



भारत सरकार

वित्त मंत्रालय/ राजस्व विभाग
केंद्रीय अप्रत्यक्ष कर एवं सीमाशुल्क बोर्ड – मुंबई अंचल-1, भारतीय सीमाशुल्क
आयुक्त सीमाशुल्क (आयात-1) का कार्यालय
द्वितीय मंजिल, नवीन सीमाशुल्क भवन, शूरजी वल्लभदास मार्ग, बेलाई एस्टेट,
मुंबई-400001.

दूरध्वनि-22757401 फैक्स-22757402

ई-मेल: adjn-commr-imp1nch@gov.in

फा.सं. : CUS/AG/MISC/1291/2022/GR.V(AB) O/o. COMMR-CUS-IMP-I-ZONE-I-MUMBAI

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

आदेश दिनांक: 31.07.2023
जारी दिनांक: 22.08.2023

सी.ए.ओ. क्रमांक : 34/2023-24/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I)
DIN No. 2023087700000000B9D6

मूल आदेश

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



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

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F.No. CUS/AG/MISC/1291/2022/GR.V(AB) O/o. COMMR-CUS-IMP-I-ZONE-I-MUMBAI

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

Date of Order: 31.07.2023
Date of Issue: 22.08.2023

C.A.O. No.: 34/2023-24/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I)
DIN No. 2023087700000000B9D6

ORDER-IN-ORIGINAL

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

Subject: - Second round adjudication of Show Cause Notice¹ dated 08.02.2012 issued vide F. No. SG/INV-35/BC/2010 SIIB(I) in light of observations of Hon'ble CESTAT in Order No. A/85410-85411/2023 dated 21.03.2023² remanding back the Order-in-Original No. 47/2013/CAC/CC(I)/AB/Gr. VB³ dated 28.03.2013 regarding evasion of customs duty of Rs. 80,30,113/- by undervaluation in import of old & used barge by M/s Jayesh Shipping Pvt Ltd.

BRIEF FACTS OF THE CASE

Information was gathered by the Special Investigation and Intelligence Branch (Import), that one vessel by name "Sarku Utama" was imported by **M/s Jayesh Shipping Pvt Ltd⁴** for home consumption and for which a checklist dated 17.06.2011 was filed through CHA M/s H.T. Shah & Sons and the subject vessel was cleared under Bill of Entry No. 3864583 dated 22.06.2011 by undervaluing the vessel and thereby evading duty in huge amount. On going through the website of supplier M/s Sarku Marine the details of subject vessels were downloaded and it was observed that as per the specifications of the barge, the value of the subject vessel declared in the Bill of Entry appeared to be much lesser though the vessel was manufactured in the year 1981 and in view of this the enquires into the present import covered under Bill of Entry No. 3864583 dated 22.06.2011 was taken up by S.I.I.B(I).

2. Search was conducted at the office of M/s Jayesh Shipping Pvt Ltd. at Plot No. 5/33, Sewree Premises co-op Society, Sewree Bunder Road, Sewree (East), Mumbai-15, on 19/07/2011, wherein number of incriminating documents with respect to the Work Accommodation Barge "Sarku Utama" and other imported barges were seized. The office of the CHA M/s H.T. Shah and Sons was also searched on 19/07/2011 and documents pertaining to clearance of the Tug Sarku Utama, Ravensturm and other barges were seized. Documents were also called from the Appraising Group VB, NCH, Mumbai from where the said Accommodation barge was cleared from Customs.

3. Statement of the CHA Mr. Mahendra H. Shah, CHA No 11/440, of M/s H.T. Shah and Sons, was recorded under Section 108 of **the Customs Act, 1962⁵** on 05.08. 2011, wherein he interalia stated that he was a Partner of M/s H.T. Shah and Sons, a Custom House Agent; he was handling, preparing documents, appearing before Customs authority for assessment of documents filed, attending Customs examination of the goods sought to be imported and exported. He affirmed that he had attended the clearance of imported goods arrived in the name of M/s Jayesh Shipping Pvt Ltd., 33, Sewree Premises Co-OP Society, Plot No.5, Sewree Bunder Road, Sewree (E), Mumbai- 400015 at Mumbai Port;

¹ Hereinafter also referred to as the SCN

² Hereinafter also referred to as the CESTAT Order

³ Hereinafter also referred to as the 1st OIO

⁴ Hereinafter referred as Importer/Noticee

⁵ Hereinafter also referred to as the Act

Vishal
31.07.23



that he came in contact with M/s Jayesh Shipping Pvt Ltd. through Shri Awate, Director of M/s Gananayak Maritime Agencies, Pvt Ltd, 178/65, 3rd Floor, C. K. Bldg., S.T. Road, Masjid Bunder, Mumbai-400 009; that M/s Gananayak Maritime Agencies Pvt Ltd., was a shipping agent handling the work of M/s Jayesh Shipping Pvt Ltd.

4. Further on being asked he replied that they had obtained the authorization to handle work of clearance of imported goods arrived in the name M/s Jayesh Shipping Pvt Ltd. through M/s Gananayak Maritime Agencies Pvt Ltd.; that the said authorization was for the import clearance of Work Accommodation Barge "Sarku Utama" with bunker for Tug RAVENSTUFM at Mumbai in the name of M/s Jayesh Shipping Pvt Ltd. M/s Gananayak Maritime Agencies Pvt Ltd. handed over the import documents pertaining to Accommodation barge Sarku Utama with bunker for Tug RAVENSTUFM arrived at Mumbai in the name of M/s Jayesh Shipping Pvt Ltd. for clearance through customs, to them under their letter dated 22.06.2011.

5. The Mercantile Marine Department, D. G. Shipping was addressed a letter dated 18/07/2011 and the documents filed by M/s Jayesh Shipping Pvt Ltd. for registration of the barge and issuance of the General Trading License was called for investigation, The Mercantile Marine Department vide their letter dated 19/07/2011 forwarded the following documents filed with them for Registration and Issuance of General Trading Licence.

- a. Name approval letter with duly endorsed carving and Marking.
- b. Bill of Sale.
- c. Memorandum of Agreement.
- d. Certificate of Class.
- e. Provisional Certificate of Registry.
- f. Letter dated 21/06/2011 from the Owner for Registry.
- g. Letter dated 01/06/2011 from M/s Jayesh Shipping Pvt Ltd requesting Name, Official Number, and Provisional Registry.
- h. Copy of Previous Registry.

6. The documents received from Mercantile Marine Department and the records taken over from the offices were scrutinised and the following evidences were brought on record of the investigation.

6.1. Bill of Sale dated 7th June, 2011 and the Memorandum of Agreement dated 9th December, 2010: - From this document it was evident that M/s Jayesh Shipping Pvt Ltd, Mumbai had purchased the Work Accommodation Barge from M/s Sarku Marine Engg Service SDN BHD Selangor Darul Ehsan, Malaysia. The consideration amount for sale of the said Accommodation barge as recorded in the Bill of Sale was US D 2,500,000.00/- and the barge was to be delivered at Belapur, Mumbai, West Coast of India.

6.2. Allotment of Name and Official Number letter dated 10/06/2011 from D G Shipping, Mumbai: - On application by M/s Jayesh Shipping Pvt Ltd, the MMD, Mumbai allotted the name of "Offshore Rani" and Official Number M-7739 to the Work Accommodation Barge "Sarku Utama".

6.3. Certificate of Malaysia Registry: The Work barge "Sarku Utama" was built in Singapore in the year 1980. The barge Registration was deleted from the Malaysian Registry before being registered with the Registrar of Indian Ships.

6.4. Certificate of Class dated 18th January, 2010: - The subject barge was under the Class- Indian Register of Shipping. From January, 2010 and the class was valid till 31st August, 2010.

6.5. Provisional certificate of Registry dated 30th June, 2011: - The Work Accommodation Barge "Offshore Rani" was registered under the India Flag by the name "Offshore Rani" by the MMD, Mumbai.

6.6. Bill of Entry No 3864583 dated 22/06/2011: - The Importer had filed the Bill of Entry through his CHA, M/s H.T. Shah and Sons for clearance of the said barge. The barge was classified under the CTH 89059090 and the Notification No 21/2002 Sr No 353. The CIF value of the barge "Sarku Utama" along with its accessories and equipments was declared at Rs. 11,75,78,982/- (USD 25,00,000.00/-) and the same was assessed to Rs. 11,81,11,138/-. The Customs duty leviable on the said barge on the declared value was Rs. 1,78,11,448.60/- which was paid by the Importer vide Challan No 2001443378 dated 29th June, 2011. The Importer had also furnished a Bond that the said barge was for trading and not for breakup.

6.7. Valuation report dated 16th December, 2010 of **M/s Dheeraj Offshore Surveyors and Adjusters Pvt Ltd**⁶ valued the subject barge "Sarku Utama" at Rs. 15 Crore: - M/s Jayesh Shipping Pvt Ltd had applied for Loan for payment against the purchase of the Work Accommodation Barge "Sarku Utama" with **M/s Saraswat Co-operative Bank**⁷. The Bank in turn had hired Dheeraj Offshore, Mumbai to Survey the value of the said barge. The Surveyors had surveyed the barge on 11th December, 2010 and valued the said barge at Rs. 15 Crore in their valuation report Ref No DOSA/0509/2010-2011 dated 16th December, 2010. Further in their report they had certified that all the statutory certificates including life rafts, firefighting and safety equipments of the said barge had expired.

7. Marine Hull Insurance for Hull and Machinery of **M/s Oriental Capital Assurance Berhad, Malaysia**⁸- Insurance value of the barge was USD 4,000,000.00/- :- The Policy No 92-313-10 000320, for insurance of the said barge as issued to the earlier owner M/s Sarku Engineering Services SON BHD for the period 01st September 2010 to

⁶ Hereinafter also referred to as Dheeraj Offshore

⁷ Hereinafter also referred to as Saraswat Bank

⁸ Hereinafter also referred to as Oriental Capital

31st August, 2011 (valid when the investigations were taken over) had Insured the barge Value of USD 4,000,000.00/-.

8. The Importer had submitted valuation report of the Valuer **M/s M. R. Shenvi and Associates**⁹, before the Customs Authorities at the time of assessment and clearance of subject barge, as required under the Circular No 4/2008 Cus dated 12/02/2008, Issued from F No 467/34/2006- Cus-V by CBEC. However, on scrutiny of the CE certificate it was found that the said Valuation Certificate lacked required details as per the Board's circular are as follows.

- a. CIF value of the New Machinery in the Year of Manufacture.
- b. Sale price of the supplier.
- c. The certificate is silent on reconditioning or repairs carried out and cost, as the year of manufacturing is shown as 1981.
- d. Expected life span.

9. In view of the above paras, the Valuation report did not appear to have been issued in terms of the above Board's instruction. The CE certificates did not provide the information about important parameters as stipulated in Para 8 of the Board Circular 4/2008-Cus dated 21/02/2008, Particularly in absence of price of a new identical machine in the year of manufacture i.e. in 1981, (by virtue of which the depreciated value can be arrived at per instructions vide F. No. 493/124/86-cus VI dated 19.11.87), it was not possible to assail the correctness of the declared value based on the submitted CE certificate. It was further observed that the said Valuer was not an approved valuer for Customs. In view of the above it appeared that the value quoted by the importer for clearance of the said barge was far from authentic and needed to be investigated.

10. The purchase of the said barge "Sarku Utama" from M/s Sarku Engineering Services SDN BHD, Malaysia was negotiated by Mr Ashish Gangaram Ingle, Director, M/s Jayesh Shipping Pvt Ltd. Statement of Mr Ashish Gangaram Ingle was recorded under Section 108 of the Act on 20/08/2011 wherein he inter alia stated that as a Director he looked only the Operations of the Offshore Business of the company; under the Offshore Operations, he looked after appointment of crews on their barges, tugs and cranes and other offshore activities like maintenance and tenders were looked after by his father and Managing Director of the Company Shri Gangaram Ingle; for the purchase of the said barge he had negotiated and therefore he would be able to give the evidence on the purchase of the said Work Accommodation Barge Sarku Utama. On being asked, he submitted that the said barge 'Sarku Utama' was purchased in the month of December, 2010 and the MOA was signed in that effect on 9th December, 2010 the consideration amount for purchase of the same was US \$ 2,500,000.00/- i.e. about INR 11.50 Crore approximately. On being asked he submitted that the barge Sarku Utama, the Work

⁹ Hereinafter also referred to as MR Shenvi or first CE MR Shenvi

Accommodation Barge was dry docked before it was handed over to them; that the said barge Sarku Utama was dry docked under the American Bureau of Shipping. On being asked to give the specification of the barge, he had gone through the barge specification and submitted that 'Sarku Utama' was built at Malaysia /Kuching, in the year 1981 and was classed under the American Bureau of Shipping, Class A1 (World's number one), fully air conditioned for 150 personnel; that the barge has a crawler crane of make American Hoist, 9320, the boom length 45 metres. It has three power generators; that it was 30 years old. He further submitted that they had filed Bill of Entry No 3864583 dated 22/06/2011 under section 46 of the Act, for clearance of the barge for home consumption and declared the price as 2,500,000.00 US \$ as the CIF value for the barge for clearance along with other consumables on the barge; they had paid duty of approx Rs. 1.78 Crore for barge and Rs. 1.00 Lakh for the Consumables; the said barge was classified under Customs Tariff Head 89059090 availing benefit of Notification No. 21/2002, Sr. No. 353, He further submitted that they had taken loan for remittance for the purchase of the said barge from Saraswat Bank, Antophill and part payment from ICICI Bank, Ghatkopar branch. He further submitted that the major portion of the purchase cost was on loan and it was about Rs. 8 Crore; the Customs duty paid was from loan on the said barge. He was shown the Marine Hull Insurance for Hull and machinery of M.V Sarku Utama and on being asked he submitted that he had seen the copy of the Insurance of Sarku Utama now known as Offshore Rani. The said insurance was issued by Oriental Capital; the beneficiary was Sarku Engineering Services SDN BHD, Malaysia. The Insurance Policy no. was 92-313-10-000320 and the period of insurance was 1st September, 2010 to 31st August, 2011. The barge was insured for US \$ 4,000,000.00/-. He was shown the Valuation Survey carried out by Dheeraj Offshore on request of the Saraswat Bank, Antophill to process their application for loan applied with Bank, and on being asked to comment he replied that he had gone through the valuation report with Ref, No. DOSA/0509/2010-11 dated 16th December, 2010 and signed in token of having seen the same as per the details of the valuation certificate Dheeraj Offshore on request of Saraswat Bank, Antop Hill, had surveyed and valued the barge; that the report consisted of 15 pages and with photographs of the barge, the survey report was signed by Gratian D Souza, the total valuation as given in the report by Dheeraj Offshore was Rs. 15 Crore only. He was informed that he had declared and submitted MOA for purchase of the said barge Sarku Utama at a consideration of Rs. 11.50 Crore. Oriental Capital had insured the Insurance Policy no 92-313-10-000320 for the period is 1st September, 2010 to 31st August, 2011 for US \$ 4,000,000.00 i.e. Rs. 18.26 Crore. The total valuation report by Dheeraj Offshore stated that the value was Rs. 15 Crore and on being questioned that he had under-invoiced the value of said barge in order to evade the legitimate Customs duty applicable on the barge Sarku Utama, he replied that the value Rs. 11.50 Crore was the value negotiated by him and he had paid the amount through remittance, as far as the Insurance was concerned, this policy was not taken by their company M/s Jayesh Shipping Pvt Ltd and the same was

taken by M/s Sarku Engineering Service SDN BHD, a foreign company, hence the value cannot be relied upon; that the bank had surveyed the barge through Dheeraj Offshore ; that it was between the Bank and the surveyor and they didn't know the understanding between the bank and the surveyor; that the value declared in the Bill of Entry was his true and correct value and it was negotiated by them.

