



भारत सरकार

वित्त मंत्रालय/ राजस्व विभाग

केंद्रीय अप्रत्यक्ष कर एवं सीमाशुल्क बोर्ड - मुंबई अंचल-1, भारतीय सीमाशुल्क

आयुक्त सीमाशुल्क (आयात-1) का कार्यालय

द्वितीय मंजिल, नवीन सीमाशुल्क भवन, शूरजी वल्लभदास मार्ग, बेलाई एस्टेट,
मुंबई-400001.

दूरध्वनि-22757401 फैक्स-22757402

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फा.सं. : S/5-PD-69/07-VA, S/10-35/2007/VA & DRI/MZU/D/INV-01/06-07/5420

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

आदेश दिनांक: 24.03.2023
जारी दिनांक: 24.03.2023

सी.ए.ओ. क्रमांक : 97/2022-23/CAC/CC(IMPORT-1)/VP/ADJ(IMP-1)
DIN No. 202303770000005555E0

मूल आदेश

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



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

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F.No. S/5-PD-69/07-VA, S/10-35/2007/VA & DRI/MZU/D/INV-01/06-07/5420

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

Date of Order: 24.03.2023
Date of Issue: 24.03.2023

C.A.O. No.: 97/2022-23/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I)
DIN No. 202303770000005555E0

ORDER-IN-ORIGINAL

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

Subject:- Second Round Adjudication of the Show Cause Notice¹ dated 03.07.2007 issued vide F. No.DRI/MZU/D/INV-01/2006-07/5420 to M/s. Rajni Printing Press, Mumbai regarding evasion of Customs duty by misdeclaration and undervaluation in the import of second-hand Offset printing machines- make Heidelberg.

Brief Facts Of The Case

Intelligence gathered by DRI indicated that certain importers had imported Second Hand offset printing Machines (Make- Heidelberg) by resorting to misdeclaration of the year of manufacture and undervaluation in the imports. In pursuance of the said intelligence, a reference was made to the COIN unit, London with a request to ascertain the exact year of manufacture and the transaction price. It was further requested to verify the valuation submitted to London Customs at the time of their exports. Also the reference copies of the relevant Invoices/Bill of Lading/Packing List/Certificate of Inspection/Certificate of Origin etc filed by the below mentioned three importers at the time of import clearance were also forwarded to COIN unit. On receipt of the intelligence, further necessary enquiries were caused which revealed that M/s Shivam offset, Kolhapur, M/s. Kalyani Corporation, Pune and M/s. Rajni Printing Press, Mumbai were the importers who had imported and installed Second hand offset printing Machines(Make-Heidelberg), in their premises, which were imported by resorting to undervaluation and misdeclaration.

2. The factory premises of M/s. Kalyani Corporation, Pune (IEC No 3196022587) and M/s. Shivam offset, Kolhapur (IEC NO. 3102004318) were arranged to be searched on 17.04.2006 through the jurisdictional officers of Central Excise and Customs. Simultaneously the premises of M/s. Rajni Printing Press (IEC No. 0304068811) and the premises of CHA firm M/s. Mehul and Company at Room No. 12, 1ST Floor Nazir Building, Calicut Street, Ballard Estate, Mumbai 400 038 were searched on 17.04.2006.

3. The factory premises of M/s. **Rajni Printing press²**, at 2nd floor, Rambaug, Chittabhai Patel Road, Kandivli (E), Mumbai was searched on 17.04.2006. During the course of search, the officers found a **Two-Colour Offset Printing Machine Make-Heidelberg-SORMZ³** having serial no. 504435, installed in the said premises and also found one file marked as 'Heidelberg ptg File' containing pages from 1 to 221 which was taken over for further investigation. The residential premises of **Shri. Rohit Patel⁴**, partner of M/s. Rajni Printing Press at Vile parle, Mumbai was also searched on 17.04.2006. However nothing was taken over or seized from the said residential premises.

¹ Also referred to as the said SCN or the present SCN or Notice

² Also referred to as the importer or Noticee-1

³ Also referred to as the imported goods

⁴ Also referred to as Noticee-2



Vivek
24.03.23

4. Scrutiny of the documents revealed that M/s. Rajni Printing Press, Kandivli (E) vide B/E No. 551847 dated 18.03.2005 had imported one Second hand Heidelberg SORM-Z, Two - Colour offset printing machine complete with all standard accessories - year 1972 and cleared the same through M/s. Mehul and Company, CHA No. 11/755 on payment of duty of Rs 2,03,700/- The Bill of Lading no. was HAMBCO82690 dated 20.02.2005 and the supplier of the said machine was "TRUE GRADE INTERNATIONAL LTD" HAMBURG, GERMANY The invoice number of M/s Tru Grade International Ltd, was found to be 037905 dated 14. 02.2005 and the invoice value of the said machine was found to be Great Britain Pound Sterling 7000/- CIF Mumbai. The other documents in the seized file were the arrival notice from the Steamer Agents, transporter's invoice, packing list, certificate of origin, certificate of insurance etc.

5(i) During the course of further investigations, the statement of Shri. Rohit Ramdas Patel, partner of M/s. Rajni Printing Press was recorded on 19.04.2006 under Section 108 of the **Customs Act, 1962**⁵. In his statement, Shri. Rohit R. Patel inter-alia stated that after the demise of his father, he and his brother were partners of this firm since 1976. However his brother had expired in the year 2000 and his brother's son Abhay R. Patel was the partner of the firm, they were having one Heidelberg two- Colour offset printing Machine SORM-Z-504435 and one polar cutting Machine. Both the Machines were imported from M/s Tru Grade International Ltd., England; he had the opportunity to visit the exhibition of printing and allied Machinery at Pragati Maidan, New Delhi; where he met one person namely Shri. Ansari who introduced himself to others as a representative of M/s Tru Grade International Ltd., England; they exchanged their visiting cards and used to keep in touch; in 2004, as the HMT Machine, which he was having was not giving good services, he had started making enquiries for the purchase of a second hand Heidelberg offset printing Machine and a cutting machine at Mumbai; Shri Ansari had come to know about his enquiries and had contacted him on phone and had offered a choice of second hand Heidelberg Machine and cutting Machines; accordingly he had selected the second hand polar 92 EM programmatic paper cutting machine and a second hand SORM-Z, Heidelberg two- colour offset printing machine, year of manufacture 1972, S No. 504435; the deal for the polar cutting Machine was finalized at 3000 Great Britain Pound Sterling; the price of the Heidelberg printing machine was high so Shri Ansari offered to help by accepting part of the machine price in cash and that this amount so paid would be reduced from the sale invoice which would be declared to the Customs Authorities; the actual price of the Machine was negotiated at 15500 GB pounds; the invoice value was, however, shown as 7000 GB pounds and Shri Ansari had agreed to collect the balance amount in cash in Indian Rs. in two instalments; Shri Ansari had arranged the certification of the machine from the chartered Engineer to suit the year of manufacture and the value as declared in the invoice and other documents for showing to the Indian Customs; this was done to reduce

⁵ Also referred to as the Act

the payment of appropriate Customs Duty and thus to reduce the total final cost of the machine.

5(ii) That the polar cutting machine had arrived earlier and was cleared vide B.E.No. 548949 dtd. 10.03.05 and the Heidelberg offset printing machine was cleared vide B.E.No. 551847 dtd. 18.03.05; that the clearance of both the machines was handled by M/s Mehul and Co., CHA no.: 11/755; the actual value / transaction value of the aforesaid machine ie. second hand SORM-Z Heidelberg two colour offset printing machine was 15500 GB pounds, whereas the value declared on the invoice submitted to Customs authorities was 7000 GB pounds; there was under invoicing in the import of second hand Heidelberg offset printing machine to the extent of 8500 GB pounds; they were liable to pay the differential duty with interest; he had already paid Rs. 2,03,700/- Customs duty at the time of import of the machine and were willing to pay the balance differential duty.

5(iii) That regarding the whereabouts of Shri Ansari, he stated that he was the representative of M/s Tru Grade International Ltd., England and had come to India for exhibition, as far as he knew Shri. Ansari was staying at England; with regard to the remittance and payment of differential value of 8500 GB pounds, he had stated that as decided earlier during negotiations, part of the differential amount was paid in cash at the time of import of the machine into India and the second instalment was collected by a person nominated by Shri. Ansari when the machine was installed in their premises; he did not know that person and did not meet that person afterwards.

5(iv) M/s Rajni Printing Press, Kandivali (E) Mumbai-101 voluntarily deposited an amount of Rs, 3,00,000/-, on 20.04.06 by way of Demand Draft drawn on Bank of Baroda, Vile Parle (W) towards the differential duty on account of misdeclaration of the value of the said Heidelberg machine at the time of import.

6. The premises of M/s Shivam offset at Gala no E-4. Udyam Society Building, Y P Powar Nagar, Kolhapur - 416008 was searched on 17.04.06 before Shri Sanjay Thorwat, proprietor of M/s Shivam offset. During the course of search the officers noticed that two offset printing machines were found installed. One machine was second hand Adast dominant 725P two- colour offset printing machine with all standard accessories- year of manufacture 1994 and another machine was second hand Heidelberg MOV-S four- colour offset printing machine-year of manufacture 1984. The officers had also recovered 3 files relating to the purchase of these machines and had taken over the same for further investigation.

