



भारत सरकार

वित्त मंत्रालय/ राजस्व विभाग

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

आयुक्त सीमाशुल्क (आयात-1) का कार्यालय

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

दूरध्वनि-22757401 फैक्स-22757402

ई-मेल: adjn-commr-imp1nch@gov.in

फा.सं. : S/26-Misc-65/2012 VB & S/10-Adjn-35 (Commr-15)/2012/VB

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

आदेश दिनांक: 28.02.2023
जारी दिनांक: 28.02.2023

सी.ए.ओ. क्रमांक : 93/2022-23/CAC/CC(IMPORT-1)/VP/ADJ(IMP-1)
DIN No. 20230277000000823964

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.

Tel. No. 22757401 Fax No. 22757402

e-mail: adjn-commr-imp1nch@gov.in

F.No. S/26-Misc-65/2012 VB & S/10-Adjn-35 (Commr-15)/2012/VB

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

Date of Order: 28.02.2023

Date of Issue: 28.02.2023

C.A.O. No.: 93/2022-23/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I)

DIN No. 20230277000000823964

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 :- Evasion of Customs duty of Rs. 2,22,82,940/- by Shri Harvinder Singh(mastermind) by resorting to undervaluation in the importation of electronics goods, through firms, M/s Davison Electronics (IEC No. 0589003275), M/s J.S. Traders (IEC No. 0504069896) and M/s B.V. Enterprises (IEC No. 0506057437) under 10 Bills of Entry of the period July 2007 to April 2008 .

BRIEF FACTS

1. This is second round of adjudication after the Show Cause Notice¹ dt. 20.06.2012 was adjudicated in the first round vide OIO No. 136/2013/CAC/CC(I)/AB/Gr.VB dated 14.10.2013 issued vide F.No. S/26-Misc-65/2012 VB and remanded back by CESTAT Mumbai Vide Order No. A/880-887/14/CSTB/C-1 dated 03.06.2014. The facts of the case are detailed as under.

2. Intelligence was received by the officers of the Directorate of Revenue Intelligence (DRI), Mumbai², which inter-alia indicated that certain consignments of electronics goods imported from Hong Kong based suppliers namely, (i) M/s Chee Lin Exports and (ii) M/s Cosmo Trading Co., were heavily under-invoiced. On discreet inquiries, it was found that most of the importing firms were not in existence and/or were not in operation at their declared addresses. The aforesaid intelligence also indicated that, M/s Davison Electronics (IEC No. 0589003275), M/s. J. S. Traders (IEC No. 0504069896) and M/s B.V. Enterprises (IEC No. 0506057437), were among the importers who had imported such consignments. The import clearances in the name of these firms were reportedly handled by Custom House Agent (CHA), M/s Sai Dutta Clearing Agency.

3. Acting on the above intelligence, searches were carried out at the following places on 09 & 10.11.2009:-

(i) Office premises of CHA firm M/s Sai Dutta Clearing Agency, at 201, Madhuban Building, 2nd Floor, 23, Cochin Street, Fort, Mumbai- 400 001, wherefrom certain documents, considered relevant for further investigation were taken over by the officers under panchanama dated 09.11.2009.

(ii) Residential premises of Shri Ashwanii Dham³ of M/s Sai Dutta Clearing Agency at 501/502, Dhairyia Apartment, 11th Road, Near Kamala High School, Khar (W), Mumbai- 400 050, wherefrom certain documents and Indian currency amounting to Rs 11 lakhs found, were taken over under panchanama dated 09.11.2009.

¹ Also referred to as SCN or Notice

² DRI MZU in short

³ Also referred to as Noticee-3



(iii) Residential premises of Shri Harvinder Singh⁴ at C-208, Greater Kailash-I, Delhi on 10.11.2009. Nothing incriminating was found during the said search.

4. The relevant bills of entry under which imported goods were cleared by resorting to undervaluation were identified as under-

TABLE-1

Sr. No.	Name of the Importer (M/s)	Bill of Entry No. / Date	Item Description	CHA (M/s)	Declared CIF Value (Rs.)
1	Davison Electronics	830272/24. 03.08	Front panel & remote control for car/vcd MP3 players (JVC/Sony/ Pioneer)	Sai Datta Clearing Agency	363431
2	Davison Electronics	836874/28. 04.08	Front panel for car VCD/DVD, MP3, remote control, manuals and gift boxes(JVC/Sony/ Pioneer/Panasonic)	-do-	505859
3	B.V. Enterprises	817121/11. 01.08	Unbranded metal cabinet with PCB and mechanism with connector for CD player	-do-	1015672
4	J.S. Traders	782434/26. 07.07	Unbranded metal cabinet with PCB and mechanism with connector for CD player	-do-	709755
5	J.S. Traders	789175/29. 08.07	Unbranded metal cabinet with PCB and mechanism with connector for CD player	-do-	645759
6	J.S. Traders	796245/01.	Unbranded metal	-do-	661826

⁴ Also referred to as Noticee-1

		10.07	cabinet with PCB and mechanism with connector for CD player		
7	J.S. Traders	799664/18. 10.07	Unbranded metal cabinet with PCB and mechanism with connector for CD player	-do-	855268
8	J.S. Traders	811653/14. 12.07	Unbranded metal cabinet with PCB and mechanism with connector for CD player	-do-	820830
9	J.S. Traders	822319/07. 02.08	Car Cassette player, LCD Monitor, Car Amplifier (Daewoo/Rockmars)	-do-	451341
10	J.S. Traders	825480/25. 02.08	Unbranded metal cabinet with PCB and mechanism with connector for CD player	-do-	738023

5. Statement of Shri Ashwanii Dham, Director of the CHA firm, M/s Sai Dutta Clearing Agency Pvt. Ltd.(CHA 11/978), was recorded on 10.11.2009 under Section 108 of the **Customs Act, 1962**⁵. In his statement, Shri Ashwanii Dham, inter alia stated:-

- (i) His CHA firm had attended to the Customs clearances of the goods imported in the name of (a) Davison Electronics (b) B. V. Enterprises and (c) M/s J. S. Traders;
- (ii) In respect of the above goods, one Harvinder Singh, Partner in M/s Davison Electronics and Proprietor of M/s J. S. Traders, had approached him;
- (iii) He had never met the proprietor of M/s B.V. Enterprises;

⁵ Also referred to as the Act

- (iv) He had never visited or verified the address of the above importing firms;
- (v) There was a general trend of undervaluation in the import of electronic goods and accessories at that time;
- (vi) Wherever there had been any undervaluation in the imports handled by his firm, he shall ensure that the differential duty along with interest is paid forthwith.

6. Statement of Shri Harvinder Singh. (Partner in M/s Davison Electronics and Proprietor in M J.S. Traders), i.e. the person named by Shri Ashwani Dham in his statement dated 10.11.2009, was recorded on 12.11.2009 under Section 108 of the Customs Act, 1962 In his statement, Shri Harvinder Singh, inter alia stated:-

- (i) He started a partnership firm in the name of M/s Davison Electronics at E- 31 Sector 3, Noida UP. Ghaziabad;
- (ii) His brothers, Paramvir Singh and Manmohan Singh were the other partners;
- (iii) The entire business activity of the said firm was handled by him;
- (iv) He used to import parts of micro motors for manufacturing along with parts of the car cassette player through above-stated firm;
- (v) In 2007, he had stopped manufacturing micro motors completely and had started importing and trading in electronic goods viz. front panels and remote control units;
- (vi) The main foreign suppliers were M/s Cosmo Trading Co. and M/s Chee Lin Exports, both based in Hong Kong;
- (vii) He had met Kumar, owner of both the above-mentioned companies in a trade fair in Hong Kong;
- (viii) All the imports were made through Mumbai port and the CHA in respect of these imports was M/s Sai Dutta Clearing Agency Pvt. Ltd, whose partner was one Ashwani Dham;
- (ix) The electronic goods imported from the above-stated foreign suppliers were undervalued;

- (x) Kumar used to make invoices of lower value for the consignment which was sent by fax/ courier;
- (xi) The invoices showing lower value were submitted to the Customs authorities;
- (xii) The amount (lower value) reflected in the invoices (i.e. the value declared to the Customs authorities) was remitted through banking channel,
- (xiii) Kumar used to collect the differential amount (the actual value of the goods less the value declared in the invoices / Customs) from them after negotiating in person or he used to nominate certain persons in Delhi to collect the differential amount in cash;
- (xiv) He did not know the person (i.e on a personal basis) to whom he had handed over the differential amount;
- (xv) Undervaluation had taken place in the name of M/s Davison Electronics in the consignments imported under bills of entry no. (a) 836874 dt. 28.04.2008 and (b) 830272 dt. 24.03.2008;
- (xvi) In 2007, he started another firm, in the name of M/s J.S. Traders, Shop No.23, Mayapuri, New Delhi;
- (xvii) He used to import and trade in electronic goods viz. parts of car cassette player and CD player in the name of the above company also;
- (xviii) The suppliers, in this case, were also M/s Cosmo Trading and M/s Chee Lin Exports, Hong Kong;
- (xix) The goods imported in the name of M/s J.S. Traders had also been undervalued;
- (xx) The terms and payments of the differential amounts were the same as that in the case of imports made in the name of M/s Davison Electronics;
- (xxi) The consignments imported in the name of M/s J. S. Traders and cleared under the following bills of entry nos. 782434 dt. 26.7.2007, 811653 dt. 14.12.2007, 822319 dt. 07.02.2008, 825480 dt. 25.02.2008, 789175 dt. 29.08.2007, 796245 dt. 01.10.2007, 799664 dt. 18.10.2007 were undervalued;
- (xxii) The actual value of the imported goods under the above 9 bills of entry was Rs. 5,87,31,423/-;

(xxiii) He had also imported parts of car cassette/CD player in the name of M/s B.V. Enterprises;

(xxiv) The proprietor of the said firm was one Kamal kumar Awasthi;

(xxv) The consignment of the above goods covered under bill of entry no 817121 dt. 11.01.2008 was from M/s Cosmo Trading Co, Hong Kong;

(xxvi) The terms and payment conditions were the same as that mentioned in M/s Davison Electronics and M/s J.S. Traders;

(xxvii) He is submitting bank pay orders for a total amount of Rs 56 lakhs as part payment towards his admitted duty liability arising out of the above undervalued imports;

(xxviii) He undertook to pay the remaining entire admitted liability in the following schedule without fail;

TABLE-2

Sr. No.	Date	Amount (Rs.)
1	On 13.11.2009	Rs. 30,00,000/-
2	On 16.11.2009	Rs. 30,00,000/-
3	On 17.11.2009	Rs. 30,00,000/-
4	On 18.11.2009	Rs. 30,00,000/-
5	On 20.11.2009	Rs. 40,93,509/-

6.1 The voluntary payment of Rs. 56,00,000/- submitted by Shri Harvinder Singh was deposited in the government treasury under TR-6 Challans as under-

TABLE-3

Sr. No.	Name of the firm (M/s)	Amount (Rs.)	Challan No. & Date	Deposited in
1	Davison Electronics	6,00,000/-	135/12.11.09	New Customs House, Mumbai-01.

2	B.V. Enterprises	8,00,000/-	133/12.11.09	-do-
3	J.S. Traders	12,00,000/-	134/12.11.09	-do-
4	B.V. Enterprises	10,00,000/-	143/13.11.09	-do-
5	J.S. Traders	20,00,000/-	144/13.11.09	-do-
Total		56,00,000/-		

6.2 Shri Harvinder Singh made further voluntary payment of Rs 1,14,96,830/- towards differential duty in respect of the imports made by him in the name of M/s Davison Electronics, M/s B. V. Enterprises and M/s J. S. Traders as under:-

TABLE-4

Sr. No.	Name of the firm (M/s)	Amount (Rs.)	Challan No. & Date	Deposited with
1	Davison Electronics	6,98,037/-	182/17.11.09	New Custom House, Mumbai.
2	B.V. Enterprises	18,93,321/-	HC1141/17.11.09	Jawaharlal Nehru Custom House,
3	J.S. Traders	23,75,472	HC 1231/18.11.09	-do-
4	J.S. Traders	25,00,000/-	224/19.11.09	New Custom House, Mumbai.
5	J.S. Traders	25,00,000/-	225/19.11.09	-do-
6	J.S. Traders	7,00,000/-	338/27.11.09	-do-
7	J.S. Traders	4,50,000/-	63/04.12.09	-do-
8	J.S. Traders	1,20,000/-	330/24.12.09	-do-
9	J.S. Traders	2,60,000/-	30/02.07.10	-do-
Total		Rs. 1,14,96,830/-		

6.3 The payment of Rs 18,93,321/- under challan no. HC 1141 dated 17.11.2009 and Rs. 23,75,472/- under challan no. HC 1231 dated 18.11.2009 of M/s B.V. Enterprises and M/s J.S. Traders, respectively, were erroneously deposited at Jawaharlal Nehru Custom House, Nhava Sheva instead of New Custom House, Mumbai. The goods imported in the name of M/s B.V. Enterprises and M/s J.S. Traders for which the above stated payment of Rs 18,93,321/- and Rs 23,75,472/- were made, were cleared from Mumbai port.

7. Statement of Shri Kamal Kumar Awasthi⁶, Proprietor of M/s B.V. Enterprises, was recorded on 24.05.2010 under Section 108 of Customs Act, 1962. In his statement, Shri Kamal Kumar Awasthi, inter alia stated:-

(i) He was looking after the accounts work and marketing of goods of M/s Davison Electronics;

(ii) Since M/s Davison Electronics was in the process of winding up their business he had opted to leave the job;

(iii) He had requested Harvinder Singh, (partner in M/s Davison Electronics) to help him find an alternate source of income;

(iv) Harvinder Singh had advised him to apply for an Import Export Code and allow him (Harvinder) to import electronic goods in the name of the said firm;

(v) As advised by Harvinder Singh, he had obtained an IEC in the name of M/s B.V. Enterprises;

(vi) The understanding between him and Harvinder Singh was that Harvinder Singh would import electronic goods in the name of his proprietary firm M/s B.V. Enterprises, for a monthly consideration of Rs 4,000/- in cash;

(vii) As per the instructions of Harvinder Singh, he had opened a Current account in the name of M/s B.V. Enterprises at Indian Bank, Chandni Chowk, Delhi-110 006;

(viii) As directed by Harvinder Singh, he used to sign blank cheques, blank letter heads of M/s B.V. Enterprises, blank slips for issuance of demand drafts mainly for Customs duty payment, blank form A-I for remittances to foreign suppliers and hand it over to Harvinder Singh;

⁶ Also referred to as the Noticee-2

- (ix) He also used to sign Customs declarations and hand it over to Harvinder Singh;
- (x) Harvinder Singh used to take care of the banking as well as the Customs formalities;
- (xi) He was not involved with the local sales of these goods;
- (xii) Rent of Rs 1500/- per month for the premises of M/s B.V. Enterprises at 1/6168, 1st Floor, Gali No.3, East Rohtas Nagar, Shahadara, Delhi- 110032 was being paid by Harvinder Singh to the owner Sanjay Jain through him;
- (xiii) The import of the electronics goods under the bill of entry no. 817121/11.01.2008 was handled by Harvinder Singh;
- (xiv) He had neither interacted with the foreign supplier M/s Chee Lin Exports, Hong Kong nor with the CHA M/s Sai Dutta Clearing Agency who had cleared the goods;
- (xv) He was not aware of the undervaluation and misdeclaration of the goods imported by Harvinder Singh in the name of M/s B.V. Enterprises;
- (xvi) He would surrender the IEC of M/s B.V. Enterprises at the earliest.

8. Again statement of Harvinder Singh was recorded on 20.09.2010 under Section 108 of the Customs Act, 1962 wherein he furnished the details of the imports made in the name of firms namely (1) M/s J. S. Traders (2) M/s Davison Electronics and (3) M/s B.V. Enterprises. Shri Harvinder Singh further stated that he had already paid Rs 1,70,96,830/- and undertook to pay the remaining amount of Customs duty evaded by him in instalments. From the said details, it appeared that the duty evaded was Rs. 2,16,93,508/-.

9. A reference was made to the Consul General of India, Hong Kong, to cause enquiries with Hong Kong Customs and forward the export declarations submitted by the suppliers before the Customs authorities in Hong Kong, in respect of the above-mentioned goods. In response, trade declarations filed by the exporters M/s Chee Lin Exports and M/s Cosmo Trading Co. before the Hong Kong Customs (duly certified by the Senior Trade Control Officer of the Customs and Central Excise Department, Hong Kong) were forwarded. The relevant details appearing in the said trade declarations were as under:-

A) Exporter in Hong Kong (M/s Cosmo Trading)

TABLE-5

Sr. No.	Trade Declaration No.	Importer (M/s)	Bill of Lading No.	Container No.	FOB Value Declared (HKD)
1	8A1712KK100DJI	Davison Electronics	HKINBOM8 B014	CRXU1512761	368004
2	7A1712KK100C0 L	J.S. Traders	HDMUHKB A0178876	HDMU254639 5	1463904
3	7A1712KK100CU F	J.S. Traders	HDMUHKB A0187307	HDMU237876 9	1501469
4	7A1712KK100CX C	J.S. Traders	HDMUHKB A0194927	FCIU3289345	1904916

B) Exporter in Hong Kong (M/s Chee Lin Exports)

TABLE-6

Sr. No.	Trade Declaration No.	Importer (M/s)	Bill of Lading No.	Container No.	FOB Value Declared (HKD)
1	8A20H6XB100 GDL	Davison Electronics	HKINBOM8 C040	REGU5014601	593697
2	8A20H6XB100F NI	B.V. Enterprises	HDMUHKB A0213180	HDMU2414845	2322927
3	7A20H6XB100E D0	J.S. Traders	HDMUHKB A0171603	HDMU2172021	1733098
4	7A20H6XB100F ES	J.S. Traders	HDMUHKB A0206995	HDMU2512369	1956171
5	8A20H6XB100F RE	J.S. Traders	HKINBOM8 A018	HLXU2140976	379626

6	8A20H6XB100 GIX	J.S. Traders	HDMUHKB A0255161	HDMU2469093	1447056
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10. Since the above stated values in the trade declarations were on FOB basis, the concerned shipping agents were requested to furnish the details of the freight charges paid in respect to the said goods. In response, M/s Console Shipping and M/s Hyundai Merchant Marine India Pvt. Ltd furnished the details of the freight charges, in respect of the goods covered by each of the bill of lading, (under their letters dated 07.06.2011 and 15.04.2011 respectively). The said details on comparative analysis indicated the position vis-a-vis goods covered by each bill of entry as under:-

TABLE-7

Sr. No.	Importer (M/s)	Bill of Lading No.	Shipping Line (M/s)	Freight Paid (USD)	Bill of Entry No. / Date
1	Davison Electronics	HKINBOM8B01 4	Console Shipping	51.99	830272/24.03.08
2	Davison Electronics	HKINBOM8C04 0	Console Shipping	98.38	836874/28.04.08
3	B.V. Enterprises	HDMUHKBA02 13180	Hyundai Merchant Marine India P Ltd	1026	817121/11.01.08
4	J.S. Traders	HDMUHKBA01 71603	Hyundai Merchant Marine India P Ltd	775	782434/26.07.07
5	J.S. Traders	HDMUHKBA01 78876	Hyundai Merchant Marine India P Ltd	1075	789175/29.08.07
6	J.S. Traders	HDMUHKBA01 87307	Hyundai Merchant Marine India P Ltd	1075	796245/01.10.07
7	J.S. Traders	HDMUHKBA01 94927	Hyundai Merchant	1075	799664/18.10.07

			Marine India P Ltd		
8	J.S. Traders	HDMUHKBA02 06995	Hyundai Merchant Marine India P Ltd	1034	811653/14.12.07
9	J.S. Traders	HKINBOM8A01 8	Hyundai Merchant Marine India P Ltd	409.73	822319/07.02.08
10	J.S. Traders	HDMUHKBA02 55161	Hyundai Merchant Marine India P Ltd	1061	825480/25.02.08

11. The full name of Shri Kumar who was reported to be the **owner of M/s Cosmo Trading Co. and M/s Chee Lin Exports (both at Hong Kong)** came to be ascertained as **Shri Vijay Kumar Choithramani**⁷. Summons under Section 108 of the Customs Act, 1962 were issued to Shri Vijay Kumar Choithramani, for his appearance in DRI office for recording of his evidence, but he did not appear. However, Shri Vijay Kumar under his letter dated 30.12.2011 (received by FAX) acknowledged the receipt of summons and sought information on the following aspects:

- (i) Name of Indian importers under enquiry;
- (ii) Name of the electronic goods under enquiry;
- (iii) Name and description of documents required by DRI

11.1 In the above reply, Shri Vijay Kumar Choithramani said that they do not maintain records, which are more than 2 years. A letter was sent to Shri Vijay Kumar Choithramani on 30.12.2011 by FAX detailing him the requirements in respect of the enquiry being carried out by DRI. Shri Vijay Kumar Choithramani, in his letter dated 16.01.2012, clarified that he had stopped doing business with these parties from the middle of 2009. He added that the firms M/s Chee Lin Exports and M/s Cosmo Trading Co. had shipped the goods and the invoices issued by them were only for the purpose of shipment.