11. On being told that these various documents on record raised question about the authenticity of the consideration amount paid by him for purchase of the said barge, he replied that the amount declared of Rs. 11.50 Crore was negotiated well and they got the said barge at a low cost. He was referred to his submission above where he had stated that the negotiation were done with M/s Sarku Engg Services in the month of December, 2010, when all the statutory certificates had lapsed and therefore he got the barge in cheap, but subsequently the barge had gone under dry docks and the certificates re-validated which consequently raised the cost of the barge, and on being questioned that doesn't this justify that the Price negotiated was not true value and normal value of the barge, he admitted and submitted that it was true that the barge price was negotiated in December, 2010 when the statutory certificates were lapsed and subsequently after Dry docking of the barge, the certificates and class were reinstated, which again should have raised the value of the barge to its real value; that, however, the sellers were stuck with some matter and they mutually agreed on selling the barge at the negotiated cost. On being questioned what would have been the actual price of the barge in normal sale or as per the condition of the barge maintained in Class ABS, he replied that if the barge would have been offered with Class, the Cost would have been different. He admitted that the value negotiated was not normal value since the class was reinstated by the seller, that at the time of negotiation the condition of the barge was different than the normal price and hence the negotiation was settled at Rs. 11.50 Crore; that if the investigation felt that the value of the subject barge Sarku Utama was not declared correctly for the assessment purpose, then the value of the subject barge may be ascertained by an Approved Chartered Engineer appointed by the department and that they were ready to bear the cost of the services of such Chartered Engineer; that they will abide by such valuation and if required ready to pay differential duty on the enhanced value if the Chartered Engineer's value was more than the value declared by them in the Bill of Entry. He further added that there was no malafide intention on their part to evade the legitimate customs duty leviable on the barge imported by them; that they had honestly declared the value on the basis of the negotiation finalized and remittance forwarded.

12. From the foregoing it was observed that;

12.1. Valuation report dated 16th December, 2010 of Dheeraj Offshore - valued the subject barge "Sarku Utama" at Rs. 15 Crore. Dheeraj Offshore had surveyed the barge on 11th December, 2010 and valued the said barge to Rs. 15 Crore in their valuation report Ref No DOSA/0509/2010-2011 dated 16th December, 2010. Further in their report they had

certified that all the statutory certificates including life rafts, firefighting and safety equipments of the said barge had expired.

12.2. Marine Hull Insurance for Hull and Machinery of Oriental Capital- Insurance value of the barge was USD 4,000,000.00/-. The Policy No 92-313-10 000320, for insurance of the said barge as issued to the earlier owner M/s Sarku Engineering Services SDN BHD for the period 01st September 2010 to 31st August, 2011 (valid when the investigations were taken over) had insured the barge Value of USD 4,000,000.00/-.

12.3. Chartered Engineer certificate dated 18.06.2011 of Valuer MR Shenvi submitted along with the Bill of Entry in support of the value declared, The subject CE certificate had not mentioned the details of the barge as required under the Circular No 4/2008 Cus dated 12/02/2008, issued from F No 467/34/2006- Cus-V by CBEC. This Valuation Certificate lacked required details as per the Board's circular which were as follows: -

- a. CIF value of the New Machinery in the Year of Manufacture.
- b. Sale price of the supplier.
- c. The certificate is silent on reconditioning or repairs carried out and cost, as the year of manufacturing is shown as 1981.
- d. Expected life span.

13 In view of this, the Valuation report appeared not to have been issued in terms of the above Board's instruction as the above CE certificates had not provided the information about Important parameters as stipulated in Para 8 of the Board circular 4/2008-Cus dated 21/02/2008. Particularly in absence of price of a new identical machine in the year of manufacture i.e. in 1981. (by virtue of which we can arrive at depreciated value as per instructions vide F.No. 493/124/86-Cus VI dated 19.11.87) it was not possible to assail the correctness of the declared value based on the submitted CE certificate. It was further observed that the said Valuer was not an approved valuer for Customs. In view of the above, it appeared that the value quoted by the Importer for clearance of the said barge was far from authentic.

14. Submissions made by the Director Mr Ashish Ingle, Director of M/s Jayesh Shipping u/s 108 of the Act: - Mr Ashish had admitted that the price declared by him was not normal price of the barge and the same would have been different had it been negotiated under normal conditions. The barge value was negotiated when the statutory certificates of the barge had lapsed because of which the value of the barge was less. However, while delivering the barge, the Seller had to reinstate the statutory certificate after going through the Dry Docks under the supervision of the Class, in order to sail to Mumbai High to effect the delivery, which would reinstate the value of the barge to its actual cost. He had volunteered to get the barge revalued and ready to pay the differential Customs duty on the said barge if there was rise in value of the said barge on valuation.

15. On the basis of above facts on record and different values of the barge coming on record, the value declared by the Importer for the barge "Sarku Utama" covered under the B.E No 3864583 dated 22/06/2011 was liable to be rejected under Rule 12 (a), (b) and (c) of the Customs Valuation (Determination of Value of Imported Goods), Rules, 2007. Therefore, the value declared by the Importer appeared to be not acceptable as transaction value and the value was to be re-determined under the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Further, if the value could not be determined under the provisions of sub rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

15.1. The consignment in the subject Bill of Entry was old and used barge and as such the same could not be valued on the basis of the available contemporary imports of similar type of barge, as such the value depended on how the barge was being used for the last so many years, the number of times it was reconditioned and the change of the worn out parts. Secondly, no other proper evidence was coming forward from the importer in support of the value declared for the barge "Sarku Utama", such as a valuation report of similar Work Accommodation Barge available or imported into India. Therefore, the valuation could not be carried out under Rule 5-8 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and hence the valuation of the consignments covered under the subject Bill of Entry was required to be carried out under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 i.e the value shall be determined using reasonable means consistent with the principles and general provisions of the rules and on the basis of the data available in India.

16. As requested by Mr Ashish Ingle, Director of M/s Jayesh Shipping Pvt Ltd, and the above observations as brought in above para the investigation had reason to believe that the said impugned consignment covered under the subject Bill of Entry was under invoiced and therefore the investigations decided to get the barge "Sarku Utama" valued by an independent, reputed Inspection and Certification Agency, under the provisions of Section 145 of the Act read with Para 2.33 A of Foreign Trade Policy, 2009-2014. The Customs Approved valuer, **M/s Intertek Testing Services India Pvt Ltd.**¹⁰ were appointed to inspect and value the subject barge "Sarku Utama" and informed vide letter dated 30/08/2011. M/s Jayesh Shipping Pvt Ltd. were informed to arrange and be present along with the CHA during the time of inspection by Intertek Testing Services. Intertek Testing Services inspected the said barge in presence of the Importer and the Officials of the SIIB(I) on 31/08/2011.

17. Pending Investigations, M/s Jayesh Shipping Pvt Ltd, vide their letter dated 30/08/2011, deposited an Account Payee Cheque No 805965 dated 30/08/2011 of Rs. 50,00,000/- towards differential duty, fine and penalty. They requested to complete the

¹⁰ Also referred to as Intertek Testing Services or second CE Intertek

investigation at the earliest and submitted that they will abide with the Order in Original passed by the Adjudicating Authority.

18. Intertek Testing Services gave its valuation report vide its Ref No SSA/CEC/VALUE/JAYESH SHIPPING/Sarku Utama/526/2011-2012 dated 2nd September, 2011. Intertek Testing Services in its detailed report of the barge estimated the value of the barge in the Year of manufacture as USD 11,500,000.00 FOB and the present value of the barge "Sarku Utama" with related spares and accessories was estimated as USD 3,814,411.00 CIF, (Rs 17,41,27,862/-).

19. On receipt of the Valuation Report, it was observed that the said barge was grossly under Invoiced to the tune of Rs. 6 Crore and it appeared that the importer had attempted to evade the legitimate customs duty applicable on the Differential Value of the said barge. From the above, it appeared that the subject consignment was deliberately under invoiced by the importer to evade legitimate customs duty and hence the barge "Sarku Utama" now known as "Offshore Rani" along with the accessories and spares totally valued at USD 3,814,411.00 CIF (Rs 17,41,27,862/-), was seized under panchanama dated 12/09/2011, under the provisions of section 110 of the Act, under the reasonable belief that the same was imported in contravention of provisions of the Act and hence liable to confiscation under the provision of section 111 of the Act. The said barge "Sarku Utama " was handed over to Mr Ashish Ingle, Director of M/s Jayesh Shipping Pvt Ltd to continue maintenance of the said barge "Sarku Utama" as was being maintained before seizure under Supurdnama dated 12/09/2011.

20. M/s Jayesh Shipping Pvt Ltd, vide their letter dated 13th September, 2011, requested for Provisional release of the barge under Section 110 A of the Act. They further submitted that they were ready to pay the Differential Customs duty on the said barge and had already deposited Rs. 50 Lakh in advance against the said Differential duty, fine and penalty. Further, they submitted that they will abide by the terms and conditions for release of the said barge.

21. The barge "Sarku Utama", was provisionally released under section 110A of the Act on fulfilment of the following conditions:

- a. Full Payment of Differential Customs Duty amounting to Rs. 88.30 Lakh (out of which Rs. 50 Lakh was paid in advance and deposited against cash no 206 dated 09/09/2011).
- b. Execution of Bank Guarantee 10% of the Total Differential CIF value Rs. 5,82,90,158/- of the barge value i.e. Rs. 58 Lakh (rounded off).
- c. Submission of the bond equivalent for 100% of the Assessable value of the goods Rs. 17,58,69,140/-.

- d. Unconditional undertaking not to dispute the identity of the goods seized in the present proceedings or any other proceedings that may be initiated by the department.

22. On abiding upon the conditions of the Provisional release granted under section 110 A of the Act, the barge "Sarku Utama" was provisionally released to M/s Jayesh Shipping Pvt Ltd vide letter dated 31/10/2011 issued to M/s Jayesh Shipping Pvt Ltd.

23. From the foregoing findings, it appeared that M/s Jayesh Shipping Pvt Ltd. had purchased the barge "Sarku Utama" now known as "Offshore Rani" and imported it into India for Home consumption. The Memorandum of Agreement for the purchase was signed by Mr. Gangaram Ingle and the consideration price was negotiated by Mr Ashish Ingle, Director of M/s Jayesh Shipping Pvt Ltd. Mr Ashish in his statement had submitted that he had negotiated the price and dealt with the Import of the barge "Sarku Utama". The barge was provisionally registered with the Mercantile Marine Department, Director General of Shipping, Mumbai with official Number M-7739 and under the Indian Flag. The Importer M/s Jayesh Shipping Pvt Ltd filed Bill of Entry No 3864583 dated 22/06/2011, under section 46 of the Act, for clearance of the barge for home Consumption and declared the price as 2,500,000.00 US \$ as the CIF value for the barge for clearance and also for clearance of other consumables on the barge. They had paid duty of Rs. 1.78 Crore approx for the barge and Rs. 1.00 Lakh for the Consumables. However, it appeared that the value declared by the Importer was not proper value and the price was negotiated by the Director, Mr Ashish Ingle under certain conditions and therefore the price negotiated does not appear to pass the condition of being true transaction value of the goods under the provision to Rule 3 (2) (b) Customs Valuation Rules (Imported Goods), 2007 which stipulates that "the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;". Mr Ashish Ingle had admitted that the value transacted was under condition and the value of the goods when sold in normal conditions would be different. This evidence that the importer though had knowledge of the proper value of the goods had under invoiced the same by 5.6 Crore with malafide intention of evading the legitimate Customs duty by Rs. 88.30 Lakh approximately. However, on being detected by the Customs, they took shelter of the reasons that the same was negotiated at the time when the Statutory certificates of the barge had lapsed, in order to escape the clutches of law. It is certain that, once the statutory certificates were reinstated after the barge has gone Dry docking and certification under a Class, the value of the barge would have been normal and competitive value of the barge and the Seller would renegotiate the price, as the barge sold "as is where condition" did not hold good after dry docking Mr Ashish Ingle was aware of the valuation carried out by the Bankers which had valued the barge to Rs. 15 Crore and he was also aware of the Insurance certificate which yet in force at the time of investigation that the barge was Insured to value of USD 4,000,000.00 i.e Rs. 18.26 Crore approx. The Valuation

Certificate of MR Shenvi had not mentioned the details of the barge as required under the Circular No 4/2008 Cus dated 12/02/2008, issued from F No 467/34/2006- Cus-V by CBEC and was found to lack the required details as brought above and it appeared the said certificate had been arranged for the said declared value. Mr Ashish Ingle, Director of M/s Jayesh Shipping Pvt Ltd was directly involved in the negotiation and it appeared that he was aware of the price factor and that it was not true transaction value, but had opted not to disclose the actual price of the barge to Customs and under invoiced the value of the barge to CIF value of Rs. 11,75,78,982/- on which transpires the menserea of the importer to evade Customs duty. While the investigation ascertained the value as per the Customs Valuation Rules, 2007 through an independent Chartered Engineer and the value of the barge was estimated to Rs. 17,41,27,862/- CIF and assessed to Rs. 17,58,69,141/- and thereby attempted to evade the legitimate Differential Customs duty amounting to Rs. 88.30 Lakh. In view of the above acts of Omission and Commission on part of Mr Ashish Ingle, Director of M/s Jayesh Shipping Pvt Ltd the subject barge "Sarku Utama" now known as "Offshore Rani" appeared liable for confiscation under Section 111(m) of the Act and appeared to have rendered himself and the company M/s Jayesh Shipping Pvt Ltd liable for Penal action under section 112(a) and (b) of the Act and under section 114A of the Act.

24. The Importer M/s Jayesh Shipping Pvt Ltd filed Bill of Entry No 3864583 dated 22/06/2011, under section 46 of the Act, for clearance of the barge for home Consumption and declared the price as 2,500,000.00 US \$ as the CIF value for the barge for clearance along with other consumables on the barge and paid duty of 1.78 Crore approx for barge and Rs. 1.00 Lakh for the Consumables. However, as brought above in the Notice, the value declared by the Importer was not proper value and the price was negotiated by the Director Mr Ashish Ingle under certain conditions and therefore the price negotiated does not pass the condition of being true transaction value of the goods under Rule 3 (2) (b) of the Customs Valuation Rules (Imported Goods), 2007.

