



भारत सरकार

वित्त मंत्रालय/ राजस्व विभाग

केंद्रीय अप्रत्यक्ष कर एवं सीमाशुल्क बोर्ड – मुंबई अंचल-I, भारतीय सीमाशुल्क

आयुक्त सीमाशुल्क (आयात-I) का कार्यालय

**द्वितीय मंजिल, नवीन सीमा शुल्क भवन, शूरजी वल्लभदास मार्ग, बेलार्ड एस्टेट,
मुंबई-400001.**

दूरध्वनि-22757401 फैक्स-22757402

ई-मेल: adjn-commr-imp1nch@gov.in

फा. सं. : F. No. S/26-Misc-216/2006 VB

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

**आदेश दिनांक: 30.03.2024
जारी दिनांक: 30.03.2024**

**सी.ए.ओ. क्रमांक : 90/2023-24/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I)
DIN No. - 20240377000000666AE3**

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 सीमा शुल्क अधिनियम, 1962 की धारा 129E के प्रावधानों के अनुपालन न करने के आधार पर निरस्त मानी जाएगी।



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

Tel. No. 22757401 Fax No. 22757402

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F. No. : F. No. S/26-Misc-216/2006 VB

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

Date of Order: 30.03.2024
Date of Issue: 30.03.2024

C.A.O. No.: 90/2023-24/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I)
DIN No. - 20240377000000666AE3

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 : 2nd round adjudication of three Show Cause Notices No. 50D/126/2004-C.I.(C.P.G.-I) dated 05.12.2005, 50D/126/2004-C.I.(C.P.G.-II) dated 16.12.2005 and 50D/126/2004-C.I.(C.P.G.-III) dated 18.05.2006 issued by ADG DRI Hqrs, New Delhi to Sh. C. P. Gupta, Proprietor of M/s. Sagar Electronics & others consequent to CESTAT Remand Orders No. A/89970-89971/17/CB dated 20.09.2017 and A/89929/17/CB and A/89930/17/CB dated 18.09.2017 regarding evasion of customs duty of Rs. 16,07,74,063/- by gross undervaluation of electronic components (transistors, diodes & integrated circuits etc.) by import through Mumbai-sea, Mumbai-air and Nhava Sheva ports in the name M/s. Sagar Electronics and other fictitious/dummy firms.

Three Show Cause Notices No. 50D/126/2004-C.I.(C.P.G.-I) dated 05.12.2005¹, 50D/126/2004-C.I.(C.P.G.-II) dated 16.12.2005² and 50D/126/2004-C.I.(C.P.G.-III) dated 18.05.2006³ were issued by the ADG, DRI Hqrs, New Delhi to Sh. C.P. Gupta, Proprietor of M/s. Sagar Electronics⁴ & others, regarding evasion of customs duty by gross undervaluation of electronic components (transistors, diodes & integrated circuits etc.) at the time of import through Mumbai-sea, Mumbai-air and Nhava Sheva ports in the name of M/s. Sagar Electronics and 16 fictitious/dummy firms.

2. Show Cause Notice No. 50D/126/2004-C.I.(C.P.G.-I) dated 05.12.2005 was adjudicated in the first round by the Commissioner of Customs (Import), Mumbai-I vide O-in-O No. CAO No. 23/2008/CAC/CC(I)/SP/Gr.VB dated 04.02.2008 and Corrigendum dated 07.03.2008⁵. The Adjudicating Authority ordered for confiscation of the goods, imposition of redemption fines in lieu of confiscation, confirmed duty demands, and imposed of penalties on the noticees.

3. Show Cause Notice No. 50D/126/2004-C.I.(C.P.G.-II) dated 16.12.05 was adjudicated in the first round by the Commissioner of Customs (Import), Mumbai-I vide O-in-O No. CAO No. 32/2008/CAC/CC(I)/SP/Gr.VB dated 29.02.2008⁶. The Adjudicating Authority ordered for confiscation of goods, imposition of redemption fines, confirmation of duty demands, and imposition of penalties on the noticees and appropriation of sale proceeds for confirmed duty demand and imposed penalties on the noticees.

¹ Also referred to as the SCN-1

² Also referred to as the SCN-2

³ Also referred to as the SCN-3

⁴ Also referred to as the Noticee-1

⁵ Also referred to as the OIO-1

⁶ Also referred to as the OIO-2



4. Show Cause Notice No. 50D/126/2004-C.I.(C.P.G.-III) dated 18.05.06 was adjudicated in the first round of adjudication by the Commissioner of Customs (Import), Mumbai-I vide **O-in-O No. CAO No. 104/2008/CAC/CC(I)/SP/Gr.VB dated 28.05.2008**⁷. The Adjudicating Authority ordered for confiscation of goods, imposition of redemption fines, confirmed duty demands, and imposed penalties on the noticees.

5. Sh. C. P. Gupta filed appeals against OIO-1 and OIO-2 passed by the Commissioner of Customs (Import), Mumbai-I in the Hon'ble CESTAT. Hon'ble CESTAT vide order No A/89970-89971/17/CB dated 20.09.2017 remanded the matter back to deal with the preliminary issue of jurisdiction and adjudicate on merits. Hon'ble CESTAT also observed that the Adjudicating Authority did not properly examine corroborative evidence gathered by the investigation, and instructed to record pleadings and evidence and to pass a reasoned and speaking order.

6. Sh. C. P. Gupta and **Sh. Surendra Sharma**⁸ filed appeals vide APPEAL NO: C/1012/2008 and APPEAL NO: C/1021/2008 in the CESTAT against OIO-3 passed by the Commissioner of Customs (Import), Mumbai - I. Hon'ble CESTAT vide Orders No A/89929/17/CB and A/89930/17/CB, both dated 18.09.2017 remanded the matter back to the Adjudicating Authority with directions to address the preliminary issue of jurisdiction, as well as the merits of the case, following due process of justice.

Brief facts of the case

7. An information was received by the **Directorate of Revenue Intelligence, Hqrs, New Delhi**⁹ that Sh. C.P. Gupta, Proprietor of M/s. Sagar Electronics having his office premises at 304, 3rd Floor, Sushma Tower, Central Shopping Centre, Prashant Vihar, Delhi - 85, earlier shop cum office at 493, Old Lajpat Rai Market, Delhi - 6 and presently shop at 599, Old Lajpat Rai Market, Delhi - 110006 was indulging in evasion of customs duty by grossly under-valuing the consignments of electronic components (i.e. transistors, diodes & integrated circuits etc.) at the time of import through Mumbai-sea, Mumbai-Air and Nhava Sheva Ports in the name M/s. Sagar Electronics and certain other deliberately created, below mentioned fictitious/dummy firms operated/controlled by Sh. C.P. Gupta, himself:

Table No. 1

Sl. No.	Name of Importer	Declared address	Name of the Proprietor as shown in IEC
1	Gemini Enterprises	B-1, Gali No. 14, Madhu Vihar, Delhi -110092	Ravindra Kumar s/o Ashwini Lal

⁷ Also referred to as the OIO-3

⁸ Also referred to as the Noticee -18

⁹ Also referred to as the DRI

2	Mars International	B-1, Gali No. 14, Madhu Vihar, Delhi -110092	Ms. Anamika w/o Sh. Ravinder Kumar
3	Shivam Overseas Inc	B-1, Gali No. 14, Madhu Vihar, Delhi -110092	Surender Kumar s/o Sh. Charanje Lal
4	Shiva International	1-A, Guru Angad Nagar, Laxmi Nagar, Delhi- 110092	Ms. Anamika w/o Sh. Ravinder Kumar
5	Shiva Enterprises	7/318, Lalita Park, Laxmi Nagar, Delhi - 110092	Smt. Lata w/o Sh. Anil Kumar
6	Royal International	H-31, Vijay Chowk, Laxmi Nagar, Delhi - 110092	Rohan Kumar s/o Sh. Anil Kumar
7	Leo International	H-31, Vijay Chowk, Laxmi Nagar, Delhi - 110092	Smt. Lata w/o Sh. Anil Kumar
8	Supreme Enterprises	2/63, Lalita Park, Laxmi Nagar, Delhi - 110092	Mrs Raj Bala w/o Sh. Atul Kumar
9	Allied Enterprises	2/63, Lalita Park, Laxmi Nagar, Delhi - 110092	Lata Podesh, w/o Sh. Anil Podesh,
10	Devika Enterprises	R-39, Vikas Marg, Shakar Pur, Delhi - 110092	Atul Kumar s/o Sh. Girija Shankar
11	Prominent Enterprises	A-1, West Guru Azad Nagar, Laxmi Nagar, Delhi - 110092	Chanderesh Kumar s/o Sh. Ram Kishore
12	Spectrum Overseas	4078, Roshanara Road, Delhi-110007	Surender Kumar s/o Sh. PhoolSingh
13	Surya Enterprises	4078, Roshanara Road, Delhi-110007	Shashi Kapoor s/o Sh. P.S. Kumar
14	Konark International	A-1, West Guru Azad Nagar, Delhi - 110092	Chanderesh Kumar s/o Sh. Ram Kishore
15	Galaxy Enterprises	A-1, West Guru Azad Nagar, Delhi - 110092	Mrs Babita Kapoor w/o Sh. Hemant Kapoor
16	Magnum Overseas	7/318, Lalita Park, Laxmi Nagar, Delhi - 110092	Mrs Sangeeta w/o Sh. Satish Kumar

8. On the basis of above intelligence following premises were searched on 06.12.04.

- i. Shop cum office of Sh. C.P. Gupta / M/s. Sagar Electronics at 599, Old Lajpat Rai Market, Delhi – 110 006. Sh. C.P. Gupta was not available during the search and as such search was conducted in the presence of Sh. Sanjay Kumar, an employee of Sh. C.P. Gupta. Documents relevant to the investigation were resumed under panchnama drawn on the spot. During the course of search various foreign origin Electronic components such as ICs, Transistors, Diodes etc. valued at Rs. 40 lacs (approx.), as detailed in Annexure to the said panchnama were recovered from the said premises. Sh. Sanjay Kumar could not provide any documents evidencing licit import or procurement of said goods, hence the said goods were seized, under Section 110 of **the Customs Act, 1962**¹⁰, on the

¹⁰ Also referred to as the Act

- reasonable belief that the same had been imported into India in violation of the provisions of Customs Act, 1962. Show Cause Notice No. 50D/126/2004-CI/CPG- I dated 05.12.05, has already been issued in respect of the said seized goods at the shop cum office of Sh. C.P. Gupta/M/s. Sagar Electronics proposing confiscation of the seized goods.
- ii. Office of Sh. C. P. Gupta at 304, 3rd Floor, Sushma Tower, Central Shopping Centre, Prashant Vihar, Delhi - 85
 - iii. Residence of Sh. C. P. Gupta at B-20, Vinoba Kunj, Sector IX, Rohini, Delhi- 85.
 - iv. Follow-up searches were also conducted at the godown of a transporter M/s. Godara Roadways Private Limited, Khasra No. 8/26/1, Bijwasan Road, Kapashera, New Delhi -110 037 on 13.12.2004 which resulted in recovery and seizure of a consignment of 62,40,600 pieces of Transistors (Model No. BC-547B34,96,000 pieces & BC-548B 27,44,600 pieces manufactured by M/s. KEC, Korea) valued at Rs. 26,06,274/- (Estimated market value as taken on panchnama) cleared from Mumbai Port in the name of **M/s. Gemini Enterprises** from Mumbai port vide Bill of Entry No. 516093 dated 29.11.2004 on the reasonable belief that they were imported into India by undervaluing the same to evade the payment of Customs duties. Sh. Krishan Kumar, Manager, M/s. Godara Roadways Private Limited, in his statement dated 09.12.04 (Annexure No. A-4) recorded under Section 108 of the Customs Act, 1962, interalia stated that the goods were meant for Sh. C.P. Gupta/Pawan Gupta; and that the said goods were lying in transit to be delivered to Sh. C.P. Gupta or his associate Sh. Pawan Gupta. Similarly, follow up search was also conducted at the godown premises of the transporter M/s. Jai Balaji Roadways situated at Plot No. 1536 Road No. 17, Steel Market, Kalamboli, Mumbai on 14.12.2004. The godown was under the charge of M/s Balaji Freight Carriers Pvt. Ltd. the search resulted in recovery/detention /seizure of a consignment of 2,00,000 pieces of 'Switches' and 50,000 pieces of 'Mini Tuners' imported in the name of **M/s. Spectrum Overseas** and cleared vide Bill of Entry No. 516908 dated 30.11.04 lying at the godown of M/s Balaji Freight Carriers Pvt.Ltd. . The said goods were detained under Section 110 of the Customs Act, 1962 on 14.12.04 on the reasonable belief that they were imported into India by undervaluing the same to evade the payment of Customs duties. A Show Cause Notice No. 50D/126/2004-CI/CPG-1 was issued on 05.12.05 demanding differential duty and proposing confiscation of the said seized goods valued at Rs. 64,02,751/-.
 - v. Simultaneously, the Customs authorities at New Customs House, Mumbai/Nhava Sheva. Air Cargo Mumbai/Mulund and Zonal Unit of DRI at Mumbai were requested to examine all the live import consignments imported in the name of any of the above said sixteen firms including M/s. Sagar Electronics , all of them shown to be operated/controlled by Sh. C.P. Gupta, for detecting undervaluation.

Accordingly, the Mumbai Zonal Unit, DRI, Mumbai in association with the local Customs authorities examined six such consignments, details of which are summarized below :

Table No. 2

Sl. No.	Name of the Importer	Description of the goods	Bill of Lading No.	Container No.	Supplier Name	Supplier Invoice No. & Value
1	M/s. Spectrum Overseas, Delhi	Wire-2RCA Wire-3RCA RF wire RF wire Cord	FPSSE041124 dt. 17.11.04	OOLU 5005810	JN. Exports, Hong Kong	SG/327/11/2004 dt. 11.11.04 T. Value-8876 HKD CIF
2	M/s. Spectrum Overseas, Delhi	Plastic Trays with Motor PCB and Connectors	OOLU 28541060 dt. 24.11.2004	TTNU 2798310	JN. Exports, Hong Kong	JNE/9547/11/2004 dt. 22.11.04 T. Value - 40000 HKD CIF
3	M/s. Spectrum Overseas, Delhi	Tape Deck Mechanism	OOLU 28511782 dt. 18.11.04	OOLU 3277336	JN. Exports, Hong Kong	JNE/9546/11/2004 dt. 16.11.2004 T. Value - 18000 USD CIF
4	M/s. Shiva Enterprises, Delhi	CD 6283 CXA 1619 BS	GETO 40646 BOM dt. 29.11.04	DNAU 4519096	JN. Exports, Hong Kong	JNE/9560/12/ 2004 dt. 26.11.2004 T. Value - 77896 HKD CIF
5	M/s. Shiva Enterprises, Delhi	CXA 1619 BS	180114011866 dt. 06.11.04	FSCU 6353278	Ritronics Components (S) Pvt. Ltd., Singapore	SO858 dt 29.10.04 T. Value-58800 SGD (C&F)
6	M/s. Shiva Enterprises, Delhi	Electronic components FBT 4012 BD (transformer)	HLCUSHA 41186233 dt. 11.09.04	HLXU 2207787	JN. Exports, Hong Kong	SG/324/11/2004 dt. 05.11.04 T. Value - 69000 HKD CIF

vi. Accordingly a Show Cause Notice No. 50D26/2004-CI/CPG-II dated 16.12.05 was issued in respect of the above said goods seized at Mumbai collectively valued at Rs. 1,70,79,683/-. Out of the above goods M/s. Shiva Enterprises had filed a Bill of Entry No. 762562 dated 13.12.04 for a part thereof declaring a value of Rs. 4,04,202/-. The above Show Cause Notice was therefore issued proposing confiscation of the above said entire quantity of seized goods and demanding differential duty amounting to Rs. 3,54,781/- in respect of the goods for which the said Bill of Entry was filed.

9. Simultaneously enquiries were conducted with the CHAs in Mumbai believed to be involved in organizing clearances of electronic components imported by Sh. C.P. Gupta of M/s. Sagar Electronics in the name of the said firms.

9.1. Statement of Sh. Manish Sangani, Partner, M/s The National Shipping Agency, 1/5, Rose Mary Cottage Church, Pakhadi, Road No.1, Andheri (E), Mumbai - 400099 was initially recorded on 7.12.04 under Section 108 of the Customs Act, 1962 wherein he, interalia, admitted working as a customs clearing agent for the import of various electronic components like IC, Transistors, Diodes, VCP parts etc. for Sh. C.P. Gupta. The said goods were imported by Sh. C.P. Gupta in the name of M/s. Sagar Electronics and several other firms namely M/s. Gemini Enterprises, M/s. Mars International, M/s. Shiva Enterprises, M/s. Royal International, M/s. Allied Enterprises, M/s. Devika Enterprises, M/s. Surya Enterprises, M/s. Konark International, M/s. Galaxy Enterprises and M/s. Prominent Enterprises. Sh. Sangani also stated that the import documents meant for obtaining clearance of the said goods pertaining to all the above said firms including M/s. Sagar Electronics were always received from Sh. C.P. Gupta having his shop at 599, Lajpat Rai Market, Delhi. He further stated that after the Clearance of the said goods, the same were dispatched to Sh. C.P. Gupta in Delhi through M/s Natraj Cargo & Courier as per his (Sh. C.P. Gupta) instructions; and that they always received Customs clearance charges from Sh. C.P. Gupta. Certain documents like letter from the importing firm addressed to The National Shipping Agency, Mumbai having details of new shipment arrival at Mumbai, Photocopies of assessed Bills of Entry, duty payment TR-6 challan, copies of Invoice, Bill of Lading or Airway Bill, Freight & Forwarders/Transporter bills/receipts etc. related to the import of the electronic components in the name of the above said companies were provided by Sh. Manish Sangani of M/s. National Shipping Agency for further enquiries. Perusal of letter dated 23.10.04 on the letter head of M/s Gemini Enterprises and addressed to M/s. National Shipping Agency, Andheri (E) reveals that it has been signed in the name of Ajay as authorized signatory of M/s Gemini Enterprises. The said letter is regarding forwarding of certain documents to M/s. National Shipping Agency for the import clearance of electronic components with reference to Import Invoice No. GH/04679 dated 24.10.04. Further, perusal of another letter dated 19.06.04 typed on the letter head of M/s. Mars International and addressed to National Shipping Agency, Sahar, Mumbai reveals that it is regarding forwarding of a set of documents for import clearance of electronic components imported from Singapore to Mumbai, ACC with reference to Invoice No. GH/04437 dated 19.06.04. This letter is signed in the name of Mr Jayesh as authorized signatory of M/s. Mars International. In respect of both consignments, other copies of related documents like Bill of Entry, TR-6 challan, Bill of Lading/Airway Bill etc. have also been provided. Several such other

letters and related import documents have been provided by M/s. National Shipping Agency.

Perusal of the forwarding letters addressed to National Shipping Agency indicates that the documents meant to be used for filing Bills of Entry have been forwarded to the CHA under the signatures different from the signatures of the dummy proprietors of the respective firms as available on Bank Account Opening Forms.

9.2. Sh. Manish G. Amlani, Proprietor, M/s. Smit Enterprises, Shop No. 1, Silver Arch, Shimpoli Road, Borivali (West), Mumbai in his initial statement dated 6.12.204 recorded under Section 108 of the Customs Act, 1962, interalia, stated that he was working as Customs Clearing Agent for the import of various electronic components for Sh. C.P. Gupta. The said goods were imported by Sh. C.P. Gupta in the name of M/s. Sagar Electronics and following other firms:

- i. Gemini Enterprises, B-1, Gali No. 14, Madhu Vihar, Delhi-110 092
- ii. Mars International, B-1, Gali No.14, Madhu Vihar, Delhi-110 092
- iii. Shivam Overseas Inc. B-1, Gali No. 14, Madhu Vihar, Delhi-110 092.
- iv. Shiva International, 1-A, Guru Angad Nagar, Laxmi Nagar, Delhi-110 092
- v. Magnum Overseas, 7/318, Lalita Park, Laxmi Nagar, Delhi-110092
- vi. Shiva Enterprises, 7/318, Lalita Park, Laxmi Nagar, Delhi-110 092.
- vii. Royal International, H-31, Vijay Chowk, Laxmi Nagar, Delhi-110092
- viii. Leo International, H-31, Vijay Chowk, Laxmi Nagar, Delhi-110 092
- ix. Supreme Enterprises, 2/63, Lalita Park, Laxmi Nagar, Delhi-110 092
- x. Allied Enterprises, 2/63, Lalita Park, Laxmi Nagar, Delhi-110 092
- xi. Devika Enterprises, R/39, Vikas Marg, Shakarpur, Delhi-110 092
- xii. Spectrum Overseas, 4078, Roshanara Road, Delhi-110 092
- xiii. Surya Enterprises, 4078, Roshanara Road, Delhi-110 092
- xiv. Konark International, A/1, West Guru Angad Nagar, Delhi-110092
- xv. Galaxy Enterprises, A/1, West Guru Angad Nagar, Delhi-110092
- xvi. Prominent Enterprises, A/1, West Guru Angad Nagar, Delhi-110092.

Sh. Amlani also stated that the import documents meant for clearance of the said goods pertaining to all the above said seventeen importers including M/s. Sagar Electronics were always received from Sh. C.P. Gupta having his shop at 599, Lajpat Rai Market, Delhi. He further stated that after the clearance of the said goods the same were dispatched to Sh. C.P. Gupta in Delhi through M/s. Godara Freight Carriers as per his (Sh. C.P. Gupta) instructions and that they always received the customs clearance charges from Sh. C.P. Gupta. Certain documents like photocopies of assessed Bills of Entry, duty payment TR-6 challan, copies of Invoice, Bill of Lading, CHA charges bills of M/s. Smit Enterprises, Freight & Forwarders/Transporter bills/receipts etc. related to the import of

the electronic components in the name of the above said companies were provided by Sh. Amlani for further enquiries.

9.3. Mr. Jayesh R. Vador of M/s. Unnati Shipping Agency 45/47, Mint Chamber, Room No.208, Mint Road, Fort, Mumbai working under CHA license of M/s, Mehta and Mehta, 13, Mangal Bhawan, Opp. Nagardas Road, Andheri (E), Mumbai-400069, in his statement dated 9.12.2004 recorded under Section 108 of the Customs Act, 1962, interalia, stated that he was working as customs clearing agent for the import of various electronic components like IC, Transistors, Diodes, etc. for Sh. C.P. Gupta. The said goods were imported by Sh. C.P. Gupta in the name of M/s. Sagar Electronics and several other firms namely M/s. Gemini Enterprises, M/s. Mars International, M/s. Shiva Enterprises, M/s. Royal International, M/s. Supreme Industries, M/s Allied Enterprises, M/s. Devika Enterprises, M/s. Spectrum Overseas and M/s. Galaxy Enterprises. Sh. Vador also stated that the import documents meant for the clearance of the said goods pertaining to all the above said ten firms including M/s. Sagar Electronics were received from Sh. C.P. Gupta having his shop at 599, Lajpat Rai Market, Delhi. He further stated that after the clearance of the said goods the same were dispatched to Sh. C.P. Gupta in Delhi through M/s. Godara Freight Carriers as per his (Sh. C.P. Gupta) instructions; that they Certain always received the customs clearance charges from Sh. C.P. Gupta; and that the transportation charges were paid to the transporter directly by Sh. C.P. Gupta. documents like copies of Bills of Entry, Invoice, Bill of Lading etc. related to the import of the electronic components in the name of the above said companies were provided by Sh. Jayesh R. Vador for further enquiries.

9.4. Sh. Dharmendra S. Shah working as Customs Clerk with M/s. Mehul & Co., 6/12, Nazir Building, Kalicut Street, Ballard Estate, Mumbai in his statement dated 6.12.04 recorded under Section 108 of the Customs Act, 1962, interalia, stated that they had undertaken customs clearing works in respect of import consignments of IC, Transistors, Diodes, VCD Parts etc. on behalf of following firms:

1. Gemini Enterprises, B-1, Gali No. 14, Madhu Vihar, Delhi-110 092
2. Mars International, B-1, Gali No.14, Madhu Vihar, Delhi-110 092
3. Shivam Overseas Inc. B-1, Gali No.14, Madhu Vihar, Delhi-110 092.
4. Shiva International, 1-A, Guru Angad Nagar, Laxmi Nagar, Delhi-110 092
5. Magnum Overseas, 7/318, Lalita Park, Laxmi Nagar, Delhi-110092
6. Shiva Enterprises, 7/318, Lalita Park, Laxmi Nagar, Delhi-110 092.
7. Royal International, H-31, Vijay Chowk, Laxmi Nagar, Delhi-110092
8. Leo International, H-31, Vijay Chowk, Laxmi Nagar, Delhi-110 092
9. Supreme Enterprises, 2/63, Lalita Park, Laxmi Nagar, Delhi-110 092
10. Allied Enterprises, 2/63, Lalita Park, Laxmi Nagar, Delhi-110 092
11. Devika Enterprises, R/39, Vikas Marg, Shakarpur, Delhi-110 092
12. Spectrum Overseas, 4078, Roshanara Road, Delhi-110 092

13. Surya Enterprises, 4078, Roshanara Road, Delhi-110 092
14. Konark International, A/1, West Guru Angad Nagar, Delhi-110092
15. Galaxy Enterprises, A/1, West Guru Angad Nagar, Delhi-110092
16. Prominent Enterprises, A/1, West Guru Angad Nagar, Delhi-110092.
17. Sagar Electronics, 493, Old Lajpat Rai Market, Delhi-110006.

That the import related documents meant for obtaining clearances of the said imported goods pertaining to said firms were provided to them by Sh. C.P. Gupta having his shop at 599, Lajpat Rai Market, Delhi-6; that after clearance the goods, the same were dispatched to Sh. C.P. Gupta in Delhi through M/s. Godara Freight Carriers; and that customs clearance charges were always received by them in cash from Sh. C.P. Gupta.

