



भारत सरकार

वित्त मंत्रालय/ राजस्व विभाग

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

आयुक्त सीमाशुल्क (आयात-1) का कार्यालय

द्वितीय मंजिल, नवीन सीमाशुल्क भवन, शूरजी वल्लभदास मार्ग, बेलार्ड एस्टेट,

मुंबई-400001.

दूरध्वनि-22757401 फैक्स-22757402

ई-मेल: adjn-commr-imp1nch@gov.in

फा.सं. : GEN/INV/MISC/32/2020-SIIB
SG/INV-24/SVP/2019-20 SIIB(I)

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

आदेश दिनांक: 31.05.2023
जारी दिनांक: 31.05.2023

सी.ए.ओ. क्रमांक : 14 /2023-24/CAC/CC(IMPORT-1)/VP/ADJ(IMP-1)
DIN No. 2023057700000000E7BF

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 VALLABHIDAS ROAD, BALLARD ESTATE,
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F.No. : GEN/INV/MISC/32/2020-SIIB
SG/INV-24/SVP/2019-20 SIIB(I)

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

Date of Order: 31.05.2023
Date of Issue: 31.05.2023

C.A.O. No.: 14/2023-24/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I)
DIN No. 2023057700000000E7BF

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: Adjudication of show cause notice issued vide F.No. GEN/INV/MISC/32/2020-SIIB & SG/INV-24/SVP/2019-20 SIIB(I) dated 01.08.2022 issued in the matter of undervaluation by M/s. Bigbore Engineering Private Limited (IEC No. AAICB7291D) by fabrication and manipulation of documents in the import of 'Used Vermeer D330*500 Navigator HD Drill Rig'(item no.1) and 'Used Mud Tech MPCT 1000 Mud Mixing, Pumping and cleaning on a trailer (item no. 2).

BRIEF FACTS OF THE CASE

Intelligence was developed by Special Intelligence and Investigation Branch (Import) [SIIB(I)] that one **M/s Bigbore Engineering Private Limited¹** bearing IEC No. AAICB7291D and having its office at Aykkareth, Edakkunnu, Paduvapuram P.O. Karukutty, Ernakulam Dist., Kerala, had filed Bill of Entry No.5782184 dated 22.11.2019 for the import of 'Old and Used Drill Rigs' with the description 'Used Vermeer D330*500 Navigator HD Drill Rig (YOM 2010)' (item no. 1) and 'Used Mud Tech MPCT 1000 Mud Mixing, Pumping and cleaning on a trailer (YOM 2012)' (item no. 2) from the supplier, M/s Heliopolis Contracting Company, Bahrain, by resorting to undervaluation to evade payment of applicable Customs duty. The details of the Bill of Entry filed by the importer is as per table below:

TABLE - I

Bill of Entry no. & date	Sr. no. of goods declared in Bill of Entry	Description of goods declared in Bill of Entry	Bill of Lading No. & date	Invoice No. & date	Invoice Value declared (in USD)
5782184 dated 22.11.2019	1	'Used Vermeer D330*500 Navigator HD Drill Rig (YOM 2010)' 'Used Mud Tech MPCT 1000 Mud Mixing, Pumping and cleaning on a trailer (YOM 2012)'	EUKOBH ID163737 1 dated 13.11.2019	HCCSPC/ TRANS/1 1/2019 dated 07.11.2019	87857

¹ hereinafter referred to as 'importer' or Noticee-1



	2	'Used Vermeer D330*500 Navigator HD Drill Rig (YOM 2010)' 'Used Mud Tech MPCT 1000 Mud Mixing, Pumping and cleaning on a trailer (YOM 2012)'			79285
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2. From the scrutiny of the Bill of Entry filed by the importer through Customs Broker M/s Shivansh Clearing and Forwarding, it was seen that the assessing group had given 'First Check' examination order to the docks examining officers. Accordingly, the docks officers examined the goods in the presence of the empanelled Chartered Engineer. As the original sale price of the machinery was not available, the Chartered Engineer in his Certificate no. CE452 dated 25.11.2019, estimated the approximate value in the Year of Manufacturer (YOM) of the said machinery to USD 6,00,000/- (YOM 2010) and USD 1,50,000/- (YOM 2012) for item nos. 1 & 2 respectively. Further, considering the permissible depreciation as per the age of the said goods, the Chartered Engineer found the value of the goods declared in the Bill of Entry (declared as USD 87,857 for Item no. 1 and USD 79,285 for item no. 2) to be low and accordingly, ascertained the assessable value for item no. 1 as USD 1,80,000/- and USD 85,000/- for item no. 2. On the basis of the above said C. E. certificate, the assessing group enhanced the value of the goods in said Bill of Entry. However, intelligence gathered by SIIB (I) pointed to the fact that the value of the imported items no. 1 & 2 was more than that estimated by the Chartered Engineer and accordingly, the value of the goods ascertained by the Chartered Engineer vide its Certificate dated 25.11.2019 was not the correct transaction value. In view of the above intelligence, detailed investigation in the said matter was conducted by SIIB(I), NCH, Mumbai.

3. INVESTIGATION AND RECORDING OF STATEMENT:

3.1 The goods covered under B/E No. 5782184 dated 22.11.2019 was examined under Panchanama dated 10.12.2019, by the officers of SIIB (I), NCH, Mumbai. Further, statement of **Shri Anil Kumar Thomas**², Managing Director, M/s. Bigbore Engineering Pvt Limited, was recorded on 12.12.2019, under the provisions of Section 108 of the **Customs Act 1962**³, wherein he inter-alia stated that:

² hereinafter referred to as Noticee-2

³ hereinafter referred to as the Act

- a. The subject import was his first import and he had executed a sales contract with the supplier, M/s Heliopolis Contracting Company, Bahrain for carrying out drilling work in Gujarat;
- b. He submitted a certified copy of the sale agreement dated 06.11.2019 between M/s Bigbore Engineering Pvt Limited, and supplier, M/s Heliopolis Contracting Company, Bahrain. As per the agreement, the payment was to be made after the machine reached the site within a period of 30 days;
- c. Only 02 items out of the 21 items mentioned in the sale agreement have been imported vide the Bill of Entry no. 5782184 dated 22.11.2019 at Mumbai Sea Port and the remaining 19 items were being imported separately;
- d. On being shown a copy of the sales agreement dated 12.06.2012 between Original Equipment Manufacturer, Vermeer Middle East FZCO, UAE and Heliopolis submitted by the importer, he submitted a signed undertaking/declaration from the supplier, M/s Heliopolis Contracting Company giving a detailed break up of price of each item from the time it was procured from the manufacturer to the depreciated value at which it was supplied to the importer;
- e. With regards to the discrepancy in the price of the imported item no. 1 'D330x500 Navigator HDD Drill Rig (self-propelled) with accessories' being as USD 10,20,000 in 2012 sales agreement and now being shown as USD 8,50,000 in the one submitted by the importer, he submitted that the value of USD 10,20,000 was inclusive of cost of accessories such as crane platform, sub paver etc. and since the goods imported by them was accessories and crane whose cost would approximately work out to 1,65,000-1,70,000 USD, the value of USD 8,50,000 was arrived at by the suppliers;
- f. As per the sales agreement, the goods under import were to be inspected by the competent authorities at the port of loading i.e. Bahrain.
- g. The import price is as per the sales agreement between him and the supplier company and the prices were declared as per the same.

3.2 Inference from the statement dated 12.12.2019 of importer:

- i. During the course of statement, the importer submitted a self-attested copy of declaration from the supplier, M/s Heliopolis Contracting Company, Bahrain, wherein they have stated that the two items under import were purchased from the manufacturer in 2012 at USD 10,20,000 and 8,05,000 respectively. They have further submitted a detailed summary of the depreciated value of the items under subject import whereby the item no. 1 was mentioned at a depreciated value of USD 87,857/- (89.7% depreciation) and item no. 2 was mentioned at a depreciated value of USD 79,285/- (56.3% depreciation).

ii. The importer also submitted copies of the sales agreement made between M/s Trenchers Construction Equipment and Machineries Trading LLC, UAE (manufacturer of item no. 1), and the supplier, M/s Heliopolis Contracting Company & M/s Vermeer Middle East FZCO, Dubai (manufacturer of item no. 2), and the supplier, M/s Heliopolis Contracting Company, indicating the prices at which the goods were procured in 2012, in token of the actual value of the goods in the YOM.