25. Mr Ashish Ingle had admitted that the value of the goods when sold in normal conditions would be different i.e. the transaction value as negotiated by Mr Ashish Ingle was under consideration that the statutory certificates were lapsed and the barge was out of class which had devalued the barge. Further, in spite of the seller subsequently taking the barge into the class after Dry docks and survey of the barge under class, for delivery, did not raise the price of the barge does not hold good. Mr Ashish Ingle was aware of the fact that the price he had negotiated was under certain conditions and that normally such a barge was not sold at the price negotiated. However, he opted not to disclose the same to Customs or the Surveyor who was appointed by him to survey and value so as to file the Bill of Entry with Customs, shows the mens rea and malafide intention of Mr Ashish Ingle of an attempt to evade the legitimate Customs duty. It is also the case of the Investigation that Mr Ashish Ingle was well aware of the valuation carried out by the Bankers which had

valued the barge to Rs. 15 Crore and he was also aware of the Insurance certificate which was yet in force at the time of investigation that the barge was Insured to value of Rs. USD 4,000,000.00 i.e Rs. 18.26 Crore approx. The Valuation Certificate of MR Shenvi had not mentioned the details of the barge as required under the Circular No 4/2008 Cus dated 12/02/2008, issued from F No 467/34/2006- Cus-V by CBEC and was found to be lacking required details as brought above and it appears that the said certificate has been arranged for the said declared value. As Mr Ashish Ingle, Director of M/s Jayesh Shipping Pvt Ltd was directly involved in the negotiation and was aware of the price factor that it was not true transaction value as required under the Customs Valuation (Determination of value of Imported goods) Rules, 2007, but had opted not to disclose the actual price of the barge to Customs and thereby under invoiced the barge to CIF value of Rs. 11,75,78,982/- only, on being investigated by Customs, Mr Ashish Ingle, admitted and volunteered to pay the differential customs duty as determined by the investigation. The investigation ascertained the value as per the Customs Valuation Rules, 2007 through an independent Chartered Engineer and the value of the barge was estimated to Rs. 17,41,27,862/- CIF and assessed to Rs. 17,58,69,141/-, and thereby the Importer attempted to evade differential customs duty amounting to Rs. 88.30 Lakh. Therefore, the total customs duty leviable on the said barge "Sarku Utama" on the re-ascertained Assessable value amounting to Rs. 2,66,41,561/- appeared liable to be recovered under the proviso of section 28 of the Act, along with interest as applicable under section 28AB of the Act.

26. Therefore, **Shri Ashish Gangaram Ingle, Director M/s Jayesh Shipping Pvt Ltd and M/s Jayesh Shipping Pvt Ltd¹¹**, the importer, were called upon to show cause to the Commissioner of Customs (Import), New Custom House, Ballard Estate, Mumbai vide show cause notice F. No. SG/INVO-35/BC/2010 SIIB(I) dated 08.02.2012 as to why:

- a. The declared assessable value of CIF value of Rs. 11,75,78,982/- of the Impugned barge "Sarku Utama" imported and sought to be cleared vide Bill of Entry No. 3864583 dated 22/06/2011 should not be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules 2007 read with Finance Ministry (CBEC) Circular No.4/2008- Customs (F.No.467/34/2006-Cus.V); and the same be re-determined at Rs17,41,27,862/- CIF and Assessable value of Rs. 17,58,69,141/- as provided in para 9-14 above under Rule 9 of the Customs Valuation Rules 2007 read with Finance Ministry (CBEC) Circular No.493/124/86-Cus VI dated 19.11.1987, on the basis of value suggested in fresh Inspection Report issued by an independent & approved Chartered Engineers firm under Section 145 of the Act read with para 2.33 (a) of the Handbook of Procedures 2009-2014, FTP 2009-14 and the said Bill of Entry be assessed accordingly.

¹¹ hereinafter combinedly referred to as the noticees or noticee-1 & 2

- b. The total Customs duty of Rs. 2,66,41,561/- leviable on the impugned goods (barge "Sarku Utama") covered under the Bill of Entry No. 3864583 dated 22/06/2011, at the prevalent standard duty rates calculated on re-determined value of Assessable value of Rs. 17,58,69,141/-, should not be demanded and recovered from them under the proviso to Section 28(1) read with Section 125(2) of the Act.
- c. The total Customs duty of Rs. 2,66,41,561/- paid vide Challan No. 2001443376, dated 28/06/2011, Challan No 206 dated 09/09/2011 and challan no 305 dated 31/10/2011, for the Bill of Entry No. 3864583 dated 22/06/2011, should not be appropriated against the total Customs Duty demanded as in para (b) above.
- d. The amount of interest as applicable on the duty amount as mentioned in above paras above should not be recovered from the Importer under Section 28AB of the Act.
- e. Impugned goods consisting of Work Accommodation Barge "Sarku Utama", now known as "Offshore Rani", covered under the Bill of Entry No. 3864583 dated 22/06/2011, should not be confiscated under Section 111(m) of the Act for misdeclaration with regard to the value of the same in the said Bill of Entry with an intent to evade the legitimate Customs duty.
- f. Penalty should not be imposed on the Director Mr Gangaram Ingle, under the provisions of Section 112(a) & (b) of the Act and on company M/s Jayesh Shipping Pvt Ltd under the provisions of Section 114A of the Act.
- g. The total Bank Guarantee amounting to Rs. 58,00,000/- (Rupees Fifty-eight Lakh only) deposited as a security for provisional clearance of the subject barge "Sarku Utama " now known as "Offshore Rani" covered under the Bill of Entry No. 3864583 dated 22/06/2011, should not be encashed for recovery of duty, penalty and fine as proposed in sub paras above.

27. A corrigendum dated 19.03.2012 was issued to the Show Cause Notice dated 08.02.2012 by the Commissioner of Customs (Import), New Custom House, Mumbai whereby the first line of para 19(f) of the said show cause notice was corrected to be read as "penalty should not be imposed on the Director, Shri Ashish Ingle".

28. Commissioner of Customs (Import), NCH, Mumbai during the first round of adjudication passed the following order: -

(a) The declared assessable value of CIF value of Rs. 11,75,78,982/- of the impugned barge "Sarku Utama" Imported and sought to be cleared vide Bill of Entry No. 3864583 dated 22/06/2011 was rejected and the same was re-determined at Rs. 17,41,27,862/- CIF and Assessable value of Rs. 17,58,69,141/-.

(b) The demand of total Customs duty of Rs. 2,66,41,561/- (Rupees Two Crore Sixty Six Lakh Forty One Thousand Five Hundred and Sixty One Only) leviable on the Impugned barge "Sarku Utama" cleared vide Bill of Entry No. 3864583 dated

22/06/2011, at the prevalent standard duty rates calculated on re-determined value of Assessable value of Rs. 17,58,69,141/-, under the proviso to Section 28(1) read with Section 125(2) of the Act was confirmed along with applicable interest under Section 28AB of the Act.

(c) The total Customs duty of Rs. 2,66,41,561/- (Rupees Two Crore Sixty Six Lakh Forty One Thousand Five Hundred and Sixty One Only) paid vide Challan No. 2001443376, dated 28/06/2011, Challan No 206 dated 09/09/2011 and challan no 305 dated 31/10/2011, for the Bill of Entry No. 3864583 dated 22/06/2011 against the total Customs Duty demanded was appropriated.

(d) The Work Accommodation Barge "Sarku Utama", now known as "Offshore Rani" cleared vide Bill of Entry No. 3864583 dated 22/06/2011 was confiscated under Section 111(m) of the Act. However, the importer, M/s Jayesh Shipping Pvt Ltd. was given an option to redeem the same by payment of redemption fine of Rs. 1,75,00,000/- (Rupees One Crore Seventy Five Lakh Only under Section: 125(1) ibid.

(e) A penalty of Rs. 2,66,41,561/- (Rupees Two Crore Sixty Six Lakh Forty One Thousand Five Hundred and Sixty One Only) plus the interest amount payable under Section 28AB of the Act was imposed on M/s Jayesh Shipping Pvt Ltd under Section 114A of the Act. If the duty and interest as demanded above is paid within 30 days of communication of that order, the amount of penalty imposed was reduced to 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.

(f) A penalty of Rs. 15,00,000/- (Rupees Fifteen Lakh Only) was imposed on the Shri Ashish Ingle, Director of M/s Jayesh Shipping Pvt Ltd. under the provisions of Section 112(a) of the Customs Act.1962.

(g) It was ordered to encash the Bank Guarantee amounting to Rs. 58,00,000/- (Rupees Fifty-eight Lakh only) deposited as a security at the time of provisional clearance of the subject barge "Sarku Utama " now known as "Offshore Rani" cleared vide Bill of Entry No. 3864583 dated 22/05/2011 towards recovery of duty, penalty and fine as imposed above.

29. Noticees preferred an appeal to the Hon'ble CESTAT against the 1st OIO, wherein Hon'ble CESTAT vide Order No. A/85410-85411/2023 dated 21.03.2023 remanded back the case to the original adjudicating authority to adjudicate afresh based on certain observations.

**SUMMARY OF OBSERVATIONS OF THE HON'BLE CESTAT IN FINAL ORDER
DATED 21.03.2023**

30. Hon'ble CESTAT made following observations while remanding back the case to original adjudicating authority:

30.1 Not placing notice of intent to the importer for holding that the impugned barge, upon arrival for import by the appellant. was already in their ownership and, thereby, the condition of at the time and place of importation would not be fulfilled. :-

In para 7 of CESTAT order, it is observed that the importer has contended that the adjudicating authority had, without placing notice of intent to do so, adduced the proposition that the impugned barge, upon arrival for import by the appellant. was already in their ownership and, thereby, the condition of at the time and place of importation would not be fulfilled. It was also contended that the same assertion was invoked to extend the period of limitation in section 28 of the Act. It was also contended that the insinuation of justification for enhancing the value further, on account of the class certification as well as the refurbishment of the barge, was also undertaken without placing them on notice. Reliance was placed on the decision of Hon'ble Supreme Court in Commissioner of Central Excise v. Gas Authority of India Ltd [2008 (232) ELT 7 (SC)] in Commissioner of Customs Mumbai v. Toyo Engineering India Ltd [2007 (201) ELT 513 (SC)] in Commissioner of Central Excise. Nagpur vs. Bellapur Industries Ltd [2007 (215) ELT 489 (SC)] and in Commissioner of Central Excise Bhubaneswar v. Champadaya Ind Ltd [2009 (241) ELT 481 (SC)].

30.2 Imposing penalty under section 114A of Act on the entire duty liability instead of restricting it, as should have been, to the amount allegedly short-levied :- In para 8 also the Hon'ble CESTAT considered another submission pressed by the applenat regarding the incorrectness of imposing penalty under section 114A of the Act on the entire duty liability instead of restricting it, as should have been, to the amount allegedly short-levied. It was observed by the learned CESTAT that the adjudicating authority has incorporated facts not suitably tested by offering opportunity to challenge, which is anathema to just and fair adjudication. The deficiency in not placing the appellants on notice of these allegations would need to be remedied and it is only by a fresh adjudicating process that the factual position may be established. The restricted framework of section 28 and section 114A of the Act would have to be adhered to in the fresh proceedings.

30.3 Explain the different positions adopted for valuation of the same barge which, but for a brief while, was within Indian territorial waters and, yet, was found to be valued with substantial difference on the two occasions :- In para 9 of the order, Hon'ble CESTAT has observed that the adjudicating authority is also obliged to explain the different positions adopted for valuation of the same barge which, but for a brief while, was within Indian territorial waters and, yet, was found to be valued with substantial

difference on the two occasions, this could have a significant bearing on the manner in which the residual method is used for conformity with the scheme of valuation espoused in rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

30.4 Credibility of Valuation Report retained by the investigators :- In para 10 of the CESTAT order, hon'ble CESTAT further pressed upon that the determination of the value based on the certification of the Chartered Engineer retained by the investigators would have to be elaborated upon by the adjudicating authority for it to have credibility acceptable to the appellate process.

RECORD OF PERSONAL HEARING DURING THE CURRENT ADJUDICATION

31. Personal Hearing Memorandums dated 24.05.2023 was issued to Noticees-1 & 2 to appear on 05.06.2023. Shri S.P. Mathew, Advocate attended the same on behalf of both noticees.

SUMMARY OF ALL SUBMISSIONS OF NOTICEES-1 & 2 MADE DURING THE FIRST ROUND AND THE CURRENT ROUND OF ADJUDICATION

32 M/s Jayesh Shipping Pvt Ltd., and Shri Ashish Ingle, Director submitted their reply to the SCN vide letter dated 22.11.2012 as following:

32.1 Vide letter dated 22.11.2012, they have stated that, "Sarku Utama" barge owned by M/s Sarku Engineering Services SDN, BHD was put up for sale for which open tenders were invited by the owners. Noticees offered their prices for the accommodation barge by submitting their tender wherein they quoted their offer. It appeared that after evaluating all the tenders, the owners expressed their intention to sell the barge to them. They approached them to finalise the sale and negotiated the terms to update the statutory certificate which had lapsed and bring it to the class. After dry docking and updating the statutory certificates the delivery was effected which fact was mentioned in para 8(d) of the Show Cause Notice.

32.2 Thereafter, a Bill of sale dated 11th June 2011 was executed for the sale of the said Work Accommodation Barge "Sarku Utama" for a total price of USD 2,500,000/-. The aforesaid BILL OF SALE dated 7th June 2011 and Memorandum of Agreement dated 3rd December 2010 were relied upon documents in the present proceedings, copies of which were furnished to us along with the notice. Both these documents namely MOA dated 3rd December 2010 as well as Bill of sale dated 7th June 2011 evidences the transaction value at USD 25 Lakh.

32.3 The B/E No. 3864583 dated 22.6.2011 was filed by declaring the aforesaid transaction value and seeking assessment of the said Work Accommodation Barge to the

customs duty. The Work Accommodation Barge was assessed to customs duty of Rs. 1,79,42,624/- which was paid and out of charge was given on the same day and the barge was cleared for home consumption.

32.4 In the investigation caused thereafter by the SIIB during which statement of the Director of the noticee was recorded with a view to gather evidence of any undervaluation. During the Investigation the noticee was forced to pay additional amounts towards customs duty that would be demanded after investigation. After investigation, the SIIB suspected undervaluation since in the insurance certificate obtained by the overseas seller, the value had been declared as USD 40 Lakh and in the insurance policy taken out by the foreign seller, the barge was insured for USD 40 Lakh. Further, in the valuation report of Dheeraj Offshore the value had been arrived at Rs. 15 Crore

32.5 In the Show Cause Notice dated 8.2.2012 issued to them, the accommodation barge was sought to be assessed to customs duty on the basis of a valuation report dated 2.9.2011 of Intertek Testing Services, a customs approved valuer, specifically appointed for the said purpose by the Asst. Commissioner of Customs (SIIB), vide his letter dated 30.8.2011. Ongoing through the said notice, it was observed that: -

32.6 The prime reason cited in the notice for suspecting the correctness of the declared assessable value was that the valuation report submitted by the importer which was prepared by MR Shenvi as required under Circular No.4/2008-Cus dated 12.2.2008, the same lacked the details as stipulated in the board circular referred to above. In view of the above the investigation was carried out which culminated in the present notice dated 8.2.2012.

