	Value (CIF) computed (in US\$)	Product Description	Quantity (no. of pcs) imported
1	592634/25.11.2003	M/s. Catvision Products Ltd.	18	21.8	Main Board for digital satellite receiver	101
2	612557/30.12.2003		17.5	21.2	MPCB for digital satellite receiver	288

16.7.1 Thus, at table no. 1 for the period of 2003 above, it is observed that M/s. G.S Enterprises have during the month of November 2003 imported two consignments of the said goods of 1515 pcs, at the CIF value of 5.3 USD per piece, whereas it is seen at table no. 2 above that during the same month, M/s. Catvision Products Ltd., E-14/15, Sector-8, NOIDA have imported the said goods declaring FOB value of 18 USD per pc.-which is calculated as CIF value of 21.80 USD

per pc. However, the quantity imported under these consignments was 101 pcs. But quantity has no significant nexus with the assessable value as discussed above. It is also observed that during the said time period of year 2003, M/s Catvision have also imported 288 pieces of the said goods declaring FOB value of 17.5 USD per piece, which is calculated as CIF value of 21.20 USD. Now applying the procedure for determination of the correct value, it follows that the correct value for the imports of the said goods in the year 2003 would be USD 17.5 (FOB) or USD 21.20 (CIF) as declared by M/s Catvision Products Ltd. in the Bill of Entry no. 612557 dated 30.12.2003 mentioned above, being the lowest amongst the values of the similar goods imported in the same period or the time zone in question. Further, as already pointed out in para 16.4(ii) above, the quantities at which imports of the said goods have taken place do not have a strong correlation with the prices of the said goods, therefore, no adjustment is required to be done for the difference in the quantities at which the said goods and the similar goods have been imported for the period in question.

16.8 For the year 2004:

Table 1-A

Name of the Importers: M/s. Maurya Traders.

Sr. no.	Bill of Entry no./date	Value (CIF) declared (in US\$)	Product description	Quantity (no. of pcs) imported
1	427818/19.01.2004	5.3	Unbranded populated PCB for CATV Receiver (Set of Two)	1515
2	431979/03.02.2004	5.3		1515
3	439814/27.02.2004	5.3		1515
4	444061/15.03.2004	5.3		1504
5	447099/25.03.2004	5.2		2020
6	450782/07.04.2004	5.2		2110
7	454933/23.04.2004	5.2		2020
8	459599/11.05.2004	5.3		2020
9	469008/10.06.2004	5.3		2020
10	471324/21.06.2004	5.3		1809
11	481490/29.07.2004	5.2		2020

Table 1-B

Name of the Importer: M/s. G.S. Enterprises.

Sr no.	Bill of Entry no/date	Value(CIF) declared (in US\$)	Product Description	Quantity (no. of pcs) imported
1	486285/16.08.2004	5.2	Unbranded Populated PCB for CATV Receiver (Set of Two)	1515
2	516033/29.11.2004	5.3		1414
3	521004/10.12.2004	5.3		3636

Table 1-C

Name of the Importer: M/s. Vinayak Enterprises

Sr. no.	Bill of Entry no./date	Value (CIF) declared (in US\$)	Product Description	Quantity (no. of pcs) imported
1	517583/01.12.2004	5.3	Unbranded Populated PCB for CATV Receiver (Set of Two)	4040

Table 2

(Contemporaneous imports)

Sr. No.	Bill of Entry no./date	Name of the Importer	Value (FOB) in USD	Value (CIF) computed (in US\$)	Product Description	Quantity (no. of pcs) imported
1	615829/01.06.2004	M/s. Catvision Products Ltd.	17.5	21.2	Mainboard for Digital Satellite Receiver	300
2	715481/17.06.2004		11.25	13.63		200
3	808285/03.11.2004*		10.75	13.02		505
4	7455/09.09.2004	M/s Modern Communication & broadcast systems pvt. ltd.	14	16.96	Only Populated PCB	2000
			8.5	10.3	Only Tuner	
			22.5	27.25	PCB Board+Tuner	
5	602404/11.05.2004		14	16.96	Only Populated PCB	5000
			8.5	10.3	Only Tuner	
			22.5	27.25	PCB	

					Board+Tuner	
6	611845/12.06. 2004		14	16.96	Only Populated PCB	10000
			8.5	10.3	Only Tuner	
			22.5	27.25	PCB Board+Tuner	

**Typographical error in the SCN, Bill of Entry date is 03.11.2004 instead of 11.03.2004.*

16.8.1 Thus, during 2004, as can be seen from the table no. 1-A above and Annexure F-1 to the SCN, M/s. Maurya Traders have imported the said goods declaring the same at CIF value of around 5.2 USD and 5.3 USD per piece. Quantity in each consignment was around 1500 to 2000 pieces. Similarly, as can be seen at table no. 1-B above and Annexure F-2 to the SCN, M/s. G.S. Enterprises also have imported the said goods at CIF values of around 5.2 USD and 5.3 USD per piece. Quantity in each consignment was around 1500 to 3636 pieces. M/s. Vinayak Enterprises also have imported the said goods at CIF values of around 5.3 USD per piece. Quantity in this single consignment was around 4000 pieces. Now, amongst the importers of similar goods, M/s. Modern Communication & Broadcast Systems Pvt. Ltd. (MCBS) have imported the said goods @ 22.5 USD per piece FOB, which translates to be 27.25 USD CIF per piece. Whereas, during the said period, M/s. Catvision Products Ltd., have imported similar goods with FOB values varying between 10.75 USD per pc and 17.5 USD per pc. Thus, the lowest value (FOB) of the contemporaneous imports of similar goods is obviously USD 10.75 per pc, which translates into a CIF value of USD 13 per piece. This CIF value of USD 13 per piece would then be the correct assessable value for imports in 2004 for the said three importers. Further, as already pointed out above, the quantities at which imports of the said goods have taken place do not have a strong correlation with the prices of the said goods, therefore, no adjustment is required to be done for the difference in the quantities at which the said goods and the similar goods have been imported for the period in question.

17. Now, therefore in light of the preceding paras, it is clear that the lowest Transaction Value out of the different ones declared by the importers of similar goods are 21.20 USD (CIF) and 13.00 USD (CIF) per piece, for the two periods i.e., the years 2003 & 2004, as explained above. These values were declared by M/s. Catvision Products Ltd. Accordingly, these values are then the correct values that are arrived at for the purposes of valuation of the said goods imported by M/s. Maurya Traders, M/s. G.S. Enterprises and M/s. Vinayak Enterprises in terms of the Valuation Rules read with the provisions of the Customs Act, 1962. Reference is invited at this stage to the following judgments:

i) The Hon'ble Supreme Court had held in the case of Commissioner of Customs, Madras Vs D. Bhurmal, 1983 (13) ELT 1546 (SC) that: *"the Department would be deemed to have discharged*

its burden if it adduces only so much evidence, circumstantial or direct, as is sufficient to raise a presumption in its favour with regard to the existence of the fact sought to be proved"

ii) The Central Excise Customs Gold (Control) Appellate Tribunal opined in the case of M/s. Poonam Plastics Industries Vs CC, 1989(3) ELT 634 (T) that the Department was not required to prove actual value with mathematical precision and that reasonable help could be taken of the documents available and other circumstances to arrive at the correct value.

18. Calculation of duty liability: These revised values are now applied to the imports of the said goods done by M/s. Maurya Traders, M/s. G.S. Enterprises and M/s. Vinayak Enterprises to arrive at the correct value of the said goods imported by them as also the correct duty liabilities on part of the noticee and the differential duty that the noticee are liable to pay. These calculations have been worked out in Annexures F-1, Annexures F-2 and Annexures F-3. The differential duty liability on part of M/s. Maurya Traders works out to be Rs. 28,02,908/- (Rupees Twenty-eight Lakhs Two Thousand Nine Hundred and Eight only). The differential duty liability on part of M/s. G.S. Enterprises works out to be Rs. 20,62,443/- (Rupees Twenty Lakhs Sixty-two Thousand Four Hundred and Forty-three only) and the differential duty liability on part of M/s. Vinayak Enterprises works out to be Rs. 5,77,363/- (Rupees Five Lakhs Seventy-seven Thousand Three Hundred and Sixty-three only).

19. From the foregoing, whereas it is evident that:

19.1 Sh. Ashwani Kumar Bhagat, on the instructions of Sh. Atul Gupta opened a firm by name M/s. Maurya Traders and obtained IEC no. Sh. Ashwani Kumar Bhagat then lent the name of his said firm to Sh. Atul Gupta for making imports. Sh. Ashwani Kumar Bhagat knew that electronic goods were being imported by Sh. Atul Gupta in the said firm. However, Sh. Ashwani Kumar Bhagat had been given the impression that all Govt. duties were paid correctly. He had not taken any monetary consideration also.

19.2 Sh. Suresh Kumar Gupta, proprietor of M/s. G.S. Enterprises gave the said firm to his son Sh. Atul Gupta for making imports. All the import business in the said firm was looked after by Sh. Atul Gupta and Sh. Suresh Kumar Gupta did not interfere in the affairs of M/s. G.S. Enterprises. Sh. Suresh Kumar Gupta has signed cheques for releasing of bank documents etc, as per requirement and since Sh. Atul Gupta was his son, there was no monetary consideration.

19.3 Sh. Yogendra Sharma, has opened M/s. Vinayak Enterprises with the intention of making import business as suggested by Sh. Atul Gupta. However, he had not made any imports in his said firm and all imports were done by his friend Sh. Atul Gupta only. He has signed all the documents and cheques etc. as directed by Sh. Atul Gupta. Sh. Yogendra Sharma knew that electronic goods were imported in his firm by Sh. Atul Gupta. He had only lent his firm's name to Sh. Atul Gupta in good faith and had not taken any financial consideration from Sh. Atul Gupta.

20. The intention of Sh. Atul Gupta to import electronic components on under-declared prices in the name of the firms of his friends Sh. Ashwani Kumar Bhagat & Sh. Yogendra Sharma and also in the firm of his father Sh. Suresh Kumar Gupta was to evade Customs duty. It is very clear from the statement of Sh. Atul Gupta dated 17.03.2005 that he only started M/s. G.S. Enterprises and his father Shri Suresh Kumar Gupta was made the proprietor on papers. He was looking after the day to day activities of M/s. G.S. Enterprises. He also had utilized the firms M/s. Vinayak Enterprises and M/s. Maurya Traders for importing the said goods. He used to place orders verbally after negotiating the price of the goods and used to get confirmed the shipment schedule. He also organized the illegal payments of differential amounts to the foreign suppliers over and above what was declared to the Indian Customs.

20.1 Sh. Atul Gupta has willfully and knowingly mis-declared the value of the said imported goods, imported in M/s. Maurya Traders, M/s. Vinayak Enterprises and M/s. G.S. Electronics in the invoices submitted to the Indian Customs with an intention to evade Customs duties thereby rendering the goods liable to confiscation under Section 111(m) of the Customs Act, 1962 and has rendered himself as well as the importers liable to penal action under Section 112(a)/114A of the Customs Act, 1962.

21. In view of the evasion of duty on account of deliberate mis-declaration of value of goods imported in M/s. Maurya Traders, M/s. Vinayak Enterprises and M/s. G.S. Electronics, proviso to Section 28(1) is invokable. Thus, the evaded Customs duties can be demanded within a period of five years from the relevant date which is the date of payment of the duty.

22.1 It appears that Sh. Ashwani Kumar has knowingly allowed his friend Sh. Atul Gupta to mis-declare the value of the goods, imported in his firm M/s. Maurya Traders, in the invoices submitted to the Indian Customs with an intention to evade Customs duties thereby rendering the goods liable to confiscation under Section 111(m) of the Customs Act, 1962. Hence, it appears that M/s. Maurya Traders, Sh. Ashwani Kumar Bhagat and Sh. Atul Gupta jointly and severally are liable to pay differential duty amounting to Rs. 28,02,908/- (Rupees Twenty-eight lakhs Two thousand Nine Hundred and Eight only) in respect of imports of Main PCB board for DSR, through New Custom House, Ballard Estate, Mumbai and as detailed in Annexure F-I, in terms of first proviso of Section 28(1) of Customs Act, 1962 and interest on duty short levied under Section 28AB of Customs Act, 1962.

22.2 It also appears that M/s. G.S. Enterprises, Sh. Suresh Kumar Gupta and Sh. Atul Gupta jointly and severally are liable to pay differential duty amounting to Rs. 20,62,443/- (Rupees Twenty Lakhs Sixty-two Thousand Four Hundred and Forty-three only) in respect of imports of Main PCB board for DSR, through New Custom House, Ballard Estate, Mumbai as detailed in Annexure F-II in terms of first proviso of Section 28(1) of Customs Act, 1962 and interest on duty short levied under Section 28AB of Customs Act, 1962.

22.3 It also appears that M/s. Vinayak Enterprises, Sh. Yogendra Sharma and Sh. Atul Gupta jointly and severally are liable to pay differential duty amounting to Rs. 5,77,363/- (Rupees Five Lakh Seventy-seven Thousand Three hundred and Sixty-three only) in respect of imports of Main PCB board for DSR, through New Custom House, Ballard Estate, Mumbai as detailed in Annexure F-III in terms of first proviso of Section 28(1) of Customs Act, 1962 and interest on duty short levied under Section 28AB of Customs Act, 1962.

23.1 M/s. Maurya Traders, Sh. Ashwani Kumar Bhagat and Sh. Atul Gupta jointly severally were called upon to show cause, in writing, to the Commissioner of Customs (Import), New Customs House, Ballard Estate, Mumbai in respect of imports of Main PCB board for DSR, through New Custom House, Ballard Estate, Mumbai as detailed in Annexure F-1, within 30 days of receipt of this notice as to why:

i) Value declared for Main PCB board for Digital Satellite Receiver (Unbrand Populated PCB for CATV Receiver (set of 2)) imported and cleared through New Custom House, Ballard Estate, Mumbai vide Eleven Bills of Entry detailed under column no. 1 to 10 in Annexure F-1 should not be rejected in terms of Rule 10(A) (1) read with Rule 4(2) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988, read with section 14 of the Customs Act, 1962.

ii) Revised assessable values as worked out in para 16 of the notice and at column 20 (read with Post Script given under the table of Annexure F-I) of Annexure F-I should not be adopted for the purpose of assessment under the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962.

iii) Consequential differential Customs duty worked out in Annexures F-I amounting to Rs. 28,02,908/- should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962.

iv) Interest should not be recovered from them on duty short levied/short paid in terms of Section 28AB of the Customs Act, 1962;

v) The said goods cleared through New Custom House, Ballard Estate, Mumbai, should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962.

vi) Penalty under Section 114A/112(a) of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid;

vii) Amount of Rs. Sixteen Lakhs voluntarily deposited by them should not be appropriated and adjusted towards the customs duties and penalties payable by the noticees under this notice.