4. OUTCOME OF THE INVESTIGATION:

i. From the investigations conducted, it appeared that the supplier indicated the procurement price from the manufacturer of item no. 1 "Used Vermeer D330*500 Navigator HD Drill Rig" as USD 8,50,000 and further offered a depreciation of 89.7% leading to the import price of USD 87,857.

ii. The import value of item no. 1 "Used Vermeer D330*500 Navigator HD Drill Rig" declared as USD 87,857/-, was enhanced to USD 1,80,000 on the basis of Chartered Engineer's Certificate. The value of USD 1,80,000/- was calculated by the Chartered Engineer by applying 70% depreciation on the estimated value (USD 6,00,000/-) of the item at the year of Manufacture.

iii. As detailed here-in-above, for item no. 1 the supplier indicated value of USD 8,50,000/- in the agreement. In terms of Circular No. 495/16/93-Cus.VI dated 26.05.1993, a maximum depreciation of 70% can be permitted for old and used goods, by taking into account the price of item no. 1 "Used Vermeer D330*500 Navigator HD Drill Rig" as USD 8,50,000, the depreciated value at the time of import worked out to be USD 2,55,000.

iv. Further, the import value of item no. 2 "Used Mud Tech MPCT 1000 Mud Mixing, Pumping and cleaning on a trailer" was USD 79,285 was enhanced and re-assessed to USD 85,000 on the basis of Chartered Engineer's Certificate. This value was derived by the CE on the basis of the value at the time of YOM to be approximately USD 1,50,000 which appeared to be correct.

TABLE-II

Sr. No.	Description of goods	Assessment on the basis of CE Certificate	Valuation on the basis of Supplier's Declaration submitted by Importer during Investigation
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		Value in YOM Estimated by CE (in USD)	Present Value Assessed on the basis of CE Cert. (in USD)	Value taken in Supplier's declaration for calculating the depreciated value(in USD)	Depreciated Value taken in Investigation Report (in USD)
1	Used Vermeer D330*500 Navigator HD Drill Rig	6,00,000	1,80,000	8,50,000	2,55,000
2	Used Mud Tech MPCT 1000 Mud Mixing, Pumping and Cleaning on a Trailer	1,50,000	85,000	1,41,000	85,000

5. **SEIZURE OF THE IMPUGNED GOODS:** From the statement of the importer and documents submitted at the time of investigation, the item no. 1 i.e. Used Vermeer D330*500 Navigator HD Drill Rig" appeared to be undervalued and hence, liable for confiscation under the provisions of Section 111 (m) of the Customs Act 1962. Accordingly, the said item no. 1 imported vide Bill of Entry no. 5792184 dated 22.11.2019 was seized vide Seizure memo dated 23.12.2019, under the provisions of Section 110 (1) of the Customs Act 1962.

6.1 In view of the above, on the basis of the supplier's declaration and the importer's statement, the value of the item no. 1 of the Bill of Entry No. 5782184 dated 22.11.2019 assessed at USD 1,80,000 appeared to be low and hence, the same was to be enhanced to USD 2,55,000 thereby leading to a differential duty of approximately Rs.15,31,000/-.

6.2 During the course of investigation, the importer vide demand draft No.185802 dated 18.12.2019, voluntarily deposited a sum of Rs.15,31,000/- on 19.12.2019 towards differential duty on the subject goods. The same was deposited in the Government Treasury vide Challan no. 67 dated 19.12.2019.

6.3 Further, as the importer vide their letter dated 12.12.2019 submitted to comply all statutory requirements and requested for urgent release of their live consignment on payment of differential duty on the goods, an investigation report in the subject matter was forwarded to Joint Commissioner of Customs, Incharge of Group V, Import-I, NCH, Mumbai for adjudication in the said matter and clearance of the said goods vide letter F. No. SG/INV-24/SVP/2019- 20/SIIB(I) dated 31.12.2019.

6.4 Accordingly, the subject matter was adjudicated by the Joint Commissioner of Customs, in-charge of Group V, Import-I, NCH, Mumbai vide Order no. 130/JC/PS/Gr-V/2019-20 dated 08.01.2020, recalculating the total customs duty as Rs.69,37,430/-and imposing Redemption fine of Rs.5,00,000/- and penalty of Rs. 3,00,000/- on the importer.

6.5 Further, in accordance with the said order, the importer vide Challan no. 2029419485 dated 13.01.2020 and Challan no. 193 dated 15.01.2020, deposited an amount of Rs. 63,14,887/- and Rs. 14,000/- respectively in addition to the amount Rs.15,31,000/- which was paid vide challan no. 67 dated 19.12.2019 as mentioned in para 6.2 above, prior to clearance of the goods from Mumbai Sea Port by the competent authority.

7. RE-INVESTIGATION OF THE SAID MATTER:

7.1 Intelligence was further developed in the said matter that the goods imported vide Bill of Entry no. 5782184 dated 22.11.2019 were sold by the supplier to one M/s. Smart building Solutions, Oman and not to M/s Bigbore Engineering Pvt Limited. Also, the agreement between the supplier and the importer submitted by the importer during the course of earlier investigation conducted by SIIB (I), was fabricated and manipulated to undervalue the goods and evade payment of applicable Customs Duty. Intelligence further suggested that the goods imported vide the subject Bill of Entry by the importer was insured from Oriental Insurance Company (OICL), Bangalore at a value much higher than that enhanced on the basis of the supplier's earlier declaration and the importer's statement during the course of the earlier investigation. Accordingly, on the basis of the above intelligence, the subject matter was taken up for re-investigation by SIIB (I), NCH, Mumbai.

7.2.1 A letter dated 24.11.2020, was issued to the Branch Manager, OICL, Bangalore requesting to provide the insurance value for the goods imported by M/s Bigbore Engineering Pvt Limited and forward the documents such as invoice etc. submitted by the importer for insuring the said imported goods. In response to the said letter, Sr. Divisional Manager, Oriental Insurance Company limited (OICL) vide letter dated 01.12.2020, submitted that they had issued a 'Contractors Plant and Machinery Policy' bearing No. 421300/44/2020/47 to M/s M/s Bigbore Engineering Pvt Limited for the period

03.03.2020 to 02.03.2021. Further, OICL also forwarded the copies of the Insurance policy, Sales Agreement and GST Certificate, submitted by M/s Bigbore Engineering Pvt Limited to OICL for procuring the said insurance for the machinery. From the perusal of the insurance policy, it was seen that the sum insured for the item no. 1 i.e. 'Used Vermeer D330*500 Navigator HDD Drill' was Rs. 4,89,60,000/- (USD 672,990 approx.).

7.2.2 Further, from the scrutiny of the Sales Agreement dated 05.11.2019, forwarded by OICL with their above mentioned letter dated 01.12.2020, it was apparent that the same was an agreement between M/s. Heliopolis Contracting & Transportation Est., UAE (seller) and M/s Smart Building Solutions, Muscat, Oman (buyer) to sell and purchase the goods mentioned in the same at a final cost of USD 6,80,000/-. The said price was much higher than the USD 2,70,000/- mentioned in the sales agreement dated 06.11.2019 between Heliopolis and M/s Bigbore Engineering Pvt Limited (submitted during the earlier investigation) and in line with the value at which the goods were insured with OICL by the importer.

7.2.3 The scrutiny of the above documents further pointed towards the suspicion that M/s Bigbore Engineering Pvt Limited had willingly and intentionally submitted fabricated and manipulated documents at the time of earlier investigation to undervalue the goods and evade payment of appropriate duties of Customs. Also, it appears that Heliopolis did not enter into any agreement for sale for the goods with M/s Bigbore and the goods were instead sold to M/s Smart Building Solutions in Oman.