32.7 There was no whisper of doubt about the truth or accuracy of the transaction value, nor it was even remotely alleged that the transaction value was not correct or they had paid any amount directly or indirectly to the seller, over and above the transaction value declared in their Bill of Sales which value was declared in the Bill of Entry for assessment of the accommodation barge.

32.8 The notice alleges that the value declared by the importer was not the proper value. In the said paragraph it was also mentioned as under: -

"Mr. Ashish Ingle had admitted that the value transacted was under condition and that the value of the goods when sold in normal conditions would be different"

They submitted that their director Mr. Ashish Ingle did not make any such statement as stated aforesaid, whereas what was stated in his statement (last page) in this regard was under:

"I say that at the time of negotiation, the condition of the barge was different than normal and hence the negotiation was settled at 11.5 Crore"

32.9 They submitted that the statements of their Director as aforesaid was distorted while quoting the same in the Show Cause Notice to the effect that they had admitted the value transacted was under condition and that the value of the goods when sold in normal conditions would be different. This distortion of his statement was attempted in the notice to somehow bring the situation within the ambit of Rule 3(2)(b) of the Customs Valuation Rules, 2007, which was sought to be invoked for enhancing the declared assessable value. Before deviating from this aspect they felt it apt to bring to attention, a categorical deposition in the last but one page of their above named directors statement dated 20.8.2011 which read as under: -

"Yes, it's true that the barge's price was negotiated low in December, when the statutory certificates were lapsed and subsequently after dry docking of the barges, the certificate and class were reinstated, which again values the barge to its real value. However, the sellers were stuck with some matter and they mutually agreed on selling the barges at the negotiated cost."

They submitted that the aforesaid categorical deposition of their director would make it unambiguously clear that the transaction value, i.e. the amount paid by them to their foreign supplier for purchase of this Work Accommodation Barge was the amount reflected in the Bill of Sale which value was declared in the Bill of Entry and that, there was no room for doubting the correctness of the transaction value

32.10 Since, the only evidence cited in the notice for enhancing the assessable value were the valuation reports of two experts purported to be experts in valuation of barges including barge, they requested the Hon'ble Commissioner to grant them permission to cross-examine these valuation experts. The cross-examination of these two witnesses were extremely necessary for the reason that in both the reports it was indicated that the value had been arrived at with reference to "local market values" or "present market value". In either case, where it was "local market value or present market value", the said value would be inclusive of the customs duty and other taxes leviable on the imported goods including the margin of profit of the importer which would in any case far exceed the CIF value of any imported goods.

32.11 Since the investigation could not gather any adverse evidence to discredit the transaction value as appearing in the relevant documents, they submitted that the acceptance of the transaction value was not tainted by any of the clauses in the proviso (a)(b)(c) and (d) mentioned in sub rule (2) of Rule 3 of the Customs Valuation Rules, 2007. At the cost of repetition they submitted that the "condition" or "consideration" referred to in the proviso (b) to sub rule (2) were not the conditions the notice sought to make out in para 17(b) of the Show Cause Notice, as would be evident from the "Interpretative Notes" appended to the Customs Valuation Rules, inasmuch as the example of such "conditions"

or "considerations" as furnished therein were no way akin to the said terms attributed to it in para 17 of the notice.

32.12 Reliance was placed by the noticees on the following case laws for acceptance of transaction value: -

- a. Eicher Tractors Ltd. Vs. CCE, Mumbai reported in 2000 (122) ELT 321 (SC)
- b. CC, Kol. Vs. South India Television reported in 2007(214) ELT 3(SC)
- c. CC, Mumbai Vs. JD Orgochem Ltd. reported in 2008 (226) ELT 9 (SC)

32.13 Without prejudice to the foregoing submissions, they submitted that the demand in the present notice dated 8.2.2012 was hopelessly barred by law of limitation. In the notice, the demand of Rs. 2,66,41,561/- was made under the proviso to Section 28(1) read with 125 of the Act. The demand was therefore by invoking the extended period of time provided under the proviso to Section 28 of the Act. In support of the proposal for invoking the extended period in para 17(b) at page 19 of the Show Cause Notice, it was alleged that Mr. Ashish Ingle was aware of the fact that the price he had negotiated was under conditions and that normally such barges were not sold at the price negotiated which showed means-rea and malafide intention of an attempt to evade the legitimate customs duty. They denied this reckless allegation made against our Director.

33. Cross examination of Chartered Accountants of Dheeraj Offshore and Intertek Testing Services:- The cross examination of Shri Gratian D Souza, Attending Surveyor (DGM), Dheeraj Offshore and Shri Sunil Dawalkar, Chartered Engineer, Intertek Testing Services, was conducted by defence advocate Shri S. P. Mathew before the Commissioner of Customs (Import), New Custom House, Mumbai held on 21.12.2012. The summary of the cross examination is as given here:

33.1 Cross examination of Shri Gratian D Souza, Attending Surveyor (DGM), Dheeraj Offshore: - During the cross examination, Shri Gratian D Souza deposed that he has been in valuation related work of ships for last 40 years; that in this period he has valued more than 2 dozen Work Accommodation Barges; that he has surveyed Work Accommodation Barge Sarku Utama before giving valuation report; that when this barge was surveyed by him, it was in a laid up condition awaiting a buyer for scrapping with no class certificates; that his valuation of 15 Crore was based on the scrap value of the barge and the cost for repairing the barge and putting it into class; that technically the barge being 30 years old and having no class certificates is normally designated as a barge which has outlived its utility; that the barge would have fetched Rs. 15 Crore after the barge was repaired and put into class; that the value Rs. 15 Crore is an approximate value and not exact value which may vary by 35% of 15 Crore depending upon supply and demand; that he was aware that the barge being 30 Years old the owner was unable to take it back to his own country as regulations there deemed that the barge more than 30 years old cannot ply in his country;

that the he is agree that in a distress sale, barge would fetch only 10 Crore; that barges of these kind were being sold in Dubai for 1.5 Million Dollars (Rs. 8 Crore approx) during the material time.

33.2 Cross examination of Shri Sunil Dawalkar, Chartered Engineer, Intertek Testing Services: - During the cross examination, Shri Sunil Dawalkar deposed that he has been in valuation related work of ships for last 30 years; that in this period he has valued more than 50 Work Accommodation Barges; that he has surveyed Work Accommodation Barge Sarku Utama before giving valuation report; that the barge was in working condition when he surveyed it; that the barge was surveyed at P & V Channel, Mumbai Port; that his associate surveyed the barge; that they have done market enquiry on internet; that he has printout of similar barge information from internet for enquiry; that the para 9.8 of the report states about processing charges, reconditioning charges, replacement value where Processing and Recondition charges depend on the condition of the barge whereas Processing and Recondition charges depend on the condition of the barge; that he could not tell on that day about the amount appropriated on processing charges, reconditioning charges, replacement value; that all the papers were submitted to customs and he did not have any records; on being asked that in the point 9.8 of your report, one of the factors that influenced your valuation is the local market value. On being asked to elaborate about the local market value survey they have done, he submitted that it depended on the availability of the barges in the local market and demand for such similar barges; on being asked about any similar accommodation barge available in the local market at that time and would he furnish details of such barge in respect of which he had done the enquiry, he offered no comments on this aspect as on that day; he further submitted that he did remember having done such local market enquiry with other similar accommodation barges in and around Mumbai; that he did not remember whether those barges were imported or locally built; that he can provide internet surfing results regarding recent import values as referred in point 9.8 of his report; that the recent import values were available in the documents submitted along with my report to customs; that he did not see any particular B/E or such import document in respect of similar Work Accommodation Barges imported during the said period; that the value given at para 9.6 of valuation report is an approximate valuation; that there would be a variation of plus or minus 10% to the basic value of the barge; that he did not consider the insured value of the Work Accommodation Barge for arriving at his value; that he has given the valuation report of the Work Accommodation Barge on the prevailing market condition after 2 years of its import.

34. Shri S P Mathew submitted another reply dated 22.12.2012, wherein it was stated that:

34.1 He submitted that no case has been made out for rejection of the value of the imported goods wherein it was interalia submitted that during the cross examination of Shri Sunil Dawalkar it had come to light that while submitting his valuation report to the

Customs investigating agency who had asked him to conduct survey for assessing the value of the ship and to prepare the valuation report, he had submitted certain recent import values of similar Work Accommodation Barges to the investigating agency.

34.2 The noticee vide their final reply dated 22.12.2012 interalia submitted that it was evident that during the investigation, import valuation of similar Accommodation barges has come on record of the investigating agency. However, in the entire Show Cause Notice there was no reference to such Import value submitted by Mr. Sunil Dawalkar along with his report who happened to be the expert valuer appointed by the Dept., for the sole purpose of valuation of the Accommodation barge, "Sarku Utama". They therefore requested to direct the investigating agency SIIB (I) to furnish the copies of such import value of other accommodation barges submitted by Mr. Dawalkar along with his report to investigating agency. They felt it was also appropriate to point out that in the Show Cause Notice and more particularly in para 8 (d) at page 14 it was averred as under: -

"The consignment in the subject B/E is old and used barge and as such the same cannot be valued on the basis of available contemporary imports of similar types of barge."

34.3 It was thus evident that while the notice avers that there was no contemporary import value available, the valuer appointed by the Dept., whose value was sought to be adopted for the purpose of assessment by rejecting the transaction value had contradicted the above view in the notice. It was therefore all the more necessary to peruse and examine the recent import values relied on by the expert valuer who recommended the value of USD 38,14,411/-, the value proposed for assessment in the Show Cause Notice issued to them. Such other documents submitted By Shri Dawalkar may also be furnished to them and they may be given a few days' time therefore to furnish their submission on such documents as well.

34.4 Without prejudice to the foregoing submissions they submitted that the record of cross examination of the aforesaid two witnesses, made very interesting revelations that Shri Sunil Dawalkar whose report was considered sacrosanct and the value recommended by him was proposed to be accepted for assessment by rejecting our transaction value, had revealed in his cross examination that he had not seen the Work Accommodation Barge in respect of which he had submitted his valuation report. He confirmed that his associate alone had seen the Accommodation barge in question. He had further stated that though he had appropriated amounts towards processing, reconditioning and replacement, he cannot offer any comments on the same and that he was not in a position to offer any comment whether similar accommodation barge was available in the local market at the time when he carried out his survey and submitted his Valuation report. Further, he claims to have pointed out recent import values to the investigating agency, but accepted that he had not seen any B/E or any such import documents in respect of similar Accommodation barges imported during the said period. He had also accepted that his valuation was only on

approximation basis and that he had submitted his valuation report on the prevalent market condition much after the time of import of the accommodation barge in question. Thus, from the revelation made by this expert witness whose report was considered sacrosanct and whose valuation recommendation was sought to be adopted as such by the Revenue to discredit their transaction value for the Work Accommodation Barge, Sarku Utama it was evident that his report was no way reliable, for the various revelations made by him during the cross examination, which were discussed above.

34.5 The other witness, Mr. Gratian D Souza who had recommended the value of Rs.15 Crore for the Accommodation barge was candid enough to accept that the barge being more than 30 years old it had outlived its utility. He was also fair enough to reveal that his valuation was on approximation basis which could vary plus or minus 35% (+ or -) and that applying the range of variation, the value could be as low as Rs.10 Crore whereas their transaction value was USD 25,00,000/- equivalent to INR.11,75,78,982/-. This witness further revealed that similar type of barges were being sold in Dubai during the material time for about USD 1.5 million equivalent to INR 8 Crore.

34.6 Thus, both the expert witnesses whose valuation reports were pressed into service to discard their transaction value, at which they bought the Work Accommodation Barge "Sarku Utama" have revealed in their cross examination that their valuation was only their approximation. What flows from the above, in their respectful submission was that none of the two valuation reports had got any cogent or tangible features to even cast a suspicion on the "transaction value" at which they bought the barge "Sarku Utama". Consequently, both the reports deserve to be viewed lightly without assigning any great significance or importance, least for mooted a proposal to reject the "transaction value" which they had throughout maintained that was the true transaction value of the Work Accommodation Barge.

34.7 Without prejudice to the foregoing submissions, they wished to draw the attention to one of the basic averments in the Show Cause Notice Appearing at page 13, in para 8 (b), according to which the value declared by us in B/E No. 3864583 dt. 22/6/11 was liable for rejection under Rule 12 (a), (b) and (e) citing the reason that different values of the barge have come on record. They have sufficiently elaborated on the credibility of the different values that were brought on record by SIIB in their investigation and submit that these values arrived in the valuation report of the experts does not deserve any consideration for the reasons discussed above.

34.8 Without prejudice to the submissions made on the factual matrix of these valuation reports they wished to deal with the proposal in the notice for rejecting the declared transaction value, by relying on the provisions of Rule 12(a)(b) and (e) of the Customs Valuation Rules, 2007. In their respectful submission, none of these provisions of Rule 12

(a) (b) and (e) were applicable nor can be invoked to raise a doubt on their transaction values.

34.9 In the present case, it was an admitted fact in para 8 (d) of the notice that there was no import of identical or similar goods during the time near the period of import of the present accommodation barge. That being so, the question of doubting the declared transaction value for the reason provided in Rule 12(2)(iii) (a) of the Valuation Rules does not arise. Consequently, the reliance placed on the aforesaid provision of the Rule for doubting the truth or accuracy of the "transaction value" was not sustainable. Rule 12(2)(1)(a) of the Customs Valuation Rules reads as under: -

"a. The significantly higher value at which identical or similar goods imported at or about the same time in comparable commercial quantities in a comparable commercial transaction were assessed".

34.10 In the present case, there was no abnormal discount or abnormal reduction from the ordinary competitive price, inasmuch as it is not the case in the notice that the similar barge of the same condition were being sold at higher price or that the present barge was sold at a reduced price from that of a barge of similar condition. It was an admitted fact in the notice as well as from the facts revealed during cross-examination that the barge was very old and had outlived its utility. In that circumstance, the question of abnormal discount or abnormal reduction from the ordinary competitive price does not arise. Hence the attempt to doubt the accuracy or truth of the transaction value by placing reliance on this provision in the Rule also fails.

Rule 12 (2)(ii)(b) reads as under: -

"(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price".

34.11 There was no whisper or allegation in the notice that they had suppressed or not declared any of the parameters such as brand, grade, specifications that would have a bearing on value of the Work Accommodation Barge, nor they had withheld any such information from the Deptt., while filing the Bill of Entry for assessment. In that view of the matter, the Rule 12(2)(iii)(e) of Customs Valuation Rules, 2007 also were not applicable and consequently reliance placed thereon would not be of any avail to justify the attempt in the notice for doubting the truth or accuracy of the "transaction value". Rule 12(2)(iii)(e) of the valuation Rules reads as under: -

"(e) the non-declaration of parameters such as brand, grade, specifications that have relevance to value."