23.2 M/s. G.S. Enterprises, Sh. Suresh Kumar Gupta and Sh. Atul Gupta jointly and severally were called upon to show cause, in writing, to the Commissioner of Customs (Import), New

Customs House, Ballard Estate, Mumbai in respect of imports of Main PCB board for DSR, through New Custom House, Ballard Estate, Mumbai as detailed in Annexure F-II, within 30 days of receipt of this notice as to why:

i) Value declared for Main PCB board for Digital Satellite Receiver [Unbrand Populated PCB for CATV Receiver (set of 2)] imported and cleared through New Custom House, Ballard Estate, Mumbai vide five Bills of Entry detailed under column no. 1 to 10 in Annexure F-II should not be rejected in terms of Rule 10(A) (1) read with Rule 4(2) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988, read with section 14 of the Customs Act, 1962.

ii) Revised assessable values as worked out in para 16 of the notice and at column 20 (read with Post Script given under the table of Annexure F-II) of Annexure F-II should not be adopted for the purpose of assessment under the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962.

iii) Consequential differential Customs duty worked out in Annexures F-II amounting to Rs. 20,62,443/- should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962.

iv) Interest should not be recovered from them on duty short levied/short paid in terms of Section 28AB of the Customs Act, 1962;

v) The said goods cleared through New Custom House, Ballard Estate, Mumbai, should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962.

vi) Penalty under Section 114A/112(a) of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid;

vii) Amount of Rs. Fourteen Lakhs voluntarily deposited by them should not be appropriated and adjusted towards the customs duties and penalties payable by the notices under this notice.

23.3 M/s. Vinayak Enterprises, Sh. Yogendra Sharma and Sh. Atul Gupta jointly and severally were called upon to show cause, in writing, to the Joint Commissioner of Customs (Import), New Customs House, Ballard Estate, Mumbai in respect of imports of Main PCB board for DSR, through New Custom House, Ballard Estate, Mumbai as detailed in Annexure F-III, within 30 days of receipt of this notice as to why:

i) Value declared for Main PCB board for Digital Satellite Receiver (Unbrand Populated PCB for CATV Receiver (set of 2)] imported and cleared through New Custom House, Ballard Estate, Mumbai vide One (*Typographical error in the SCN, one Bill of Entry instead of eleven*) Bill of Entry detailed under column no. 1 to 10 in Annexure F-III should not be rejected in terms of Rule 10(A) (1) read with Rule 4(2) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988, read with section 14 of the Customs Act, 1962.

- ii) Revised assessable values as worked out in para 16 of the notice and at column 20 (read with Post Script given under the table of Annexure F-III) of Annexure F-III should not be adopted for the purpose of assessment under the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962.
- iii) Consequential differential Customs duty worked out in Annexures F-III amounting to Rs. 5,77,363/- should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962.
- iv) Interest should not be recovered from them on duty short levied/short paid in terms of Section 28AB of the Customs Act, 1962;
- v) The said goods cleared through New Custom House, Ballard Estate, Mumbai, should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962.
- vi) Penalty under Section 114A/112(a) of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid;
- vii) Amount of Rs. Five Lakhs voluntarily deposited by them should not be appropriated and adjusted towards the customs duties and penalties payable by the notices under this notice.

Details of first round of adjudication and remand order of the Hon'ble CESTAT

24. The said SCN dated 09.02.2007 was adjudicated in the first round vide CAO No. 51/2008CAC/CC(I)/SP/Gr. VB dated 28.03.2008. Operative portion of the said order is reproduced below:

"46 (i). I reject the declared value of the subject goods imported in the name of M/s. Maurya Traders, M/s.G.S.Enterprises, and M/s. Vinayak Enterprises, under Rule 10A of the Customs Valuation Rules, 1988 and re-determine the value as Rs. 1,19,67,202/-, Rs.68,69,200/- and Rs. 24,00,295/- respectively under Rules 6 of Customs Valuation Rules read with Section 14(1) of the Customs Act, 1962.

(ii) I confirm the demand of differential duty of Rs. 28,02,908/- (Rupees Twenty Eight Lakh Two Thousand Nine Hundred and Eight Only) under Section 28(2) of the Customs Act, 1962 from M/s Maurya Traders. Since Shri Atul Gupta has voluntarily deposited Rs. 16,00,000/- (Rupees Sixteen Lakhs only), towards the admitted duty liability on behalf of M/s Maurya Traders, I appropriate the same towards the payment of differential duty. I order the balance amount of differential duty of Rs. 12,02,908/- (Rupees Twelve Lakh Two Thousand Nine Hundred and Eight Only) to be recovered from M/s Maurya Traders. I also order recovery of appropriate interest on the differential duty under Section 28AB of the Customs Act, 1962 from M/s. Maurya Traders.

(iii) I confirm the demand of differential duty of Rs. 20,62,443/- (Rupees Twenty Lakh Sixty Thousand Four Hundred Forty Three Only) under Section 28(2) of the Customs Act, 1962 from M/s G.S. Enterprises. Since Shri Atul Gupta has voluntarily deposited Rs. 14,00,000/- (Rupees

Fourteen Lakhs only), towards the admitted duty liability on behalf of Ms G.S. Enterprises, I appropriate the same towards the payment of differential duty. I order the balance amount of Rs. 6,62,443/- (Rupees Six Lakh Sixty Two Thousand Four Hundred and Forty Three only) to be recovered from M/s G.S. Enterprises. I also order recovery of appropriate interest on the differential duty under Section 28AB of the Customs Act, 1962 from M/s. G.S. Enterprises.

(iv) I confirm the demand of differential duty of Rs. 5,77,363/- (Rupees Five Lakh Seventy Seven Thousand Three Hundred Sixty Three Only) under Section 28(2) of the Customs Act, 1962 from M/s Vinayak Enterprises. Since Shri Atul Gupta has voluntarily deposited Rs.5,00,000/- (Rupees Five Lakhs only), towards the admitted duty liability on behalf of M/s Vinayak Enterprises, I appropriate the same towards the payment of differential duty. I order the balance amount of Rs. 77,363/- (Rupees Seventy Seven Thousand Three Hundred Sixty Three only) to be recovered from M/s Vinayak Enterprises. I also order recovery of appropriate interest on the differential duty also be recovered under Section 28AB of the Customs Act, 1962 from M/s. Vinayak Enterprises.

(v) I confiscate the goods valued at Rs. 1,19,67,202/- (Rupees One Crore Nineteen Lakh Sixty Seven Thousand Two Hundred Two Only) imported by M/s. Maurya Traders, under Section 111 (m) of the Customs Act, 1962 and impose redemption fine of Rs. 36,00,000/- (Rupees Thirty Six Lakh only) in lieu of confiscation.

(vi) I confiscate the goods valued at Rs.68,69,200/- (Rupees Sixty Eight Lakh Sixty Nine Thousand Two Hundred Only) imported by M/s.G.S.Enterprises, under Section 111 (m) of the Customs Act, 1962 and impose redemption fine of Rs. 20,00,000/- (Rupees Twenty Lakh only) in lieu of confiscation.

(vii) I confiscate the goods valued at Rs. 24,00,295/- imported M/s. Vinayak Enterprises under Section 111(m) of the Customs Act, 1962 and impose redemption fine of Rs. 7,00,000/- (Rupees Seven Lakh only) in lieu of confiscation.

(viii) I impose penalty on the three importers under Section 114A of the Customs Act, 1962 as under :-

- 1. M/s. Maurya Traders - Rs. 28,02,908/- (Rupees Twenty Eight Lakh Two Thousand Nine Hundred and Eight Only)*
- 2. M/s.G.S. Enterprises- Rs. 20,62,443/- (Rupees Twenty Lakh Sixty Two Thousand Four Hundred Forty Three Only)*
- 3. M/s. Vinayak Enterprises- Rs. 5,77,363/- (Rupees Five Lakh Seventy Seven Thousand Three Hundred Sixty Three Only)*

(ix) I impose penalty of Rs. 10,00,000/- (Rupees Ten Lakhs Only) on Shri Atul Gupta under Section 112(a) of the Customs Act, 1962.

(x) Since M/s. Maurya Traders, M/s.G.S.Enterprises and M/s. Vinayak Enterprises are proprietary concerns, I am not imposing any penalty on Shri Ashwin Kumar Bhagat, Shri Suresh Kumar Gupta and Shri Yogendra Sharma respectively being Proprietor of the firms.”

24.1 Noticees M/s. Maurya Traders, M/s.G.S.Enterprises, M/s. Vinayak Enterprises & Mr. Atul Gupta preferred an appeal against the said OIO before the Hon'ble CESTAT vide appeal nos. C/577,578,579 & 580/08-MUM. The Hon'ble Tribunal vide Order No. A/90199-90202/17/CB dated 11/10/2017 disposed the said appeals and ordered that:

“3. Revenue although confirms above proposition, says that Hon'ble High Court of Bombay in the case of Sunil Gupta Vs. Union of India - 2014-TIOL-1949-HC-MUM-CUS and Hon'ble High Court of Andhra Pradesh in the case of Vuppalamritha Magnetic Components Ltd. Vs. DRI (Zonal Unit), Chennai - 2017 (345) ELT 161 (AP) have held contrary to the aforesaid decision. It may be stated that when an appeal is admitted, order or judgment of lower court is in jeopardy and judgment of Apex Court shall bring the matter to finality as has been held by Apex Court in the case of Union of India Vs. West Coast Paper Ltd. - 2004 (164) ELT 375 (SC). Therefore, as a rule of consistency, this matter may also go back to the adjudicating authority for appropriate decision on the basis of outcome of the Apex Court judgment in the case of Mangali Impex (supra).

4. As we have not touched the merit of the case, while making fresh adjudication on the basis of outcome of Apex Court decision, as stated herein before, appellants shall be granted reasonable opportunity of hearing to argue both on facts and law as well as on merit before learned adjudicating authority. That authority, recording pleading as well as evidence, shall pass a reasoned and speaking order.

5. In the result, appeals are remanded to the adjudicating authority.”

24.2 The said order of Hon'ble CESTAT was accepted by the Commissioner of Customs on 20/12/2017 and the said case file was transferred to Call Book subsequently. Further, after certain amendments in the Act vide Finance Act, 2022, the said case file was taken out of the Call Book on 30.11.2022.

Details of personal hearing and noticees submissions

25. Personal hearings were granted to the noticees to appear on 15.06.2023. Shri Sanjay Singhal, Advocate, representative for all the noticees i.e. M/s. Maurya Traders, M/s. G.S.Enterprises, M/s. Vinayak Enterprises with proprietors & Mr. Atul Gupta attended PH on 15.06.2023 and made his written submissions.

Summary of submissions by noticees

26. Representative of all the noticees submitted his written submissions dated 15.06.2023 and also submitted additional submissions vide E-mail dated 24.11.2023.

26.1 Vide submissions dated 15.06.2023 noticees M/s. Maurya Traders, M/s. G.S. Enterprises & M/s. Vinayak Enterprises and their proprietors submitted the submissions on the following points:-

(i) No separate demand of duty and imposition of separate fine & penalty can be made from the proprietor and the firm

- a. It is submitted that since the law is well settled that a Proprietary Firm and its Proprietor are one and the same, therefore no separate demand of duty and imposition of separate fine & penalty can be made from the proprietor and the firm. Therefore, proceedings against the proprietor, Shri Ashwin Kumar Bhagat, Shri Suresh Gupta & Shri Yogendra Sharma need to be dropped.

(ii) Jurisdiction of DRI Officers to issue SCN

- a. It is submitted that the matter relates to remand order No. A/90199-90202/17/CB dated 11.10.2017 passed by the Tribunal, which remanded the matter back to the adjudicating authority to decide the issue upon pronouncement of the judgment of the Apex Court in the case of UOI Vs Mangli Impex (CA No. 20453 of 2016), wherein the Apex Court had stayed the operation of the judgment of the Hon'ble Delhi High Court. In the circumstances, when the decision of Apex Court in Department's appeal in Mangli Impex Case is yet to be pronounced, it is not known as to why the matter is being adjudicated in violation of the Order of the Hon'ble Tribunal and if it is the view that since the Apex Court has stayed the order of High Court, then there is no reason for keeping the adjudication pending since 2017, when the case was remanded back to customs.
- b. It is also submitted that unless cogent reasons are supplied for the reasons of the delay, adjudication of the same is a violation of the Tribunal Order as well as Violation of Principles of Natural Justice, as the delay remains unexplained and therefore the proceedings ought to be dropped in terms of delay in adjudication. Reliance placed upon the judgments of the Hon'ble High Court:
- i. Eastern Agencies Aromatics (P) Ltd Vs UOI & Ors [2022 (12) TMI 323 (Bom)]
 - ii. Zodiac Clothing Co Ltd Vs UOI [2023 (1) TMI 61 (Bom)]
 - iii. Parle International Vs UOI [2020 (11) TMI 842 (Bom)]
- c. Further, it is submitted that whether the officers of Directorate of Revenue Intelligence are proper officers for issuance of Show Cause Notice has been examined by the Hon'ble Supreme Court in the case of Canon India Pvt Ltd Vs UOI [2021 (3) TMI 384 (SC)], wherein it has been held that the officers of DRI are not proper officers for issuance of show cause notice. The same has been confirmed by the Hon'ble Supreme Court in the case of CC Vs Agarwal Metals and Alloys [2021 (9) TMI 316 (SC)]. Recently, the Hon'ble Tribunal in the case of Fakhri Steels and Iron Vs CC [2022 (7) TMI 208] basing its order on the judgments of the Supreme Court in the case of Canon India Pvt Ltd and the Delhi High Court in the case of Mangli Impex has allowed the appeal filed by the appellant on the grounds that the officers of DRI are not proper officers for issuance of

show cause notice. Therefore, these proceedings are also *ab initio void* in terms of the Tribunal Order in the case of Fakhri Steels and Iron Vs CC.

(iii) Submissions on Rejection of Declared Value:

- a. It is submitted that mere noticing of undervaluation cannot be ground for rejecting these contemporaneous imports and that cogent evidence of undervaluation has to be produced, which the investigation has failed to do so. The notice makes reference to imports by Modern Cable and Broadcasting Services (MCBS), Ahmedabad who appear to have stated that the value ranges between US \$ 7-12/pc (fob or cif not known), depending upon chipset. Electronic Enterprises, who stated to have imported stock lots goods and @ US\$ 10.5 cif per pc. Catvision Products Pvt ltd, whose Bills of Entry are taken under Rule 6 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 to load the value of the goods imported by the noticee, who stated that the value ranges from US \$ 10.75 to US \$ 18 per piece (fob). A quotation from one N.Shin Exports showing price of US \$ 16.50/pc, Indian Manufacturer BEL, Bangalore who estimated price of US \$ 10 to US \$ 18 for different manufacturers, a report was taken from TVS Electronics Ltd, Chennai which stated that the price of controller varies from US \$ 8 to US \$ 13/pc.

It is further submitted that the quotation price of N.Shin Exports and report of TVS electronics Ltd can be safely removed from the list as the law is well settled that quotation prices or reports, which are not backed by import Bills of Entry are liable to be rejected for comparison basis. As far as values provided by BEL, Bangalore, these are local manufacturing prices and not the import backed by Bills of entry and hence cannot be taken cognizance of. Similarly, the prices of Electronic Enterprises, who imported one consignment of stock lot goods also cannot be taken cognizance for comparison basis, they being stock lot goods and not in the course of normal trade. This leaves out only the imports made by MCBS and Catvision.