9.5. Sh. Mehul H. Sanghavi, partner of M/s. Mehul & Company, Nazir Building, Calicut Street, 12, Ballard Estate, Mumbai-400 038 in his statement dated 6.12.2004 recorded under Section 108 of the Customs Act, 1962, inter alia, stated that all the import clearances of electronic goods at JNPT were specifically handled and supervised personally by Sh. Dharmendra Shah; that they got the job of clearance of electronic goods from M/s. Smit Enterprises who used to obtain orders from various importers; that Sh. Dharmendra Shah interacted with the said importer and they raised their bills for import clearing charges on M/s. Smit Enterprises.

The above facts clearly corroborated the intelligence that the above said firms (as mentioned in para 1 supra) were under the managerial and financial control of Sh. C.P. Gupta of M/s. Sagar Electronics. All the CHAs handling the imports of the electronic components in respect of the firms listed at para 1 have categorically and unanimously stated that the import related documents in respect of the firms listed at Para 1 and clearing charges were given to them by Sh. C.P. Gupta. Further, the goods after clearance were transported to Sh. C.P. Gupta irrespective of the firm in whose name they were imported.

10. Further, enquires were also conducted with the transporters at Mumbai and Delhi who were engaged in the transportation of such above said imported electronic goods/components to Mumbai to Delhi. The following emerged:

10.1 Sh. Krishan Kumar, Manager, M/s. Godara Roadways Private Limited & M/s. Godara Freight Carriers in his statement dated 9.12.04 recorded under Section 108 of the Customs Act, 1962, inter alia, stated that Sh. C.P. Gupta, owner of M/s. Sagar Electronics, 493/599, Old Lajpat Rai Market was their regular client whose goods imported in the names of the following firms were regularly transported through their transport company brought his (Sh. C. P. Gupta) Consignments from Mumbai to Delhi:

- 1) Gemini Enterprises, B-1, Gali No. 14, Madhu Vihar, Delhi - 110 092.

- 2) Mars International, B-1, Gali No. 14, Madhu Vihar, Delhi 110 092.
- 3) Shivam Overseas Inc., B-1, Gali No. 14, Madhu Vihar, Delhi -110092.
- 4) Shiva International, I-A, Guru Angad Nagar, Laxmi Nagar, Delhi - 110092.
- 5) Magnum Overseas, 7/318, Lalita Park, Laxmi Nagar, Delhi-II 0092
- 6) Shiva Enterprises, 7/318, Lalita Park, Laxmi Nagar, Delhi - 110 092.
- 7) Royal International, H-31, Vijay Chowk, Laxmi Nagar, Delhi - 110 092.
- 8) Leo International, B-31, Vijay Chowk, Laxmi Nagar, Delhi - 110 092.
- 9) Supreme Enterprises, 2/63, Lalita Park, Laxmi Nagar, Delhi - 110 092.
- 10) Allied Enterprises, 2/63, Lalita Park, Laxmi Nagar, Delhi - 110 092.
- 11) Devika Enterprises, R/39, Vikas Marg, Shakarpur, Delhi - 110092.
- 12) Spectrum Overseas, 4078, Roshanara Road, Delhi - 110 007.
- 13) Surya Enterprises, 4078, Roshanara Road, Delhi - 110 007.
- 14) Konark International, A/1, West Guru Angad Nagar, Delhi -110092.
- 15) Galaxy Enterprises, All, West Guru Angad Nagar, Laxmi Nagar, Delhi - 110 092.
- 16) Prominent Enterprises, All, West Guru Angad Nagar, Delhi - 110 092.
- 17) Sagar Electronics, 493, Old Lajpat Rai Market, Delhi - 110 006

He categorically stated that the consignments booked in the name of all the above mentioned firms were actually delivered to Sh. C. P. Gupta or his associate Sh. Pawan Gupta; that the payment towards freight was made by Sh. Pawan Gupta in cash either at their office or at the shop No.493, Old Lajpat Rai Market or at 599, Old Lajpat Rai Market, Delhi- 10006.

10.2 Sh. Prayag Nath Singh, Helper with M/s. Natraj Cargo & Courier, 3214/165, Ram Bazar, Mori Gate, Delhi-6 was 'summoned and in his statement dated 30.01.2006 recorded under Section 108 of the Customs Act, 1962, he, inter-alia, stated that:

- i. he had been working with M/s. Natraj Cargo & Courier, 3214/16, Ram Bazar, Mori Gate for the last three years;
- ii. his duties in the firm included booking of Parcels from Delhi to Mumbai, receiving delivery of Parcels from Hazrat Nizamuddin Railway Station in Delhi and delivery of the parcels / goods to the consignee;
- iii. Sh. Basava Raj and Sh. Subhash were the owners of the firm. Its Delhi office was being looked after by Sh. Basava Raj whereas the Mumbai office was controlled by Sh. Subhash;
- iv. that Sh. Bhupender Chincholi was the Manager of his firm at Delhi;
- v. that the goods of several companies of Sh. C.P. Gupta sent by National Shipping Agency, Mumbai were transported to Delhi from Mumbai through Natraj Cargo & Courier and it was informed to him either by Sh. Bhupender or Sh. Basava Raj.
- vi. that several times he delivered goods belonging to M/s. Sagar Electronics and M/s. Royal Enterprises to the representatives of Sh. C.P. Gupta; and

- vii. that the goods were also received with different consignee firm names and delivered to the representative of Sh. C.P. Gupta, but he did not remember their names. However, Sh. Basava Raj or Sh. Bhupender would be able to give details.

10.3 Sh. Basava Raj, Partner, M/s. Natraj Cargo & Courier, 3214/165, Ram Bazar, Mori Gate, Delhi-6 in his statement dated 6.02.2006 recorded under Section 108 of the Customs Act, 1962, inter-alia, stated:

- i. that he was partner in M/s. Natraj Cargo & Courier at Mumbai and Delhi and working with M/s. Natraj Cargo & Courier for the last ten years;
- ii. that the Mumbai office was managed and controlled by his own brother Sh. Govind;
- iii. that no proper account was prepared or maintained by them;
- iv. that they did not file any Income Tax return and did not send any income or loss figure to Mumbai office and whatever money was earned, was wholly kept at Delhi as his share in the company;
- v. that he had not met Sh. C.P. Gupta but he knew him by telephone
- vi. that he (C.P. Gupta) telephoned him (every third day) to enquire about his courier cargo's arrival from Mumbai in respect of his following firms:
 1. M/s. Surya Enterprises, 4078 Roshanra Road, Delhi-17
 2. M/s. Supreme Enterprises, 2/63 Lalita Park, Laxmi Nagar, Delhi-92
 3. M/s. Galaxy Enterprises, All West Guru Angad Nagar, Laxmi Nagar, Delhi-92
 4. M/s. Gemini Enterprises, B-1 Gali No. 14, Madhu Vihar, Delhi-92
 5. M/s. Mars International, B-1, gali No.14, Madhu Vihar, Delhi-92
 6. M/s. Royal International, H-31 Vijay Chowk, Laxmi Nagar, Delhi-92
 7. M/s. Shiva Enterprises, 7/318 Lalita Park, Laxmi Nagar, Delhi-92
 8. M/s. Royal Enterprises, D-13/85, 1st Floor, Sector 7, Rohini, Delhi -85
- vii. that Sh. C.P. Gupta always contacted him for the cargo of the above listed firms;
- viii. that Sh. C.P. Gupta told them that if the cargo was received in the name of above listed firms, it belonged to him (C.P. Gupta) only;
- ix. that along with cargo their courier receipt came with Bill of Entry in the respective firm name;
- x. that they got instructions from M/s. National Shipping Agency on telephone for the identification of cargo related to different firms names

and addresses and that the subject cargo belonged to Sh. C.P. Gupta which was to be given to him (C.P. Gupta):

- xi. that this was also told to them by their Mumbai office that the cargo of above listed firms had to be delivered to Sh. C.P. Gupta;
- xii. that the Cargo was delivered at his (C.P. Gupta's) shop No. 493 Old Lajpat Rai Market, Chandni Chowk, Delhi-6 and also at shop No. 599 of Old Lajpat Rai Market, Delhi;
- xiii. that at times delivery of cargo was also given at New Delhi Railway station to the representative of Sh. C.P. Gupta after confirming the identity through immediate mobile teleconferencing, at the time of delivery;
- xiv. that the money for freight/courier charges was always given in cash at C.P. Gupta's shop located at 493/599 old Lajpat Rai Market, Delhi; and
- xv. that the courier receipts of Natraj Cargo & Couriers were always given to him (C.P. Gupta) but he (C.P. Gupta) used to destroy the same before he (C.P. Gupta) made the cash payments on courier to courier basis;

Perusal of the statements of various employees/owners of the two transporters involved in transporting the goods/electronic components imported in the names of various firms under investigation from Mumbai to Delhi, made it clear that Sh. C.P. Gupta had all the managerial and financial control over the firms under investigations, in addition to M/s. Sagar Electronics. It also emerged that M/s. The National Shipping Agency, Mumbai gave instructions about the person to whom the goods were to be delivered ie. Sh. C.P. Gupta, irrespective of the name shown on the transport/courier documents. Further, Sh. C.P. Gupta deliberately used to destroy the transport documents with an intention to do away with any evidence, which might later link him to the goods imported in the name of the above firms under investigation.

10.4. Based on the above revelations by the transporters, Customs Clearing Agents (CHAs) etc. coupled with the intelligence, further investigations into the financial transactions between the above said Customs Clearing Agents and Sh. C.P. Gupta/firms under investigations were Conducted. Summons were issued to the said Customs clearing agents and their statements under Section 108 of the Customs Act, 1962 were recorded.

10.4.1 Sh. Manish G. Amlani in his statement dated on 26.9.2005 recorded under Section 108 of the Customs Act, 1962, interalia, stated:

- i. He disclosed that the seventeen firms mentioned in his previous statement (6.12.2004) were non-existent, and imports made under those names, along with M/s. Sagar Electronics, benefitted Sh. C.P. Gupta.
- ii. His association with Sh. C.P. Gupta commenced in September 2002, with the first import of electronic goods.

- iii. Negotiations for import rates (ranging from Rs. 4000/- to 5000/- per contract) and logistics were finalized during C.P. Gupta's visit to Bombay.
- iv. that the non-existent firms were selectively used for imports, with only two to three firms active at any given time.
- v. Import instructions and relevant documents were conveyed by C. P. Gupta via telephone, fax, and courier, consistently labeling consignments under M/s. Sagar Electronics.
- vi. Documents pertaining to imports were dispatched to Sagar Electronics, Delhi-6, regardless of the firm under which the goods were imported.
- vii. A specific instance was cited where documents related to goods imported by M/s. Allied Enterprises were dispatched to Sagar Electronics.
- viii. Cash payments for clearance services were regularly received from Gupta, with accompanying documentation showing reimbursement for expenses.
- ix. Declaration of the country of origin for imported electronic components was based solely on supplier invoices, without further verification.
- x. that all dealings regarding clearance of import consignments were exclusively conducted with Sh. C. P. Gupta of M/s. Sagar Electronics, with no involvement from any other individual.

10.4.2 Scrutiny of the documents tendered by Sh. Manish G. Amlani vide his statement dated 26.09.05 in the light of his above statement revealed as under:

- i. that copy of Airway Bill No. 0402542 dated 09.12.03 of M/s. Skylark Express, a courier company, reference of which has also been found mentioned on the covering letter dated 24.11.03 of M/s. Smit Enterprises, Mumbai in respect of Job Ref. No. M&CI773103-04 dated 24.11.203 revealed that although the-documents were in respect of the goods imported in the name of M/s. Allied Enterprises, Delhi vide B/E. No. 917726 dated 13.11.03 but were sent to M/s. Sagar Electronics, Delhi. They included Bill No. REMB/537 & Agency Charges Bill No.ACI537 both dated 24.11.03 of M/s. Smit Enterprises, Triplicate (Exchange Control Copy) of Bill of Entry, Duplicate Copy of Bill of Entry, TR6 challan, Invoice & packing lists in original, Bill of Lading, Shipping Line Agency's bill etc. Similarly, the documents although related to clearance of electronic components imported in the name of M/s. Allied Enterprises, Delhi vide Bill of Entry No. 939731 dated 26.12.03 and 937521 dated 22.12.03 including the CHA's bills etc. but were couriered to M/s. Sagar Electronics, Delhi-6 vide Skylark Express Courier's receipt No. 0478181 dated 19.01.04. Similar details along with the CHA's covering letter including courier receipts etc. have also been provided, which shows that irrespective of the name of firm in respect of which import clearance work was handled by M/s. Smit Enterprises through Mehul & Co., the documents related to clearance of goods and bills were

dispatched to M/s. Sagar Electronics, Delhi-6 or at their office located at Sushma Tower, Prashant Vihar, Delhi. Details in respect of some such clearances and corresponding courier receipts, as provided by Sh. Manish G. Amlani, have been tabulated as under:

Table No. 3

Courier Receipt No. & Date	Name of the Courier Agency	M/s. Smit Enterprises Job ref. No. and date of forwarding	Bill of Entry no. and date, documents related to which were sent to M/s. Sagar Electronics, Delhi	Name of the Importer as per Bill of Entry.
0568834 dt. 25.02.04	Skylark Express	M&C/1126/03-04 dtd 13.02,04	958461 dt. 30.01.04	Allied Enterprises
0402543 dt. 09.12.03	Skylark Express	M&C/1672/03-04 dtd 17.11.03	909692 dt. 29.10.03	Konark International
0478180 dt. 19.01.04	Skylark Express	M&C/930103-04 dt. 03.01.04	937354 dt. 22.12.03	Konark International
10707053092 dt. 08.09.04	Blue Dart Courier	M&C/588/04-05 dt 08.09.04	683389 dt. 25.08.04	Leo International
10551649905 dt. 25.03.04	Blue Dart Courier	M&C/1287/03-04 Dt. 24.03.04	980399 dt. 12.03.04	Supreme Enterprises
10579543111 dt. 19.05.04	Blue Dart Courier	M&C 108/04-05 dt. 12.05.04	606749 dt. 29.04.04	Surya Enterprises
10646151213 dt. 19.06.04	Blue Dart Courier	M&C/185104-05 dt. 03.06.04	624074 dt 27.05.04	Surya Enterprises

ii. M/s. Smit Enterprises, Mumbai's letter ref. M&C/840/04-05 dated 6.01.2005 is addressed to M/s. Royal International, Delhi pertaining to forwarding of various documents related to clearance of import consignment of M/s. Royal International against B/E. No. 732548 dated 1.11.04 from JNPT, Nhava Sheva, Mumbai, which included copies of the above said Bill of Entry, TR6 Challan dated 4.11.04 for Rs. 2,94,288/- and photocopy of Demand draft No.898051 dated 3.11.04 issued from Bank of Punjab Ltd., Preet Vihar, Delhi. Sh. Amlani also tendered a similar bunch of documents in respect of other firms under investigations on 26.09.05.

iii. Copies of general letters of authority addressed to M/s. Mehul & Co. authorizing them to undertake Customs Clearing & Forwarding job on behalf of various firms have been tendered by Sh. Manish G. Amlani on 26.09.2005. Perusal of such authorization letters revealed as under:

Table No. 4

Sl. No.	Name of the firm	Date of Authorisation Letter	Signed by
1	Allied Enterprises	22.09.03	Sh. L. Gomes
2	Gemini Enterprises	05.08.03	Signature not legible
3	Konark International	29.08.03	Sh. S. Naik
4	Royal International	10.06.04	Sh. Parikh
5	Supreme Enterprises	02.11.03	Signature not legible
6	Spectrum Overseas	21.04.04	Sh. R. Shah
7	Surya Enterprises	28.03.04	Sh. Chatterjee
8	Galaxy Enterprises	05.08.03	Sh. D'souza
9	Devika Enterprises	19.12.03	Sh. Manjrekar
10	Mars International	24.03.04	Signature not legible
11	M/s. Prominent Enterprises	29.01.03	Sh. Doshi
12	Shiva International	04.02.03	Sh. Parekh
13	Sagar Electronics	06.03.03	Sh. Pavan

Investigation into the matter has subsequently revealed that none of the authority letters were signed even by the dummy proprietors of the firms under investigations. These appear to have been signed either by some un'-related persons or some names/signatures have just been deliberately scribbled to alienate C.P. Gupta from the firms under investigations.

10.4.3 Sh. Manish Sangani in his further statement recorded under Section 108 of the Customs Act, 1962 on **27.09.05**, interalia, stated

- i. Sh. C.P. Gupta personally visited Sangani's office in 2002/2003 for the clearance of goods imported under M/s. Sagar Electronics and ten other firms disclosed by him in his earlier statement dated 7.12.04.
- ii. that Sh. C. P. Gupta's visits occurred every six months for clearance, payment, and other import-related matters.
- iii. That the ten firms mentioned earlier were confirmed to be non-existent, and imports made under these names, along with M/s. Sagar Electronics, benefited Gupta.
- iv. that Sh. C. P. Gupta transmitted clearance documents such as authority letters, invoices, airway bills, and packing lists for all ten firms via fax.
- v. that he handled imports for two to three firms at a time for six to twelve months, after which Gupta provided names of new firms for clearance.

- vi. That goods were handed over to transporter M/s. Natraj Cargo & Courier in Mumbai, who then transported them to Delhi as instructed by Gupta.
- vii. That he received acknowledgement receipts (Railway Receipts) from the transporter, acknowledged by M/s. Sagar Electronics Delhi.
- viii. That documents related to the ten firms, including M/s. Sagar Electronics, such as clearing bills, Bills of Entry, invoices, and packing lists, were sent via First Flight Courier to M/s. Sagar Electronics/Sh. C.P. Gupta.
- ix. That despite consignee information on delivery papers reflecting the Bill of Entry, goods were sent to M/s. Sagar Electronics as directed by Gupta.
- x. that only Sh. C.P. Gupta of M/s. Sagar Electronics contacted him regarding import clearance activities.
- xi. That Customs duty payments for imports made by Gupta under M/s. Sagar Electronics and the ten mentioned firms were received by Sangani's company (National Shipping Agency) through the banking channel.
- xii. that Sh. C. P. Gupta provided drafts in the name of M/s. National Shipping Agency, Mumbai, directing the allocation of funds for customs duty and miscellaneous charges.
- xiii. That various charges like delivery order, demurrage, transport, and service charges were covered from the funds sent by Gupta through the banking channel.
- xiv. That he sent firm-wise accounts of consignment charges to Gupta via courier, regardless of which firms the consignments were imported under.

10.4.4 Sh. Manish Sangani in his statement recorded under Section 108 of the Customs Act, 1962 on **13.01.2006**, interalia, stated:

- i. that he would make available all the correspondence with Sh. C.P. Gupta in respect of M/s. Sagar Electronics and his other group's company by 20th Jan, 2006 to confirm the fact that the money / draft received from Sh. C.P. Gupta were adjusted in his various group companies;
- ii. that he had been sending all the copies of import documents like Bills of Entry etc. in respect of all the group companies of Sh. C.P. Gupta through courier to M/s Sagar Electronics irrespective of the firms to which they related. Some of the courier receipts (152 Nos) were sent to this office vide letter dated 30.11.05;
- iii. that couriers enclosing import documents pertaining to different group companies of Sh. C.P. Gupta were always sent to M/s. Sagar Electronics and not a single courier was ever sent in the name of other group companies of Sh. C.P. Gupta whether it was for sending import documents after clearance or any other documents /correspondence;
- iv. that Sh. C.P. Gupta had given him strict instruction, not to write or associate his (C.P. Gupta) name anywhere with his (C.P. Gupta's) group companies other than M/s. Sagar Electronics; and

- v. that he had sent a letter to Sh. C.P. Gupta enclosing the detail of outstanding dues in respect of M/s. Sagar Electronics and his other group companies for payments for which response was awaited.

10.4.5 Sh. Manish Sangani during his statement dated **13.01.06** also tendered a folder containing certain documents (12 pages) which on scrutiny revealed as under:

- a. Perusal of pages Nos. 9 & 10 of the said folder indicates that it is the account statement in respect of M/s. Gemini Enterprises where at page No.9, an Entry for Rs. 4,33,242/- has been shown as amount received by the National Shipping Agency in the account of M/s. Gemini Enterprises vide Bank Draft No. 000490 of UTI Bank Ltd. Sh. Sangani in his above said statement dated 13.01.06 stated that the said draft was received from Sh. C.P. Gupta with the instruction that the amount may be adjusted against the expenses for M/s. Gemini Enterprises, M/s Mars International and M/s. Royal Enterprises. Journal vouchers showing adjustment of the amounts so received towards other firms were not made available by Sh. Sangani but he promised to submit the Ledger print outs of his company. Sh. Sangani of M/s The National Shipping Agency vide his letter dated 28.01.2006 forwarded copies of Ledger accounts of Sh. C.P. Gupta for his various firms. Perusal of the said account statements revealed that there were several entries in the said ledgers of various firms where payments received by National Shipping Agency was transferred from the account of one firm and adjusted against the bills raised for other firms.
- b. A copy of the summary chart showing total outstanding amount of Rs. 1,42,941/-receivable from Sh. C.P, Gupta Group was tendered with the statement on 13.01.06. This chart also had summary of account in respect of each firm of C.P. Gupta for which the Customs clearance work was handled by Sh. Sangani in his company. Sh. Sangani his statement admitted that the present total outstanding from Sh. C.P. Gupta group companies under this investigation including M/s. Sagar Electronics was Rs. 1, 42,941/-, the payment of which was being pursued with Sh. C.P. Gupta for the last eight months. The said amount has been reflected in the accounts of M/s. National Shipping Agency as recoverable in the Ledger account of M/s. Gemini Enterprises for the period 01.07.04 to 31.03.05 tendered by M/s. National Shipping Agency vide their above said letter dated 28.01.2006. M/s. National Shipping Agency vide their aforesaid letter have also forwarded copies of their earlier letters dated 2.01.04, 28.09.04, 22.01.05, 26.02.05,04.03.05 and 22.03.05 addressed to Sh. C.P. Gupta of M/s. Sagar Electronics demanding payment of outstanding dues against various firms under investigations including M/s. Gemini Enterprises, Devika Enterprises, Mars International and Konark International.

- c. Perusal of Ledger Account of M/s. Sagar Electronics for the period 01.04.03 to 30.06.04 and 01.07.04 to 31.03.2005 and of M/s. Mars International for the same period and several other firms under investigations, tendered by Sh. Manish Sangani of M/s. The National Shipping Agency vide his letter dated 28.01.06 revealed as under:
- i. that there is a transfer Entry of Rs. 3,00,000/- from the account of M/s. Sagar Electronics, Delhi into the account of M/s. Mars International through a journal voucher dated 10.05.2004. The said transfer of Rs. 3,00,000/- has also been reflected in the Ledger account of M/s. Mars International showing credit Entry of equal amount on the same day, as receipt from M/s. Sagar Electronics.
 - ii. In the ledger account of M/s. Sagar Electronics, there is a credit Entry for Rs. 6497/- on 24.11.04 shown as receipt from the account of M/s. Gemini Enterprises. Against this, there is a corresponding transfer journal Entry dated 24.11.04 of equivalent amount shown in the Ledger account of M/s. Gemini Enterprises, as transfer to M/s. Sagar Electronics.
- d. Apart from the above, the Ledger accounts provided by M/s. National Shipping Agency for the period 01.04.03 to 31.03.05 in respect of various firms under investigations showed transfer and adjustment of amounts from one company to another company e.g. M/s. Konark International to Galaxy Enterprises, Devika Enterprises to Galaxy Enterprises, Gemini Enterprises to Devika Enterprises, Gemini Enterprises to Galaxy Enterprises and Gemini Enterprises to Mars International.

10.4.6 Sh. Jayesh P. Vador in his statement dated **13.05.05** recorded under Section 108 of the Customs Act, 1962, inter alia stated:

- i. that they were involved in customs clearing work for C.P. Gupta and associated firms under CHA Licence No. 11/938 of M/s. Mehta & Mehta & Worldwide Cargo Works. The associated firms were: (1) Gemini Enterprises, (2) Mars International, (3) Shiva International, (4) Supreme Enterprises, (5) Allied Enterprises, (6) Devika Enterprises, (7) Spectrum Overseas, (8) Galaxy Enterprises (9) Sagar Electronics (10) Konark International;
- ii. that Sh. C.P. Gupta gave instructions/authorization on behalf of above listed companies for customs clearance;
- iii. that the above listed firms were not owned/controlled by the persons mentioned in the Importer Exporter Codes (IECs) issued to the above firms as the instructions came from one person that is C.P. Gupta;
- iv. that every time the authorization in different companies came in different name with different signatures;

- v. that the above firms were fake and for all the enquiries/instructions he contacted C.P. Gupta;
- vi. that he did not know any person by name Sh. Surender Kumar and he (Surender Kumar) never contacted him for any customs clearance in respect of the above mentioned firms;
- vii. that though there were more than one items in the Bill of Entry having different/separate country of origin but they declared only one country of origin of items and the country of origin certificates were never provided by the importing firms and hence, the country of origin in the Bills of Entry were declared as mentioned on the supplier invoice;
- viii. that in case of more than one item in the Bill of Entry, any country was mentioned in the Bill of Entry for the whole consignment as in the EDI system only one country of origin could be mentioned in the Bills of Entry.