34.12 Thus, none of the legal provisions of the Customs Valuation Rules invoked in the present notice for doubting the truth or accuracy of the transaction value was of no avail

for supporting the proposal in the notice for rejection of transaction value. Therefore, in their respectful submissions the transaction value declared by them at the time of import of the Work Accommodation Barge deserve to be accepted and the proposal in the notice to reject the same was liable to be withdrawn, as not sustainable in law.

34.13 Yet another reason mentioned in para 8 (c) at page 13 of the Notice for rejecting the transaction value was that Chartered Engineer's Valuation Certificate by valuer, M/s M.R. Shenva & Associates submitted along with B/E does not appear to have been issued in terms of the Board's Circular dtd. 12.2.2008 and consequently it was not possible to assess the correctness of the value declared based on the Chartered engineer's certificate submitted along with B/E. Another reason mentioned therein was that the said valuer was not an approved valuer of the Customs Department. At the outset, they mentioned that suspicion raised on the value declared by them for clearance of the barge was devoid of any basis as the same was not a legally valid or authorised ground for rejecting the transaction value. Unless such doubt was supported by cogent and tangible evidence to substantiate the grounds provided in the relevant Rule for rejecting "transaction value", the declared value deserved acceptance. Further, merely for the reason that it was not possible for the Dept. to assail the correctness of the declared value based on the chartered engineer's certificate filed along with B/E is not a legally, recognized ground for rejecting the declared transaction value. The legally recognized ground for rejecting transaction value declared by the importer were set out in Rule 3 of Customs Valuation Rules, none of which can be invoked in the facts of the present case. Moreover, the different situations provided in Rule 3, for rejection of transaction value does not include a ground that the valuation report submitted by the Chartered Engineer was not prepared by a Customs approved valuer. Nor does it contain a ground that the valuation report submitted by the importer was not capable of being assailed by the Dept.

34.14 They had already made elaborate submissions in their reply to the SCN and more particularly vide para 4 and 7 of their reply dtd. 8th December 2012 that the attempt in the notice to bring the situation within the ambit of Rule 3(2)(b) of the Customs Valuation Rules, 2007, by alleging that their director had admitted that the value transacted was on condition, was not sustainable.

34.15 They submitted that none of the situations envisaged in Rule 3(2) or (3) were attracted to the facts of the present case and therefore transaction value deserved to be accepted and proposal to the contrary in the notice for rejecting the transaction value was not sustainable. In this context, they referred and relied upon judgement of the Hon'ble Bombay High Court in the case of Lifestyle International reported in 2011 (271) ELT 190 (Bom), wherein it was held that the standing order or circular issued by the Dept. cannot curtail the jurisdiction of the assessing officer under section 14 of the Customs Act and the customs valuation Rules framed thereunder. In this judgement it was also held that the standing order cannot override the statutory provisions contained in the Act or Rules.

34.16 The notice containing the proposal for rejecting the declared transaction value and recovery of customs duty under the proviso to section 28 read with Sec. 125(2) of the Act also contained a proposal for confiscation of the Work Accommodation Barge, 'Sarku Utama' u/s. 111(m) of the Act allegedly for mis-declaration with regard to value of the same in B/E and also a proposal for imposition of penalty u/s. 114A of the Act. Besides it contained a proposal for imposition of penalty on their Director u/s. 112(a) & (b) of the Act.

34.17 To summarize: -

- (a) There was no mis-declaration of value and that the transaction value declared by them deserved acceptance.
- (b) The proposal for rejection of transaction value and consequent demand of differential duty was not sustainable.
- (c) The proposal for imposition of penalty u/s. 114A of the Act was not sustainable for the reason that there was no ground for invoking the extended period provided in proviso to section 28 of the Act.
- (d) The Work Accommodation Barge was not liable for confiscation u/s. 111(m) of the Act. Consequently, it may be held that bank guarantee of Rs. 58 Lakh furnished by them was liable to be cancelled/returned to them immediately.
- (e) The differential Customs Duty of Rs. 88.30 Lakh deposited by them on insistence by the investigating agency was liable to be returned forthwith
- (f) The proposal for imposition of penalty on their director Shri. Ashish Ingle u/s. 112(a) & (b) of the Act was not sustainable.

35. Summary of Noticees' submissions dated 05.06.2023 made in personal hearing held after remand by Hon'ble CESTAT:

35.1 The barge was originally imported by M/s Sarku Engineering Services, Malaysia for offshore oil drilling operation of M/s ONGC, who filed a bill of entry no. 919728 dated 12.11.2009 declaring a value of Rs. 5,73,27,600/- and claimed exemption from payment of customs duty against a bond and undertaking that the accommodation barge will be re-exported after the intended use. However, while she was in the Indian Shores at Belapur, the importer floated open tenders for sale of the barge as they did not find it worth to take it back to Malaysia. The noticee, Jayesh Shipping offered the highest bid price of US dollar 25 Lakh which was accepted by the original importer and accordingly a Memorandum of Understanding, was executed between them pursuant to which the complete payment of US dollar 25 Lakh was made by the Noticee, M/s Jayesh Shipping upon which the title was passed on to the Noticee.

35.2 The Noticee thereupon applied to the customs authorities at Mumbai port as well as BPT Authorities for permission to dry dock the accommodation barge, which was granted. Thereafter the barge was towed into outer sea by the original importer apparently, for

fulfilling the export obligation undertaken by them. Later, the Noticee filed the impugned bill of entry, declaring the transaction value as per the price paid in accordance with the MOU, for assessment, which was unacceptable to the department, hence the notice for redetermination of the declared Assessable Value was issued.

35.3. Advocate submitted that in the above background, his client was not required to pay any customs duty least there was any requirement of even filing a bill of entry inasmuch as they bought the barge when she was in the Indian waters, duly imported by its previous owner who had completed all formalities of import, including filing of the requisite bill of entry as required under the Act. In terms of the bond executed by the previous owner, the barge ought to have been exported, but instead, they sold the barge to a local buyer contrary to their undertaking given to the Customs on its import. Accordingly, the department ought to have proceeded against the previous owner for recovery of custom duty on account of non-fulfilment of the conditions of the bond, executed by them. Advocate submitted that present proceedings initiated against his client is unsustainable in law for the reason that customs duty cannot be recovered twice on the same goods and if there was a failure to recover the same from the original importer, such liability, cannot be fastened on the Noticee as is being done presently.

35.4 Without prejudice to the foregoing submission, the advocate submitted that there is no allegation anywhere in the notice that the Noticee had paid any amount over and above the price mentioned in the MOU directly or indirectly, based on which the Transaction Value was declared in the bill of entry, by the noticee. In these circumstances, going by the catena of decisions rendered by the Apex court, no case is made out for rejecting the transaction value, and therefore the attempt during investigation to survey the barge for ascertaining its value was not in accordance with the law. Consequently, the value suggested by Intertek Testing Services for a reassessment has no sanctity in law for the redetermination of assessable value and consequent demand of differential customs duty.

35.5 Earlier, when the barge was imported, the department accepted the value of Indian Rs. 5,67,60,000/- (CIF) without any demur but when the Noticee declared more than double the amount as Transaction Value (Rs.11,75,78,982/-) for assessment of the barge to custom duty, the same was objected, and proposed reassessment based on third party report, which is a mere opinion, particularly when there was no evidence of any payment over and above the price spelt out in the MOU. Interestingly, the price in the MOU is not even doubted or suspected in the Notice.

35.6 Most significantly, para 8.3 and 8.5 of the survey report of Intertek Testing Services makes an interesting reading and exposes the complete absurdity of the said valuation recommended by Intertek Testing Services.

Para 8.3 reads:

"Present Condition and Expected Residual life:- The vessel and onboard equipment are in working condition, but requires major refurbishment and thereafter can have residual life of at least another 5 to 6 years provided--"

Para 8.5 reads:

"Comments on Valuation:-Taking into consideration, the condition of the equipment, expected residual life and the enquiry in market, the fair and reasonable price in our opinion is USD 3,750,000/-(FOB)---"

35.7 Advocate submitted that from the very valuation report strongly relied on in the notice, it was evident that the recommended value of USD 3,750,000/- (FOB) is the price that the barge might fetch, considering its residual life of at least 5 to 6 years after major refurbishment. Thus, the value recommended by Intertek Testing Services is not the value that the barge would fetch in her condition in which it was surveyed. No further argument is required or deserved to reject the value recommended by the surveyor Intertek Testing Services in para 8.3, 8.5 read with para 9.5 of the report dated 2nd September 2011.

35.8 Moreover, this surveyor during cross examination, deposed that he had along with his report furnished to the customs, recent import values of similar barges. However, the Commissioner in para 80 of the Adjudication Order had observed that no such documents or reports had been submitted by the witness to the department as claimed by him and in that case, there was no need of a Chartered Engineer. This finding of the Hon'ble Commissioner would completely demolish the credibility of the valuer and the valuation report prepared by him. It is therefore submitted that the Hon'ble Commissioner must reject the report of the valuer for two major reasons. Firstly, for the reason that the credibility of the valuer is, undoubtedly tarnished and secondly, in any case, the value recommended by the valuer was not for the condition in which it was surveyed, but by suggesting a future value that the barge might fetch after its major refurbishment, which cannot under any circumstances, be accepted for rejection of the declared Transaction Value.

35.9 The advocate also invited attention to the deposition made by the expert valuers whose report are relied on in the Notice. These depositions during cross examination, if carefully scrutinized, would establish that there was no case whatsoever for the department, to even doubt the correctness of the transaction value declared by the Noticee in the bill of entry. Further it was also submitted that the notice proceeds on an erroneous presumption that Shri Ashish Ingle, Director of the noticee had admitted that the value transacted was under condition and the value of the goods when sold in normal condition would be different, as contended in Para 16 on page 17 of the notice. It was submitted that this witness had not made any such admissions or deposition which can be verified from the statement of this witness which is on record.

35.10 He drew attention to the observation of the Hon'ble Tribunal in para 9 of the order to the effect that the restricted framework of Sections 28 and 114A of the Customs Act would have to be adhered to in the fresh proceedings, as pointed out by the Ld. Counsel in para 5 of the order to the effect that there was no scope for alleging any mis-declaration or suppression of facts by the Noticee, to bring down the force of penalties upon the Appellants. He also drew attention to the observation of the Hon'ble Tribunal in para 10 to the effect that the certification of the Chartered Engineer retained by the investigators, would have to be elaborated upon by the Adjudicating Authority for it to have credibility acceptable to the Appellate process.

35.11 Finally, it was submitted that impugned demand raised in the Notice be dropped as not sustainable, for it did not appear to noticee to have any reliable ground /basis or any cogent reasoning inasmuch as the Notice miserably failed to bring out a case for rejection of the Transaction Value declared by the Noticee in the Bill of Entry filed by them.

DISCUSSION & FINDINGS

36. The present SCN dated 08.02.2012 was issued to the following 02 noticees:

Noticee-1: M/s Jayesh Shipping Pvt Ltd

Noticee-2: Shri Ashish Ingle (Director: M/s Jayesh Shipping Pvt Ltd)

37. The said SCN was adjudicated in the first round by Commissioner of Customs (Import), Mumbai vide Order in Original No. 47/2013/CAC/CC(I)/AB/Gr. VB dated 28.03.2013 in respect of Noticees-1 & 2. Both noticees preferred appeal in the Hon'ble CESTAT against the said OIO. Hon'ble CESTAT vide Order dated 21.03.2023 remanded back the matter to original Adjudicating Authority with following observations: (i) Not placing notice of intent to the importer for holding that the impugned barge, upon arrival for import by the appellant. was already in their ownership and, thereby, the condition of at the time and place of importation would not be fulfilled, (ii) explain the different positions adopted for valuation of the same barge which, but for a brief while, was within Indian territorial waters and, yet, was found to be valued with substantial difference on the two occasions, (iii) determination of the value in the certification of the Chartered Engineer retained by the investigators would have to be elaborated upon by the adjudicating authority for it to have credibility acceptable to the appellate process. & (iv) imposing penalty under section 114A of the Act on the entire duty liability instead of restricting it, as should have been, to the amount allegedly short-levied. Therefore, in pursuance of the said Hon'ble CESTAT order, the present SCN is before me for afresh adjudication in respect of Noticees-1 & 2.

38. Personal hearings have been duly conducted with all the noticees. I have gone through the case records and the replies/submissions of the noticees made during the personal hearings and in their written submissions.

39. Now, let me deal with the four observations of the Hon'ble CESTAT which have formed the basis of remand.

39.1 On the Hon'ble Tribunal's observation(in para 7 & 9) that "7.....*The importer has contended that the adjudicating authority had, without placing notice of intent to do so, adduced the proposition that the impugned barge, upon arrival for import by the appellant, was already in their ownership and, thereby, the condition of at the time and place of importation would not be fulfilled.....*9. *On the basis of the additional grounds, we do find that the adjudicating authority has incorporated facts, not suitably tested by offering opportunity to challenge, which is anathema to just and fair adjudication*", I observe that the show cause notice dated 08.02.2012 proposes to reject the declared assessable value of Rs.11.76 Crore CIF of the old and used barge imported by the noticees in June 2011, under rule 12 of the CVR 2007 read with CBIC Circular No. 4/2008 – Cus dated 08.02.2008 and redetermine the value at Rs.17.41 Crore CIF under Rule 9 of the CVR 2007 read with CBIC Circular dated 19.11.1987 and second CE Intertek report. The SCN has alleged that the declared value of Rs.11.76 Crore was decided in December 2010 between the buyer and the seller in the form of MOA (Memorandum of Agreement) signed six months prior to import. When the barge was imported in June 2011, the same price decided in the MOA was declared in the bill of entry but the importer never disclosed to the Customs Department that in the intervening period of six months, the barge had received substantial repairs and reconditioning leading to the reinstatement of the essential certificates regarding its class and ability to voyage, which may have increased the commercial value of the barge substantially at the time of import. The valuation of imported goods is covered by section 14 of the Act. This section prescribes that the value of the imported goods shall be the transaction value of such goods that is to say the price actually paid or payable for the goods when sold for export to India **for delivery at the time** and place of importation. In the present case, the relevant time for valuation was June 2011 after reinstatement of certificates, whereas the value declared was the value decided between the two parties in December 2010 when the certificates stood expired. In the personal hearing on 05.06.23 given to the noticees after the remand of the case by the Hon'ble Tribunal, they have argued more on the lines as to how the report of the second CE Intertek is not proper, and how flaws have emerged during the cross-examination of the second CE. They have also argued that there is no evidence of any additional payment to the seller of the barge and transaction value should be accepted. In all their arguments, one significant point to note is that they have remained silent on the question as to why have they declared the same value to the customs in June 2011 which was decided in December 2010 pre-repair of barge, when they fully knew that the section 14 of the Act required them to declare the value at the time of importation or at least justify to customs that repairs & reconditioning and reinstatement of certificates has not affected the value. The noticees chose to remain silent on this point till SIIB intervened. Even till now, they have not denied the charge that

substantial repair and refurbishment and reinstatement of certificates would have changed the commercial value of the barge. Infact, in para G of their Stay Application No. C/stay/95993/13 filed on 11.06.2013 before the Hon'ble Tribunal, they have admitted for the first time, as an alternative ground, that the repair, reconditioning and certificate reinstatement charges borne by them could be added to the transaction value under rule 10 of CVR 2007. The factual part of this admission, even though as an alternative ground, further reinforces the reason to doubt the transaction value. In view of the above, I find that the rejection of the declared value in terms of rule 12 of CVR 2007 by the Department appears to be in order. The allegation relating to the date and time of importation has been suitably tested through the mechanism of the show cause notice and personal hearing dated 05.06.2023 ensuring natural justice to the noticees.