7(i). During investigations, the statement of Shri. Sanjay Thorwat, proprietor of M/s Shivam offset. Kolhapur was recorded on 24.04.06. In his statement he inter-alia stated that he had started a printing press Viz. Ganesh Printers in the year 2003; that thereafter he had expanded and registered another proprietary printing firm in his name and he was the sole

proprietor of small scale Industry in the name and style of M/s Shivam offset, Gala no. E-4, Udyan Society, New Building, Y.P. Powar Nagar, Kolhapur-416008; that he had imported two machines from England between the year 2004 and 2005 through Mumbai port and M/s Mehul and Co. CHA 11/755 had cleared both the Consignments. The first consignment was one second hand Adast dominant 725P two- colour offset printing machine with all standard accessories, year of manufacture 1994. This was cleared under B.E.no 424131 dt 05.01.2004, that the invoice no. was 32491A dt. 30.11.2003 and the declared value was 7500 GB pounds i.e. declared CIF value was Rs. 6,06,000/- and assessable value was Rs. 6, 12,060/-; the duty of Rs. 3,10,927/- was paid for the clearance. The other imported consignment second hand Heidelberg MOV-S four- colour offset printing machine-year of manufacture 1984 was cleared under BE no. 550781 dt. 15.03.2005; that the invoice no. and price were 037880/01.02.2005 and 23000 GB pounds i.e. Declared CIF value was Rs. 19,23,950/- and the assessable value was Rs. 19,43,189.50/- that the duty of Rs. 6,69,300/- was paid for the clearance of the said machine; that M/s Tru Grade International Ltd., England were the supplier of the two consignments; that he had visited the exhibition at Pragati Maidan, New Delhi in the year 2002, that there he met one person viz Shri. Ansari who was the representative of M/s Tru Grade International Ltd, England who offered him the aforesaid machines and also advised that he would get Chartered Engineer's certificate prepared showing the required year of manufacture by showing less value; that he had been assured by Shri. Ansari, representative of M/s Tru Grade International Ltd., England that the invoices would be prepared for the desired value to avoid payment of appropriate amount of Customs Duty, with regard to the real value / transaction value of the aforesaid two- machines, he stated that the real value of the second hand Adast dominant 725-P two- colour offset printing machine with all standard accessories was GB pounds 10,000/- as against declared value of GB pounds 7500, that the real value / transaction value of second hand Heidelberg MOV-S four- colour offset printing machine with year of manufacture 1984 was GB pounds 30,000/- as against the declared value of GB pounds 23,000/-; that there was under invoicing to the extent of GB pounds 9500 in respect of both the aforesaid machines and that they were liable to pay the differential duty with interest, that they had already paid Customs Duty of Rs. 9,80,226/- and the differential duty in respect of both the aforesaid consignments was worked out to Rs. 3,90,000/-; that Shri. Ansari was the representative of M/s Tru Grade International Ltd., England and that Shri Ansari had come to India for exhibition and was staying at England; that he did not know the detailed address of Shri. Ansari, that with regard to payment of differential value of GB pounds 9500, he stated that the equivalent balance amount in the Indian rupees in cash was given to some unknown person nominated by Shri. Ansari.

7(ii) With regard to the third second hand Adast dominant 725-P two colour printing machine with all standard accessories, he stated that he had sold this machine to Biswaranjan Naik, Director of Print Technology offset Pvt. Ltd, Bhuvaneshwar for Rs. 8.5 lakhs on loan basis and he had not prepared any invoice for the said sale nor received any payment so far. M/s Shivam offset, Kolhapur voluntarily deposited an amount of Rs. 3,90,000/- towards the differential duty / interest against undervaluation in the import of second hand Heidelberg offset printing machine on 28.04.2006.

8. The premises of M/s Kalyani Corporation 1464, Sadashiv Peth, "Mangesh-Shree", Renuka Swaroop School lane, Pune - 411 030 were searched on 17.04.06 in presence of Shri. Gautam M. Gelada, proprietor of M/s Kalyani Corporation. During the course of search the officers had recovered certain documents and took over the same, as the same were relevant to the on-going investigation. The officers had also noticed 3 Heidelberg machines and one polar 92 CE programmatic paper cutting machine, which were found installed in the said factory premises.

9. Scrutiny of the seized documents had revealed that M/s Kalyani corporation had imported one second hand Heidelberg speed master 72 V four-colour offset printing machine complete with CPC and all standard accessories - Country of origin Germany and cleared the same under BE no 431659 dt. 30.01.2004 through Custom House clearing Agent M/s. Mehul and Company CHA no. 11/755. The declared Value of the said Machine was 35,000 Great Britain Pound Sterling, the Assessable Value had been Rs. 38,00,076.52 and the total duty paid was Rs. 14,89,630/- The machine had been brought in container no. CRXU 4820080. The packing list and the invoice had been issued by M/s Tru Grade International Ltd. England.

10. Scrutiny of the documents further revealed that M/s Kalyani Corporation had imported another Second hand Heidelberg MOV-S four colour offset printing machine with C P C and all standard accessories - year 1983 Germany and cleared the same under B. E. no. 534963 dt. 24.01.05. The CIF value of the machine had been declared as 20000 Great Britain Pound Sterling, the Assessable Value had been i.e. Rs. 17,12,960/- and the total duty of Rs. 6,91,619/- was paid at the time of clearance. The packing list and the invoice had been issued by M/s Tru Grade International Ltd.

11. Further scrutiny revealed that M/s Kalyani Corporation had imported one second hand Heidelberg G T O V 52 four- colour offset printing machine complete with all standard accessories for GB pounds 17000- year 1983 - Germany and one second hand polar 92 CE programmatic paper cutting machine complete with all standard accessories for GB pounds 1500-year 1979 - Germany.

12. During further investigation, the statement of Shri Gautam Manikehand Gelada, proprietor of M/s Kalyani Corporation was recorded on 18.04.06. In his statement, he inter-alia stated that he was the sole proprietor of M/s Kalyani Corporation and the firm was registered in the year 1995 and the main business was printing of Government forms, registers, posters and other commercial printings on job work basis; that he had imported 4 machines from UK in the year 2004 and 2005; that one second hand Heidelberg speed master 72 V four- colour offset printing machine complete with C P C and all standard accessories was imported and was cleared under BE no. 431659 dt. 30.01.04; that the invoice no. was 127067 dt 18.12.03 and the declared value was 35000 GB pounds i.e. CIF. Rs. 28,28,000/- and A.V. was Rs. 38,00,077/- that the total duty paid was Rs 14,89,630/-; that another second hand Heidelberg MOV-S four- colour offset printing machine complete with all standard accessories MOV-603617 was imported and cleared under BE no. 534963 dt. 24.01.05; that the declared value was GB pounds 20,000 i.e., CIF Rs. 16,96,000/- and the duty paid was Rs 6,91,619/-; that again one more second hand Heidelberg GTO-V52-680012 N was imported and was cleared under BE no. 583020 dt 01.07.05, that the declared value was GB pounds 17000 i.e. CIF 14,72,600 and the duty paid was Rs. 5,12,285/-, that under the same BE, another second hand polar 92 CE programmatic paper cutting machine complete with all standard accessories was also imported, that the declared value of the machine was 1500 GB pounds: that M/s Tru Grade International Ltd., England were the supplier of all the above said 4 consignments; that he had visited the exhibition at Pragati Maidan, New Delhi in the year 2002; that he then met one Shri. Ansari, representative of M/s Tru Grade International Ltd., who offered him the aforesaid machines and advised that he would get the chartered Engineer's certificate prepared showing the required year of manufacture, showing less value on the basis of year of manufacture, that he had been assured by Shri Ansari that the invoices would be prepared for the desired value to avoid the payment of appropriate amount of Customs duty and thereby saving lot of amount, that the real value / transaction value of second hand Heidelberg speed master 72 V four- colour offset printing machine complete with CPC and all standard accessories HD 72-V-525024 was GB pounds 72000 as against the declared value of GB pounds 35000, that the real value / transaction value of second hand Heidelberg MOV-S four colour offset printing machine complete with CPC and all standard accessories MOV-603617 was GB pounds 52000 as against the declared value of GB pounds 20000, that the real value / transaction value of second hand Heidelberg GTO 52 four- colour offset printing machine complete with all standard accessories year 1983 GTO 52-680012 N was GB pounds 27200 as against the declared value of GB pounds 17000, that the real value / transaction value of second hand polar 92 CE programmatic paper cutting machine complete with all standard accessories EMC 115 was GB pounds 1500 and there was no undervaluation in the said consignment, that the real value/transaction value of the aforesaid 3 consignments i.e. second hand Heidelberg

printing machines was GB pounds 151200 as against the declared value of GB pounds 72000, that there was undervaluation to the extent of Great Britain Pound Sterling 79200 and that they were liable to pay the differential duty amount with interest, that they had already paid customs duty amounting to Rs 26,93,529/- against the aforesaid 3 consignments and that he had calculated the differential duty amounting to Rs 34 lakhs as payable, that regarding the tampering of Sr.No. HD 72-V-525054 on second hand Heidelberg speed master 72V four- colour offset printing machine complete with CPC and all standard accessories and Sr. No. GTOV52-680012N on Second hand Heidelberg GTOV52 four-colour offset printing machine complete with all standard accessories year 1983, he stated that he was not aware as to who had tampered/altered these Sr. Nos; that Shri. Ansari of M/s. Tru-Grade International Ltd., England might have tampered/altered these serial Nos. with a view to show the invoices that was to be prepared for the desired value to avoid the payment of appropriate amount of customs duty; that Shri Ansari had come to India for exhibition and thereafter Shri. Ansari was staying in England and he did not know Shri Ansari's detailed address, that with regard to remittance and payment of differential value of Great Britain Pound Sterling 79200, he stated that the balance amount in Indian Rupees in cash form was given to some unknown person nominated by Shri. Ansari

13. In his further statement dated 21.04.2006, he interalia stated that his statement dated 18.04.2006 was true and correct, that with regard to the import of Second hand Heidelberg Speed master 72V four- colour offset printing machine complete with CPC and all standard accessories under BE No 431659 dated 30.01.2004, he stated that in the invoice No. 127067 dated 18.12.2003 sent by the suppliers, the year of manufacture was given as 1994, which was not the correct year of manufacture, that the correct year of manufacture was 1986, which had been arranged by the suppliers to be shown in the invoice as 1994, so as to circumvent the restriction imposed on imports of used machines beyond 10 years, that Shri Ansari had arranged the Chartered Engineer's certificate giving the year of manufacture of the said machines as 1994 which had been submitted to customs for clearances; that this fact could be confirmed from the website of Heidelberg' taking into consideration the serial number of the machine i e., 603617.