- b. It is further submitted that, as far as imports by MCBS are concerned which is tabulated in Table 2 in Para 15.8 (Pg 25 of impugned notice), it may be seen that reliance is placed on three bills of entry and the description of the goods given in Column 6 are only populated PCB, only tuner, PCB Board + Tuner etc and there is no mention whether these are for Digital Satellite Receiver or not, the chipset type which is being peddled in their statement is not figuring in the said table. Therefore, the averments and imports made by Modern Cable and Broadcasting System, Ahmedabad are not comparable to the imports made by the noticee.
- c. It is further submitted that, the value of the goods imported by Catvision Private Limited viz., Main Board for Digital Satellite Receiver has fallen from US \$ 21.80 (B.e No. 612557 dated 30.12.2003) to US \$ 10.75 (B.e No. 808285 dated 11.03.2004) fob within a

period of 3 months, which seems to indicate foul play on part of this importer. Besides, it may be noted from Table 2 (Page 25 of SCN) that the price of the very same goods has varied between US \$ 10.75 (B.e No. 808285 dated 11.03.2004) and US \$ 17.5 (B.e No. 615829 dated 01.06.2004) within a period of 3 months from March 2004 to June 2004. Also, the price of the very same item fell from US \$ 17.5 (B.e No. 615829 dated 01.06.2004) to US 11.25 (B.e No. 715481 dated 17.06.2004) within 16 days of June 2004. No attempt has been made by the investigation agency to verify as to why the prices of the very same goods have fallen by 35% within a span of 16 days. It raise the doubt as to whether the item imported by Catvision Private Limited is the same in all the three bills of entry and whether the same is similar to the one imported by M/s. Maurya Traders. Therefore, given the vast variation in prices, the proposal for rejection of value under Rule 10A of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 cannot be upheld. In this regard, reliance is placed upon the following:

- 1) Sumeet Exports (India) Vs CC [2019 (370) ELT 423]
- 2) CCE Vs Sanjeevani Non-ferrous Trading Pvt Ltd [2019 (365) ELT 3 (SC)]
- 3) Gujarat Ambuja Cements Ltd Vs CC [2003 (7) TMI 159]
- 4) Dohler India Pvt Ltd Vs CC [2017 (357) ELT 1129]
- 5) Divine International Vs CC [2016 (338) ELT 142]
- 6) Rajesh Gandhi & Ors Vs CC [2019 (2) TMI 1508]

(iv) No Corroboration of the alleged payments differential amount to supplier

- a. It is submitted that for the payment of money, over and above the invoice value, the only investigation done by the agency comes out in para 8.3 of the Show Cause Notice, wherein Shri Atul Gupta stated that one Mr Guo Bin had earlier visited India and had sent a person name Mr Sanjay with a currency note number to whom he paid. There is no investigation as to trace out this Mr Guo Bin or Mr Sanjay nor was it ascertained as to the exact amount paid to this person for each of the pieces imported by him through any of the three firms covered by the impugned notice. Unless there is some kind of evidence of payment over and above, the invoice value, the loading of the value cannot be approved. Without any investigation in that direction whatsoever, the show cause notice is defective. Also, apart from the statements that Mr Atul Gupta looked after the imports of the firm, there is no documentary evidence of any kind to show that Mr Atul Gupta handled the imports of the noticee firm. Reliance is placed upon the judgements of Hon'ble Tribunal in the case of Impex Steel & Bearing Co Vs CC [2014 (302) ELT 464].
- b. It is further submitted that Shri Atul Gupta in his statement dated 17.03.2005 has admitted to undervaluation and extent of undervaluation and manner in which the differential value was paid and that Shri Atul Gupta has already retracted his statement in

his letter dated 18.03.2005 and therefore, the said statement cannot be taken cognizance of. That the investigating agency did not call Shri Atul Gupta to confirm his statement dated 17.03.2005.

(v) proposal of substituting the declared value by the cif value is illegal

- a. For imports in 2003, Noticee M/s. G S Enterprises submitted that the notice proposes substituting the declared value by the cif value derived in Bill of Entry No. 612557 dated 30.12.2003 of Catvision Private Limited against the Bills of Entry No. 409414 dated 17.11.2003 and No. 413453 dated 28.11.2003 and the said proposal is erroneous and illegal as the value declared by Catvision Pvt ltd in its import document is fob value and the said cif value has been derived artificially under rule 9 by assuming the freight, insurance and landing charges at 20%, 1.125% and 1% respectively.
- b. For imports in 2004, noticees M/s. Maurya Traders, M/s. G.S. Enterprises & M/s. Vinayak Enterprises submitted that the proposal of substituting the declared value by the cif value derived in Bill of Entry No. 808285 dated 11.03.2004 of Catvision Private Limited against the Bills of Entry filed by M/s. Maurya Traders, M/s. G.S. Enterprises & M/s. Vinayak Enterprises is erroneous and illegal as the value declared by Catvision Pvt ltd in its import document is fob value and the said cif value has been derived artificially under rule 9 by assuming the freight, insurance and landing charges at 20%, 1.125% and 1% respectively.

(vi) Description of the goods is not matching

- a. For imports in 2003, Noticee M/s. G S Enterprises & For imports in 2004, noticees M/s. Maurya Traders, M/s. G.S. Enterprises & M/s. Vinayak Enterprises submitted that the description of the goods is not matching at all since the goods have been described in the import invoices of the noticees as “Unbranded Populated PCB for CATV receiver (set of two)” whereas the description of the goods in the relied upon document is “Mainboard for Digital Satellite Receiver”. The difference between CATV Receiver and Digital Satellite Receiver is given below -

CATV (Cable And Terrestrial TV) was the original technology used to provide television signals to remote areas that couldn't receive over-the-air broadcasts. This involved the use of a central antenna to pick up the signals and distribute them to individual subscribers via coaxial cable.

Cable TV evolved from CATV and involves the use of a coaxial cable network to deliver a broader range of channels to subscribers. Cable TV providers also offer additional services such as internet and telephone service, and often use a hybrid fiber-coaxial network to deliver their services.

Satellite TV uses a network of satellites to deliver television signals directly to subscribers' homes via a dish installed on their property. Satellite TV offers a wider range of channels and packages compared to cable TV and can be a good option for people living in remote areas where cable is not available.

In summary, CATV, cable TV, and satellite TV are all technologies used for delivering television programming, but they differ in their delivery method and the range of services they offer.

- b. Reliance is placed upon the judgement of Hon'ble Tribunal in the case of Tech Tronix India Vs CC [2006 (203) ELT 301]. In view of the above difference between CATV Receiver and Digital Satellite Receiver, the case law applies on all fours and the proceedings initiated by the impugned notice have to be dropped.

(vii) Application of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 is not proper

- a. For imports in 2003, Noticee M/s. G S Enterprises & for imports in 2004, noticees M/s. Maurya Traders, M/s. G.S. Enterprises & M/s. Vinayak Enterprises submitted that the notice has proposed applying Rule 6 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 for loading the value of the imported goods. It appears that no attempt whatsoever was made to demonstrate that the imported goods and the goods cleared vide relied upon Bill of Entry No. 612557 dated 30.12.2003 & 808285 dated 11.03.2004 are having like components, perform the same functions and are commercially interchangeable.
- b. Further, M/s. GS Enterprises for the imports in 2003, submitted that the contemporaneous imports have to be at the same commercial level. While the imports are to the tune of 1515 pieces per consignment, the contemporaneous imports are of 288 pieces in the consignment. Therefore, the quantities being hugely different, the same are not comparable and therefore the proposal for enhancement of value to US \$ 21.20 cif per piece merits rejection.
- c. For imports in 2004, noticee M/s. Maurya Traders submitted that the contemporaneous imports have to be at the same commercial level. While their imports are to the tune of 1515, 1504, 2020, 2110 and 1809 pieces per consignment in each of the eleven Bills of Entry listed in Table 1-A of Para 15.8 of the notice, the contemporaneous imports are of 505 pieces in the consignment. Therefore, the quantities being hugely different, the same are not comparable and therefore the proposal for enhancement of value to US \$ 13.02 cif per piece merits rejection. Noticee, M/s. G.S. Enterprises submitted that the contemporaneous imports have to be at the same commercial level while their imports are of the tune of 1515, 1414 and 3636 pieces per consignment respectively, the

contemporaneous imports are of 505 pieces in the consignment. Therefore, the quantities being hugely different, the same are not comparable and therefore the proposal for enhancement of value to US \$ 13.02 cif per piece merits rejection. Further, noticee M/s. Vinayak Enterprises submitted that the contemporaneous imports have to be at the same commercial level. While their import is only one Bill of Entry No. 517583 dated 01.12.2004 containing 4040 pieces in the said Bill of Entry listed in Table 1-C of Para 15.8 of the notice, the contemporaneous imports are of 505 pieces in the consignment. Therefore, the quantities being hugely different, the same are not comparable and therefore the proposal for enhancement of value to US \$ 13.02 cif per piece merits rejection. Noticees M/s. Maurya Traders, M/s. G.S. Enterprises & M/s. Vinayak Enterprises placed reliance upon the judgement of Hon'ble Tribunal in the case of CC Vs Arihant Enterprises [2023 (4) TMI 788]

(viii) Proviso to Section 28 cannot be applied

- a. It is submitted that there is no allegation of any collusion in the whole of the impugned notice and therefore this charge does not apply. As far as wilful mis-statement is concerned, nothing has been brought on record that any statement made is false in any respect excepting that the agency has found some other importers importing, apparently "similar" goods, for higher value. Therefore, the charge of wilful mis-statement also cannot be made against the noticee especially in view of the fact that the Bills of Entry have been duly assessed and goods examined in docks. Nothing is brought out in the notice that any fact has been suppressed by the noticee and the said fact has surfaced during the investigation. If it is deemed that some payment was allegedly made by Mr Atul Gupta to one Mr Sanjay at the behest of one Mr Nuo Bin, then it is not related to the bills of entry of the noticee since there is nothing to connect the payment with which bill of entry filed by the noticee. Hence, the proviso to Section 28 cannot be applied to the facts of this case and hence the whole of the demand of duty cannot be sustained at all.

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

- a. It is submitted that no case for misdeclaration can be made out against the impugned goods. Reliance is placed upon the judgement of Hon'ble Bombay High Court in the case of CC Vs Finesse Creation Inc [2009 (8) TMI 115 (Bom)]. Also, the said Order has been upheld by the Hon'ble Supreme Court [2010 (5) TMI 804 (SC)], which dismissed the appeal filed by the department. Therefore, it is submitted that not only the goods are not liable for confiscation but also no redemption fine can be imposed as the goods are not available for redemption.

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

- a. It is submitted that when the goods are not liable to confiscation then no penalty under Section 112(a) of Customs Act, 1962 can be imposed on the goods. Section 112(a) applies only when the noticee does any positive act which renders the goods liable to confiscation. Apart from a statement of Mr Atul Gupta that he paid some money once to one Mr Sanjay on the behest of One Mr Guo Bin, there is nothing to show any amount was paid over and above the invoice value and yet. Merely because the notice finds some other apparently “similar” goods cleared by some other importers, it cannot be categorically said that the value or description has been misdeclared. When there is no misdeclaration whatsoever and hence no penalty under Section 112(a) can be imposed on the noticee.

(xi) Penalty cannot be imposed under Section 114A of Customs Act, 1962

- a. The notice proposes penalty under Section 114A of Customs Act, 1962, but as already submitted hereinabove, the proviso to Section 28 (1) does not apply to the facts of this case and when there is no collusion, wilful mis-declaration or suppression of facts, penalty under Section 114A of Customs Act, 1962 cannot be applied. Reliance is placed upon the judgement of:
1. Hon’ble Tribunal in the case of Signet Chemical P ltd Vs CC [2020 (10) TMI 289] . The said Order has been upheld by the Bombay High Court in the case of CC Vs Signet Chemicals P ltd [2022 (9) TMI 1014 (Bom)]
 2. Hon’ble Tribunal in the case of Srithai Superware India Ltd Vs CC [2019 (10) TMI 460]
 3. Hon’ble Tribunal in the case of P G Electroplast Ltd Vs CC [2020 (373) ELT 415]

26.2 Vide submissions dated 15.06.2023 representative of the Noticee Shri Atul Gupta submitted his arguments on the following points:-

(i) Jurisdiction of DRI Officers to issue SCN

- a. It is submitted that the matter relates to remand order No. A/90199-90202/17/CB dated 11.10.2017 passed by the Tribunal, which remanded the matter back to the adjudicating authority to decide the issue upon pronouncement of the judgment of the Apex Court in the case of UOI Vs Mangli Impex (CA No. 20453 of 2016), wherein the Apex Court had stayed the operation of the judgment of the Hon’ble Delhi High Court. In the circumstances, when the decision of Apex Court in Department’s appeal in Mangli Impex Case is yet to be pronounced, it is not known as to why the matter is being adjudicated in violation of the Order of the Hon’ble Tribunal and if it is the view that since the Apex Court has stayed the order of High Court, then there is no reason for keeping the adjudication pending since 2017, when the case was remanded back to customs.

- b. It is also submitted that unless cogent reasons are supplied for the reasons of the delay, adjudication of the same is a violation of the Tribunal Order as well as Violation of Principles of Natural Justice, as the delay remains unexplained and therefore the proceedings ought to be dropped in terms of delay in adjudication. Reliance placed upon the judgments of the Hon'ble High Court:
- i. Eastern Agencies Aromatics (P) Ltd Vs UOI & Ors [2022 (12) TMI 323 (Bom)]
 - ii. Zodiac Clothing Co Ltd Vs UOI [2023 (1) TMI 61 (Bom)]
 - iii. Parle International Vs UOI [2020 (11) TMI 842 (Bom)]
- c. Further, it is submitted that whether the officers of Directorate of Revenue Intelligence are proper officers for issuance of Show Cause Notice has been examined by the Hon'ble Supreme Court in the case of Canon India Pvt Ltd Vs UOI [2021 (3) TMI 384 (SC)], wherein it has been held that the officers of DRI are not proper officers for issuance of show cause notice. The same has been confirmed by the Hon'ble Supreme Court in the case of CC Vs Agarwal Metals and Alloys [2021 (9) TMI 316 (SC)]. Recently, the Hon'ble Tribunal in the case of Fakhri Steels and Iron Vs CC [2022 (7) TMI 208] basing its order on the judgments of the Supreme Court in the case of Canon India Pvt Ltd and the Delhi High Court in the case of Mangli Impex has allowed the appeal filed by the appellant on the grounds that the officers of DRI are not proper officers for issuance of show cause notice. Therefore, these proceedings are also *ab initio void* in terms of the Tribunal Order in the case of Fakhri Steels and Iron Vs CC.