7.3 Further, the Branch Manager, CSB Bank Limited, Ernakulum (declared by the importer as their banker for foreign remittance) vide letter dated 08.01.2021 was requested to provide the details of the foreign remittances made by the importer against Bill of Entry no. 5782184 dated 22.11.2019 and invoice no. HCCSPC/TRANS/11/2019 dated 07.11.2019. Further, it was requested to provide the bank statement of M/s BigBore Engineering Pvt. Ltd. for the past 5 years for the accounts maintained by the said importer in the said branch. The Branch Manager, CSB bank Limited submitted an email reply dated 10.02.2021 alongwith the bank statement for the account of M/s Bigbore Engineering Pvt Limited for the period 08.11.2019 to 10.02.2021, intimating that the said account was opened by M/s Bigbore Engineering Pvt Limited on 08.11.2019 and that the importer has not made any foreign remittance to the supplier in lieu of the invoice/Bill of Entry for purchase of the 'HD Drill Rig' although the said Bank is mentioned as the Authorised Dealer in the BE.

8. APPEAL BEFORE COMMISSIONER OF CUSTOMS (APPEALS):

8.1 In view of the above facts and new evidences pointing towards the alleged submission of false and fabricated documents at the time of import and during investigation by the importer, it was implied that the Order-in-Original No.

130/JC/PS/Gr-V/2019-20 dated 08.01.2020 was not based on proper and full facts of the case as the Investigation report was based on incorrect declaration and submissions by the importer during import and investigation. Hence, it was imperative that the adjudicating authority be made aware of the correct facts brought forward by re-investigation in the said matter, to decide the matter afresh. Further, it was learnt that the importer had filed an appeal before the Commissioner of Customs (Appeals), Mumbai – I which was still pending for decision. Therefore, in light of the new evidences on record which may likely have a bearing on revenue, an interim application was filed on 15.02.2021 before the Commissioner of Customs (Appeals), Mumbai - I against the OIO no. 130/JC/PS/Gr-V/2019-20 dated 08.01.2020, praying to remand back the case to the original adjudicating authority to decide the matter afresh taking into account the new investigation and the alleged wilful suppression of facts by the importer at the time of the earlier investigation.

8.2 Accordingly, Commissioner of Customs (Appeals), Mumbai-I vide Order-In-Appeal No. MUM-CUS-KC-IMP-58 to 59/2021-22 dated 22.09.2021, remanded back the case to the Adjudicating Authority for deciding the matter afresh.

9. RECORDING OF STATEMENT OF THE IMPORTER:

9.1 As the say of the importer was to be recorded in light of the new evidences on record pointing towards the alleged submission of false and fabricated documents at the time of earlier investigation, the importer, Shri Anil Kumar Thomas, MD of M/s. Bigbore Engineering Pvt Ltd was summoned and his statement was recorded on 11.08.2021 under the provisions of Section 108 of the Customs Act 1962 wherein he inter-alia stated as under-

i. M/s Bigbore Engineering Pvt Limited was involved in drilling works for pipelines in Mundra, Gujarat and had imported one 'Vermeer Navigator HDD Drill Rig and Used Mud Tank MPCT with the accessories' from Bahrain in the year 2019 vide Bill of Entry no. 5782184 dated 22.11.2019 at Mumbai Port and the part consignment of the goods i.e accessories for the Rig Drills were imported vide Bill of Entry no. 6645707 dated 27.01.2020 at Mundra Sea Port.

ii. On being asked about the valuation of the goods in the Bill of Entry no. 5782184 dated 22.11.2019, he stated that the value was quoted by the supplier M/s Heliopolis Contracting Company SPC, Bahrain, vide their invoice of the said Bill of Entry. However, the goods were assessed on the basis of Chartered Engineer Certificate 25.11.2019, considering the price during the Year of Manufacture and the depreciation in this regard. Accordingly, the value of item no. 1 and item no. 2 in the Bill of Entry no. 5782184 dated 22.11.2019 was taken as USD 1,80,000/- and USD 85,000/- respectively. Further, the said Bill of Entry was investigated by SIIB(I), New Custom

House, Mumbai with regards to the valuation and said item no. 1 i.e. Used Vermeer Navigator HDD Drill Rig was enhanced to USD 2,55,000/-. Accordingly, on completion of investigation by SIIB (I), the matter was adjudicated vide OIO no. 130/JC/PS/Gr-V/2019-20 dated 08.01.2020 . As per the OIO, they paid differential duty of Rs. 15,31,000/-, RF of Rs. 5,00,000/- and Penalty of Rs. 3,00,000/- and accordingly, the goods imported vide Bill of Entry no. 5782184 dated 22.11.2019 at Mumbai Sea Port were cleared. Further, the value of the goods imported vide Bill of Entry no. 6645707 dated 27.01.2020 at Mundra Sea Port was declared as per the invoice of the supplier and goods were cleared accordingly, on payment of appropriate duty.

iii. He had submitted the sales contract between M/s Bigbore Engineering Pvt Limited and supplier M/s Heliopolis Contracting Company SPC during his statement dated 12.12.2019 to justify the pricing of the goods imported vide Bill of Entry no. 5782184 dated 22.11.2019.

iv. On being shown the letter dated 01.12.2020 from Oriental Insurance Company Limited (OICL) alongwith the insurance copy and the contract between M/s Heliopolis Contracting & Transportation Est and M/s Smart build Solutions, Oman submitted by them (Importer) to OICL for insuring the goods imported vide Bill of Entry no. 5782184 dated 22.11.2019 at Mumbai Port and Bill of Entry no. 6645707 dated 27.01.2020 at Mundra Sea Port and specifically questioning that he had submitted the forged documents and given false submissions during your statement dated 12.12.2019 to undervalue the consignment imported at Mumbai Port, he accepted that the sales agreement submitted during his statement dated 12.12.2019 was incorrect and the value mentioned thereof i.e. USD 2,70,000/- was significantly lower than the actual price of USD 6,80,000/- as mentioned in the agreement between M/s Heliopolis Contracting & Transportation Est and M/s Smart build Solutions, Oman submitted for the insurance of the goods. The same was done to save on the duty before the customs. The correct price was declared before OICL and the said contract was submitted by M/s Bigbore Engineering Pvt Limited to OICL to get the goods insured for any damages during drilling operations at the site.

v. He further, confirmed that the correct value for the entire goods imported vide Bill of Entry no. 5782184 dated 22.11.2019 at Mumbai Port and Bill of Entry no. 6645707 dated 27.01.2020 at Mundra Sea Port was USD 6,80,000/- as declared in the said contract between M/s Heliopolis Contracting & Transportation Est and M/s Smart build Solutions, Oman.

vi. He accepted that M/s Bigbore Engineering Pvt Limited had not made any remittance for the said imported goods to the supplier and had remitted the duty amount from the accounts of M/s Bigbore Engineering Pvt Limited maintained in CSB and SBI, Ernakulam Branch to the CHA who paid the duty to customs on their behalf.

vii. He further submitted that the company M/s. Smart build Solutions did not belong to him and was owned by one Mr. Idris Salim, who was an Omani Citizen. Mr. Idris Salim was also partner in the company M/s Bigbore Engineering Pvt Limited. He was aware of the total value of the goods i.e. USD 6,80,000/- at the time of import also. However, he declared less value to Customs authorities to decrease Assessable value and pay lesser duty.

viii. His partner Mr. Idris Salim had remitted USD 5,44,000/- through his (Idris Salim) company M/s. Smart build Solutions, Oman as one instalment and rest of the amount i.e. USD 1,36,000/- (6,80,000-5,44,000) was also paid by his partner only.

ix. As his partner had remitted the amount for the said goods imported at Mumbai and Mundra, he didn't remit any amount from the account of M/s Bigbore Engineering Pvt Limited for the said goods.

x. He had also not made any payments to M/s. Smart build Solutions or to Mr. Idris Salim, as he had joined M/s Bigbore Engineering Pvt Limited on the terms that his partner would have gained 50% of the profit earned out of the earnings of the company.