⁷ Also referred to as the Noticee-4

12.1 Further statement of Shri Harvinder Singh was recorded on 31.01.2012 under Section 108 of the Customs Act, 1962 wherein he inter alia stated:-

(i) He had dealt and negotiated the price with Vijay Kumar Choithramani for the imports made in the name of M/s Davison Electronics, M/s B.V. Enterprises and M/s J. S. Traders;

(ii) Vijay Kumar Choithramani owns M/s Chee Lin Exports and M/s Cosmo Trading at Hong Kong;

(iii) For all the imports made in the name of the above stated firms, the deal was finalised with Vijay Kumar and no one else;

(iv) The invoices were raised by Vijay Kumar in the name of the following companies namely (a) M/s Chee Lin Exports, (b) M/s Lim Manufacturing (Pte) Ltd, Singapore and (c) M/s Guangdong Gui Han, China;

(v) For the imports made in the name of M/s B.V. Enterprises, he had utilized the services of its proprietor Kamal Kumar Awasthi;

(vi) The understanding between Kamal Kumar Awasthi and himself was that he would pay him(Kamal Kumar Awasthi) Rs 4000/- month for lending the IEC and allowing him to import in the name of M/s B.V. Enterprises;

(vii) Kamal Kumar Awasthi used to affix his signature on blank Customs related documents and bank related documents as per requirement;

(viii) The requisite details were subsequently filled in these documents, as per his instructions;

(ix) The insurance as well as the freight was pre-paid by the overseas supplier and he was unable to provide the same.

12.2 Shri Harvinder Singh was shown the trade declarations received from Hong Kong Customs pertaining to electronic goods sent by the overseas suppliers namely M/s Chee Lin Exports / M/s Cosmo Trading Co. to the above mentioned importing firms. He was also shown a chart showing details taken from the bills of entry and the above stated trade declarations. Based on the details appearing in the chart, Shri Harvinder Singh admitted that Customs duty on value of Rs 6,52,44,422/- had not been paid. He further stated that he

had paid an amount of Rs. 1,70,96,830/- towards the differential duty payable and if there be any further balance, he would pay the same also.

13. From the foregoing investigation, it was concluded that:-

i) **A conspiracy was hatched** by Shri Harvinder Singh (partner: M/s Davison Electronics and proprietor: M/s J.S. Traders), Shri Vijay Kumar Choithramani (M/s Chee Lin Exports and M/s Cosmo Trading, both in Hong Kong), Shri Ashwanii Dham (Director, M/s Sai Dutta Clearing Agency, CHA 11/978) and Shri Kamal Kumar Awasthi (proprietor: M/s B.V. Enterprises) to defraud the Government of India of its legitimate revenue by causing import of electronic goods on gross undervaluation, leading to evasion of duty, leviable on the said goods,

ii) **Pursuant to the said conspiracy and the understanding arrived at by Shri Harvinder Singh with the overseas supplier (i.e. Shri Vijay Kumar Choithramani) at Hong Kong**, the below mentioned consignments were dispatched to Mumbai port in India from Hong Kong by the said overseas supplier **in the name of M/s Chee Lin Exports, M/s Lim Manufacturing (Pvt) Ltd, and M/s Guangdong Gui Han, China, from Hong Kong:-**

TABLE-8

Sr. No.	Name of the Importer (M/s)	Description of Goods	No. of pkgs(ctns.)	Bill of Lading No.	Container No.
1	Davison Electronics	Front panel & remote control for car/vcd MP3 players (JVC/Sony/ Pioneer)	35	HKINBOM 8B014	CRXU15127 61
2	Davison Electronics	Front panel for car VCD/DVD, MP3, remote control, manuals and gift boxes(JVC/Sony/ Pioneer/Panasonic)	66	HKINBOM 8C040	REGU50146 01
3	B.V. Enterprises	Unbranded metal cabinet with PCB and mechanism with connector for CD	399	HDMUHK BA021318 0	HDMU24148 45

		player			
4	J.S. Traders	Unbranded metal cabinet with PCB and mechanism with connector for CD player	265	HDMUHK BA017160 3	HDMU21720 21
5	J.S. Traders	Unbranded metal cabinet with PCB and mechanism with connector for CD player	244	HDMUHK BA017887 6	HDMU25463 95
6	J.S. Traders	Unbranded metal cabinet with PCB and mechanism with connector for CD player	257	HDMUHK BA018730 7	HDMU23787 69
7	J.S. Traders	Unbranded metal cabinet with PCB and mechanism with connector for CD player	334	HDMUHK BA019492 7	FCIU328934 5
8	J.S. Traders	Unbranded metal cabinet with PCB and mechanism with connector for CD player	327	HDMUHK BA020699 5	HDMU25123 69
9	J.S. Traders	Car Cassette player, LCD Monitor, Car Amplifier (Daewoo/Rockmars)	161	HKINBOM 8A018	HLXU21409 76
10	J.S. Traders	Unbranded metal cabinet with PCB and mechanism with connector for CD player	296	HDMUHK BA025516 1	HDMU24690 93

iii) Upon arrival of the goods, as above, bills of entry were filed on the basis of manipulated invoices showing less value of the said goods (as against the actual transaction value of the said goods) duly supported by the declarations made by or on behalf of the proprietor of the individual firm, in whose name the import was caused, with the help of Shri Ashwani Dham, Director of M/s Sai Dutta Clearing Agency (CHA 11/978) at Mumbai, thereby evading huge Customs duty due thereon and consequently causing loss to the public exchequer.

13.1 The bills of entry filed at Mumbai port along with the value and duty assessed thereon, are as under:-

(i) Importer:- M/s Davison Electronics

TABLE-9

Bill of Entry No. / Date	Description of goods	Invoice No. / Date	Total Qty (ctns.)	CIF / Assessed Value (in Rs.)	Total duty (Rs.)
830272/24. 03.08	Front panel & remote control for car/vcd MP3 players (JVC/Sony/Pioneer)	GG-1578/08 / 25.02.08	35	363431 / 379219	120225/-
836874/28. 04.08	Front panel for car VCD/DVD, MP3, remote control, manuals and gift boxes(JVC/Sony/Pioneer/Panasonic)	GG-1579/08 / 28.03.08	66	505859 / 537044	170094/-

(ii) Importer: M/s B.V. Enterprises

TABLE-10

Bill of Entry No. / Date	Description of goods	Invoice No. / Date	Total Qty(ctns.)	CIF / Assessed Value (in Rs.)	Total duty (Rs.)
817121/ 11.01.08	Unbranded metal cabinet with pcb and mechanism with connector for CD player	LM-860/0 7 dt. 22.12.07	399	1015672 / 1025829	350123/-

(iii) Importer: M/s J.S Traders

TABLE-11

Bill of Entry No. / Date	Description of goods	Invoice No. / Date	Total Qty(ctns.)	CIF / Assessed Value (in Rs.)	Total duty (Rs.)
782434/26. 07.07	Unbranded metal cabinet with PCB and mechanism with connector for CD player	DL-1214/07 dt. 12.07.07	265	709755 / 716852	244667
789175/29. 08.07	Unbranded metal cabinet with PCB and mechanism with connector for CD player	LM-832/07 dt. 09.08.07	244	645759 / 652216	222152
796245/01. 10.07	Unbranded metal cabinet with PCB and mechanism with connector for CD player	LM-840/07 dt. 07.09.07	257	661826 / 668445	228145

799664/18. 10.07	Unbranded metal cabinet with PCB and mechanism with connector for CD player	LM-851/07 dt. 04.10.07	334	855268 / 863280	294828
811653/14. 12.07	Unbranded metal cabinet with PCB and mechanism with connector for CD player	LM-857/07 dt. 24.11.07	327	820830 / 829039	282957
822319/07. 02.08	Car Cassette player, LCD Monitor, Car Amplifier (Daewoo/Rockmars)	LM-30/08 dt. 16.01.08	161	451341 / 528025	217923
825480/25. 02.08	Unbranded metal cabinet with PCB and mechanism with connector for CD player	LM-40/08 dt. 11.02.08	296	738023 / 745403	254411

13.2 The value of the above stated goods, as declared in the respective bill of entry, on the basis of which the said goods were assessed and allowed clearance, was not the actual transaction value of the said goods, in terms of the provisions of Section 14(1) of the Customs Act, 1962 read with provisions of Rule 3 of the Customs Valuation Rules, 2007, hence liable for rejection on the following grounds-

- (i) The value(s) declared by the overseas supplier at Hong Kong in the respective trade declarations filed by them before the Hong Kong Customs authorities were much higher than the value(s) of the same goods mentioned in the invoices submitted by the Indian importer before the Indian Customs for the respective bills of entry;
- (ii) The concerned person of M/s B.V. Enterprises namely Shri Kamal Kumar Awasthi had never negotiated and finalised the deal for the import of the goods, which

had been caused in the name of his firm. Which is evident from the statement dated 24.05.2010 of Shri Kamal Kumar Awasthi;

(iii) Admission of Shri Harvinder Singh (partner of M/s Davison Electronics and proprietor of M/s J.S. Traders), who had caused the above stated imports in the name of M/s B.V. Enterprises and also in the name of his own firms, M/s Davison Electronics and M/s J.S. Traders as per his pre decided arrangement with the overseas supplier, which is evident from his statement dated 10.11 2009;

(iv) While the amount shown in respective invoices was remitted officially through banking channels, the differential value i.e. difference between the actual transaction value of the goods and the value shown in the invoices submitted to the Customs, was paid to the agent of the supplier in cash, which is evident from the statement dated 10.11.2009 of Shri Harvinder Singh.

13.3 The actual value of the above goods for the purpose of Section 14(1) of the Customs Act, 1962, read with provisions of Rule 3 of the Customs Valuation Rules, 2007, appears to be the FOB value as declared in the export declarations by the overseas supplier at the Hong Kong Kong end, which had been accepted and admitted by Shri Harvinder Singh as the correct transaction value. Since the value is FOB, the freight given by the shipping line and insurance at the normal rate i.e. 1.125% is added thereon to arrive at the CIF value. The details of the consignment wise calculation of CIF and Assessable value was at Annexure A-1 to the said SCN. The bill of entry wise details of the redetermined assessable value is as under:-

TABLE-12

Col.1	Col.2	Col.3	Col.4	Col.5	Col.6
Sr. No.	Name of the Importer	Bill of Entry No. / Date	Initial Assessed Value (Rs.)	Re-determined Assessable Value (Rs.)	Difference (Col.5 - Col.4)(Rs.)
1	Davison Electronics	830272 / 24.03.08	379219	1937818	1558599
2	Davison Electronics	836874 / 28.04.08	537044	3157194	2620150
3	B.V. Enterprises	817121 / 11.01.08	1025829	12141201	11115372
4	J.S. Traders	782434 /	716852	9325267	8608415

		26.07.07			
5	J.S. Traders	789175 / 29.08.07	652216	7818946	7166730
6	J.S. Traders	796245 / 01.10.07	668444	7941236	7272792
7	J.S. Traders	799664 / 18.10.07	863280	10063375	9199555
8	J.S. Traders	811653 / 14.12.07	829039	10231213	9402174
9	J.S. Traders	822319 / 07.02.08	528025	1993881	1465856
10	J.S. Traders	825480 / 25.02.08	745403	7580183	6834780
Total			6945351	72190314	65244423

13.4 The Retail Sales Price (RSP) which was declared in the bill of entry no. 822319 dated 07.02.2008, filed in the name of M/s J.S. Traders for the purpose of levy of additional customs duty(CVD), was also misdeclared. Scrutiny of the above bill of entry revealed that to arrive at the RSP as declared, loading of about 149% (2.49 times of the value) was made in the import value i.e. the value declared in the respective bill of entry. As the import value in the respective bill of entry was misdeclared as per the investigation. Hence, the RSP determined by loading therein was also vitiated.

13.5 The Retail Sale Prices, which were misdeclared as above, were found liable to be rejected. Accordingly, taking into consideration the percentage of loading, the revised RSP of the goods based on the estimated CIF value (as per Annexure A-1 to SCN), was as under-

TABLE-13

Name of Importer (M/s)	Bill of Entry No. / Date	Item	Re-determined Value(Rs.)	% of RSP to value (as declared)	Estimated RSP Value(Rs.)
J.S. Traders	822319 / 07.02.08	LCD Monitor (1421978	149	3540725

		Daewoo 7.3", Rockmars 7 & 7.6"			
		Daewoo Car Cassette Player	329377	149	820149

13.6 The position of the differential duty, in view of the above stated misdeclaration in the value, taking into consideration the aspect of misdeclaration of RSP in respect of bill of entry no. 822319 dated 07.02.2008 of M/s J.S. Traders, appeared as under:-

TABLE-14

Sr. No.	Importer (M/s)	Bill of entry no. / date	Duty paid on declared value in bill of entry (Rs.)	Duty payable on redetermined value (Rs.)	Differential Duty (Rs.)
1	Davison Electronics	830272 / 24.03.08	120225	614354	494129
2	Davison Electronics	836874 / 28.04.08	170094	1000938	830844
3	B.V. Enterprises	817121 / 11.01.08	350123	4143879	3793756
4	J.S. Traders	782434 / 26.07.07	244667	3182780	2938113
5	J.S. Traders	789175 / 29.08.07	222152	2668662	2446510
6	J.S. Traders	796245 / 01.10.07	228145	2710401	2482255
7	J.S. Traders	799664 / 18.10.07	294828	3434702	3139874
8	J.S. Traders	811653 / 14.12.07	282957	3491986	3209029
9	J.S. Traders	822319 /	217923	833593	615670

		07.02.08			
10	J.S. Traders	825480 / 25.02.08	254411	2587171	2332760
	Total		2385525	24668466	22282940

The calculation of differential duty is mentioned in the Annexure- A2 of the SCN.

13.7 The above mentioned differential duty amounting to Rs 2,22,82,940/- (Rupees two crore twenty two lakh eighty two thousand nine hundred & forty only) was evaded by Shri Harvinder Singh, Shri Ashwani Dham (Director: M/s Sai Dutta Clearing Agency, CHA no. 11 / 978), Shri Kamal Kumar Awasthi (proprietor: M/s B.V. Enterprises) and the overseas supplier by the way of collusion, misstatement and suppression of fact. The said amount of differential duty amounting to Rs 2,22,82,940/- is recoverable under the extended period available under the proviso to Section 28 of the Custom Act, 1962, alongwith interest under the provisions of the Section 28 AB (28 AA from 08.04.2011) of the Customs Act, 1962.

13.8 (a) Import of the above stated goods in the name of M/s. B.V. Enterprises (proprietor: Shri Kamal Kumar Awasthi), was caused by Shri Harvinder Singh. The proprietor of M/s. B.V. Enterprises had lent his IEC to Shri Harvinder Singh to facilitate the import of above stated goods in the name of his firm. The proprietor of M/s. B.V. Enterprises, was not aware of the exact nature and quantity of the goods imported in the name of his firm by Shri Harvinder Singh. He had not negotiated and finalised the deal for import of goods in the name of his firm. All above stated goods imported by Shri Harvinder Singh, including the goods imported in the name of his firms (M/s. Davison Electronics and M/s J.S. Traders), were imported and cleared on the basis of manipulated and fabricated documents. Shri Harvinder Singh (partner M/s Davison Electronics and proprietor: M/s J.S. Traders) and Shri Kamal Kumar Awasthi (proprietor: M/s B.V. Enterprises) had subscribed to declarations certifying the truth of such manipulated and fabricated documents under the respective bills of entry, knowing that the same were not true. In view of the aforesaid, the import of all the above stated goods which were imported and cleared in the name of M/s Davison Electronics and M/s J.S. Traders were in violation of the provisions of Rule 11, Rule 14(1) and Rule 14(2) of the Foreign Trade (Regulation) Rules, 1993. Likewise, goods which were imported and cleared in the name of M/s B.V. Enterprises were in violation of the provisions of Section 7 of the Foreign Trade (Development & Regulation) Act, 1992 and Rule 2 (c), Rule 11, Rule 14(1) and Rule 14(2) of the Foreign Trade (Regulation) Rules, 1993.

(b) Consequently, (i) the goods having declared CIF value of Rs 8,69,290/- (redetermined CIF value of Rs. 50,44,567/-) imported in the name of M/s. Davison Electronics (ii) the goods having declared CIF value of Rs 48,82,802/- (redetermined CIF value Rs. 5,44,10,001/-) imported in the name of M/s J.S. Traders, cleared at Mumbai port (details as per Annexure A-1 to SCN), were liable to confiscation under the provisions of **Section 111(d) and Section 111(m)** of the Customs Act, 1962 read with Rule 11, 14(1) and 14(2) of Foreign Trade (Regulation) Rules, 1993. Likewise the goods having declared CIF value of Rs 10,15,672/- (redetermined CIF value of Rs. 1,20,20,991/-), imported and cleared in the name of M/s. B.V. Enterprises at Mumbai port (details as per Annexure A-1 to SCN), were liable to confiscation under **Section 111(d) and Section 111(m) of the Customs Act, 1962, read with provisions of Section 7 of Foreign Trade (Development & Regulation Act, 1992 and Rule 2 (c) of Rule 11, Rule 14(1) and Rule 14(2) of the Foreign Trade (Regulation) Rules, 1993.**

13.9 For the deliberate misdeclaration of the value, the goods imported and cleared in the name of M/s. Davison Electronics, M/s BV Enterprises and M/s J.S. Traders, under the respective bills of entry (details as per Annexure A-1 to SCN) having declared CIF value of Rs 67,67,764/- CIF (redetermined CIF value of Rs. 7,14,75,558/-) cleared through Mumbai port (details as per Annexure A-1 to SCN), were **liable to confiscation under Section 111(m) of the Customs Act, 1962.**

13.10 (a) Shri Harvinder Singh played a pivotal role in the conspiracy to evade duty in this case. He finalised all the arrangements with the overseas suppliers to undervalue the goods imported by him to evade payment of appropriate Customs duty. He also entered into an agreement with the proprietor of M/s. B.V. Enterprises for allowing him to import the goods in the name of the firm M/s. B.V. Enterprises. Shri Harvinder Singh imported goods in the name of the above firms and got the same cleared on the basis of fabricated and manipulated invoices. The remittance in respect of the imported goods, to the extent of value declared to the Customs authorities in India, was arranged by Shri Harvinder Singh through a banking channel. The remaining amount i.e. the differential value was paid by Shri Harvinder Singh in cash in India to Vijay Kumar of M/s Chee Lin Exports or to a representative of him as deposed by Shri Harvinder Singh in his statement dated 10.11.2009. Briefly stated the entire gamut of functions for causing the above stated imports were handled by Shri Harvinder Singh. Such act of Shri Harvinder Singh in relation to the impugned goods, had rendered the above stated goods having declared CIF value of Rs. 67,67,764/- (redetermined CIF value of Rs 7,14,75,558/-) cleared through Mumbai port (details as per Annexure A-1 to SCN), liable to confiscation under Section 111(d) and Section 111(m) of the Customs Act, 1962, as aforesaid. Further, Shri Harvinder Singh acquired possession of and / or was concerned in carrying, keeping, purchasing or

selling the aforesaid goods, knowing or having reason to believe that the said goods were liable to confiscation under the provisions of Section 111(d) and Section 111(m) of the Customs Act, 1962, as aforesaid. The said act renders, Shri Harvinder Singh, liable to penalty under Section 112(a) and 112(b) of the Customs Act, 1962 in relation to the said goods (details as per Annexure A-1 to SCN)

(b) **Shri Harvinder Singh** had admittedly caused import of the above stated goods in the name of his own firms namely, M/s. Davison Electronics and M/s JS Traders and in the name of the other firm namely M/s. B.V. Enterprises. **Shri Harvinder Singh was the actual owner of the goods and consequently the importer within the meaning of Section 2(26) of the Customs Act, 1962, in respect of the goods imported and cleared in the name of M/s. B.V Enterprises.** The appropriate Customs duty in respect of the goods imported by Shri Harvinder Singh, in the manner aforesaid, was not levied or short levied by reason of collusion or willful misstatement or suppression of facts. Accordingly, Shri Harvinder Singh has rendered himself liable to penalty equivalent to the duty so determined, under Section 114A of the Customs Act, 1962 in relation to the said goods (details as per Annexure A-2 to SCN)

(c) Shri Harvinder Singh, in relation to the goods imported in the name of above stated companies (details as per Annexure A-1 to SCN) knew or had reason to believe that the documents and the declarations submitted under the respective 10 bills of entry were false or incorrect in their material particulars. Despite this position, Shri Harvinder Singh, knowingly made, signed or caused to be made or signed false or incorrect declarations under the above respective bills of entry. Consequently, Shri Harvinder Singh rendered himself liable to penalty under Section 114AA of the Customs Act, 1962 in relation to the said goods (details as per Annexure A-1 to SCN).