(ii) Reliance on statements

- a. It is submitted that the case against the Noticee emanates from the statement dated 17.03.2005 and other importers gave identical statements that Shri Atul Gupta opened their firms and that they used to sign papers when needed and that the electronic goods were imported and all government duties were paid correctly and that they did not take any monetary compensation. They also stated that they agreed with the statement of Shri Atul Gupta and that they undertake to pay the differential duty.
- b. It is further submitted that the Noticee has retracted his statement vide letter dated 18.03.2005. Therefore, the statement has no evidentiary value and Shri Gupta attended the DRI office on 21.03.2005 to hand over the demand drafts but no attempt was made by the investigating agency to get him to confirm his earlier statement dated 17.03.2005.
- c. Further, it is submitted that there is no documentary evidence whatsoever, to show that Shri Atul Gupta handled any import or local sales or bank documents or any statutory agencies relating to any of the three firms.
- d. It is submitted that as far as payments for the goods imported by the three firms, it may be noted that no investigation has been carried out to find out the gentlemen, Mr. Nuo Bin

or Mr. Sanjay to find out the exact amount stated to have been remitted towards the said purchase of the goods.

- e. Besides, the provisions of Section 138B of Customs Act, 1962 has not been carried out in respect of the statement of the noticee.

(iii) No provision of beneficial owner

- a. It is submitted that Shri Atul Gupta jointly and severally responsible for payment of duty in respect of imports made by M/s. G S Enterprises, M/s. Vinayak Enterprises and M/s. Maurya Traders, it is respectfully submitted that there was no provision of beneficial owner at the relevant period of imports and therefore, the claim of duty from the Shri Atul Gupta cannot survive. Reliance is placed upon the judgement of the Hon'ble Tribunal in the case of CC Vs Shri Joginder Kumar & Ors [2022 (9) TMI 227].

(iv) Penalty cannot be imposed under Section 112 and Section 114A of the Act

- a. It is submitted that the Notice also proposes that a penalty be imposed under Section 112(a) and Section 114A of customs Act 1962. As already submitted hereinabove when the goods are not belonging to the Noticee and even the deposits have been made by the individual firms, then no penalty under Section 114A of Customs Act, 1962 can be imposed. Besides there is nothing to demonstrate collusion, wilful mis-declaration or suppression of facts so as to invoke Section 114A of Customs Act, 1962. Reliance is placed upon the judgement of:

1. Hon'ble Tribunal in the case of Signet Chemical P ltd Vs CC [2020 (10) TMI 289] . The said Order has been upheld by the Bombay High Court in the case of CC Vs Signet Chemicals P ltd [2022 (9) TMI 1014 (Bom)]
2. Hon'ble Tribunal in the case of Srithai Superware India Ltd Vs CC [2019 (10) TMI 460]
3. Hon'ble Tribunal in the case of P G Electroplast Ltd Vs CC [2020 (373) ELT 415]

- b. As far as imposition of penalty under Section 112(a) of Customs Act, 1962 is concerned, there is nothing in the impugned notice to demonstrate that noticee has dealt with the goods in any manner except for the statement given by him that he handled the imports of the three firms.

26.3 Vide E-mail dated 24.11.2023 representative of all the noticees submitted identical additional submissions upon the receipt of RUDs and submitted that:-

- a. Noticees referred to the Bills of Entry of M/s. Catvision Products Ltd and M/s. Modern Cable and Broadcasting Services of the RUDs and submitted that the goods imported by them are CATV receivers and not Digital Satellite Receivers. Therefore, same cannot be taken into cognizance.

- b. It is further submitted that the quantities at which the goods imported by them are much higher and therefore can't be compared with the imports relied upon.
- c. Goods imported by M/s. Modern Cable and Broadcasting Services are of Set Top Boxes for Satellite Applications and therefore cannot be compared with the goods imported by them.
- d. Quotation of N Shin Exports, Hongkong can't form a basis for rejection of value or redetermination of value by customs.
- e. The letter of Bharat Electronics Limited having an opinion of the writer cannot form the basis for rejection of declared value nor can it be used for redetermination of value.
- f. The letter dated 31.03.2005 from M/s. TVS Electronics Ltd., Chennai is an opinion and a guesswork as to the value of the different components which make up a set top box. Letter is therefore only an opinion and does not reflect the transaction value of similar/identical goods. Such an opinion is not sufficient to reject the declared value under rule 10A of CVR 1998.

DISCUSSIONS AND FINDINGS

27. The present SCN dated 09.02.2007 was issued to the following 7 noticees:

Noticee-1: M/s Maurya Traders

Noticee-2: M/s G.S. Enterprises

Noticee-3: M/s. Vinayak Enterprises

Noticee-4: Shri Atul Gupta

Noticee-5: Shri Ashwani Kumar Bhagat

Noticee-6: Shri Suresh Kumar Gupta

Noticee-7: Shri Yogendra Sharma

28. The said SCN was adjudicated in the first round by the Commissioner of Customs (Import), NCH vide Order in Original No. 51/2008CAC/CC(I)/SP/Gr.VB dated 28.03.2008 in respect of all the noticees. The Commissioner in the said order had demanded differential duty from the noticees 1,2 & 3, imposed penalties on them under section 114A of the Act, hence no penalties were imposed on the noticees 5, 6 & 7 being the proprietors of these firms. The Commissioner also imposed penalty under section 112(a) on the Noticee 4. Therefore, aggrieved by the said order, noticees-1, 2, 3 & 4 preferred an appeal in the Hon'ble CESTAT against the said OIO.

29. I find that the Hon'ble Tribunal vide Order No. A/90199-90202/17/CB dated 11/10/2017 remanded back the 1st OIO dated 28.03.2008 issued vide F.No. S/10-108(Commr.I-25)/2007 VB

and ordered that “3. Revenue although confirms above proposition, says that Hon'ble High Court of Bombay in the case of Sunil Gupta Vs. Union of India - 2014-TIOL-1949-HC-MUM-CUS and Hon'ble High Court of Andhra Pradesh in the case of Vuppalamritha Magnetic Components Ltd. Vs. DRI (Zonal Unit), Chennai - 2017 (345) ELT 161 (AP) have held contrary to the aforesaid decision. It may be stated that when an appeal is admitted, order or judgment of lower court is in jeopardy and judgment of Apex Court shall bring the matter to finality as has been held by Apex Court in the case of Union of India Vs. West Coast Paper Ltd. - 2004 (164) ELT 375 (SC). Therefore, as a rule of consistency, this matter may also go back to the adjudicating authority for appropriate decision on the basis of outcome of the Apex Court judgment in the case of Mangali Impex (supra).

4. As we have not touched the merit of the case, while making fresh adjudication on the basis of outcome of Apex Court decision, as stated herein before, appellants shall be granted reasonable opportunity of hearing to argue both on facts and law as well as on merit before learned adjudicating authority. That authority, recording pleading as well as evidence, shall pass a reasoned and speaking order.

5. In the result, appeals are remanded to the adjudicating authority.”

30. Therefore in this 2nd round of adjudication post remand, only 4 noticees namely-1, 2, 3 & 4 remain before me for adjudication. I have carefully gone through the SCN, records of the case, submissions of the 4 noticees and records of personal hearing held before me.

31. I find that the issue in the case of **Mangali Impex**⁸ was the jurisdiction of DRI officers to issue SCNs under Section 28 of the Act. Similar issue came up later before the Hon'ble Supreme Court in Canon India case, wherein the Hon'ble Court ruled that DRI officers do not have power to issue SCN under section 28 of the Act. It is clear that the remand by the Tribunal is on the limited issue of jurisdiction of DRI officers to issue SCN. So the only issue before me is the legality of the SCN with respect to Mangali Impex judgement of the Hon'ble Delhi High Court and **Canon India**⁹ judgement of the Hon'ble Supreme Court.

Let me deal with this issue now:

32. Jurisdiction issue (Mangali Impex , Canon India)

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

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

⁸ Mangali Impex vs. Union of India-2016 (335) ELT 605 (Del.)

⁹ Canon India Pvt. Ltd. vs Commissioner of Customs-2021 (376) E.L.T. 3 (S.C.)

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

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

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

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

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

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

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

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

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

32.3 I also refer to the judgement of the Hon’ble Madras High Court in the matter of **N. C. Alexander**¹⁰ wherein the validity of SCNs issued by DRI was challenged through various writ petitions in the wake of Canon India (supra) Judgement after enactment of the Finance Act, 2022. Hon’ble High Court while disposing of the said writ petitions held that pursuant to the

¹⁰ N.C. Alexander Vs. Commissioner of Customs and others-2022 (381) ELT 148 (Mad.)

amendment in Section 3 of the Act by Finance Act 2022, officers from the Directorate of Revenue Intelligence are explicitly recognized as Officers of Customs and Show Cause Notices issued by officers of DRI cannot be assailed in view of validation in Section 97 of the Finance Act 2022 to pending proceedings. Relevant paras of the said judgement are reproduced below:

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

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

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

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

33. Grounds of delay in adjudication

33.1 All the noticees submitted that if the case is being decided by the Adjudicating Authority before the pronouncement of the judgment by the Apex Court in the case of UOI Vs Mangli Impex, then there is no reason for keeping the adjudication pending when the case was remanded back to customs since 2017. Unless cogent reasons are supplied for the reasons of the delay,

adjudication of the same is a violation of the Tribunal Order as well as violation of the principles of natural justice, as the delay remains unexplained and therefore the proceedings ought to be dropped in terms of delay in adjudication.

33.2 In this regard, the chronology of the case is shown below:

Sl No.	Date	Event relating to this case
1	09.02.2007	Issuance of Show Cause Notice
2	28.03.2008	Issuance of 1st Order in Original issued by Commissioner of Customs(Import), NCH
3	29.06.2016	CBIC vide Instruction F. No. 276/104/2016-CX.8A (Pt.) dated 29.06.2016 directed field formations to transfer all the SCNs issued by DRI, DGCEI,SIIB, Preventive prior to 06.07.2011 and which are pending adjudication to the Call Book, till disposal of the matter in the Supreme Court.
4	28.12.2016	CBIC Vide Instruction F. No. 276/104/2016-CX.8A (Pt.) dated 28.12.2016 clarified that all the Show Cause Notices issued by DRI, DGCEI, SIIB, Preventive and other similarly placed officers and pending adjudication, where duty demand pertains to the period prior to 08.04.2011 should be transferred to the Call Book, irrespective of the fact whether the SCN is issued prior to or post 06.07.2011 by such officers, till the Department's SLP is finally disposed by the Supreme Court.
5	11.10.2017	CESTAT's Remand Order no. A/90199-90202/17/CB on the grounds of Mangali Impex
6	03.11.2017	CBIC vide Office Memorandum F. No. 437/143/2009-Cus.IV dated 03.11.2017 expressed its view that adjudications of SCN issued by DRI may not be feasible.
7	20.12.2017	Case transferred to the call book
8	2020-21	Corona epidemic

9	17.03.21 & 16.04.21	CBIC vide Instruction F. No. 450/72/2021-Cus IV dated 17.03.2021 and 16.04.2021 instructed to keep the said SCNs pending for the present until further directions.
10	01.04.2022	Finance Act 2022 comes into force
11	30.11.2022	Case taken out of the call book and taken up for the adjudication. Further, extensions dated 14.03.2023 & 21.09.2023 were taken from the competent authority i.e. Pr. Chief Commissioner of Customs under section 28(9) of the Customs Act, 1962 and communicated to the noticees. However, these extensions were taken without prejudice to the official stand of the Department before the Bombay High Court in Writ Petition no. 33946 of 2023 (Kejal Mehta Vs. Union of India & Ors) that Show Cause Notices issued prior to 29.03.2018 will not have the mandatory time limit (as per Explanation 4 of the amended Section 28 of the Customs Act, 1962).

33.3 As seen from the table above, the present case was investigated by the Directorate of Revenue Intelligence, Delhi and the Show Cause Notice F. No. 50D/19/2005-C.I. dated 09.02.2007 was issued to the noticees. Thereafter, the said case was adjudicated by the Commissioner of Customs (Import), NCH vide Centralized Adjudication Order No. 51/2008/CAC/CC(I)/SP/Gr. VB dated 28.03.2008. Noticees aggrieved by the said order, preferred an appeal in the Hon'ble CESTAT against the said OIO and Hon'ble CESTAT remanded the case back to the Adjudicating Authority for appropriate decision on the basis of outcome of the Apex Court judgement in the case of Mangali Impex. Thereafter, the case was transferred to the call book on 20.12.2017 and after the amendments vide Finance Act, 2022, the case was taken out of the call book on 30.11.2022 along with the other cases for initiating Adjudication proceedings which were transferred to the call book due to the reasons arising out of CBIC instructions not to adjudicate the cases due to impact of Mangli Impex and Canon India Judgements. Further, extensions dated 14.03.2023 & 21.09.2023 were taken from the competent authority i.e. Pr. Chief Commissioner of Customs under section 28(9) of the Customs Act, 1962 and communicated to the noticees. However, these extensions were taken without prejudice to the official stand of the Department taken before the Bombay High Court in Writ Petition no. 33946 of 2023 (Kejal Mehta Vs. Union of India & Ors) that Show Cause Notices issued prior to 29.03.2018 will not have the mandatory time limit (as also explained in explanation 4 to amended Section 28 of the Customs Act, 1962). Hence, there is no unjustifiable or undue delay in the adjudication of the case as argued by the noticees.

33.4 Further, transferring the case to the call book was a legal necessity beyond the control of the Adjudicating Authority (Commissioner) due to reasons arising out of CBIC Instructions F. No. 276/104/2016-CX.8A (Pt.) dated 29.06.2016 & 28.12.2016 & F. No. 450/72/2021-Cus IV dated 17.03.2021 and 16.04.2021 & Office Memorandum F. No. 437/143/2009-Cus.IV dated 03.11.2017 not to adjudicate due to impact of Mangli Impex and Canon India Judgements. The principles embodied in the legal maxims '*lex non cogit ad impossibilia*' and '*impotentia excusat legem*' simply put that law does not compel a man to do that which cannot possibly be performed (*lex non cogit ad impossibilia*), and law will generally excuse a default if a party is unable to perform a duty created by law without any default in him and where he has no remedy (*impotentia excusat legem*).

33.5 Noticees have also relied upon the cases of **Eastern Agencies Aromatics (P) Ltd**¹¹, **Zodiac Clothing Co Ltd**¹² & **Parle International**¹³ on the issue of delay in adjudication proceedings.

33.5.1 In the case of **Eastern Agencies Aromatics (P) Ltd** supra, the SCN was issued by ADG, DRI in 2013. The case related to obtaining DFIA (Duty Free Import Authorisation) licences on the basis of the irregular exports to get undue benefits of import duty exemption. The adjudication of the show cause notice was kept pending for almost 9 years. The Superintendent of Customs, Adjudication(Export), by letter dated 26th August 2022, for the first time called upon the Petitioner for personal hearing scheduled on 8th September 2022. Hon'ble Bombay High Court held that **they do not find any reasonable ground for delay** in adjudication and quashed the SCN.

33.5.2 In the case of **Zodiac Clothing Co Ltd** supra, SCN was issued to the petitioner in 1997 on the grounds of non fulfilment of conditions of the Notification No.13/81 dated 9 February 1981 and 3 June 1997. The Petitioner replied to the show cause notice on 6 August, 1997. Thereafter the Petitioner did not receive any further communication in regard to the show cause notice. Neither the proceeding pursuant to show cause notice dated 7 July, 1997 were taken forward. The Bombay High Court held that the assertion of the petitioner that the Petitioner was not informed that the file of the Petitioner was transferred to the Call Book has not been controverted. The position continued for 18 years. The fact situation where show cause notice has been transferred to the Call Book and the noticee is not informed about the pendency for an unreasonable period of time. Accordingly, the Court quashed the SCN.