9.2 Inference from the above statement dated 11.08.2021 of the importer: From the above statement, it is evident that Shri Anil Kumar Thomas, MD of M/s Bigbore Engineering Pvt Limited had willingly and intentionally submitted forged and fabricated sales contract to undervalue the goods during earlier investigation being conducted by SIIB (I), NCH, Mumbai. Now, from the actual sales contract, it was apparent that the value of the goods imported by M/s Bigbore Engineering Pvt Limited at Mumbai Port vide Bill of Entry no. 5782184 dated 22.11.2019 and at Mundra Port vide Bill of Entry no. 6645707 dated 27.01.2020, was totally valued at USD 6,80,000/- which has also been remitted by his partner Shri Idris of M/s Smart build Solutions. Further, in his statement he has accepted that he had manipulated the sales agreement and other documents submitted before SIIB (I) earlier in his statement dated 12.12.2019 to evade payment of applicable Customs Duty on the subject goods.

10. RE-DETERMINATION OF VALUE OF GOODS:

i. As per the Customs Tariff Act, 1975, valuation of imported goods is to be done in terms of Section 14 of the Customs Act 1962 read with Customs Valuation (Determination of Value of Imported goods), Rules, 2007 (CVR 2007). As per said provisions of the Act and Rules, transaction value of the imported goods is to be accepted subject to Rule 12 of the CVR 2007. However, in the instant case, there is a reasonable belief to doubt the truth and accuracy of the declared value, as the importer has submitted false and fabricated documents at the time of import and during initial investigation for assessment of the goods before clearance, and hence, the value declared by the importer in the Bill of Entry cannot

be relied upon as the same does not appear to reflect the actual transaction value. In view of the above, the values declared in the Bill of Entry cannot be taken as the transaction value and transaction value as per documents recovered during investigation need to be considered as actual transaction value in terms of Rule 3 of the CVR 2007.

ii. From the actual sales contract between the supplier M/s Heliopolis Contracting & Transportation Estt. and M/s Smart build Solutions, Oman it was apparent that value of the goods mentioned in the said contract and that imported by M/s Bigbore Engineering Pvt Limited at Mumbai Sea Port and at Mundra Port, was totally valued at USD 6,80,000/-. Further, the importer in his statement dated 11.08.2021 has accepted that the said total value of the said goods has been remitted by his partner Shri Idris of M/s Smart build Solutions. From the investigations and scrutiny of the documents as mentioned above, it was seen that the importer has imported 2 items mentioned in the said Sales Contract vide Bill of Entry no. 5782184 dated 22.11.2019 at Mumbai Sea Port and the remaining items at Mundra Sea Port vide Bill of Entry no. 6645707 dated 27.01.2021 (assessable value of USD 102858/-). Therefore, the assessable value of the goods imported at Mumbai Sea Port vide Bill of Entry no. 5782184 dated 22.11.2019 was arrived at by deducting the assessable value of goods imported at Mundra from the total value of the goods mentioned in the Sales contract. The detailed calculation of the assessable value of the goods imported at Mumbai Sea port and the applicable differential duty on the same is as per table below:

TABLE - III

Total Value of Goods as per actual sales agreement dated 05.11.2019 (in USD) (CF)	Assessable Value declared in BE no. 6645707 Dated 27.01.2020 at Mundra (in USD) (CF)	Re-determined Ass. Value of goods at Mumbai (in USD) (CF)	Re-determined Ass. Value of goods at Mumbai (in Rs.) (1USD=Rs. 72.75) (CF+Insurance@ 1.125%)	Duty payable as per the redetermined value of Goods at Mumbai Sea Port (in Rs.)	Duty paid at Mumbai Sea Port after assessment on the basis of CE Certificate (in Rs.)	Differential duty of goods imported at Mumbai Sea Port (in Rs.)
A	B	C=(A-B)	D	E=Dx27.735 %	F	G= (E-F)
680000	102858	577142	4,24,59,435	1,17,76,124	54,07,115	63,69,009

iii. In view of the above, as the value of the goods imported at Mumbai Sea Port as mentioned in Column C & D of Table – III above appears to be the correct transaction value of the subject goods, as the same has already been remitted by the partner of the importer on his behalf. Therefore, the said value of the goods imported vide the subject Bill of Entry is re- determined as USD 5,77,142/- (Rs. 4,24,59,435/-) in terms of Section 14 of the Customs Act 1962 read with Rule 3(1) of the CVR 2007.

II. SUMMARY AND OUTCOME OF INVESTIGATIONS:

From the investigations conducted in the subject matter, it appears that:

- i. M/s. Bigbore Engineering Pvt Ltd. had filed Bill of Entry No.5782184 dated 22.11.2019 for the import of goods with the description 'Used Vermeer D330*500 Navigator HD Drill Rig' and 'Used Mud Tech MPCT 1000 Mud Mixing, Pumping and cleaning on a trailer (YOM 2012)' from the supplier, M/s Heliopolis Contracting Company. The import value of item no. 1 "Used Vermeer D330*500 Navigator HD Drill Rig" was declared as USD 87,857 which was enhanced and re- assessed by the concerned group to USD 1,80,000 on the basis of CE's Certificate. Further, the import value of item no. 2 'Used Mud Tech MPCT 1000 Mud Mixing, Pumping and cleaning on a trailer' was declared as USD 79,285 which was enhanced and re-assessed to USD 85,000 on the basis of Chartered Engineer's Certificate.
- ii. During the course of initial investigation, the importer submitted a supplier's declaration indicating the procurement price from the manufacturer of item no. 1 "Used Vermeer D330*500 Navigator HD Drill Rig" as USD 8,50,000/- and further offered a depreciation of 89.7% to arrive at the import price of USD 87,857. However, as a maximum depreciation of 70% was permissible, the depreciated value at the time of import for item no. 1 worked out to be USD 2,55,000/-. As the said goods appeared to be undervalued the same was seized vide Seizure memo dated 23.12.2019 under the provisions of Section 110 (1) of the Customs Act 1962.
- iii. An investigation report in the subject matter was forwarded to the concerned adjudicating authority which was adjudicated vide OIO dated 08.01.2020. On payment of the duty, fine and penalty as per the said order, the subject goods were cleared from Mumbai Sea Port by the competent authority.
- iv. Intelligence was further developed in the said matter that the goods imported vide Bill of Entry no. 5782184 dated 22.11.2019 had been sold by the supplier to one M/s. Smart building Solutions of Oman and not to M/s Bigbore Engineering Pvt Limited and that the sales agreement submitted by the importer during the course of earlier investigation was fabricated and manipulated to undervalue the goods and evade payment of applicable Customs Duty. Accordingly, the case was taken up for re-investigation.

v. Detailed investigation in the said matter suggested that the importer had obtained a 'Contractors Plant and Machinery Policy' from OICL wherein the subject goods i.e. 'Used Vermeer D330*500 Navigator HDD Drill' was insured at a value of Rs. 4,89,60,000/- (USD 672,990 approx.) by submitting a sales agreement between M/s. Heliopolis Contracting & Transportation Est., UAE (seller) and M/s Smart Building Solutions, Muscat, Oman (buyer) of an amount of USD 6,80,000/-. Further, the banker of the importer for foreign remittance, CSB Bank Limited confirmed that the importer has not made any foreign remittance to the supplier in lieu of the invoice/Bill of Entry for purchase of the 'HD Drill Rig'. The above said documents further pointed towards the suspicion that M/s Bigbore Engineering Pvt Limited. had willingly and intentionally submitted fabricated and manipulated documents at the time of earlier investigation to undervalue the goods and evade payment of appropriate Customs duty. Also, it appears that Heliopolis did not enter into any agreement for sale for the goods with M/s Bigbore Engineering Pvt Limited and the goods were instead sold to one M/s Smart Building Solutions in Oman.

vi. Shri Anil Kumar Thomas, MD of M/s. Bigbore Engineering Pvt Ltd. in his statement dated 11.08.2021 accepted the value of the goods imported by M/s. Bigbore Engineering Pvt Ltd at Mumbai Port vide Bill of Entry no. 5782184 dated 22.11.2019 and at Mundra Port vide Bill of Entry no. 6645707 dated 27.01.2020, was totally valued at USD 6,80,000/- which has also been remitted by his partner Shri Idris of M/s Smart build Solutions. Further, in his statement he has accepted that he had willingly and intentionally manipulated the sales agreement and other documents submitted before SIIB (I) earlier in his statement dated 12.12.2019 to evade payment of applicable Customs Duty on the subject goods to the tune of Rs. 63,69,009/-, which is recoverable under the provisions of Section 28 (4) of the Customs Act 1962.