From the perusal of the documents and statements of various CHAs discussed above, who were involved in clearance of imports of electronic components for Sh. C.P. Gupta in the names of his firms M/s. Sagar Electronics and other firms under investigation, it emerged that all the CHAs have categorically stated that:

- i. ***they were approached by Sh. C.P. Gupta for clearance of import consignments of electronic components imported in the names of Sagar Electronics and other firms under investigations.***
- ii. ***The documents related to clearance of such import consignments like IEC, invoice, Bill of Lading, authorization letter etc. were provided to them by Sh. C.P. Gupta for M/s. Sagar Electronics as well as other firms under investigation by fax/courier.***
- iii. ***The import documents after clearance were sent to Sh. C.P. Gupta in respect of all the said firms through courier.***
- iv. ***The goods after clearance were dispatched to Sh. C.P. Gupta through Godara Freight Carriers and Natraj Cargo and Courier to be delivered to Sh. C.P. Gupta irrespective of the firm in the names of which they were imported.***
- v. ***The customs duties and other CHA charges were paid by Sh. C.P. Gupta in respect of all the firms under investigations including Sagar Electronics.***
- vi. ***M/s The National Shipping Agency, received lump sum amount in the form of bank drafts from Sh. C.P. Gupta to be deposited into their account which was used for payment of Customs duty and other charges as and when required for different firms, as per the instructions of Sh. C.P. Gupta.***
- vii. ***Sh. Sangani of M/s The National Shipping Agency has stated that there was an outstanding amount due to be received from Sh. C.P. Gupta against various firms under investigation for handling their import consignments.***

viii. *That they only dealt with Sh. C.P. Gupta for any and every work related to the said imports.*

The above revelations of all the CHAs showed that Sh. C.P. Gupta was the person having managerial and financial control over the firms under investigation including M/s. Sagar Electronics.

11. Scrutiny of documents provided by the Customs House Clearing Agents, other available records and further enquiries with the banks in respect of the firms under investigation were conducted which revealed as tabulated and discussed below :

Table No. 5

Sl. No.	Name & address of firm	Name & Residential address of proprietor	Bank A/C. No.	IEC code & Date of issue
1	Spectrum Overseas, 4078, Roshanara Road, Delhi- 110017	Surender Kumar, s/o Sh. P.S.Kumar @ Phool Singh, R/o 8575, Roshanara Road, Delhi	CA 5068, Kangra Bank, Pahar Ganja, New Delhi - 55	0504000047 dt. 01.04.04
2	Shiva Enterprises, 7/318, Lalita Park, Laxmi Nagar, Delhi - 92.	Lata Kumar W/o. Anil Kumar, 54-D, Vikas Marg, Delhi.	2869, The Kangra Co-operative Bank, Jagat Puri, Delhi-92.	0504047361 dt. 01.10.04
3	M/s.Surya Enterprises, 4078, Roshanara Road, Delhi	Sh. Shashi Kapoor, s/o Sh. P.S.Kumar @ Phool Singh, R/o Roshanara Rd, Delhi	A/c. No. CD 5067 The Kangra Co-operative Bank Ltd.	0504000039 dt. 1.04.04
4	Gemini Enterprises,B-1 Gali No.14, Madhu Vihar, IP Extn. Delhi	Ravinder Kumar, s/o Sh. Ashwini Lal, D-45, Jawahar Park, Delhi	UTI Bank Ltd. Krishna Nagar, Delhi A/c No. 166010200002011	0503077011 dt.24.02.04
5	Mars International, B-1 IInd flr, Madhu Vihar, Street No.14, IP Extn., Delhi-92	Smt. Anamika w/o Sh. Ravinder Kumar, 45-D, Jawahar Park, Laxmi Nagar, Delhi-92	UTI Bank Ltd., Krishna Nagar, Delhi A/c.No. 166010200002356	503080471 Dt.8.03.04
6	Shivam Overseas Inc., B-1 IInd flr, Madhu Vihar, Street No.14, IP Extn., Delhi-92	Sh. Surender Kumar, S/o Sh. Charanje Lal R/o D-45, Jawahar Park, Laxmi Nagar, Delhi-92	Bank of Punjab Ltd., Preet Vihar, Delhi Customer ID/CA No. 110899023/CA 1723	0503066800 dt. 12.01.04
7	Shiva International, 1-A Vishesh Complex, West Guru Angad Nagar, Laxmi Nagar, Delhi-92	Sh. Anamika Sharma w/o Sh. Ravinder Sharma, D-45, Jawahar Park, Pushp Vihar, N.Delhi-30	Bank of Punjab Ltd. Chandni Chowk, Delhi CA No.1119240	502054620 dt.27.11.02
8	Royal International, H-31, Vijay Chowk, Laxmi Nagar, Delhi-92.	Sh. Rohan Kumar s/o Sh Anil Kumar, R/o D54, Shakar Pur, Vikas Marg, Delhi	A/c.No.CD2731, The Kangra Co-operative Bank	504001507 dt.8.4.04

			Ltd., Jagat Puri, Delhi-52.	
9	Leo International, H-31, Vijay Chowk, Laxmi Nagar, Delhi-92	Smt. Lata Kumar W/o Sh. Anil Kumar, D54, Shakar Pur, Vikas Marg, Delhi.	A/c. No. CD 2730, The Kangra Co-op Bank Ltd., Jagat Puri, Delhi-52.	0504001477 dt. 7.4.04
10	Supreme Enterprises, 62/2, Sai Chamber, Lalita Park, Laxmi Nagar, Delhi	Smt. Raj Bala w/o.Sh. Atul Kumar, R/o.D-54, Shakar Pur, Vikas Marg, Delhi.	A/c No. CD 2612, The Kangra Co-op Bank Ltd. Jagat Puri, Delhi-52.	5030403940 dt. 6.10.03
11	Allied Enterprises, 2/63, Lalita Park, Laxmi Nagar, Delhi.	Smt.Lata Podesh, w/o Sh. Anil Podesh, R/o D-54, ShakarPur, Vikas Marg, Delhi	A/c No. CD 2587, The Kangra Co-op Bank Ltd. Jagat Puri, Delhi-52	0503035271 dt. 5.9.03
12	Devika Enterprises, R-39, Vikas Marg, Shakar Pur, Delhi-92	Sh. Atul Kumar, s/o Sh. Girija Shanker R/o D-54, Shakar Pur, Delhi-92.	Bank of Punjab Ltd., Preet Vihar, Delhi Customer ID/CA No. 110809979/CA 1681,	0503046027 dt. 14.0.03
13	Prominent Enterprises, A- 1, Guru Angad Nagar, Laxmi Nagar, Delhi-92	Sh. Chandresh Kumar, s/o Sh. Ram Kishore, WZ-80, Ram Nagar, Tilak Nagar, New Delhi.	Indian Bank, CA 5344	0502053453 dt. 25.11.02
14	Konark International, A-1, West Guru Angad Nagar, Laxmi Nagar, Delhi	Sh. Chandresh Kumar, s/o Sh. Ram Kishore, R/o C-111, WZ-394, Hari Nagar, New Delhi.	Bank of Punjab Ltd., Chandni Chowk, Delhi CA No. 1119422	050328282 dt. 06.08.03
15	Galaxy Enterprises, A-1, IInd floor, West Guru Angad Nagar, Priyadarshini Vihar, Delhi-92.	Smt. Babita Kapoor, w/o Sh. Hemant Kapoor, R/o C-111, WZ-394, Hari Nagar, Delhi.	A/c No. CD 2552 The Kangra Co-op. Bank Ltd., Jagat Puri, Delhi-52.	0503027944 dt. 05.08.03
16	Magnum Overseas, 7/318, 1st flr, Lalita Park, Laxmi Nagar, Delhi-92.	Smt. Sangeeta w/o Sh. Satish Kumar, R/o D- 45, Jawahar Park, Laxmi Nagar, Delhi-92.	UTI Bank Ltd., Krishna Nagar, Delhi-51, A/c. No. 166010200004206	050418884 dt. 16.06.04.

Summons were sent to each of the firms/proprietors but the same came back from the postal authorities undelivered in all cases. Thereafter, enquiries were conducted in respect of each of the above mentioned firms and the following emerged:

- i Perusal of bank records like account opening forms, account statements, proof of residence provided while opening the said account etc. submitted by the Manager, The Kangra Co-operative Bank Ltd. 1916, Chuna Mandi, Pahar Ganj, New Delhi-5 vide his letter dated 11.01.2005 revealed that M/s. Spectrum Overseas purportedly operated from 4078, Roshanara Road, Delhi-17, with Sh. Surender Kumar listed as the proprietor. However, upon investigation by the DRI team, it was discovered that no such firm existed at that address. In response, a statement was obtained from Sh. Gurvinder Singh, the owner of the

premises, under Section 108 of the Customs Act, 1962, dated 09.12.2004. Singh clarified that the premises served as a commercial building and that in March 2003, he had rented a room to Sh. Shashi Kapoor, who vacated the room in June 2003 without conducting any business. Singh affirmed that neither M/s. Spectrum Overseas nor M/s. Surya Enterprises ever operated from the building. He also mentioned that the residential address of Sh. Shashi Kapoor was 8575, Roshanara Road, Delhi-110007. However, upon inquiry at that address, Sh. Viren Kumar, the resident, indicated through a letter dated 08.12.2004, that although Sh. Shashi Kapoor was his cousin, he did not reside there, nor did Sh. Surender Kumar, who was stated to be Shashi Kapoor's brother. No further details regarding the whereabouts of Shashi Kapoor and Surender Kumar could be provided. It was noted that the account at the bank was introduced by Sh. Surender Sharma of M/s. Ganpati Sales Corporation (A/c. No.2348).

ii. Perusal of bank records like account opening forms, account statements, proof of residence provided while opening the said account etc. submitted by the Manager, The Kangra Co-operative Bank Ltd., 1916, Chuna Mandi, Pahar Ganj, New Delhi-55, vide his letter dated 11.01.2005 revealed that M/s. Surya Enterprises has shown its office at 4078, Roshanara Road, Delhi-17 of which Sh. Shashi Kapoor was shown as the proprietor residing at 8575, Roshanara Road, Delhi. Verification of both the premises were also conducted, but with similar result, as discussed at para 5(i) supra because the addresses shown in respect of M/s. Spectrum Overseas and M/s. Surya Enterprises were the same. Although premises at 4078, Roshanara Road, Delhi was rented to Sh. Shashi Kapoor for a short period from March 2003 to June 2003 but no business in the name of any firm was carried from the said premises. Introduction of Account in the Kangra Co-operative Bank was also done by Sh. Surender Sharma of M/s. Ganpati Sales Corporation (A/c.No.2348).

iii. Perusal of bank records like account opening forms, account statements, proof of residence provided while opening the said account etc. submitted by the Manager, The Kangra Co-operative Bank Ltd., 73-A, A-Block, Jagat Puri, Delhi-51 vide his letter dated 7.12.04 revealed that **M/s. Shiva Enterprises** has shown its office at 7/318, IInd Floor, Lalita Park, Laxmi Nagar Delhi-92 of which Smt. Lata Kumar has been shown as proprietor. The residential address of Smt. Lata Kumar has been shown as 54-D, Vikas Marg, Delhi as a proof of which a copy of a Ration Card bearing No. 156079 was submitted to the bank. Smt. Lata Kumar also submitted a copy of PAN No. ALHPP3795P in the name

of Lata Pandey as address proof. Perusal of said copy of ration card and PAN revealed that the surname shown in Ration Card was Podesh, in Bank Account it was Kumar whereas in PAN No. it was Pandey respectively. The residential address shown on IEC No. issued to this firm is also same which on verification revealed that no such persons or firms existed at that address. The office address shown at 7/318, First Floor, Laxmi Nagar, Delhi -110092 was also verified and it was found that no such firms existed at that address, which was found locked. Local enquiries revealed that the premises were in the possession of Mr. & Mrs. Fadil for the last one year who were engaged in the business of Handicraft items. Introduction of the bank account was done by Sh. Surender Sharma, Proprietor of M/s. Ganpati Sales Corpn. (A/c. No. 2348) in the same bank.

Perusal of Account statement of M/s. Shiva Enterprises for the period 27.09.04 to 05.11.04 as provided by the Kangra Co-operative Bank Ltd., Jagatpuri, Delhi (A/c.No. 2869) revealed that there was Entry relating to transfer of funds between the firms under investigation and M/s. Ganpati Sales Corporation under proprietorship of Sh. Surender Sharma, the detail of which is as under:

Table No. 6

Date	Detail of transaction shown in the statement	Cheque No.	Amount (in Rs.)	Remark
5.11.04	Transfer to A/c. No. CD 2348	499902	2500	A/c .No. 2348 belongs to M/s. Ganpati Sales Corporation

iv. Perusal of bank records like account opening forms, account statements, proof of residence etc. provided by the Manager, UTI Bank Ltd., F-2125, Krishna Nagar, Near Lal Quarter, Delhi-51 vide his letter dated 7.12.04 revealed that M/s. Gemini Enterprises purportedly operated from B-1, Gali No.14, Madhu Vihar, IP Extension, Delhi, with Sh. Ravinder Kumar listed as the proprietor, and his residential address indicated as D-45, Jawaharlal Park, New Delhi. These addresses were also associated with the establishment of two other firms: M/s. Shivam Overseas Inc., with Sh. Surender Kumar as the proprietor, and M/s. Mars International, with Mrs. Anamika, wife of Sh. Ravinder Kumar, as the proprietor. The bank provided a copy of a certificate issued by M/s. Ajay Agarwal & Company, Chartered Accountants, and a 'Lease Deed' for the office premises as proof of residence. However, verification of the office address at Madhu Vihar revealed discrepancies, as no Lease Deed with Ravinder Kumar or Surender Kumar was executed by Mrs. Chander Mohini, the actual owner of the premises.

This fact was corroborated by Sh. S.P. Mahajan and his wife Mrs. Chander Mohini in their joint statement dated 9.12.04 under Section 108 of the Customs Act, 1962. They disclosed that the premises were rented to an unknown individual through Mr. Prem Mahajan, a property dealer working at M/s. Mahajan Properties in Madhu Vihar, Delhi, for a period of seven to eight months. Sh. Prem Prakhsh Mahajan, the owner of M/s. Mahajan Properties, further confirmed in his statement dated 9.12.04 under Section 108 of the Customs Act, 1962, that the signatures on the lease agreements were forged. When presented with a photograph of Mr. Surender Kumar (alias Surender Sharma), the proprietor of M/s. Ganapati Sales Corporation and Shivam Overseas Inc., Sh. Mahajan recalled renting the house to him for about 3 to 4 months but was unaware of his business activities. Regarding the residential address listed as D-45, Jawahar Park, Khanpur (Pushp Vihar), New Delhi, and D-45, Jawahar Park, Laxmi Nagar, Delhi, enquiries were conducted at both places, revealing that neither location housed the individual in question

Enquiries with the Chartered Account Sh. Ajay Kumar Agarwal of M/s. Ajay Agarwal & Co. whose certificate was used to open the bank account of M/s. Gemini Enterprises & M/s. Mars International another such firm of which Mrs. Anamika wife of Mr. Ravinder Kumar has been shown as proprietor were also made and a statement under Section 108 of Customs Act, 1962 of Sh. Aggarwal was recorded on 10.12.2004. After having seen the said certificates, Sh. Agarwal stated that no such certificates were ever issued by him and did not even know the persons whose photographs were affixed on the said certificates. He also stated that the letterheads, rubber stamps and signatures used in the said certificates were fake and fabricated.

Perusal of Bank Account statement of M/s Gemini Enterprises for the period 15.02.04 to 07.12.04 provided by the UTI Bank Ltd. Krishna Nagar, Delhi revealed that there were entries showing transfer of fund amongst the firms under investigation. The details of funds transfer shown in the account statements of Gemini Enterprises bank A/c. No. 166010200002011 held in UTI Bank Ltd., Krishna Nagar Branch, Delhi to & from Mars International and Ganpati Sales Corporation is as under:

Table No. 7

Date	Detail of transaction shown in the statement	Cheque No.	Amount (in Rs.)	Remark
02.04.04	Transfer to M/s. Mars International	6704	100000	
27.04.04	Receipt from M/s. Mars International		295000	
07.05.04	Transfer to M/s. Mars International	6703	215000	

08.05.04	Receipt from M/s. Mars International		35000	
14.05.04	Receipt from M/s. Mars International		20000	
20.05.04	Transfer to M/s. Mars International	6715	165000	
15.06.04	Transfer to Ganpati Sales Corpn.	6720	200000	
18.06.04	Transfer to Ganpati Sales Corpn.	6721	250000	
30.06.04	Transfer to Ganpati Sales Corpn.	6722	300000	
07.07.04	Receipt from Ganpati Sales		50000	
14.07.04	Receipt from Ganpati Sales		45000	
20.07.04	Receipt from Ganpati Sales		50000	
11.08.04	Receipt from Ganpati Sales		136700	
18.08.04	Transfer to M/s. Mars International	6734	106000	
25.08.04	Receipt from Ganpati Sales		88225	
27.08.04	Receipt by transfer from M/s. Ganpati Sales Corpn.		100000	
1.09.04	Receipt by transfer from M/s. Ganpati Sales Corpn.		48000	
02.09.04	Receipt from Ganpati Sales		107800	
03.09.04	Receipt from Ganpati Sales		243000	
22.09.04	Receipt by transfer from M/s. Ganpati Sales Corpn.		810000	
18.10.04	Transfer to Ganpati Sales Corpn.	6745	200000	
01.11.04	Transfer to Ganpati Sales Corpn.	6750	33500	
25.11.04	Transfer to Ganpati Sales Corpn.	25702	220000	
03.12.04	Transfer to Ganpati Sales Corpn.	25709	44000	

v. Perusal of bank records like account opening forms, account statement, proof of residence etc. provided by the Manager, UTI Bank Ltd., F-2/25, Krishna Nagar, Near Lal Quarter, Delhi-51 vide his letter dated 7.12.04 revealed that **M/s. Mars International** has shown its office at B-1, IInd floor, Street No.14, Madhu Vihar, I.P. Extension, Delhi-92 of which Smt. Anamika w/o Sh. Ravinder Kumar has been shown as proprietor. Her residential address has been shown as D-45, Jawahar Park, Laxmi Nagar, Delhi. A copy of certificate issued by M/s. Ajay Agarwal & Company, Chartered Accountant has been provided to the bank as residence proof for opening the bank account in UTI Bank Ltd. The addresses of M/s. Mars International being same as that of M/s. Gemini Enterprises have already been discussed in the pars 5(iv) supra related to M/s. Gemini Enterprises.

It, thus, appears that the said premises were never remained in the possession or use of Mrs. Anamika or her husband Sh. Ravinder Kumar either for residential purposes or business related work of the abovementioned firm.

Perusal of Bank Account statement of M/s. Mars International for the period 25.02.04 to 07.12.04 provided by the UTI Bank Ltd., Krishna Nagar, Delhi revealed that there were entries showing transfer of funds amongst the firms under investigations. The details of funds transfer shown in the account statements of M/s. Mars International bank A/c No, 166010200002356 held in UTI Bank Ltd., Krishna Nagar Branch, Delhi to & from Gemini Enterprises and Ganpati Sales Corporation is as under:

Table No. 8

Date	Detail of transaction shown in the statement	Cheque No.	Amount (in Rs.)	Remark
02.04.04	Receipt from M/s. Gemini Enterprises		100000	
27.04.04	Transferred to M/s. Gemini Enterprise	7454	295000	
07.05.04	Receipt from M/s. Gemini Enterprises		215000	
08.05.04	Transferred to M/s. Gemini Enterprise	7459	35000	
14.5.04	Transferred to M/s. Gemini Enterprise	7462	20000	
20.05.04	Receipt from M/s. Gemini Enterprises		165000	
15.06.04	Transfer to Ganpati Sales Corpn.	7466	205000	
07.07.04	Receipt from Ganpati Sales Corpn.		150000	
09.07.04	Transfer to Ganpati Sales Corpn.	7470	200000	
30.07.04	Receipt from Ganpati Sales Corpn.		170000	
10.08.04	Receipt from Ganpati Sales Corpn.		300000	
11.08.04	Receipt from Ganpati Sales Corpn.		114610	
18.08.04	Receipt from M/s. Gemini Enterprises		106000	
26.08.04	Receipt from Ganpati Sales Corpn.		113310	
01.09.04	Transfer to Ganpati Sales Corpn.	7484	254664	
02.09.04	Receipt from Ganpati Sales Corpn.		243800	

01.11.04	Transfer to Ganpati Sales Corpn.	7495	15000	
07.12.04	Transfer to Ganpati Sales Corpn.	7497	3000	

vi Perusal of bank records like account opening forms, account statement, proof of residence etc. provided by the Authorised Signatory, Bank of Punjab Ltd. F-101/B, Aditya Complex, Preet Vihar, Delhi-92 vide his letter dated 7.12.04 revealed that M/s. **Shivam Overseas Inc.** has shown its office at B-1, IInd floor, Street No. 14, Madhu Vihar, I.P. Extension, Delhi-92 of which Sh. Surender Kumar S/o Sh. Chiranje Lal has been shown as proprietor. His residential address has been shown as D-45, Jawahar Park, Laxmi Nagar, Delhi. For opening the bank account, Sh. Surender Kumar (alias Surender Sharma) as proof of residence has provided copy of Ration Card No. 178576 bearing address as D-45, Jawahar Park, New Delhi, a locality in South Delhi along with copy of a lease agreement dated 10.12.2003 shown as entered into between himself and Mrs. Chander Mohini. Verification report of both the above said addresses have already been discussed in pars 5(iv) supra related to M/s. Gemini Enterprises. It, thus, appears that fraudulently prepared lease deed was used to open the bank account and a Ration Card was got made at the said address where he neither lived nor used it for any of his business activities related to the said firm M/s. Shivam Overseas Inc.

Perusal of Bank Account statement of M/s. Shivam Overseas Inc. for the period 01.04.04 to 7.12.04 provided by the Bank of Punjab Ltd. Preet Vihar, Delhi (A/c.No.08CA11081723) revealed that there were entries showing transfer of funds amongst the firms under investigations. The details of transfer of funds between the above said account of M/s. Shivam Overseas Inc. and the bank account of M/s. Devika Enterprises, a firm under this investigation, is as under:

Table No. 9

Date	Detail of transaction shown in the statement	Cheque No.	Amount (in Rs.)	Remark
26.04.04	Receipt from M/s. Devika Enterprises		3000	
29.04.04	Transfer to M/s. Devika Enterprises		6000	
07.06.04	Receipt from M/s. Devika Enterprises		5000	

vii. Perusal of bank records like account opening forms, accounts statements, proof of residence etc. provided by the Authorised Signatory, Bank of Punjab Ltd.

F-101/B, Aditya Complex, Preet Vihar, Delhi-92 vide his letter dated 7.12.04 revealed that **M/s. Devika Enterprises** purportedly operated from R-39, Vikas Marg, Shakarpur, Delhi-92, with Sh. Atul Kumar listed as the proprietor and his residential address mentioned as D-54, Shakarpur, Delhi-92. Documentation submitted to the bank as proof of residence/office included a copy of Ration Card No. 156079, a photocopy of a telephone bill in the name of Mrs. Lata Pandey, and a notarized Rent Agreement dated 20.09.2003 signed between Mrs. Lata Pandey and Sh. Atul Kumar. However, upon investigation at the stated address, it was found to be a three-storeyed commercial building housing various offices such as M/s. Shiva Shakti Enterprises, M/s. Nav Shakti Finance, M/s. Shivalik Enterprises, M/s. Everest Consultancy, and M/s. Hi-Con. Local inquiries revealed no existence of M/s. Devika Enterprises or any individual named Sh. Atul Kumar operating from the premises. Similarly, inquiries regarding the residential address D-54, Shakarpur, Delhi-92, yielded no evidence of individuals associated with the mentioned names residing there. Discrepancies were also noted in the Ration Card No. 156079, which had been utilized for opening the account of M/s. Devika Enterprises, as it included names of individuals not present in documents related to other firms. Furthermore, upon comparing signatures on the lease deed provided by the bank with those on the account opening form of M/s. Shiva Enterprises, it was observed that signatures were identical, indicating potential forgery. Additionally, inconsistencies were found in the names and addresses associated with various firms, suggesting the fabrication of documents and slight alterations in names to establish multiple entities. It was concluded that the same individual, represented by various aliases, was involved in setting up multiple firms using forged documents, including the Ration Card, to open bank accounts. All the aforementioned firms were subject to investigation in this case.

Perusal of Account statement of M/s. Devika Enterprises for the period 01.04.04 to 7.12.04 provided by Bank of Punjab Ltd., Preet Vihar, Delhi (A/c. No. 08CA11081681 introduced by M/s. Shiva International, a firm under investigations) revealed that there were entries showing transfer of funds between the account and the account of M/s. Shivam Overseas Inc. as under:

Table No. 10

Date	Detail of transaction shown in the statement	Cheque No.	Amount (in Rs.)	Remark
26.04.04	Transfer to M/s. Shivam Overseas Inc.	351574	3000	
29.04.04	REceipt from M/s. Shivam Overseas Inc.		6000	

07.06.04	Transfer to M/s. Shivam Overseas Inc.	215453	5000	
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viii. Perusal of bank records like account opening forms, account statements, proof of residence etc. provided by the Branch Head, Bank of Punjab Ltd. 1907, Chandni Chowk, Delhi-6 vide his letter dated 10.12.04 revealed that **M/s. Shiva International** has shown its office at 1-A, Vishesh Complex, West Guru Angad Nagar, Laxmi Nagar, Delhi-92 of which Mrs. Anamika Sharma w/o Sh. Ravinder Sharma has been shown as proprietor. Her residential address has been shown as D-45 Jawahar Park, Pushp Vihar, New Delhi in the bank records of Bank of Punjab Ltd., Chandni Chowk. Delhi. Copies of ration card No. 178576 as proof of residence and a copy of phone bill in the name of Mrs. Wajiada Ashar as proof of office address was submitted to the bank for opening the bank account of the firm. The same ration card has been used while opening the accounts of other firms like M/s. Shivam Overseas Inc. by Sh. Surender Kumar alias Sh. Surender Sharma. The residential address shown in the said bank account was never in the possession of Smt. Anamika or other members shown in the ration card. The details have already been discussed in pars 5(vi) supra. A team of officers of this Directorate visited the aforesaid office address of M/s. Shiva International and observed that no firm by the name M/s. Shiva International ever existed at the said premises. Sh. Surender Kumar (alias Sh. Surender Sharma), Proprietor of M/s. Alpine International introduced the bank account of M/s. Shiva International. Perusal of the signatures of Sh. Surender Sharma revealed that he was the same person who had been shown proprietor of M/s. Ganpati Sales Corporation and M/s. Shivam Overseas Inc. His name also figures in the copy of ration card No. 178576 provided by the banks.