33.5.3 In the case of **Parle International** supra, SCN was issued in 2006 on the issue of wrong avilment of excess CENVAT credit. The adjudication was taken up 13 years later in 2019. Hon'ble High Court set aside the OIO and the SCN on the ground of inordinate delay in adjudication and also taking objection to the fact that the Adjudicating Authority passed the OIO

¹¹ Eastern Agencies Aromatics (P) Ltd Vs UOI & Ors [2022 (12) TMI 323 (Bom)]

¹² Zodiac Clothing Co Ltd Vs UOI [2023 (1) TMI 61 (Bom)]

¹³ Parle International Vs UOI [2020 (11) TMI 842 (Bom)]

while the Writ was under active consideration of the High Court thereby giving an impression that OIO has tried to bypass the HC proceedings. .

33.5.4 As evident from the above discussion, out of 17 years period between the SCN & now, the case was pending in CESTAT for 9 years and in call book for 5 years; there has been regular action during the rest of the period; the notices have been duly informed about the case being taken out of call book and the extensions granted in adjudication period by the competent authority; personal hearings have been given and the noticees have participated in those hearings. The delay in adjudication of the SCN, if any, was due to justifiable grounds well beyond the control of the adjudicating authority i.e. the Commissioner. Hence, the present case is different from the cases of **Eastern Agencies Aromatics (P) Ltd , Zodiac Clothing Co Ltd & Parle International** supra as in the present case. Therefore, I find that these case laws are of no help to the noticees in the present case.

34. On examining the rest of the issues raised in the SCN dated 09.02.2007, records of the personal hearing and the submission of noticees, I find that my predecessor Commissioner in the 1st OIO dated 28.03.2008 has discussed in detail all the issues / submissions / arguments raised by the noticees. I find her findings on the issues raised as reasonable and just and the same are reproduced below:

“26. I have carefully examined the records of the case, submissions made by the noticees and records of personal hearing.

*27. The first and the foremost issue before me is **whether there is any ground for rejecting the transaction/invoice value of the subject goods imported in the name of M/s. Maurya Traders, M/s. G.S.Enterprises and M/s. Vinayak Enterprises.***

*28. It is revealed in the investigation that Shri Ashwin Kumar Bhagat, on the instruction of Shri Atul Gupta opened a firm by name M/s. Maurya Traders and obtained IEC number wherein import of Main PCB for DSR was made by Shri Atul Gupta. Similarly Shri Suresh Kumar Gupta, Proprietor of M/s. G.S. Enterprises and Shri Yogendra Sharma, Proprietor of M/s. Vinayak Enterprises allowed Shri Atul Gupta to use the names of their respective firms as suggested by him for the purpose of importation of the subject goods of this case. It is thus seen that, **Shri Atul Gupta is the mastermind behind all the subject import of Main PCB Board of Digital Satellite Receiver (DSR)** [hereinafter referred to as the said goods] effected by the aforesaid firms. From the investigations carried out by the department, it was observed that the price of the said goods was much higher as declared by the other importers in the instant case in comparison of the pieces declared by the said three importers. During the course of investigations many instances of contemporaneous imports have been noticed and some of these imports are discussed in below mentioned paragraphs.*

29. *M/s. Modern Cable and Broadcasting Services (MCBS) of Ahmedabad is one of those contemporaneous importers of the subject goods. The said MCBS imported the main Boards and the Tuners of Satellite Receivers, separately at a total FOB value varying between US\$ 15.25 and US\$ 22.5 per unit respectively. The FOB value of the entire Satellite Receiver Kit imported by them varies between US\$ 34 to US\$ 48.5 per unit. M/s. Electronic Enterprises, another contemporaneous importer, have imported the said goods of Chinese origin at the rate of US\$ 10.5 per unit. M/s. Catvision Products Ltd., also another contemporaneous importer, have imported the said goods at the rate of US\$ 18 (FOB) per unit. During the course of investigation, detailed information was called for from the leading manufacturers and dealers of the DSR/Set Top Boxes. As per the quotation dated 07.02.2005 received from M/s. N.Shin Exports, a dealer of the said goods in Hong Kong, the said goods were offered for sale between the CIF values of US\$ 16.25 per unit (for Haier Solution) and US\$ 16.5 per unit (for Fijitsu Solution) to M/s. S.S. Enterprises, Delhi. As per the **report obtained from M/s. Bharat Electronics Ltd., Bangalore** (leading manufacturer of the said goods), cost of the said goods is in the range of US\$ 10, US\$ 15 and US\$ 18 per unit for Haier, Fijitsu and ST Microtypes. As per the report of TVS Electronics Ltd., Chennai, the Mother Board or the Main PCB of the Satellite Receiver mainly consists of the Controller and Tuner and the price of the said goods (Main Board) varies from US\$ 17.5 to US\$ 21 per unit, which is approximately 70% of the value of the entire Set Top Box/Digital Satellite Receiver. On the basis of above findings, there is sufficient reason to doubt the truth or accuracy of the value declared in relation to the subject imported goods by the three importers. It is also pertinent to mention that **no brand name or name of the chipset used in the said goods was declared** by any of the aforesaid three firms namely M/s. Maurya Traders, M/s. G.S. Enterprises and M/s. Vinayak Enterprises. The invoices submitted by these three firms to the customs authorities at the time of imports also did not mention any technical specification of the said goods. The importer also did not enter into any written contract with the supplier, rather negotiated the prices verbally and placed the order. In the light of the above enquiries conducted by the department into the correct value of the said goods vis-a-vis the value declared by the aforesaid three firms, **it is evident that heavy undervaluation has been done by these three firms in the import of the said goods.** This undervaluation was further corroborated by Shri Atul Gupta in his **confessional statement dated 17.03.2005** wherein he admitted that there was under valuation in the imports of Main Board effected by the said three firms. Shri Atul Gupta stated the extent of under valuation to the tune of US\$ 10.5 in the import of the said goods. Shri Atul Gupta also confessed regarding payment of extra remittance to the foreign suppliers over and above the value declared before the Customs. He also specified how he made these extra payments to the representative of the overseas supplies i.e. by way of identification of given currency note number. As a matter of fact, **he had voluntarily paid an amount of Rs. 35 lakhs collectively towards the discharge of differential duty obligation of the said three firms controlled by him.** The undervaluation was also admitted by **Shri Ashwin Kumar Bhagat, Shri Suresh Kumar Gupta and Shri Yogendra Sharma**, the concerned three proprietors in their respective statements recorded on 12.4.2005 wherein all of them stated that there was*

*undervaluation in the import effected in the names of their respective firms and that it was Shri Atul Gupta who had organized imports of the said goods in their firms. In the aforesaid observation, **the transaction/ invoice value, has thus been liable to be rejected under Rule 10A of Customs Valuation Rules, 1988 and the goods imported are liable for confiscation under section 111(m) of the Customs Act, 1962.***

30. Usually, the value of the goods shall be the transaction value as per Rule 3(i) of the Customs Valuation Rules, 1988. The value to be determined under Rule 3(i) is however, subject to Rule 10A of the said Rules which provides that if the proper officer has reasons to doubt the truth of the value declared before the Customs, then the transaction value can be rejected. For the reasons discussed in the aforesaid paragraph, there are sufficient ground for rejecting the transaction value as per Rule 10A. The declared value of the goods, therefore, cannot be accepted under Rule 4 in view of the Rule 3(i) read with Rule 10A of the Customs Valuation Rules, 1988. Further Rule 3(ii) of the said Rules provides that if the value cannot be determined under provisions of clause (i) i.e. the transaction value, the same shall be determined by proceeding sequentially through Rule 5 to 8 of the said Rules.

31. I find that the department has correctly doubted the transaction value in this case and the same stands rejected under Rule 10A of the Customs Valuation Rules, 1988. The valuation of the subject goods has, therefore, to be done sequentially from Rule 5 onwards. Rule 5 says that the transaction value of the goods shall be the value of the identical goods being imported into the country. "Identical Goods" as per the definition contained in Rule 2(c) implies that the goods should be same in all respects including physical characteristics, quality and reputation as the goods being valued. In the present case, **it is seen that the importers have not even declared the brand name of the said goods being imported or the chipset used or the technical characteristics of the product. In these circumstances, to establish the identical nature of the goods imported with any other goods would be inappropriate, and consequently Rule 5 cannot be invoked for determining the correct value of the imported goods.**

32. Now moving to Rule 6, the valuation of the imported goods can be done on the basis of value of the "similar goods". It is seen that many Companies have imported goods "similar" to the goods in question. On perusal of the Bills of Entry filed by Shri Atul Gupta in the name of the said three importing firms, it is found that the product has been described mainly as "Unbranded Populated PCB Board for CATV Receiver" also known as "Main Board for Receiver" or "Main Board for Digital Satellite Receiver" etc. in common parlance. All these product descriptions are of the same products, namely Main PCB Board, which is also called as Mother Board of the Digital Satellite Receiver. This main board consists of both the tuner and the controller, which together perform the function of converting the frequency band of the satellite signal received by the antenna into an appropriate frequency band, then de-coding and de-modulating it, and then finally providing an audio video signal as output to be used by the television set. It is further seen that there were several importers who were importing the goods which perform the same

*function as the subject goods that have been imported by the three noticee firms. Similarly, the goods imported by the contemporaneous importers referred to above have been produced in China. It is seen that as per the Bills of Entry filed by the aforesaid three firms, the country-of-origin has been declared as China. **On the basis of above observations, it is seen that Rule 6 of CVR, 1988 squarely applies to the present case for determining the correct value of the said goods.***

33. *It is observed that M/s. Maurya Traders have imported the said goods between January, 2004 and July, 2004. Similarly, M/s. G.S.Enterprises have imported the said goods in 2003 and in 2004 as well. The period of import in case of M/s. Vinayak Enterprises is year 2004. It is observed that the period of import is relevant for the purpose of determination of correct value on the basis of contemporaneous import as per Rule 6. It is seen that the entire period of import is divided into two time zones namely 2003 and 2004. For the period 2003, it is observed that M/s.G.S.Enterprises have imported two consignments of 1515 pcs. in November, 2003 at the CIF value of US\$ 5.3 per piece; whereas it is seen that during the same month M/s. Catvision Products Ltd., Noida have imported similar goods declaring FOB value of US\$ 18 per piece (US\$ 21.8 CIF per piece). It is also observed that during the said time period of 2003 the said M/s. Catvision Products Ltd. have also imported 288 pcs. of the said goods declaring FOB value of US\$ 17.5 per piece (US\$ 21.2 CIF per piece). It is also observed that M/s. Catvision Product Ltd. has imported this product without any brand name means that it was unbranded one. As per Rule 6, it therefore follows that the correct value for the import of said goods in the year 2003 would be **US\$ 17.5 (FOB) [US\$ 21.2 CIF] as declared by M/s. Catvision Products Ltd. in the Bill of Entry No. 612557 dated 30.12.2003 being the lowest amongst the value of similar goods imported during the same period of time.** Furthermore the quantities at which import of the said goods have taken place do not have a strong correlation with the prices of the said goods and therefore no adjustments is required to be done for the difference in the quantities at which the said goods and the similar goods have been imported for the period in question. **I fully agree with the department's view regarding the difference in quantities as discussed in the facts of the case.***

34. *It is further seen that during the year 2004, the said three firms have imported the subject goods in the range of 1500 pcs. to 3636 pcs. at approximately uniform price i.e. US\$ 5.2 to 5.3 per piece. Now the contemporaneous import by M/s. Modern Communications and Broadcast System P.Ltd. (MCBS) of similar goods at the rate of FOB value US\$ 22.6 per pc. (US\$ 27.25 CIF per pc.). M/s. Catvision Products Ltd. have also imported similar goods during this period of import at a varying value between US\$ 10.75 to US\$ 17.5 per piece. **Thus, the lowest value of the contemporaneous import of similar goods is US\$ 10.75 FOB (US\$ 13 CIF per pc.). I agree with the departmental proposal of taking the CIF value of similar goods as US\$ 13 for the imports made during the year 2004 for the aforesaid three firms***

34.1 On the basis of above, I find that department has correctly applied Rule 6 of Customs Valuation Rules, 1988 for re-determination of value by taking contemporaneous imports made by various importers in consideration. In this way, by applying Rule 6 of the Customs Valuation Rules, 1988 read with Section 14(1) of the Customs Act, 1962 the total redetermined value for M/s Maurya Traders, M/s G.S. Enterprises and M/s Vinayak Enterprises comes to Rs. 1,19,67,202/-, Rs. 68,69,200/- and Rs. 24,00,295/- respectively. I also agree with the differential duty calculated as per Annexure F-I, F-II and F-III in respect of the above mentioned three concerns. Thus, duty amounting Rs. 28,02,908/-, Rs. 20,62,443/- and Rs.5,77,363/- in respect of M/s Maurya Traders, M/s G.S. Enterprises and M/s Vinayak Enterprises is recoverable under Section 28(2) of the Customs Act, 1962. Since the duty has been short paid by the importers by reason of collusion with Shri Atul Gupta and willful misstatement and suppression of facts with respect to value as well as quantity, the extended time period as provided under proviso to sub-section (1) of Section 28 of the Customs Act, 1962 is applicable. Appropriate interest under Section 28AB of the Customs Act, 1962 is also leviable on the duty which ought to have been paid by the importers but short paid by reason of collusion, wilful misstatement and suppression of facts.

35. All the three importers have raised identical replies to the show cause notice. They contended that the statement of Shri Atul Gupta has no evidentiary value as it was retracted on the very next day. I do not agree with this statement of the importers, as there are a number of decisions supporting the case of the department about the admissibility of the retracted statement. In the case of *Krishnanand S Bhatt Vs. Commr.* [2002 (148) ELT 492 (Tri Mumbai)] it was held that the retraction of statement could not be upheld on ground of duress as no representation was made against the officer who allegedly committed duress. There is no evidence that in the instant case any of the three noticees had made any representation or complaint against any investigating officer who allegedly used threat, coercion or duress to record their statement. This decision of the CESTAT has been confirmed by the Apex Court as reported in [2003 (155) ELT 157 A(SC)]. A similar view has been upheld by the Madras High Court in the case of *Dy. Director Narcotics Control Bureau, Madras Vs. Senna K Sevan* [2003 (159) ELT 62 Madras]. In the case of *Hanuman Prasad Vs. CC Jaipur* [1998 (99) ELT 658] it was held that the effect of retraction of the statement by the appellant in his bail application as also by the subsequent telegram send by his brother and duly sworn affidavit filed after his release does not by itself reflect upon the evidentiary value of the statement which has been recorded under Section 108. No other material has been placed on record to corroborate the fact that the statements were recorded under coercion and duress. Thus, the mere fact of retraction of confessional statements by itself is not sufficient. In the case of *Surjeet Singh Chhabra Vs. Union of India* [1997 (89) ELT 646 SC] it was held by the Apex Court that confessional statement made before customs officer, though retracted within 6 days, is an admission and binding since Customs officers are not police officers

36. Further if there was really any threat why Shri Atul Gupta deposited differential duty by way of demand draft which were issued on 12/13/15.4.2005 i.e. approximately after one month from the date of the recorded statement which was recorded on 17.03.05. This clearly implies that there was no force on Shri Atul Gupta and he has given his statement voluntarily and I am bound to accept his statement as evidence in the subject matter which is also corroborated with so many other evidences that importer has mis declared the value of the subject goods.