13.11 (a) Shri Vijay Kumar Choithramani played a key role in the conspiracy to evade duty in this case. He finalised the entire arrangement of dispatch of goods from Hong Kong on the basis of fabricated and manipulated invoices showing lower value of the goods. The foreign exchange equivalent to the value declared on such fabricated and manipulated invoices was received by him through banking channels. The remaining amount (i.e. the differential value between the actual transaction price and the value declared in such fabricated and manipulated invoices) was received by him in cash in India, as deposited by Shri Harvinder Singh in his statement dated 10.11.2009. Shri Vijay Kumar Choithramani had in relation to the goods under reference by his various acts of commission or omission as discussed above, has rendered the goods of the declared value of Rs 67,67,764/- CIF (redetermined CIF value of Rs 7,14,75,558- details as per Annexure A-1 to SCN) liable to confiscation under Section 111(d) and Section 11(m) of the Customs Act, 1962. Further, Shri Vijay Kumar Choithramani had also actively dealt with the said goods and

manipulated documentation thereof, knowing or having reason to believe that the said goods were liable to confiscation under the provisions of Section 111 (d) and Section 111(m) of the Customs Act, 1962, as aforesaid. Consequently, Shri Vijay Kumar Choithramani has rendered himself liable to penalty under Section 112(a) of the Customs Act, 1962 in relation to the said goods (details as per Annexure A-1 to SCN).

(b) Shri Vijay Kumar Choithramani, in relation to the goods (details as per Annexure A-1) knew or had reason to believe that the invoices raised by him **in the name of M/s Chee Lin Exports, Ms Lim Manufacturing (Pre) Ltd and M/s Guangdong Gui Han** were false or incorrect in their material particulars. Based on such false or incorrect documents, false declarations were submitted under the respective bills of entry filed for their clearance, Consequently, Shri Vijay Kumar Choithramani had rendered himself liable to penalty under Section 114AA of the Customs Act, 1962 in relation to the said goods (details as per Annexure A-1)

13.12 (a) Shri Kamal Kumar Awasthi (proprietor of M/s B.V. Enterprises) **allowed use of the IEC of his firm** to Shri Harvinder Singh for causing import of above goods. He evidently did not negotiate and/ or finalised the transaction of the goods with the overseas supplier which were imported in the name of his firm. He subscribed to the declarations made under the respective bills of entry filed in the name of his firm, certifying the truth thereof. All the imports made in the name of the his firm (including negotiation and finalisation of the transaction value with the overseas supplier) were handled by Shri Harvinder Singh, as deposed by him in statements dated 24.05.2010 and the statement dated 10.11.2009 of Shri Harvinder Singh. Shri Kamal Kumar Awasthi has done acts or omitted to do acts or abetted the omission or commission of such acts which have rendered the goods imported in the name of his firm (details as per Annexure A-1 to SCN) liable to confiscation under the provisions of Section 111(d) and Section 111(m) of the Customs Act, 1962, as aforesaid. Shri Kamal Kumar Awasthi in relation to the goods imported in the name of his firm(details as per Annexure A- 1 to SCN) was concerned in the proxy import of these goods by suppressing the actual value, therefore he is liable to penalty under Section 112(a) and 112(b) of the Customs Act, 1962.

(b) **Shri Kamal Kumar Awasthi** (proprietor of M/s B.V. Enterprises) **allowed use of the IEC of his firm** to Shri Harvinder Singh for causing import of electronic goods. The appropriate Customs duty in respect of the goods imported in the name of his firm, in the manner aforesaid, was not levied or short levied by reason of collusion or willful misstatement or suppression of facts by them. Accordingly, each of the above person has rendered himself liable to penalty, equivalent to the duty so determined, under Section 114A of the Customs Act, 1962, in relation to the goods imported in the name of their respective firms (details as per Annexure A-2 to SCN)

(c) **Shri Kamal Kumar Awasthi** (proprietor of M/s B.V. Enterprises) intentionally made signed or used declarations certified by them to be true under each of the bills of entry filed in the name of respective firms. Despite knowing such declarations made by him were false or incorrect in their material particulars. Accordingly, he has rendered himself liable to penalty under Section 114AA of the Customs Act, 1962, in relation to the goods imported in the name of his firm (details as per Annexure A-1 to SCN).

13.13 (a) Shri Ashwanii Dham (Director: M/s Sai Dutta Clearing Agency, CHA 11/978) had admittedly attended to clearance of the goods imported in the name of M/s Davison Electronics, M/s B.V. Enterprises and M/s J.S. Traders by filing bills of entry through his firm i.e. Sai Dutta Clearing Agency. Shri Ashwanii Dham interacted only with Shri Harvinder Singh (partner of M/s Davison Electronics and proprietor of M/s J.S. Traders) in respect of the goods imported in the name of the above stated firms. The filing of bill of entry no. 817121 dated 11.01.2008 in the name of M/s B.V. Enterprises, without knowing the concerned person in the above firm, in the documents given to him by Shri Harvinder Singh, was a result of acquiescence on the part of Shri Ashwanii Dham, to facilitate clearance of the goods which were imported, pursuant to the conspiracy hatched in the case. The import of the electronic goods in the name of the above stated firm was in violation of provisions of Section 7 of the Foreign Trade (Development & Regulation) Act, 1992 read with Rules 2 (c) and 12 of the Foreign Trade (Regulations) Rules, 1993, further read with provisions of para 2.12 of the Foreign Trade Policy and para 2.8 of the HandBook of Procedures. In addition corrupt and/ or fraudulent practices were adopted in the import of above stated goods, including the goods imported in the name of M/s Davison Electronics and Ms J.S. Traders. Shri Ashwanii Dham was aware at all material times that the goods imported in the name of M/s B.V. Enterprises were proxy imports. He was also aware at all material times that the goods imported in the name of the above stated firms were grossly undervalued. As a Custom House Agent, he was required to ensure due compliance of Laws, Rules and Procedure and instead of compliance, he actively colluded in circumvention of the Rules by connivance with tax evaders. By his various acts of commission or omission, as aforesaid, and being concerned with the proxy import of said goods with intent to evade duty and circumvent the Law and Rules, which rendered the said goods liable to confiscation under Section 111(d) and Section 111(m) of the Customs Act, 1962, as aforesaid, Shri Ashwanii Dham has rendered himself liable to penalty under Section 112(a) and Section 112(b) of the Customs Act, 1962, in relation to the said goods (details as per Annexure A-1 to SCN).

(b) **Shri Ashwanii Dham**, Director M/s Sai Dutta Clearing Agency (CHA 11/978) knew or had reason to believe, at all material times, that documents, declarations submitted under the bills of entry (details as per Annexure A-1 to SCN) were false or incorrect.

Despite being aware, Shri Ashwanii Dham knowingly and / or intentionally allowed use of such documents/declarations under the respective bills of entry (details as per Annexure A-1 to SCN) to facilitate clearance of the said goods. Accordingly, Shri Ashwanii Dham, Director M/s Sai Dutta Clearing Agency, has rendered himself liable to penalty under Section 114AA of the Customs Act, 1962 in relation to the above stated goods.

14. Accordingly, the Show Cause Notice dated 20.06.2012 was issued vide F.No. DRI/MZU/F/05/2009/10672 and **Shri Harvinder Singh (partner of M/s Davison Electronics and proprietor of M/s J.S.Traders), Shri Kamal Kumar Awasthi (proprietor of M/s B.V Enterprises), Shri Vijay Kumar Choitramani (M/s Chee Lin Exports and M/s Cosmo Trading) and Shri Ashwanii Dham (Director: M/s Sai Dutta Clearing Agency, CHA 11/978) were called upon** to show cause to the Commissioner of Customs (Import), New Custom House, Ballard Estate, Mumbai-400038.

14.1 In respect of goods covered under the bill of entry no. 830272 dated 24.03.2008 and 836874 dated 28.04.2008:-

(a) M/s Davison Electronics and its partner Shri Harvinder Singh were required to show cause as to:

(i) why the value of the goods declared under the above bills of entry should not be rejected under the provisions of Section 14(1) of the Customs Act, 1962 read with the provisions of Rule 12(1) of the Customs Valuation Rules, 2007;

(ii) why the value of the goods under the above bills of entry for the purpose of Section 14 (1) of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation Rules, 2007, should not be redetermined combinedly as Rs 50,95,012/- (Rupees Fifty Lakhs Ninety five Thousand Twelve Only) on the basis of the CIF value of Rs 50,44,567/- as redetermined from the declarations filed by the overseas supplier with the Hong Kong authorities (details as per Annexure A-1 to SCN);

(iii) why differential duty amounting to Rs. 13,24,973/- leviable on the basis of the above stated value of Rs. 50,95,012/- (details as per Annexure A-2 to SCN) which had not been paid due to collusion, wilful misstatement and suppression of fact should not be demanded and recovered under the provisions of Section 28 of the Customs Act, 1962, with interest under the provisions of Section 28 AB (28 AA from 08.04.2011) of the Customs Act. 1962;

(iv) why the amount of Rs 12,98,037/- paid voluntarily by Shri Harvinder Singh during the investigation should not be appropriated against the above-stated differential duty leviable on the said goods (details as per Annexure A-2).

(v) why goods of the declared value of Rs. 8,69,290/- (redetermined CIF value of Rs 50,44,567/-details as per annexure A-1 to SCN) should not be held liable for confiscation under Section 111(d) and Section 111(m) of the Customs Act, 1962 read with Section 11 of the Foreign Trade (Development & Regulation) Act, 1992 and further read with Rule 11, Rule 14(1) and 14(2) of the Foreign Trade (Regulations) Rules 1993;

(vi) why penalty under Section 112 (a)/ Section 112 (b) or Section 114A, and Section 114AA of the Customs Act, 1962 should not be imposed on them, in relation to the above goods.

(b) Shri Vijay Kumar Choithramani was required to show cause as to why penalty under Section 112(a) and Section 114AA of the Customs Act, 1962 should not be imposed on him, in relation to the above goods.

(c) Shri Ashwanii Dham was required to show cause as to why penalty under Section 112(a), Section 112(b) and Section 114AA of the Customs Act, 1962 should not be imposed on him, in relation to the above goods.

14.2 In respect of goods covered by the bill of entry no. 817121 dated 11.01.2008:-

(a) **M/s B.V. Enterprises, its proprietor Kamal Kumar Awasthi and Shri Harvinder Singh** were required to show cause as to:

(i) why the value of the goods declared under the above bill of entry should not be rejected under the provisions of Section 14(1) of the Customs Act, 1962 read with the provisions of Rule 12(1) of the Customs Valuation Rules 2007;

(ii) why the value of the goods declared against the above bill of entry, for the purpose of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation Rules, 2007, should not be redetermined as Rs 1,21,41,201/- (Rupees One Crore Twenty One Lakhs Forty One Thousand Two Hundred One Only)(details as per annexure A-1 to SCN) on the basis of the CIF value of Rs 1,20,20,991/- as redetermined from the declaration filed by the overseas supplier with the Hong Kong authorities;

(iii) why differential duty amounting to Rs 37,93,756/- leviable on the basis of the above stated value of Rs 1,21,41,2017 (details as per Annexure A-2 to SCN) which had not been paid due to collusion, wilful misstatement and suppression of fact should not

be demanded and recovered under the provisions of Section 28 of the Customs Act, 1962 with interest under the provisions of Section 28 AB (28 AA from 08.04.2011) of the Customs Act 1962:

(iv) why the amount of Rs 36,93,321/- paid voluntarily by Shri Harvinder Singh during the investigation should not be appropriated against the duty so demanded;

(v) why the goods of the declared value of Rs 10,15,672/- (redetermined CIF value of Rs 1,20,20,991/- details as per Annexure A-1 to SCN) should not be held liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962 read with Section 7 of the Foreign Trade (Development & Regulation) Act, 1992, read with Rules 2 (c) and 12 of the Foreign Trade (Regulations) Rules 1993, further, read with provisions of para 2.12 of the Foreign Trade Policy and Para 2.8 of the Hand Book of Procedures;

(vi) why penalty under Section 112 (a) / Section 112 (b) or Section 114A and Section 114AA of the Customs Act, 1962 should not be imposed on them, in relation to the above said goods.

(b) Shri Vijay Kumar Choithramani is required to show cause as to why penalty under Section 112(a) and Section 114AA of the Customs Act, 1962, should not be imposed on him, in relation to the above said goods.

(c) Shri Ashwani Dham is required to show cause as to why penalty under Section 112(a), Section 112(b) and Section 114AA of the Customs Act, 1962, should not be imposed on him, in relation to the above goods.

14.3 In respect of the goods covered by the bill of entry no. 782434 dated 26.07.2007, 789175 dated 29.08.2007, 796245 dated 01.10.2007, 799664 dated 18.10.2007, 811653 dated 14.12.2007, 822319 dated 07.02.2008 and 825480 dated 25.02.2008:-

(a) **M/s J.S. Traders and its proprietor Shri Harvinder Singh** were required to show cause as to:-

(i) why the value of the goods declared under above bills of entry should not be rejected under the provisions of Section 14(1) of the Customs Act, 1962, read with the provisions of Rule 12(1) of the Customs Valuation Rules, 2007;

(ii) why the value of the goods under the above bills of entry for the purpose of Section 14 (1) of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation Rules, 2007, should not be combinedly redetermined as Rs. 5,49,54,101/- (Rupees Five

Crores, Forty Nine Lakhs Fifty Four Thousand One Hundred One Only) on the basis of the CIF value of Rs 5,44,10,001/- (details as per Annexure A-1 to SCN) as redetermined from the declaration filed by the overseas supplier with the Hong Kong authorities;

(iii) why differential duty amounting to Rs 1,71,64,211/- leviable on the basis of the above stated value of Rs. 5,49,54,101/- (details as per Annexure A-2 to SCN) which had not been paid due to collusion, wilful misstatement and suppression of fact should not be demanded and recovered under the provisions of Section 28 of the Customs Act, 1962, with interest under the provisions of Section 28 AB (28 AA from 08.04.2011) of the Customs Act 1962;

(iv) why amount of Rs 1,21,05,472/-paid voluntarily by Shri Harvinder Singh during the investigation should not be appropriated against the duty so demanded;

(v) why the goods of the declared value of Rs 48,82,802/- CIF (redetermined CIF value of Rs 5,44,10,001/- (details as per Annexure A-1 to SCN) should not be held liable for confiscation under Section 111(d) and Section 111(m) of the Customs Act, 1962 read with Section 11 of the Foreign Trade (Development & Regulation) Act 1992, read with Rule 11, Rule 14(1) and 14(2) of the Foreign Trade (Regulations) Rules, 1993;

(vi) why penalty under Section 112 (a)/Section 112 (b) or Section 114A and Section 114AA of the Customs Act, 1962, should not be imposed on them in relation to the above goods.

(b) Shri Vijay Kumar Choithramani was required to show cause as to why a penalty under Section 112(a) and Section 114AA of the Customs Act, 1962, should not be imposed on him, in relation to the above goods.

(c) Shri Ashwanii Dham was required to show cause as to why penalty under **Section 112 (a), Section 112(b) and Section 114AA** of the Customs Act, 1962, should not be imposed on him, in relation to the above goods.

Notices submissions

15. Representatives of noticee-1, 2 & 3 appeared for PH on 24.11.2022. Representatives of noticee-1 & 2 submitted their written submissions dated 24.11.2022. In the said written submissions they also made reference to their earlier submissions dated 24.07.2013. Representative of noticee-3 submitted their submission vide email dated 25.11.2022 and also made reference to their early reply dated 09.10.2012.

15.1 Noticee-1 submitted their submissions on the following points:-

(i) **Show Cause Notice is liable to be quashed and dropped in view of non-compliance of mandatory limitation as provided under Section 28(9)(b) of the Customs Act, 1962:-**

a. This Hon'ble Court in the matter of **Nelco Limited Vs Union of India 2002 (144) ELT 56 (Bom)** has categorically held that in the re-adjudication proceedings the parties are put to the status of original date of show cause notice and the said proposition of law has been upheld by the Hon'ble Supreme Court of India in 2002 (144) ELT A104 (SC). Further, reliance placed on **J. Sheik Parith Vs Commissioner of Customs (Seaport-Exports), Chennai [2020 (374) ELT 15 (Mad)]**.

b. The Noticee submits that in construing the provisions wherever it is possible to do so the court has very categorically held that it means that if in the ordinary course it is possible to determine the amount of duty within specified time it should be so done. Reliance placed on **Siddhi Vinayak Syntex Pvt. Ltd Vs Union of India (2017 (352) ELT 455]**.

c. The Noticee submits that in the present matter no reason has been given for not completing the adjudication proceeding within the timeline of one year and it goes to the root of matter and amounts to violation of principle of natural justice.

d. The Noticee submits that the Show Cause Notice has become stale because of expiry of limitation envisaged under Section 28(9) (b) of the Customs Act and there is a violation of Principle of Natural Justice. Reliance placed upon **Harkaran Dass Vedpal Vs Union of India [2019 (368) ELT 546 (P&H)]**

(ii) **Assessment made by 'Proper Officer' not challenged by the revenue**

a. The value of the goods declared under the Bills of Entry were not accepted by the proper officer and the CIF value as declared were in all cases assessed at a higher value than the declared by the proper officer and the same has been admitted in the show cause notice itself. This assessment order under Section 17 was arrived at after proper examination and inquiries by the proper officer and the same has not been challenged. Such determination by the proper officer is a quasi judicial order. The said loading has attended finality as it was not challenged by the revenue. Reliance placed upon **Venus Enterprises 2007 (209) ELT A61 (SC)**.

b. It is submitted the reloading of value is in direct violation of the Apex Court's decision in the case of **Mohan Meakin Ltd - 2000 (115) ELT 3 (S.C)** relied upon by the **Tribunal Lord Shiva Overseas - 2005 (181) ELT 213 (T)** and **Hitashi Fine Craft Industries Ltd - 2002 (216) ELT 435 (T)**.

(iii) Appropriation of amount paid by Shri Harvinder Singh

a. It is submitted that the proposition to appropriate the amounts paid by Shri. Harvinder Singh, in the name of the IEC holders' BoEs, viz M/s Davison Electronics, and M/s. B.V Enterprises, 'to avoid DRI harassment towards the duty differential is not permitted in law as Shri Harvinder Singh is not liable to pay any duty under the Customs Act, 1962. Reliance is placed on **Biren Shan 1994 (72) ELT 660**.

b. In the case of **Brij Mohan Sood - 2007 (217) ELT 570** the Ld. SDR submission to the effect, -

"4..... In the present case as Bill of Entry filed by the Appellant, he has to be considered as importer and any "behind the scene" agreement by him with the other person will not covert the other person as the importer.