Perusal of Account statement of M/s. Shiva International for the period 20.11.02 to 11.12.04 provided by the Bank of Punjab Ltd., Chandni Chowk, Delhi (A/c. No. 73CA1119240 introduced by Sh. Surender Sharma of M/s. Alpine International) revealed that there were entries showing transfer of funds between this account and the account of various other firms under investigation as under:

Table No. 11

Date	Detail of transaction shown in the statement	Cheque No.	Amount (in Rs.)	Remark
12.08.03	Transfer to M/s. Galaxy Enterprises	23403	200000	

13.08.03	Transfer to M/s. Galaxy Enterprises	23404	200000	
20.09.03	To Konark International	377588	195000	
25.09.03	To Galaxy Enterprises	37759	200000	
17.11.04	Transfer from Konark International		600	

ix. Perusal of bank records like account opening forms. Account statements, proof of residence etc. provided by the Branch Head, Bank of Punjab Ltd., 1907, Chandni Chowk, Delhi-6 vide his letter dated 16.12.04 revealed that M/s. Konark International has shown its office at A-1, West Guru Angad Nagar, Laxmi Nagar, Delhi-92 of which Sh. Chandresh Kumar s/o Sh. Ram Kishore has been shown as Proprietor. His residential address has been shown as C-111, WZ-394, Hari Nagar, New Delhi-18, Bank account CA No. 1119422 has been introduced by Mrs. Anamika Sharma, Proprietor of M/s. Shiva International, a firm under investigations. Driving Licence of Sh. Chandresh Kumar s/o Sh. Ram Kishore and ration card No. 73856 were submitted to the bank as proof of residence for opening the bank account of the firm. A team of officers visited the premises at A-1 West Guru Angad Nagar, Laxmi Nagar, Delhi and noticed that no firm in the name of M/s.Konark International ever existed at the said premises. Enquiries in respect of Ration Card No. 73856 were conducted to know the whereabouts of the person shown as the proprietors. The Food & Supply Officer, Circle-13, Hari Nagar, New Delhi-64 vide his letter dated 16.02.05 informed that the above said Ration Card was cancelled by them on 18.06.03 and surrender certificate was issued to the applicant as the ration card holder had shifted to Laxmi Nagar, Delhi as per their records.

Perusal of bank Account statement of M/s. Konark International for the period 23.07.2003 to 15.12.2004 provided by Bank of Punjab Ltd., Chandni Chowk, Delhi revealed that there were entries showing transfer of funds amongst the firms under investigations. The details of fund transferred from and received in the abovesaid bank account of M/s. Konark International is as under:

Table No. 12

Date	Detail of transaction shown in the statement	Cheque No.	Amount (in Rs.)
20.09.03	Receipt from M/s. Shiva International		195000
01.10.03	Payment to M/s. Allied Enterprises	40365	300000

17.11.04	Amount transfer to M/s. Shiva International		600
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x) Perusal of bank records like account opening forms, account statements, proof of residence provided while opening the said account etc. submitted by the Manager, The Kangra Co-operative Bank Ltd., 73-A, A-Block, Jagat Puri, Delhi-51 vide his letter dated 10.12.04 revealed that M/s. Galaxy Enterprises has shown its office at A1, IInd Floor, West Guru Angad Nagar, Priyadarshini Vihar, Delhi of which the proprietor has been shown as Smt. Babita Kapoor w/o Sh. Hemant Kapoor, Her residential address has been shown as C-111, WZ-394, Hari Nagar, New Delhi-18. The office address shown is same as that of M/s. Konark International and M/s. Shiva International, but for some small modifications. Bank account No. CD 2552 held in Kangra Co-operative Bank Ltd., Jagat Puri, Delhi-51 has been introduced by Sh. Surender Sharma, the proprietor of M/s. Ganapati Sales Corporation. A copy of Ration card No. 73856 was submitted to the bank as proof of residence for opening the bank account of the firm. A team of officers visited the premises at A-1 West Guru Angad Nagar, Laxmi Nagar, Delhi on 9.12.04 and it was noticed that no firm in the name of M/s. Galaxy Enterprises ever existed at the said premises. The Ration card, used here was the same which was used for opening the account of M/s. Konark International with Bank of Punjab Ltd. Chandni Chowk, Delhi. The report of the enquiry in respect of ration card has been discussed in pars 5(ix) supra.

Perusal of the bank account statement of M/s. Galaxy Enterprises for the period 25.07.03 to 31.03.04 provided by the Kangra Co-operative Bank Ltd. Jagat Puri, Delhi (A/c. No. CD 2552) revealed that there were entries showing transfer of funds from and into the bank account No. 2552 of M/s. Galaxy Enterprises to/from M/s. Allied Enterprises, M/s. Konark International, M/s. Supreme Enterprises and M/s. Ganpati Sales, Corpn. The details are as under:

Table No. 13

Date	Detail of transaction shown in the statement	Cheque No	Amount (in Rs.)	Remark
14.08.03	Receipt from A/c.CD2348		500000	A/c. No. 2348 belongs to Ganpati Sales Corp.
20.09.03	Transfer to M/s. Konark Intl.	470620	250000	do
6.11.03	Receipt from CD-2587		345000	A/c No. 2587 belongs to M/s. Allied Enterprises
13.11.03	Transfer to A/c CD 2587	470640	92000	

16.12.03	Transfer to A/c CD 2612	421352	15000	A/c No.CD2612 belongs to M/s. Supreme Enterprises
26.12.03	Receipt from A/c CD2348		30000	A/c. No. 2348 belongs to Ganpati Sales Corp.
29.12.03	Transfer to A/c. CD2587	470646	250000	A/c No. 2587 belongs to M/s. Allied Enterprises
30.12.03	Transfer to A/c. CD2587	421354	49000	-do-
07.01.04	Transfer to A/c. CD2587	421355	275000	-do-
09.01.04	Transfer to A/c. CD2587	421356	300000	-do-
14.01.04	Transfer to A/c. CD2587	421357	20000	-do-
15.01.04	Transfer to A/c. CD2612	421358	91000	A/c No.CD2612 belongs to M/s. Supreme Enterprises
19.01.04	Transfer to A/c. CD2612	421359	150000	-do-
27.01.04	Transfer to A/c. CD2612	421360	50000	-do-
27.01.04	Transfer to A/c. CD2587	421361	200000	A/c No. 2587 belongs to M/s. Allied Enterprises
31.01.04	Receipt from A/c CD 2612		50000	A/c No.CD2612 belongs to M/s. Supreme Enterprises
05.02.04	Transfer to A/c. CD2587	421362	10000	-do-
06.02.04	Receipt from A/c CD 2587		11000	A/c No. 2587 belongs to M/s. Allied Enterprises
07.02.04	Receipt from A/c CD 2612		125000	A/c No.CD2612 belongs to M/s. Supreme Enterprises
11.02.04	Transfer to A/c. CD2348	470650	39000	A/c. No. 2348 belongs to Ganpati Sales Corp.
04.03.04	Receipt from A/c CD 2587		560	A/c No. 2587 belongs to M/s. Allied Enterprises

xi) Perusal of bank records like account opening forms, accounts statements, proof of residence provided while opening the said account etc. submitted by the Manager, The Kangra Co-operative Bank Ltd., 73-A, A-Block, Jagat Puri, Delhi-51 vide his letter dated 7.12.04 revealed that M/s. Royal International has shown its office address at H-31, Vijay Chowk, Laxmi Nagar, Delhi of which the proprietor has been shown as Sh. Rohan Kumar s/o Sh. Anil Kumar. His residential address has been shown as D-54, Shakar Pur, Delhi, which incidentally is also the residential addresses of the proprietors of M/s. Allied Enterprises, Shiva Enterprises, Leo International, Devika Enterprises and Supreme Enterprises. This bank account in the Kangra Co-operative Bank Ltd., Jagat Puri,

Delhi was also introduced by Sh. Surender Sharma of M/s. Ganpati Sales Corporation. Photocopy of ration card No. 156079, as tendered to the bank towards proof of residence, has been provided by the bank to this Directorate. A team of officer visited the office premises of the above said firm on 9:12.04 and it was noticed that the said premises was owned by Sh. Narender Kumar and Rajneesh Sharma for the last 30 years. On enquiry about the existence of two firms at the said address, Sh. Narender Kumar informed that M/s. Royal International and M/s. Leo International never existed there. Further, enquiries were also conducted in respect of the above said residential address which has also been shown as residential address of proprietor of M/s. Devika Enterprises (discussed in para 5(vii) supra) which revealed that no person in the name of Sh. Rohan Kumar ever resided there.

Perusal of the bank account statement of M/s. Royal International for the period 6.04.04 to 21.09 .04 provided by the Kangra Co-operative Bank Ltd., Jagat Puri, Delhi revealed that there were entries showing transfer of funds amongst the firms under investigation. The details of transfer of funds from the A/c No CD 2731 held at the above said bank to the other firms under investigations including M/s. Ganpati Sales Corporation is detailed below:

Table No. 14

Date	Detail of transaction shown in the statement	Cheque No.	Amount (in Rs.)	Remark
18.05.04	Transfer to M/s. Mars International	407254	200000	A/c.No.2730 belongs to M/s. Leo Intl.
18.05.04	Transfer to A/c CD-2730	407255	3000	
29.05.04	Amount transfer to M/s. Mars International	407256	300000	
19.06.04	Amount transfer to M/s. Ganpati Sales Corpn.	407259	200000	
23.06.04	Amount transfer to M/s. Ganpati Sales Corpn.	407261	100000	
28.06.04	Amount transfer to M/s. Ganpati Sales Corpn.	407262	100000	
28.06.04	Transfer to A/c. CD-2730	407263	100000	A/c. No.2730 belongs to M/s. Leo Intl.
30.06.07	Amount transfer to M/s. Ganpati Sales Corpn.	407264	250000	
01.07.04	Amount transfer to M/s. Ganpati Sales Corpn.	407265	200000	
10.07.04	Transfer to M/s. Gemini Enterprises.	407267	300000	
22.07.04	Amount transfer to M/s. Ganpati Sales Corpn.	407271	250000	
23.07.04	Amount transfer to M/s. Ganpati Sales Corpn.	407273	150000	
04.09.04	Transfer to M/s. Shivam Overseas Inc.	407280	300000	

xii) Perusal of bank records like account opening forms, account statement, proof of residence provided while opening the said account etc. submitted by the Manager, The Kangra Co-operative Bank Ltd., 73-A, A-Block, Jagat Puri, Delhi-51 vide his letter dated 7.12.04 revealed that M/s. Leo International had shown its office at H-31, Vijay Chowk, Laxmi Nagar, Delhi of which Mrs. Lata Kumar has been shown as Proprietor. Her residential address has been shown as D-54, Shakar Pur, Delhi-92 which has also been used for creating the firm M/s. Royal International, under investigation. This bank account of M/s. Leo International in the Kangra Cooperative Bank Ltd., Jagat Pur, Delhi was also introduced by Sh. Surender Kumar alias Surender Sharma of M/s. Ganpati Sales Corporation. Photocopy of ration card no. 156079, as tendered to the Bank towards proof of residence for opening the bank account, has been provided by the bank to this Directorate. A team of officer visited the office premises of the above firm on 9.12.04 and it was noticed that M/s. Royal International and M/s. Leo International never existed there at least for the last 30 years. Enquiries were also conducted at the given residential address, also shown as residential address of the proprietor of M/s. Devika Enterprises as discussed which revealed that no person in the name of Sh. Rohan Kumar ever resided there.

Perusal of bank account statement of M/s. Leo International for the period 6.04.04 to 7.12.04 provided by the Kangra Co-operative Bank Ltd., Jagat Puri, Delhi (A/c.No.2730) revealed that there were entries showing transfer of funds amongst the firms under investigations. The details of funds transfer shown in the account no. CD 2730 of Leo International to and from M/s. Royal International, Mars International, Ganpati Sales Corporation, Gemini Enterprises, Shivam Overseas Inc. are given below:

Table No. 15

Date	Detail of transaction shown in the statement	Cheque No	Amount (in Rs.)	Remark
18.05.04	Transfer to M/s. Gemini Enterprises	406513	200000	
18.05.04	Receipt from A/c. No.CD 2731		3000	A/c. No.2731 Belong to M/s. Royal Intl.
29.05.04	Transfer to M/s. Mars International	406514	300000	
19.06.04	Amount transfer to Ganpati Sales Corporation	406520	250000	
23.06.04	Amount transfer to Ganpati Sales Corporation	406521	200000	

25.06.04	Amount transfer to Ganpati Sales Corporation	406522	200000	
28.06.04	Amount transfer to Ganpati Sales Corporation	406523	200000	
28.06.04	Receipt firm A/c. CD-2731		100000	A/c. No. 2731 Belongs to M/s. Royal Intl.
30.06.04	Amount transfer to Ganpati Sales Corporation	406524	250000	
01.07.04	Amount transfer to Ganpati Sales Corp	406525	200000	
10.07.04	Amount transfer to Ganpati Sales Corp	406528	250000	
16.07.04	Amount transfer to Ganpati Sales Corp.	406529	300000	
21.07.04	Amount transfer to Ganpati Sales Corp.	406530	150000	
26.07.04	Amount transfer to Ganpati Sales Corp	406534	250000	
28.07.04	Amount transfer to Ganpati Sales Corp	406536	200000	
04.09.04	Transfer to Shivam Overseas Inc.	406538	300000	

xiii) Perusal of bank records like account opening forms, account statements, proof of residence provided while opening the said account etc. submitted by the Manager, The Kangra Co-operative Bank Ltd., 73-A; A-Block, Jagat Puri, Delhi-51 vide his letter dated 7.12.04 revealed that M/s. Allied Enterprises had shown its office at 2/63, Lalita Park, Laxmi Nagar, Delhi-92 of which the proprietor has been shown as Mrs. Lata Kumar w/o Sh. Anil Kumar. Her residential address has been shown as D-54, Shakar Pur, Delhi-92. This bank account no. CD 2587 held in the Kangra Co-operative Bank Ltd., Jagat Puri, Delhi was also introduced by Sh. Surender Kumar alias Surender Sharma of M/s. Ganpati Sales Corporation. Photo copy of ration card No. 156079, as tendered to the bank towards proof of residence, was provided by the bank to this Directorate. A team of officers visited the office premises of the above said firm on 7.12.04 and the said premises was found to be three storeyed building occupied on one side by Sh. V.S. Chauhan, Advocate and on the other side by a doctor named Sh. V.S. Saxena having his clinic in the name of East Delhi Speech Therapy and Hearing Aid Clinic. No firm in the name of M/s. Supreme Enterprises or M/s. Allied Enterprises ever existed in the said premises. In this regard a statement of Sh. V.S. Saxena was also recorded on 7.12.04 under Section 108 of the Customs

Act, 1962 confirming the above facts. Enquiries were also conducted at the given residential address {which has also been shown as residential address of proprietor of M/s. Devika Enterprises [discussed in pars (vii) supra]} which revealed that no person in the name of Smt. Lata Kumar ever resided there. Further, on comparing the photographs of the proprietor and other particulars shown on the ration card provided by the banks, it emerged that the proprietor of M/s. Devika Enterprises, M/s. Shiva Enterprises, M/s. Leo International and M/s. Allied Enterprises is one and the same lady.

Perusal of the bank account statement of M/s. Allied Enterprises for the period 27.08.03 to 31.03.04 provided by the Kangra Co-operative Bank Ltd., Jagat Puri, Delhi (A/c.No.CD2587) revealed that there were entries showing transfer of funds amongst the firms under investigations. The details of funds transferred from M/s. Allied Enterprises to Konark International, Galaxy Enterprises, Supreme Enterprises, Ganpati Sales Corporations etc. and receipt from the same firms are details below:

Table No. 16

Date	Detail of transaction shown in the statement	Cheque No	Amount (in Rs.)	Remark
20.09.03	Transfer to M/s. Konark International	301652	250000	
6.11.03	Transfer to A/c. No. CD 2552	301666	345000	A/c No. 2552 belongs to M/s. Galaxy Ent
13.11.03	Receipt from NC No. CD 2552		92000	-do-
13.11.03	Receipt from A/C No. CD 2612		231000	A/c No. CD 2612 belongs to M/s. Supreme Enterprises
25.11.03	Receipt from A/C No.CD 2348		1000	A/c No. 2348 belongs to M/s. Ganpati Sales Corpn.
12.12.03	Transfer to A/c. No. CD 2612	421401	250000	A/c No .CD 2612 belongs to M/s. Supreme Enterprises
16.12.03	Transfer to A/c. No. CD2612	421403	43000	-do-
26.12.03	Receipt from A/C No.CD2348		10000	A/c No. 2348 Belongs to M/s. Ganpati Sales Corpn.
29.12.03	Receipt from A/C No.CD2552		250000	A/C No. 2552 Belongs to M/s. Galaxy Ent
30.12.03	Receipt from NC No.CD2552		49000	-do-
02.01.04	Transfer to A/c. No. CD 2612	421408	255000	A/c No. CD 2612 belongs to M/s. Supreme Enterprises

5.01.04	Receipt from NC No.CD2612		200000	-do -
07.01.04	Receipt from A/C No.CD2612		590000	-do-
07.01.04	Receipt from NC No.CD2552		275000	A/C No. 2552 belongs to M/s. Galaxy Ent
09.01.04	Receipt from A/C No.CD2552		300000	-do-
14.01.04	Receipt from A/C No.CD2552		20000	-do-
16.01.04	Receipt from A/C No.CD2612		250000	A/c No. CD 2612 belongs to M/s. Supreme Enterprises
19.01.04	Transfer to A/c. No. CD 2612	421420	150000	-do-
20.01.04	Transfer to A/c. No. CD 2348	421421	5000	A/c No. 2348 Belongs to M/s. Ganpati Sales Corpn.
27.01.04	Receipt from A/C No.CD2552		200000	A/C No. 2552 belongs to M/s. Galax Ent
27.01.04	Transfer to A/c. No. CD 2348	421422	10000	A/c No. 2348 Belongs to M/s. Ganpati Sales Corpn.
28.01.04	Receipt from A/C No.CD2612		100000	A/c No. CD 2612 belongs to M/s. Supreme Enterprises
30.01.04	Transfer to A/c. No. CD 2612	421423	100000	-do-
31.01.04	Transfer to A/c. No. CD 2348	421425	30000	A/c No. 2348 Belongs to M/s. Ganpati Sales Corpn.
04.02.04	Transfer to A/c. No. CD 2612	421427	70000	A/c No. CD 2612 belongs to M/s. Supreme Enterprises
06.02.04	Transfer to A/c. No. CD 2552	421430	11000	-do-
07.02.04	Receipt from A/C No. CD2612		40000	A/c No. CD 2612 belongs to M/s. Supreme Enterprises
10.02.04	Receipt from A/C No. CD2612		26000	-do-
13.02.04	Receipt from A/C No.CD2612		150000	-do-
16.02.04	Transfer to A/c. No. CD 2612	421436	304000	-do-
28.02.04	Receipt from A/C No.CD2612		225000	-do-
04.03.04	Transfer to A/c. No. CD 2552	421442	560	A/C No. 2552 belongs to M/s. Galaxy Ent

16.03.04	Transfer to A/c. No. CD 2348	421446	6500	A/c No. 2348 belongs to M/s. Ganpati Sales Corpn.
20.03.04	Transfer to A/c. No. CD 2612	421448	300000	A/c No. CD 2612 belongs to M/s. Supreme Enterprises
23.03.04	Receipt from A/C No.CD2612		50000	-do-
24.03.04	Receipt from A/C No.CD2612		650000	-do-
29.03.04	Receipt from A/C No.CD2612		45000	-do-

xiv) Perusal of bank records like account opening forms, accounts statements, proof of residence provided while opening the said account etc. submitted by the Manager, The Kangra Co-operative Bank Ltd., 73-A, A-Block, Jagat Puri, Delhi-51 vide his letter dated 7.12.04 revealed that M/s. Supreme Enterprises had shown its office at 63/2, Sai Chamber, Lalita Park, Laxmi Nagar, Delhi of which the proprietor has been shown as Smt. Raj Bala w/o Sh. Atul Kumar. Her residential address has been shown as D-54, Shakar Pur, Vikas Marg, Delhi in the said bank records. Bank account no. CD 2612 held in the above said bank was also introduced by Sh. Surender Kumar alias Surender Sharma of Ganpati Sales Corporation. Verification of the above office premises and residential premises has been discussed in the above para 5(xiii) in respect of M/s. Allied Enterprises, Office address of M/s. Supreme Enterprises is almost same as that of M/s. Allied Enterprises except for, in Allied Enterprises the digits of the house no. have been reversed.

Perusal of the bank account statement of M/s. Supreme Enterprises for the period 1.10.03 to 06.04.04 provided by the Kangra Co-operative Bank Ltd., Jagat Puri, Delhi (A/c.no.CD 2612) revealed that there were entries showing transfer of funds amongst the firms under investigation. The details of funds transfer from M/s. Supreme Enterprises A/c.No.CD 2612 to Allied Enterprises, Galaxy Enterprises, Ganpati Sales Corpn. And receipts from these firms under investigations, are as under:

Table No. 17

Date	Detail of transaction shown in the statement	Cheque No	Amount (in Rs.)	Remark
13.11.03	Transfer from a/c no. CD 2612	304828	231000	Receipts shown in the A/c. of Allied Enterprises (A/c No. 2587)
12.12.03	Receipt from A/c No. 2587		250000	A/c No.CD 2587 belongs to M/s. Allied Enterprises

16.12.03	Receipt from A/c No. 2587		43000	-do-
16.12.03	Receipt from A/c No. 2552		15000	A/c.No. 2552 belongs to M/s. Galaxy Enterprises.
16.12.03	Receipt from A/c No. 2348		45000	A/c. No .CD 2348 belongs to M/s.Ganpati Sales Corpn.
02.01.04	Receipt from A/c No. 2587		255000	A/c No. CD 2587 Belongs to M/s. Allied Enterprises
5.01.04	Transfer to A/c No.CD 2587	304836	200000	-do-
07.01.04	Transfer to A/c No.CD 2587	304837	590000	-do-
15.01.04	Receipt from A/c No. 2552		91000	A/c. No. 2552 belongs to M/s. Galaxy enterprises
16.01.04	Transfer to A/c No.CD 2587	304840	250000	A/c No.CD 2587 belongs to M/s. Allied Enterprises
19.01.04	Receipt from A/c No. 2587		150000	-do-
19.01.04	Receipt from A/c No. 2552		150000	A/c.No. 2552 belongs to M/s. Galaxy Enterprises.
27.01.04	Receipt from A/c No. 2552		50000	-do-
28.01.04	Transfer to A/c No. CD 2348			A/c. No .CD 2348 belongs to M/s.Ganpati Sales Corpn.
28.01.04	Transfer to A/c No.CD 2585	304845	100000	A/c No.CD 2587 belongs to M/s. Allied Enterprises
30.01.04	Receipt from A/c No. 2587		100000	-do-
31.01.04	Transfer to A/c No.CD 2552	304849	50000	A/c.No. 2552 belongs to M/s. Galaxy Enterprises.
04.02.04	Receipt from A/c No. 2587		70000	A/c No.CD 2587 belongs to M/s. Allied Enterprises
05.02.04	Receipt from A/c No. 2552		10000	A/c.No. 2552 Belongs to M/s. Galaxy Enterprises.
07.02.04	Transfer to Nc No.CD 2587	483456	40000	A/c No.CD 2587 belongs to M/s. Allied Enterprises
07.02.04	Transfer to A/c No.CD 2552	483455	125000	A/c.No. 2552 belongs to M/s. Galaxy Enterprises.
10.02.04	Transfer to A/c No.CD 2587	483458	26000	A/c No. CD 2587 belongs to M/s. Allied Enterprises
13.02.04	Transfer to A/c No.CD 2587	483460	150000	-do-
16.02.04	Receipt from A/c No. 2587		304000	-do-
28.02.04	Transfer to A/c No.CD 2587	483467	225000	-do-

20.03.04	Receipt from A/c No. 2587		300000	-do-
23.03.04	Transfer to A/c No.CD 2587	483476	50000	-do-
24.03.04	Transfer to A/c No.CD 2587	483477	650000	-do-
29.03.04	Transfer to A/c No.CD 2587	483480	45000	-do-

xv) Perusal of IEC Number's copy revealed that M/s. Prominent Enterprises had shown its office at 1-A, West Guru Angad Nagar, Laxmi Nagar, Delhi-92 and residential address of its proprietor Sh. Chandresh Kumar s/o Sh. Ram Kishore as WZ-80, Ram Nagar, Tilak Nagar, Delhi. However, as discussed in paras supra, no firm in the name of M/s. Prominent Enterprises existed at the said office address. Further, residential address also appears to be fake as the summons sent at this address were returned undelivered. The address of the office of M/s. Prominent Enterprises is same as the one in respect of M/s. Konark International, Galaxy Enterprises & Shiva International. Here also the digits of the premises number have been reversed to give an impression of the addresses being separate.

xvi) Perusal of bank records like account opening forms, account statements, proof of residence etc. provided by the Manager, UTI Bank Ltd., F-2/25, Krishna Nagar, Near Lal Quarter, Delhi-51 vide his letter dated 7.12.04 revealed that M/s. Magnum Overseas has shown its office at 7/318, 1st floor, Lalita Park, Laxmi Nagar, Delhi-92 of which Smt. Sangeeta has been shown as the proprietor. Her residential address has been shown as D-45, Jawahar Park, Laxmi Nagar, New Delhi. These addresses were also used for creating another firm by the name of M/s. Shivam Overseas Inc. of which Sh. Surender Kumar has been shown as proprietor and M/s. Shiva Enterprises of which Mrs. Lata Kumar w/o Sh. Anil Kumar has been shown as proprietor. A copy of certificate issued by M/s. Ajay Agarwal & Company, Chartered Accountant was provided by the bank as proof of residence. Based on these documents, the account of M/s. Magnum Overseas on the introduction by M/s. Gemini Enterprises was opened in the UTI Bank Ltd. Verification of the said office address and residential address shown in this firm revealed that no such person or firm existed at that address and the same has been discussed in detail at pars 5(iii) and 5(vi) supra. Enquiries made at D-45, Jawahar Park, Laxmi Nagar, Delhi revealed that it was non-existent.