37. Now I want to discuss various points raised by the noticees. A point was raised by the noticees that they had imported PCB for CATV receiver and these are for Analogue Receiver and not for the Digital Receiver. For the first time the noticees, in their replies, made an effort to distinguish their product as ASR from DSR. In this context the Proprietors of the three companies also submitted non-judicial affidavits. Shri Atul Gupta who was operating the three firms in question admitted in his confessional statement recorded under section 108 of Customs Act, 1962 on 17.03.05 that they had imported Main PCB for Digital Satellite Receiver. Further, Shri Ashwin Kumar Bhagat, Proprietor of M/s. Maurya Traders; Shri Yogendra Sharma, Proprietor of M/s. Vinayak Enterprises and Shri Suresh Kumar Gupta, Proprietor of M/s. G.S. Enterprises admitted in their voluntary statement on 12.04.2005 that Shri Atul Gupta used to import the electronic component in the said three firms and they undertake to pay the differential duty as admitted by Shri Atul Gupta s/o Shri Suresh Kumar Gupta who is the Proprietor of M/s. G.S. Enterprises. On the basis of the above, these affidavits and the statement of importing Analogue Receiver and not the Digital Receiver is a clear afterthought and have no evidentiary value. I do not find any scope for escape of the three firms, their proprietor and Shri Atul Gupta in the light of above mentioned fact.

38. I find that two submissions were made by each of three firms in approximately identical wordings on both the occasions. The first submission was received in this office on 10.04.2007 and the second submission was made on 18.10.2007. In the first submission all the three importers admitted in their replies that they had imported Main Board of DSR (Digital Satellite Receiver) and tried to justify their case, however, on the second submission all the three importers have stated that they have imported Analogue Receiver and not Digital Receiver part. Both the submissions of all the three importers are contradictory to each other. I believe it to be an afterthought only as they are not consistent on their own statements/submissions, and therefore, their retraction from accepting that they had imported Main Board for DSR cannot be believed in the light of so many corroborated evidences against them.

39. One issue raised by the importers with reference to quantities was that the quantity imported by them are more than that of the quantity of Main PCB of DSR imported by the Company which was taken as contemporaneous import. I find that though there is a variation in the quantity imported by the three Companies and M/s. Catvision Products Ltd. for comparison purpose, I agree with the view of the department that in the present case the quantity does not affect the determination of value. It is seen that the value for 1515 pcs. and 3636 pcs. of the said

goods declared by the three companies are approximately same. More than double the quantity was imported by them at same value, therefore there is no justification for their claim of proportionate quantity. Further this was not only one reason on the basis of which contemporaneous import value was taken, and there are other contemporaneous imports in the same or higher range of value, however the lower value was taken into consideration for the purpose of assessment of values.

40. The noticees have stated that the **quotation raised by M/s. N. Shin Exports, Hong Kong to M/s S.S. Enterprises** does not have any evidentiary value because quotation is merely an offer price and not the transaction value. DRI has not taken the quotation value to determine the transaction value. Since the quotation indicates a much higher value, it strengthens the department's belief that the values declared by the importer are not true and accurate, so liable to rejection under Rule 10A. As regards the question of placing reliance on quotation, it is observed that it is not a universally accepted principle that under no circumstances quotation can be accepted [Sharp Business Machines Pvt. Ltd. Vs. Collector of Customs 1990 (49) ELT 640(SC), Pan Asia Enterprises Vs. Collector - 1997 (94) ELT 59 (SC), Hind Industries Vs. Commissioner - 1998 (99) ELT A55(SC), HCL Office Automation Ltd. Vs. Commissioner - 2001 (130) ELT A266(SC), Mytri Enterprises Vs. Commissioner of Customs, Mumbai - 2004 (174) ELT 389 (Tri. Mumbai) etc.]. It will depend upon the fact of each case. In the instant case the price provided by M/s. TVS Electronics Ltd., Chennai and M/s Bharat Electronics Ltd., Bangalore being significantly higher than the values declared by the importers, also justify the rejection of declared value under Rule 10A as not true and accurate.

41. One point raised by the noticees that Show-Cause Notice equates unbranded goods with the branded goods and the goods with Fujitsu, IBM, NEC, Philips or any other IT Solution. I do not find this is true in the subject case. The goods imported by M/s Catvision Products Pvt. Ltd. are unbranded and on perusal of the copies of Bills of Entry filed by them, **I do not find any brand mentioned in the said B/E or subject invoice**. Similarly the quotation of received by M/s N Shin Exporters reflects the price of Haier Configuration which is same as that of imported by the three firms. This fact was accepted by Shri Atul Gupta in his confessional statement dated 17.3.2005 who has made all the imports under the said three firms.

42. Another point raised by the noticees that SCN concedes the involuntary statement because it accepts the value of the goods in question and duty liability of Rs.67 lakhs was admitted by Shri Atul Gupta in respect of the three firms, whereas the SCN demands duty of Rs. 54,42,714/- from these three firms. I find that the duty demanded by the department is less than that accepted by Shri Atul Gupta. However, it is seen that importers have not entered into any contract/LC/agreement with the overseas suppliers and therefore the value has been determined on the basis of contemporaneous import. In case of similar goods, the lowest value of contemporaneous import has been taken to determine the correct assessable value. Because of

exact and correct methods applied in accordance with law, the CIF value of 2004 has actually come to a less value than CIF value of 2003 (USD 13 per piece against USD 21 per piece).

43. *Regarding the issue of power of adjudication, in case of M/s Maurya Traders and M/s G.S. Enterprises, the noticees were called to show cause to Commissioner whereas in case of M/s Vinayak Enterprises, the noticees were called to show cause to Joint Commissioner. Since Commissioner has got the full powers to adjudicate under Section 122 of Customs Act, 1962 without any limit, **any adjudication that could be done by Joint Commissioner can also be done by Commissioner.** While adjudicating the common Show Cause Notice, I have clubbed all three cases of the noticees and there is no infringement of any law or instruction in doing so.*

44. *In the aforesaid circumstances, it is seen that M/s. Maurya Traders, M/s. Vinayak Enterprises and M/s. G.S. Enterprises in conspiracy with Shri Atul Gupta have willfully and knowingly mis declared the value and suppressed the true transaction value of the said imported goods in the invoice submitted to Customs with an intent to evade the customs duties, and thus rendered the said goods liable to confiscation under section 111(m) of Customs Act, 1962 and have also rendered themselves liable for penal action under Section 114A as well as Section 112(a) of Customs Act, 1962. Since the duty has been short paid by the importers by the reason of willful misstatement and suppression of facts, the penalty under Section 114A of the Customs Act, 1962 equal to the duty is also leviable on them. Since, I am imposing penalty under Section 114A, I am not imposing any penalty under Section 112(a) as provided under the fifth proviso to Section 114A ibid though penalty under Section 112(a) is otherwise imposable on them. It is further seen that Shri Ashwin Kumar Bhagat, Proprietor of M/s. Maurya Traders, Shri Suresh Kumar Gupta, Proprietor of M/s. G.S. Enterprises and Shri Yogendra Sharma, Proprietor of M/s. Vinayak Enterprises and Shri Atul Gupta were also parties to the aforesaid fraud and thus have rendered the goods liable for confiscation under section 111(m) of the Customs Act, 1962 and consequently liable for penalty under Section 112(a) ibid. As I have already decided to impose penalty on the proprietary firms under Section 114A, I am not imposing penalty on the proprietors under Section 112(a) ibid. But I am imposing penalty on Shri Atul Gupta under Section 112(a) of Customs Act, 1962 for his act of commission in abetting illegal import of impugned goods by three firms*

45. *Since the goods are not physically available for confiscation the importers are liable to pay fine in lieu of confiscation as provided under Section 125 of Customs Act, 1962.[Weston Components-2000(115) ELT 278(SC) and Venus Enterprises-2006(199) ELT 661 (Tri-Chennai)].”(emphasis added at certain places)*

35. I agree with the above findings of my predecessor Commissioner in the OIO dated 28.03.2008. In addition to the above findings, I find that the noticees submitted some case laws in their defence.

Case laws on Valuation

35.1 The noticees 1,2 & 3 have placed reliance on **Tech Tronix India**¹⁴, **Sumeet Exports (India)**¹⁵, **Sanjeevani Non-ferrous Trading Pvt Ltd**¹⁶, **Dohler India Pvt Ltd**¹⁷, **Rajesh Gandhi**¹⁸, **Divine International**¹⁹, **Gujarat Ambuja Cements Ltd**²⁰, **Arihant Enterprises**²¹ & **Impex Steel & Bearing Co**²² regarding valuation of the imported goods.

Let me deal with these case laws now:

35.1.1 The case of **Tech Tronix India** supra is related to the undervaluation of imports of 'Digital Satellite Receiver (Set Top Box)'. SCN was based on a study of the value evidences available from Directorate of Valuation (DOV) data. Hon'ble Tribunal held that the data relied upon by the department does not indicate the level of the imports in quantity terms & description of the goods relied upon was 'Integrated Receiver Decoder (Set Top Box)', while goods under import were "Digital Satellite Receiver (Set Top Box)". No material is available on record to prove that "Integrated Receiver Decoder" & "Digital Satellite Receiver" are same goods and accordingly impugned order was set aside and appeals of the party were allowed by the Hon'ble Tribunal.

35.1.2 In the Tech Tronix case, the imported commodity was the complete unit of Digital Satellite Receiver & the importer had submitted NIDB data of similar value clearances at Kolkata which was neither admitted nor verified by the Commissioner. In the present case, the commodity is the main PCB Board, which is a part of Digital Satellite Receiver. DRI has given detailed contemporaneous data of other parties showing 2-3 times higher value. The party who is importing these goods at around \$5-6 did not submit any trade data near to their values. They have only questioned DRI's reliance on quotations from manufacturers/suppliers and also that their product is main PCB Board for CA TV receiver which is different from Digital Satellite Receiver. Hence, I find that the present case is clearly distinguishable from the Tech Tronix case.

35.1.3 The case of **Sumeet Exports (India)** supra is related to the undervaluation in import of disperse dyes from China. Duty due against the imported consignment was debited by the importer against the Target Plus License. The SCN was based upon certain relied upon documents including e-mail regarding the price of disperse dyes based on 25 Kgs carton. Hon'ble Tribunal relied upon SC Judgement in **Eicher Tractors**²³ wherein it is held that "*In the circumstances, production of the price list did not discharge the onus cast on the Customs authorities to prove that the value of the 1989 bearings in 1993 as declared by the appellant was*

¹⁴ Tech Tronix India Vs CC [2006 (203) ELT 301]

¹⁵ Sumeet Exports (India) Vs CC [2019 (370) ELT 423]

¹⁶ CCE Vs Sanjeevani Non-ferrous Trading Pvt Ltd [2019 (365) ELT 3 (SC)]

¹⁷ Dohler India Pvt Ltd Vs CC [2017 (357) ELT 1129]

¹⁸ Rajesh Gandhi & Ors Vs CC [2019 (2) TMI 1508]

¹⁹ Divine International Vs CC [2016 (338) ELT 142]

²⁰ Gujarat Ambuja Cements Ltd Vs CC [2003 (7) TMI 159]

²¹ CC Vs Arihant Enterprises [2023 (4) TMI 788]

²² Impex Steel & Bearing Co Vs CC [2014 (302) ELT 464]

²³ Eicher Tractors Vs CC [2000 (122) E.L.T. 321 (S.C.)]

not the "ordinary" sale price of the bearings imported." Hon'ble Tribunal held that proper cogent evidences for rejection of value were not there. Certain e-mails were relied upon which were not even with the reference to imports. NIDB data should have been referred to by the Ld. Adjudicating Authority and Commissioner (Appeals). Accordingly appeals filed by the appellants are allowed by the Hon'ble CESTAT.

35.1.4 The Supreme Court judgement in the case of Eicher Tractors limited supra was on the principal that the special circumstances on which the transaction value can be rejected have been given in rule 4(2) of the CVR 1988 and in the absence of these exceptions, it is mandatory for Customs to accept the price actually paid or payable for the goods in the particular transaction.

35.1.5 The case of **Dohler India Pvt Ltd** supra is related to the under-valuation in the import of 72 drums (19800 kgs.) of 'apple juice concentrate' and importer is the manufacturer of blended juice for which the imported concentrate is an input. The SCN was based on the contemporaneous import Bill of Entry on the basis of which value of the imported goods was enhanced. Hon'ble Tribunal held that proper cogent evidences for rejection of value were not there except for a contemporaneous import at a different port at a higher price. Also the valuation rules were not applied sequentially and appellants were denied access to the documents of contemporaneous imports.

35.1.6 However, the present case is different from the cases of **Sumeet Exports, Eicher Tractors and Dohler India** supra because in the case of **Sumeet Exports** orders were passed by lower authorities without quoting any NIDB data and do not indicate as to what evidence or special circumstances were taken into account for such rejection and to justify their doubt. However, in the present case multiple evidences are present in the form of contemporaneous import Bills of entry of M/s. Catvision Products Limited & M/s. Modern Communication & Broadcast System Pvt. Ltd. which are at significantly higher value. Moreover, Shri Atul Gupta in his statement dated 17.03.2005 not only admitted under-valuation but also the extent of under-valuation and has even indicated the manner in which the differential value over and above the value declared to Indian Customs was being illegally sent to the overseas suppliers i.e. by way of identification of given currency note number. The under valuation was also admitted by Shri Ashwani Kumar Bhagat, Shri Suresh Kumar Gupta and Shri Yogendra Sharma, the concerned three proprietors in their respective statements recorded on 12.4.2005. Further, no evidence of retraction of the said statements has been putforth and this issue has been discussed in detail in the findings in para no. 35 and 36 of the OIO dated 28.03.2008 passed by my predecessor Commissioner. Therefore, proper evidence exists to justify the doubt on transaction value. Also, in the present case, the importers did not enter into any written contract with the supplier, rather negotiated the prices / orders verbally which is different in facts from the case of **Eicher Tractors** supra as that case was based on the availability of the vendor's price list indicating significantly higher prices of the goods imported than that declared by the importer and hence these ratios are of no help to the noticees in this case.