5. We agree with the above contention of the Ld. DR, the financier of the goods or the owners of the same do not become importers and any liability which may arise would fall upon the person who has filed the Bill of Entry for clearance of goods and in whose name the goods have been imported...."

c. As also in the case of **Adani Exports - 2006 (199) ELT 613**, Hon'ble CESTAT held that "there is no provision of a deemed importer" in the Customs Act, 1962. An importer is one who imports the goods and is covered by the definition of 'importer' given in Section 2(26). Appeal against this was dismissed by Hon'ble Karnataka High Court.

(iv) Penalty under Section 114A of Customs Act, 1962, on Shri Harvinder Singh

a. It is well settled that penalty under Section 114A can be imposed on the importer. The importer in respect of the BoEs filed by the said two entities cannot be Shri Harvinder Singh since there is no provision of identifying the 'Real Importer' under the Customs Act, 1962. Also It is submitted that no penalty can be imposed on Shri Harvinder Singh under Section 114A as he is not the importer in the case of BoEs of M/s Davison and M/s B.V Enterprises and similarly as there is no mis-declarations of

the values of the goods imported on 7 BoEs of M/s J.S Traders. Reliance was placed on,

(i) Dhirubhai N. Sheth V/S CC - 1995 (75) ELT 694 (T)

(ii) Ashwin Doshi Vs. CC-2004 (173) ELT 488 (T)

(iii) J.B Trading Corporation V/s UOI - 1990 (45) ELT 9 (Mad)

(iv) Chaudhary International Vis CCE - 1999 (109) ELT 371 (T) (Maintained in 2002 (145) ELT A253 (SC))

(v) Bimal Kumar Mehra V/s CCF-2011 (27) ELT 280 (T)

b. Duty can be demanded only from a person who is liable to duty i.e. an importer, more than one importer is not envisaged under Section 28 of the Customs Act for recovery of duty. Since Shri Harvinder Singh cannot be determined to be the importer for BOE's filed by M/s Davison Electronics and M/s B.V Enterprises, he cannot be placed in the shoes of an importer for the said imports. Reliance was placed in the case of Jupiter Exports 2001(131) ELT 147 (T) para 7. This decision of the Tribunal has been maintained in the Bombay High Court 2007 (213) ELT 641. Therefore, it was binding on the Hon'ble Adjudicator and nobody other than M/s B.V Enterprises and M/s Davison Electronics could be imposed a penalty under Section 114A on imports made on Bills of Entry filed by them.

c. Demand can be made from the Partnership Firm only, in whose name the BoEs has been filed. Under the tax laws, Partnership has a different identity from the partners. Though a Partnership has no corporate personality it has a personality (identity) distinct from the partners of the firm. Reliance was placed on Nityanand Nirmal - 1999 (109) ELT 522 (T) wherein it has been held in a Central Excise case that, Show Cause Notice issued to an individual without indicating his status as partner of firm nor any notice served on partnership firm, demand not sustainable since it can be raised against the firm and not against partners.

(iv) Valuation of goods

a. The Noticee submits that the revenue has failed to appreciate that the Trade Declaration is not reliable on the grounds as it was specifically submitted that the DRI Officers have only shown the copies of the Hong Kong declarations during the course of investigation to the deponent of the statements, even though they had the originals

with them. Therefore Revenue's sole reliance to enhance value on the basis of photocopies and not bringing the original on record cannot be a cause to enhance values and reliance is placed on the decision of Tiato Watch Manufacturing Indus-2004 (173) ELT 17 (T). Reliance made on the photocopies of documents shown to the deponents cannot be made, as held in the case of Shobha Rani - 2007 (212) ELT 458 (SC).

b. It is submitted that the Hong Kong Trade Declarations cannot be relied upon also on the grounds of the analysis made in detail in the earlier written submissions dated 24.07.2013, that the invoices and the documents viz. Bill of Lading etc. in the case of M/s Davison Electronics have been made from China and supplied on an invoice of M/s Guangdong Gui Han, C.P.O Box 166, Dong North Road, Xinthi District, Jiangmen City Guangdong, China and the Bills of Lading (RUD page 16 & 44) the shipper is shown as M/s Guangdong Gui Han. The Bill of Lading, an internationally recognised document showing the ownership of the shipper abroad, does not relate to the two Hong Kong based suppliers i.e M/s. Chee Lin Exports and M/s Casmo Trading Company, who have alleged to have under invoiced the goods.

c. It is settled law that even if the invoice is to be set aside and transaction value depicted therein not accepted goods have to be valued as per the Valuation Rules and in this case the NIDB data would be applicable to uphold the value of 6.5 USD as declared in this BoE and other BOE of similar/like goods.

(v) Statements of Shri Harvinder Singh Cannot be relied upon

a. The statements of Shri Harvinder Singh as recorded are not reliable and corroborated in any fashion and thus cannot be relied for the reasons that the same have been retracted, noticee has never admitted to have paid anybody in cash.

(vi) Re-determination of RSP

a. It is submitted that re-determination of RSP as proposed cannot be upheld as there was no provision under Section 3 of the Customs Tariff Act, empowering any authority to differ with the deemed valuation and re-determine the RSP. Reliance was placed in the case of ABB Ltd - 2011 (272) ELT 706 (T).

(vii) No liability for any violation under Section 111(d) of the Customs Act, 1962

a. It is submitted that the act of Shri Harvinder Singh and others in having agreed to associate with the IEC holders to import the goods will ipso facto not call for any

liability on them for the said acts. Reliance placed on **Carmel Exports & Imports-2012 (276) ELT 505 (Ker)**.

b. Therefore in view of the findings of the Division Bench, there can be no cause or to visit any person with any liability for any violation under Section 111(d) or the Customs Act, 1962.

(viii) The SCN reliance on the statements cannot be upheld

a. without examining the said deponents whose statements have been relied as witnesses in the impugned show cause notice, without examining them as stipulated under Section 138B(1)(b) read with Section 138B(2) cannot be upheld.

b. The entire finding and reliance on the statements is bad in law as it does not consider the directive of the Apex Court in the case of **KI Pavunni - 1997 (90) ELT 245 (SC)**.

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

a. In the present case the alleged admissions of under-valuations are being disputed and are being contested. There is no corroboration of the alleged payments of the exact differential amounts said to have been made to supplier in Hong Kong. It is settled law that mere admission or payment towards alleged short payments of duty does not constitute and establish a case. Revenue has to make out a case for under valuation with evidence of the extent of under valuation. Reliance is placed on 2008 (232) ELT 622 (T-LB) Bosh Chassis System India Ltd., and CC V/S South India Television (P) Ltd - 2007 (214) ELT 3 (SC).

(x) Confiscation cannot be ordered as goods are not under seizure

a. Since no goods are under seizure the confiscation cannot be ordered is settled law. In this view when confiscation cannot be pursued to its logical end of ordering confiscation and has to be aborted or abandoned penal liabilities cannot be upheld as held in the case of **Haniff Shabbir Bros - 1997 (96) ELT 27 (Mad)**. Reading of para 3 and 6 of this decision would lead to a conclusion that liability to penalty would not arise as held by CBEC and the Hon'ble Division Bench which cannot be pursued and has to be abandoned for whatever reasons.

(xi) No Penalty can be imposed under Section 114AA of Customs Act,1962

a. Reliance placed on the 27th Report of the Parliamentary Committee and the comments of the Finance Ministry on the proposed introduction of Section 114AA of the Customs Act, 1962, to submit that this is not a case of any Export Incentive Scheme Fraud. Therefore, no penalty can be imposed under said Section 114AA on any person in this case. Ministry's interpretation would prevail even if interpretation of law may be otherwise, as it is well settled CBEC instructions are binding on Revenue and Revenue cannot be heard to plead otherwise. Ministry being higher in hierarchy to CBEC their interpretation would be thus binding on the department. This submission has been ignored by the Respondent and therefore the impugned order deserves to be quashed and set aside.

15.2 Representative of Shri Kamal Kumar Awasthi (Noticee-2), submitted his arguments same as submitted for Shri Harvinder Singh (Noticee-1) except following points:-

(i) Penalty under Section 112 of Customs Act, 1962

a. The goods were neither seized nor available for confiscation. Therefore the proposal for confiscation has to be aborted as it cannot be pursued. When confiscation cannot be pursued for any reason the penalty under Section 112 cannot be upheld and reliance was placed on the case of Hanif Shabbir Brothers - 1999 (96) ELT 27 (Mad) para 6 and in the case of CC Vs Finesse Creation -2009 (248) ELT 122 (Bom) upheld by the Supreme Court in 2010 The goods were neither seized nor available for confiscation. Therefore the proposal for confiscation has to be aborted as it cannot be pursued.

b. There is no case for penalty under section 112 (a) and/or (b) of the Customs Act, 1962 as the goods are not liable to confiscation under Section 111 (d) and (m) of the Customs Act, 1962.

(ii) Penalty under Section 114A / 114AA of Customs Act, 1962

a. Since all declarations have been made as per the documents of imports as made available by the Foreign Supplier there can be no case to call for any knowing and deliberate mis-declaration on part of the notice to call for penalty under Section 114A and/or Section 114AA, when it is the case of the Department itself that IEC holder were non-existent or non-operative at the given addresses and in the facts of this case the

Show Cause Notice accepts that the IED holder viz M/s. B.V. Enterprises whose Proprietor has been questioned was in existence but was not aware of the negotiations.

(iii) Reliance on statements

a. The alleged statement do not establish any payments to any person in India or abroad in connection with the impugned imports in this case by the importer. The statements contrary to the above fact have been recorded at the behest and dictates of the officers and they are not factually correct or and corroborated. Any statement before being accepted as admission of a fact has to be examined to ascertain what is its imports and then to determine what weight should be attached to the same. The Apex Court in Nagubai Ammal and Others Vs V.B. Shama Rao & Ors - AIR 1956 SC 593 had ruled that 'an admission is not conclusive as to the truth of the matters stated therein. It is only a piece of evidence, the weight to be attached to which matters depend on the circumstances under which it is made.'

b. The Hon'ble Supreme Court of India in the case of Sitaram Sao Vs State of Jharkhand - (2207) 12 SCC 630 have pithily encapsulated the idea of "corroborative" evidence, in the following words:

34. The word 'corroboration means not mere evidence tendering to confirm other evidence. - (1972) 3 ALL ER 10.16, Lord Morris said:

The purpose of corroboration is not to give validity or credence to evidence which is deficient or suspect of incredible but only to confirm and support that which as evidence is sufficient and satisfactory and credible. and corroborative evidence will only fill its role if it itself is completely credible.....

There can be, therefore, no "corroboration" of evidence, which is itself unworthy of credence."

15.3 Representative of noticee-3, argued on the following points:-

(i) Penalty under Section 112(a), Section 112(b) and Section 114AA of Customs Act

a. An order of remand for a de novo adjudication by the Hon'ble Tribunal will not deprive him of the setting aside penalty under Section 112(b) and 114AA of the Customs Act, 1962 in entirety and imposition of no penalty as regards to clearances made in respect of M/s. Davison Electronics and M/s. J.S.Traders in erstwhile Order dated 14-10- 2013 (Para 46(1), 46(i) and 46(1) of the Order dated 24-6-2013] passed by your Honour's predecessor. In this regard, reliance is placed on the judgements/ decisions as follows:

Banshi Dhar Lachhman Prasad & Anr-1978 (2) E.LT. (J 385) (S.C.)
SPL Industries Limited-2003(159) ELT 720(T)
Gautam Diagnostic Centre-2003(159) ELT 6789T

b. The entire case is based on declarations of FOB value said to be made to Hong Kong Customs by the supplier in Hong Kong. It is relevant to note that said declaration bears an endorsement "restricted" and said documents were procured by the investing agency, which was not available at the time of clearance work (with Noticee). In other words, only after investigations and after procurement of restricted documents such as declarations, an allegation of undervaluation was made. It is relevant to note that Noticee was not aware about the FOB declarations made at Hong Kong and in the absence of knowledge of alleged undervaluation proposal to impose penalty on the Noticee is not sustainable.

c. In the impugned proceedings, an allegation was made that interest in the imported goods was shown by persons other than IEC holder. It is relevant to note that the statement of IEC holder, was recorded during investigations and they were found very much in existence. The Noticee submits that in the matter of PROPRIETOR, CARMEL EXPORTS & IMPORTS reported in 2012 (276) ELT, 505 (Ker), it was held that IEC Code holder can import goods in normal course of business on strength of contract either with consumer or trader who eventually sells imported goods to consumers and such transaction is neither illegal nor prohibited by law i.e. Sections 2(e) and 7 of Foreign Trade (Development and Regulation) Act, 1992. The Noticee submits that Hon'ble High Court in the aforementioned matter accepted and acknowledged the practice of import of goods by IEC holders based on the financing done by financiers/operators.

Discussion & Findings

The present SCN was issued to the following noticees:

Noticee-1: Shri Harvinder Singh (Partner, M/s Davison Electronics & Proprietor M/s J.S. Traders)

Noticee-2: Shri Kamal Kumar Awasthi (Proprietor, M/s B.V. Enterprises)

Noticee-3: Shri Ashwani Dham (Director, CHA firm, M/s Sai Dutta Clearing Agency Pvt. Ltd.(CHA 11/978))

Noticee-4: Shri Vijay Kumar Choithramani (Owner of M/s Chee Lin Exports & M/s Cosmo Trading at Hong Kong)

16. The present Show Cause Notice dated 20.06.2012 was adjudicated in the first round vide OIO No. 136/2013/CAC/CC(1)/AB/Gr.VB dated 14.10.2013 issued vide F.No. S/26-Misc-65/2012 VB. Noticees- 1, 2 & 3 preferred an appeal before the Hon'ble CESTAT against the said OIO whereas Noticee-4 did not prefer appeal against the said OIO. Hon'ble CESTAT, Mumbai vide Order No. A/880-887/14/CSTB/C-1 dated 03.06.2014 remanded back the matter to the Adjudicating Authority with the direction to decide the issue first from whom the duty is to be demanded and thereafter, if required impose penalties. Since, Shri Vijay Kumar Choithramani (Noticee-4), had not preferred an

appeal against the said Order in Original dated 14.10.2013, therefore, the OIO dated 14.10.2013 pertaining to Shri Vijay Kumar Choithramani (total penalty of Rs. 17 lakhs imposed under section 112(a) of the Act) has attained finality. So, only Noticees 1,2 and 3 are present before me in this second round of adjudication of the said SCN.

17. To understand the dispute, let us go through the charge para of the SCN dated 20.06.2012 in case of one of the firms:

In respect of goods covered under the bill of entry no. 830272 dated 24.03.2008 and 836874 dated 28.04.2008, M/s Davison Electronics and its partner Shri Harvinder Singh were required to show cause as to:

(i) why the value of the goods declared under the above bills of entry should not be rejected under the provisions of Section 14(1) of the Customs Act, 1962 read with the provisions of Rule 12(1) of the Customs Valuation Rules, 2007;

(ii) why the value of the goods under the above bills of entry for the purpose of Section 14 (1) of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation Rules, 2007, should not be redetermined combinedly as Rs 50,95,012/- (Rupees Fifty Lakhs Ninety five Thousand Twelve Only) on the basis of the CIF value of Rs 50,44,567/- as redetermined from the declarations filed by the overseas supplier with the Hong Kong authorities (details as per Annexure A-1 to SCN);

(iii) why differential duty amounting to Rs. 13,24,973/- leviable on the basis of the above stated value of Rs. 50,95,012/- (details as per Annexure A-2 to SCN) which had not been paid due to collusion, wilful misstatement and suppression of fact should not be demanded and recovered under the provisions of Section 28 of the Customs Act, 1962, with interest under the provisions of Section 28 AB (28 AA from 08.04.2011) of the Customs Act, 1962;

(iv) why the amount of Rs 12,98,037/- paid voluntarily by Shri Harvinder Singh during the investigation should not be appropriated against the above-stated differential duty leviable on the said goods (details as per Annexure A-2).

(v) why goods of the declared value of Rs. 8,69,290/- (redetermined CIF value of Rs 50,44,567/- details as per annexure A-1 to SCN) should not be held liable for confiscation under Section 111(d) and Section 111(m) of the Customs Act, 1962 read with Section 11 of the Foreign Trade (Development & Regulation) Act, 1992

and further read with Rule 11, Rule 14(1) and 14(2) of the Foreign Trade (Regulations) Rules 1993:

(vi) why penalty under Section 112 (a)/ Section 112 (b) or Section 114A, and Section 114AA of the Customs Act, 1962 should not be imposed on them, in relation to the above goods.

(b) Shri Vijay Kumar Choithramani was required to show cause as to why penalty under Section 112(a) and Section 114AA of the Customs Act, 1962 should not be imposed on him, in relation to the above goods.

(c) Shri Ashwani Dham was required to show cause as to why penalty under Section 112(a), Section 112(b) and Section 114AA of the Customs Act, 1962 should not be imposed on him, in relation to the above goods.

18. Against the above charge, the order portion of OIO dated 14.10.2013 read as:

"In respect of goods covered by bills of entry no. 830272 dated 24.03.2008 and 836874 dated 28.04.2008, M/s. Davison Electronics.

.....

(iii) I confirm the differential duty amounting to Rs.13,24,973/- leviable on the basis of the above stated value of Rs.50,95,012/- [details as per annexure A – 2] which had not been paid, should not be demanded and recovered under section 28 of the Customs Act, 1962, with interest under the provisions of section 28AB (28AA wef 08.04.2011) of the Customs Act, 1962;

(iv) I appropriate an amount of Rs.12,98,037/- paid voluntarily by Shri Harvinder Singh, during investigation against the above stated differential duty leviable on the said goods [details as per annexure A – 2 to the show cause notice]:" (emphasis supplied)

19. The Order portion in respect of imports in the name of other two importer firms M/s. B.V. Enterprises and M/s. J.S.Traders . It can be seen that at the start of the order portion after the bills of entry numbers, the name of the importer firm is mentioned. So it is obvious that the demand and recovery of duty was also from the importer firms. But the confusion in the minds of Hon'ble Tribunal may have been created by the fact that in the appropriation para in the OIO, the name of Harvinder Singh and not the importer firms was mentioned.

20. The Hon'ble Tribunal in its order dated 03.06.2014 at para 4 records that "*the learned counsel for the appellants drew our attention to the operative part of the impugned order wherein duty has been demanded but from whom the duty is demanded has not been mentioned. The learned counsel contends that when it is not clear from whom duty has been demanded. Therefore, the amount deposited by Shri Amarjeet Singh Mago, during investigation, cannot be appropriated.*" This was a common order in a bunch of 15 related appeals in which the role of Amarjeet Singh Mago was identical to Harvinder Singh in the present case. Thereafter the Hon'ble Tribunal ordered that *the impugned order is set aside and the appeals are allowed by way of remand to the adjudicating authority to decide the issue first, from whom the duties to be demanded and thereafter if required impose the penalties.* The adjudicating authority was further directed to adjudicate the matter afresh within 90 days after giving reasonable opportunity to the appellants to present their case. The grounds on which the confiscation of goods was upheld in the earlier OIO dated 14.10.2013 were not examined or commented upon by the Hon'ble Tribunal.

21. Personal hearings have been duly conducted with all the notices. I have gone through the said Show Cause Notice, case records and replies/submissions of all the noticees made during the personal hearings. The said SCN issued by ADG, DRI Mumbai Zonal Unit alleges undervaluation of electronic goods imported at Mumbai port covered by 10 Bills of Entry of the period July 2007 to April 2008 by 3 firms and the mastermind, Sh. Harvinder Singh. I find that the following issues arise for determination in this adjudication:

- i. Rejection of declared value of the goods imported by M/s Davison Electronics, M/s B.V. Enterprises and M/s J.S. Traders and their redetermination.
- ii. Evidentiary value of statements made before DRI.
- iii. Whether the present SCN dated 20.06.2012 is hit by the mandatory time limitation clause of Section 28(9) of the Act brought into force vide amendment in law effective from 29.03.2018?
- iv. To decide from whom the demand /recovery of customs duty has to be made and accordingly appropriation of the amount of Rs. 1,70,96,830/- deposited.
- v. Confiscation of goods.
- vi. Penalty under sections 112(a), 112(b), Section 114A and Section 114AA on the persons and firms involved.