Enquiries with the Chartered Accountant Sh. Ajay Kumar Agarwal of M/s. Ajay Agarwal & Co. whose certificate was used to open the bank account of M/s.

Magnum Overseas of which Mrs. Sangeeta wife of Mr. Satish Kumar has been shown as proprietor were also made and a statement under Section 108 of the Customs Act, 1962 of Sh. Agarwal was recorded on 10.12.2004. After having seen the said certificates Sh. Agarwal stated that no such certificates were ever issued by him and he did not even know the persons whose photographs were affixed on the said certificates. He also stated that the letter heads, rubber stamps and signatures used in the said certificates were fake and fabricated.

Perusal of Bank Account statement of M/s. Magnum Overseas for the period 10.06.04 to 07.12.04 provided by the UTI Bank Ltd., Krishna Nagar, Delhi revealed that there were entries showing transfer of funds amongst the firms under investigation. The details of funds transfer shown in the account statements of Magnum Overseas Bank A/c. No. 166010200004206 held in UTI Bank Ltd., Krishna Nagar Branch, Delhi to & from Gemini Enterprises, Mars International and Ganpati Sales Corporation are as under:

Table No. 18

Date	Detail of transaction shown in the statement	Cheque No	Amount (in Rs.)	Remark
09.07.04	Transfer from M/s. Gemini Enterprises.		200000	
09.07.04	Transfer from M/s. Ganpati Sales Corpn		100000	
12.07.04	Transfer from M/s. Gemini Enterprises.		200000	
20.07.04	Transfer to M/s. Gemini Enterprises.	6356	150000	
21.07.04	Transfer from M/s. Ganpati Sales Corpn.		150000	
22.07.04	Transfer to M/s. Ganpati Sales Corpn.	6362	150000	
23.07.04	Transfer to M/s. Ganpati Sales Corpn.	6365	120000	
24.07.04	Transfer from M/s. Ganpati Sales Corpn.		150000	
26.07.04	Transfer from M/s. Ganpati Sales Corpn.		10000	
03.08.04	Transfer from M/s. Gemini Enterprises.		5925	
03.08.04	Transfer from M/s. Mars Intl.		5400	

03.08.04	Transfer from M/s. Ganpati Sales Corpn.		52000	
06.08.04	Transfer to M/s.Ganpati Sales Corpn.	6374	10000	
12.08.04	Transfer to M/s. Mars Intl.	6375	6000	
18.08.04	Transfer to M/s.Ganpati Sales Corpn.	6377	750000	
18.08.04	Transfer to M/s. Mars Intl.	6378	6000	
25.08.04	Transfer to M/s.Ganpati Sales Corpn.	6380	70000	
02.09.04	Transfer to M/s. Mars Intl.	6382	501000	
03.09.04	Transfer from M/s. Ganpati Sales Corpn.		300000	
11.09.04	Transfer from M/s. Ganpati Sales Corpn.		30000	
16.09.04	Transfer to M/s.Ganpati Sales Corpn.	6399	50000	
24.09.04	Transfer from M/s. Ganpati Sales Corpn.		500000	
24.09.04	Transfer to M/s. Gemini Enterprises.	53603	16000	
24.09.04	Transfer to M/s. Gemini Enterprises.	53604	3500	
27.09.04	Transfer from M/s. Ganpati Sales Corpn.		490000	
09.10.04	Transfer to M/s.Ganpati Sales Corpn.	53616	30000	
12.10.04	Transfer from M/s. Ganpati Sales Corpn.		3000	
20.10.04	Transfer to M/s. Mars Intl.	53619	200000	
02.11.04	Transfer from M/s. Ganpati Sales Corpn.		550000	

xvii) Perusal of bank records like account opening forms, account statements, proof of residence provided while opening the said account etc. submitted by the Manager, The Kangra Co-operative Bank Ltd., 73-A, A-Block, Jagat Puri, Delhi-51 vide his letter dated 10.12.04 revealed that M/s. Ganpati Sales Corporation was the firm under the proprietorship of Sh. Surender Kumar alias Surender Sharma having

bank account no. CD 2348 in the Kangra Co-operative Bank Ltd., 1 Jagat Puri, Delhi. Perusal of bank records also revealed that the address of the firm had been shown as B-1662/16-B, Govind Puri, New Delhi and residential address of the proprietor had been shown as D-45, Jawahar Park, Delhi. The account was opened on the introduction of the Proprietor of a firm M/s. Chill Point involved in the repair and maintenance of Air Conditioners. The bank also provided photocopy of Ration Card No. 178576 given to them as proof of residence. Summons sent to Sh. Surender Kumar also returned undelivered with the postal remark "found locked" on several visits. Residential addresses of Sh. Surender Sharma as shown 1 Y him in this account and other accounts opened by him i.e. M/s. Shivam Overseas Inc. was also verified and the same has been discussed in detail supra. The summons sent at the address in Madhu Vihar shown in firm M/s. Shivam Overseas Inc. under investigations but this also returned undelivered with the postal remark "found to be locked". Sh. Surender Kumar alias Surender Sharma has used the above said bank account CD 2348 in the name of M/s. Ganpati Sales Corporation for introductions of several bank accounts of the firms under investigation. The same account of M/s. Ganpati Sales Corporation has been used for the transfer and receipts of funds to / from the other firms under the investigations.

xviii) Similarly, scrutiny of the documents like Bills of Entry, Invoices, Bills of Lading, TR. 6 Challans, copies of Bank drafts for duty payments etc. tendered by Sh. Manish G. Amlani vide his statement dated 26.09.2005 revealed that the demand drafts issued from the current account of one firm under investigation seem to have been used for the purpose of payment of customs duty in respect of consignments imposed in the name of other, firms under investigation. Details of some such demand drafts are tabulated below:

Table No. 19

D.D. No. & Date	Name & Address of Issuing Bank	Issued in favour of	Amount of DD (in Rs.)	Used for payment of duty against B/E No.	Name of the firm from whose account issued
8988051 dt. 3.11.04	Bank of Punjab Ltd., Preet Vihar, Delhi	SBI A/c Customs duty A/c Royal International	2,94,288	732548 dt. 1.11.04	Shivam Overseas Inc.
000564 dt. 19.11.04	UTI Bank Ltd., Krishna Nagar, Delhi	SBI A/c Customs duty A/c Royal International	4,11,785	740309 dt. 10.11.04	Mars International

000515 dt.20.10.04	UTI Bank Ltd., Krishna Nagar, Delhi	SBI A/c Customs duty A/c Spectrum Overseas	9,40,741	720258 dt. 14.10.04	Mars International
898379 dt. 3.12.04	Bank of Punjab Ltd., Preet Vihar, Delhi	SBI A/c Customs duty A/c Spectrum Overseas	3,18,711	755859 dt. 2.12.04	Shivam Overseas Inc.
000417 dt. 01.09.04	UTI Bank Ltd., Krishna Nagar, Delhi	SBI A/c Customs duty A/c Surya Enterprises	9,48,713	686144 dt. 30.08.04	Gemini Enterprises
897484 dt. 11.09.04	Bank of Punjab Ltd., Preet Vihar, Delhi	SBI A/c Customs duty A/c Surya Enterprises	8,92,907	694255 dt. 10.09.04	Shivam Overseas Inc.
000516 dt. 20.10.04	UTI Bank Ltd., Krishna Nagar, Delhi	SBI A/c Customs duty A/c Surya Enterprises	49,704	723002 dt. 19.10.04	Mars International
898241 dt. 23.11.04	Bank of Punjab Ltd., Preet Vihar, Delhi	SBI A/c Customs duty A/c Surya Enterprises	8,46,908	749965 dt. 24.11.04	Shivam Overseas Inc.
000581 dt. 29.11.04	UTI Bank Ltd., Krishna Nagar, Delhi	SBI A/c Customs duty A/c Surya Enterprises	7,218	755707 dt. 2.12.04	Gemini Enterprises
000421 dt. 02.09.04	UTI Bank Ltd., Krishna Nagar, Delhi	SBI A/c Customs duty A/c Leo International	9,94,814	683379 dt. 25.08.04	Mars International

Perusal of the account opening records, photographs, IECs, rent agreements, Chartered Accountant Certificates, ration cards, address verification reports, bank statements in respect of each of the 16 deliberately created firms under investigations, the following emerged:

- a. ***that only a group of related persons have been used to create firms under their proprietorship, to be used for import of electronic components;***
- b. ***that only three ration cards nos. 178576, 73856 and 156079 have been used to set up the firms either in the names of the persons mentioned in the said ration cards or in the names of persons, which were illegally added to the said ration cards;***
- c. ***that only a set of names, parentage and addresses have been used by twisting the first name, middle name, surname of a person and using the same for creating more than one firm. Similarly, the addresses used for setting up the firms and opening the bank accounts have been changed in such a way that the digits/alphabets shown in the addresses have been reversed to give an impression that they are different like '54D' or 'D-54';***

- d. that in most of the cases the bank accounts have been introduced by Sh. Surender Kumar @ Surender Sharma. In a couple of cases the bank accounts were introduced based on forged Chartered Accountant certificate purported to have been issued by Sh. Ajay Agarwal, Chartered Accountant who has denied having issued any such certificate;*
- e. that although the names of the proprietors were fudged/twisted the photographs used for the above purpose were of one individual, e.g. name of Lata w/o Anil Kumar has been shown as Lata Podesh w/o Anil Podesh, Lata Kumar w/o Anil Kumar and in one rent deed as Lata Pandey w/o Anil Pandey;*
- f. that there are frequent fund transfers from the bank account of one firm to those of others under investigations i.e. amongst one another, not on account of any sale or purchase amongst the firms but to be utilized for making drafts for payment of Customs duty/CHA charges as and when it was required in the respective firms. The above said inter-transfers of funds amongst the firms under investigation indicate that the firms were mutually related/interconnected with one another; that Sh. Surender Kumar @ Surender Sharma appears to be the person involved in fudging/twisting documents for creating the firms and opening bank accounts;*
- g. that he (Surender Kumar alias Surender Sharma) deliberately appears to have refrained from co-operating with the investigations, by not responding to the summons for several months;*
- h. that the ration cards used for opening the bank accounts were forged inasmuch as a copy used in 2003 had six names but the same ration card copy used in 2004 had four names mentioned therein. Interestingly, there is no cutting on this copy of ration card;*
- i. that the amount transacted in the available bank statements in respect of the said firms under investigation mainly shows local transactions within the country, mostly to Mumbai;*
- j. that perusal of bank statements in respect of all the current bank accounts held in the name of the firms under investigation also revealed that there have been virtually no transactions regarding payments made to the foreign suppliers;*
- k. that the ration card no. 178576 dated 16.5.2000 used for creating the said firms was issued in the name of Sh. Surender Kumar @ Surender Sharma.*

12. Investigations revealed that Sh. C.P. Gupta of M/s. Sagar Electronics had been purchasing certain electronics components from various overseas suppliers, who were also having their offices in Delhi. As such, searches were conducted at the office premises of all such suppliers, which resulted in recovery and seizure of certain incriminating documents. Scrutiny of the seized records revealed as under:

12.1 Office of M/s. Ritronics & M/s. Hsin Semiconductor at 202, 'Hemkunt Tower, Nehru Place, New Delhi were searched on **22.12.2004**. Certain incriminating document were recovered and resumed under Panchnama drawn on the spot.

(a) Perusal of page No.03 of Misc. file containing 169 pages recovered and seized vide Panchanama dated 22.12.2004 reveals that it is a letter issued by M/s Sagar Electronics to M/s Ritronics Singapore Pvt. Ltd. placing orders for supply of 1,00,000 pieces of electronics components i.e. CXA 1619 BS @ US\$ 0.38 collectively valued at US\$ 38,000 plus freight amount of US\$ 800. In his above said letter/purchase order, the reference No. has been shown as JT/061 dated 29th October, 2002 which corresponds to the reference no. shown on the Invoice packing list No. S000000107 dated 30.10.2002 relied upon in the Bill of Entry No. 514960 dated 2.11.2002 filed by M/s Sagar Electronics 493, Old Lajpat Rai Market, Delhi at Air Cargo Complex, Sahar, Mumbai for clearance of the said goods. M/s Sagar Electronics have shown the CIF value of unit component in the said Bill of Entry as 0.125 SGD, collectively 12,500 SGD for 1,00,000 pcs of CXA 1619 BS, as against the rates shown in the above referred purchase order, where per unit rate of the said component has been decided agreed upon, as US \$ 0.38.

The above appeared to indicate that M/s Sagar Electronics have undervalued the above said component to almost one sixth of its actual price.

(b) Perusal of page No. 9, 106, 108, 109, 144, and 129 of Misc. file containing 169 pages recovered and seized vide Panchanama dated 22.12.2004 reveal that they are purchase orders, proforma invoice etc. placed on M/s. Ritronics Components (S) Pvt. Limited, Singapore showing price of item IC CXA 1619 BS (Sony) ranging between US\$ 0.35 to US\$ 0.42 addressed to M/s. Hitech India, M/s. Jolly Videotronics, M/s. Impex India etc.

On perusal of Bill of entry filed by M/s. Sagar Electronics and the firms under investigations, it emerged that the same component i.e. IC CXA 1619 has been imported at a highly undervalued price. Perusal of the purchase orders referred to above in respect of the said component, addressed to firms other than M/s Sagar Electronics also suggest that the rate of the said component is ranging between 0.35 to 0.42 US \$ per pc. The undervaluation of the said component has also been done in another firm M/s. Spectrum Overseas, which is under the control of Sh. C P Gupta. The above was evident from the Bill of Entry no. 665160 dtd. 29.7.04, as detailed in Annexure C-3 where the said component has been shown as imported at a unit price of 0.46 HK\$ (CIF) which as per the documents discussed above should have been ranging between 0.35 to 0.42 US\$ per pc.

12.2 Investigations revealed that Sh. C.P. Gupta was purchasing certain electronic components from M/s. WPI International (S) Pvt. Limited, Singapore and was in regular contact with their Delhi office. Intelligence suggested that Sh. C.P. Gupta was also

involved in negotiating rates of the components to be imported with the Delhi office of M/s. WPI and was also placing orders with instruction to M/s. WPI to deliver goods from Singapore based warehouse of M/s. WPI to his (C.P. Gupta) shipper M/s. Great Himalayan Pvt. Limited, Singapore. Based on the above intelligence, the premises of M/s. WPI International (I) Pvt. Ltd., A-379, Basement, Defence Colony, New Delhi-110024 was searched on 13.01.2005, under Section 105 of the Customs Act, 1962. Certain documents considered relevant to the investigations were resumed under Panchnama dated 13.01.05. Statement of Sh. Sudhansu Sekhar Samal, Branch Manager, M/s.WPI International (I) Pvt. Ltd. was recorded under Section 108 of the Customs Act, 1962 on 17.01.2005. Sh. Sudhansu Sekhar Samal, interalia, stated that he was working in M/s. WPI International (I) Pvt. Ltd. since year 2001 as Branch Manager; that M/s. WPI International (I) Pvt. Ltd. were working as indenting agents for their principal, M/s. WPI International (S) Pvt. Limited, Singapore; that M/s. WPI, Singapore was into trading of electronic components i.e. I.C's, Transistors, diodes, capacitors etc. and were authorised distributors of manufacturers like Philips, Texas Instrument (T.I.), Vishay, On-Semi, I.R. (International Rectifier) etc.; that they handled various customers in India on behalf of their principal and the orders were finalized with the Indian customers and forwarded to their Singapore office; that the material was delivered from their Singapore based warehouse to any destination decided by the customer; that Sh. C.P. Gupta of M/s. Sagar Electronics was their regular customer; that Sh. C.P. Gupta used to purchase electronic components such as ICs, transistors, diodes etc. from their company; that Sh. C.P. Gupta used to negotiate prices of goods with their Delhi office; that Sh. C.P. Gupta made payments t that the material was delivered by their Singapore office to Singapore based shippers of C.P. Gupta such as M/s. Great Himalayan Pvt. Ltd., M/s. Swastik Software, M/s. Anjaneya etc.; that Sh. C.P. Gupta used to decide the name of the shipper to whom the delivery of material was to be made; o their Singapore office through his Shippers, M/s. Great Himalayan Pvt. Ltd., M/s. Swastik Software Pvt. Ltd., M/s. Anjaneya etc.; that he was not aware as to how the goods were being imported into India by Sh. C.P. Gupta as the role of M/s. WPI was limited to accepting payments in Singapore and delivery of material in Singapore; that during the past they had sold goods to M/s. Sagar Electronics (proprietor Sh. C.P. Gupta) of the following value:

Year 2002-03 :	US\$ 9,31,456.90
Year 2003-04 :	US\$ 6,24,965.98
Total	US\$ 15,56,422.88

The above figures are reflected in charts provided by Sh. S. Samal of WPI International (I) Pvt. Ltd. in his statement dated 17.01.05.

Perusal of the Trading, Profit & Loss Account portion of the Income tax return filed by M/s. Sagar Electronics for the year 2002-03 and 2003-04 tendered by Sh. C.P.

Gupta, Proprietor of M/s. Sagar Electronics clearly indicated the total purchase of the electronic components by the said firm during the financial year 2002-03 was Rs. 52,86,6061- and during 2003-04 was Rs. 92,52,6461-. M/s. WPI International (I) Pvt. Ltd., one of the several foreign suppliers of electronic components on whom Sh. CP. Gupta had placed orders and purchased the goods, had given a statement showing year-wise sale of electronic components to M/s. Sagar Electronics of which Sh. CP. Gupta is the proprietor. On comparing the above said two sets of figures one provided by M/s. WPI and others taken from Income Tax returns filed by M/s. Sagar Electronics, it emerged that the purchases of the electronic components by M/s. Sagar Electronics from just one of the several foreign suppliers i.e. WPI International (I) Ltd. was several times more than the total purchases of the electronic components shown by M/s Sagar Electronics during one financial year. Year-wise comparison is as below:

Table No. 20

Period	Total Purchase as per Income tax returns of Sagar Electronics (in Rs.)	Sale figures as per information provided WPI International		Difference in purchase figures shown by Sagar Electronics in their Accounts
		In US \$	In Rs. (Minimum conversion rate at Rs. 42.00 per US \$)	
2002-03	Rs. 52,86,606	931456.90	3,91,21,190/-	Rs. 3,38,34,584/-
2003-04	Rs. 92,52,646/-	624965.98	2,62,48,571/-	Rs. 1,69,95,925/-

It thus, appeared that although the orders for purchase of electronic components by Sh. C.P. Gupta of Sagar Electronics were placed on M/s. WPI International and other discussed foreign suppliers at their offices in India in the name of Sagar Electronics but as per their modus operandi the said goods were dispatched to the shippers in Hong Kong and Singapore from where the said goods were shipped in the name of various firms under investigation, as decided and instructed by Sh. CP. Gupta. This also gets corroborated by the fact that the total import in Sagar Electronics is far less than the total purchases shown in the sale records of only one of the several foreign suppliers i.e. WPI International (I) Ltd. From the statements of various other foreign suppliers discussed in the succeeding paras and perusal of the documents like e-mails tendered by M/s. Avenet, it has also emerged that Sh. CP. Gupta had been directly negotiating the rates of electronic components with the foreign suppliers.

12.3 Investigations also revealed that Sh. C.P. Gupta was also purchasing various electronic components from M/s. Arrow Electronics, Singapore and was in regular contact with their Delhi office. As such, the premises of M/s. Arrow Electronics India

Limited, 2nd floor, Pusa Road, New Delhi was searched on 19.01.2005 and certain incriminating documents were recovered and seized under Panchnama dated 19.01.05. **Sh. Tarun Tripathi of M/s. Arrow Electronics Ltd. present in the office was summoned and his statement was recorded on 23.03.05** under Section under 108 of the Customs Act, 1962. He, interalia, stated that he was working as Branch Manager of Delhi office of M/s. Arrow Electronics India Pvt. Ltd; that M/s. Arrow Electronics India Pvt. Ltd. was a 100% subsidiary of Arrow Electronics Inc., USA; that M/s. Arrow Electronics Asia (S) Pte. Ltd., Singapore was also a subsidiary of M/s. Arrow Electronics Inc., USA; M/s. Arrow Electronics is into the business of trading of electronic components i.e. ICs, transistors, diodes etc. and are authorised distributors of manufacturers like IR (International Rectifier) Philips, S.T., On Semi, Vishay, Fairchild, NSC etc.; that they handled sales to various customers in India on behalf of their principals; that Indian customers contacted their Delhi Office for their requirements and they quoted the prices; that after negotiations the prices were finalised with the Indian customers; that the orders were executed by their Singapore office and the goods were delivered from their Singapore based warehouse to the designated freight forwarder of the customers; that he knew Sh. C. P. Gupta (Chander Prakash Gupta) Proprietor of M/s. Sagar Electronics, Shop No: 493A/599 Old Lajpat Rai Market, Delhi 6 for more than 3 years; that Sh. C. P. Gupta was their regular customer; Sh. C. P. Gupta used to contact their Delhi Office and negotiated prices of electronic components; that Sh. C. P. Gupta used to finalise the prices and quantity of electronic components to be purchased from Arrow Electronics; that the written purchase orders were released by M/s. Great Himalayan Pte. Ltd., Singapore to M/s. Arrow Electronics Singapore in respect of prices negotiated by Sh. Gupta; that he submitted billing statement of M/s. Arrow Electronics, Singapore for the period 2003 to 2004 in respect of goods billed to M/s. Great Himalayan Pvt Ltd. In this billing statement column No:1 shows name of the customer (i.e. Great Himalayan Pte. Ltd), Column No: 2 Port, Column 3 : Invoice No., Column 4 Invoice date in format DD/MM/YYYY, Column 5 Customer purchase order no. column 6 quantity, column 7 sale unit price in US \$, column 8 is total value in US \$, that customer P.O. was generated by M/s. Great Himalayan Pvt. Ltd, Singapore. In the P.O. wherever ARUN or ARYAN appear the goods were meant for Sh. Arun Suri of M/s. Aryan Electronics who was also one of the customers and wherever words "CP" appear in the P.O., the goods were meant for Sh. C. P. Gupta of M/s. Sagar Electronic and similar is the case for other buyers; that the goods were delivered by M/s. Arrow Electronics Asia (S) Pvt. Ltd., Singapore to M/s. Great Himalayan Pvt.Ltd. and payment was made by M/s. Great Himalayan Pte. Ltd, Singapore to M/s. Arrow Electronics Asia(S) Pvt. Ltd. on behalf of Sh. C. P. Gupta.

12.4 Investigations revealed that Sh. C.P. Gupta was also purchasing various electronic components (ICs, transistors, diodes etc.) from **M/s. Avnet Asia Pte. Ltd.,**

Singapore, who were authorised distributors of various manufacturers such as ST, Philips, TI (Texas Instrument) Vishay, IR (Intl' Rectification) and he (Sh. C. P. Gupta) was in regular touch with their Delhi office. Sh. Puneet Batra Regional Manager-North M/s. Avnet Asia Pte. Ltd in his statement recorded under Section 108 of Customs Act, 1962 on 11.08.05, interalia, stated that they handled queries from various Indian customers on behalf of their principals Avnet Asia Pte. Ltd. and the orders were finalised with the Indian Customers and these orders were forwarded to their Singapore office. The goods were delivered from their Singapore based warehouse to any destination decided by the customer whether in India or Singapore or elsewhere; that Sh. C. P. Gupta of M/s. Sagar Electronics was their customer and Sh. C P. Gupta used to purchase electronic components (ICs, Transistors, diodes etc) from their company; that Sh. C. P. Gupta used to negotiate prices of goods with their Delhi office and the goods were then delivered by their (Avnet) Singapore office to his (Sh. C. P. Gupta's) Singapore based supplier such as M/s. Great Himalayan Pvt. Ltd, M/s. Angono etc.; Sh. C. P. Gupta used to decide the name of the supplier to whom the delivery of goods was to be made; that Sh. C. P. Gupta used to instruct them (Avnet) to collect payments from M/s. Great Himalayan Pvt. Ltd or his (C.P. Gupta) other supplier; that he (Puneet Batra) did not know how the goods were subsequently imported into India; that he was submitting signed invoices issued by M/s. Avnet Asia Pvt. Ltd, Singapore (their principals) to M/s. Great Himalayan Pvt. Ltd., Singapore (14 Nos) and the same issued to M/s. J. N. Exports (2 Nos) which were available in their Delhi office; that in invoice No: 1101116421 dated 8.10.04 it is mentioned that the deal was done with C.P. which means C. P. Gupta; that earlier also on 04.02.05, he had submitted certain documents, which contained certain order confirmation, Proforma invoices and correspondence e-mail; that in e-mail it was specifically mentioned that the deal was done with Sh. C. P. Gupta and order confirmation was issued in favour of M/s. Great Himalayan Pvt. Ltd, Singapore or M/s. Anjaneya Trading Pvt. Ltd.; that goods were delivered to M/s. Great Himalayan Pvt. Ltd or M/s. Anjaneya Trading Pvt. Ltd at the prices mentioned in the said order confirmation, however, copies of invoices issued by M/s. Avnet Asia Pvt. Ltd., Singapore to M/s. Great Himalayan Pvt. Ltd were not available in their Delhi office. Certain document & e-mails evidencing the rate negotiation and order finalisation between Sh. C.P. Gupta and the representatives of M/s Avnet Asia Pvt. Ltd. where the goods were to be delivered in Singapore to the shippers i.e. Great Himalayan Pvt. Ltd. and Anjaneya Trading Pvt. Ltd., on the instructions from Sh. C.P. Gupta, are discussed below:

a) E-mail dated 17.11.04 from Sh. Bharat Teckchandany to other representatives of Avnet Asia Pvt Ltd. read as under:

“From: Teckchandany, Bharat

Sent: Wednesday, November 17, 2004 2:32 PM

To: Kukreja, Vijesh; Panda, Debasis
Cc: Batra, Puneet
Subject: CP Booking - 17/11/04
Importance: High

CP is interested in the following parts:

1. 2498/2499 @ US\$ 0.63 - 100k pairs (50k in Dec and 50k in Feb).
[Kukreja, Vijesh] sorry pair cost is 0.62 so 0.63 selling price does not make any sense at all.
2. TEA2261 - 10k @ 0.68 [Kukreja, Vijesh] ok Panda
3. TSOP4838 - 100k @ 0.20
4. TSOP1738 - 200k @ 0.22

Pls advice if we can go ahead with this booking.