39.2 On the Hon'ble Tribunal's observation(para 9) that "*The adjudicating authority is also obliged to explain the different positions adopted for valuation of the same barge which, but for a brief while, was within Indian territorial waters and, yet, was found to be valued with substantial difference on the two occasions, this could have a significant bearing on the manner in which the residual method is used for conformity with the scheme of valuation espoused in rule 3 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007*", I observe that this impugned barge was for the first time imported into India in November 2009 vide bill of entry No. 919798 dated 12.11.2009 with declared assessable value (CIF) of Rs.5.73 Crore. The question raised by the Hon'ble Tribunal is that how a barge which was assessed at Rs.5.73 Crore in November 2009, is again on its second entry into India is declared by the importer at Rs.11.76 Crore and SIIB on investigation proposes to reassess it at 17.41 Crore. While trying to find answer to this question, I find that at para 7 of the said SCN; Shri Ashish, Ingle, Director of the importer firm has admitted that the price of the barge mentioned in the MOA and Bill of Sale as Rs.11.76 Crore is quite low and they were lucky enough to get such kind of barge at such a low-cost. This was an admission by the noticees which has not been disputed till date, that the said barge of class A1, 75 m long and 24 m wide with accommodation for 150 persons and other goods facilities and a good brand of crane would be widely believed to fetch a better price. Dheeraj Offshore, the valuers of the Saraswat Bank for the purpose of loan valued the barge at Rs.15 Crore. In September 2010, the insurance company Oriental Capital insured the barge at Rs.18.26 Crore (USD 40,00,000/-) for a period of one year covering the period of present import. It is also a fact that the buyers in its initial import in November 2009, the importer had claimed duty exemption under Notification No. 21/2002 – Cus dated 01.03.2002 (sl no.214) and was assessed at nil rate of duty under reexport bond on the ground that the said barge would be used only for ONGC's petroleum operations and would be re-exported thereafter. At the time of first import, the supplier of the barge and the importer of the barge were the same and the value was declared for the customs purposes without any actual sale. The earlier importer M/s Sarku Engineering

appears to have used the said barge for petroleum operations and re-exported it to high seas in April 2011 vide shipping bill no 3207787 dated 12.04.2011 and subsequently re-export bond was discharged. The only explanation for the low value of Rs.5.73 Crore at the time of first import could be that since at that time, the consignment was claiming exemption and duty was nil. So the focus of the customs assessing officer would have been on the fulfilment of conditions of the exemption notification and the value of the barge may not have received the due attention. And at the time of second import, SIIB unit of Customs received information about undervaluation of the barge and initiated the investigation during which it came across various documents which showed a much higher valuation of the barge than that declared. The importer themselves have declared the value at rupees 11.76 Cr, which is six Crore more than the declared value at the time of first import. Thus it becomes apparent that the barge was grossly under invoiced at the time of first import also, which remained undetected; but the undervaluation was detected only at the time of its second import based on information received by SIIB. By pointing out that the mistake of the first time importer went unnoticed by customs, this does not in any way affect the case of undervaluation by the noticees at the time of second import. Moreover, the barge on re-export from India assumed foreign character and therefore full customs duty was payable even on its second time import into India and also because the customs duty paid at the time of first import was nil due to exemption notification benefit.

39.3 On the Hon'ble Tribunal's observation(in para 10) that "*We would also like to point out that the determination of the value in the certification of the Chartered Engineer retained by the investigators would have to be elaborated upon by the adjudicating authority for it to have credibility acceptable to the appellate process*", I observe that there were ample grounds for rejection of the declared value as discussed in para above. The only question remains now, is on the mechanism and accuracy and reliability of redetermination of value. The issue raised by the Hon'ble Tribunal in the comment above is also on the reliability of the second CE Intertek report used for redetermination of the value of the barge.

39.3.1 I find that Para 2.33A of Foreign Trade Policy, 2009-2014 prescribes that Customs or any other Central or State Government authority may avail of services of Inspection and Certification Agencies in Appendix 5 of the HBP v1, for certifying residual life as well as valuation / purchase price of capital goods. I find that the guidelines for valuation of second-hand machinery / capital goods have been categorically prescribed by the Board in its Circular No. 04/2008-Cus dated 12.02.2008. The Circular clearly mentions that if transaction value of Rule 3 is rejected, valuation of second-hand machinery can be done under Rule 9, on the basis of value of new machine, as certified by the Chartered Engineer, and scaled down by allowing depreciation commensurate with the period of usage.

Reliance is placed on the Hon'ble Supreme Court judgement in the case of **Gajra Bevel Gears**¹².

39.3.2 The Circular states, for valuation of second-hand machinery/ capital goods, a certificate should be submitted by the importer issued by an independent Chartered Engineer or any equivalent in the country of supply. It has been further provided that in the absence of a proper Load Port Certificate, a local Chartered Engineer's Certificate issued by Chartered Engineers whose names have been published by the Department may be accepted. The certificate should indicate inter alia:

- i) Price of new machinery as in the year of its manufacture,
- ii) Current CIF value of new machinery if purchased now,
- iii) Year of the manufacture of machinery
- iv) Sale price of the supplier,
- v) Present condition of machinery,
- vi) Nature of reconditioning or repairs carried out, if any, and the cost (including the dismantling cost, if any) thereof,
- vii) Expected life span

39.3.3 It is an admitted fact that the valuation certificate dated 18.06.2011 of first CE MR Shenvi did not contain (i) the price of the new barge as in its year of manufacture (ii) Sale price of the supplier (ii) nature of reconditioning or repairs carried out on the barge, if any, and the cost thereof and (iv) the expected life span of the barge. MR Shenvi vide their report dated 18.06.2011 have merely endorsed / backed the price / value quoted by M/s Jayesh Shipping Pvt Ltd., the importers, in the MOA and Bill of Sale of the second-hand barge. The absence of the aforesaid crucial parameters in the report alone becomes a ground for rejection of the 1st CE report and of the transaction value of USD 2500000 (Rupees 11,75,78,982/-) for the barge "Sarku Utama" declared before the Department.

39.3.4 Thus, I find that the first CE MR Shenvi report is not reliable because of the following reasons:

- i. The said report does not contain information mandated by the relevant CBIC Circular.
- ii. The first CE MR Shenvi has not explained as to how his value is the same as the value of the barge taken in December 2010 before the repairs, reconditioning and reinstatement of the Certificates. Thus, the information provided by the first CE MR Shenvi was not sufficient enough to help the assessing officer to come to an informed decision.

¹² 2000 (115) E.L.T. 612 (S.C.)

- iii. The valuation of Rs.11.76 Crore of barge prescribed by the first CE is much below the valuation of Rs. 15 Crore done by Dheeraj Offshore, valuers of the Saraswat Bank for the purpose of grant of loan for the said barge. The Saraswat Bank and its Valuer were independent third-party neither related to customs nor to the noticees.
- iv. The valuation of Rs.11.76 Crore prescribed by the first CE is much below the valuation of Rs.18.26 Crore done in the insurance policy of the barge for the relevant period.

39.3.5 Now coming to the second CE Intertek report dated 02.09.2011; I find that the said report mentions the date and place of inspection as 31.08.2011 at P&V Channel, Mumbai Port. The barge has been described as "One old, used & secondhand non-propelled accommodation barge 'Sarku Utama' with related spares, accessories, consumables & provisions on board". The year and place of manufacture is mentioned as 1981, Singapore. The price of the new vessel in the year of manufacture is categorically mentioned at Para 6.2 (d) as USD 11,500,000/-. Thus, this second CE Intertek report looks more detailed and comprehensive as per the relevant CBIC Circular.

39.3.6 Further, if we examine this problem mathematically. The importer has brought on record that the valuation report by Dheeraj Offshore had an approximation range of plus or minus 35% of INR 15 Crore i.e. the price of the barge is between INR 9.75 Crore and INR 20.25 Crore. Whereas, the valuation report by Intertek Testing Services had an approximation range of plus or minus 10% of INR 17.41 Crore i.e. the price of the barge is between INR 15.67 Crore and INR 19.15 Crore. The intersection of both the ranges of price is between INR 15.67 Crore and 19.15 Crore. The insurance valuation of Rs. 18.26 Crore by Oriental Capital also falls in this range. Hence, by preponderance of probabilities and the circumstances of the case, the valuation of Rs. 17.41 Crore by second CE Intertek appears more reasonable and accurate. I also keep in mind here the golden words of the Hon'ble Apex Court in **D. Bhoormull**¹³ case that *the law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may on its basis believe in the existence of the fact in issue. Thus, legal proof is not necessarily perfect proof, often it is nothing more than a prudent man's estimate as to the probabilities of the case.*

39.3.7 Regarding the noticees contention in the personal hearing that as per the para 8.3 & 8.5 of the second CE Intertek report the said barge needs urgent repairs and reconditioning and the valuation given by the valuer is subject to repair i.e. value after such repair. I find from the report that these two paras contain two independent observation of the CE. Para 8.3 reads as:

¹³ 1983 (13) ELT 1546

“Present Condition and Expected Residual life:- The vessel and onboard equipment are in working condition, but requires major refurbishment and thereafter can have residual life of at least another 5 to 6 years provided that the same are put in operation with routine & preventive maintenance measures as per the Manufacturer's instructions Manual subject to usage of original spares for worn outs as may be postulated and recommended for Equipments”

39.3.8 This para, as it starts with, describes the present condition of the barge, which it states that it is in working condition but needs major refurbishment. Further, if it is refurbished, it will have a residual life of at least another 5-6 years. *Para 8.5 reads:*

“Comments on Valuation:-Taking into consideration, the condition of the equipment, expected residual life and the enquiry in market, the fair and reasonable price in our opinion is USD 3,750,000/-(FOB)---”

39.3.9 This para, as it starts with, comments on valuation of the barge, it states that taking into consideration the condition of the equipment, expected residual life and enquiry in market, the fair and reasonable price in our opinion is USD 3,750,000/-(FOB). It can be seen that the help verb “is” has been used, which indicates that the prices quoted are for current condition of the barge and not that of any future as claimed by the noticees.

39.4 On the Hon’ble Tribunal’s observation(in para 9) that “.....As pointed out by learned counsel, the restricted framework of section 28 and section 114A of the Act would have to be adhered to in the fresh proceedings....”, I observe that a combined reading of section 114A with subsection (2) of section 28 makes the picture clear. Section 114A provides for imposing penalty which shall be equal to the duty or interest so determined under subsection (2) of section 28, wherein, duty or interest so determined under subsection (2) of section 28 is only part of duty which was short levied and was due from the such person. Hence, I hold that the penalty under section 114A of the Act shall be limited to the duty or interest so determined under subsection (2) of section 28.

40. On rest of the issues raised by the Noticees, I rely upon the detailed findings of my predecessor Commissioner given in paras 59 to 86 of his OIO dated 28.03.2013. The same are reproduced below for ready reference.

“59. The subject case involves import of an old and used Work Accommodation Barge viz. "Sarku Utama" by M/s Jayesh Shipping Pvt Ltd. vide Bill of Entry No. 3864583 dated 22.06.2011 from M/s Sarku Engineering Services SDN BHD, Malaysia with a declared value of USD 2500000/-. According to the investigation, the CIF of USD 2500000 (Rs. 11,75,78,982/-) of the subject barge declared at the time of import was not true and fair and was deliberately undervalued by the importer M/s Jayesh Shipping Ltd. with an intention to evade payment of legitimate Customs duties. I have to decide on the allegations raised in the Show Cause Notice proposing rejection of the transaction value of

the Work Accommodation Barge viz. "Sarku Utama" declared by the importer at the time of filing of Bill of Entry and redetermination of the values arrived at by the investigation. Consequently, to also decide on the demand of differential duty from the noticees on the redetermined values along with interest, liability for confiscation of the barge and imposition of penalty on the noticees as proposed in the Show Cause Notice.

60. *At the time of importation of the subject barge, the importer M/s Jayesh Shipping Pvt Ltd had produced the following documents in support of the declared value of USD 2500000/-.*

(i) Memorandum of Agreement (MOA) dated 09.10.2010 between them and M/s Sarku Marine Engineering SDN BHD, Malaysia showing the consideration amount of sale at USD 2500000/-

(ii) Bill of Sale dated 07.05.2011 for USD 2500000/-

(iii) Valuation report dated 18.06.2011 of MR Shenvi showing the value of the barge at Rs. 11,75,78,982/-.

61. *I take note that the MOA is dated 09.10.2010 and Bill of Sale is dated 07.05.2011. I also proceed to take up the independent valuation report dated 18.06.2011 of MR Shenvi which was a pre-requisite for establishing the fair value of the second-hand barge.*

62. *The guidelines for valuation of second-hand machinery / capital goods have been categorically prescribed by the Board in its Circular No. 04/2008-Cus dated 12.02.2008. The Circular states, for valuation of second-hand machinery/ capital goods, a certificate should be submitted by the importer issued by an independent Chartered Engineer or any equivalent in the country of supply. It has been further provided that in the absence of proper Load Port Certificate, a local Chartered Engineer's Certificate may be accepted issued by Chartered Engineers whose names have been published by the department. As per Board's Circular, the certificate should indicate inter alia:*

i) Price of new machinery as in the year of its manufacture,

ii) Current CIF value of new machinery if purchased now,

iii) Year of the manufacture of machinery

iv) Sale price of the supplier;

v) Present condition of machinery.

vi) Nature of reconditioning or repairs carried out, if any, and the cost (including the dismantling cost, if any) thereof,

vii) Expected life span

63. It is not in dispute that the valuation certificate dated 18.06.2011 did not contain (i) the price of the new barge as in its year of manufacture (ii) Sale price of the supplier (ii) nature of reconditioning or repairs carried out on the barge, if any, and the cost thereof and (iv) the expected life span of the barge. MR Shenvi vide their report dated 18.06.2011 have merely endorsed / backed the price / value quoted by M/s Jayesh Shipping Pvt Ltd., the importers, in the MOA and Bill of Sale of the second-hand barge. The absence of the aforesaid crucial parameters in the report alone becomes a ground for rejection of the transaction value of USD 2500000 (Rupees 11,75,78,982/-) for the barge "Sarku Utama" declared before the department.