35.1.7 The case of **Sanjeevani Non-Ferrous Trading Pvt Ltd** supra is related to the undervaluation in respect of imported aluminum scrap, which was imported by the importer. The said declared value was rejected by the assessing officer and reassessment was done by increasing the assessable value. The Hon'ble Apex Court relied upon the judgement in the case of the **South India Television** [2007 (214) E.L.T. 3 (S.C.)] wherein at para no. 13 it is held that *"13. Section 14(1) speaks of "deemed value". Therefore, invoice price can be disputed. However, it is for the Department to prove that the invoice price is incorrect. When there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted. The value in the export declaration may be relied upon for ascertainment of the assessable value under the Customs Valuation Rules and not for determining the price at which goods are ordinarily sold at the time and place of importation. This is where the conceptual difference between value and price comes into discussion."* Further, Hon'ble Apex Court also relied upon the judgement in the case of **Prabhu Dayal Prem Chand** [2010 (253) E.L.T. 353 (S.C.)] wherein appeal by the Department was dismissed by the Court. The Court noted, while accepting the plea of the assessee, that they were not confronted with any contemporaneous material relied upon by the Revenue for enhancing the price declared by them in the Bills of Entry. In view of the above, Hon'ble Apex Court did not find any merit in these appeals and dismissed the case.

35.1.8 The present case is different from the cases of **Sanjeevani Non-Ferrous Trading , South India Television & Prabhu Dayal Prem Chand** supra as in those cases no evidences was putforth to reject the declared value. However in this case, multiple evidences of contemporaneous imports at a significant higher price are available and are relied upon for the purpose of valuation.

35.1.9 The case of **Rajesh Gandhi** supra is related to the under-valuation of 'silver polyester metal yarn(1/64)' and 'polyester metallic yarn (kasab)'. The Show Cause Notice refers to emails and facsimile messages, as evidence of participation of the appellants in the conspiracy to mis-declare the value with the suppliers by arranging the documents to mis-declare the price of the goods, besides adducing information culled from the internal memory of computers belonging to certain other persons. The consideration paid separately to Indian representatives of the suppliers from the unaccounted consideration received from buyers of the final products and the confessional statement of Shri Rajesh Gandhi. Hon'ble Tribunal held that the impugned order was bereft of sequential application of the Valuation Rules 1988 and also the RUDs were not supplied to the noticees. Hence, impugned order was set aside and appeals were allowed. However, the present case is different from the Rajesh Gandhi case as in this case the Customs Valuation Rules, 1988 were applied properly and proper reasons were recorded to reject the declared value under the rule 10A of the CVR,1988. Thereafter, the said rules were sequentially applied to arrive at the correct valuation of the goods imported and as per rule 6 of the said rules.

35.1.10 The case of **Divine International** supra is related to the under-valuation in the import of old and used 241 photocopier machines of Cannon brand. SCN was based on enhancing the

value of consignment on the basis of the report of the second Chartered Engineer. Hon'ble Tribunal held that "8. *In view of the fact that Revenue has not advanced any evidence to show that transaction value was not correct and has in fact have not rejected the transaction value and in view of clear legal position as emerging from the above declared decisions, we are of the view that transaction value was required to be adopted as correct assessable value. In the light of said conclusion arrived at by us, we find no reasons to go into the other pleas of the appellant as regards the correctness of the value adopted by the Chartered Engineer.*

9. *In view of the above discussion, we find no merits in the Revenue's stand. Accordingly, the impugned order is set aside and appeal allowed with consequential relief to the appellant.*"

35.1.11 The facts of the present case are different from the case of **Divine International** supra as the case is regarding the import of old and used photocopier machine and the value was enhanced on the basis of the report of the second Chartered Engineer. However, the present case is of the import of the new components/parts of Digital Satellite Receiver and the transaction value has been rejected on the basis of the contemporaneous imports of significantly higher value and the admission of undervaluation in the statement of Shri Atul Gupta dated 17.03.2005. Therefore, this ratio is not applicable in this case.

35.1.12 Noticees also placed reliance on the judgement of Hon'ble Tribunal in the case of **Gujarat Ambuja Cements Ltd** supra. The case is related to the under-valuation of import non-coking coal from different suppliers. The reason for enhancing the assessable value was that other importers were importing coal at higher values and that the appellants had themselves imported coal consignments at varying prices. Hon'ble Tribunal held that the lower authorities have shown no reason as to why the lower transaction values are not to be considered as full commercial prices. The appellant's explanation that quantity variations under the different contracts was the only reason for the lower price is in conformity with commercial practice. Accordingly, the appeal was allowed after setting aside the impugned order. The present case is different from the case of Gujarat Ambuja Cements. In the present case, the noticees had imported different quantities of the said goods i.e. unbranded populated PCB for CATV receiver (Set of Two) at almost the same price of USD 5.2/ 5.3. Therefore, quantities at which import of said goods have taken place do not have a strong correlation with the prices of the said goods and also there are reasonable evidences in the form of contemporaneous imports which are at significantly higher values (2-3 times) as compared to the price of imported goods in the present case. Therefore, this ratio will not help noticees in this case.

35.1.13 The case of **Arihant Enterprises** supra is related to the import of electric motors of various capacities under five Bills of entry by undervaluing the price. SCN is based on the comparison of the values of the electric motors declared in these bills of entry with the values of electric motors in the National Import Data Base (NIDB). The quantities imported by the respondent were three times to 500 times the quantities in the bills of entry with which the values

have been compared. The Hon'ble Tribunal held that *“15. To sum up, we find that the only thing established during the investigation is that other importers imported goods through Nhava Sheva port at different prices and the difference in quantities was between 3 times to 500 times. This does not in any way prove that the declared transaction value was not true or not accurate.*

16. In view of the above and the factual matrix of this case, we fully agree with the findings of the impugned order and find no reason to interfere with it. The impugned order is upheld and appeal is rejected.”

35.1.14 In the present case the noticees had imported different quantities of the said goods i.e. unbranded populated PCB for CATV receiver (Set of Two) at almost the same price of USD 5.2/5.3. Therefore, quantities at which import of said goods have taken place do not have a strong correlation with the prices of the said goods and also there are reasonable evidences in the form contemporaneous imports which are at significantly higher values as compared to the price of imported goods in the present case. Therefore, this ratio will not help noticees in this case.

35.1.15 The case of **Impex Steel & Bearing Co** supra is related to undervaluation in the import of 11225 dozens of Chinese PU Belts with buckles from the manufacturer in China. SCN was based on the price taken from internet, market enquiry and NIDB data. Hon'ble Tribunal held that the Revenue has not produced any evidence to show that there was any additional consideration flowing back from the appellant to the foreign supplier, in which case the Revenue is bound to accept the declared transaction value. Apart from that the attention of the lower authorities was drawn to the fact of another import made by the appellant at Tughlakabad wherein the value of the identical goods declared by them @ US \$ 1.50 per dozen were accepted and there was no appeal of the Revenue against the said assessment order. Similarly, reliance on NIDB data, without going into the details of the goods cannot be held to be appropriate. There is nothing in the said market enquiry to reveal that the belts purchased by the officers were of the same type, which stands imported by the appellant except the fact that the brand name was 'Tuff Line'. Accordingly, impugned order was set aside and the appeal was allowed with consequential relief to the appellant.

35.1.16 I find that the case of **Impex Steel & Bearing Co** supra is of no help to the noticees as technically in this case the importer had earlier imported identical goods at the same price at ICD, Tughlakabad which stands accepted by the Customs authorities and the consignment stands cleared. However, in the present case, no evidence of identical goods being cleared by the noticees is put forth for consideration. Moreover, in the present case Shri Atul Gupta in his statement dated 17.03.2005 himself had admitted under-valuation and had even indicated the manner in which the differential value over and above the value declared to Indian Customs was being illegally sent to the overseas suppliers i.e. by way of identification of given currency note number. Therefore, this ratio is not applicable in this case.

Case law on Confiscation & Redemption

35.2 Noticees 1,2 & 3 further Relied upon the judgement of Hon'ble Bombay High Court in the case of **Finesse Creation Inc**²⁴. The case is related to the undervaluation in the imported consignment of artificial flowers. SCN was based on the seized documents recovered during the search of the premises of the importer which showed value declared to the Customs was substantially lower than the value appearing on seized documents. Hon'ble High Court in this case held that if the goods are not available, there is no question of redemption of the goods. Department challenged this Bombay HC Order in Supreme Court by way of SLP (CIVIL) which was dismissed after delay condonation by the Hon'ble Apex Court vide Order dated 26.02.2010 in SLP (Civil) CC 7373/2010.

35.2.1 In this regard, I find that in terms of Section 125 of the Customs Act, 1962 there is an option to pay a fine in lieu of confiscation. Section 125 is reproduced below for the sake of brevity:

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

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

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

35.2.2 I find that the Hon'ble Madras High Court, in the case of **Visteon Automotive Systems India Limited**²⁵, has held that availability of goods is not necessary for imposing redemption fine. Vide the said order it was inter alia held that “....opening words of Section 125, “Whenever confiscation of any goods is authorised by this Act”, brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing

²⁴ CC Vs Finesse Creation Inc [2009 (8) TMI 115 (Bom)]

²⁵ Visteon Automotive Systems India Limited Vs CESTAT, Chennai-2018 (9) G.S.T.L. 142 (Mad.)

from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act.

35.2.3 I find that the above view of the Hon'ble Madras High Court was relied upon by Hon'ble Gujarat High Court in the case of **M/s. Synergy Fertichem Pvt. Ltd**²⁶. Hon'ble Gujarat High Court at para 174 and 175 held that *We would like to follow the dictum as laid down by the Madras High Court in Para-23 in the case of Visteon Automotive Systems India Limited Vs CESTAT, Chennai.*

35.2.4 The noticee has argued that not following the ratio of Finesse Creation would amount to contempt of Supreme Court. But on reading the Supreme Court Order dated 26.02.2010 in the case of Finesse Creation in SLP (Civil) CC 7373/2010, it states “ *The special leave petition is dismissed*”. As per the landmark judgement in **Kunhayammed**²⁷ of the Apex Court, dismissal of an SLP does not lead to merger. The underlying principle is that the Supreme Court, when refusing to grant leave to appeal, exercises merely discretionary jurisdiction and not appellate jurisdiction. Hence the Finesse Creation ratio cannot be considered as the judgement of the Hon'ble Supreme Court.

35.2.5 To conclude, since the High Court judgements in the case of **Visteon Automotive Systems India Limited & Synergy Fertichem Pvt. Ltd** have been passed much after the judgement of **Finesse Creation Inc**; the Committee of Chief Commissioners for reviewing Orders of this Zone have also taken a stand in consonance with the ratio of Visteon & Synergy in the case of **QK Marine Services**²⁸; therefore I rely on these judgements and conclude that the redemption fine is imposable on imported goods even if they have been cleared from the customs port and are not presently available for confiscation.

Case law on Beneficial Owner

35.3 Further, Shri Atul Gupta relied upon the judgement of the Hon'ble Tribunal in the case of **Shri Joginder Kumar & Ors**²⁹ and submitted that as far as imposition of penalty under Section 112(a) of Customs Act, 1962 is concerned, there is nothing in the impugned notice to demonstrate that noticee has dealt with the goods in any manner except for the statement given by him that he handled the imports of the three firms. Therefore, penalty under Section 112(a) of Customs Act, 1962 cannot be invoked against him. Also it is submitted that the provisions of beneficial owner did not exist prior to 2017.

35.3.1 I find that Shri Atul Gupta is the mastermind in this import fraud of under-valuation of electronic goods. It is very clear from the statement of Shri Atul Gupta dated 17.03.2005 that he

²⁶M/s. Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.)

²⁷Kunhayammed Vs State of Kerala 2001 (129) E.L.T. 11 (S.C.)

²⁸Order No. 02-R/PCCO-I/2021-22 dated 21.01.2022

²⁹CC Vs Shri Joginder Kumar & Ors [2022 (9) TMI 227].

only started M/s. G.S. Enterprises and his father Shri Suresh Kumar Gupta was made the proprietor on papers. He was looking after the day to day activities of M/s. G.S. Enterprises. He also had utilized the firms M/s. Vinayak Enterprises and M/s. Maurya Traders for importing the said goods. He used to place orders verbally after negotiating the price of the goods and used to get confirmed the shipment schedule. He also organized the illegal payments of differential amounts to the foreign suppliers over and above what was declared to the Indian Customs. Penalty under section 112(a) is imposable **on any person and not on the importer alone**. The criteria for imposing penalty is any person who abets the doing of any action which renders the goods liable for confiscation. In this case, Shri Atul Gupta has abetted the act of improper importation of goods by the three importer firms. Therefore, Shri Atul Gupta is liable for penal action under section 112(a) of the Act . Further, in this case, differential duty is being demanded from the firms and not from Shri Atul Gupta, therefore, the concept of beneficial importer is neither applied nor relevant to this case.

Case laws On Penalty and Limitation

35.4 Noticees 1,2,3 & 4 also opposed penalty under section 114A of the Customs Act, 1962 and placed reliance upon the judgements of Hon'ble Tribunal in the case of **Signet Chemical P ltd³⁰, Srithai Superware India Ltd³¹ & P G Electroplast Ltd³²**.

35.4.1 The case of **Signet Chemical** supra is related to the mis-classification of sucrose on the basis of audit. Importer classified the same under CTH 17029090 of Customs Tariff Act (CTA), 1975, however, the Department proposed re-classification of the goods under CTH 17019990. Hon'ble Tribunal held that since the issue relates to classification of goods between two competing Headings being a question of interpretation of law, hence, imposition of penalty is uncalled for and unwarranted and is accordingly set aside. The said order was upheld by the Bombay High Court in the case of **Signet Chemical³³**.

35.4.2 The case of **Srithai Superware** supra is related to the mis-classification and wrong availment of duty benefit under notification No 46/2011-Cus dated 01.06.2011 of 'Melamine ware viz Kitchenware and Tableware'. Hon'ble Tribunal set aside the impugned order and remanded the matter back to Commissioner for re-determination and re-quantification of the demand which could be made by denying the exemption under Notification No. 46/201-Cus to the appellants within the normal period as provided by Section 28(1) also set aside the order holding goods liable for confiscation and imposition of penalty under Section 112(a) & 114A of Customs Act, 1962.

³⁰ Signet Chemical P ltd Vs CC [2020 (10) TMI 289]

³¹ Srithai Superware India Ltd Vs CC [2019 (10) TMI 460]

³² P G Electroplast Ltd Vs CC [2020 (373) ELT 415]

³³ CC Vs. Signet Chemical P ltd [2022 (9) TMI 1014 (Bom.)]

35.4.3 The case of **P G Electroplast** supra is related to the over-valuation of 14 inch colour picture tubes from M/s. Chunghwa, Malaysia in order to evade Anti Dumping duty. Hon'ble Tribunal held that "7.Further we note that the assessment were finalized during May 2010 to January 2011 and all the information required for assessment was provided by the appellant and therefore the allegation of suppression of facts made on 29 May, 2015 are not sustainable. Therefore, the proceedings are hit by limitation. We therefore hold that the impugned order is neither sustainable on merits nor sustainable on point of limitation. We, therefore, set aside the impugned order and allow both the appeals."