14. Thereafter M/s Kalyani Corporation voluntarily deposited an amount of Rs 34,00,000/- Rs. 7,75,000/- on 20.04.2006, Rs 6,25,000/- on 24.04.2006 and Rs. 20,00,000/- on 05.05.2006 towards the differential duty and interest in respect of the aforesaid imports.

15. During the course of further investigations,

(a) The secondhand Heidelberg MOV-S Four -Colour offset printing machine (serial no. 604462) imported vide Bill of Entry no 550781 dated 15.03.2005 by M/s Shivam Offset and valued at Rs 32 Lakhs has been placed under seizure under section 110 of the Customs Act 1962 on 30.11.2006.

(b) The three printing machines i.e. secondhand Heidelberg MOV-S Four- Colour Offset printing machine complete with all standard accessories (SR No. 603617). Secondhand Heidelberg Speedmaster 72 V Four- colour offset printing machine complete with CPC and all standard accessories (Sr. No. 525024 and Secondhand Heidelberg GTO V 52 Four- colour offset printing machine complete with all standard accessories (Sr. No. 680012 N) imported by M/s Kalyani Corporation and all the three machines valued at Rs. 1.75 crores were placed under seizure under Section 110 of the Customs Act, 1962 on 29.11.2006.

(c) The secondhand Heidelberg SORM-Z Two colour offset printing machine imported vide Bill of Entry No 551847 dated 18.03.2005 by M/s Rajni Printing Press and valued at Rs. 18 Lakhs was placed under seizure under Section 110 of the Customs Act, 1962 on 29.11.2006.

16. All the above-mentioned three importers in their letters dated 30.11.2006, 03.12.2006 and 08.12.2006 respectively had requested to allow them to continue running their business by utilising the said machine and they had also stated that they had paid the entire differential duty with interest. The requests of the importers were forwarded by DRI to the Commissioner of Customs (Import), New Custom House for considering provisional release of the aforesaid machines which were under seizure. The said machines of the importers were released provisionally on execution of Bond for full seizure value and Bank Guarantee of 20% of the seizure value of the machines. The particulars are as under:

Sr. No.	Name of the Party	Bod Amount (in Rs.)	Bank Guarantee Amount (in Rs.)
1	M/s Rajni Printing Press	Rs. 18,00,000/-	Rs. 3,60,000/-
2	M/s Shivam Offset	Rs. 32,00,000/-	Rs. 6,40,000/-
3	M/s Kalyani Corporation	Rs. 1,75,00,000/-	Rs. 35,00,000/-

17(i). During further investigations, the details of the value indicated in the invoices of the UK Supplier were received from COIN unit London. The report gave the data regarding the name of the importer, invoice reference number of the UK supplier, value indicated in the UK supplier's invoice, value declared by the Indian importer and the year of manufacture. From the said information it was noticed that importers namely M/s Shivam Offset, Kolhapur had declared the value of their imports as Great Britain Pound Sterling 23000 whereas the value indicated in the UK supplier's invoice was found to be GBP 30000. M/s Rajni Printing Press, Mumbai had declared the value of their imports as Great Britain Pound Sterling 7000 whereas the value indicated in the UK supplier's invoice

was found to be GBP15500. M/s Kalyani Corporation, Pune had declared the value of their imports as Great Britain Pound Sterling 20000 whereas the value indicated in the U.K supplier's invoice was found to be Great Britain Pound Sterling 52000. It was further mentioned in the said information that there was no documentation to confirm the age of the machine however the UK trader had a Serial number from Heidelberg which indicated the year of manufacture of the machine as mentioned in the said letter as 1983, 1974 and 1983 respectively. The copies of the relevant invoices and the related documents obtained from the UK supplier, M/s Tru Grade International Ltd were enclosed alongwith the said letter. It was also mentioned in the said report which was supported by corroboratory documentary evidence that the Indian importers had resorted to misdeclaration of value of a huge order besides misdeclaring the age of the machinery.

17(ii). Thus the actual invoice value of the Secondhand Heidelberg SORM-Z Two- colour offset printing machines (Sr No. 504435) year of manufacture -1972 imported under Bill of Entry No. 551847 dated 18.03.2005 by M/s Rajni printing Press, Mumbai was ascertained from the UK supplier invoice. The actual invoice price was 15500 Great Britain Pound Sterling as against the declared invoice price of 7000 Great Britain Pound Sterling. Thus the differential duty on the differential value of 8500 Great Britain Pound Sterling was worked out to be Rs.2,47,350. M/s Rajni Printing Press have paid Rs. 3 lakhs on 20.04.2006 towards the differential duty and interest. Shri Rohit Ramdas Patel, partner of M/s Rajni Printing Press, in his statement recorded under Section 108 of the Customs Act, 1962 admitted the under valuation and had stated that the actual value of the said machine was 15500 Great Britain Pound Sterling whereas the value declared on the invoice declared to Customs authorities was 7000 Great Britain Pound Sterling and thus there was under invoicing to the extent of 8500 Great Britain Pound Sterling in the import of the said printing machine.

18(i). The actual invoice value of secondhand Heidelberg MOV-S Four-colour offset printing machine -year of manufacture-1984 imported and cleared under Bill of entry No. 550781 dated 15.03.2005 by M/s Shivam Offset, Kolhapur was ascertained from the supplier. The actual invoice price is 30000 Great Britain Pound Sterling whereas the declared invoice price was 23000 Great Britain Pound Sterling. Thus the differential duty on the differential value of 7000 Great Britain Pound Sterling was worked out to Rs. 2,03,700/- M/s Shivam Offset have deposited Rs. 3,90,000/- towards the differential duty and interest on 28.04.2006 in respect of the import of the above said machine and another Secondhand Adast Offset printing machine. Further Shri Sanjay Thorwat, proprietor of M/s Shivam Offset has in his statement dated 24.04.2006 recorded under Section 108 of the Customs Act, 1962 admitted the under invoicing and has interalia stated that the real value/transaction value of the Secondhand Heidelberg MOV-S Four- colour offset Printing machine was 30000 Great Britain Pound Sterling as against the declared price value of

23000 Great Britain Pound Sterling and that there was under invoicing to the extent of 7000 Great Britain Pound Sterling in the said import.

18(ii). M/s Shivam Offset had imported another Secondhand Adast Dominant 725p Two-colour offset printing machine year of manufacture-1984 with all standard accessories and cleared the same under Bill of entry No. 424131 dated 05.01.2004. The actual transaction value/price was 10000 Great Britain Pound Sterling whereas the declared invoice price was 7500 Great Britain Pound Sterling. Thus the differential duty on the differential value of 2500 Great Britain Pound Sterling worked out to be Rs. 1,03,643/ As mentioned in the earlier para, M/s Shivam Offset had voluntarily deposited an amount of Rs. 3,90,000/- in respect of the undervaluation in the import of the two printing machines. Further, Shri Sanjay Thorwat, proprietor of M/s Shivam Offset in his statement dated 24.04.2006 admitted the undervaluation/under-invoicing and interalia stated that the real value of the Secondhand Adast dominant 725P Two-colour offset printing machine was 10000 Great Britain Pound Sterling as against the declared value of 7500 Great Britain Pound Sterling and that there was under invoicing to the extent of 2500 Great Britain Pound Sterling in the import of the above-said machine.

19. M/s Kalyani Corporation, Pune had imported three Secondhand Printing machines of Heidelberg make during the year 2004 and 2005.

19(a). The actual invoice value of the Secondhand Heidelberg MOV-S Four- Colour offset printing machine complete with CPC and all standard accessories imported by M/s Kalyani Corporation, Pune and cleared under Bill of Entry No 534963 dated 21.01.2005 was ascertained from the supplier. The actual transaction value of the above-said machine was 52000 Great Britain Pound Sterling whereas the declared value of the said machine was 20000 Great Britain Pound Sterling. There was a difference in value to the extent of 32000 Great Britain Pound Sterling. Thus the differential duty on the differential value worked out to be Rs 11,06,591/- M/s Kalyani Corporation had voluntarily deposited Rs 7,75,000/- on 20.04.2006, Rs. 6,25,000/- on 24.04.2006 and Rs. 20,00,000/- on 05.05.2006 (total Rs. 34 lakhs) towards the differential duty and interest in respect of the import of three Secondhand Heidelberg printing machines. Further, Shri Gautam Manikchand Gelada, proprietor of M/s Kalyani Corporation had in his statement dated 18.04.2006 admitted the undervaluation in the import of the above said machine and stated that the real value of the said machine with Sr. No. MOV- 603617 was 52000 Great Britain Pound Sterling as against the declared value of 20000 Great Britain Pound Sterling.

19(b). The actual price of Second Hand Heidelberg Speed master 72 V Four- colour offset printing machine complete with CPC and all standard accessories and cleared under Bill of Entry No. 431659 dated 30.01.2004 was 72000 Great Britain Pound Sterling whereas the declared price of the said machine was 35000 Great Britain Pound Sterling Therefore, the differential duty on the differential value of 37000 Great Britain Pound Sterling worked out

to Rs. 8,13,674/- Further Shri Gautam M.Gelada, proprietor of M/s Kalyani Corporation in his statement dated 18.04.2006 recorded under Section 108 of the Customs Act, 1962 admitted the undervaluation and had stated that the real value/transaction value of the Second Hand Heidelberg Speed Master 72 V Four- colour offset printing machine complete with CPC and all standard accessories HD172-V- 525024 was 72000 Great Britain Pound Sterling as against the declared value of 35000 Great Britain Pound Sterling

19(c). The actual price of Second Hand Heidelberg GTO V52-680012 Four- colour offset printing machine complete with all standard accessories imported and cleared under Bill of Entry No. 583020 dated 01.07.2005 was 27200 Great Britain Pound Sterling whereas the declared value was 17000 Great Britain Pound Sterling The differential duty on the differential value of 10200 Great Britain Pound Sterling worked out to Rs 2,40,912/- Further Shri Gautam M Galada, proprietor of M/s Kalyani Corporation had in his statement dated 18.04.2006 recorded under Section 108 of the Customs Act, 1962 admitted the undervaluation and stated that the actual value of the said printing machine was 27200 Great Britain Pound Sterling as against the declared value of 17000 Great Britain Pound Sterling.