64. Now I come to the Memorandum of Agreement (MOA) dated 09.12.2010 entered into between M/s Jayesh Shipping Pvt Ltd., the Importers and the suppliers of the barge. At Section 2 of the Attachment to the said Memorandum of Agreement, the description of the barge has been stated as "Accommodation Work barge Sarku Utama "as is where is-as it lie". At Section 5, the place for taking delivery of the barge has been stated as Belapur Anchorage, Mumbai, West Coast of India. However, Shri Ashish Ingle, Director of the importing firm in his statement recorded at the time of investigation has admitted that the delivery of the barge was changed to Mumbai West Coast of India Open International waters at 1906N/069 12E. The vessel delivery place was in international high waters as per the stated coordinates, because the vessel had no valid documents at the time of signing of MOA and the same was reinstated by M/s Sarku Engineers Services SDN BHD, Malaysia. This is a conspicuous deviation from the terms and conditions of MOA dated 09.12.2010 which mentioned the description and place of delivery as "as is where is-as it lie" basis and Belapur Anchorage respectively. The deviation in place of delivery goes on to have a bearing on the value of the barge imported. The barge was lying in laid up condition at Belapur Anchorage needing repairs and refurbishment at the time of signing of MOA. However, before taking of delivery in international waters, the barge was admittedly sent for dry docking so as to get it reconditioned and put into class. This in turn made the barge seaworthy and also influenced its value. On this count also, the declared transaction value of the barge is liable to be rejected

65. Another crucial document which was produced before the department in support of the value of the barge was the Bill of Sale dated 07.06.2011. It is an admitted fact that negotiations for purchase of the barge "Sarku Utama" with the owners was entered into by the Importers as early as in December, 2010 when none of its statutory certificates were valid. A perusal of the statement of Shri Ashish Ingle would further show that the subject barge was temporarily imported into India by M/s Sarku Marine under a contract of ONGC. Thus, at the time of negotiation, the barge was already in Indian waters at Belapur. Therefore, the consideration amount quoted in the MOA was with respect to the condition of the barge at that point of time. It is also nobody's case that the barge was not dry docked for repairs before it was delivered to M/s Jayesh Shipping Pvt Ltd. in the international

waters at the given coordinates. At the time of acceptance of the delivery of the barge and its re-entry into Indian waters in May, 2011, the barge had valid certification and class. So, when Bill of Sale dated 24.05.2011 (invoice for valuation purpose) was issued by the suppliers of the barge, its identity had changed. However, no change in identity of the barge or its transaction value has been recorded in the said Bill of Sale and it depicted the same description and value of USD 2500000/- as in the MOA which was signed almost 6 months back in December, 2010. This becomes another ground for rejection of the declared transaction value of the barge. To arrive at the above conclusion in rejecting the transaction value of the impugned barge, I derive strength from the judgement in the case of *M/s Prashant Glassware Pvt Ltd. Vs Collector (1996 (87) ELT 518 (Trib.))*, wherein the CESTAT had held that the burden of proving misdeclaration of value in the invoice is not on the department when inadequate, incomplete, incorrect or misleading description is given by the assessee. The decision was upheld by the Apex Court as reported in 1997 (87) ELT A179 (SC).

66. The noticees have pleaded that statement of their Director was distorted while quoting the same in the Show Cause Notice to the effect that they had admitted the transaction value was under condition and that the value of the goods when sold in normal conditions would be different. They have further pointed towards the deposition of their Director that the vessel's price was negotiated when the statutory certificates were lapsed and subsequently even after dry docking and reinstatement of class and certificates the value had not changed since the owners were stuck with some matter.

67. I find that, Shri Ashish Ingle, Director of *M/s Jayesh Shipping Pvt Ltd.* on being questioned about purchase of the class A1 barge at just Rs. 11.5 Crore has stated that they were lucky enough to get such kind of barge at such low cost through negotiation. In reply to next question, Shri Ingle has stated that in normal course they would not get such barges in the international market at the given cost but since the owner does not have to bear the expenses of taking the barge whose certificates had lapsed in Malaysia, they had sold the impugned barge to *M/s Jayesh Shipping Pvt Ltd.* This confession from the part of Shri Ashish Ingle, therefore, makes it apparent that the subject transaction was not as per the normal conditions prevailing in the market at that point of time. Moreover, the identity of the barge at the time of negotiation in December, 2010 and its delivery in May, 2011 had undergone a sea-change owing to dry docking for repairs and reinstatement of class and certificates. All these factors raise a genuine doubt towards the declared transaction value of the barge in question and ultimately its rejection. My above findings would invalidate the noticees' claim that there is no adverse evidence to discredit the transaction value of the barge.

68. The noticees have cited the case-laws of *Eicher Tractors Ltd. Vs. CCE, Mumbai* reported in 2000 (122) ELT 321 (SC), *CC, Kol. Vs South India Television* reported in 2007(214) ELT 3(SC) and *CC, Mumbai Vs. JD Orgochem Ltd.* reported in 2008 (226) ELT

9 (SC) to assert that since the department could not adduce any evidence as referred to in Rule 3(2)(b) of Customs Valuation Rules, 2007 the transaction value has to be accepted.

69. In the case of **Eicher Tractors Ltd.** it has been held by the Apex Court that transaction value has to be determined subject to three conditions laid down in Section 14(1) of the Act i.e. of time, place and absence of special circumstances and price of imported goods is to be determined under Section 14(1A) in accordance with the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. Section 14(1) of the Customs Act, 1962 states that

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

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

Similarly, the Rule 3 (2)(b) of the Customs Valuation (Determination of Value of Imported Goods), Rules, 2007 states that

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued.

70. In the case in hand, there has been a considerable variation in the time of the negotiation of price of the barge and its actual delivery i.e. the price was negotiated in December, 2010, the actual time of delivery was May, 2011. Further, the sale was admittedly not as per the normal course of international trade since the barge was devoid of any certification when the sale was effected. However, at the actual time of delivery the barge was dry docked for the sole purpose of getting it classed and certified. Whereas, the sale price was influenced owing to the then condition of the barge, at the time of its importation, its condition and thereby its identity had changed. Thus, the principles laid down by the Apex Court in the case of **Eicher Tractors Ltd.** is clearly distinguishable from the instant case and is of no help to the noticees.

71. In the case of **South India Television**, the Apex Court has discussed undervaluation in imports of ceramic capacitors and diodes which is different from that of the present case which involves import of second-hand barge. Even otherwise, in **South India Television**, there had been comparable imports of the same commodity so as to arrive at a fair transaction value whereas in the subject case, there are no such contemporaneous imports, since the matter involves an import of second-hand barge. Thus, the ratio of the case-law of **South India Television** is nowhere similar to the present case. The case of **J.D. Orgochem Ltd.** cited by the noticees is also somewhat similar to the case of **South India Television**. In **J.D. Orgochem Ltd.**, the department rejected the transaction value of the imported goods and sought to enhance same based on past prices without any contemporaneous evidence. This was struck down by the Apex Court stating that the department has not discharged the burden of proof as envisaged in Section 14(1) of the Act. I have already held in paras hereinabove that the transaction value of the used and the second-hand barge was largely influenced by its conditions at the time of negotiation. However, at the time of delivery, the barge had undergone a change in its identity i.e. it was reinstated to class and certification. So, the burden of proof as laid down by Section 14(1) of the Act has been rightly discharged by the department in rejecting the transaction value of the second-hand barge. All in all, none of the case-laws cited by the noticees support their case.

72. It has been further averred by the noticees that situations envisaged in Rule 3(2) or (3) were attracted to the facts of the present case and therefore transaction value deserved to be accepted. They have also cited the case-law in the matter of **Lifestyle International** reported in 2011 271) ELT 190 (Bom) stating that the circular issued by the department cannot curtail the jurisdiction of the assessing officer under Section 14 of the Customs Act. For the sake of clarity reproduce Rule 3 of the Customs Valuation Rules, 2007.

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; (2) Value of imported goods under sub-rule (1) shall be accepted:

Provided that

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which –

(i) are imposed or required by law or by the public authorities in India; or

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods.

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued.

73. *In this case, as already held by me, the sale price of the subject barge was determined admittedly in a condition where it was in laid down condition without any class or certificate and had to be refurbished and repaired to put it into class. As such the declared value cannot be determined without ascertaining the extent of reconditioning and refurbishment. So sub- rule (2)(b) of Rule 3 is directly applicable in the present case and the declared value cannot be accepted as such. Once, value is not acceptable under Rule 3(2)(b), there is no need to further proceed to sub-rule (3) of Rule 3. Hence, the submission of the noticees lacks substance. The case-law of Life Style International cited by the noticee relates to a Standing Order issued by the department for valuation of imported furniture purportedly against the spirit of Section 14 of the Act and merely giving guidelines for assessment. Such is not the case here. The subject matter only refers to the Circular No. 04/2008-Cus dated 12.02.2008 issued by the Board in consonance with Section 14 of the Act read with the Valuation Rules to bring a uniform practice for assessment of second-hand machinery / capital goods between different field formations. As such the Circular has prescribed guidelines for assessment of second hand machinery and the same has been adopted by the department to reject the declared transaction value of the barge. Therefore, the facts and circumstances of the subject case are far different with that of the case-law of Life Style International cited by the noticees.*

74. *The investigation has also been successful in unearthing evidence which further creates genuine doubts in accepting the declared transaction of the barge viz. Valuation report dated 16.10.2010 issued by M/s Dheeraj Offshore Surveyors and Adjusters Pvt Ltd. wherein the subject barge has been valued at Rs. 15 Crore. This valuation was done by Dheeraj Offshore as requested by Saraswat Bank, Antop Hill branch, Mumbai, whom the importers had approached for loan towards payment for purchase of the subject barge "Sarku Utama". As could be observed from the report, the surveyors had done a comprehensive inspection of the barge so as to ascertain its then market value. It was reported that all the certificates, including Life Rafts, Fire Fighting and Safety Equipment had expired during that point of time. The work barge had arrived in Mumbai from Malaysia in 2009 and was in operation at Mumbai High for ONGC project being carried out by Larsen & Toubro; that after the end of the offshore construction season in June, 2010, the barge continued to remain in Mumbai awaiting further orders from her owners. As per inspection of the barge on 18.05.2010, it was further reported that the condition of the barge's Hull was noted to be work worn and required maintenance, numerous dents consistent with Offshore operations were observed endured on its hull which needed painting. Except for minor dents, damage to the Hull section was reported. Similarly, all the other parts i.e. tank, accommodation space, winch control rooms, barge crane, power generators, water maker, sewage disposal systems and all other auxiliary equipments*

needed overhauling and maintenance as reported by the surveyors. It was concluded that the barge is in a satisfactory condition, and may be revived to operational readiness with overhaul of her Hull, as required by Class Special Survey and general overhaul of her machinery. Based on this inspection dated 11.12.2010, Dheeraj Offshore had valued the subject barge at Rs. 15 Crore considering it is fully classed without any major deficiency and keeping in view its remaining life, type and market conditions for similar vessels. Thus, the value proposed by Dheeraj Offshore was after taking into consideration the factors of getting the barge fully classed and reinstatement of the certificates after due maintenance of its equipments and was issued around the same time when the MOA was signed by the importers with the owners for purchase of the barge. However, the MOA quoted the value of the barge at Rs. 11.5 Crore which was far below the estimated Rs. 15 Crore quoted by Dheeraj Offshore. This again casts a doubt on the genuineness of the transaction value declared by the Importers.

75. *The noticees have pointed towards the reply of Mr. Gratian D Souza who had recommended the value of Rs. 15 Crore for the barge on behalf of Dheeraj Offshore, during the course of his cross-examination dated 21.12.2012. Mr. D'Souza has stated therein that there was an approximation in the range of plus or minus 35% on the value of Rs. 15 Crore arrived upon by him; that such barges were being sold in Dubai for Rs. 8 Crore approximately during the material time. The noticees have harped upon the value of Rs. 10 Crore of the barge taking into consideration the range of approximation of minus 35% as suggested by Mr. D'Souza. I tend to disagree with this submission of the noticees. The range of approximation of 35% (plus or minus) is being used by the noticees to their advantage i.e. on the lower side to reach at a value of Rs. 10 Crore. However, the same logic can also be adopted for enhancement of the value of the subject barge to Rs. 20 Crore to the detriment of the noticees. So, the theory of approximation brought out during the course of cross-examination defies sense. Even otherwise, the range of approximation of plus or minus 35% by no stretch of imagination can be applied towards valuation of second hand machinery. Further, the market conditions prevalent in Dubai, at the material time also cannot be compared with that in India because the transaction value always depends on the time and place of importation.*

76. *Another evidence brought forth by the investigation is the value of the barge arrived at by the Oriental Capital, the insurance company in its policy no. 92-313-10-000320 dated 29.09.2010 towards the Marine Hull & Machinery insurance. The period of insurance is 01.09.2010 to 31.08.2011 i.e. the insurance was still valid when the barge was imported into India in May, 2011. The insured value is at USD 4000000/-. Even though the insurance was issued to the previous owners of the barge, the value of the barge of USD 4000000/- arrived at by the insurance company is well on the higher side as compared to the declared transaction value of USD 2500000/- by M/s Jayesh Shipping*

Private Limited. This also becomes a factor for doubting the genuineness of the transaction value as well as the credentials of the importers.

77. *Having factored in the above reasons for rejection of the declared transaction value, I now move towards Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The noticees have contested the rejection of the transaction value on the provisions of Rule 12(2) (i) (a), (b) and (e) of the Valuation Rules *ibid*. Let me reproduce the relevant rule before delving into the appropriateness of its invocation in the subject case.*

12. Rejection of declared value. - (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further Information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the ground's for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation: -

(1) For the removal of doubts, it is hereby declared that: -

(i) This rule by itself does not provide a method for determination of value, It provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) the non-declaration of parameters such as brand, grade, specifications that have relevance to value

(f) the fraudulent or manipulated documents

78. The subject Rule 12 at sub-rule (1) provides that when the proper officer doubts the truth or accuracy of the value declared by the importer it would be deemed that the value cannot be determined as per sub-rule (1) to Rule 3. Sub-rule (2) to Rule 12 further prescribes the procedure to be adopted by the proper officer before taking a final decision under sub-rule (1). Having exhausted the above two provisions of sub-rule (1) and (2) to Rule 12 and having reasonable doubts about the accuracy of the declared transaction value of the barge, I move towards the various reasons framed under sub-rule (2)(ii) enunciated from (a) to (f). I concur with the views of noticees that the reason (a) cannot be adopted for rejection of the transaction value. However, it has already been proved as to how the declared transaction value of USD 2500000/- for the subject barge is far from being realistic and involved a heavy reduction from the ordinary competitive price prevailing in the market for a barge with such class and certification. So, reason (b) to Rule 12(2)(iii) is rightly invocable. Similarly, reasons (d) and (e) are also attracted for rejection of transaction value since the vital parameters of repairs and refurbishment undergone by the subject barge after dry docking for putting it into class was not declared by the importers at the time of its clearance. Therefore, the argument that the provisions of Rule 12 are incorrectly invoked for rejection of the transaction value does not survive.