35.4.4 I find that the cases of **Signet Chemical & Srithai Superware** are of no help to the noticees as these case laws are on the principle that penalty under section 114A cannot be imposed merely on the ground of technical dispute between the importer and the Department. The case of **P G Electroplast Ltd** is also of no help to the noticees as in that case it was held that no suppression was done by the importer. The present case is not the case of the technical dispute or the classification issue. In the present case, serious under-valuation of 2-3 times have been noticed. Sufficient evidences of conspiracy and suppression unearthed during investigation have been placed on record in the SCN. It is very clear from the statement of Shri Atul Gupta dated 17.03.2005 that he only started M/s. G.S. Enterprises and his father Shri Suresh Kumar Gupta was made the proprietor on papers. He was looking after the day to day activities of M/s. G.S. Enterprises. He also had utilized the firms M/s. Vinayak Enterprises and M/s. Maurya Traders for importing the said goods. He used to place orders verbally after negotiating the price of the goods and used to get confirmed the shipment schedule. He also organized the illegal payments of differential amounts to the foreign suppliers over and above what was declared to the Indian Customs. Thus, the three firms & the mastermind Shri Atul Gupta came together only for the purpose of doing under-valuation in the import of 'the said goods'. Therefore, the elements of fraud and suppression are clearly present in this case. Hence, the three importing firms are liable for the penal action under section 114A & the mastermind Shri Atul Gupta is liable for penal action under section 112(a) for abetting the import fraud.

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

ORDER

36.1 I reject the declared value of the subject goods imported in the name of M/s. Maurya Traders, M/s. G.S. Enterprises, and M/s. Vinayak Enterprises **under Rule 10A** of the Customs Valuation Rules, 1988 and re-determine the value as Rs. 1,19,67,202/-, Rs. 68,69,200/- and Rs. 24,00,295/- respectively **under Rule 6** of Customs Valuation Rules read with Section 14(1) of the Customs Act, 1962.

36.2 I confirm the demand of differential duty of **Rs. 28,02,908/- (Rupees Twenty Eight Lakh Two Thousand Nine Hundred and Eight Only)**, as calculated in Annexure F-I to the SCN, under Section 28 of the Customs Act, 1962 from **M/s Maurya Traders** along with

appropriate interest on the differential duty under Section 28AA (erstwhile 28AB) of the Customs Act, 1962 from M/s. Maurya Traders.

36.3 I appropriate the amount of Rs. 16,00,000/- (Rupees Sixteen Lakhs only) paid voluntarily by M/s Maurya Traders against the above stated confirmed differential duty as calculated in Annexure F-I to the SCN, in respect of goods imported in the name of firm M/s Maurya Traders.

36.4 I confirm the demand of differential duty of **Rs. 20,62,443/- (Rupees Twenty Lakh Sixty Two Thousand Four Hundred Forty Three Only)**, as calculated in Annexure F-II to the SCN, under Section 28 of the Customs Act, 1962 from **M/s G.S. Enterprises** along with appropriate interest on the differential duty under Section 28AA (erstwhile 28AB) of the Customs Act, 1962 from M/s. G.S. Enterprises.

36.5 I appropriate the amount of Rs. 14,00,000/- (Rupees Fourteen Lakhs only) paid voluntarily by M/s. G.S. Enterprises against the above stated confirmed differential duty as calculated in Annexure F-II to the SCN, in respect of goods imported in the name of firm M/s. G.S. Enterprises.

36.6 I confirm the demand of differential duty of **Rs. 5,77,363/- (Rupees Five Lakh Seventy Seven Thousand Three Hundred Sixty Three Only)**, as calculated in Annexure F-III to the SCN, under Section 28 of the Customs Act, 1962 from **M/s Vinayak Enterprises** along with appropriate interest on the differential duty also be recovered under Section 28AA (erstwhile 28AB) of the Customs Act, 1962 from M/s. Vinayak Enterprises.

36.7 I appropriate the amount of Rs.5,00,000/- (Rupees Five Lakhs only) paid voluntarily by M/s. Vinayak Enterprises against the above stated confirmed differential duty as calculated in Annexure F-III to the SCN, in respect of goods imported in the name of firm M/s. Vinayak Enterprises.

36.8 I confiscate the goods valued at Rs. 1,19,67,202/- (Rupees One Crore Nineteen Lakhs Sixty Seven Thousand Two Hundred Two Only) imported by M/s. Maurya Traders, under Section 111(m) of the Customs Act, 1962 and impose redemption fine of **Rs. 36,00,000/- (Rupees Thirty Six Lakhs Only)** in lieu of confiscation under Section 125 of the Act.

36.9 I confiscate the goods valued at Rs. 68,69,200/- (Rupees Sixty Eight Lakh Sixty Nine Thousand Two Hundred Only) imported by M/s. G S. Enterprises, under Section 111(m) of the Customs Act, 1962 and impose redemption fine of **Rs. 20,00,000/- (Rupees Twenty Lakhs Only)** in lieu of confiscation under Section 125 of the Act.

36.10 I confiscate the goods valued at Rs. 24,00,295/- (Rupees Twenty Four Lakh Two Hundred Ninety Five Only) imported by M/s. Vinayak Enterprises under Section 111(m) of the

Customs Act, 1962 and impose redemption fine of **Rs. 7,00,000/- (Rupees Seven Lakhs Only)** in lieu of confiscation under Section 125 of the Act.

36.11 I impose a penalty equal to duty of **Rs. 28,02,908/- (Rupees Twenty Eight Lakh Two Thousand Nine Hundred and Eight Only) alongwith interest** upon M/s. Maurya Traders under Section 114A of the Act, provided that where such duty and interest is paid within thirty days from the date of the order of the proper officer determining such duty, the amount of penalty liable to be paid under this section shall be twenty-five percent of the duty and interest, as the case may be, so determined. The benefit of reduced penalty shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days.

36.12 I impose a penalty equal to duty of **Rs. 20,62,443/- (Rupees Twenty Lakh Sixty Two Thousand Four Hundred Forty Three Only) alongwith interest** upon M/s. G. S. Enterprises under Section 114A of the Act, provided that where such duty and interest is paid within thirty days from the date of the order of the proper officer determining such duty, the amount of penalty liable to be paid under this section shall be twenty-five percent of the duty and interest, as the case may be, so determined. The benefit of reduced penalty shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days.

36.13 I impose a penalty equal to duty of **Rs. 5,77,363/- (Rupees Five Lakh Seventy Seven Thousand Three Hundred Sixty Three Only) alongwith interest** upon M/s. Vinayak Enterprises under Section 114A of the Act, provided that where such duty and interest is paid within thirty days from the date of the order of the proper officer determining such duty, the amount of penalty liable to be paid under this section shall be twenty-five percent of the duty and interest, as the case may be, so determined. The benefit of reduced penalty shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days.

36.14 I impose penalty of **Rs. 10,00,000 (Rupees Ten Lakhs Only)** on Shri Atul Gupta under Section 112(a) of the Customs Act, 1962.

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



Vivek
16.2.24
(Vivek Pandey)
आयुक्त सीमाशुल्क (आयात-I)
Commissioner of Customs (Import-I),
नवीन सीमाशुल्क भवन, मुंबई
New Custom House, Mumbai-01

Enclosures:Annexure-F-I, II & III to the SCN

To,

1. M/s. Maurya Traders, 339, Triveni Apartments, Sanjan Sewa Society Opp. Jhilmil Colony, New Delhi-95
2. M/s. G.S Enterprises, B-9 (Ground Floor), New Delhi South Extension (Part-I), New Delhi -110049
3. M/s. Vinayak Enterprises, B-41 Gali No.3 North Chajjipur, Delhi-110094
4. Shri Atul Gupta, S/o- Sh. Suresh Kumar Gupta, R/o. E-75 South Extension (part-I),New Delhi-110049

Copy to:

1. The Pr. Chief Commissioner of Customs, Mumbai Zone-I, New Custom House, Mumbai.
2. The Pr. ADG, DRI, Headquarter, I.P. Bhavan, I.P. Estate, New Delhi-110002.
3. ADG(CEIB) ,Central Economic Intelligence Bureau, Janpath Bhavan, B-Wing,6th Floor, New Delhi -110001.
4. The Deputy Commissioner of Customs, Group-VA, New Custom House, Mumbai.
5. The Deputy Commissioner of Customs, CHS Section, New Custom House, Mumbai.
(For display on notice board)
6. Office Copy.

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ANNEXURE F-1
SHOW CAUSE NOTICE 50D/19/2005-C1 DATED 01/02/2007, ISSUED TO M/S. MOURYA TRADERS, M/S. G.S. ENTERPRISES & M/S. VINAYAK ENTERPRISES

Differential duty calculation in respect of goods imported through New Custom House, Ballard Estate, Mumbai by M/S. MOURYA TRADERS, Delhi.

DESCRIPTION OF GOODS -DECLARED :Unbranded Populated PCB for CATV Receiver (Set of 2)

SL.NO.	BE NUMBER	BEDATE	QATTY (PCS)	Unit Price declared (HKD) (CIF)	Exchange Rate of HKD	Exchange Rate of USD	Unit price In USD (CIF)	Ass. Value (Rs)	DUTY (paid/ Adjusted)										Revised Ass Value in Rs.*	Duty payable	Differential duty payable
									BCD	Rate	SCD/C VD	Rate	CVD/CESS	Rate	SAD/CESS	Rate	TOTAL	19			
1	427818	19.01.2004	1515	41	5.9	45.75	5.3	370143.29	74028.7	20	0	0	71067.5	16	0	0	145096.2	910056.71	356742.31	211646.11	
2	431979	03.02.2004	1515	41	5.85	45.55	5.3	367006.48	73401.3	20	0	0	70465.2	16	0	0	143866.5	906078.32	355182.60	211316.10	
3	439814	27.02.2004	1515	41	5.85	45.45	5.3	367006.48	73401.3	20	0	0	70465.2	16	0	0	143866.5	904089.13	354402.84	210536.34	
4	444061	15.03.2004	1504	41	5.85	45.45	5.3	364341.74	72868.3	20	0	0	69953.6	16	0	0	142821.9	897524.78	351829.56	209007.66	
5	447099	25.03.2004	2020	41	5.85	45.95	5.2	489341.97	97868.4	20	0	0	93953.7	16	0	0	191822.1	1218713.47	477735.80	285913.70	
6	450782	07.04.2004	2110	41	5.75	44.95	5.2	502406.83	100481.4	20	0	0	96462.1	16	0	0	196943.5	1245308.29	488160.90	291217.40	
7	454933	23.04.2004	2020	41	5.75	44.95	5.2	480977.15	96195.4	20	0	0	92347.6	16	0	0	188543.0	1192190.87	467338.71	278795.71	
8	459599	11.05.2004	2020	41	5.7	44.30	5.3	476794.74	95358.9	20	0	0	91544.6	16	0	0	186903.5	1174851.18	460580.77	273677.27	
9	469008	10.06.2004	2020	41	5.85	45.45	5.3	489341.97	97868.4	20	0	0	93953.7	16	0	0	191822.1	1205452.17	472537.37	280715.27	
10	471324	21.06.2004	1809	41	5.85	45.45	5.3	438227.54	87645.5	20	0	0	84139.7	16	0	0	171785.2	1079536.13	423178.17	251392.97	
11	481940	29.07.2004	2020	41	5.9	46.50	5.2	493524.38	98704.9	20	94757	16	1895.1	2	3907.1	2	199263.8	1233300.90	497953.56	298689.76	

20068

2802908.30

In respect of imports during the year 2004 revised assessable value calculated as FOB value i.e., 10.75 USD +Freight 20%+Insurance1.125%=13.02 USD CIF which is rounded off at 13 USD.
Landing cost of 1% is added on this revised CIF value

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ANNEXURE F-II
SHOW CAUSE NOTICE 50D/19/2005-CI DATED 01/02/2007, ISSUED TO M/S. MOURYA TRADERS, M/S. G.S.ENTERPRISES & M/S. VINAYAK ENTERPRISES

Differential duty calculation in respect of goods imported through New Custom House, Ballard Estate, Mumbai by M/s. G.S.ENTERPRISES, Delhi.

DESCRIPTION OF GOODS -DECLARED :Unbrand Populated PCB for CATV Receiver (Set of 2)

SLNO.	BE NUMBER	BEDATE	QTTY (PCS)	Unit Price declared (HKD)	Exchange Rate of HKD	Exchange Rate of USD	Unit price in USD (CIF)	Ass. Value (RS)	DUTY (Paid/ Adjusted)										Revised Ass. Value in Rs.-	Duty payable	Differential duty payable
									BCD	Rate	SCD/CVD	Rate	CVD/CESS	Rate	SAD/CESS	Rate	TOTAL	19			
1	409414	17.11.2003	1515	41	5.85	45.50	5.3	367006.5	91448.8	25	0	0	73401.2	16	21216.1	4	186066.1	1475982.69	748298.31	562232.21	
2	413453	28.11.2003	1515	41	5.85	45.25	5.3	367006.5	91448.8	25	0	0	73401.2	16	21216.1	4	186066.1	1467872.90	744186.78	558120.68	
3	486285	16.08.2004	1515	41	5.95	46.50	5.2	373280.1	74656	20	71669.8	16	1433.4	2	2955.2	2	150714.4	924975.68	373465.27	222750.87	
4	516033	29.11.2004	1414	41	5.9	45.25	5.3	345467.07	69093.4	20	66329.7	16	1326.6	2	2735	2	139484.7	840103.36	339197.49	199712.79	
5	521004	10.12.2004	3636	41	5.8	45.25	5.3	873287.21	174657.4	20	167671.1	16	3353.4	2	6913.6	2	352595.5	2160265.77	872221.62	519626.12	

9595 2062442.68

In respect of imports during the year 2003 revised assessable value calculated as FOB value i.e., 17.5 USD +Freight 20%+Insurance1.125%=21.19 USD CIF which is rounded off at 21.20 USD. Landing cost of 1% is added on this revised CIF value

In respect of imports during the year 2004 revised assessable value calculated as FOB value i.e., 10.75 USD +Freight 20%+Insurance1.125%=13.02 USD CIF which is rounded off at 13 USD. Landing cost of 1% is added on this revised CIF value

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ANNEXURE F-III
 SHOW CAUSE NOTICE 50D/19/2005-C1 DATED 01/02/2007, ISSUED TO M/S. MOURYA TRADERS, M/S. G.S. ENTERPRISES & M/S. VINAYAK ENTERPRISES

Differential duty calculation in respect of goods imported through New Custom House, Ballard Estate, Mumbai by M/s. Vinayak Enterprises, Delhi.

DESCRIPTION OF GOODS -DECLARED :Unbrand Populated PCB for CATV Receiver (Set of 2)

SLNO.	BE NUMBER	BEDATE	QTYTY (PCS)	Unit Price declared (HKD) (CIF)	Exchange Rate of HKD	Exchange Rate of USD	Unit price in USD (CIF)	Ass. Value (Rs)	DUTY (Paid/ Adjusted)										Revised Ass Value in Rs.*	Duty payable	Differential duty payable
									BCD	Rate	SCD/CVD	Rate	CVD/CESS	Rate	SAD/CESS	Rate	TOTAL	20			
1	517583	01.12.2004	4040	41	5.8	45.25	5.3	970319.12	194063.8	20	186301.3	16	3726	2	7681.8	2	391772.9	2400295.30	969135.44	577362.54	
																				577362.54	

In respect of imports during the year 2004 revised assessable value calculated as FOB value i.e., 10.75 USD +Freight 20%+Insurance1.125%=13.02 USD CIF which is rounded off at 13 USD. Landing cost of 1% is added on this revised CIF value