20. Thus the aforesaid investigations revealed that M/s Rajni Printing Press, Mumbai, M/s Shivam Offset, Kolhapur, and M/s Kalyani Corporation, Pune had undervalued the prices of their import consignments i.e. various types of offset printing machines of Make-Heidelberg and one Adast dominant to the concerned Customs Authorities during 2003 to 2005 as brought out in Annexure- A, B and C to the Show Cause Notice and thereby paid less customs duty. The duty paid and the differential duty payable by each of the above importers was incorporated in Annexure-A, B and C and A1, B1 and C1 respectively to the said Show Cause Notice.

21. With respect to the said consignments viz (a) second hand Heidelberg SORM-Z, two colour offset printing machine imported by M/s Rajni Printing Press, Mumbai, (b) (i) second hand Heidelberg, MOV-S, four- colour offset printing machine, (b) (ii) second hand Adast dominant 725-p two- colour offset printing machine both imported by M/s Shivam Offset, Kolhapur, (c) (i) second hand Heidelberg MOV-S Four Colour offset printing machine, (c) (ii) second hand Heidelberg Speed Master 72V Four-colour offset printing machine complete with CPC and all standard accessories, (c) (iii) second hand Heidelberg GTO-V 52 Four- colour offset printing machine complete with all standard accessories imported by M/s Kalyani Corporation, Pune, the actual value of the imported consignments appeared to be grossly in excess of the values declared in the import documents, i.e. Invoices. Thus the value in the invoice did not appear to be the value commensurate to the imported second hand Heidelberg and one Adast offset printing machines and therefore did not appear to be the transaction value as envisaged in Rule 4 of the **Customs Valuation**

(Determination of price of imported goods) Rules, 1988⁶. Therefore, the values declared in respect of the above said consignments are liable to be rejected under Rule 10 of the Customs Valuation (Determination of price of imported goods) Rules, 1988. The actual transaction value in respect of machines imported under Bill of Entry No. 551847 dated 18.03.2005, 550781 dated 15.03.2005, and 534963 dated 24.01.2005 filed in the name of M/s Rajni Printing Press, Mumbai, M/s Shivam Offset, Kolhapur and M/s Kalyani Corporation, Pune respectively are those given in the Invoices procured from the supplier. In respect of the of machines imported under Bill of Entry No. 424131 dated 05.01.2004 filed in the name of M/s Shivam Offset, Kolhapur and Bill of Entry No. 431659 dated 30.01.2004 and 583020 dated 01.07.2005 filed in the name of M/s Kalyani Corporation, Pune, the actual transaction values are as admitted by the respective importers in their statements recorded under Section 108 of the Customs Act, 1962.

22. The importers appeared to have violated the provisions of Rule 11 of the Foreign Trade (Regulation) Rules, 1993, Rule 14(1) of the Foreign Trade (Regulation) Rules, 1993 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992. On account of the aforesaid violations, the import consignments in question of an ascertained and admitted CIF value of Rs. 12,96,575/- (as mentioned in Annexure A1 to SCN), Rs. 8,08,000/- and Rs 25,09,500/- totalling to Rs.33,17,500/- (as mentioned in Annexure B1 to SCN) and Rs 44,09,600/-, Rs 58,17,600/- and Rs 21,65,120/- totaling to Rs. 1,23,92,320/- (as mentioned in Annexure C1 to SCN) are liable to confiscation under the provisions of Section 111(d) and 111(m) of the Customs Act, 1962.

23. Thus the foregoing findings indicated that:

- (a) M/s Rajni Printing Press, Mumbai had imported one Secondhand Heidelberg SORM-Z Two-colour offset Printing machine and cleared the same vide Bill of Entry No. 551847 dated 18.03.2005 and by declaring CIF value of Rs. 5,85,550/- as against the ascertained value of Rs. 12,96,575/- they have evaded Customs duty to the tune of Rs. 2,47,350/- as per Annexure 'A1' to the SCN.
- (b) M/s Shivam Offset, Kolhapur had imported one Secondhand Heidelberg MOV-S Four- colour offset printing machine year of manufacture 1984 and cleared the same under Bill of Entry No. 550781 dated 15 03.2005 and by declaring CIF value of Rs. 19,23,950/- as against the ascertained value of Rs. 25,09,500/- they have evaded Customs duty to the tune of Rs. 2,03,700/- as per Annexure 'B1' to the SCN
M/s Shivam Offset, Kolhapur had also imported one Secondhand Adast dominant 725 P Two- colour offset printing machine with all standard accessories and cleared the same under Bill of Entry No. 424131 dated 05.01.2004 and by declaring CIF value of Rs. 6,06,000/- as against the admitted value of Rs. 8,08,000/- they have evaded Customs duty to the tune of Rs. 1,03,643/- as per Annexure 'B1' to the SCN.

⁶ In short CVR, 1988

(c) M/s Kalyani Corporation, Pune had imported one Second Hand Heidelberg MOV-S four- colour offset printing machine complete with CPC and all standard accessories and cleared the same under Bill of Entry No. 534963 dated 24.01.2005 and by declaring CIF value of Rs 16,96,000/- as against the ascertained value of Rs. 44,09,600/- they have evaded Customs duty to the tune of Rs. 11,06,591/- as per Annexure C1 to the SCN M/s Kalyani Corporation, Pune had also imported one Secondhand Heidelberg Speedmaster 72V Four- colour offset printing machine complete with CPC and all standard accessories and cleared the same under Bill of Entry No. 431659 dated 30.01.2004 and by declaring CIF value of Rs 28,28,000/- as against the admitted value of Rs. 58, 17,600/- they have evaded Customs duty to the tune of Rs. 813674/- as per Annexure 'C1' to the SCN. M/s Kalyani Corporation, Pune had also imported one Second Hand Heidelberg GTO V52-680012 Four- colour offset printing machine complete with CPC and all standard accessories and cleared the same under Bill of Entry No. 583020 dated 01.07.2005 and by declaring CIF value of Rs. 13,53,200/- as against the admitted value of Rs. 21,65,120/- they have evaded Customs duty to the tune of Rs. 240912/- as per Annexure C1 to the SCN.

24. Therefore, M/s Rajni Printing Press and its partner Shri Rohit Ramdas Patel, M/s Shivam Offset and its proprietor Shri Sanjay Thorwat, and M/s Kalyani Corporation, Pune and its proprietor Shri Gautam Manikchand Gelada were called upon to show cause to the Commissioner of Customs (Imports) having his office at 2nd Floor, New Custom House, Ballard Estate, Mumbai 400 001 within 30 days from the date of receipt of the notice as to why;

(a)(i) the declared CIF value of Rs 5,85,550/- in respect of the imported Second Hand Heidelberg SORM-Z Two- colour offset printing machine cleared under B/E no. 551847 dated 18.03.2005 as given in Annexure A to the SCN should not be rejected for the purpose of assessment of the goods to duty in terms of the provisions of Section 14(1) of the Customs Act, 1962 read with the Valuation (Determination of price of imported goods) Rules, 1988 made thereunder and the B/E be assessed at ascertained CIF value of Rs. 12,96,575/-

(ii) the above goods of ascertained CIF value of Rs. 12,96,575/- as given in Annexure A1 to SCN(seizure value Rs. 18 lakhs) should not be held liable to confiscation in terms of the provisions of Section 111(m) and Section 111(d) of Customs Act, 1962 as the goods are misdeclared with reference to the value.

(iii) the differential duty of Rs. 2,47,350/- as given in Annexure A1 to SCN in respect of the above said consignment imported by M/s Rajni Printing Press should not be demanded and recovered from them under the proviso to Section 28 of the Customs Act, 1962.

- (iv) Interest on the above differential duty should not be recovered under Section 28AB of the Customs Act, 1962.
- (v) Penalty under the provisions of Section 114A of the Customs Act, 1962 should not be imposed on M/s Rajni Printing Press and/or Shri. Rohit Patel, partner in M/s Rajni Printing Press with regard to the evasion of duty on account of undervaluation of the subject import.
- (vi) Penalty under the provisions of Section 112(a) of the Customs Act, 1962 should not be imposed on M/s Rajni Printing Press and Shri Rohit. R. Patel, partner of M/s Rajni Printing Press with regard to his acts of commission and omission which have rendered the above goods liable to confiscation.
- (vii) the amount of Rs 3,00,000/- deposited voluntarily on 20.04.2006 should not be appropriated against the aforesaid differential duty and interest.
- (viii) the aforesaid Bond and Bank Guarantee furnished by the importers earlier while availing the provisional release of the subject machine should not be invoked and enforced towards the aforesaid liabilities including duty, interest and penal liabilities involved and invoked under the provisions of the Customs Act. 1962 in respect of the aforesaid import consignment.
- (b)(i) the declared CIF value of Rs 19,23,950/- in respect of imported Second Hand Heidelberg MOV-S Four Colour offset printing machine cleared under Bill of Entry No. 550781 dated 15.03.2005 and the declared CIF value Rs 6,06,000/- in respect of the imported Secondhand Adast dominant 725P Two Colour Offset printing machine cleared under Bill of Entry No. 424131 dated 05.01.2004 as given in Annexure 'B' to this SCN should not be rejected for the purpose of assessment of the goods to duty in terms of the provisions of Section 14(1) of the Customs Act, 1962 read with the Valuation (Determination of price of imported goods) Rules, 1988 made thereunder and the said Bills of Entry be assessed at ascertained CIF value of Rs. 25,09,500/- and Rs. 8,08,000/- respectively,
- (ii) the above goods of ascertained and admitted CIF value of Rs. 25,09,500/- (seizure value- Rs.32 lakhs) and Rs 8,08,000/- as given in Annexure B1, should not be held liable to confiscation in terms of the provisions of Section 111(d) and 111(m) of Customs Act, 1962 as the goods are misdeclared with reference to the value.
- (iii) the differential duty of Rs. 2,03,700/- and Rs 1,03,643/- as given in Annexure B1 in respect of the above said consignments imported by M/s Shivam Offset should not be demanded and recovered from them under the proviso to Section 28 of the Customs Act, 1962.