79. Once the transaction value of the subject barge is rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods), Rules, 2007, I now move on to the next step of determining the correct assessable value of the impugned goods in terms of the Rules *ibid* for the purpose of computation of Customs duty. As per Rule 4 of the said Rules, value of identical goods sold for export to India and imported at or about the same time as the goods being valued is to be considered. Here I find that the barge "Sarku Utama" was old and used barge subsequently refurbished by dry docking and as such the contemporaneous import values of identical or similar goods are not available. Rule 4 and 5 of the said Rules, hence, cannot be applied. Therefore, as per Rule 6, if the value of the imported goods cannot be determined under provisions of Rule 3, 4 and 5, the value shall be determined under the provisions of Rule 7 or, when the value cannot be determined under that rule, under Rule 8. Rule 7 cannot be applied since no identical or

similar barges would be sold in India after importation. Further, Rule 8 also cannot be resorted to since the values depends on the extent of usage of the goods for the preceding years, the degree of reconditioning and refurbishment and also the maintenance of the goods carried out. Also since no other proper evidence besides the incomplete certificate issued by MR Shenvi was provided by the importer in support of the value declared for the barge, the valuation cannot be carried out under Rule 8 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 also. Hence, the valuation of the impugned barge is required to be carried out as envisaged under Rule 9 of the ibid Rules i.e. the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of the data available in India. Therefore, in the instant case, the investigation had rightly sought the assistance of another reputed Chartered Engineer and valuer in Intertek Testing Services. Intertek Testing Services by opting a broad and transparent Valuation Methodology have arrived at the value of the barge. The criterion in arriving at the new values included the estimation of the price of the barge when new at the time of its manufacture, present condition of the barge, scope of repairs by way of dry docking and estimated useful and residual life of the barge. Since, the above methodology Is in accordance with the one envisaged under the Valuation Rules and the Board's Circular, I accept the same for arriving at the transaction value of the impugned goods for computation of Customs duty.

80. The noticees after cross-examination of Shri Sunil Dawalkar, the Chartered Engineer who had signed the report of Intertek Testing Services have pointed fingers towards his answer stating that while submitting his valuation report to the department he had also submitted certain recent import values of similar Work Accommodation Barges. So, the noticees have sought a copy of these documents. However, I find that no such documents have been submitted by Shri Dawalkar to the department. Even otherwise being a technically qualified, Shri Dawalkar as a Chartered Engineer himself is competent enough to suggest the value based on his survey of the barge. There is no need for a Chartered Engineer to compare the import values of similar vessels to arrive at a fair value of the subject barge. Had values of similar barges been available with the department as claimed by the noticees, there would have been no need to appoint a Chartered Engineer for determining the value of the subject barge. So, the reply given by Shri Dawalkar during his cross-examination is devoid of any substance and quoted in the wrong context. Other observation pointed out by the noticees from the cross-examination of Shri Dawalkar is that he had not surveyed the subject barge in person and his associate had seen it. This does not in any way prove that value arrived at by Shri Dawalkar on behalf of Intertek Testing Services is incorrect. The value has been arrived at not at the instance of a single person in Shri Dawalkar but on behalf of an agency appointed by the department. It does not make any major difference even if the barge was surveyed by an associate of Shri Dawalkar who is competent to inspect the barge on behalf of the agency Intertek Testing

Services. No fault could be ascribed to the reply of Shri Dawalkar that he cannot offer any comments on the amounts of processing, reconditioning and replacement since the survey was undertaken almost 18 months before the cross-examination and as such he is not supposed to remember the exact amounts on these heads. Another point brought forth by the noticees is that Shri Dawalkar has stated to have arrived at the value of the barge only on approximation basis and had submitted his valuation report much after the time of import. I find that the barge was imported in the month of June, 2011 whereas the valuation report was submitted by Intertek Testing Services on 02.09.2011. So even if the report has been submitted after 2 months or more of import, it would not have much bearing on the valuation of the barge since there was seemingly no drastic change in market conditions which has been brought out either in the notice or by the noticees.

81. *The valuation reports of the experts adopted by the department to reject the transaction value of the barge have been disputed by the noticees stating that the valuation was only on approximation as revealed during the course of cross-examination and as such they should not be assigned any significance or importance. This argument of the noticees does not cut any ice with the facts and evidences brought out. The factors and reasons leading to the rejection of the declared transaction value of the subject barge have been dealt at length by me in the foregoing paras. As such I have exercised the burden of proof as envisaged by the principles laid down by the Apex Court in the case-laws of Elcher Tractors and J.D. Orgochem Ltd. cited supra in accordance with Section 14(1) of the Act. Once this has been done, it is not required of me to validate the transaction of the barge with pin-point precision. To reinforce my above views, I rely on the judgement given by the Hon'ble Supreme Court in the case of D. Bhoormull, reported in [1983 (13) ELT 1546], wherein it was held that*

"The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may on its basis believe in the existence of the fact in issue. Thus, legal proof is not necessarily perfect proof often it is nothing more than a prudent man's estimate as to the probabilities of the case.

It was also held therein that the department would be deemed to have discharged its burden if it adduces only so much evidence, circumstantial or direct, as is sufficient to raise a presumption in its favour with regard to the existence of the fact sought to be proved. Therefore, the department is not required to prove actual value with mathematical precision and that reasonable help could be taken of the documents available and other circumstances to arrive at the correct value. In view of the aforesaid, I accept the transaction value of Rs. 17,41,27,862/- (Rupees Seventeen Crore Forty One Lakh Twenty Seven Thousand Eight Hundred and Sixty Two Only) suggested by Intertek Testing Service.

82. *Once I have determined the transaction value of the subject barge "Sarku Utama", I move towards the demand of duty on the re-ascertained value. The noticees have*

vehemently argued that recovery of differential duty by invoking proviso to Section 28(1) of the Act cannot be adopted since there was no wilful suppression or misdeclaration with an intention to evade payment of duty. I tend to disagree with the noticees on this count too. At the time of signing of the MOA with the owners by the importers, the terms of delivery of the barge was on "as-is-where-is" basis and place of delivery was shown as Belapur Anchorage, Mumbai. However, the condition of the barge was modified from that of an uncertified classless one to a refurbished and reconditioned barge with ABS class and certificates. Even the Bill of Sale was silent about the repairs and reconditioning carried out on the barge so as to put it into class. The noticees had, therefore, conveniently and wilfully misdeclared the actual identity of the barge at the time of its importation leading to a stage where the department was misled into accepting its declared transaction value of Rs. 11,75,78,982/-. Thus, the wilful act of misdeclaration of the identity of the barge was with an intention to avoid payment of legitimate Customs Duty which otherwise would have been leviable on the said barge.

83. Notwithstanding the aforesaid, the noticees at the time of negotiation for purchase of the impugned barge in December, 2010, were aware of its laid down condition. If the barge would have been bought in "as-is-where-is-condition" basis, the same would have been rendered useless in the course of normal trade since the barge was of scrap value without class or certificates. The importers were well aware of the fact that the barge would have to be put into class and its certificates reinstated before it is chartered. However, none of these aspects were brought before the department at the time of clearance of the barge in question. Instead the barge was taken from its anchorage in Belapur to international waters so as to show that the barge was imported at that point of time. Thus, the repairs carried out during dry docking were carefully hidden from the department which would have very well influenced the transaction value in normal market conditions. These aforesaid acts of commission and omission of willful suppression of identity of the barge was adopted by the importers to evade payment of applicable Customs duty. This fulfils the necessary ingredients of proviso to Section 28(1) of the Act and hence duty is demandable from the importers by invoking the extended time period along with applicable interest under Section 28AB of the Act: Consequently, the importer is also liable to penalty under Section 114A of the Act.

84. The noticees have further pleaded that the entire basis for alleging undervaluation in the present case was mere opinion expressed by the experts and such opinions cannot in any way form the basis for alleging misdeclaration of value and consequently the proposal for confiscation of the barge under Section 111(m) of the Act is not sustainable in law. They have relied upon the judgement of Hon'ble Supreme Court in the case of Collector of Customs, Mumbai Vs East Punjab Traders reported in [1997 (89) ELT 11 (SC)] in this regard. The case of East Punjab Traders relates to matter of undervaluation alleged after receipt of photocopies of documents from overseas. The Apex Court therein had held that

undervaluation cannot be alleged based merely on the photocopies of the documents obtained from foreign sources and hence set aside the proposal for confiscation of the goods. The ratio of the relied upon case is not even remotely close to that of the instant case since it has been categorically proved that the importers had deliberately concealed the true identity of the barge "Sarku Utama" by not declaring the extent of refurbishment and repairs under wraps. They adopted the modus operandi of taking the barge from the anchorage at Belapur to international waters before bringing it into India so as to show that the barge had just arrived from overseas. These tactics have had a bearing on the declared transaction value of the barge as convincingly proved in the preceding paragraphs. As a consequence of the same, the barge "Sarku Utama" is liable to confiscation under Section 111(m) of the Act and I hold so.

85. Now I come to the penal provisions invocable on Shri Ashish Ingle, Director of M/s Jayesh Shipping Pvt Ltd, Shri Ashish Ingle was the person who had negotiated with the owners for the purchase of the said barge "Sarku Utama" from M/s Sarku Engineering Services SDN BHD, Malaysia. He was well aware that the barge was dry docked for repairs and reconditioning before it was handed over to them under the class of American Bureau of Shipping ABS. He has further confessed that the vessel price was negotiated in December, 2010 when the statutory certificates were not valid and subsequently after dry docking of the vessel and reinstatement of the certificates and class, the value of the barge would have enhanced. He has also admitted that the actual price of the barge in normal sale as per Class ABS would have been different. However, he chose not to disclose the true character and identity of the barge at the time of its importation which has led to its undervaluation before the department and its confiscation under Section 111(m) of the Act. Therefore, Shri Ashish Ingle owing to his acts of commission and omission also becomes liable to penalty under Section 112(a) ibid.

86. In view of the above, I find that the Work Accommodation Barge "Sarku Utama" imported by M/s Jayesh Shipping Pvt Ltd. vide Bill of Entry No. 3864583 dated 22.06.2011 was misdeclared in terms of description and value. Therefore, the declared transaction value of Rs. 11,75,78,982/- is liable to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods), Rules, 2007, In view of the detailed discussions given hereinabove, I re-determine the value of the barge at Rs. 17,41,27,862/- by accepting the value suggested by the Chartered Engineers, Intertek Testing Services in terms of Rule 9 of the Rules ibid, Consequently, I also confirm the demand of total duty of Rs. 2,66,41,561/- on the re-determined value by invoking the proviso to Section 28(1) of the Act. The barge "Sarku Utama" is also liable to confiscation under Section 111(m) of the Act owing to misdeclaration of value and the Importers liable to penalty under Section 114A of the Act. The Director of the importer is also liable to penalty under Section 112(a) ibid."

41. I find the above findings of the first OIO dated 28.03.2013 reasonable and just and covering all the remaining issues raised by the notices. Accordingly, I agree with the same.

42. In view of the above discussion, I pass the following Order.

ORDER

42.1 I reject the declared value of Rs. 11,75,78,982/- (CIF) of the impugned barge "Sarku Utama" imported as item no. 1 in the Bill of Entry No. 3864583 dated 22/06/2011 and re-determine the same at Rs. 17,41,27,862/- (CIF) and assessable value of Rs. 17,58,69,141/-. The value of other 5 items in the said Bill of Entry remain unchanged.

42.2 I confirm the demand of total customs duty of Rs. **2,66,41,561/- (Rupees Two Crore Sixty Six Lakh Forty One Thousand Five Hundred and Sixty One Only)** on the re-determined Assessable value of Rs. 17,58,69,141/-, under Section 28 read with Section 125(2) of the Act along with **applicable interest under Section 28AB** of the Act. The above total confirmed duty amount includes duty of Rs. 1,78,11,448.60/- on the declared value already paid by the importer at the time of initial assessment. The short paid duty confirmed stands at Rs. 88,30,113/- (Rupees Eighty Eight Lakh Thirty Thousand One Hundred and Thirteen Only).

42.3 I appropriate the total customs duty of **Rs. 2,66,41,561/- (Rupees Two Crore Sixty Six Lakh Forty One Thousand Five Hundred and Sixty One Only)** paid vide challan no. 2001443376, dated 28/06/2011, challan no. 206 dated 09/09/2011 and challan no. 305 dated 31/10/2011, for the Bill of Entry No. 3864583 dated 22/06/2011 against the total customs duty demanded above.

42.4 I confiscate the Work Accommodation Barge "Sarku Utama", cleared vide Bill of Entry No. 3864583 dated 22/06/2011 with redetermined value of Rs. 17,41,27,862/- (CIF) under Section 111(m) of the Act. However, I give an option to the importer, M/s Jayesh Shipping Pvt Ltd. to redeem the same by payment of redemption fine of **Rs. 1,75,00,000/- (Rupees One Crore Seventy Five Lakh Only)** under Section 125(1) *ibid*.

42.5 I impose a penalty equal to the short paid duty (Rs. 88,30,113/-) and interest on M/s Jayesh Shipping Pvt Ltd. under Section 114A of the Act, provided that where such duty and interest is paid within thirty days from the date of the order of the proper officer determining such duty, the amount of penalty liable to be paid under this section shall be twenty-five percent of the duty or interest, as the case may be, so determined. The benefit of reduced penalty shall be available subject to condition that the amount of penalty so determined has also been paid within the period of thirty days.

42.6 I impose a penalty of **Rs. 15,00,000/- (Rupees Fifteen Lakh Only)** on Shri Ashish Ingle, Director of M/s Jayesh Shipping Pvt Ltd. under the provisions of Section 112(a) of the Customs Act.1962.

42.7 I order for encashment of the Bank Guarantee amounting to Rs. 58,00,000/- (Rupees Fifty-eight Lakh only) deposited as security at the time of provisional clearance of the subject barge, towards recovery of duty, interest, penalty and fine as imposed above.



Vivek
31.07.23

(Vivek Pandey)

आयुक्त सीमाशुल्क (आयात-I)

Commissioner of Customs (Import-I),

नवीन सीमाशुल्क भवन, मुंबई

New Custom House, Mumbai-01

To,

1. M/s Jayesh Shipping Pvt Ltd,
Plot No. 5/33, Sewree Premises Co-operative Society,
Sewree Bunder Road, Sewree (East), Mumbai - 400 015.
2. Shri Ashish Ingle, Director,
M/s Jayesh Shipping Pvt Ltd.,
Plot No. 5/33, Sewree Premises Co-operative Society,
Sewree Bunder Road, Sewree (East), Mumbai - 400 015.

Copy to:

1. The Pr. Chief Commissioner of Customs,
Mumbai Zone -I, New Custom House, Mumbai.
2. The Dy. Commissioner of Customs,
Group VB, New Custom House, Mumbai.
3. The Dy. Commissioner of Customs,
SIIB(I), New Custom House, Mumbai.
4. The Dy. Commissioner of Customs,
Adjudication Cell, New Custom House, Mumbai.
5. The Dy. Commissioner of Customs,
CHS Section, New Customs House, Mumbai (For display on notice board).
6. The Dy. Director (Inv.) Unit-II,
Income Tax Department, Aaykar Bhavan, New Marine Lines, Mumbai.
7. ADG(CEIB), Central Economic Intelligence Bureau, Janpath Bhavan, B-wing,
6th Floor, New Delhi - 110001.
8. Office Copy.

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