Best Regards,

Bharat''

Perusal of the above mail reveals rate negotiation between Sh. CP. Gupta and the representatives of M/s. Avnet Asia Pvt. Ltd. wherein Sh. CP. Gupta has shown his interest for purchase of components like 2498/ 2499 and TEA2261. It appeared that the rate for 10000 Pcs of TEA2261 was finalized between Sh. CP. Gupta and Kukreja, Vijesh as the said rate appeared to have been okayed by the representatives of M/s. Avnet Asia Pvt. Ltd. whereas the negotiation in rates in respect of 2498/2499 could not be materialized as selling at 0.63 US \$ rate did not make any sense to M/s. Avnet. Further, perusal of earlier Bill of Entry of M/s. Mars International, the firm under investigations reveals that the said component TEA2261 was undervalued to the extent that it was imported at the rate 0.09 S\$ vide B/E No. 960985 dated 30.08.04. Thus, the undervaluation as seen from the above was 12 to 13 times. This quantum of under valuation also corroborated the extent of under valuation as seen from the comparison of trade declarations and their corresponding Bills of Entry in respect of firms under investigation.

b.) Copy of proforma Invoice dated 01.04.2004 showing Order No. 406048 for Rs. 21,769.82 submitted by Sh. Batra revealed that the said proforma Invoice had been raised on M/s. Great Himalayan Pte Ltd., #07-04, Afro Asia Building, 63, Robinson Road, Singapore and address of consignee mentioned on Order Confirmation advice was Great Himalayan Pvt. Ltd., 2, Alexandra Road, #02-11

Delta House, Singapore 159919. Copy of the E-mail dated April, 01, 2004 (2: 17 PM) from Mr. Puneet Batra to his counterpart in Singapore office in respect of this consignment for which above said Proforma Invoice had been raised, read as under:

"From: Batra, Puneet

Sent: Thursday, April 01, 2004 2 : 17 PM

To: ghplsincapacific.net.sg

Cc: Arora, Vandana.; Teckchandany, Bharat

Subject: Deal with Mr. CP Gupta!!

Dear Sir,

We have closed a deal with Mr. C. P. Gupta. The Proforma Invoice for the same for US\$ 21,769.82 (inclusive of 5% GST) is enclosed herewith. Kindly send us the cheque number by return mail once the cheque is ready for collection. We would collect the original cheque and process shipment immediately.

We look forward to receiving your cheque number by return mail.

Warm Regards

Puneet Batra."

Perusal of above records recovered from the office premises of above said foreign suppliers of electronic components to Sh. CP. Gupta of M/s. Sagar Electronics and statements of various supplier's representatives discussed above appeared to indicate that Sh. C.P. Gupta had devised modus operandi to undervalue the imports of electronic components. He placed the orders for the desired components, with the local office of the foreign suppliers in India after negotiating the rates of the said goods. He gave instructions to the foreign suppliers that the goods should be billed in the name of certain pre-designated companies in Singapore and delivery of the goods to be done from their Singapore warehouse to the designated firm in Singapore itself. Although, the orders were placed by Sh. C.P. Gupta to various representatives of foreign suppliers, but the Purchase Orders / Proforma Invoices were issued in the name of certain foreign shippers as per instructions of Sh. C.P. Gupta. These modus operandi discussed herein is corroborated from the above mentioned e-mails & other documents provided by Sh. Puneet Batra of M/s. Avnet Asia Pte Ltd. Once the goods got delivered in Singapore they were dispatched to India in the name of the firms under Investigations. The reason behind this circuitous manner of importing the goods by Sh. C.P. Gupta appears to be that getting under invoiced import from a trader like Great Himalayan Pte Ltd, M/s. Anjaneya Trading Pvt. Ltd. etc. was easier than from the

actual foreign suppliers directly. It also emerged that all the local representatives of foreign suppliers discussed above have clearly stated that they used to get all the orders from Sh. C.P. Gupta of Sagar Electronics, but were not aware of the manner in which the said ordered goods were imported in India by him.

13. In spite of repeated summons as detailed below, Sh. C. P. Gupta, initially, did not join. Investigations:

Table No. 21

S1. No.	Date of summons	Date for appearance
<u>1</u>	06.12.04	09.12.04
<u>2</u>	14.12.04	21.12.04
<u>3</u>	24.12.04	05.01.05
<u>4</u>	06.01.05	14.01.05
<u>5</u>	27.01.05	07.02.05

13.1 Sh. C. P. Gupta, however, appeared in response to the summons dated 28.02.05 and his statement under Section 108 of the Customs Act, 1962 was recorded, wherein he, inter alia, stated:

- a) that he had started business of electronic goods at Gwalior in the year 1990 and then in the year 1993, he shifted to Delhi;
- b) that in year 2000, he started M/s. Sagar Electronics at 493, 151 floor, Lajpat Rai Market, Delhi-6, in which he was the proprietor. In the year 2004, he shifted his firm, M/s. Sagar Electronics to the present address 599, Lajpat Rai Market, Delhi-6;
- c) that he was having one office at address- 304, Sushma Tower, Prashant Vihar, Delhi-85;
- d) that his business was to import ICs, transistors, diodes and VCD parts and to sell them;
- e) that he was importing in the name of M/s. Sagar Electronics;
- f) that he was also importing goods in the name of following firms;
 - i) Gemini Enterprises, B-1, Gali No. 14, Madhu Vihar, Delhi - 110092.
 - ii) Mars International, B-1, Gali No. 14, Madhu Vihar, Delhi - 110092.
 - iii) Shivam Overseas Inc., B-1, Gali No. 14, Madhu Vihar, Delhi - 110092.

- iv) Shiva International, I-A, Guru Angad Nagar, Laxmi Nagar, Delhi -092.
 - v) Magnum Overseas, 7/318, Lalita Park, Laxmi Nagar, Delhi - 110 092.
 - vi) Shiva Enterprises, 7/318, Lalita Park, Laxmi Nagar, Delhi - 110 092.
 - vii) Royal International, H-31, Vijay Chowk, Laxmi Nagar, Delhi - 110 092.
 - viii) Leo International, H-31, Vijay Chowk, Laxmi Nagar, Delhi - 110 092
 - ix) Supreme Enterprises, 2/63, Lalita Park, Laxmi Nagar, Delhi - 110 092
 - x) Allied Enterprises, 2/63, Lalita Park, Laxmi Nagar, Delhi - 110 092
 - xi) Devika Enterprises, R/39, Vikas Marg, Shakarpur, Delhi - 110 092.
 - xii) Spectrum Overseas, 4078, Roshanara Road, Delhi - 110 007.
 - xiii) Surya Enterprises, 4078, Roshanara Road, Delhi - 110 007.
 - xiv) Konark International, All, West Guru Angad Nagar, Delhi - 110092
 - xv) Galaxy Enterprises, All, West Guru Angad Nagar, Laxmi Nagar, Delhi -92
 - xvi) Prominent Enterprises, All, West Guru Angad Nagar, Delhi - 110 092.
- g) that all the above firms were opened- by one person named Sh. Surender Kumar;
 - h) that he was not aware whether in the given addresses, any firm of those names existed or not;
 - i) that he did not know whether persons of those names (in whose names the firms were opened) existed or not;
 - j) that Sh. Surender Kumar was paid Rs.10,000 per month per operating firm;
 - k) that at any time, only 3-4 firms were being operated at any relevant time and about Rs.30,000 Rs.40,000 was being paid to Sh. Surender Kumar;
 - l) that Sh. Surender Kumar looked after his bank work also and bank drafts for payment of Customs duty were got prepared by Sh. Surender Kumar;
 - m) that Sh. Surender Kumar got IE Code (IEC) issued and got bank accounts opened;
 - n) that Sh. Pawan Kumar Gupta was his nephew and was not concerned with his business;
 - o) that for the import of electronic goods, he had following suppliers:
 - i) M/s. Great Himalayan Pvt. Limited, Singapore
 - ii) M/s Great Himalayan Shippers Ltd. Hong Kong

- iii) J.N. Exports, Hong Kong
- p) That he was buying goods from the above said suppliers and cleared them from Nhava Sheva, Mumbai Air and Mumbai Sea Ports;
- q) that his CHAs were
 - i) M/s. National Shipping Agency, Mumbai (Prop. Sh. Manish Sangani)
 - ii) M/s. Unnati Shipping Agency, Mumbai (Prop. Sh. Jayesh Vader)
 - iii) M/s. Smith Enterprises, Mumbai (Prop. Sh. Manish Amlani);
- r) that he used to send IEC, invoice, packing list, A WB, Bill of Lading etc. to the CHA and CHA used to file Bills of Entry and informed him (C.P. Gupta) amount of Custom duty;
- s) that he used to give money in cash to Sh. Surender Kumar to get demand draft issued from Banks which he sent to CHAs in Mumbai;
- t) that sometimes, he used to give cash to CHAs for getting Drafts issued in Mumbai;
- u) that CHAs used to get goods cleared and sent to Delhi through transporter namely M/s. Godara Transporter;
- v) that goods from M/s. Godara Transporter were received in his shop M/s. Sagar Electronics, Lajpat Rai Market, Delhi-6;
- w) that he used to sell those goods to various buyers against cash payment and he had not issued any Bill to his buyers;
- x) that he did not remember the address and phone numbers of Sh. Surender Kumar.

13.2 Sh. C.P. Gupta was then confronted with statement of accounts and photographs of account holders of his various fictitious firms which had been obtained from Kangra Co-Operative Bank, Jagat Puri, Delhi; Kangra Co-Op. Bank Ltd., Pahar Ganj, Delhi; Bank of Punjab, Chandni Chowk, Delhi; Bank of Punjab, Preet Vihar, Delhi and UTI Bank, Krishna Nagar, Delhi. Sh. C.P. Gupta signed on those documents as a token of seeing them and in his above said statement dated 28.02.05, inter alia, stated :

- a. that the photograph affixed on Account No. 2348, Kangra Co-op Bank Ltd, of M/s. Ganpati Sales Corporation was of Sh. Surender Kumar who was opening his import firms, got IEC codes issued, opened bank accounts and got bank drafts issued for payment of Custom duty;
- b. that he did not know other persons whose photographs were affixed on the Account opening forms and only Sh. Surender Kumar could tell who they were;
- c. that he was regularly importing electronic components and declared their description in the invoice & Bills of Entry as follows:

MCR 12 DSNO01 - MCR-12
IRFZ44N - Z44/TR44
IRFP250N - TR250
TSOP 1738/4838 - CENSOR/SENSOR
BFR 96 TS - TR96
TYN410 - TR410
ST1803 DHI - TR1803
ST 1802 HI - TR 1802
CXA 1619BS - IC 1619

- d. that similarly, in many other parts, in the invoice and Bill of Entry, description was written in the short form;
- e. that M/s WPI International (S) Pvt Ltd; M/s Arrow Electronics, M/s BBS Electronics, M/s Ritronics etc, were distributors of various manufacturers of electronics components; that these distributors have offices in Delhi.

13.3 Further, statement of Sh. C. P. Gupta was recorded on 01.03.05, wherein he confirmed his statement dated 28.02.05 and interalia stated that he used to make cash payment to person, as per the telephone call received, from M/s. Great Himalayan and that the money was always paid in cash and was obtained by him after selling the goods.

In view of the facts & evidences discussed above, it emerged that Sh. C. P. Gupta had committed offences under Section 132 & 135 of Customs Act, 1962. He was, therefore, arrested under Section 104 of the Customs Act, 1962 on 01.03.2005 and was released on 13.04.05, as per the order dated 13.04.05 of Additional Session Judge, New Delhi, after having been in judicial custody for 44 days.

13.4. Sh. C. P. Gupta again avoided joining investigation, despite repeated summons as under:

Table No. 22

SI. No.	Date of summons	Date for appearance
1	21.04.05	03.05.05
2	25.05.05	27.06.05
3	09.11.05	21.11.05
4	22.11.05	29.11.05
5.	12.12.05	28.12.05
6.	06.01.06	17.01.06

- i. Finally, Sh. C.P. Gupta appeared on 17.01.2006 and in his statement dated 17.01.2006 recorded under Section 108 of the Customs Act, 1962, inter-alia, stated:
- ii. that he was the proprietor of M/s. Sagar Electronics and was engaged in the trading of imported and locally purchased electronic components;
- iii. that he did not purchase any goods i.e. electronic components from the local suppliers during the period 2002 onwards;i
- iv. that he imported various electronic components from the firms namely M/s. Ausfield International Ltd., Hongkong, M/s. Great Himalayan Shippers Ltd., Hongkong, M/s. Arrow Electronics India Pvt. Ltd., M/s. Great Himalayan Pte Ltd., Singapore and M/s. J.N. Exports, Hongkong;
- v. that goods imported by his firm were Customs cleared by the Customs House Agents namely Sh. Manish Amlani of M/s. Smit Enterprises, Bombay, M/s. Unnati Shipping Agency (Mehta. & Mehta) and Sh. Manish Sangani of M/s. National Shipping Agency;
- vi. that he made all the payments in respect of Customs duty, CHA charges etc. in respect of his firm M/s. Sagar Electronics through Bank Drafts;
- vii. that drafts for payments of Customs duty in the name of Customs and for CHA charges were separately sent to both M/s. Smit Enterprises and M/s. Unnati Shipping Agency while payments in respect of Customs duty and CHA charges had been sent to M/s. National Shipping Agency in their name through consolidated single draft out of which duty and CHA charges were adjusted by them and bills were mailed to him;
- viii. that goods were received by him in Delhi through Natraj Courier and M/s. Godara Transport and payments were made to them in Delhi by cheque;
- ix. that after customs clearance, the CHA used to book the said goods to Delhi through the above said transporters on 'To Pay" basis;
- x. that the Transporter/courier used to deliver the goods on his shop;
- xi. that he used to fax the Purchase orders in respect of goods received/imported from M/s. J. N. Exports, M/s. Great Himalayan, Singapore & Hongkong and M/s. Ausfield, Hongkong and payments were released to them through Bank within 90 days of receipt of goods;
- xii. that all purchase orders to M/s. Arrow Electronics India were given in Delhi and payments were made in advance through Bank. The goods were received

- from M/s. Arrow, Singapore to Delhi Air Cargo and were cleared by our CHA M/s. Dolphin Freight Movers Pvt. Ltd.;
- xiii. that all drafts for the payment of Customs duty and CHA charges were issued from his account no. 20895 at ICICI Bank Ltd., Branch Chandni Chowk, Delhi and no draft was made out of cash payment;
- xiv. that he had been shown and has understood the statement dated 17/1/05 given by Sh. Sudhanshu Shekhar Branch Manager, M/s. WPI International (I) Pvt. Ltd. under the said Section 108 but neither M/s. Sagar Electronics nor he had ever purchased any goods from the said M/s. WPI;
- xv. that he had been shown and has understood the statement dated 11/08/2005 given by Sh. Punit Batra, Regional Manager North, M/s. Avnet India Pvt. Ltd. under the said Section 108 but neither M/s. Sagar Electronics nor he had ever purchased any goods from the said M/s. Avnet;
- xvi. that he had been shown and understood the statement dated 27.09.05 and 13.01.06 of Sh. Manish Sangani, CHA, M/s. National Shipping Agency recorded under Section 108 of the Customs Act, 1962 wherein he had stated that M/s. National Shipping Agency used to render Customs clearance work and thereafter sent the imported goods to Sh. C.P. Gupta from Mumbai to Delhi in respect of all those firms on which he had financial and administrative control and he had paid for all the charges including customs duty, clearance charges etc. for all those firms and he has also been shown and has understood the statement of Sh. Manish Amlani, CHA, M/s. Smit Enterprises dated 26.9.2005 recorded under the above said Section, but he had only got cleared the goods imported by M/s. Sagar Electronics through the said two CHAs and he could not say anything about the other firms;
- xvii. that he paid through Demand drafts for the bills raised on M/s. Sagar Electronics in respect of CHA charges.

On being shown a copy of Bill for CHA charges raised by Sh. Manish Sangani of National Shipping Agency on M/s. Royal Enterprises on which name of Sh. C.P. Gupta was also mentioned within brackets, Sh. C.P. Gupta in the aforementioned statement stated that he was not aware as to why his name has been mentioned there by M/s. National Shipping Agency and in this regard, only they can explain.

Perusal of the initial statements dated 28.02.2005 & 01.03.2005 of Sh. C. P. Gupta discussed at paras supra revealed that the said statements of Sh. C.P. Gupta are first in point of time wherein he has accepted the modus-operandi/manner in which the imports and sale of electronic components in various dummy firms were managed by him. The above first hand admission/information given by him was also found in agreement with the evidence given by the CHAs, transporters and the suppliers of the imported material having offices in India during investigation in their various statements recorded under Section 108 of the Customs Act, 1962 as discussed here in above. Thus, the statement of Sh. C.P. Gupta dated 17.01.2006 wherein he attempted to distant himself from his earlier admissions appears to be a afterthought and is not creditable in the light of the fact his earlier statements stands fully corroborated by the statements of CHAs, representatives of foreign suppliers, transporters (and even by Sh. Surender Kumar @ Surender Sharma as discussed later).

14. In the light of the enquiries conducted with the banks, Chartered Accountant, verification of address etc., the dummy proprietors shown against the firms under investigations were summoned repeatedly but summons were received back undelivered. The addresses of the said proprietors were either non-existent or the said firms did not exist at that addresses. Based on the intelligence collected, persistent and concerted efforts were made as a result of which addresses of some of the proprietors including Sh. Surender Kumar @ Surender Sharma were ascertained. Summons were sent at those addresses and statements of some of the proprietors of the firms under investigations were recorded.

14.1 Sh. Surender Sharma in his statement dated 02.02.2006 recorded under Section 108 of the Customs Act, 1962, interalia, stated:

- i. that he set-up a Company in the name of M/s. Shivam Industrial Corpn. Located at B 1662/16 Govind Puri Kalkaji, New Delhi -19 for trading in P.U. Forum. Simultaneously he came in contact with Sh. C.P. Gupta resident of Rohini having his old shop at 493, Old Lajpat Rai Market, Delhi — 6 and new shop at 599, Old Lajpat Rai Market, Delhi and office at DDA Shopping Complex, above Nirula's Prashant Vihar, Delhi;
- ii. that sometime in the year 2001, he was introduced to Sh. C.P. Gupta by one (now Late) Sh. Nirmal Singh living in the vicinity of his house;
- iii. that during their meetings, Sh. C.P. Gupta proposed to import certain electronic components by setting up some bogus firms so that the import consignments

could be undervalued/mis-declared to evade customs duty and accordingly he advised him (Sh. Sharma) to set-up a company initially in his (Surender Sharma) name for the said purpose and promised to pay Rs. 20,000/- cash per month in lieu of using the name of my company for such imports;

- iv. that in addition to use the name of his company, he was also required to do the following other works for the amount of Rs. 20,000/- proposed to be paid to him by Sh. C.P. Gupta :
 - a. To set up companies in various names.
 - b. To obtain IEC for the companies.
 - c. To open Bank A/cs in the name of companies.
 - d. To make Demand drafts (DDs) out of the cash received from Sh. C.P. Gupta for the payment of customs duty in respect of the companies;
- v. that accordingly he set up a company in the name of M/s. Ganpati Sales Corporation, B-1662/16, Govind Puri, Kalkaji, New Delhi -19 under his own proprietorship and allowed Sh. C.P. Gupta to make imports;
- vi. that he obtained IE Code, opened bank account and handed over the IEC code along with certain blank cheques duly signed and letter heads duly signed to Sh. C.P. Gupta;
- vii. that he was aware that Sh. C.P. Gupta had made several imports of electronic components in the name of his said company/firm as he got the demand drafts made for the payment of customs duty from time to time out of the cash received from Sh. C.P. Gupta;
- viii. that he also got demand drafts made in the name of CHA like National Shipping Agency and M/s. S.M. Enterprises who looked after the clearances of import consignments imported by Sh. C.P. Gupta in the name of the firms set up by him;
- ix. that he received Rs. 10,000 for each additional firm set up, paying Rs. 2,500 to dummy proprietors.
- x. that at one time only three to four firms functioned for importing electronic components by Sh. C.P. Gupta;
- xi. that considering the profits in setting up new firms and allowing them to be used by Sh. C.P. Gupta for the said imports, he decided to set-up a chain of firms in the name of my various friends and those nominated by Sh. C.P. Gupta;
- xii. that his job was to act as a go between Sh. C.P. Gupta and the so called proprietors of the firms created by him with an intention of allowing them to be used by Sh. C.P. Gupta;

- xiii. that for the said imports, he set up the following firms/opened their bank accounts by introducing as proprietors of Ganpati Sales Corporation, Delhi;

Table No. 23

S. No.	Name of the firm	A/C No.	Name of the Bank
1	Surya Enterprises	5067	The Kangra Co-operative Bank Ltd., Pahar Ganj.
2	Spectrum Overseas	5068	The Kangra Co-operative Bank Ltd., Pahar Ganj.
3	Supreme Enterprises	2612	The Kangra Co-operative Bank Ltd., Jagatpuri.
4	Ganpati Sales Corporation	2348	The Kangra Co-operative Bank Ltd., Jagatpuri.
5	Alpine International	1119164	Bank of Punjab
6	Shiva International	1119240	Bank of Punjab
7	Roman Enterprises	2895	The Kangra Co-operative Bank Ltd.
8	Galaxy Enterprises	2552	The Kangra Co-operative Bank Ltd.
9	Allied Enterprises	2612	The Kangra Co-operative Bank Ltd
10	Konark International	1119422	Bank of Punjab
11	Royal International	2731	The Kangra Co-operative Bank Ltd.
12	Leo International	2730	The Kangra Co-operative Bank Ltd.
13	Payal Enterprises	2862	The Kangra Co-operative Bank Ltd.
14	Shiva Enterprises	2869	The Kangra Co-operative Bank Ltd.
15	Devika Enterprises	1681	Bank of Punjab
16	Shivam Overseas	1723	Bank of Punjab
17	Mars International	2356	UTI Bank
18	Gemini Enterprises	2011	UTI Bank
19	Magnum Overseas	4206	UTI Bank

- xiv. that on being shown three typed pages wherein the details of various companies set-up by him had been mentioned, he confirmed that all the twenty firms except for the firm M/s. Hidayat Enterprises had been created/set up by him and the details of addresses, Bank accounts names of the banks, introducers etc. shown in the said pages were correct and further all these

- firms had been used by Sh. C.P. Gupta at one time or the other for making under-valued/mis-declared imports of electronic components;
- xv. that the first firm which he opened was Ganpati Sales Corporation, the ration card for which was organized by Sh. C.P. Gupta through one of his cousins Sh. Pawan Gupta and based on this ration card, that firm M/s. Ganpati Sales Corporation was set up whose documents were used for setting up/creating other firms, bank accounts etc. as shown in the said 3 pages;
 - xvi. that the details on these pages would tally with the corresponding company details shown in the banks, PE codes etc;
 - xvii. that the names of proprietors shown against each of the above said firms had nothing to do with the imports whatsoever made in these companies by C.P. Gupta;
 - xviii. that all the imports made in these companies since their incorporation were made by Sh. C.P. Gupta who only made the payment of customs duty, CHA charges, transportation charges etc. and received the goods after their clearance from Mumbai;
 - xix. that he used to get cash amounts from Sh. C.P. Gupta which he used to deposit in the respective firms under which the imports were made and in which the customs duty was supposed to be paid, subsequently he used to get drafts made for customs duty in respect of the said firms in the name of (1) SB1 A/c Commissioner of Customs A/c (Name of the firm), (2) BOI A/c Customs Duty A/c (Name of the firm);
 - xx. that after obtaining the drafts he used to hand them over the same to Sh. C.P. Gupta to be couriered to respective CHAs for the purpose of payment of Customs duty;
 - xxi. that lump-sum amounts of drafts were also got made by Sh. C.P. Gupta in the name of National Shipping Agency, Bombay which he was aware were used as and when required by M/s. National Shipping Agency for the purpose of payment of Customs Duty and CHA charges in respect to various said firms under which the said goods were imported by Sh. C.P. Gupta;
 - xxii. He acknowledged the dummy nature of the proprietors listed for various firms, agreeing to produce them upon request, emphasizing their lack of involvement in imports.
 - xxiii. that the blank letter heads of various companies given to Sh. C.P. Gupta duly signed by the respective proprietors would have been used for giving authority to some of his (C.P. Gupta) men to sign the Bill of Entry in respect of various consignments imported by him (C.P. Gupta) using the name of the said above mentioned firms;

- xxiv. that Sh. C.P. Gupta, after the searches at his (C.P. Gupta) residence, office, shop, CHAs etc. met him (Surender Sharma) and took away all the documents in his (Surender Sharma) possession in respect of the above said firms on the pretext that there might be a search at his (Surender Sharma)house by the officers of DRI and he (Surender Sharma) gave him (C.P. Gupta) whatever records he (Surender Sharma) had and presently he (Surender Sharma) did not have any records with him (Surender Sharma) pertaining to any imports whatsoever, even related to Sh. C.P. Gupta or the above said firms;
- xxv. that all the paper work used to be handled by Sh. C.P. Gupta and his cousin Pawan Gupta, other than the work related to setting up a company/firm and corresponding bank related work;
- xxvi. that he did not know and to whom the goods so imported by Sh. C.P. Gupta were sold in the market and there had never been any profit sharing neither between him and C.P. Gupta nor between the other dummy proprietors and C.P. Gupta;
- xxvii. that most of the addresses shown against the companies/firm existed but immediately after the search the addresses were wound up under the instructions of C.P. Gupta and suitable directions were given to the residents/owner of the premises, not to disclose the existence of the said companies/firm in case any inquiry was made at any item by the investigating agencies;
- xxviii. that he had also been operating the a/c of M/s. Ganpati Sales Corporation for making small payments in respect of his personal use like electric bill, phone, school fees etc. from time to time;
- xxix. that there had never been any occasion when remittances to foreign suppliers were made from the said firms;
- xxx. that Sh. C.P. Gupta always used to say that transferring payments/remittances was his (C.P. Gupta) concern and he (Surender Sharma) believed that it was never done through banking channels and appeared to have been done by Hawala and it could only be explained by C.P. Gupta;
- xxxi. that in M/s. Ganpati Sales Corporation of which he was the proprietor, Sh. C.P. Gupta would have imported more than 25 to 30 consignments of electronic components for which he (Surender Sharma) had never made any payments, wither by Hawala or through any banking channels;
- xxxii. that since the consignments were imported by Sh. C.P. Gupta, he (C.P. Gupta) only would have arranged and made the payments;

- xxxiii. that only customs duty and some CHA charges would have been made from the A/c of Ganpati Sales Corpn., out of cash deposited by them, received from Sh. C.P. Gupta;
- xxxiv. that for all these imports and clearances C.P. Gupta would have made use of the blank letter heads signed and given to him (C.P. Gupta);
- xxxv. that he as proprietor of M/s. Ganpati Sales Corpn. Did not sign any Bill of Entry or any import documents;
- xxxvi. that he had been shown 5 typed written pages showing import of various companies/goods in the name of his firm during the period Dec. 2001 to July 2002 and signed all the 5 pages and stated that he had not made those imports and those had been made by Sh. C.P. Gupta using the name and IE code of his firm and that could be confirmed from Sh. Sunil Kumar an aide of Sh. C.P. Gupta;
- xxxvii. that he (Sunil Kumar) used to bring cash from C.P. Gupta and at times he (Surender Sharma) himself used to deposit cash given by Sh. C.P. Gupta in his (Surender Sharma) account and sometimes he (C.P. Gupta) used to give it to one of his (C.P. Gupta) employees to be deposited in Ganpati Sales Corpn and such other firms;
- xxxviii. that he would try and produce Sh. Sunil Kumar before this office by 6.2.2006 whose evidence would make the things clear;
- xxxix. that the said Sh. Sunil was an old employee of Sh. C.P. Gupta and lived in some area near Saraswati Vihar, Rohini

14.2. In continuation to the above statement, Sh. Surender Kumar alias Surender Sharma, further, on 6.2.2006 brought a person to this office who introduced himself as Sh. Sunil Kumar. Statement of Sh. Surender Sharma was recorded on 6.2.2006 under Section 108 of the Customs Act, 1962 wherein, he, inter-alia, stated:

- i) that he was the person who used to accompany Sh. Pawan Gupta while carrying cash received from Sh. C.P. Gupta for the purpose of making drafts in the bank;
- ii) that Sh. Sunil Kumar had come that day for joining the investigations; and
- iii) that the other proprietors i.e. Sh. Surender Kumar, Proprietor, M/s. Spectrum Overseas, S/o Sh Phool Singh and Sh. Shashi Kapur S/o Sh. Phool Singh, Proprietor, M/s. Surya Enterprises were likely to appear before this office shortly to join investigations and he was making his efforts to locate other persons who had been made dummy proprietors by him for using the said companies for the purpose of imports made by Sh. C. Gupta.