TABLE-IV

Sr. No.	Description of Goods imported vide Bill of Entry no. 5782184 dated 22.11.2019	Assessed Value of Goods imported at Mumbai (in USD)	Re-determined Ass. Value of goods as per Investigation conducted here-in- above (in USD)(CF)	Differential duty of goods imported at Mumbai Sea Port (in Rs.)
1	Used Vermeer D330*500 Navigator HD Drill Rig	2,55,000/-	5,77,142/-	63,69,009/-

2	Used Mud Tech MPCT 1000 Mud Mixing, Pumping and Cleaning on a Trailer			
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12. Obligations under Self-Assessment:

i. Sub-section (4) of section 46 and Section 46 (4A) of the Customs Act 1962, specifies that, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such Bill of Entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods. From the evidences discussed here-in-above, it appears that the importer, M/s Bigbore Engineering Pvt Limited, has intentionally mis-declared and suppressed the true and correct value of the impugned imported goods, only to evade payment of applicable Customs duty and hence, contravened the provisions of section 46 of the Customs Act 1962.

ii. Further, Section 17 of the Customs Act 1962, was substituted with effect from 08.04.2011 introducing self-assessment of goods imported by the importers wherein it was obligatory on the part of the importer to declare all the particulars such as true and correct value of the goods. However, from the investigation conducted carried out and discussed here-in- above, it is clear that the imported goods do not correspond in respect of the value of the goods with the entries made under the provisions of the Customs Act 1962 in as much as the importer had willingly and intentionally submitted fabricated and manipulated documents before to undervalue the goods and evade payment of applicable Customs duty. Therefore, by not declaring the true and correct facts at the time of import and at the time of investigation before the Customs department, M/s. Bigbore Engineering Pvt Ltd appear to have indulged in mis-declaration, wilful mis- statement, manipulation and suppression of facts with the sole intention to wrongfully evade payment of applicable Custom duties.

13. Invocation of extended period and confiscation of goods:

13.1. From the investigation carried out and discussed here-in-above, it appears that the importer M/s. Bigbore Engineering Private Limited have willfully suppressed the true and correct value of the impugned imported goods, gave mis-statement and submitted fabricated and manipulated import documents, with a malafide intention to evade payment of appropriate customs duties. Hence, it appears that the duty evaded by them is recoverable, by invoking extended period, in terms of Section 28(4) of the Customs Act 1962.

13.2. From the investigations carried out and brought out here-in-above, it is evident that the imported goods do not correspond in respect of the value of the goods with the

entry made under the provisions of Section 46 and 46 (4A) of the Customs Act 1962. This act of the omission and commission have rendered the subject goods of re-determined value of Rs. 4,24,59,435/-, liable for confiscation under Section 111 (m) of the Customs Act 1962.

14. Grounds of penal provisions applicable:

- i. From the investigations carried out and brought out here-in-above, it is evident that the imported goods do not correspond in respect of the value of the goods with the entry made under the provisions of Section 46 and 46 (4A) of the Customs Act 1962. This act of the omission and commission have rendered the subject goods of re-determined value of Rs. 4,24,59,435/-, liable for confiscation under Section 111 (m) of the Customs Act 1962. Consequently, the importer has rendered themselves liable for penalty in terms of Section 112(a) of the Customs Act 1962.
- ii. Also, as it appears that the duty on the goods as mentioned in Table-II of this SCN had been short levied on account of wilful suppression, mis-statement and the duty thus short levied is liable to be demanded under section 28(4) of the Customs Act 1962. Consequently, the importer has rendered themselves liable for penalty in terms of Section 114A of the Customs Act 1962.
- iii. Also, as it appears that the duty on the goods as mentioned in Table-II of this SCN had been short levied on account of wilful suppression, mis-statement, fabrication and manipulation of the import documents, and the duty thus short levied is liable to be demanded under section 28(4) of the Customs Act 1962. Since fabricated documents have been used with intention to evade duty, the importer, M/s Bigbore Engineering Pvt Limited also appear liable for imposition of penalty under Section 114AA of the Customs Act 1962.
- iv. From the statements dated 12.12.2019 and 11.08.2021 of Shri Anil Kumar Thomas, Managing Director of M/s. Bigbore Engineering Pvt Ltd. it appears that before filing of the subject Bill of Entry, he was aware about the fabrication and manipulation of the import documents submitted before the Custom Authorities but did not bring the same to the notice of the concerned Custom Authorities. This is a deliberate attempt on the part of Shri Anil Kumar Thomas to devise a plan and submit the false and fabricated documents to evade payment of appropriate Customs duty in relation to the impugned goods imported vide Bill of Entry No. 5782184 dated 22.11.2019. Therefore, it appears that Shri Anil Kumar Thomas had knowingly or intentionally made, signed or used declaration and documents which were false or incorrect with an intention to evade duty and violated the provisions of Customs Act 1962 as evident from his statements and documentary evidence as discussed above. He appears to have done acts or has omitted to do acts, abetted the doing or omission of such acts knowingly with an intention to

evade payment of appropriate Customs duty, which have rendered the goods imported under the Bill of Entry No. 5782184 dated 22.11.2019, liable for confiscation under Section 111(m) of the Customs Act 1962. Since fabricated documents have been used with intention to evade duty, for such act of omission and commission is rendering the goods liable for confiscation, Shri Anil Kumar Thomas, Managing Director of M/s. Bigbore Engineering Pvt Ltd. appears to have rendered himself liable for penalty under Section 114AA of the Customs Act 1962.

15. Legal Provisions:

I. The relevant portions of the Customs Act 1962 that are referred in this Show Cause Notice are reproduced in brief as follows:

i. Section 14 in the Customs Act 1962 read as

Valuation of goods. —

(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

ii. SECTION 17 of the Customs Act 1962 read as

Assessment of duty. —

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(2) The proper officer may verify the self-assessment of such goods and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

(3) For verification of self-assessment under sub-section (2), the proper officer may require the importer, exporter or any other person to produce any contract, broker's note, insurance policy, catalogue or other document, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained, and to furnish any information required for such ascertainment which is in his power to produce or furnish, and thereupon, the

importer, exporter or such other person shall produce such document or furnish such information.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self- assessment done by the importer or exporter regarding valuation of goods, classification, exemption or concessions of duty availed consequent to any notification issued therefore under this Act and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

(6) Where re-assessment has not been done or a speaking order has not been passed on re- assessment, the proper officer may audit the assessment of duty of the imported goods or export goods at his office or at the premises of the importer or exporter, as may be expedient, in such manner as may be prescribed.

Explanation. - For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of section 17 as it stood immediately before the date on which such assent is received."