- (iv) Interest on the above differential duty should not be recovered under Section 28AB of the Customs Act, 1962.
- (v) Penalty under the provisions of Section 114A of the Customs Act, 1962 should not be imposed on M/s Shivam Offset and/or Shri. Sanjay Thorwat, proprietor of M/s Shivam Offset with regard to the evasion of duty on account of undervaluation of the subject import.
- (vi) Penalty under the provisions of Section 112(a) of the Customs Act, 1962 should not be imposed on M/s Shivam Offset and Shri Sanjay Thorwat, proprietor of M/s Shivam Offset with regard to his acts of commission and omission which have rendered the above goods liable to confiscation.
- (vii) the amount of Rs 3,90,000/- deposited voluntarily on 28.04.2006 should not be appropriated against the above said differential duty and interest.
- (viii) the aforesaid Bond and Bank Guarantee furnished by the importers earlier while availing the provisional release of the subject machine should not be invoked and enforced towards the aforesaid liabilities including duty, interest and penal liabilities involved and invoked under the provisions of the Customs Act, 1962 in respect of the aforesaid import consignment.
- (c)(i) the declared CIF value of Rs. 16,96,000/- in respect of imported Second Hand Heidelberg MOV-S Four- Colour Offset Printing machine cleared under B/E no. 534963 dated 24.01.2005 and the declared CIF value of Rs 28,28,000/- in respect of the imported second hand Heidelberg Speedmaster 72 V Four- Colour Offset Printing machine complete with CPC and all Standard accessories cleared under B/E no. 431659 dated 30.01.2004 and the declared C.I.F value of Rs. 13,53,200/-, in respect of imported Second Hand Heidelberg GTO-52 Four Colour Offset Printing machine complete with all standard accessories, cleared under B/E No. 583020 dated 01.07.2005 as given in Annexure C should not be rejected for the purpose of assessment of the goods to duty in terms of the provisions of Section 14(1) of the Customs Act, 1962 read with the Valuation (Determination of price of imported goods) Rules, 1988 made thereunder and the Bills of Entry be assessed at ascertained CIF value of Rs. 44,09,600/-, Rs 58,17,600/- and Rs 21,65,120/- respectively,
- (ii) the above goods of ascertained and admitted CIF value of Rs. 44,09,600/, Rs. 58,17,600/- and Rs 21,65,120/- (total seizure value- Rs. 1,75,000/-) as given in Annexure C1, should not be held liable to confiscation in terms of the provisions of Section 111(d) and Section 111(m) of Customs Act, 1962 as the goods are misdeclared with reference to the value.
- (iii) the differential duty of Rs. 11,06,591/-, Rs. 8,13,674/- and Rs. 2,40,912/- as given in Annexure C1 in respect of the above said consignments imported by M/s Kalyani

Corporation should not be demanded and recovered from them under the proviso to Section 28 of the Customs Act, 1962.

(iv) Interest on the above differential duty should not be recovered under Section 28AB of the Customs Act, 1962.

(v) Penalty under the provisions of Section 114A of the Customs Act, 1962 should not be imposed on M/s Kalyani Corporation and/or Shri. Gautam Gelada, proprietor of M/s Kalyani Corporation with regard to the evasion of duty on account of undervaluation of the subject import.

(vi) Penalty under the provisions of Section 112(a) of the Customs Act, 1962 should not be imposed on M/s Kalyani Corporation and Shri Gautam. M. Gelada, proprietor of M/s Kalyani Corporation with regard to his acts of commission and omission which have rendered the above goods liable to confiscation.

(vii) the total amount of Rs. 34,00,000/- deposited voluntarily on 20.04.2006, 24.04.2006 and 05.05.2006 should not be appropriated against the aforesaid differential duty and interest.

(viii) the aforesaid Bond and Bank Guarantee furnished by the importers earlier while availing the provisional release of the subject machine should not be invoked and enforced towards the aforesaid liabilities including duty, interest and penal liabilities involved and invoked under the provisions of the Customs Act, 1962 in respect of the aforesaid import consignment.

Noticees Submissions and Records of Personal Hearings

25. Personal Hearings were granted to noticees-1 & 2 to appear on 09.02.2023, 21.02.2023, 28.02.2023 and 10.02.2023. Shri Rohit Ramdas Patel (Partner: M/s Rajni Printing Press) appeared on 09.02.2023 and reiterated his defence submission as recorded in para 29 of the first O-I-O dated 06.05.2009. Further, Ms. Kiran Doiphode, Advocate, Representative of Noticee-1 & 2 attended the PH on 10.03.2023 and she argued that the adjudication proceedings in the present case not to be proceeded as appeal / review petitions are pending in Hon'ble Supreme Court in the cases of Mangali Impex (supra) and Canon India Pvt. Ltd. (supra). She also stated that they are relying upon grounds of appeal that was filed before Hon'ble CESTAT (Appeal No. C/818/09-Mum) and the written reply to SCN dated 12.01.2009.

26. Summary of written reply to SCN dated 12.01.2009:

- (i) They deny the allegation levelled in the Show Cause Notice and state that they had correctly declared the value of the machinery as GB Pound Sterling 7000 and year of manufacture as 1972.

- (ii) In the absence of the copy of the report received from COIN unit, London which is referred in para 17(1) of the Show Cause Notice, the charge of undervaluation cannot be proved against them and that it is a well settled principle that confession is not substantive evidence and it can be pressed into service only when the court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of conclusions deducible therefrom.
- (iii) In this case there is absolutely no other evidence other than the statement of the partner of the firm; that they rely on the Apex Court judgement in the case of Mohtesham Mohd. Ismail Vs Special Director, Enforcement Directorate reported in Manu/SC/4019/07.
- (iv) The invoice relied upon in the Show Cause Notice is unsigned, unlike the invoice they have received which was invoice No. 037905 dated 14.02.2005, that since the relied upon invoice is of a subsequent date the Serial No. of the invoice should have been more than 037905 and not 791, that therefore, they doubt the authenticity and genuineness of the unsigned invoice, in the absence of any statement of the supplier regarding authenticity of such an invoice; that the certificate of insurance dated 14.02.2005 also shows that the machinery was insured only for GBP 7000 which supports their case that there is no undervaluation.
- (v) Since they have paid the entire duty before issue of the Show Cause Notice, they are not liable to pay or penalty as held by the Hon'ble Bombay High Court in the case of Commissioner of Central Excise - Vs Gaurav Mercantile Ltd. reported in 2005 (190) ELT 11 (Bom.) and further as there is no misdeclaration of value, the said machine is not liable to confiscation as proposed in the Show Cause Notice .
- (vi) It is a well settled principle of law that if a partnership firm is penalised there cannot be separate penalty on the partner as held in the judgement of the Hon'ble Bombay High Court in the case of Commissioner of Customs (EP) Vs Jupiter Exports reported in 2007 (213) ELT 641 (Bom).

27. Summary of grounds of appeal of the noticees before Hon'ble CESTAT :-

- (i) The Ld. Commissioner has passed the impugned order in gross violation of natural justice in as much as he did not provide the Appellant the copy of the report obtained from Customs and Revenue authorities by the COIN.
- (ii) The subject invoice No. 791 dated 15.2.05 purportedly of M/s Tru Grade International Ltd., England for Pounds Sterling 15,500/- is unsigned, unlike the

invoice No. 037905 dated 14.2.05 furnished by the Appellants at time of clearance of the subject printing machinery also the relied upon invoice is of a subsequent date and therefore the Serial No. of the invoice should have been more than 037905 and not 791. Therefore, reliance should not have been placed on such a document in the absence of any statement of the supplier regarding the authenticity of such invoice, particularly in view of the Apex Court judgement in the case of C.C. Calcutta Vs. South India Television (P) Ltd., reported in 2007 (214) E.L.T. 3 (S.C.).

(iii) The Ld. Commissioner failed to observe that the certificate of insurance dated 14.2.05 also shows that the subject machinery was insured only for GBP 7000. Thus, supporting Appellants' case that there is no undervaluation.

(iv) The Ld. Commissioner failed to observe that the Chartered Engineer's certificate being part of the relied upon documents as the same has been annexed to the report sent by the COIN Unit and that the said certificate clearly indicates year of manufacture as 1972 and as per then prevailing market rates the price of GBP 7000/- is very reasonable, whereas the report obtained by the department from abroad indicates the year of manufacturing as 1974 pertaining to the invoice dated 15.2.2005 for GBP 15,500/- and whereas as per the evidence on record, there is no dispute that the Appellants have imported only 1972 model. In light of this incontrovertible factual position the Ld. Commissioner ought to have arrived at the only conclusion that the Appellants have correctly declared the value of the subject goods and there is no undervaluation as alleged in the SCN.