14.3. Sh. Sunil Kumar who accompanied Sh. Surender Sharma to the DRI office was accordingly summoned and he in his **statement dated 6.2.2006** recorded under Section 108 of the Customs Act, 1962, inter-alia, stated:

- i. that he was an employee of Sh. C.P. Gupta at his (C.P. Gupta) office at Prashant Vihar, Delhi (above Nirula's Restaurant) during the period April, 2000 to September, 2001 and his job in the firm of Sh. C.P. Gupta was to accompany two of his (C.P. Gupta) other employees namely Sh. Pawan Kumar and Sh. Pappu to Bank of Punjab, Chandni Chowk and The Kangra Co-operative Bank Ltd., Jagat Puri, Delhi;
- ii. that Sh. Pawan Kumar was the cousin of Sh. C.P. Gupta who was involved in the business activities of Sh. C.P. Gupta and used to receive cash amounts, normally Rs. 2.00 Lacs to 3.00 Lacs at a time for getting drafts made out of the said cash;
- iii. that the cash was deposited in the accounts of various companies and draft were got made in the name of "SBI A/c. Customs duty A/c (name of the company)" and also in the name of "BOI A/c. Commissioner of Customs (Name of the company)";
- iv. that the drafts were also made in the name of "The National Shipping Agency", the CHA of Sh. C.P. Gupta;
- v. that he also used to collect drafts after they were ready from the Bank and handed over the same at his (C.P. Gupta) Shop No. 493, Lajpat Rai Market, Delhi-6; and
- vi. that he knew Sh. Surender Sharma as he used to visit the shop and met Sh. C.P. Gupta off and on.

14.4. Sh. Shashi Kapoor in his statement dated 6.2.2006 recorded under Section 108 of the Customs Act, 1962, inter-alia stated:

- i. He worked as an employee of Sh. C.P. Gupta from January 2004 to December 2004, earning Rs. 2500 per month as a helper. He was instructed by Sh. C.P. Gupta to accompany Sh. Pawan Gupta, Sh. Sanjay, and Sh. Pappu to Bank of Punjab, Preet Vihar, and Kangara Co-operative Bank Ltd., Jagat Puri, Delhi.
- ii. Sh. C.P. Gupta regularly sent these individuals to the mentioned banks for depositing money and preparing demand drafts.

- iii. Sh. Shashi Kapoor was aware that Sh. C.P. Gupta managed several firms for importing electronics components, some of which he recalled:
 - a. M/s. Sagar Electronics, 493, Old Lajpat Rai Market, Delhi.
 - b. M/s. Ganpati Sales Corp.
 - c. M/s. Payal Enterprises, Lalita Park, Laxmi Nagar, Delhi.
 - d. M/s. Shiva Enterprises, Lalita Park, Laxmi Nagar, Delhi.
 - e. M/s. Shivam Overseas.
 - f. M/s. Surya Enterprises, 4078, Roshanara Road, Delhi.
 - g. M/s. Spectrum Overseas, 4078 Roshanara Road, Delhi.
- iv. Sh. C.P. Gupta directed him to open Surya Enterprises in his name and Spectrum Overseas under the proprietorship of his brother Sh. Surender Kumar.
- v. Both firms were opened under Sh. C.P. Gupta's instructions, with necessary documents provided by Sh. Shashi Kapoor, including ration card copies and photographs.
- vi. Neither he nor his brother conducted any business in the two firms; all transactions were managed by Sh. C.P. Gupta.
- vii. He received Rs. 2500 per month for each firm, in addition to his salary.
- viii. Payments were handed to him by Sh. Pawan Gupta, an employee and relative of Sh. C.P. Gupta.
- ix. He was aware of Sh. C.P. Gupta's import and sale business of electronic components through various firms, as he overheard discussions among colleagues regarding goods arriving from Mumbai through Natraj Cargo and Courier.
- x. Initially, he provided blank signed cheque books and letterheads for both companies to Sh. Pawan Gupta.

14.5. Smt. Lata Pandey was summoned on 22.03.2006 and was shown some documents related to current accounts opened in respect of various firms wherein in her names, signatures or her ration card were used to open such accounts. She in her **statement dated 22.03.06** recorded under Section 108 of the Customs Act, 1962, interalia, admitted:

- i. Her current residence was at R-10, Shakarpur, Delhi-92.
- ii. She earned income through tuitions and job consultancy under the name M/s. Everest Consultancy, operating from a rented office at R-39, Shakarpur, Vikas Marg, Delhi-92.
- iii. She had resided at R-39, Shakarpur, since July 2004 and previously stayed at House No. 190, Guru Ram Das Nagar, Laxmi Nagar, Delhi-92.

- iv. She confirmed her association with Sh. C.P. Gupta and Sh. Surender Sharma, introduced to her by her friend Mrs. Babita Kapoor.
- v. At the behest of Mrs. Babita Kapoor, she agreed to sign documents related to companies for importing electronic items by Sh. C.P. Gupta, for which she was promised a monthly payment of Rs. 2500.
- vi. She admitted signing numerous written/blank documents and forms provided by Mrs. Babita Kapoor or representatives of Sh. C.P. Gupta.
- vii. She received cash payments from Sh. C.P. Gupta through Mrs. Babita Kapoor from September 2003 to March 2004.
- viii. She denied personal use of the three accounts opened in her name.
- ix. She stated that office addresses for the mentioned firms were not under her control, and she never visited them.
- x. She filed income tax returns only for her consultancy income and was not involved in electronic items' import transactions.
- xi. She confirmed that copies of her ration card used for opening accounts for M/s. Devika Enterprises and M/s. Supreme Enterprises were forged.
- xii. She disavowed ownership of the premises at R-39, Vikas Marg, Shakarpur, Delhi, and denied signing the rent deed dated 20.09.2003.
- xiii. She acknowledged providing a copy of her telephone bill to Sh. C.P. Gupta but disclaimed knowledge of its usage for creating a firm.
- xiv. After searches at Sh. C.P. Gupta's premises on 6.12.2004, Mrs. Babita Kapoor instructed her not to accept any letters regarding the mentioned firms and to disclaim involvement if officers visited her premises.

14.5.1 Further, **in continuation of her statement dated 22.03.2006** recorded under Section 108 of the Customs Act, 1962, Smt. Lata Pandey vide her letter dated nil has submitted a copy of - her PAN Card showing PAN No. as AGYPP0588N and copies of her Income Tax returns for the assessment year 2004-05 & 2005-06 showing her total income from Business or Profession as Rs. 56,560/- and Rs. 58,970/- respectively. She has also informed that one more firm was opened by Sh. C.P. Gupta in the name of M/s. Royal International, showing her son Sh. Rohan Kumar as Proprietor. The required photograph and signatures of her son were provided to Sh. C.P. Gupta by her. Apart from this neither she nor her son has any knowledge about the import related activities that may have taken place in the name of said firms. As a consideration, she was paid Rs. 2500/- per month for this firm as well. She only gave blank cheques duly signed by her son as authorized signatory in the bank account to Sh. C.P. Gupta.

14.6. Mrs. Babita Kapoor was summoned on 22.03.2006 and her statement was also recorded under Section 108 of the Customs Act, 1962 wherein she, interalia, stated:

- a. that her husband had not lived with her since 1999. Her source of income was a boutique for dress designing, operating from her rented residence at 190, Guru Ram Das Nagar, Laxmi Nagar, Delhi, since 2000.
- b. that the ration card no. 73856 used to open the account of M/s. Galaxy Enterprises belonged to her mother, Smt. Shanti Devi. She continued using this ration card despite changing residences.
- c. that M/s. Galaxy' Enterprises was created by Sh. C.P. Gupta for importing electronic components. Although listed as the proprietor, she was not involved in import activities.
- d. that the purpose of opening the bank account was to pay customs duty for imports made by Sh. C.P. Gupta for M/s. Sagar Electronics. She was the authorized signatory but Sh. C.P. Gupta controlled the account, using blank cheques she signed;
- e. that sometime in the year 2002, she met Sh. C.P. Gupta at his office, where he proposed creating a firm in her name for importing electronic components, promising her Rs. 2500 per month. After receiving payments for six to seven months, they ceased without explanation;
- f. that she introduced Mrs. Lata Pandey to Sh. C.P. Gupta for creating M/s. Shiva Enterprises, M/s. Allied Enterprises & M/s. Leo International. She also arranged the necessary documents for creating another firm by the name M/s. Konark International under proprietorship of her brother Sh. Chandresh Mishra but her brother never met Sh. C.P. Gupta and she only used to co-ordinate for him with Sh. C.P. Gupta;
- g. that she and others used to get Rs. 2500/- per month for letting Sh. C.P. Gupta use the firms for the purpose of import of electronic components;
- h. that Sh. C.P. Gupta himself told her that he (CP. Gupta) would be importing electronic components in the names of the above said companies for which Rs. 2500/- per month in cash would be given to each proprietor of the firm/company and she was not aware about the suppliers of the electronic components, the customs clearing agents or the manner in which the payments for the electronic components were made;
- i. that she was aware that the bank account opened by her had been used by Sh. C.P. Gupta for the purpose of payments of customs duty in respect of the consignments imported by him in the name of her companies/firms;
- j. that her bank account and that of Sh. Chandresh and Smt. Lata Pandey were operated and controlled by Sh. C.P. Gupta, based on the blank cheques given to him (C.P. Gupta) by us;

- k. that she and others did not invest in Sh. C.P. Gupta's businesses or receive any trading profits besides the monthly payment of Rs. 2500;
- l. that She confirmed knowing Sh. Surender Sharma, Sh. Pawan Gupta, and their roles as representatives of Sh. C.P. Gupta.

Perusal of the statements of Sh. Surender Kumar @ Surender Sharma, Smt. Lata Kumar @ Lata Podesh @ Lata Pandey, Smt. Babita Kapoor, Sh. Shashi Kapoor etc. revealed that the said persons were only the dummy proprietors of the firms under investigations and that, they had absolutely no control over the activities of the firms of which they were shown as proprietors. The entire control in respect of import related activities in respect of the firms under investigations, vested with Sh. C.P. Gupta alone. It further emerged the so called proprietors i.e. dummy proprietors only signed the documents related to creation of the firms, opening of bank accounts and blank cheques produced before them by Sh. C.P. Gupta or his representatives, for a consideration of Rs. 2500/- per active per month. The dummy proprietors neither made any investments nor shared any profits. They appeared to have blindly followed the directions of Sh. C.P. Gupta for lending their names and addresses for the creation of the firm under investigations. In view of the above facts, it appeared that Sh. C.P. Gupta had full managerial and financial control over the firms under investigations and it was him (C. P. Gupta) alone who had made investments and used the said firms of "dummy proprietors" in making huge quantity of undervalued imports with a distinct intention to evade payment of appropriate Customs duty and simultaneously attempted to keep his (C. P. Gupta) name out of the said undervalued imports. Sh. C.P. Gupta has himself admitted the above facts in his statement dated 28.02.2005, the contents of which stand unanimously corroborated by the statements tendered by various dummy proprietors of the firms under investigations, the CHAs, the Indian representatives of the foreign based suppliers, the transporter, the ex-employee of Sh. C.P. Gupta, Sh. Surender Kumar @ Surender Sharma who acted as conduit between the dummy proprietors and Sh. C.P. Gupta also stated that he used to get Rs. 10,000/- for creating each dummy proprietorship firm to be used by Sh. C.P. Gupta for making undervalued imports of electronic components. It, thus, appeared that Sh. C.P. Gupta was the beneficiary of the entire Customs duty evaded by undervaluing the imports of electronic components in his firm M/s. Sagar Electronics and other firms under investigations, operated and controlled by Sh. C.P. Gupta himself.

15.1 In order to ascertain the authenticity of the transaction value i.e. invoice price declared by the importer at the time of import for all the imports effected by all the above

said dummy/bogus firms including M/s. Sagar Electronics being managed and controlled by Sh. C.P. Gupta, a request was made by DRI for assistance in this case under the Mutual Legal Assistance in Criminal Matters Ordinance of the Hong Kong Special Administrative Region (in short "HKSAR"), from the Department of Justice, Hong Kong SAR, China through Consulate General of India, Hong Kong vide letter dated 04.07.05. In response to this request, the HKSAR Government forwarded 111 duly certified Export Trade Declarations, out of which 109 Trade declarations were found relevant to 109 import shipments under investigation. These 109 trade declarations were scrutinized with a view to co-relate them with the corresponding imports effected by the above said dummy/bogus firms and by M/s. Sagar Electronics in order to ascertain the authenticity of the value declared in the Bills of Entry filed by the representative firms. On the basis of the Bills of Lading Numbers and other particulars appearing in the Trade Declarations received from Hong Kong, it was found that for every Trade Declaration one Bill of Entry was filed under which imported electronic goods were cleared. Hence, a total of 109 Bills of Entry corresponding to the 109 trade declarations in question have been identified. Out of these 109 Bills of Entry identified, one Bill of Entry relates to imports made by M/s. Sagar Electronics, 7 Bills of Entry relate to M/s. Allied Enterprises, 8 Bills of Entry relate to M/s. Devika Enterprises, 25 Bills of Entry relate to M/s. Galaxy Enterprises, 14 Bills of Entry relate to M/s. Gemini Enterprises, 4 Bills of Entry relate to M/s. Konark International, 3 Bills of Entry relate to M/s. Leo International, 7 Bills of Entry relate to M/s. Prominent Enterprises, 4 Bills of Entry relate to M/s. Royal International, 6 Bills of Entry relate to M/s. Shiva International, 2 Bills of Entry relate to M/s. Shivam Overseas, 5 Bills of Entry relate to M/s. Spectrum Overseas, 2 Bills of Entry relates to M/s. Shiva Enterprises and 13 Bills of Entry relate to imports made by M/s. Mars International, on the basis of which electronic components were found to have been imported and cleared through various ports in India. Scrutiny of the values declared in these 109 export declarations revealed that the values declared therein were far higher than the values declared in the corresponding Bills of Entry & other import documents filed by the said firms at the time of their respective imports of goods into India. These export declarations clearly bring out the mis-declaration of value in the import of electronic goods in India by these firms under investigation. The details of the export declarations vis-a-vis corresponding Bills of Entry are summarized below:

Table No. 24

Sr. No	Trade Declaration No. / date	BL/AWB No. & Date	Total Value declared for shipment as per Trade Declaration with Hong Kong Customs (FOB) (In HK \$)	Total Value declared for import in the corresponding B.E/Invoice at the time of Import in India (In HK \$)	Corresponding B/E No. /date	Name of the importing unit
1	R085758630 12BB dt. 8.3.04	HLCUHKGO 40310474 DT. 9.3.04	690400	159000	986104 DT 23.3.04	Allied Enterprises
2	P085758630 OWT9 DT. 25.9.03	APLU031241478 DT. 16.9.03	686026	384000	896771 DT 1.10.03	Allied Enterprises
3	P179157970OSN3 DT. 10.10.03	HKNS0058504 dt 17.09.03	387731.86	30500	906736 DT 22.10.03	Allied Enterprises
4	P179157970OU5B DT 23.12.03	APLU031261292 DT 2.12.03	208729.62	110385	938457 DT 23.12.03	Allied Enterprises
5	R0857586301162 DT. 28.01.04	HLCUHKGO3123 0133 DT 20.01.04	688623	159000	961198 DT 5.2.04	Allied Enterprises
6	R085758630 12BB dt. 8.3.04 3.1.04	HLCUHKGO3123 0133 DT 24.12.03	688623	159000	944952 DT 6.1.04	Allied Enterprises
7	R085758630 11H2 DT 14.02.2004	HLCUHKGO4031 0474 DT. 9.3.04	611618	321750	961836 DT 6.2.04	Devika Enterprises
8	R08575863011H2 DT 14.02.2004	APLU031261507 DT 9.2.04	159732	27000	972353 DT 26.2.04	Devika Enterprises
9	R08575863011S2 DT 19.2.04	HLCUHKGO4021 2069 DT 17.2.04	688623	159000	973615 DT 1.3.04	Devika Enterprises
10	P085758630OZW5 DT 12.12.03	HLCUHKGO3121 1758 DT 11.12.03	682504	159000	940370 DT 29.12.03	Devika Enterprises
11	R08575863010T3 DT 14.1.03	HLCUHKGO4011 4373 DT 13.1.04	710888	164141	955977 DT 27.1.04	Devika Enterprises
12	P0857586300Y49 DT 17.10.03	DNALHKGO3100 0622 DT 15.10.03	682504	159000	909436 DT 29.10.03	Galaxy Enterprises
13	P085758630UD3 DT 1.8.03	APLU030743465 DT 21.7.03	698958	330000	874796 DT 14.8.03	Galaxy Enterprises
14	P085758630OXT6 DT 3.10.03	APLU031188821 DT 30.09.03	318502	179200	903257 DT 15.10.03	Galaxy Enterprises

15	P179157970OST2 DT 16.10.03	HKNS0058621 DT 6.10.03	383515	143685	914076 DT 6.11.03	Galaxy Enterprises
16	P1791579700Q18 DT 04.08.03	HKNS0056808 DT 27.7.04	422454	145233	875431 DT 18.08.03	Galaxy Enterprises
17	R0857586301189 DT 28.01.04	HLCUHKG04013 4902 DT 28.01.04	688623	159000	963469 DT 10.02.04	Galaxy Enterprises
18	P1791579700S3A DT 18.09.03	HKNS0056921 DT 24.08.03	270495.04	118350	888249 DT 16.09.03	Galaxy Enterprises
19	R0857586301669 DT 30.07.04	HKNS4011134 DT 6.07.04	683152	345600	687294 DT 31.08.04	Gemini Enterprises
20	R08575863017B7 DT 4.9.04	HKNHC0127 K DT 3.9.04	1315700	691200	701931 DT 20.9.04	Gemini Enterprises
21	P085758630OW K5 DT 20.9.03	APLU031238 480 DT 29.8.03	686027	387840	889231 DT17.09.03	Konark International
22	P085758630 OZ7B DT 22.11.03	HKGNSAP03 0321 DT 21.11.03	682504	159000	929959 DT 8.12.03	Konark International
23	P179157970 0S21 DT 18.9.03	APLU031183 631 DT 1.9.03	91796.22	25000	891343 DT 22.9.03	Konark International
24	R085758630 1405 DT 11.5.04	APLU030760 512 DT 26.4.04	651480	159000	614125 DT 12.5.04	Leo International
25	R085758630 1596 DT 2.7.04	HKNS400642 6 DT 25.6.04	695803	345600	661409 DT 23.7.04	Leo International
26	R085758630 12R1 DT 25.3.04	APLU030758 018 DT 23.3.04	690398	159000	996599 DT 13.04.04	Leo International
27	P179157970 OMW3 DT 20.3.03	HKID004829 4 DT 16.3.03	378792.64	65000	833294 DT 7.4.03	Prominent Enterprises
28	P179157970 OMM1 DT 1.3.03	HKID004346 8 DT 23.2.03	414121.62	33000	827949 DT 19.3.03	Prominent Enterprises
29	P179157970 OMQ4 DT 20.3.03	HKID004349 4 DT 2.3.03	385561.24	15000	830528 DT 26.3.03	Prominent Enterprises
30	P179157970 00H5 DT 5.6.03	HKNS005328 6 DT 26.5.03	370748.12	66000	854633 DT 16.6.03	Prominent Enterprises
31	P179157970 OP97 DT 26.6.03	HKNS005339 4 DT 23.6.03 206006.62	206006.62	36000	863802 DT 15.7.03	Prominent Enterprises

32	P17915797000N4 DT 12.6.03	HKNS0053331 DT 8.6.03	253565.76	91179	858973 DT 30.6.03	Prominent Enterprises
33	P179157970 OMB1 DT 29.01.03	HKID004340 3 DT 25.01.03	263998.74	110000	819875 DT 17.02.03	Prominent Enterprises
34	R085758630 17R8 DT 5.10.04	HKGNSV026 926 DT 2.10.04	670500	345600	723750 DT 19.10.04	Royal Leo International
35	R085758630 1642 DT 30.7.04	HKGCB4178 877 DT 18.7.04	683152	345600	669643 DT 4.804	Royal Leo International
36	R085758630 14PA DT 10.6.04	APLU030762 833 DT 1.6.03	653155	315000	646443 DT 30.6.04	Royal Leo International
37	R085758630 16F2 DT 10.8.04	HKGCB4180 744 DT 31.7.04	683152	345600	679719 DT 19.8.04	Royal Leo International
38	P179157970 OPB9 DT 26.6.03	HKNS005339 3 DT 23.6.03	331606.94	148599	863801 DT 15.7.03	Shiva International
39	P085758630 OSE7 DT 2.7.03	HKNS005338 1 DT 15.6.03	586833	44780	863803 DT 15.7.03	Shiva International
40	P085758630 OR99 DT 14.6.03	HKNS051021 DT 31.5.03	747162	159000	856858 DT 23.6.03	Shiva International
41	P085758630 12G1 DT 16.3.04	APLU031261 557 DT 9.3.04	127367	58510	987471 DT 25.3.04	Shivam Overseas
42	R085758630 1286 DT 3.3.04	HLCUHKGO 40227672 DT 2.3.04	690400	159000	982531 DT 17.3.04	Shivam Overseas
43	R085758630 179B DT 3.9.04	HKNHCOO9 9K DT 28.8.04	657850	345600	694598 DT 10.9.04	Shivam Overseas
44	R085758630 13J3 DT 21.4.04	APLU031283 943 DT 19.4.04	655530	159000	610061 DT 6.5.04	Spectrum Overseas
45	R179157970 OWX5 DT 14.6.04	2004060590 DT 7.6.04	317050.56	73179	646571 DT 30.6.04	Spectrum Overseas
46	R179157970 0Y18 DT 2.8.04	OOLU99082 920 DT 24.7.04	515938.48	127532.5	679499 DT 19.8.04	Spectrum Overseas
47	P085758630 OYPB DT 13.11.03	HK/NHA- 30466 DT 7.11.03	607433	46780	923082 DT 24.11.03	Supreme Enterprises
48	R085758630 1163 DT 28.1.04	APLU030754 965 DT 20.01.04	688623	159000	967420 DT 17.2.04	Supreme Enterprises