*iii. Circular No.17/2011- Customs dated 8th April, 2011 issued by the Ministry of Finance, specified that Section 17 of the Customs Act, 1962 provided for self-assessment of duty on import and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill, as the case may be. The importer or exporter at the time of self-assessment was to ensure that he declares the **correct classification**, applicable rate of duty, value, benefit of exemption notifications claimed, if any, in respect of the imported / export goods while presenting Bill of Entry or Shipping Bill. The Bill of Entry or Shipping Bill self-assessed by importer or exporter, as the case may be, could be subject to verification with regard to **correctness of classification**, value, rate of duty, exemption notification or any other relevant particular having bearing on correct assessment of duty on imported or export goods. For the purpose of verification, the proper officer was also*

required to order for examination or testing of the imported or export goods, production of any relevant document or ask the importer or exporter to furnish any relevant information.

iv. **Section 28(4)** of the Customs Act, 1962 read as:

Recovery of duties not levied or short-levied or erroneously refunded: *Where any duty has not been levied or has been short-levied or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of:*

- (a) *collusion; or*
- (b) *any wilful mis-statement; or*
- (c) *suppression of facts,*

by the importer or the exporter or the agent or employee of the importer or exporter; the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

v. **Section 46(4)** of the Customs Act, 1962 read as:

"The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods".

vi. **Section 46 (4A)** - *The importer who presents a bill of entry shall ensure the following, namely:*

- a. *the accuracy and completeness of the information given therein;*
- b. *the authenticity and validity of any document supporting it; and*
- c. *compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.*

vii. **Section 110** - *Seizure of goods, documents and things —*

(1) *If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods: Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer. 1[(1A)*

The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.

viii. **Section III of the Customs Act 1962 read as: Confiscation of improperly imported goods, etc.-** ".... Confiscation of improperly imported goods, etc. The following goods brought from a place outside India shall be liable to confiscation: -

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

ix. **Section II4A of the Customs Act, 1962- Penalty for short-levy or non-levy of duty in certain cases -** *Where the duty has not been levied or has been short levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined.*

x. **Section II4 AA - Penalty for use of false and incorrect material. -** *If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.*

16. Therefore,

i. The importer, M/s Bigbore Engineering Private Limited, was called upon to show cause to the Commissioner of Customs (Import-I), New Custom House, Ballard Estate, Mumbai-400001 as to why:

a. The total value of the impugned goods i.e. 'Used Vermeer D330*500 Navigator HD Drill Rig' and 'Used Mud Tech MPCT 1000 Mud Mixing,

Pumping and cleaning on a trailer', imported vide Bill of Entry No.5782184 dated 22.11.2019, should not be re-determined as Rs. 4,24,59,435/- (Rupees Four Crores Twenty Four Lakhs Fifty Nine Thousand Four Hundred Thirty Five only) instead of the declared value of Rs. 1,94,95,636/- (Rupees One Crore Ninety Four Lakhs Ninety Five Thousand Six hundred Thirty Six only) in terms of Section 14 of the Customs Act 1962 read with Rule 3(1) of the CVR 2007.

- b. The impugned goods i.e. 'Used Vermeer D330*500 Navigator HD Drill Rig' and 'Used Mud Tech MPCT 1000 Mud Mixing, Pumping and cleaning on a trailer', imported vide Bill of Entry No.5782184 dated 22.11.2019, having re-determined value of Rs. 4,24,59,435/- (Rupees Four Crores Twenty Four Lakhs Fifty Nine Thousand Four Hundred Thirty Five only) should not be held liable for confiscation under section 111(m) of the Customs Act 1962;
 - c. The differential duty of Rs. 63,69,009/- (Sixty Three Lakhs Sixty Nine Thousand Nine only) on the impugned goods i.e. 'Used Vermeer D330*500 Navigator HD Drill Rig' and 'Used Mud Tech MPCT 1000 Mud Mixing, Pumping and cleaning on a trailer', imported vide Bill of Entry No. 5782184 dated 22.11.2019, should not be demanded under the provisions of Section 28(4) of the Customs Act 1962 alongwith the applicable interest under the provisions of Section 28AA of the Customs Act 1962;
 - d. Penalty should not be imposed on M/s Bigbore Engineering Private Limited under section 114AA of the Customs Act 1962;
 - e. Penalty should not be imposed on M/s Bigbore Engineering Private Limited under section 114A and/or 112(a) of the Customs Act 1962.
- ii. Shri Anil Kumar Thomas, Managing Director of M/s Bigbore Engineering Pvt. Ltd. was called upon to show cause as to why:
 - a. Penalty should not be imposed on Shri Anil Kumar Thomas under Section 114AA of the Customs Act 1962;
 - b. Penalty should not be imposed on Shri Anil Kumar Thomas under section 112(a) of the Customs Act 1962.

PERSONAL HEARING AND SUBMISSIONS OF THE NOTICEE

17. A personal hearing was granted to noticees on 09.11.2022 vide letter dated 31.10.2022, however no one turned up for hearing. Another opportunity of personal hearing was granted on 22.12.2022 vide letter dated 16.12.22 again no one appeared for

hearing. Further last third opportunity of personal hearing was granted on 14.04.23, however noticees not appeared for hearing.

DISCUSSION AND FINDINGS

18. This case involves following two noticees:

Noticee-1: M/s. Bigbore Engineering Pvt Ltd,

Noticee-2: Shri Anil Kumar Thomas, Managing Director, M/s. Bigbore Engineering Pvt Ltd.

18.1 As no one turned up for the three personal hearings, I proceed to decide the case ex-parte.

19. **Issues for determination:**

- a. Whether the total value of the impugned goods imported vide Bill of Entry No.5782184 dated 22.11.2019, should be re-determined as Rs. 4,24,59,435/- instead of the declared value of Rs. 1,94,95,636/- in terms of Section 14 of the Customs Act 1962 read with Rule 3(1) of the CVR 2007?
- b. Whether the impugned goods imported vide Bill of Entry No.5782184 dated 22.11.2019, should be held liable for confiscation under section 111(m) of the Customs Act 1962?
- c. Whether penalty should be imposed on M/s Bigbore Engineering Private Limited under section 112(a) and/or 114A of the Customs Act 1962?
- d. Whether penalty should be imposed on Shri Anil Kumar Thomas under section 112(a) of the Customs Act 1962?
- e. Whether penalty should be imposed on M/s Bigbore Engineering Private Limited (Noticee-1) and on Shri Anil Kumar Thomas (Noticee-2) under section 114AA of the Customs Act 1962?

Let me take up the issues one by one.

20. **Whether the total value of the impugned goods imported vide Bill of Entry No.5782184 dated 22.11.2019, should be re-determined as Rs. 4,24,59,435/- instead of the declared value of Rs. 1,94,95,636/- in terms of Section 14 of the Customs Act 1962 read with Rule 3(1) of the CVR 2007?**

20.1 The Noticee-1 had filed Bill of Entry No.5782184 dated 22.11.2019 for the import of goods (2 items) having descriptions as :

- (i) 'Used Vermeer D330*500 Navigator HD Drill Rig' and
- (ii) 'Used Mud Tech MPCT 1000 Mud Mixing, Pumping and Cleaning on a Trailer (YOM 2012)'

20.2 The name of the supplier was declared as **M/s. Heliopolis Contracting Company⁴** in Bahrain. The import value of item no. 1 "Used Vermeer D330*500 Navigator HD Drill Rig" was declared as USD 87,857 and the import value of item no. 2 'Used Mud Tech MPCT 1000 Mud Mixing, Pumping and cleaning on a trailer" was declared as USD 79,285.

20.3 The subject goods being old and used were ordered for first check examination under DC(Docks) supervision. The goods were examined by the docks officers and gave the examination report considering the Chartered Engineer's findings vide Certificate No CE. 452 dated 25.11.2019. The import value of item no. 1 "Used Vermeer D330*500 Navigator HD Drill Rig" was enhanced and re- assessed by the concerned group to USD 1,80,000 on the basis of CE's Certificate. Further, the import value of item no. 2 'Used Mud Tech MPCT 1000 Mud Mixing, Pumping and cleaning on a trailer" was enhanced and re-assessed to USD 85,000 on the basis of Chartered Engineer's Certificate.