DISCUSSION AND FINDINGS

28. The present SCN dated 03.07.2007 was issued to the following 06 noticees:

Noticee-1: M/s Rajni Printing Press

Noticee-2: Shri Rohit Ramdas Patel (Partner in M/s Rajni Printing Press)

Noticee-3: M/s Shivam Offset

Noticee-4: Shri Sanjay Thorwat (Proprietor of M/s Shivam Offset)

Noticee-5: M/s Kalyani Corporation

Noticee-6: Shri Gautam Manikchand Gelada (Proprietor of M/s Kalyani Corporation)

29. Noticees-3 to 6 approached the Settlement Commission after the issuance of the notice. The Settlement Commission, vide order no. 444 and 446/FINAL ORDER/CUS/SRB/2007 dated 30.11.2007, settled the matter in respect of Noticees-3 to 6 by ordering as below :

Excerpt of Settlement Commission Order dated 30.11.2007 in respect of Noticees-3 & 4:-

"The Bench has gone through the submissions made by the applicant and the Revenue. The Bench observed that the applicant fulfils all the conditions laid down under Section 127B of the Customs Act, 1962. The applicant has already deposited an amount of Rs. 34,00,000/- which is allowed to be adjusted against its admitted duty liability. The Bench notes that the applicant in compliance of the statutory provisions has also calculated and paid the interest liability. Thus the applicant has come before the Commission with the spirit of settling the case. The Bench accordingly settles the case under sub-section (7) of Section 127 C of the Customs Act, 1962 on the following terms and conditions:-

Customs Duty: *The amount of Customs duty in this case is settled at Rs. 21,61,177/- This amount already stands paid.*

Redemption Fine : *The machines seized from the applicant have already been released on execution of a Bond of Rs 1,75,00,000/- and a Bank Guarantee of Rs. 35,00,000/- Keeping in view the extent of misdeclaration of value the Bench grants immunity from fine in excess of Rs. 7,50,000/-. This amount can be realized by encashing the Bank Guarantee.*

Interest: *The applicant has already deposited an amount of Rs. 4,45,898/-@ 13% towards interest. Revenue shall calculate the interest and if any difference is to be paid the same shall be communicated to the applicant, who thereupon shall pay it within the next 15 days. If the interest paid is more the same can be refunded.*

Penalty: *Keeping in view the extent of undervaluation and the applicant's conduct during settlement, Bench grants immunity from penalty in excess of Rs. 5,00,000/-*

After payment of fine, penalty etc. the bond and bank guarantee shall be discharged.

Prosecution: *Immunity from Prosecution to the applicant is granted as prayed for."*

Excerpt of Settlement Commission Order dated 30.11.2007 in respect of Noticees-5&6:-

"The Bench has gone through the submissions made by the applicant and the Revenue. The Bench observes that the applicant fulfils all the conditions laid down under Section 127B of the Customs Act, 1962. The applicant has already deposited

an amount of Rs. 3,90,000/- which is allowed to be adjusted against its admitted duty liability. The Bench notes that the applicant had immediately after detection of the case had deposited the duty liability and admitted the undervaluation. Thus the applicant has come before the Commission with the spirit of setting the case. The Bench accordingly settles the case under sub-section (7) of Section 127 C of the Customs Act, 1962 on the following terms and conditions: -

Customs Duty: The amount of Customs duty in this case is settled at Rs 3,07,343 This amount already stands paid.

Redemption Fine: The goods have been provisionally released on execution of a Bond of Rs. 32,00,000/- and a Bank Guarantee of Rs. 6,40,000. Keeping in view the confiscability of goods for misdeclaration of value to evade payment of appropriate duty, the Bench grants immunity from fine in excess of Rs 1,00,000/-. This amount can be realized from the Bank Guarantee.

Interest: The applicant has already deposited an amount of Rs. 61,195 @ 13% towards interest. Revenue shall calculate the interest and if any difference is to be paid the same shall be communicated to the applicant, who thereupon shall pay it within the next 15 days. If the interest paid is more the same can be refunded.

Penalty: Keeping in view the extent of undervaluation and the applicant's conduct during settlement, Bench grants immunity from penalty in excess of Rs. 50,000/-.

After payment of fine, penalty etc. the Bond and Bank Guarantee shall be discharged.

Prosecution: Full Immunity from Prosecution under the Customs Act, 1962 is extended to the applicant

30. As per office record, the Department accepted both the Settlement Commission Orders on 10.01.2008. Therefore, the proceedings initiated vide the said SCN in respect of Noticees 3,4,5 &6 stood concluded. Thereafter, the said SCN was adjudicated in the first round vide Order in Original No. 73/2009/CAC/CC(I)/SHH/Gr.VA dated 06.05.2009 in respect of Noticees-1 & 2. Noticees-1 &2 preferred an appeal in the Hon'ble CESTAT against the said OIO. The Hon'ble CESTAT vide Order No. A/85084/18 dated 12.01.2018 remanded back the matter to Adjudicating Authority with the direction that "as a rule of consistency, this matter may also go back to the adjudicating authority for appropriate decision on the basis of outcome of the Apex Court judgment in the case of Mangali Impex". The issue in **Mangali Impex⁷ and Canon India Pvt. Ltd.⁸** was 'Whether Directorate of Revenue Intelligence Officers are proper officers to issue SCN under Section 28 of Customs Act, 1962'. Therefore, in view of the above and pursuance of the said

⁷ Mangali Impex vs. Union of India-2016 (335) ELT 605 (Del.)

⁸ Canon India Pvt. Ltd. vs Commissioner of Customs-2021 (376) E.L.T. 3 (S.C.)

Hon'ble CESTAT order, the present SCN is before me for afresh adjudication in respect of Noticees-1 & 2.

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

32. The said SCN issued by ADG, DRI Mumbai Zonal Unit alleges misdeclaration and in the import of 'Second Hand Offset Printing Machine' imported by M/s Rajni Printing Press, Mumbai at Mumbai port vide Bill of Entry No. 551847 dated 18.03.2005. I find that the following issues arise for determination in this adjudication:

- i. **Issue of jurisdiction of DRI officers to issue SCN.**
- ii. **Evidentiary value of statements made before DRI.**
- iii. **Rejection and Re-determination of the value of the imported goods.**
- iv. **Confiscation of goods, demand of duty and Penal action.**

Now let me take up the issues one by one.

32. Issue of jurisdiction of DRI officers to issue SCN.

32.1 Ms. Kiran Doiphode, Advocate, Representative of Noticee-1 & 2 during PH dated 10.03.2023 argued that adjudication proceedings in the present case not to be proceeded as appeal/review petitions are pending in Hon'ble Supreme Court in the case of **Mangali Impex (supra) and Canon India Pvt. Ltd. (supra)**.

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

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

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

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

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

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

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

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

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

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

Act, as it stood prior to its amendment by this Act, shall be deemed to have been validly done or performed or taken;

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

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

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

32.3 The aforementioned amendments in Section 3 of the Customs Act, 1962 and the validation of action taken under the Customs Act, 1962 vide Finance Act, 2022 have not been stayed by any court of law. I also refer to the judgement of the Hon'ble High Court in the matter of **N. C. Alexander**⁹, wherein the validity of SCNs issued by DRI was challenged through various writ petitions after **Canon India(supra)** judgement and enactment of the Finance Act, 2022. Hon'ble High Court while disposing of the said writ petitions held that pursuant to the amendment in Section 3 of the Customs Act, 1962 by Finance Act, 2022, officers from the Directorate of Revenue are explicitly recognized as Officers of Customs and Show Cause Notices issued by officers of DRI cannot be assailed in view of validation in Section 97 of Finance Act, 2022 to pending proceedings. Relevant paras of the said 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.

⁹N. C. Alexander vs Commissioner of Customs and others-2022 (381) E.L.T. 148 (Mad.)

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." (emphasis added)*

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

32.5 In view of the above, it can be concluded that the issue of jurisdiction of DRI officers to issue SCNs under Section 28 of the Act, stands settled as of now by the Finance Act 2022. Therefore, I find that the noticees' argument that the present SCN be kept in abeyance until the said issue is finally decided by the Hon'ble Supreme Court, cannot be accepted. The issuance of the said SCN by DRI is legal and proper.

33. Evidentiary value of statements made before DRI.

33.1 Noticees have argued that confession is not substantive evidence and it can be pressed into service only when the court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of conclusions deductible therefrom. Noticees also argued that in this case there is absolutely no other evidence other than the statement of the partner of the importer firm.

33.2 I find that voluntary statement of Shri Rohit Ramdas Patel, Partner, M/s. Rajni Printing press was recorded on 19.04.2006 under Section 108 of the Customs Act 1962. He has stated that:

- (i) He had a deal with Shri Ansari for Heidelberg two-colour offset printing machine, year of manufacture 1972, S. No. 504435.
- (ii) The cost of the Heidelberg printing machine was quite high, so Shri Ansari offered to assist by accepting a portion of the machine's price in cash, which would then be deducted from the sale invoice to be declared to the Customs Authorities.
- (iii) The actual price of the Machine was negotiated at 15500 GB pounds however the invoice value was shown as 7000 GB pounds and Shri. Ansari agreed to collect the balance amount in cash in Indian Rs. in two instalments.

(iv) Shri Ansari had arranged the certification of the machine from the Chartered Engineer to suit the year of manufacture and the value as declared in the invoice and other documents for showing to the Indian Customs and this was done to reduce the payment of appropriate Customs Duty.

33.3 The said statement of Shri Ramdas Patel (Noticee-2) is also corroborating with the report dated 15th March, 2006 of COIN Unit, London. The statement contains detailed information about his business which was within his exclusive knowledge only and could not be a result of tutoring and compulsion. I find that the Customs Act, 1962 and various judicial pronouncements over it provide a higher level of sanctity to the statements made under section 108 of the Act. In this regard, I rely upon the following judgements.