Now let me take up the issues one by one.

22. Whether the declared value of the goods imported by M/s Davison Electronics, M/s B.V. Enterprises and M/s J.S. Traders is liable for rejection and redetermination as proposed in SCN?

22.1 As per SCN, intelligence developed by DRI MZU indicated that certain consignments of electronic goods imported from Hong Kong were heavily under invoiced and that importing firms were not in existence and / or were not in operation at the declared addresses. Searches were carried out at various places and statements were recorded. Enquiries from the Consulate General of India at Hong Kong resulted in procurement of Hong Kong Trade Declarations of the same consignments which showed almost 10 times higher value. After corroborating the overseas data through voluntary statements under section 108, A case of gross under-valuation was established against the importer firms and their owners. It was revealed that a conspiracy was hatched by Shri Harvinder Singh (partner: M/s Davison Electronics and proprietor: M/s J.S. Traders), Shri Vijay Kumar Choithramani (M/s Chee Lin Exports and M/s Cosmo Trading, both in Hong Kong), Shri Ashwanii Dham (Director, M/s Sai Dutta Clearing Agency, CHA 11/978) and Shri Kamal Kumar Awasthi (proprietor: M/s B.V. Enterprises) for this purpose. Harvinder Singh was the mastermind of the fraud and DRI's SCN called him as the actual importer, controller and conspirator. However, no conclusion of non-existent importer firms was drawn in the SCN thereby implying that DRI found the all the three importer firms in existence at their addresses . Accepting the undervaluation and evasion of customs duty, voluntary payments of customs duty were made in the name of the three importer firms .

22.2 I find that goods such as front panel & remote control for car / vcd MP3 players (JVC / Sony / Pioneer), etc were imported by firms namely M/s Davison Electronics, M/s J.S. Traders and M/s B.V. Enterprises as detailed in above mentioned table-1.

22.3 I find that Shri Harvinder Singh in his statement dated 12.11.2009, recorded u/s 108 of Customs Act, 1962, has admitted undervaluation(almost 10 times) in the electronic goods imported from the suppliers, M/s Cosmo Trading Co., and M/s Chee Lin Exports. He has accepted that invoices of lower value prepared by Mr. Kumar for the consignments were sent to him by fax/courier. These parallel false invoices with highly reduced values were submitted to the Customs Authorities. Undervaluation had taken place in the consignments imported in the name of firms i.e. M/s Davison Electronics, M/s J.S. Traders and M/s B.V. Enterprises.

22.4 I find that a reference was made to the Consul General of India, Hong Kong, to cause enquiries with Hong Kong Customs and forward the export declarations submitted by the suppliers before the Customs authorities in Hong Kong, in respect of the goods imported in the name of firms i.e. M/s Davison Electronics, M/s J.S. Traders and M/s B.V. Enterprises. In response, trade declarations filed before the Hong Kong Customs by the exporters M/s Chee Lin Exports and M/s Cosmo Trading Co., duly certified by the Senior Trade Control Officer of the Customs and Central Excise Department, Hong Kong, were forwarded.

22.5 I find that the values declared by the overseas suppliers in the respective trade declarations filed by them before the Hong Kong Customs authorities were much higher than the values of the same goods mentioned in the invoices submitted by the Indian importers before the Indian Customs for the respective bills of entry.

22.6 Noticee-1 & 2 have argued that the Trade Declaration is not reliable on the grounds as DRI Officers have only shown photocopies of the Hong Kong declarations during the course of investigation to the deponent even though they had the originals with them. On this point, the Noticees relied upon the case laws of **Taito Watch Manufacturing**⁸ and **Shobha Rani**⁹. They also questioned the reliability of the Hong Kong Trade Declarations on the ground that shipper names are different. In the Bills of Lading pertaining to M/s Davison Electronics, the shipper name is shown as M/s Guangdong Gui Han, whereas the shipper names in the Hong Kong Trade Declaration are shown as M/s Chee Lin Exports and M/s Casmo Trading Company. They also submitted that re-determination of RSP was invalid as there was no provision under Section 3 of the Customs Tariff Act, empowering any authority to differ with the deemed valuation and re-determine the RSP. On this point, they relied upon **ABB Ltd**¹⁰. Further they argued that redetermination of value has not been done as per the Valuation Rules.



22.7 I find that in **Taito Watch Manufacturing (supra)**, no statement of noticee was recorded and the export declaration was without the signature of any Customs officials, and without any Customs seal. However, in the present case, statement of noticee-1 was recorded on 31.01.2012 u/s 108 of Customs Act, 1962 wherein he stated that "*I have now been shown the original certificate dated 23.02.2011 of Mr. Kwok Hin, Government Counsel, International Law Division of the Department of Justice of the Hongkong Special Administrative Region of the People's Republic of China with 10 trade declarations. On scrutiny, I find that these trade declarations pertain to electronic goods sent by the overseas suppliers namely M/s Chee Lin Exports / M/s Cosmo Trading Co. in the name of M/s Davison Electronics, M/s B.V. Enterprises and M/s J.S. Traders (i.e. above bills of*

⁸ Taito Watch Manufacturing Inds.-2004 (173) ELT 17 (T)

⁹ Shobha Rani- 2007 (212) ELT 458 (SC)

¹⁰ ABB Ltd - 2011 (272) ELT 706 (T)

entry shown to me)". Noticee-1 also signed those trade declarations on the same day. Further, he was also shown a chart having details from the bills of entry of the above-mentioned importers and the trade declaration submitted at Hong Kong Customs. After seeing the chart and trade declarations, he admitted that Customs duty on the value of Rs 6,52,44,422/- had not been paid. He further stated that he had paid an amount of Rs. 1,70,96,830/- towards the differential duty payable and if there be any further balance, he would pay the same also. In the present case, these trade declarations are bearing the seal and signatures of the Customs Officials at Hong Kong Customs. A sample scanned copy of the same is shown below.

HONG KONG
CUSTOMS AND EXCISE DEPARTMENT

**CERTIFICATE VERIFYING
A COMPUTER PRODUCED DOCUMENT**

I, Wong Kwong Senior Trade Control Officer of the Customs and Excise Department HEREBY CERTIFY that:

(1) I occupy a responsible position in relation to the operation of the Department's computer system, namely the Government TDEC System and I am duly authorised by the Commissioner of Customs and Excise to certify on his behalf that the document annexed to this certificate and marked 'A' is a document produced by the said computer system.

(2) This document is a copy of a document produced from the Department's computer system.

(3) (a) The said computer was used to store, process or retrieve information for the purposes of the activities carried on by the Department;
(b) the information contained in the statement in the document reproduced, or is derived from, information supplied to the computer in the course of the activities of the Department; and
(c) while the computer was so used in the course of those activities:
(i) appropriate measures were in force for preventing unauthorised interference with the computer; and
(ii) the computer was operating properly, or if not, that any respect in which it was not operating properly or was out of operation was not such as to affect the production of the document or the accuracy of its contents.

(4) I give the following explanation of the nature and contents of the document: that this document is a true copy of the record of the information sent using services provided by a specified body within the meaning of the Import and Export Ordinance, Cap. 60 which is an import/export declaration required to be lodged under the said Ordinance in relation to the importation/exportation of the articles mentioned in the document; and that according to the document, COSMO TRADING CO on 19/01/2008 informed the Department that it had on 25/02/2009 exported from Hong Kong:

1.	9	CARTON CONTAINING	162,000	KG	COMPONENTS FOR CAR STEREO, FRONT PANEL (FACES) valued at \$87,250.80
2.	8	CARTON CONTAINING	154,800	KG	COMPONENTS FOR CAR STEREO, FRONT PANEL (FACES) valued at \$101,306.40
3.	5	CARTON CONTAINING	108,000	KG	COMPONENTS FOR CAR VCD PLAYER, FRONT PANEL (FACES) valued at \$67,891.20
4.	5	CARTON CONTAINING	90,000	KG	COMPONENTS FOR CAR STEREO, FRONT PANEL (FACES) valued at \$50,347.20

Signature dated 31.01.2012
of Shri Harvinder Singh
(Noticee-1)

Stamp of
Hong Kong
Customs and
Excise
Department

Name of Trade
Control Officer,
Hong Kong

Name of Exporter and
Date of Export

Details of goods

5. 7 CARTON CONTAINING 1,360,000 NO. COMPONENTS FOR CAR STEREO/CAR VCD PLAYER, REMOTE CONTROL (INFRA - RED RAYS) valued at \$34,561.80
6. 7 CARTON CONTAINING 1,360,000 NO. COMPONENTS FOR CAR STEREO, REMOTE CONTROL (INFRA - RED RAYS) valued at \$26,605.80

to India.

(5) All of the above is stated to the best of my knowledge and belief.

Dated: 28/01/2012
SIGNED BY: WONG KWONG
in Hong Kong
in the presence of: LI KWOK YING
(Trade Controls Officer)

[Handwritten signature]
31/1/12

Signature of
Trade Control
Officer, Hong
Kong Excise and
Customs
Department

Signature Dated
31.01.2012 of Shri
Harvinder Singh
(Noticee-1)

RESTRICTED
GOVERNMENT TRADE SYSTEM
TRADE INFORMATION SYSTEM
HONG KONG CUSTOMS

REGDATE: 28/01/2012 10:40:45
SIGN DATE: 28/01/2012
PAGE: 001

INVOICE REFERENCE NO.: 1472/2008
INVOICE NO.: 1104310
INVOICE DATE: 28/01/2012

DECLARANT'S NAME: CHONG CHENG WAI ELEVA
DECLARANT'S OCCUPATION: EXPORTER
EXPORTER TEL NO.: 001149871
EXPORTER ADDRESS:
LINE 1: 5/F 501 THE PLAZA TOWER
LINE 2: 11-11 CHATERAY RD HONG KONG
CITY NAME: HONG KONG
COUNTRY / TERRITORY: HONG KONG
DECLARANT'S SIGNATURE: *[Handwritten signature]*

EXPORTER'S NAME: CHONG CHENG WAI ELEVA
EXPORTER'S ADDRESS:
LINE 1: 5/F 501 THE PLAZA TOWER
LINE 2: 11-11 CHATERAY RD HONG KONG
CITY NAME: HONG KONG
COUNTRY / TERRITORY: HONG KONG

DEPARTING DATE: 28/01/2012
DEPARTING TIME: 10:00
PORT OF DEPARTURE: HONG KONG
DESTINATION COUNTRY/TERRITORY: IN 7449
PLACE OF DEPARTURE: HONG KONG

CONSIGNEE NAME: DAVISON ELECTRONICS
CONSIGNEE ADDRESS:
LINE 1: 5/F 501 THE PLAZA TOWER
LINE 2: 11-11 CHATERAY RD HONG KONG
CITY NAME: HONG KONG
COUNTRY / TERRITORY: HONG KONG

REMARKS: 1472/2008

RESTRICTED

Name of Exporter

Departure date of consignment

Consignee Name and FOB Value of Consignment

Signature Dated 31.01.2012 of Shri Harvinder Singh (Noticee-1)

1472/2008

22.8 I find that the above-depicted sample trade declaration (RUD No. 33 to SCN) has been provided by the Trade Controls Officer, Customs & Excise Department of Hong Kong. I find that each document has been signed by the Hong Kong Customs Authorities. I find that the trade declarations are having information with regard to the number of cartons with total weight for each individual product with their value. In addition to that they have the name and address of exporter, port of discharge, consignee name and address, bills of lading no. and container number. I find that when bills of lading number and container number mentioned in the trade declarations at Hong Kong are tallying with the bills of entry filed in India, It has to be inferred that the details submitted by the Hong Kong Customs and Excise department are only with regard to declarations submitted at Indian Customs by the above mentioned importers in respect of above-mentioned bills of entry.

22.9 I find that noticee-1&2 have relied upon **Shobha Rani (supra)** to argue that secondary evidence(photocopy) cannot be admitted without non-production of original being first accounted for in such a manner as to bring it within one or other of cases provided for in Section 65 of the Indian Evidence Act, 1872. The noticees in their recorded statements have admitted to having been shown the original Hong Trade Declarations establishing undervaluation of goods and Harvinder Singh's signature appears on the pages of the said documents as proof of having seen the original. Therefore, the reliance upon **Shobha Rani** is misplaced.

22.10 I find that the CIF value declared at Indian Customs in respect of above-mentioned bills of entry (details as per above mentioned table-1) was very much less than the FOB value mentioned in the trade decorations submitted at Hong Kong Customs. The said comparison is detailed below:

Table-15

Sr. No.	Name of the Importer (M/s)	Bill of Entry No. / Date	Declared CIF Value (Rs.)	FOB Value Declared (HKD)
1	Davison Electronics	830272/24. 03.08	363431	368004
2	Davison Electronics	836874/28. 04.08	505859	593697
3	B.V. Enterprises	817121/11.	1015672	2322927

		01.08		
4	J.S. Traders	782434/26. 07.07	709755	1733098
5	J.S. Traders	789175/29. 08.07	645759	1463904
6	J.S. Traders	796245/01. 10.07	661826	1501469
7	J.S. Traders	799664/18. 10.07	855268	1904916
8	J.S. Traders	811653/14. 12.07	820830	1956171
9	J.S. Traders	822319/07. 02.08	451341	379626
10	J.S. Traders	825480/25. 02.08	738023	1447056

22.11 From the trade declarations it is very much clear that the said importing firms grossly undervalued the goods before the Indian Customs . Since the values in the trade declarations were on FOB basis, the concerned shipping agents were requested to furnish the details of the freight charges paid in respect to the said goods. The said details are tabulated in the above mentioned table-7.

22.12 I find that the declared Retail Sales Price (RSP) for the purpose of levy of additional customs duty(CVD) in respect of goods imported vide bill of entry no. 822319 dated 07.02.2008, filed in the name of M/s J.S. Traders, was also misdeclared. Scrutiny of the above bill of entry revealed that to arrive at the RSP as declared, loading of about 149% (2.49 times of the value) was made in the import value i.e. the value declared in the respective bill of entry. As the import value in the respective said bill of entry was misdeclared hence the RSP determined by loading therein was also vitiated. Accordingly, taking into consideration the percentage of loading, the revised RSP of the said goods was determined. The details of the same are as per table-13 above. Noticee-1 relied on **ABB Ltd(supra)** to argue that machinery to determine RSP for CVD purpose was absent under Section 3 of Customs Tariff Act, 1975 and therefore redetermination of RSP in the present case is invalid. On this point, I find that the Hon'ble CESTAT, Mumbai departed from this

ruling in **Sushil Agarwal**¹¹ by holding that even if machinery provision is not explicitly provided, there is no bar in adopting a reasonable provision to make the law operational. The Statute has to be construed in a manner to make machinery workable. Therefore, **ABB Ltd** does not help the noticees' case.

22.13 I find that CIF value was arrived after considering freight given by the shipping lines and insurance at normal rate i.e. 1.125%. Bill of Entry wise detailed calculation of re-determined value and differential duty in respect of above mentioned importing firms are as per Annexure A-1 and Annexure A-2 of SCN. Bill of Entry wise details of redetermined value and differential duty are as under:-

Table-16

Sr. No.	Name of the Importer	Bill of Entry No. / Date	Re-determined Assessable Value (Rs.)	Differential Duty (Rs.)
1	Davison Electronics	830272 / 24.03.08	1937818	494129
2	Davison Electronics	836874 / 28.04.08	3157194	830844
3	B.V. Enterprises	817121 / 11.01.08	12141201	3793756
4	J.S. Traders	782434 / 26.07.07	9325267	2938113
5	J.S. Traders	789175 / 29.08.07	7818946	2446510
6	J.S. Traders	796245 / 01.10.07	7941236	2482255
7	J.S. Traders	799664 / 18.10.07	10063375	3139874
8	J.S. Traders	811653 / 14.12.07	10231213	3209029
9	J.S. Traders	822319 / 07.02.08	1993881	615670
10	J.S. Traders	825480 / 25.02.08	7580183	2332760

22.14 In view of the direct primary evidence unearthed by DRI through Hong Kong trade data and accepted to by the noticees after having seen the original documents, the retraction of their statements at the time of adjudication appear belated and an afterthought. The noticees could not provided any factual evidence in support of their declared values being true value of goods. They have only taken legal ground to contest the case of DRI, which also do not hold ground in view of discussion above. Hence, I conclude that the declared values in respect of the goods imported by the importers namely M/s Davison Electronics, M/s B.V. Enterprises and M/s J.S. Traders were not the true transaction values

¹¹ SUSHIL AGARWAL Versus COMMISSIONER OF CUS., MUMBAI-I-2012 (283) E.L.T. 377 (Tri. - Mumbai)

in terms of the provisions of Section 14(1) of the Customs Act, 1962 read with provisions of Rule 3 of the Customs Valuation Rules, 2007. Therefore, I find that the declared prices of said goods are liable for rejection under the provisions of Section 14(1) of the Customs Act, 1962 read with the provisions of Rule 12(1) of the Customs Valuation Rules, 2007.

22.15 I find that the prices mentioned in the trade declarations reflect the true and correct transaction value of the goods. I find that in the present case redetermined value has been ascertained from the trade declarations submitted at Hong Kong Customs. Rule 3(1) of the Customs Valuation Rules (Determination of value of imported goods) Rules, 2007, is reproduced below:

Rule 3. Determination of the method of valuation . -

(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

22.16 I find that in the present case the value declared in the trade declarations submitted at Hong Kong Customs shall be the transaction value of goods in terms of Rule 3(1) adjusted in accordance with Rule 10 of Customs Valuation (Determination of value of the imported goods) Rules, 2007. As per trade declarations payment was on FOB basis. Therefore in terms of Rule 10(2) of CVR, 2007, the cost of transport and insurance needs to be added to the FOB value to arrive at CIF value. Hence . I find that the value has been rightly determined in the Show Cause Notice under the provisions of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation Rules, 2007 in respect of goods imported by the three importer firms namely M/s Davison Electronics, M/s B.V. Enterprises and M/s J.S. Traders.

23. Evidentiary value of statements made before DRI.

23.1 The question here is whether the statements dated 13.11.2009, 20.09.2010 and 31.01.2012 given by Shri Harvinder Singh(Noticee-1), statement dated 24.05.2010 given by Shri Kamal Kumar Awasthi (Noticee-2) and statement dated 10.11.2009 given by Shri Ashwanii Dham (Noticee-3), recorded u/s 108 of Customs Act, 1962 by DRI, can be relied upon.

23.2 Noticee-1 in his submissions argued that the statements as recorded are not reliable and corroborated in any fashion and thus cannot be relied upon for the reasons that the same have been retracted. He argued that he has never admitted to have paid anybody in cash. Statements cannot be relied upon without examining the said deponents whose statements have been relied upon as witnesses in the impugned show cause notice as stipulated under Section 138B(1)(b) read with Section 138B(2). Noticee-1 relied upon **KI**

Pavunni¹². Noticee-2 also argued that the statements do not establish any payments to any person in India or abroad in connection with the impugned imports in this case by the importer. The statements contrary to the above fact have been recorded at the behest and dictates of the officers and they are not factually correct or and corroborated. Noticee-2 on this point relied upon **Nagubai Ammal**¹³ and **Sitaram Sao**¹⁴.

23.3 I find that the case laws of **K.I. Pavunni** and **Sitaram Sao** supra deal with relevance of confessional statement in a prosecution/criminal matter where the evidence level required is proof beyond reasonable doubt. The present case is a tax adjudication matter where the evidence level required is lower i.e. preponderance of probability. Hence both case laws relied upon by the noticee are not relevant here. The case law of **Nagubai Ammal** stated in para 16 of the judgement that "*an admission is not conclusive as to the truth of the matters stated therein. It is only a piece of evidence, the weight to be attached to which must depend on the circumstances under which it is made.*" But this observation by the Court was made in the context of Transfer of Property Act. In the present case, Shri Harvinder Singh in his statements has accepted that Shri Vijay Kumar Choithramani, (overseas supplier) used to collect differential amount (the actual value of the goods less the value declared in the invoices / declared at Indian Customs) from them in cash through certain persons in Delhi. The Customs Act, 1962 and various judicial pronouncements over it provide higher level of sanctity to the statements made under section 108 if not retracted within a reasonable time to the proper authorities. The voluntary statements are duly supported by Hong Kong Trade Declarations, etc. and therefore the ratio of Nagubai Ammal does not help the noticees.