20.4 I find that during the course of initial investigation, the Noticee-1 submitted a supplier's declaration indicating the procurement price from the manufacturer of item no. 1 "Used Vermeer D330*500 Navigator HD Drill Rig" as USD 8,50,000/- and further offered a depreciation of 89.7% to arrive at the import price of USD 87,857. However, as a maximum depreciation of 70% was permissible as per Board Circular no 495/1693-Cus-VI dated 26.05.1993, the depreciated value at the time of import for item no. 1 worked out to be USD 2,55,000/-. Further the subject matter was adjudicated by then JC/Group 5 vide OIO No. 130/JC/PS/GR-V/2019-20 dated 08.01.2020. On payment of the duty, fine and penalty as per the said order, the subject goods were cleared. However, certain new facts came to light regarding use of false and manipulated documents by the importer during the initial investigation. An interim application was filed on 15.02.2021 before the Commissioner of Customs (Appeals), Mumbai-I against the said OIO praying to remand back the case to the original adjudicating authority to decide the matter afresh taking into account the new investigation and the alleged wilful suppression of facts by the importer at the time of the earlier investigation. Accordingly, Commissioner of Customs (Appeals), Mumbai – I vide Order-In-Appeal no. MUM-CUS-KC-IMP-58 to 59/2021-22 dated 22.09.2021, remanded back the case for deciding the matter afresh.

⁴ M/s. Heliopolis in short

20.5 It came to light that the importer had obtained a 'Contractors Plant and Machinery Policy' bearing No.421300/44/2020/47 dated 05.03.2020 from Oriental Insurance Company Limited for the period 03.03.2020 to 02.03.21 wherein the subject goods was insured at a value of Rs. 4,89,60,000/-(USD 672,990 approx.) by submitting a sales agreement between M/s. Heliopolis (supplier) and **M/s Smart Building Solutions, Muscat, Oman**⁵ (buyer) for an amount of USD 6,80,000/-. It showed that M/s. Heliopolis did not enter into any agreement for sale for the goods with the importer and the goods were instead sold to one M/s Smart Building. Further Branch Manager, CSB Bank Limited (banker of the noticees for foreign remittance) vide an email dated 10.02.2021, also confirmed that the noticees has not made any foreign remittance to the supplier in lieu of the invoice/Bill of Entry.

20.6 Thus the said imported goods had been sold by the supplier M/s. Heliopolis to M/s. Smart Building vide sales agreement dated 05.11.2019 and not to the importer. Thus the self declaration dated 10.12.2019 by the supplier M/s. Heliopolis which had been submitted by the noticees during the course of earlier investigation showing the total value of the goods as USD 2,70,000 was fabricated and manipulated to undervalue the goods and evade payment of applicable customs duty.

20.7 As per the Customs Tariff Act, 1975, valuation of imported goods is to be done in terms of Section 14 of the Customs Act 1962 read with Customs Valuation (Determination of Value of Imported goods), Rules, 2007 (CVR 2007). As per said provisions of the Act and Rules, transaction value of the imported goods is to be accepted subject to Rule 12 of the CVR 2007. Since both the supplier's name and value of goods declared in the import documents were found to be false, a reasonable belief was formed to doubt the truth and accuracy of the declared value. Hence, the value declared by the importer in the Bill of Entry has rightly been proposed to be rejected as the same did not appear to reflect the actual transaction; and the value as per documents recovered during investigation has rightly been considered as actual transaction value in terms of Rule 3 of the CVR 2007.

20.8 I find that the Noticee-2 in his statement dated 11.08.2021 has accepted that the sales agreement submitted during his earlier statement dated 12.12.2019 was false and the value mentioned thereof i.e. USD 2,70,000/- was significantly lower than the actual price of USD 6,80,000/- as mentioned in the actual sales agreement between the supplier M/s Heliopolis and M/s Smart Building. The total value of the said goods USD 6,80,000 has been remitted by Shri Idris of M/s Smart Building who was also a Director(as per website data of www.zauba.com) in the importing firm M/s. Heliopolis. Sh. Anil Thomas in his voluntary statement dated 11.08.2021 has loosely termed him as partner in his Company. I find that the total goods covered in the sales agreement valued at USD 6,80,000 imported by Noticee-1 at Mumbai Port and at Mundra Port. Thus Noticee-1 has imported two items

⁵ M/s. Smart Building in short

of the said sales agreement vide Bill of Entry no. 5782184 dated 22.11.2019 at Mumbai Sea Port and the remaining items at Mundra Sea Port vide Bill of Entry no. 6645707 dated 27.01.2020(assessable value of USD 102858/-). Therefore, I find that the assessable value of the goods imported vide Bill of Entry no. 5782184 dated 22.11.2019 has been rightly arrived at by deducting the assessable value of goods imported at Mundra Sea Port from the total value of the goods mentioned in the sales agreement. The detailed calculation of the assessable value of the goods imported at Mumbai sea port and the applicable differential duty on the same is shown in table below:

TABLE - III

Total Value of Goods as per actual sales agreement dated 05.11.2019 (in USD) (CF)	Assessable Value declared in BE no. 6645707 Dated 27.01.2020 at Mundra (in USD) (CF)	Re-determined Ass. Value of goods at Mumbai (in USD) (CF)	Re-determined Ass. Value of goods at Mumbai (in Rs.) (1USD=Rs. 72.75) (CF+Insurance@ 1.125%)	Duty payable as per the redetermined value of Goods at Mumbai Sea Port (in Rs.)	Duty paid at Mumbai Sea Port after assessment on the basis of CE Certificate (in Rs.)	Differential duty of goods imported at Mumbai Sea Port (in Rs.)
A	B	C=(A-B)	D	E= Dx27.73%	F	G= (E-F)
680000	102858	577142	4,24,59,435	1,17,76,124	54,07,115	63,69,009

20.9 I further rely on the judgement of Hon'ble Supreme Court in **Union of India Vs R.C. Fabrics**⁶ wherein it was held that *once some new facts come to light on the basis of investigations past assessments can be opened and the case adjudicated afresh*. I further rely on the Hon'ble Supreme Court in the case of **Systems & Components Pvt. Ltd**⁷ wherein it has been held that it is a basic and settled law that what is admitted need not be proved. Department is not required to go into a lengthy investigation when documents showing the correct transaction value have been found from the insurance company in the form of a duly executed agreement and accepted unconditionally by the importer.

20.10 In view of the above, the value mentioned in Column C & D of Table – III above is the correct transaction value of the subject goods as the same has already been remitted by Md. Idris, Director in the importing firm on his behalf. Therefore, I re- determine the value of the subject goods as USD 5,77,142/- (Rs. 4,24,59,435/-) in terms of Section 14 of

⁶ Union of India Vs R.C. Fabrics (P) Ltd [2002(ELT)12 (SC)

⁷ Commissioner of C. Ex., Madras Vs. Systems & Components Pvt. Ltd. [2004 (163) E.L.T. 136 (S.C.)

the Customs Act 1962 read with Rule 3(1) of the CVR 2007. Accordingly , I confirm the differential duty of Rs. 63,69,009/ as mentioned in Column G of above Table-III.

21. Whether the impugned goods imported vide Bill of Entry No.5782184 dated 22.11.2019, should be held liable for confiscation under section 111(m) of the Customs Act 1962?

21.1 The sub-section (4) of Section 46 and Section 46 (4A) of the Customs Act 1962, specifies that, the importer while presenting a Bill of Entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such Bill of Entry and shall, in support of such declaration, produce to the proper officer, the invoice, if any, relating to the imported goods. From the discussion here-in-above, it is evident that the noticee has intentionally mis-declared and suppressed the true and correct value of the impugned imported goods, only to evade payment of applicable customs duty and hence, contravened the provisions of section 46 of the Customs Act 1962.

21.2 Further, Section 17 of the Customs Act 1962, was substituted with effect from 08.04.2011 introducing self-assessment of goods imported by the importers wherein it was obligatory on the part of the importer to declare all the particulars such as true and correct value of the goods. It is clear from the above discussion that the imported goods do not correspond in respect of the value of the goods with the entries made under the provisions of the Customs Act 1962. The Noticee-1 had willingly and intentionally submitted fabricated and manipulated document i.e. self declaration dated 10.12.2019 of the supplier M/s. Heliopolis to undervalue the goods 2.5 times and evade payment of applicable customs duty to the tune of Rs. 63.69 lakhs. Therefore, by not declaring the true and correct facts at the time of import and at the time of investigation before the Customs department, Noticee-1 has indulged in mis-declaration, wilful mis-statement, manipulation and suppression of facts with the sole intention to wrongfully evade payment of applicable custom duties.