- i. In the matter of **Asst. Collector of Central Excise, Rajamundry v. M/s. Duncan Agro India Ltd.**¹⁰, it was held that a statement recorded by a Customs Officer under Section 108 is a valid evidence.
- ii. In **Shri Naresh J. Sukawani**¹¹, the Hon'ble SC held that "4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act."
- iii. In the case of **Gulam Hussain Shaikh Chougule**¹², the Hon'ble SC held that "14.....We hold that a statement recorded by Customs Officers under Section 108 of the Customs Act is admissible in evidence. The Court has to test whether the inculcating portions were made voluntarily or whether it is vitiated on account of any of the premises envisaged in Section 24 of the Evidence Act....."
- iv. The Apex Court, in the case of **Hazari Singh**¹³, and in the case of **Surjeet Singh Chhabra**¹⁴, has held that the confessional statement made before the Customs Officer, even though retracted, is an admission and binding on the person.
- v. Hon'ble Supreme Court in the case of **Romesh Chandra Mehta**¹⁵ held that Statements made before Customs Officers under Section 108 of Customs Act, 1962 are admissible in evidence and are not hit by Section 25 of Indian Evidence Act.

¹⁰ Asst. Collector of Central Excise, Rajamundry v. M/s. Duncan Agro India Ltd. reported in 2000 (120) E.L.T. 280 (S.C.)

¹¹ Shri Naresh J. Sukawani v. Union of India-1996 (83) E.L.T. 258 (S.C.)

¹² Gulam Hussain Shaikh Chougule vs. Reynolds-2001 (134) E.L.T. 3 (S.C.)

¹³ Hazari Singh V/s. Union of India, reported in-1999(110) E.L.T. 406 (SC)

¹⁴ Surjeet Singh Chhabra V/s. Union of India & Others, reported in-1997(89).ELT.646(SC)

¹⁵ Romesh Chandra Mehta vs. the State of West Bengal (1969) 2 S.C.R. 461, A.I.R. 1970 S.C. 940

vi. In the case of **Bhana Khalpa Bhai Patel**¹⁶, the Hon'ble Apex Court at Para 7 of the judgement held that *"It is well settled that statements recorded under Section 108 of the Customs Act are admissible in evidence vide Romesh Chandra v. State of West Bengal, AIR 1970 S.C. 940 and K.I. Pavunny v. Assistant Collector (H.Q.), Central Excise Collectorate, Cochin, 1997 (90) E.L.T. 241 (S.C.) = (1997) 3 S.C.C. 721."*

vii. In the case of **Raj Kumar Karwal**¹⁷, Hon'ble Supreme Court held that *officers of the Department of Revenue Intelligence who have been vested with the powers of an Officer-in-Charge of a police station under Section 53 of the NDPS Act, 1985, are not police officers within the meaning of Section 25 of the Evidence Act. Therefore, a confessional statement recorded by such officer in the course of investigation of a person accused of an offence under the Act is admissible as evidence against him.*

33.4 In view of the above referred judicial pronouncements and statement dated 19.04.2006 of noticee-2, I find that the arguments presented by the Noticees that a confession is not substantial evidence and that no other evidence exists in this particular case aside from the statement made by the partner of the importer firm, are unfounded. The case law of **Mohtesham Mohd. Ismail**¹⁸ relied upon by the noticees is not applicable in the instant case because the facts and circumstances of the said case are different. In the cited case, it has been held by the Hon'ble Supreme Court that confession of co-accused person can be treated as substantive evidence if found to be voluntary and free from pressure. It was further held that the Court must seek corroboration of the purported confession from independent sources. In the present case, admittedly, the inculpatory statement has been given by the main accused and not by any co-accused. The statement was also given voluntarily, without use of any coercion or pressure. Most importantly, the statement is also corroborated by the COIN report from London whose authenticity has been accepted by the other 4 noticees of the case before the Settlement Commission. Hence, I find that the said case law does not help the noticees. Therefore, I conclude that the voluntary statement given by Mr Rohit Ramdas Patel (a partner in M/s Rajni Printing Press) on 19.04.2006 holds evidentiary value.

34. Rejection and Re-determination of the value of the goods imported by M/s Rajni Printing Press.

34.1 The allegation in the SCN is that the noticees imported the goods i.e. second-hand Heidelberg SORM-Z, two-colour offset printing machines (Sr. No. 504435), year of manufacture declared as 1972, under Bill of Entry No. 551847 dated 18.03.2005 by

¹⁶ Bhana Khalpa Bhai Patel Vs. Asstt. Collr. of Cus., Bulsar-1997 (96) E.L.T. 211 (SC)]

¹⁷ Raj Kumar Karwal Vs. UOI & Others-1990 (48) E.L.T. 496 (S.C.)

¹⁸ Mohtesham Mohd. Ismail Vs Special Director, Enforcement Directorate-2009 (13) S.T.R. 433 (S.C.)

allegedly misdeclaring the value as Great Britain Pound (GBP) 7000 instead of the actual transaction value of GBP 15500. On account of this alleged misdeclaration of value, the Customs duty evaded has been worked out to be Rs. 2,47,350/-.

34.2 On examination of case records, I find that there is a letter dated 15.03.2006¹⁹ written by the First Secretary (Trade), High Commission of India, London, to the Director General, DRI, New Delhi, stating that based on a reference received from the DRI Mumbai Zonal Unit, the London Coin Unit has conducted enquiries in the United Kingdom in the subject case. The matter was referred to HM Revenue and Customs(HMRC) Authorities for causing necessary enquiry with reference to the value and age of the machinery. The HMRC Authorities have stated that they have visited the UK company M/s. Tru Grade International Ltd and they have found that the value declared by the Indian importer in the documents forwarded to them for verification appeared to be false and that the original invoice indicate much higher value for the machine supplied to the Rajni Printing Press, Mumbai against invoice reference no. 791 dated 15.02.2005; the HMRC Authorities reported the value as GBP15,500 (value indicated in the UK supplier's invoice) against the value declared by the Indian importer as GBP 7000. The said London Coin Unit report dated 15.03.2006 was forwarded to Commissioner of Customs, Import, New Custom House Ballard Estate, Mumbai by ADG, DRI, Mumbai vide letter dated 17.03.2009. I also find that a copy of the said London Coin Unit Report was supplied to the Noticees-1 & 2 by the office of the Commissioner of Customs, Import, New Custom House, Ballard Estate, Mumbai vide letter dated 18.03.2009. The serial number of the Heidelberg Two Colour Offset Printing machine was reported by London Coin Unit as SORM-Z504435 which matches with the serial number of the machine disclosed by the noticee-2 in his voluntary statement before DRI dated 19.04.2006 .

34.3 Noticees have argued that they were not provided the report of HMRC which was referred to in the report of COIN unit, London. I find that the copy of the detailed report received from Coin Unit London along with the copy of the actual invoices reflecting the true value of goods, have already been provided to the Noticees vide letter dated 18.03.2009 issued vide F.No. S/10-35/2007 VA dated 18.03.2009 which is a sufficient evidence. The Noticees have not provided any ground as to why they require the report of HMRC when the Coin Report(which is a detailed document) signed by the First Secretary (Trade) of the Indian High Commission in London along with the copy of the actual invoice relied upon has already been provided to them.

34.4 Moreover, I find that the Noticees-1 & 2 have duly acknowledged the receipt of this letter dated 18.03.2009 along with enclosures vide their letter dated 25.03.2009, addressed to the Commissioner of Customs, Import, New Custom House, Ballard Estate, Mumbai wherein they have stated that "*since the Coin report refers to the report of HMRC, we*

¹⁹ Also referred to as the London Coin Unit Report or the Coin report

request that a copy of the report of HMRC along with other related and relevant documents be supplied to us. If your honour is not inclined to supply copy of the same, we request your honour to take into consideration the written reply dated 12th January 2009 to SCN and the oral submissions made before your honour on 26th February 2009, when personal hearing was attended and accordingly decide the matter in accordance with law and on merits." Thus, it is evident that the noticees have been shown the report and they have never questioned its authenticity. Further, the said London Coin Unit Report is corroborated by the voluntary statement dated 19.04.2006 of the noticee-2 wherein he has accepted the fact of undervaluation by giving a detailed sequence of events, which could have been known only to him. He has also accepted the additional payment made to supplier through cash by stating that *"the cost of the Heidelberg printing machine was quite high, so Shri Ansari offered to assist by accepting a portion of the machine's price in cash, which would then be deducted from the sale invoice to be declared to the Customs Authorities. The actual price of the Machine was negotiated at 15500 GB pounds however the invoice value was shown as 7000 GB pounds and Shri. Ansari collected the balance amount in cash in Indian Rs. in two instalments."*

34.5 In the absence of any reasonable ground cited, the demand of the noticees for getting a copy of HMRC report appears only to be a delaying tactic and an attempt to dilute the direct and strong evidence of undervaluation found by the Revenue. I therefore conclude that there is no need to provide the report of HMRC to the noticees.

34.6 The noticees have opposed reliance on the invoice obtained from London Customs, arguing that they are unsigned and unsupported by any statements from the supplier in London. They also claimed that the serial number and date on the invoice are not proper. I find that Noticee-2 in his voluntary statement dated 19.04.2006 recorded before DRI has categorically admitted that he ordered a second hand SORM-Z Heidelberg two-colour offset printing machine with S. No. 504435, and the deal for the same was negotiated at 15500 GBP. This statement recorded under section 108 of the Act, which is directly matching with the Coin report in terms of serial number and actual value of the machine, has never been retracted. Moreover, the other 4 noticees of the case having accepted the Coin Report's valuation before the Settlement Commission also points towards the genuineness of the said report. It is also a settled law that the Department is not required to prove its case with mathematical precision. All that is required is the establishment of such a degree of probability that any prudent man on its basis, believes in the existence of the fact. In view of the above, the Noticees' argument that the invoice obtained from London Customs is not proper, does not hold much ground.