- i. In the matter of **Asst. Collector of Central Excise, Rajamundry v. M/s. Duncan Agro India Ltd.**¹⁵, it was held that a statement recorded by a Customs Officer under Section 108 is a valid evidence.
- ii. In **Shri Naresh J. Sukawani**¹⁶, 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**¹⁷, the Hon'ble SC held that "*14.....We hold that a statement recorded by Customs Officers under Section 108 of the*

¹² K.I Pavunni - 1997 (90) ELT 245 (SC)

¹³ Nagubai Ammal and Others Vs V.B. Shama Rao & Ors - AIR 1956 SC 593

¹⁴ Sitaram Sao Vs State of Jharkhand - (2207) 12 SCC 630

¹⁵ Asst. Collector of Central Excise, Rajamundry v. M/s. Duncan Agro India Ltd. reported in 2000 (120) E.L.T. 280 (S.C.)

¹⁶ Shri Naresh J. Sukawani v. Union of India-1996 (83) E.L.T. 258 (S.C.)

¹⁷ Gulam Hussain Shaikh Chougule vs. Reynolds-2001 (134) E.L.T. 3 (S.C.)

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. In **State(NCT) Delhi¹⁸**, It was held that confessions are considered highly reliable because no rational person would make an admission against his interest unless prompted by his conscience to tell the truth. *“Deliberate and voluntary confessions of guilt, if clearly proved are among the most effectual proofs in law.”*

v. The Apex Court, in the case of **Hazari Singh¹⁹**, and in the case of **Surjeet Singh Chhabra²⁰**, has held that the confessional statement made before the Customs Officer, even though retracted, is an admission and binding on the person.

vi. In the case of **Bhana Khalpa Bhai Patel²¹**, 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 Karwal²²**, 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.

viii. Hon'ble Supreme Court in the case of **Romesh Chandra Mehta²³** 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 .

ix. Hon'ble Punjab and Haryana High Court in the matter of **Jagjit Singh²⁴** held that *“the statements under Section 108 of the Customs Act were admissible in evidence as has been held by the Hon'ble Supreme Court in Ram Singh vs. Central Bureau of Narcotics, 2011 (2) RCR (Criminal) 850”.*

¹⁸ State(NCT) Delhi Vs Navjot Sandhu @ Afsan Guri, 2005 (122) DLT 194 (SC)

¹⁹ Hazari Singh V/s. Union of India, reported in-1999(110) E.L.T. 406 (SC)

²⁰ Surjeet Singh Chhabra V/s. Union of India & Others, reported in-1997(89)ELT.646(SC)

²¹ Bhana Khalpa Bhai Patel Vs. Asstt. Collr. of Cus., Bulsar-1997 (96) E.L.T. 211 (SC)

²² Raj Kumar Karwal Vs. UOI & Others-1990 (48) E.L.T. 496 (S.C.)

²³ Romesh Chandra Mehta vs. the State of West Bengal (1969) 2 S.C.R. 461, A.I.R. 1970 S.C. 940

²⁴ Jagjit Singh vs State of Punjab And Another-in Crl. Appeal No.S-2482-SB of 2009 Date of Decision: October 03, 2013

23.4 The noticees have not produced any copy of retraction letter made within a reasonable time from the date of the statements recorded by the DRI officers. Further, I find that retraction of statements recorded under Section 108 of the Customs Act, 1962, does not make it inadmissible as evidence, completely. It merely raises a doubt, which is required to be examined in the light of other corroborative evidences, if any.

23.5 The retraction of admissional statement, without any evidence of threat and coercion is not acceptable. In the case of **K.T.M.S. Mohd.**²⁵, Hon'ble Supreme Court observed: *"If the statement appears to have been obtained by any inducement, threat, coercion or by any improper means, that statement must be rejected. It is only for the maker of the statement who alleges inducement, threat, promise, etc. to establish that such improper means have been adopted."*

- i. In **K.I.Pavunny**²⁶, a Three Judge Bench of the Hon'ble Supreme Court observed as follows *"20..... Burden is on the accused to prove that the statement was obtained by threat, duress or promise like any other person as was held in Bhagwan Singh v. State of Punjab – AIR 1952 SC 214, (Para 30)"*
- ii. Hon'ble High Court of Bombay in the case of **Kantilal M Jhala**²⁷ held that confessional statement corroborated by documents is admissible.

23.6 Accordingly, in view of the above referred judicial pronouncements, I cannot disregard the statements recorded under Section 108 of the Customs Act, 1962 in this case. The statements recorded by the DRI officers span over a sufficiently long period of time-20.09.2010 , 13.11.2009 and 31.01.2012(Harvinder Singh) ; 24.05.2010 (Kamal Kumar Awasthi) and 10.11.2009 (Ashwani Dham). All these statements corroborate each other as well as material evidence found. The trade declarations submitted at Hong Kong Customs, gathered by the Investigating Agency have sufficiently established the facts contained in these statements.. Further, statements of Noticees have elaborated in detail the modus operandi adopted by them with the sole objective of evasion of Custom duty. The statements contain information and details which were within exclusive knowledge of the said persons only and could not be a result of tutoring and compulsion. Harvinder Singh made payments of customs duty of around Rs. 1.70 crore accepting undervaluation of goods. No retraction letter to any DRI officer superior to the one recording the statement has been submitted. So, the plea of retraction by the notices at the time of adjudication appears to be an afterthought. Hence, I find that the statements given by the Noticees-1,2 & 3 hold evidentiary value and are crucial in determining and confirming the facts of this case.

²⁵ K.T.M.S. Mohd. Vs. UOI, (1992) 3 SCC 178

²⁶ K.I.Pavunny vs. Asstt. Collector (HQ), C. Ex. Collectorate, Cochin 1997 (90) ELT 241(S.C.)

²⁷ Kantilal M Jhala Vs Union Of India-judgment dated: October 5, 2007 (reported in 2007-TIOL-613-HC-MUM-FEMA) in FERA Appeal No.44 OF 2007

24. Whether the present SCN dated 20.06.2012 is hit by mandatory time limitation clause of Section 28(9) of the Act brought into force vide amendment in law effective from 29.03.2018?

24.1 Noticee-1 & 2 on this point in their submissions submitted that CESTAT, Mumbai vide Order No. A/880-887/14/CSTB/C-1 dated 03.06.2014 remanded back the matter to the Adjudicating Authority with a direction to consider the contentions of the Noticee and adjudicate the Show Cause Notice within 90 days of the receipt of the Order. Also submitted that as per provisions of Section 28 (9)(b) of the Customs Act, 1962, in a case where a notice is issued the same has to be adjudicated within one year. Noticee in this regard relied upon case laws of **Nelco Limited²⁸, Sheik Parith²⁹, Siddhi Vinayak Syntex Pvt. Ltd³⁰ and Harkaran Dass Vedpal³¹.**

24.2 I find that the subject matter was remanded by the Hon'ble CESTAT vide Order No. A/880- 887/14/CSTB/C-1 dated 03.06.2014 with the direction to adjudicate the matter afresh within 90 days of the receipt of the order after giving reasonable opportunity to the appellants to present their case.

24.3 On the issue of delay in Adjudication, I find that the Adjudication Section of Import-1 Commissionerate, Mumbai Customs Zone-1 has already submitted its comments as part of counter affidavit to the Hon'ble High Court in connection with the Writ Petition No. 3328 of 2022 filed by the Noticee-1 praying to the Hon'ble High Court to quash the SCN due to delay in adjudication. It has been explained that the Government of India vide Notification No. 77/2014-Customs(N.T.) dated 16.09.2014 reorganised the Mumbai Customs altering the existing Commissionerates and carving out some new ones. The existing Import Commissionerate, New Custom House, Zone-I, Mumbai was divided into Import-I and Import-II Commissionerates. Further, vide public notice no. 52/2014 dated 13.10.2014, functional sections of Import Commissionerate were divided into Import-I and Import-II Commissionerate and the concerned files were re-distributed accordingly as per sections. During this reorganisation process, the present case file got lost and was retrieved later during an inspection. The SCN in the present case was issued by ADG,DRI. During this intervening period, certain judgements came from higher courts holding that DRI does not have power under section 28 to issue SCN. The case could not be adjudicated as the Department had gone on appeal against these judgements. Only after the Parliamentary Amendment in March 2022 in the Customs Act overcoming the legal hurdles, the said case was taken out of Call Book on 02.06.2022. Two years during this delay period were also affected by Covid wherein the Hon'ble Apex Court had extended all the statutory timelines.

²⁸ Nelco Limited Vs Union of India 2002 (144) ELT 56 (Bom)

²⁹ Sheik Parith Vs Commissioner of Customs (Seaport-Exports), Chennai-2020 (374) ELT 15 (Mad)

³⁰ Siddhi Vinayak Syntex Pvt. Ltd Vs Union of India 2017 (352) ELT 455

³¹ Harkaran Dass Vedpal Vs Union of India-2019 (368) ELT 546 (P&H)

In Oct 2022, the earlier Adjudicating Authority got transferred and the undersigned joined in his place. Thereafter, the adjudication process was speeded up. So the present case cannot be called a case of acute delay because firstly SCN of 2012 was adjudicated in 2013 itself and the present adjudication is only by way of remand on certain specific points and secondly, there are justifiable reasons for the delay in the present case.

24.4 Noticee-1 & 2 argued that the SCN is time-barred for adjudication in terms of provisions of Section 28(9)(b) of the Customs Act, 1962. The relevant provisions of Section 28(9) of the Customs Act, 1962 at the relevant time are reproduced herein below:

Section 28(9):

The proper officer shall determine the amount of duty or interest under sub-section (8),

(a) within six months from the date of notice, where it is possible to do so, in respect of cases falling under clause (a) of sub-section (1);

(b) within one year from the date of notice, where it is possible to do so, in respect of cases falling under sub-section (4).

24.5 Section 28 has been amended with effect from 29.03.2018 wherein sub-section (9) of Section 28 has also been amended. **The amended provisions of Section 28 are reproduced below:**

Section 28. [Recovery of [duties not levied or not paid or short-levied or short-paid] or erroneously refunded. -

Section 28(9): The proper officer shall determine the amount of duty or interest under sub-section (8),-

(a) within six months from the date of notice, in respect of cases falling under clause (a) of sub-section (1);

(b) within one year from the date of notice, in respect of cases falling under sub-section (4).

Provided that where the proper officer fails to so determine within the specified period, any officer senior in rank to the proper officer may, having regard to the circumstances under which the proper officer was prevented from determining the amount of duty or interest under sub-section (8), extend the period specified in clause (a) to a further period of six months and the period specified in clause (b) to a further period of one year:

Explanation 4 - For the removal of doubts, it is hereby declared that notwithstanding anything to the contrary contained in any judgment, decree or order of the Appellate Tribunal or any Court or in any other provision of this Act or the rules or regulations made thereunder, or in any other law for the time being in force, in cases where notice has been issued for non-levy, short-levy, non-payment, short payment or erroneous refund, prior to the 29th day of March, 2018 (13 of 2018), being the date of commencement of the Finance Act, 2018, such notice shall continue to be governed by the provisions of section 28 as it stood immediately before such date.) (emphasis added)

24.6 In view of the above, I find that the maximum time limit of 1 year for completion of adjudication proceedings of a Show Cause Notice issued under Section 28 of the Customs Act, 1962 has been inserted by the Finance Act, 2018 dated 29.03.2018. I find that it has been explicitly made clear by inserting *explanation 4* in Section 28 of the Act, that, notices issued before the commencement of the Finance Act, 2018, shall continue to be governed by the provisions of section 28 as it stood immediately before such date. Therefore, in view of the above, I find that the amended provisions of Section 28(9) of the Act, are not applicable in the present case, as **in the present case notice was issued on 20.06.2012, before the commencement of the Finance Act, 2018.**

24.7 Noticees have relied upon the case law of **Nelco Limited(supra)** to argue that in re-adjudication proceedings, the parties are to put to the status of original date of show cause notice. I find that in 2012 when the SCN was issued, the concerned section read "*within one year from the date of notice, where it is possible to do so*". So the time limit of 1 year was not mandatory. It became mandatory only from 29.03.2018. Therefore, this case law is of no help to the noticees.

24.8 Noticees have relied upon certain case laws. In **Sheik Parith(supra)**, SCN issued in 2011 was quashed by the Hon'ble Madras Court in 2020 on the ground of inordinate delay without any reasonable basis and non supply of RUDs to the noticees. In the case of **Siddhi Vinayak Syntex (supra)**, a SCN issued in Central Excise matter was quashed by Gujarat High Court due to delay in adjudication by 17 years and the action of the Commissioner to transfer the case in call book based on CBIC Circular No. 162/73/95-CX, dated 14-12-1995 was held to be improper. The Hon'ble Apex Court did not accept the appeal as it was below the monetary limit, but stayed the observation of the Hon'ble Gujarat High Court on the reason for transfer of the case to call book being improper. In **Harkaraan Dass Vedpal(supra)**, a SCN issued by DRI was quashed by the Hon'ble P&H High Court on the ground of 10 years delay without reasonable cause. The P&H High Court used retroactive application of amended Sections 28(9) and (9A) of Customs Act, 1962 as amended w.e.f. 28-3-2018, but this was distinguished by the Hon'ble Madras High Court in **Sheik Parith(supra)** by agreeing with Revenue that amended

provisions will only apply from the date of amendment. I find that the facts of **Sheikh Parith, Siddhi Vinayak Syntex and Harkaran Dass Vedpal** are clearly distinguishable with the present case as in the present case, justifiable reasons as discussed in para 24.3 above existed for the delay and also in the present case, SCN of 2012 was first adjudicated in 2013 itself and the present adjudication has resulted from remand back from Hon'ble Tribunal unlike the above cases.

25. To decide from whom the demand/recovery of customs duty has to be made and accordingly appropriation of the amount of Rs. 1,70,96,830/- deposited.

25.1 I find that there is no dispute that the importation in the name of firm M/s B.V. Enterprises was actually done by Shri Harvinder Singh however the fact remains that the firm was in the name of Shri Kamal Kumar Awasthi and he was the sole proprietor of the said firm and therefore entire responsibility of duty lies with the proprietor of the firm, Shri Kamal Kumar Awasthi.

25.2 I find that the demand has been proposed under Section 28 of the Customs Act, 1962. The same at relevant time is reproduced below:

Section 28. Recovery of duties not levied or short-levied or erroneously refunded. -

Section 28(4): 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.

25.3 I find that the importer has been defined under Section 2(26) of the Customs Act, 1962. The same at relevant time is reproduced below:

"importer", in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer:

25.4 Therefore, on going through the definition of importer it is clear that an importer maybe

- 1) Owner of the goods or
- 2) Any person holding himself out to be the importer

at the time between the importation of the goods and clearance of the goods for home consumption.

25.5 I find that the Hon'ble High Court of Bombay in the case of **Gagandeep Singh Anand**³² held that demand of duty can only be made from the importer of the goods. The relevant part of the judgement is reproduced below:

We have examined the rival contentions. From the facts, it is evident that the appellant is the second buyer of the car. The importer of the car is one Mr. Dholakia who had cleared the said car from the Customs on payment of customs duty and thereafter sold to one Mr. Oberoi. The appellant had purchased the said car from Mr. Oberoi in the year 2005. During the course of investigation by the DRI, the said car was seized on 30th August, 2007 and confiscated in 2008 with option to redeem the same. It is an admitted position that since then the said car is in possession of the DRI as the option to redeem has not been exercised. The importer of the said car is Mr. Dholakia who had filed the bill of entry and cleared the said car on payment of customs duty as assessed by the Officers of the customs. In fact, on identical fact situation, where the importer of the offending car was not traceable, this Court in VXL India Ltd. (supra) has held that the differential duty, if any, is to be only recovered from the importer in terms of Section 28 of the Act and the same cannot be recovered from the buyer of such offended goods.

25.6 I find that Hon'ble Tribunal in the case of **Inderjit Nagpal**³³ held that the Department has no authority to demand short-levied or non-levied duty from anyone other than the importer and person "believed" to be owner cannot be proceeded against.

³² Gagandeep Singh Anand Vs Commissioner of Customs (Import), Mumbai, 2019 (367) ELT 212 (Bom)

³³ INDERJIT NAGPAL Versus COMMISSIONER OF CUS. & C. EX., GOA-2017 (357) E.L.T. 1029 (Tri. - Mumbai)

25.7 I find that Hon'ble Supreme Court in **Vellanki Frame Works**³⁴ at para 30 held that an importer is a person who imports goods into India. Further, the owner of the goods or person holding himself to be the owner shall also be regarded as importer during the period between importation of goods and clearance for home consumption.

25.8 I find that the Hon'ble Tribunal in the case of **Commr. Of Customs (Port), Kolkata Vs Rudra Vyaparchem Pvt. Ltd**³⁵, held that *In the present case is concerned, it is undisputed that the invoices and bill of lading are in the name of the respondent. It is true that in their statement, the respondent denied that they are not the importers, which is now being disputed by the respondent's Counsel. However, the key to decide who the owner of the goods in case of international trade is the bill of lading, which is the document of title. Since the Bill of Lading is in the name of the respondent, they are the owners of the goods. It does not matter whether they have already paid for the goods or have yet paid so. It also does not matter whether after import, they in turn, sells the goods to the indenters who placed orders on them. The goods have been imported by the respondent and the Bill of Lading is in their name and therefore, they are the owner of the goods. Therefore, the goods can be provisionally released to them under Section 110A of the Customs Act, 1962.*

25.9 I find that the goods imported in the name of firms M/s. B.V. Enterprises (proprietor: Kamal Kumar Awasthi) was caused by Shri Harvinder Singh. Shri Kamal Kumar Awasthi lent his IEC to Shri Harvinder Singh to facilitate the import of goods in the name of his firm. However, facts remain the same that the Bill of Entry was filed in the name of proprietorship concern and as per case laws discussed above, the proprietor of the said proprietorship concern will be considered as the importer and the duty liability will remain with him. All the above mentioned goods imported by Shri Harvinder Singh through firms M/s Davison Electronics, M/s B.V. Enterprises and M/s J.S. Traders, were imported and cleared on the basis of manipulated and fabricated documents. Shri Harvinder Singh (partner M/s Davison Electronics and proprietor: M/s J.S. Traders) and Shri Kamal Kumar Awasthi (proprietor: M/s B.V. Enterprises) had subscribed to declarations certifying the truth of such manipulated and fabricated documents under the respective bills of entry, knowing that the same were not true.

25.10 I find that Noticee-1 wilfully misstated or suppressed the real transaction value of the said goods. He wilfully submitted the lower value invoices before the Indian Customs. He was well aware that the values declared in the invoices submitted at Indian Customs in respect of goods being imported by M/s Davison Electronics, M/s B.V. Enterprises and M/s J.S. Traders are not the true transaction value of the goods. Also, I find that noticee-2 was well aware that the value declared in the invoice submitted at Indian Customs in respect of goods imported by M/s B.V. Enterprises are not the true transaction value of the goods. The

³⁴ VELLANKI FRAME WORKS Versus COMMERCIAL TAX OFFICER, VISAKHAPATNAM-2021 (375) E.L.T. 289 (S.C.)

³⁵ COMM. OF CUSTOMS (PORT), KOLKATA Versus RUDRA VYAPARCHEM PVT. LTD-2020 (371) E.L.T. 774 (Tri. - Kolkata)

sole intention of the noticees was to evade customs duty by the way of undervaluation. This establishes the mens rea on the part of the noticee-1 & 2. Therefore, In view of above, I find that demand under Section 28(4) of Customs Act, 1962, is sustainable in the present case.