21.3 Thus the imported goods do not correspond in respect of the value of the goods with the entry made under the provisions of Section 46 and 46 (4A) of the Customs Act 1962. This act of the omission and commission have rendered the subject goods of re-determined value of Rs. 4,24,59,435/-, liable for confiscation under Section 111 (m) of the Customs Act 1962.

22. Whether penalty should be imposed on M/s. Bigbore Engineering Private Limited (Noticee-1) under section 112(a) and/or 114A of the Customs Act 1962?

22.1 It is evident from above discussions that the imported goods do not correspond in respect of the value of the goods with the entry made under the provisions of Section

46 and 46 (4A) of the Customs Act 1962. The name of the supplier has also been misdeclared in the bill of entry as a part of the conspiracy and scheme to hide the undervaluation of goods. The Noticee-1 had willingly and intentionally submitted fabricated and manipulated document i.e. self declaration dated 10.12.2019 by the supplier M/s. Heliopolis mentioning value to undervalue the goods to the tune of 2.5 times and evade payment of applicable customs duty to the tune of Rs. 63.69 lakhs. This act of the omission and commission have rendered the subject goods of re-determined value of Rs. 4,24,59,435/-, liable for confiscation under Section 111 (m) of the Customs Act 1962. Thus the Noticee-1 has rendered themselves liable for penalty in terms of Section 112(a) of the Customs Act 1962. Also the said acts of the importer of wilful suppression, mis-statement with respect to value of the subject goods has resulted in evasion of customs duty Rs. 63.69 lakhs making him liable for penalty in terms of Section 114A of the Customs Act 1962. I note that the penalties under sections 112(a) and 114A are mutually exclusive.

23. Whether penalty should be imposed on Shri Anil Kumar Thomas (Noticee-2) under section 112(a) of the Customs Act 1962?

23.1 Shri Anil Kumar Thomas was working in the capacity of Managing Director of M/s. Bigbore Engineering Private Limited from 2019. It is clear from the statements dated 12.12.2019 and 11.08.2021 of Noticee-2 that he was aware about the fabrication and manipulation of the import documents submitted before the Customs Authorities but did not bring the same to the notice of the concerned Custom Authorities. This is a deliberate attempt on the part of Noticee-2 to devise a plan and submit the false and fabricated documents to evade payment of appropriate customs duty in relation to the subject imported goods. The said acts of omission and commission of Noticee-2 with an intention to evade payment of appropriate customs duty rendered the imported goods liable for confiscation under Section 111(m) of the Customs Act 1962. Thus Noticee-2 is liable for penalty in terms of Section 112(a) of the Customs Act 1962.

24. Whether penalty should be imposed on M/s Bigbore Engineering Private Limited (Noticee-1) and on Shri Anil Kumar Thomas (Noticee-2) under section 114AA of the Customs Act 1962?

24.1 It is clear from the above discussions that Noticee-1 had knowingly and intentionally made, signed or used declarations and documents which were false or incorrect with an intention to evade duty and violated the provisions of the Customs Act 1962 and the same is evident from his statements and documentary evidence. The said acts of omission and commission of Noticee-1 with an intention to evade payment of appropriate customs duty rendered the imported goods liable for confiscation under Section 111(m) of the Customs Act 1962. Both the value of goods and the supplier's name have been misdeclared in the

import documents. A false sales agreement was produced alongwith the import documents before the Customs as a part of elaborate conspiracy and scheme to hide the undervaluation of the imported goods. Had SIIB not received specific intelligence and had not called for documents from the insurance company, this evasion of customs duty would have gone unnoticed. Since false and fabricated documents have been used with intention to evade customs duty, thus both Noticee-1(firm) and Noticee-2(being the MD of the firm and a separate legal entity and has accepted his role in the conspiracy) are liable for penalty under Section 114AA of the Customs Act 1962.

ORDER

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

25.1 I reject the declared value of Rs. 1,94,95,636/- (Rupees One Crore Ninety Four Lakhs Ninety Five Thousand Six hundred Thirty Six only) of the goods imported vide Bill of Entry No.5782184 dated 22.11.2019. I re-determine the total value as **Rs. 4,24,59,435/- (Rupees Four Crores Twenty Four Lakhs Fifty Nine Thousand Four Hundred Thirty Five only)** in terms of Section 14 of the Act read with Rule 3(1) of the CVR 2007.

25.2 I confirm the differential duty of **Rs. 63,69,009/- (Rupees Sixty Three Lakhs Sixty Nine Thousand Nine only)** on the impugned goods imported vide Bill of Entry No. 5782184 dated 22.11.2019 under the provisions of Section 28 of the Customs Act 1962 alongwith the applicable interest under the provisions of Section 28AA of the Act.

25.3 I hold the impugned goods imported vide Bill of Entry No.5782184 dated 22.11.2019, having re-determined value of Rs. 4,24,59,435/- (Rupees Four Crores Twenty Four Lakhs Fifty Nine Thousand Four Hundred Thirty Five only) liable for confiscation under Section 111(m) of the Act. However, in lieu of confiscation, I impose a redemption fine of **Rs. 15,00,000/-(Rupees Fifteen Lakhs Only)** under Section 125 of the Act.

25.4 I impose a penalty equal to the short paid duty and interest upon the importer, M/s Bigbore Engineering Private Limited under Section 114A of the Act, provided that where such duty and interest is paid within thirty days from the date of the order of the proper officer determining such duty, the amount of penalty liable to be paid under this section shall be twenty-five percent of the duty or interest, as the case may be, so determined. The benefit of reduced penalty shall be available subject to condition that the amount of penalty so determined has also been paid within the period of thirty days.

25.5 I impose a penalty of **Rs. 6,00,000/-(Rupees Six Lakhs Only)** on Shri Anil Kumar Thomas, Managing Director, M/s Bigbore under Section 112(a) of the Act.

25.6 I impose a penalty of Rs. 1,25,00,000/-(Rupees One Crore Twenty Five Lakhs only) on M/s Bigbore Engineering Private Limited under Section 114AA of the Act.

25.7 I impose a penalty of Rs. 12,00,000/-(Rupees Twelve Lakhs only) on Shri Anil Kumar Thomas, Managing Director, M/s Bigbore under Section 114AA of the Act.

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

29
विवेक
31.05.23

(Vivek Pandey)
आयुक्त सीमाशुल्क (आयात-1)
Commissioner of Customs (Import-I),
नवीन सीमाशुल्क भवन, मुंबई
New Custom House, Mumbai-01



To,

1. M/s Bigbore Engineering Private Limited (IEC No. AAICB729NDY)
Aykkareth, Edakkunnu, Paduvapuram
P.O. Karukutty, Ernakulam Dist.,
Kerala-683576 12 M 171716625IM
2. Shri Anil Kumar Thomas, Managing Director, M/s Bigbore Engineering Pvt.
Ltd., Aykkareth, Edakkunnu, Paduvapuram,
P.O. Karukutty, Ernakulam Dist.,
Kerala-683576 6 M 171716437IM

Copy to:

1. The Pr. Chief Commissioner of Customs, Mumbai Zone-I, New Custom House,
Mumbai.
2. The Additional Commissioner of Customs, SIIB(Import), New Custom House,
Mumbai.
3. ADG(CEIB), Central Economic Intelligence Bureau, Janpath Bhavan, B-wing, 6th
Floor, New Delhi-110001.
4. The Deputy Commissioner of Customs, Group-5, New Custom House, Mumbai.
5. The Deputy Commissioner of Customs, CBS, New Custom House, Mumbai.
6. Office Copy.