34.7 The party has also relied upon the case of **C.C. Calcutta vs. South India Television**²⁰ to argue that the report obtained from Coin Office London cannot be relied

²⁰ C.C. Calcutta vs. South India Television (P) Ltd.,-2007 (214) E.L.T. 3 (S.C.)

upon if the original copies of the same were not shown to the party. I find that the ratio of the Hon'ble Supreme Court judgement in the South India Television case is different than what the Noticees have interpreted. The Hon'ble Supreme Court has observed in para 6 of its judgement that *"for proving under-valuation if the department relies on declaration made in the exporting country it has to show how such declaration was procured. We may clarify that strict rules of evidence don't apply to adjudication proceedings. They apply strictly to the court proceedings. However, even in adjudication proceedings the AO has to examine the probative value of the demands on which reliance was placed of under-valuation."* From office record, it is evident that the detailed report of the First Secretary (Trade), London dated 15.03.2006 was supplied to the party and duly received by the Noticees on 18.03.2009. From 2009 to 2023, the party has never questioned the authenticity of this report and has never asked for seeing the original report. Thus the originality of the overseas report is not in question here. Moreover, the other 4 noticees of the case have accepted the Coin report's valuation before the Settlement Commission. Also in **South India Television supra**, the Hon'ble Supreme Court has observed that *the respondent importer has relied upon contemporaneous imports from the same supplier, namely, M/s Pearl Industrial Company, Hong Kong which indicates comparable price of like goods during the same period of importation. This evidence has not been rebutted by the department.* In the present case no such contemporaneous data has been produced by the noticees to rebut the value relied upon by the Department. Hence, the facts of the present case are much different from that of **South India Television**.

34.8 Noticees have also argued that there is a difference in year of manufacture between the Chartered Engineer's Certificate (shown as 1972) produced before Customs and sent to COIN for verification and the COIN report(shown as 1974). I find that this difference is adequately explained by Shri Rohit Ramdas Patel (Noticee-2) in his voluntary statement dated 19.04.2006 wherein he has stated that the Chartered Engineer's Certificate was prepared by Shri Ansari to suit the year of manufacture and the value as declared in the invoice and other documents for showing to the Indian Customs. Hence, I find that the correct year of manufacture of the machine is 1974 as stated by the London Coin Report.

34.9 Rule 10A of CVR, 1988, is reproduced hereinbelow for sake of brevity:

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

34.10 In the present case the proper officer had reason to doubt the truth of the value declared in relation to imported goods therefore enquiries were made with the exporting country or supplier country and upon enquiry, the actual invoice of the goods was recovered. In the actual invoice, goods value was declared as 15500 GBP whereas in the forged invoice which was submitted to Indian Customs, the value of goods was declared as 7000 GBP. Notably, the value declared in the actual invoice is also corroborating with the statement dated 19.04.2006 of the Noticee-2. Therefore, I conclude that the declared value of goods is liable for rejection under Rule 10A of CVR, 1988 read with Section 14(1) of the Act.

34.11 Rule 4(1) of CVR, 1988, is reproduced below for sake of brevity:

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

34.12 I find that the actual invoice received from COIN unit, London, is reflecting the true value of the imported goods and the same was paid to foreign supplier in respect of the imported goods as stated by the noticee-2 in his statement dated 19.04.2006. Therefore, I find that value mentioned in the actual invoice received from COIN unit, London is the actual transaction value of the imported goods in terms of Rule 4(1) of CVR, 1988 read with Section 14(1) of the Act and hence the SCN has rightly re-determined the CIF value of goods as Rs. 12,96,575/- (As per Annexure-A1 to SCN).

35. Confiscation of goods, demand of duty and Penal action.

35.1 Notice has proposed confiscation of goods under Section 111(m) and the duty demand under Section 28 of the Act. Notice has also proposed penalty under Section 114A of the Act on M/s Rajni Printing Press and/or Shri Rohit Rmadas Patel (Partner: M/s Rajni Printing Press) and penalty under Section 112(a) of Act on M/s Rajni Printing Press and Shri Rohit Rmadas Patel (Partner: M/s Rajni Printing Press)

35.2 As discussed in the above paras, I find that the actual value of the goods was suppressed and a false invoice was submitted to Indian Customs by the importer. Therefore, the goods imported by M/s Rajni Printing Press vide B/E No. 551847/18.03.2005 do not correspond in respect of value with the entry made under the Act hence the same are liable for confiscation under Section 111(m) of the Act.

35.3 I find that the Noticee-2 in his voluntary statement has admitted that they willfully suppressed the true value of the goods and prepared the false invoice and CE certificate to justify the false value of the goods to evade the customs duty to the tune of Rs. 2,47,350/- (as per Annexure-A1 to SCN). He has also admitted that the amounts over and above the invoice value has been paid by him in cash to the overseas supplier. Therefore, I find that

the notice has rightly demanded differential duty by invoking the extended period under proviso to Section 28(1) of the Act.

35.4 In view of the foregoing discussion , I find that demand under the extended period proviso to Section 28 (1) is sustainable in the present case, in respect of the goods imported by M/s Rajni Printing Press. Where demand is sustainable under the extended period provided under proviso to Section 28(1) of the Act, a penalty is imposable under Section 114A of the Act. Thus, I hold that M/s Rajni Printing Press(Noticee-1) is liable for penalty under Section 114A of the Act. Since the Noticee-1 is liable for penalty under Section 114A, I refrain from imposing penalty under Section 112 of the Act.

35.5 Noticee-2 argued that if a partnership firm is penalized there cannot be a separate penalty on the partner of the firm. He relied upon the judgement of the Hon'ble High Court in the case of **Commissioner of Customs Vs Jupiter Exports**²¹. In this regard, there are various pronouncements of the Tribunal/Courts in support of the contention of the noticee. Moreover, there is no independent existence of any proprietorship or partnership firm as the liability of such firms is dependent on the proprietor or partner of such firms. Therefore, a separate penalty on Shri Rohit Ramdas Patel, the partner of the importing firm is not called for.

36. I also take note of the ratio contained in the judgements in the cases of **Banshi Dhar Lachhman Prasad**²², **SPL Industries Limited**²³ and **Gautam Diagnostic Centre**²⁴ which state that remand proceedings ordered on a person's own appeal cannot be subjected to a greater penalty than that imposed on him in the original order unless specifically stated in the remand order. Therefore, I am inclined to agree with the first Adjudication Order No. 73/2009/CAC/CC(I)/SHH/Gr.VA dated 06.05.2009 on the quantum of penalty to be imposed.

37. In view of the above, I pass the following order:

ORDER

37.1 I reject the declared CIF value of Rs 5,85,550/- in respect of the imported Second Hand Heidelberg SORM-Z Two- Colour Offset Printing Machine cleared under B/E No. 551847 dated 18.03.2005 in terms of Rule 10A of CVR, 1988 read with Section 14 of the Act and redetermine the same as Rs. 12,96,575/-CIF (Rupees twelve lakh ninety six thousand five hundred seventy five only) (As per Annexure-A1 to SCN) in terms of Rule 4 ibid read with Section 14(1) ibid.

²¹ Commissioner of Customs Vs Jupiter Exports reported in 2007 (213) ELT 641 (Bom)

²² Banshi Dhar Lachhman Prasad & Anr-1978 (2) E.L.T. (J 385) (S.C.)

²³ SPL Industries Limited vs Commissioner of Central Excise, New Delhi-II-2003(159) ELT 720(T)

²⁴ Gautam Diagnostic Centre vs Commissioner Of Customs, Mumbai-2003(159) ELT 678(T)

37.2 I confiscate the above goods of redetermined CIF value of Rs. 12,96,575/- under Section 111(m) of the Act . However, I give an option to the importer to redeem the same on payment of a fine of Rs. 2,60,000/- (Rupees two lakh sixty thousand only) under Section 125 of the Act.

37.3 I confirm the demand and order for recovery of differential duty of Rs. 2,47,350/- (Rupees two lakh forty seven thousand three hundred fifty only) (As per Annexure-A1 to SCN) in respect of the above said consignment imported by M/s Rajni Printing Press under the provisions of Section 28 of the Customs Act, 1962 alongwith applicable interest under then Section 28AB (now Section 28AA) of the Act.

37.4 I impose a penalty of Rs. 2,47,350/- (Rupees two lakh forty seven thousand three hundred fifty only) alongwith interest, if any, on M/s Rajni Printing Press under Section 114A of the Customs Act, 1962, provided that where such duty and interest, is paid within thirty days from the date of communication of the order, the amount of penalty liable to be paid under this section shall be twenty-five percent of the duty or interest, as the case may be, so determined. The benefit of reduced penalty shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days.

37.5 Since I have already imposed a penalty on M/s Rajni Printing Press, a partnership concern, I am not imposing any separate penalty on Shri Rohit Ramdas Patel, the Partner of M/s Rajni Printing Press.

37.6 I order for appropriation of the amount of Rs 3,00,000/- (Rupees three lakh only) already deposited by the importer against the above mentioned liabilities.

37.7 I also order for invocation and enforcement of the Bond and Bank Guarantee furnished by the importer while availing the provisional release of the subject machine towards the above mentioned liabilities.



Vivek
24.03.23
(Vivek Pandey)
आयुक्त सीमाशुल्क (आयात-I)
Commissioner of Customs (Import-I),
नवीन सीमाशुल्क भवन, मुंबई
New Custom House, Mumbai-01

1. M/s Rajni Printing Press,
2nd Floor, Rambaug, Chitabhai Patel Road,
Kandivli (East), Mumbai 400 101.

2. Shri Rohit Ramdas Patel,
Partner of M/s Rajni Printing Pess,
Flat No. A/103, Rising Sun, Juhu Tara Road,
Vile Parle (West), Mumbai 400 049.

Copy to:

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