25.11 Noticees have also argued that assessment made by the proper officer under Section 17 of the Act has not been challenged by the department. Noticees also submitted that such determination by the proper officer is a quasi judicial order and the said loading has attended finality as it was not challenged by the revenue. I find that my predecessor Commissioner in para 27 of OiO dated 14.10.2013 has correctly dealt with this argument of the noticee. In this regard the said OiO relied upon case law of **Union of India vs Jain Shudh Vanaspati Ltd.**³⁶, wherein at para 5, it has been held that "5. *It is patent that a show cause notice under the provisions of Section 28 for payment of Customs duties not levied or short-levied or erroneously refunded can be issued only subsequent to the clearance under Section 47 of the concerned goods. Further, Section 28 provides time limits for the issuance of the show cause notice thereunder commencing from the "relevant date"; "relevant date" is defined by sub-section (3) of Section 28 for the purpose of Section 28 to be the date on which the order for clearance of the goods has been made in a case where duty has not been levied; which is to say that the date upon which the permissible period begins to run is the date of the order under Section 47. The High Court was, therefore, in error in coming to the conclusion that no show cause notice under Section 28 could have been issued until and unless the order under Section 47 had been first revised under Section 130.*" Therefore, in view of the above, I find that demand under Section 28 can be made without revising 'Assessment Order' and 'Clearance Order' respectively made under Section 17 & 47 of the Act.

25.12 Noticee-1 submitted that amounts paid by him in the name of the IEC holders' viz M/s Davison Electronics, and M/s. B.V Enterprises to avoid DRI harassment towards the differential duty is not permitted in law. Noticee in this regard relied upon case law of **Biren Shah**³⁷.

25.13 Sample scanned copies of TR-6 Challan No. 135 dated 12.11.2009 of M/s Davison Electronics (RUD-16 to SCN), Challan No. 133 dated 12.11.2009 of M/s B.V. Enterprises (RUD-17 to SCN) and Challan No. 134 dated 12.11.2009 of M/s J.S. Traders (RUD-18 to SCN) are reproduced below for sake of brevity:

³⁶ Union of India vs Jain Shudh Vanaspati Ltd.-1996 (86) E.L.T. 460 (S.C.)

³⁷ Biren Shah vs Collector of Customs, Bombay-1994 (72) ELT 660

DIRECTORATE OF REVENUE INTELLIGENCE
MUMBAI ZONAL UNIT
3rd Floor, UTI Building, 13, Sir Vitthaladas Thakersey Marg,
Opp. SNDI, New Marine Lines, Mumbai 400 020

20

ANNEXURE

CHALLAN FORM FOR MAKING PAYMENT OF DUTY

NAME & FULL ADDRESS OF THE IMPORTER	M/s. Davison Electronics (IEC No. 0589003275) F-31, Sector 112, Noida, M.Dist. Ghazipur - 201301.
B.I. NO. AND DATE	Various B.I.'s
DESCRIPTION OF GOODS	Various Electronic Goods
VALUE	—
CHA NO.	M/s. Sai Datta Clearing Agency Pvt. Ltd. (No. 11/978)
APPRAISING GROUP	7 th Cell, DRI, MZU
FILE NO.	DR/IBZU/F/4/2009
CASH NO.	—
AMOUNT RECOVERED	Rs. 6,00,000/- (Rupees Six Lakhs only) DRAFT No. 49793 dt. 11.11.2009 issued by Indian Bank, Nariman Point Branch, drawn on Indian Bank, Service Branch (Mumbai), amounting to Rs. 6,00,000/- (Rupees Six Lakhs only)

F.NO. DR/IBZU/F/4/2009
Dated: 12/11/2009

To,
The Cashier,
Accounts Department,
Mumbai Customs House, Mumbai

Subject: - Evasion of Customs duty by M/s. Davison Electronics, Noida.
(IEC No. 0589003275) - reg.



Please deposit the above mentioned Pay Order/Draft for Rs. 6,00,000/- (Rupees Six Lakhs only) favouring Commissioner of Customs, Mumbai A/c M/s. Davison Electronics in the Government Treasury towards part payment of differential Customs duty.

Encl: As above.

SIGNATURE OF THE
CASHIER WITH SEAL



correct
Deputy Director 7th Cell
DRI, MZU, Mumbai.

क्रेडिट जांच किया
CREDIT CHECKED

correct

DIRECTORATE OF REVENUE INTELLIGENCE
MUMBAI ZONAL UNIT
3rd Floor, UTI Building, 13, Sir Vitthaladas Thakersey Marg,
Opp. SNDI, New Marine Lines, Mumbai 400 020

21

ANNEXURE

CHALLAN FORM FOR MAKING PAYMENT OF DUTY

NAME & FULL ADDRESS OF THE IMPORTER	M/s. B. V. Enterprises (IEC No. 0506057437) F-618B, 1 st Floor, Gali No. 3, East Rohitas Nagar, Shahdara, Delhi 110 032.
B.I. NO. AND DATE	Various B.I.'s
DESCRIPTION OF GOODS	Various Electronic Goods
VALUE	—
CHA NO.	M/s. Sai Datta Clearing Agency Pvt. Ltd. (No. 11/978)
APPRAISING GROUP	7 th Cell, DRI, MZU
FILE NO.	DR/IBZU/F/4/2009
CASH NO.	—
AMOUNT RECOVERED	Rs. 8,00,000/- (Rupees Eight Lakhs only) DRAFT No. 49792 dt. 11.11.2009 issued by Indian Bank, Nariman Point Branch, drawn on Indian Bank, Service Branch (Mumbai), amounting to Rs. 8,00,000/- (Rupees Eight Lakhs only)

F.NO. DR/IBZU/F/4/2009
Dated: 12/11/2009

To,
The Cashier,
Accounts Department,
Mumbai Customs House, Mumbai

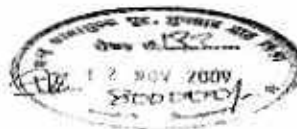
Subject: - Evasion of Customs duty by M/s. B. V. Enterprises, Delhi.
(IEC No. 0506057437) - reg.



Please deposit the above mentioned Pay Order/Draft for Rs. 8,00,000/- (Rupees Eight Lakhs only) favouring Commissioner of Customs, Mumbai A/c M/s. B. V. Enterprises in the Government Treasury towards part payment of differential Customs duty.

Encl: As above.

SIGNATURE OF THE
CASHIER WITH SEAL



correct
Deputy Director 7th Cell
DRI, MZU, Mumbai.

क्रेडिट जांच किया
CREDIT CHECKED

correct

DIRECTORATE OF REVENUE INTELLIGENCE
MUMBAI ZONAL UNIT
3rd Floor, UTI Building, 13, Sir Vitthalidas Thakersey Marg,
Opp. SNDT, New Marine Lines, Mumbai 400 020

02

ANNEXURE

CHALLAN FORM FOR MAKING PAYMENT OF DUTY

NAME & FULL ADDRESS OF THE IMPORTER : M/s. J. S. Traders (IEC No. 0504069896)
Shop No. 15, 1st floor, Plot No. W 134,
Mayapuri Phase II, New Delhi 110 064.

B.E. NO. AND DATE : Various B.E.'s

DESCRIPTION OF GOODS : Various Electronic Goods

VALUE : ---

CHA NO : M/s. Sai Dutta Clearing Agency Pvt. Ltd. (No. 11/978)

APPRAISING GROUP : 'F' Cell, DRI, MZU.

FILE NO. : DRI/BZU/F/4/2009

CASH NO. : ---

AMOUNT RECOVERED : Rs. 12,00,000/- (Rupees Twelve Lakhs only)

DRAFT No. 497991 dt. 11.11.2009 issued by Indian Bank, Nariman Point Branch, drawn on Indian Bank, Service Branch (Mumbai), amounting to Rs. 12,00,000/- (Rupees Twelve Lakhs only)

F NO. DRI/BZU/F/4/2009
Dated: 12/11/2009

To,
The Cashier,
Accounts Department,
Mumbai Custom House, Mumbai

Subject: - *Evasion of Customs duty by M/s. J. S. Traders, New Delhi.*
(IEC No. 0506049896) - reg.

Please deposit the above mentioned Pay Order/Draft for Rs. 12,00,000/- (Rupees Twelve Lakhs only) favouring Commissioner of Customs, Mumbai A/c M/s. J. S. Traders in the Government Treasury towards part payment of differential Customs duty.



Encl: As above.

SIGNATURE OF THE
CASHIER WITH SEAL.



for Deputy Director 'F' Cell
DRI, MZU, Mumbai
12/11/09

AMOUNT RECEIVED
CASHIER CHECKED

Signature

25.14 On perusal of the above TR-6 challan copies and other TR-6 challans (RUD-16 to 29 to SCN), I find that payment towards differential duty has been made in the name of firms namely M/s Davison Electronics, M/s B.V. Enterprises and M/s J.S. Traders. When the payment has been made in the name of the importing firms as per challan copies then it has to be inferred that legally / formally payment has been done by the said firms. The source of money by which the importer firms have made the payment for differential customs duty was, Shri Harvinder Singh as mentioned in the SCN also. It is natural for

Harvinder Singh to pay in the case of M/s. Davison Electronics and M/s. J.S. Traders as he is Partner and Proprietor respectively in these two firms . The payment made on behalf of M/s. B.V. Enterprises can be considered as a loan by Harvinder Singh to the said importer firm.

25.15 My predecessor Commissioner in the operative part of the earlier OIO dated 14.10.2013 has also held the importer firms liable for duty. I find that no conclusion of non-existent importer firms was drawn in the SCN thereby implying that DRI found the all the three importer firms and their proprietors/partners in existence at their addresses. Hence, I conclude that the three importer firms are liable for payment of differential customs duty on the imported goods; and the payment made towards differential duty through challan in the name of said firms can be appropriated against the differential duty liability on these importer firms.

26. Short levy of Duty , Confiscation of imported goods and imposition of redemption fine when goods not available

26.1 As discussed in paras 22.1 to 22.16 above, it is clear that the imported goods were highly undervalued . The declared values in the Bills of Entry are liable for rejection. the value declared in the trade declarations submitted at Hong Kong Customs shall be the transaction value of goods in terms of Rule 3(1) adjusted in accordance with Rule 10 of Customs Valuation (Determination of value of the imported goods) Rules, 2007.

26.2 Accordingly , I find that there has been short levy of Customs duty amounting to **Rs 2,22,82,940/-** (Rupees Two Crores, Twenty Two Lakhs Eighty Two Thousand Nine Hundred Forty Only) in respect of the goods cleared through the New Custom House, Mumbai, under bills of entry, as stated above, which was short levied by reason of collusion, misstatement and suppression of facts by or on behalf of the respective importing firms by Shri Harvinder Singh, Shri Ashwanii Dham (Director: M/s Sai Dutta Clearing Agency, CHA no. 11/978) acting in collusion with the proprietor of M/s B.V. Enterprises and the overseas supplier. The said amount of the differential duty amounting to **Rs 2,22,82,940/-** is recoverable from the three importer firms under the extended period available under the proviso to Section 28 of the Custom Act. 1962, alongwith interest under the provisions of the Section 28 AB (28 AA from 08.04.2011) of the Customs Act, 1962.

26.3 Section 111(m) of the Act reads as :

"The following goods brought from a place outside India shall be liable to confiscation:.....

Section 111(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 trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54;"

26.4 I find that all the above stated goods imported by Shri Harvinder Singh, including goods imported in the name of firms i.e. M/s. Davison Electronics, M/s B.V. Enterprises and M/s J.S. Traders were imported and cleared on the basis of manipulated and fabricated documents. Shri Harvinder Singh (partner: M/s Davison Electronics and proprietor: M/s J.S. Traders) and Shri Kamal Kumar Awasthi (proprietor: M/s BV Enterprises) have subscribed to declarations certifying the truth of such manipulated and fabricated documents under the respective bills of entry, knowing that the same were not true.

26.5 As the importers have willfully and knowingly mis-declared the value of the imported goods in the invoices with an intention to evade customs duties, the imported goods of the declared value of Rs 8,69,290/- CIF (redetermined CIF value Rs 50,44,567/-) imported in the name of M/s Davison Electronics and the goods of the declared value of Rs 48,82,802/- CIF (redetermined CIF value Rs 5,44,10,001/-) imported in the name of M/s. J.S. Traders imported and cleared at Mumbai port; and the goods of the declared value of Rs 10,15,672/- CIF (redetermined CIF value Rs 1,20,20,991/-) imported and cleared in the name of M/s. B.V. Enterprises at Mumbai port (details as per Annexure A-1 to SCN) are liable to confiscation under Section 111(m) of the Customs Act, 1962.

26.6 Noticee-1 & 2 have argued that since no goods are under seizure the confiscation cannot be ordered. Noticees have relied upon the case law of **Haniff Shabbir Bros**³⁸ in which the Adjudicating Authority had passed an order for penalty without holding the goods liable for confiscation. Whereas in the present case there is a proposal to confiscate the goods in the SCN and sufficient grounds have been given in the SCN to hold that goods are liable for confiscation. Thus the present case is different from Hanif Shabbir Bros.

26.7 I find that the impugned goods have already been cleared from the port and not available for confiscation. I find that in terms of Section 125 of the Customs Act, 1962 there is an option to pay fine in lieu of confiscation. Section 125 is reproduced below for the sake of brevity:

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

³⁸ Haniff Shabbir Bros vs COLLECTOR OF CUSTOMS, MADRAS- 1997 (96) ELT 27 (Mad).

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

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

26.8 I find that the Hon'ble High Court of Chennai, in the case of **Visteon Automotive Systems India Limited**³⁹, has held that availability of goods is not necessary for imposing redemption fine. Vide the said order it was inter alia held that "*....opening words of Section 125, "Whenever confiscation of any goods is authorised by this Act", brings out the point clearly. The power to impose redemption fine springs from the authorisation of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act.*

26.9 I find that the above view of the Hon'ble Madras High Court was relied upon by Hon'ble Gujarat High Court in the case of **M/s. Synergy Fertichem Pvt. Ltd**⁴⁰. Hon'ble Gujarat High Court at para 174 and 175 held that *We would like to follow the dictum as laid down by the Madras High Court in Para-23 in the case of Visteon Automotive Systems India Limited Vs CESTAT, Chennai.*

26.10 Hence, I conclude that redemption fine is imposable on imported goods even if they have been cleared from the customs port and are not presently available for confiscation.

27. Penalty under sections 112(a), 112(b), Section 114A and Section 114AA on the persons and firms involved.

27.1 I find that the notice proposed imposition of penalty on the following persons and firms as detailed in table below:

³⁹ Visteon Automotive Systems India Limited Vs CESTAT, Chennai-2018 (9) G.S.T.L. 142 (Mad.)

⁴⁰ M/s. Synergy Fertichem Pvt. Ltd reported in 2020 (33) G.S.T.L. 513 (Guj.)

Table-17

Sr. No.	Penalty proposal in respect of Bills of Entry No.	Importer Name	Proposal for imposition of penalty on	Penalty proposal under section of the Act
1.	830272 dated 24.03.2008 and 836874 dated 28.04.2008	M/s Davison Electronics	M/s Davison Electronics	112(a) / 112(b) or 114A & 114AA
			Shri Harvinder Singh	112(a) / 112(b) or 114A & 114AA
			Shri Ashwanii Dham	112(a), 112(b) & 114AA
2.	817121 dated 11.01.2008	M/s B.V. Enterprises	M/s B.V. Enterprises	112(a) / 112(b) or 114A & 114AA
			Shri Kamal Kumar Awasthi	112(a) / 112(b) or 114A & 114AA
			Shri Harvinder Singh	112(a) / 112(b) or 114A & 114AA
			Shri Ashwanii Dham	112(a), 112(b) & 114AA
3.	782434 dated 26.07.2007, 789175 dated 29.08.2007, 796245 dated 01.10.2007, 799664 dated 18.10.2007, 811653 dated 14.12.2007, 822319 dated 07.02.2008 and	M/s J.S. Traders	M/s J.S. Traders	112(a) / 112(b) or 114A & 114AA
			Shri Harvinder Singh	112(a) / 112(b) or 114A & 114AA

825480 dated 25.02.2008		Shri Ashwanii Dham	112(a), 112(b) & 114AA
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27.2 Noticee-1 argued that the proposition to levy penalty under Section 114A proposed on him for the imports made by M/s Davison Electronics and M/s B.V Enterprises is untenable. It is well settled that penalty under Section 114A can be imposed only on the importer. Duty can be demanded only from a person who is liable to pay duty i.e. an importer, more than one importer is not envisaged under Section 28 of the Customs Act for recovery of duty. Noticee on this point relied upon **Jupitor Exports**⁴¹. Noticee argued that nobody other than M/s B.V Enterprises and M/s Davison Electronics could be imposed a penalty under Section 114A on imports made on Bills of Entry filed by them. Noticee argued that demand can be made from the Partnership Firm only, in whose name the BoEs has been filed. Under the tax laws, Partnership has a different identity from the partners. Noticee on this point relied upon **Nityanand Nirmal**⁴².

27.3 Shri Harvinder Singh is the active partner in M/s. Davison Electronics and Proprietor in M/s. J.S. Traders. Shri Kamal Kumar Awasthi is the proprietor in M/s. B.V. Enterprises. Shri Harvinder Singh in his voluntary statements recorded before DRI on various dates has accepted that he undervalued the electronic goods by over 10 times, imported from M/s. Cosmo Trading Co. and M/s Chee Lin Exports of Hong Kong in conspiracy with Shri Vijay Kumar Choithramani in Hong Kong. Shri Vijay Kumar used to ship the goods. The invoices used to be sent by Fax or courier. These invoices showing lower value were submitted to the Customs Department in India. Shri Vijay Kumar, owner of M/s. Cosmo Trading Co. and M/s Chee Lin Exports used to collect the differential amount from Shri Harvinder Singh after negotiating in person or he used to nominate certain persons in Delhi to collect the differential amount in cash. Shri Kamal Kumar Awasthi in his voluntary statement before DRI accepted that he was working for M/s. Davison Electronics and was looking after the account works and marketing of their goods. On the advice of Shri Harvinder Singh, he obtained the IEC code number (0506057437) in the name of M/s BV Enterprises. The understanding between him and Shri Harvinder Singh was that Shri Harvinder Singh will import electronic goods in the name of his proprietary concern M/s B.V. Enterprises for a monthly consideration of Rs.4000/- in cash. He never met the CHA who used to clear the goods. As directed by Shri Harvinder Singh, he used to sign blank cheques, blank letter heads of M/s B.V. Enterprises, blank slips for issuance of demand draft, mainly for customs duty payment even for remittances to foreign suppliers and used to hand over these to him. He also used to sign customs declarations and handed them over to Shri Harvinder Singh.

⁴¹ Jupitor Exports vs Commissioner of Cus. (Genl.), Mumbai-2001(131) ELT 147 (T)

⁴² Nityanand Nirmal vs Collector of C. Ex., Indore- 1999 (109) ELT 522 (T)

27.4 Thus, I find that both, Shri Harvinder Singh and Shri Kamal Kumar Awasthi, partner and proprietor in the importing firms were hands in glove in perpetrating this import fraud by grossly undervaluing the imported electronic goods resulting in evasion of customs duty of Rs. 2,22,82,940/- .

27.5 Thus, I find that the importer firms M/s Davison Electronics, M/s B.V. Enterprises and M/s J.S. Traders are liable for penalty under section 112(a) of the Act for their acts of omission and commission as discussed above rendering the goods liable for confiscation. These three importer firms are also liable for penalty under section 114A of the act for evading customs duty of Rs. 2,22,82,940/- for their various acts amounting to wilful misstatement and suppression of facts as discussed above. Out of both penalties under section 112(a) and 114A , only one can be imposed. I also find that these three importer firms have produced false invoices before the customs department at the time of clearance of goods. Hence they are also liable for penalty under section 114AA of the Act.

27.6 From the discussion in the above paras, undervaluation in the imported goods by over 10 times stands established rendering the goods imported liable for confiscation under section 111(m) resulting in short levy of customs duty of around Rs. 2.22 crores. I find that Shri Harvinder Singh played a pivotal role in the conspiracy to evade duty in this case. He finalised all the arrangements with the overseas suppliers to undervalue the goods imported by him to evade payment of appropriate Customs duty. He also entered into an agreement with the proprietor of M/s. B.V. Enterprises for allowing him to import the goods in the name of the firm M/s. B.V. Enterprises. Shri Harvinder Singh imported the goods in the name of the firms M/s Davison Electronics, M/s B.V. Enterprises and M/s J.S. Traders and got the same cleared on the basis of fabricated and manipulated invoices. The remittance in respect of the imported goods, to the extent of value declared to the Customs authorities in India, was arranged by Shri Harvinder Singh through a banking channel. The remaining amount i.e. the differential value was paid by Shri Harvinder Singh in cash in India to Vijay Kumar (Owner of M/s Chee Lin Exports and M/s Cosmo Trading Co.) or to a representative of him as deposed by Shri Harvinder Singh in his statement dated 10.11.2009. Further, Shri Harvinder Singh acquired possession of and / or was concerned in carrying, keeping, purchasing or selling the aforesaid goods in respect of all the firms, knowing or having reason to believe that the said goods were liable to confiscation under the provisions of Section 111(m) of the Customs Act, 1962 as discussed in above paras. **The said act renders, Shri Harvinder Singh, liable to penalty under Section 112(b) of the Customs Act, 1962 in relation to the goods imported in the name of firm M/s B.V. Enterprises.** I find that as discussed above demand under Section 28(4) is sustainable in the present case in respect of above mentioned bills of entry. Where demand is sustainable under Section 28(4), penalty is imposable under Section 114A of the Customs Act, 1962. **Thus, I hold that M/s Davison Electronics (Active Partner:Shri Harvinder Singh) is**

liable for penalty under Section 114A of the Act in respect of the goods imported in the name of firm M/s Davison Electronics, M/s J.S. Traders (Proprietor: Shri Harvinder Singh) is liable for penalty under Section 114A of the Act in respect of the goods imported in the name of firm M/s J.S. Traders and M/s B.V. Enterprises (Proprietor:Shri Kamal Kumar Awasthi) is liable for penalty under Section 114A of the Act in respect of the goods imported in the name of firm M/s B.V. Enterprises. I find that Shri Harvinder Singh, in relation to the goods imported in the name of all the three firms, knew or had reason to believe that the documents and the declarations submitted under the respective 10 bills of entry, filed by the said importing firms, are false or incorrect in their material particulars. Despite this, Shri Harvinder Singh, knowingly made, signed or caused to be made or signed false or incorrect declarations under the above mentioned respective bills of entry. **Thus, I hold that Shri Harvinder Singh is liable for penalty under Section 114AA of the Customs Act, 1962 in relation to the goods imported in the name of firms M/s Davison Electronics, M/s B.V. Enterprises and M/s J.S. Traders.** I find that Shri Kamal Kumar Awasthi, in relation to the goods imported in the name of firm M/s B.V. Enterprises, knew or had reason to believe that the documents and the declarations submitted under the respective bill of entry, are false or incorrect in their material particulars. Despite this, Shri Kamal Kumar Awasthi, signed all the documents and verified the same. **The said act of Shri Kamal Kumar Awasthi renders him liable for penalty under Section 114AA of the Customs Act, 1962 in relation to the goods imported in the name of firm M/s B.V. Enterprises.**

27.7 Noticee-2 has opposed penalty under section 112 (a) and/or (b) of the Customs Act, 1962 on the ground that the goods are not liable to confiscation under Section 111 (d) and (m) of the Customs Act, 1962, and further relied upon the case laws of **Hanif Shabbir Brothers⁴³(Penalty not imposable under Section 112 when goods not liable to confiscation)**. I find that the ratio decided in the **Hanif Shabbir Brothers (supra)** is not applicable as the confiscation of goods has been upheld in the present case.The Noticee-2 has also relied upon **CC Vs Finesse Creation⁴⁴** where the ratio is confiscation not arises if goods are not available for confiscation and consequent redemption. I find that the Hon'ble Madras High Court in **Visteon Automotive Systems(supra)** and the Hon'ble Gujarat High Court in **Synergy Fertichem Pvt.(supra)**, has held that goods physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act. Hence, I find that, the noticees argument that when goods are not available for confiscation **penalty not imposable under Section 112, is not correct.**

27.8 I find that the SCN proposed a penalty on Shri Ashwanii Dham (Noticee-3) under Section 112(a), Section 112(b) and Section 114AA of the Customs Act, 1962. Noticee-3 on this point in their submissions submitted that an order of remand for a de novo adjudication

⁴³ Hanif Shabbir Brothers vs Collector of Customs, Madras- 1999 (96) ELT 27 (Mad)

⁴⁴ CC Vs Finesse Creation -2009 (248) ELT 122 (Bom)

by the Hon'ble Tribunal will not deprive him of the setting aside penalty under Section 112(b) and 114AA of the Customs Act, 1962 in entirety and imposition of no penalty as regards to clearances made in respect of M/s. Davison Electronics and M/s. J.S.Traders in erstwhile Order dated 14-10- 2013 (Para 46(1), 46(i) and 46(1) of the Order dated 24-6-2013]. Noticee in this regard, placed reliance on the judgements / decisions in the cases **Banshi Dhar Lachhman Prasad**⁴⁵, **SPL Industries Limited**⁴⁶ and **Gautam Diagnostic Centre**⁴⁷. These case laws are on the ratio that in 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. In the present case, the Hon'ble Tribunal has specifically mentioned in its remand order that "*the adjudicating authority to decide the issue first, from whom the duties to be demanded and thereafter if required impose the penalties*" (emphasis added). It implies that the Hon'ble Tribunal in its remand order has given freedom to the Adjudicating Authority to decide the appropriate and reasonable quantum of penalties.

27.9 Noticee-3 has further argued that he was not aware of the FOB declarations made at Hong Kong and in the absence of knowledge of alleged undervaluation, the proposal to impose a penalty on the Noticee is not sustainable. An allegation was made that interest in the imported goods was shown by persons other than IEC holder. It is relevant to note that the statement of the IEC holder was recorded during investigations and they were found very much in existence. Noticee in this regard relied upon case law of **Proprietor Carmel Exports & Imports**⁴⁸. As discussed above, I have already held the importer firms, whose names appear on the bills of Entry and on the TR-6 challans used for making payment of differential customs duty, as persons liable to pay the duty under section 28.

27.10 I find that Noticee – 3, who is the Director of the CHA firm has admitted in his voluntary statement dated 10.11.2009 that though he attended to the custom clearance of the said 10 consignments, he never met the proprietor of M/s B.V. Enterprises and he never visited or verified the address of the three importer firms. As per obligations of Customs House Agents (CHA) in the "Custom House Agent Licensing Regulations-2004", the CHA has to exercise due diligence to ascertain the correctness of any information which he imparts to the client with reference to any work related to clearance of cargo or baggage. The CHA shall also verify correctness of Importer Exporter Code (IEC) No., identity of his client and functioning of his client at the declared address by using reliable independent authentic documents, data or information.

27.11 In the present case through enquiry from the Hong Kong Trade Office, it has been found that the 10 consignments were grossly under-valued by over 10 times. Most of the

⁴⁵ Banshi Dhar Lachhman Prasad & Anr-1978 (2) E.L.T. (J 385) (S.C.)

⁴⁶ SPL Industries Limited vs Commissioner of Central Excise, New Delhi-II-2003(159) ELT 720(T)

⁴⁷ Gautam Diagnostic Centre vs Commissioner Of Customs, Mumbai-2003(159) ELT 678(T)

⁴⁸ Proprietor Carmel Exports & Imports reported in 2012 (276) ELT, 505 (Ker)

items were in the nature of commonly used items relating to car CD player, MP3 player etc. The CHA could not have missed the gross under-valuation in such items even by visual inspection. More than 10 times under-valuation is not a trade dispute but a serious fraud and people involved in the clearance of such goods have been termed as conspirators by the SCN. Thus, Noticee – 3 by his acts of omission and commission has rendered the goods liable to confiscation under Section 111(m) of the Act and therefore, he is liable for penalty under Section 112(a) of the Customs Act 1962. The Noticee – 3 has filed forged and false invoices in the said 10 consignments before the Customs Department. The values were so grossly under-valued so as not to escape the attention of an ordinary, prudent and rational person. Also the action of the Noticee – 3 in not verifying the address and not meeting the owner of M/s B.V. Enterprises shows collusion on his part with the fraudulent importers.

27.12 In this regard, I find that in the case of **Noble Agency v. Commissioner of Customs, Mumbai**⁴⁹, the Division Bench of the CEGAT, West Zonal Bench, Mumbai observed:-

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

27.13 The aforesaid observations of the CEGAT, West Zonal Bench, Mumbai was approved by Hon'ble Apex Court in the case of **K.M. Ganatra & Co**⁵⁰ and it was held that misconduct on behalf of CHA had to be viewed seriously. Thus, in view of his act of aiding the production of false invoices and trade documents before the Customs Department, I find the Noticee – 3 liable for penalty under Section 114AA of the Customs Act 1962. Since the penalty under Section 112(a) has been found to be imposable on Noticee – 3, the penalty under Section 112(b) is ruled out.

⁴⁹ Noble Agency v. Commissioner of Customs, Mumbai [2002 (142) E.L.T. 84 (Tri. -Mumbai)]

⁵⁰ K.M. Ganatra & Co [2016(332) E.L.T. 15 (S.C.)]

28. Accordingly, I pass the following order:-

ORDER

28.1 In respect of goods covered under bills of entry no. 830272 dated 24.03.2008 and 836874 dated 28.04.2008 of M/s Davison Electronics.

- (i) I reject the value of the goods declared under the above bills of entry under the provisions of Section 14(1) of the Customs Act 1962 read with the provisions of Rule 12(1) of the Customs Valuation Rules 2007;
- (ii) I redetermine the value of the said goods combinedly as **Rs. 50,95,012/-** (Rupees fifty lakh ninety five thousand & twelve only) (details as per Annexure A-1 to the Show Cause Notice) under Section 14(1) of the Customs Act 1962 read with Rule 3(1) adjusted in accordance with Rule 10 of Customs Valuation (Determination of value of the imported goods) Rules 2007;
- (iii) I confirm the differential duty amounting to **Rs. 13,24,973/-** (Rupees thirteen lakh twenty four thousand nine hundred & seventy three only) leviable on the basis of the above stated value of Rs 50,95,012/- (details as per Annexure A-2 of SCN) under the provisions of Section 28 of the Customs Act, 1962, with applicable interest under the provisions of Section 28AB (28 AA w.e.f 08.04.2011) of the Customs Act, 1962 and the same shall be recovered from M/s Davison Electronics (Active Partner : Shri Harvinder Singh);
- (iv) I appropriate an amount of **Rs 12,98,037/-** (Rupees twelve lakh ninety eight thousand & thirty seven only) paid voluntarily by M/s Davison Electronics against the above stated confirmed differential duty, in respect of the goods imported by M/s Davison Electronics;
- (v) I confiscate the goods of the declared value of Rs 8,69,290/- CIF(redetermined value of Rs 50,95,012/-)(details as per Annexure A-1 to the show cause notice)under Section 111 (m) of the Customs Act, 1962; However, in lieu of the confiscation, I impose a Redemption Fine of **Rs. 5,00,000/- (Rs. five lakh only)**.
- (vi) I impose a penalty of **Rs 13,24,973/-** (Rupees thirteen lakh twenty four thousand nine hundred & seventy three only) alongwith interest, if any, under **Section 114A** of the Customs Act, 1962 on M/s Davison Electronics . If the duty and interest as demanded above is paid within 30 days of communication of this order, the amount of penalty imposed would be 25% of the duty and interest as per first proviso to Section 114A ibid subject to the condition that the amount of penalty so determined is also paid within the said period of thirty days.



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(vii) Since I have imposed a penalty under section 114A on the importer firm , I refrain from imposing a penalty under section 112(a) or (b) on the importer firm and its active partner.

(viii) I impose a penalty of **Rs.3,00,000/-** (Rupees three lakh only) under Section 114AA of the Customs Act, 1962 on Shri Harvinder Singh, Partner, M/s Davison Electronics.

(ix) I impose a penalty of **Rs.10,000/-** (Rupees ten thousand only) under Section 112(a) of the Customs Act, 1962 on Shri Ashwanii Dham, Director, M/s Sai Dutta Clearing Agency.

(x) I impose a penalty of **Rs.20,000/-** (Rupees twenty thousand only) under Section 114AA of the Customs Act, 1962 on Shri Ashwanii Dham, Director, M/s Sai Dutta Clearing Agency.

28.2 In respect of goods covered by bill of entry no. 817121 dated 11.01.2008 of M/s B.V. Enterprises :-

(i) I reject the value of the goods declared under the above bill of entry under the provisions of Section 14(1) of the Customs Act 1962 read with the provisions of Rule 12(1) of the Customs Valuation Rules 2007.

(ii) I redetermine the value of the said goods as **Rs. 1,21,41,201/-** (Rupees one crore twenty one lakh forty one thousand two hundred & one only) (details as per Annexure A-1 to the Show Cause Notice) under Section 14 (1) of the Customs Act, 1962 read with Rule 3(1) adjusted in accordance with Rule 10 of the Customs Valuation (Determination of value of the imported goods) of the Customs Valuation, Rules, 2007.

(iii) I confirm the differential duty amounting to **Rs 37,93,756/-** (Rupees thirty seven lakh ninety three thousand seven hundred & fifty six only) leviable on the basis of the above stated value of Rs 1,21,41,201/- (details as per Annexure A-2 of SCN) under Section 28 of the Customs Act, 1962, alongwith interest under the provisions of Section 28AB (28AA wef 08.04.2011) of the Customs Act, 1962 and the same shall be recovered from M/s B.V. Enterprises (Proprietor : Shri Kamal Kumar Awasthi) ;

(iv) I appropriate an amount of **Rs 36,93,321/-** (Rupees thirty six lakh ninety three thousand three hundred & twenty one only) paid voluntarily by M/s B.V. Enterprises against the above stated confirmed differential duty, in respect of goods imported in the name of firm M/s B.V. Enterprises.

(v) I confiscate the goods of the declared value of Rs 10,15,672/-(redetermined value of Rs 1,21,41,201/- (details as per the Annexure A-1 to the show cause notice) under



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Section 111(m) of the Customs Act, 1962: However, in lieu of the confiscation, I impose a Redemption Fine of **Rs. 12,00,000/-** (Rupees twelve lakh only).

(vi) I impose a penalty of **Rs. 37,93,756/-** (Rupees thirty seven lakh ninety three thousand seven hundred & fifty six only) alongwith interest, if any, **under Section 114A** of the Customs Act, 1962 on the importer firm M/s B.V. Enterprises . If the duty and interest as demanded above is paid within 30 days of communication of this order, the amount of penalty imposed would be 25% of the duty and interest as per first proviso to Section 114A ibid subject to the condition that the amount of penalty so determined is also paid within the said period of thirty days.

(vii) Since I have imposed a penalty under section 114A on the importer firm , I refrain from imposing a penalty under 112(a) or (b) on the importer firm and its proprietor.

(viii) I impose a penalty of **Rs.3,70,000/-** (Rupees three lakh seventy thousand only) **under Section 114AA** of the Customs Act, 1962 on Shri Kamal Kumar Awasthi, Proprietor, M/s B.V. Enterprises.

(ix) I impose a penalty of **Rs.1,85,000/-** (Rupees one lakh eighty five thousand only) **under Section 112(b)** of the Customs Act, 1962 on Shri Harvinder Singh.

(x) I impose a penalty of **Rs.7,00,000/-** (Rupees seven lakh only) under Section 114AA of the Customs Act, 1962 on Shri Harvinder Singh.

(xi) I impose a penalty of **Rs.20,000/-** (Rupees twenty thousand only) under Section 112(a) of the Customs Act, 1962 on Shri Ashwanii Dham, Director, M/s Sai Dutta Clearing Agency.

(xii) I impose a penalty of **Rs.40,000/-** (Rupees forty thousand only) under Section 114AA of the Customs Act, 1962 on Shri Ashwanii Dham, Director, M/s Sai Dutta Clearing Agency.

28.3 In respect of goods covered by bill of entry no. 782434 dated 26.07.2007, 789175 dated 29.08.2007, 796245 dated 01.10.2007, 799664 dated 18.10.2007, 811653 dated 14.12.2007, 822319 dated 07.02.2008 and 825480 dated 25.02.2006 of M/s J.S.Traders:-

(i) I reject the value of the goods declared under the above bills of entry under the provisions of Section 14(1) of the Customs Act, 1962 read with the provisions of Rule 12(1) of the Customs Valuation Rules, 2007.

(ii) I redetermine the value of the said goods combinedly as **Rs. 5,49,54,101/-** (Rupees five crore forty nine lakh fifty four thousand one hundred & one only) (details



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as per Annexure A-1 to the Show Cause Notice) under Section 14 (1) of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation Rules, 2007.

(iii) I confirm the differential duty amounting to **Rs. 1,71,64,211/-** (Rupees one crore seventy one lakh sixty four thousand two hundred & eleven only) leviable on the basis of the above stated value of Rs 5,49,54,101/- (details as per Annexure A-2 of SCN) under the provisions of Section 28 of the Customs Act, 1962, alongwith applicable interest under the provisions of Section 28AB (28 AA wef 08.04.2011) of the Customs Act, 1962 and the same shall be recovered from M/s J.S. Traders (proprietor: Shri Harvinder Singh).

(iv) I appropriate an amount of **Rs. 1,21,05,472/-** (Rupees one crore twenty one lakh five thousand four hundred & seventy two only) paid voluntarily by M/s J.S. Traders against the above stated confirmed differential duty in respect of goods imported by M/s J.S. Traders.

(v) I hold the goods of the declared value of Rs 48,82,802/- CIF (redetermined value of Rs 5,49,54,101/-details as per Annexure A-1 to the show cause notice) liable for confiscation under Section 111 (m) of the Customs Act, 1962; However, in lieu of confiscation, I impose a Redemption Fine of **Rs. 54,00,000/-** (Rupees fifty four lakh only).

(vi) I impose a penalty of **Rs. 1,71,64,211/-** (Rupees one crore seventy one lakh sixty four thousand two hundred & eleven only) alongwith interest, if any, under Section 114A of the Customs Act, 1962 on M/s J.S. Traders. If the duty and interest as demanded above is paid within 30 days of communication of this order, the amount of penalty imposed would be 25% of the duty and interest as per first proviso to Section 114A ibid subject to the condition that the amount of penalty so determined is also paid within the said period of thirty days.

(vii) Since I have imposed a penalty under section 114A on the importer firm , I refrain from imposing a penalty under section 112(a) or (b) on the importer firm and its proprietor.

(viii) I impose a penalty of **Rs.35,00,000/-**(Rupees thirty five lakh only) under Section 114AA of the Customs Act, 1962 on Shri Harvinder Singh, Proprietor, M/s J.S. Traders.

(ix) I impose a penalty of **Rs.50,000/-** (Rupees fifty thousand only) under Section 112(a) of the Customs Act, 1962 on Shri Ashwanii Dham, Director, M/s Sai Dutta Clearing Agency.



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(x) I impose a penalty of **Rs.1,00,000/-** (Rupees one lakh only) under Section 114AA of the Customs Act, 1962 on Shri Ashwanii Dham, Director, M/s Sai Dutta Clearing Agency.

Vivek
28.02.2023

(Vivek Pandey)

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



To

1. Shri Harvinder Singh (Partner, M/s Davison Electronics & Proprietor, M/s J.S. Traders), C-208, Greater Kailash Part-I, New Delhi-110048.
2. Shri Kamal Kumar Awasthi (Proprietor, M/s B.V. Enterprises), House No. 1/6562, Galli No. 5, East Rohtash Nagar, Shahdara, Delhi- 110032.
3. Shri Ashwanii Dham, Director of M/s Sai Dutta Clearing Agency(CHA) , 201, Madhuban Bldg, Cochin Street, Mumbai- 400001.

Copy for information and necessary action to:

1. The Principal Chief Commissioner of Customs, NCH, Zone-I, Mumbai.
2. The Additional Director General, Directorate of Revenue Intelligence, MZU, Mumbai.
3. ADG(CEIB) ,Central Economic Intelligence Bureau, Janpath Bhavan, B-Wing, 6th Floor, New Delhi -110001.
4. The Asst. / Dy. Commissioner of Customs, Group VB, NCH, Mumbai.
5. The Asst. / Dy. Commissioner of Customs, Prosecution Cell, NCH, Mumbai.



6. Notice Board.
7. Office Copy