49	P085758630 OZB3 DT 2.12.03	HKGNSAP03 03224 DT 28.11.03	682504	375000	934107 DT 16.12.03	Supreme Enterprises
50	P085758630 0Y13 DT 6.11.03	HLCUHKGO 31104009 DT 5.11.03	685504	159000	921824 DT 21.11.03	Supreme Enterprises
51	R085758630 165B DT 30.7.04	HKNHC0863 DT 25.7.04	683152	345600	677623 DT 17.8.04	Surya Enterprises
52	R085758630 1847 DT 5.11.04	HKNHCO459 K DT 29.10.04	657850	345600	67	Surya Enterprises
53	R085758630 1315 DT 21.4.04	HCUHKGO4 0423382 DT 19.4.04	603130	297000	612187 DT 10.5.04	Surya Enterprises
54	R085758630 15NB DT 23.7.04	HKNS4009215 DT 6.7.04	695803	345600	669929 DT 5.8.04	Surya Enterprises
55	P085758630 1W28 DT 11.9.03	12556328016 DT 26.8.03	246089	22480	682973 DT 26.8.03	Galaxy Enterprises
56	P085758630 1VDB DT 19.8.03	16095191924 DT 15.8.03	226600	44500	676282 DT 14.8.03	Galaxy Enterprises
57	8085758630 11J9 DT 14.2.04	695222320815 DT 7.2.04	309742	45700	796353 DT 7.2.04	Galaxy Enterprises
58	P085758630 OVV8 DT 5.9.03	16094537240 DT 19.8.03	226600	44500	679138 DT 21.8.03	Galaxy Enterprises
59	P179157970 ORV1 DT 16.9.03	69521173364 DT 11.9.03	166492	65000	693514 DT 12.9.03	Galaxy Enterprises
60	P085758630 OWR2 DT 25.9.03	12556328414 DT 6.9.03	251362	28600	690207 DT 6.9.03	Galaxy Enterprises
61	R085758630 12XB DT 15.4.02	69522372722 DT 25.3.04	351947	33932.5	835435 DT 25.3.04	Galaxy Enterprises
62	8179157970 OVY6 DT 14.4.04	12554678610 DT 7.4.04	208706.28	20670.8	846213 DT 8.4.04	Galaxy Enterprises
63	PZZFHA003 8139A DT 19.9.03	12556332942 DT 5.9.03	263742	53100	690037 DT 6.9.03	Galaxy Enterprises
64	R085758630 1294 DT 3.3.04	69522323000 DT 2.3.04	268775	29590	814581 DT 3.3.04	Galaxy Enterprises
65	P179157970 OU93 DT 23.12.03	12551614253 DT 17.12.03	285168.12	27300	762254 DT 19.12.03	Galaxy Enterprises

66	P179157970 OT09 DT 3.12.03	12551614113 DT 21.11.03	196437.22		741927 DT 21.11.03 15748	Galaxy Enterprises
67	P179157970 OSZ1 DT 28.10.03	12551613914 DT 15.10.03	249846.22	27916	718288 DT 17.10.03	Galaxy Enterprises
68	P179157970 OTB2 DT 11.11.03	12551613973 DT 29.10.03	298184.06	39090	727547 DT 31.10.03	Galaxy Enterprises
69	P085758630 OVE9 DT 19.8.03	16095192020 DT 16.8.03	441912	64100	676989 DT 16.8.03	Galaxy Enterprises
70	R085758630 13QB DT 22.4.04	6952232212 DT 19.2.04	401551	31040	805908 DT 20.2.04	Galaxy Enterprises
71	R179157970 OXNB DT 15.7.04	12553692590 DT 13.7.04	246112.52	53960	922709 DT 15.7.04	Gemini Enterprises
72	R179157970 I OWB DT 2.12.04	40658118163 DT 25.11.04	531996.5	75370	135538 DT 25.11.04	Gemini Enterprises
73	8085758630 18L6 DT 18.11.04	69524358692 DT 16.11.04	480000	61700	125539 DT 16.11.04	Gemini Enterprises
74	R085758630 15CB DT 2.7.04	2031994723 DT 30.6.04	685442	65540	911383 DT 30.6.04	Gemini Enterprises
75	R085758630 1537 DT 30.6.04	12572745853DT 16.6.04	456326	45000	900581 DT 17.6.04	Gemini Enterprises
76	R085758630 1606 DT 12.8.04	69523096743 DT 9.8.04	253896	13500	945450 DT 10.8.04	Gemini Enterprises
77	R085758630 17FA DT 22.9.04	69523416116 DT 11.9.04	682380	65100	971541 DT 13.9.04	Gemini Enterprises
78	R179157970 OZE1 DT 6.10.04	2014426963DT 21.9.04	331217.94	41422.68	980949 DT 22.9.04	Gemini Enterprises
79	R179157970 OVX8 DT 14.4.04	12554678610 DT 7.4.04	320147	114000	846214 DT 8.4.04	Sagar Electronics
80	R179157970 OXV6 DT 23.7.04	2004072829 DT 19.7.04	178940	46000	484654 DT 10.8.04	Gemini Enterprises
81	R179157970 OWPA DT 2.6.04	HKBA400519 3 DT 23.5.04	273980.48	35820	468729 DT 9.6.04	Gemini Enterprises
82	8179157970 OXU8 DT 23.7.04	2004072834 DT 18.7.04	820703.7	121052	484659 DT 10.8.04	Spectrum Overseas
83	R179157970 OWY3 DT 14.6.04	HKBA400674 1 DT 11.6.04	601394	81000	475417 DT 5.7.04	Mars International

84	R179157970 106 DT 23.11.04	40658115304 DT 16.11.04	173798.36	15909.58	125541 DT 16.11.04	Shiva Enterprises
85	8179157970 10J4 DT 23.11.04	40658115260 DT 13.11.04	355935	93000	124884 DT 16.11.04	Shiva Enterprises
86	P085758630 OS02 DT 27.6.03	69521068821 DT 14.6.03	234325	44550	637897 DT 16.6.03	Shiva International
87	P085758630 OREA DT 14.6.03	16094631574 DT 11.6.03	236900	44550	636916 DT 12.6.03	Shiva International
88	P085758630 OOZA DT 10.5.03	16087292376 DT 3.4.03	256759	140000	598613 DT 4.4.03	Shiva International
89	R179157970 OUZ7 DT 24.2.04	16097667500 DT 20.2.04	251581.86	62500	806577 DT 21.2.04	Devika Enterprises
90	R179157970 OV24 DT 25.2.04	16097318292 DT 14.2.04	302649.78	32100	801685 DT 16.2.04	Devika Enterprises
91	R179157970 OV16 DT 25.2.04	16097317581 DT 30.1.04	343463.66	43888	791086 DT 31.1.04	Devika Enterprises
92	P085758630 OVA6 DT 19.8.03	HUBOM3000 DT 8.8.03	262650	45000	383911 DT 25.8.03	Galaxy Enterprises
93	P179157970 OU69 DT 23.12.03	HDMUHUBA 0062934 DT 5.12.03	135753.22	37500	420752 DT 23.12.03	Galaxy Enterprises
94	P179157970 OSY3 DT 28.10.03	2003101677 DT 13.10.03	419995.52	63000	406720 DT 06.11.03	Konark International
95	R179157970 OUF3 DT 8.1.04	HDMUKBA00 63664 DT 18.12.03	299996.8	54000	424270 DT 6.1.04	Allied Enterprises
96	R179157970 OVE2 DT 18.3.04	HDMUHKBA 0065640 DT 8.3.04	421372.58	54000	447338 DT 26.3.04	Gemini Enterprises
97	R179157970 OVN6 DT 30.3.04	HDMUHKBA 0065665 DT 15.3.04	181701.9	50000	450659 DT 7.4.04	Gemini Enterprises
98	R085758630 16N8 DT 12.8.04	69523096743 DT 9.8.04	449700	46800	945451 DT 10.8.04	Mars International
99	R179157970 OW21 DT 29.4.04	12553692214 DT 26.4.04	150154	51000	860002 DT 28.4.04	Mars International

100	R179157970 OXL4 DT 13.7.04	12553692564 DT 8.7.04	445397.22	27330.6	918523 DT 12.7.04	Mars International
101	R085758630 17GB DT 22.9.04	69523416116 DT 11.9.04	139600	38400	971396 DT 13.9.04	Mars International
102	R179157970 OWT2 DT 12.6.04	12553692413 DT 8.6.04	269717.04	16348	895185 DT 10.6.04	Mars International
103	R085758630 1855 DT 5.11.04	16052025234 DT 29.5.04	552100	77600	107697 DT 25.10.04	Mars International
104	R179157970 OWN3 DT 2.6.04	16050732275 DT 29.5.04	165737.34	10904	885987 DT 31.5.04	Mars International
105	R179157970 OWL7 DT 2.6.04	2031221643 DT 18.5.04	244377.58	58525	876988 DT 19.5.04	Mars International
106	R085758630 1863 DT 5.11.04	40653908842 DT 26.10.04	176500	51200	109724 DT 26.10.04	Mars International
107	R179157970 0X96 DT 6.7.04	12553692450 DT 16.6.04	452375.88	23330	900583 DT 17.6.04	Mars International
108	R085758630 1509 DT 23.7.04	12575762944 DT 7.7.04	681731	48200	918386 DT 8.7.04	Mars International
109	R085758630 17N5 DT 5.10.04	69523417026 DT 23.9.04	134800	38400	982307 DT 24.9.04	Mars International
		Total	48056662.78	13137011.26		

15.1.1 It is pertinent to mention that in Hong Kong there are no export incentives on the subject goods and therefore, there is no reason for the exporter to over-value the export goods. Needless to say, undervaluation of imported goods in India enables the importers to evade duty.

15.2. As an illustration, M/s. Sagar Electronics imported a consignment of electronic components vide Bill of Entry No. 846214 dated 08.04.2004 appearing at Sr. No. 79 above, M/s. Sagar Electronics had cleared a value of 114000 HKS in the Bill of Entry for the entire shipment at the time of their clearance. However, the corresponding Trade Declaration received from Hong Kong Government showed that the value of the said goods was declared as HK \$ 320147.00 (FOB) at the time of their export from Hong Kong, thereby evidencing undervaluation to the tune of HK \$ 2,06,147 in a single consignment. Similarly, a Consignment of electronic components imported by another firm, M/s. Allied Enterprises, under investigations vide Bill of Entry No. 986104 dated

23.03.2004 had declared the value as 159000 HK \$ for the entire shipment. However, the corresponding Trade declaration received from Hong Kong Government showed that the value of the said goods was declared to be 690400 HK \$ evidencing undervaluation to the tune of 4,31,400 HK \$ in one single consignment. Similarly, there has been gross undervaluation in the import of electronic components in the names of several other firms under investigation vide 109 Bills of Entry mentioned in the table above, collectively to the tune of 34919651.52 HK \$.

15.3. The above said 109 Trade declarations and the corresponding 109 Bills of Entry have been scrutinized and tabulated in a chart. In the said chart, based on the value declared in the said 109 Trade declarations received from Hong Kong, revised assessable values have been worked out component wise in respect of all goods imported vide 109 Bills of Entry. The differential Customs duty on the goods imported vide the above said 109 Bills of Entry has been quantified on the basis of value shown in the said trade declarations corresponding to the 109 Bills of Entry pertaining to M/s. Sagar Electronic and other said firms operated and controlled by Sh. C.P. Gupta.

15.4. The said export Trade declarations reflected the details of the consignee, Bill of Lading/Air Way Bill No., total no. of packages, item description, quantity, FOB value for individual items exported and also the container numbers in some cases. All the said details have been taken into account for co-relating with respective Bills of Entry filed in India as under:

- i. The details of consignee, items description, Bill of Lading No., Container No. (if declared), quantity and no. of packages declared in the Trade declarations tallied with that declared in the respective Bill of Entry filed in India.
- ii. In some cases, the item description mentioned in the Trade declarations somewhat differed with the description declared in the Bill of Entry but all other parameters taken for correlating the Bill of Entry with its respective trade declaration received from Hong Kong have been found to be tallying. For example, Pick Up cartridges falling under Ch. Heading 8522.10.00 mentioned in the Trade declarations have been found to be declared as Pick up Units, Parts of VCD or as CD Lenses/CD Lenses unit classified under Chapter headings 8522.90.00 and 9002.90.00 in their respective Bills of entry.

It appeared that Sh. C.P. Gupta has deliberately mis-declared the description of Pick Up cartridges as Pick up units, Part of VCD or as CD Lenses/CD Lenses unit in the Bills of Entry and also mis-classified the same under Ch. Headings 8522.90.00 and 9002.90.00, instead of its correct classification under the Ch. Heading 8522.10.00. Such mis-description and misclassification, appeared to have been resorted to by Sh. C.P. Gupta to justify

the undervaluation done by him while importing the said goods in the name of the firms under investigation.

- iii. In some cases in the Trade declarations, the quantity of items imported have been declared/shown in Kgs while the same in the Bill of Entry have been declared in no. of pcs. In such cases, apart from other details, the total no. of packages along with net/gross weight of the total consignment given in the Bill of Entry has been found to be tallying with that declared in the trade declarations. For example, in the Trade Declaration No. R08575863010A8 dated 03.01.2004, the item description mentioned is "Pick up Cartridge" and the quantity is declared as "8000 Kgs" while in the respective/corresponding B/E No. 944952 dated 06.01.2004, item description is "CD Lense unit" and quantity is declared as "30000 Pcs". But, perusal of the Bill of Entry shows that the gross weight of the consignment as "8000 Kgs" which tallies with that mentioned in the trade declaration. Further, no. of packages mentioned in the Bill of Entry as well as trade declaration received from Hong Kong were the same i.e. 375 Cartons. All other parameters like BL No., consignee detail, container number, shippers detail etc. have been found to be tallying.
- iv. In some cases, items of similar description but having different make/model code have been declared in the Trade declarations while the same have been split model-wise/make-wise while declaring in the Bill of Entry. For example, in the trade declaration no. P1791579700S3A dated 18.09.2003, the item description mentioned is Diodes and the quantity has been mentioned as 10026 Thousand. But in the corresponding Bill of Entry No. 888249 dated 16.09.2003, items declared were Diodes-IN407 (MIC), Diodes-IN5402(MIC) and Diodes IN5408(MIC) with their respective quantity as 8010000, 1008000 and 1008000 which is collectively equal to 10026 Thousand. All other parameters like consignee details, no. of packages etc. tally in the case.
- v. In some cases, the unit of quantity shown in the trade declarations received from Hong Kong was in Thousands while the quantity has been found to be mentioned on the corresponding Bill of Entry in no. of pieces and unit price has also been declared on per piece basis. Prices mentioned on the respective/corresponding invoice filed with the Bill of Entry are per 1000 pcs. However, it is seen from the said invoice that actually there is no difference in the quantity exported from Hong Kong as mentioned in the Trade Declarations and which was received in India. For example, in trade declaration no. R085758630117B dated 28.01.2004 the quantity of diodes exported from Hong Kong is mentioned as 29.25 and unit quantity is mentioned as Thousands while in the corresponding Bill of Entry the total quantity of import has been shown as 29250000 pcs. On verification of the

corresponding invoice it is seen that per unit rate mentioned therein is on the basis of per thousand pieces. The quantity mentioned on the invoice is also 29250000 pieces but while calculating total value of goods on the invoice unit price per thousand pcs has been multiplied by 29250 units. These 29250 units tally with the quantity shown on the corresponding trade declaration 29.25 thousand. In respect of this trade declaration, all other details like no. of packages, consignee details, BL No., container no. etc. has also been found tallied.

Thus, seen in totality, even in such cases, the goods in trade declarations and the Bills of Entry were the same, minor differences in description notwithstanding.

In view of the above exercise undertaken, 109 trade declarations as received from Hong Kong have been found to be correlated with the same number of Bills of Entry filed in India as per details in para supra. Since the value shown in the said trade declarations was FOB 11K\$, and the actual freight & insurance was neither available on records not was the same provided by Sh. C.P. Gupta and the said firms, the declared FOB value in HK \$ has been first converted into CIF value by adding 20% of FOB value as Freight and 1.125% of FOB value as Insurance charges to achieve the CIF value. Hence, revised CIF was worked out in terms of Rule 9(2) of **the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988¹¹** which provides for addition of freight (20% of FOB) and insurance (1.125%) in cases where the same were not ascertainable. Thereafter, revised assessable value has been worked out by adding 1% of CIF value as landing charges in Indian Rs. applying the prevailing exchange rate on respective date of Bill of Entry. The import documents i.e. Invoice/Bill of Entry indicate item-wise description, quantity and value thereof. The differential duty short paid at the time of clearance of goods in India, item wise for all the goods imported vide 109 Bills of Entry has been worked out in the manner discussed above.

15.5. The total differential duty short paid in the imports of electronic components from HongKong vide 109 Bills of Entry by Sh. C.P. Gupta in the name of M/s. Sagar Electronics and other said firms under investigations has been quantified port-wise and importer-wise, amounting to Rs. 9,82,06,143/- and the same has been summarized. The above said amount of differential duty port-wise works out to be Rs. 6,67,61,5331- short paid at Jawahar Lal Nehru Port Trust (JNPT), Nhava Sheva, Mumbai - 400 707, Rs. 2,22,39,276/- short paid at Air Cargo Complex, Sahar, Mumbai- 400 099 and Rs. 92,05,334/- short paid at New Custom House, Ballard Estate, Mumbai - 400 038.

¹¹ Also referred to as the CVR, 1988

15.6. There were some more Bills of Entry other than the 109 discussed supra, for which the corresponding Trade declarations were not available. Against the said Bills of Entry, Sh. C.P. Gupta had made imports of electronic items (similar in description to some of those found in the trade declarations pertaining to 109 Bills of Entry referred to in para supra) from Hong Kong & Singapore in the names of the said firms under investigation, operated and controlled by Sh. C.P. Gupta himself. The values shown in such Bills of Entry were compared with those shown in the said Trade declarations and it was observed that the said imports vide 42 Bills of Entry were also grossly undervalued. A chart showing the said comparison and quantifications of differential Customs duty so evaded, has been prepared in respect of 42 such Bill of entries. Where same electronic component was found to have been exported at different values during different periods in the above said 109 Trade declarations, the minimum of such values has been taken for working out revised assessable value. The collective differential customs duty on the said 42 Bills of Entry short paid at the JNPT, Nhava Sheva, Mumbai and Air Cargo Complex, Sahar, Mumbai worked out to be Rs. 5,32,92,077/-.

15.7. Further, some other Bills of Entry filed by the above said firms under investigation including M/s. Sagar Electronics under the control of Sh. C.P. Gupta have been scrutinized for which corresponding Trade declarations, have not been received from the exporting country. The actual prices of some of the components in these Bills of Entry are available in the above trade declarations and the prices of some other components are available in the Bills of Entry filed by other importers during the relevant period. The comparison of values which these firms/importers under investigation have declared in their Bills of Entry and those available in the trade declarations or Bills of Entry of other contemporary importers. Where same electronic component was found to have been exported/imported at different value during different period in the above said 109 Trade declarations/contemporaneous Bills of Entry of other importers, the minimum of such values has been taken for working out revised assessable value. Hence, the revised assessable value and differential duty short paid on such imports has also been worked out on the basis of actual minimum comparable value of each such electronic component as available in the Trade declarations or the Bills of Entry filed during the relevant period by other importers. Thus, the firms under the control of Sh. C.P. Gupta also appears to have short paid duty to the tune of Rs. 66,74,712/- on the imports of various electronic components at the time of clearance from various ports as per details summarized as under:

Table No. 25

S. No.	Name of the firm / importer	Port of Clearance	Duty Short paid (in Rs.)
1	M/s. Mars International	JNPT, Nhava Sheva Mumbai	25,31,575
2	M/s. Spectrum Overseas	JNPT, Nhava Sheva Mumbai	5,91,448
3	M/s. Mars International	Air Cargo Complex, Sahar	1,94,346
4	M/s. Gemini Enterprises	Air Cargo Complex, Sahar	3,41,226
5	M/s. Sagar Electronics	Air Cargo Complex, Sahar	4,47,407
6	M/s. Spectrum Overseas	NCH, Ballard Estate, Mumbai	13,67,212
7	M/s. Shiva Enterprises	NCH, Ballard Estate, Mumbai	8,77,294
8	M/s. Magnum Overseas	NCH, Ballard Estate, Mumbai	2,19,000
9	M/s. Sagar Electronics.	Delhi Air Cargo	1,05,204
		Total (in Rs.)	66,74,712

15.8. One Bill of Entry No. 514960 dated 02.11.2002 filed by M/s Sagar Electronics, 493, Old Lajpat Rai Market, Delhi under the proprietorship of Sh. C.P. Gupta has been scrutinized as per Annexure C-4 for which corresponding Purchase Order Ref No. JT/061 dated 29.10.02 for 1,00,000 pieces of IC (CXA 1619BS) was recovered from the office of M/s. Ritronics & Hsin Semiconductor at 202, Hemkunt Tower, Nehru Place, New Delhi as per panchnama dated 22.12.04. The actual price of the said component under the said Bill of Entry dated 2.11.02 was available in the above purchase order, on the basis of which it appears that the component has been assessed at much lower value in the Bill of Entry filed by M/s. Sagar Electronics. The comparison of value at which M/s. Sagar Electronics have filed their Bill of Entry No. 514960 dated 2.11.02 and that available in the above said purchase order has been given in Annexure C-4. Hence, the revised assessable value and differential duty short paid on such import has also been worked out in the said Annexure C-4 on the basis of price paid or payable by M/s. Sagar Electronics as mentioned in the above said purchase order. Thus, M/s. Sagar Electronics appears to have short paid customs duty to the tune of Rs. 3,25,620/- on the imports of electronic components vide Bill of Entry No. 514960 dated 2.11.02 at the time of customs clearance from Air Cargo Complex, Sahar, Mumbai.

16. Sh. C. P. Gupta, Proprietor, M/s. Sagar Electronics also had managerial and financial control over the other 16 firms deliberately created by him with the assistance of his associate Sh. Surender Kumar @ Surender Sharma for the purpose of making undervalued imports of electronic components using the said firms. The proprietors of the

said firms were dummy and had nothing to do with the said imports. The representatives of the foreign suppliers, the CHAs, the transporters, his ex-employee Sh. Sunil and his associate -Sh. Surender Kumar @ Surender Sharma, all have unanimously stated that all the imports made in the firm M/s. Sagar Electronics and other 16 firms, operated and controlled by Sh. C.P. Gupta, were made by Sh. C.P. Gupta himself. They have also stated that the investment for payment of goods, customs duty, CHA charges, transport charges in respect of all the above said firms were made by Sh. C.P. Gupta alone. In view of the facts & evidences discussed above, it emerged that Sh. C. P. Gupta had committed offences under Section 132 & 135 of Customs Act, 1962. He was earlier arrested under Section 104 of the Customs Act, 1962 on 01.03.2005. He was released on 13.04.05, as per the order dated 13.04.05 of Additional Session Judge, New Delhi, after having been in judicial custody for 44 days.

17.1 The relevant provisions of the Customs Act 1962, the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 and the relevant Customs Notifications in so far as they relate to the facts and circumstances of the subject imports are as follows:

(A) Sub-Section (1) of Section 14 of the Customs Act, 1962, provides that for the purpose of charging duty, the value of goods shall be deemed to be "the price at which such or like goods are ordinarily sold, or offered for sale in the course of international trade where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale.....".

(B) Section 111 (m) of the Customs Act, 1962 provides that where any goods do not correspond in respect of value or in any other particular with the Entry made in this behalf, the same shall be liable to confiscation.

(C) Section 112 (a) of the Customs Act, 1962 provides that any person, who in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111 shall be liable to penalty.

(D) Section 114A of the Customs Act 1962 provides that where the duty has not been levied or has been short levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful misstatement or suppression of facts, the person who is liable to pay the duty or interest as the case may be as determined under sub-Section (2) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined.

(E) First proviso to Section 28(1) of the Customs Act, 1962 provides that where any duty has not been levied or has been short levied or the interest has not been charged or has been part paid or the duty or interest has been erroneously refunded by reason of

collusion or any willful misstatement or suppression of facts, the duty can be demanded for within 5 years.

(F) Section 28AB of the Customs Act 1962, provides that where any duty has not been levied or has been short levied or erroneously refunded by reason of collusion' or any willful misstatement or suppression of facts, the person who is liable to pay the duty, shall in addition to the duty, be liable to pay the interest at such rate not below, ten per cent and not exceeding thirty percent per annum, as is for the time being fixed by the Board, from the first day of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in subSection (2) of Section 28, till the date of payment of such duty.

17.2 The Tribunal has held in the case of **Ruchi Associates**¹² that "where importer has not laid any basis for acceptance of invoice price as transaction value then the authorities are legally right to proceed to fix the price under Rule 3(ii) of the Customs Valuation Rules, 1988.

17.3 The Hon'ble Supreme Court had held in the case of **D. Bhurmal**¹³ 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".

17.4 The Central Excise Customs Gold (Control) Appellate Tribunal opined in the case of **Poonam Plastics Industries**¹⁴ that the Department was not required to prove actual value with mathematical precision and that reasonable help could be taken of the documents available and other circumstances to arrive at the correct value.

17.5 The Hon'ble Supreme Court in the case of **M/s. Orson Electronic Pvt. Ltd. Vs Collector 1997(93) ELT A133 (SC)** dismissed the appeal on merits against the CESTAT ruling. The CESTAT in its order had held that adoption of the export declaration of value by the supplier before Japanese Customs along with related invoices was in order for arriving at the assessable value of the imported goods under Section 14 of the Customs Act, 1962. The CESTAT was also of the view that authenticity of the documents forwarded by the Japanese government authorities to DRI is not doubted.

17.6 The Hon'ble Tribunal further in the case of **M/s. Indian Watch Parts Mfg. Vs. Commissioner 2004(171)EL T. 141(Tri-Delhi)** ruled that in case of difference between

¹² Ruchi Associates Vs Commissioner of Customs [1992(59)EL T 155]

¹³ Commissioner of Customs, Madras Vs D. Bhurmal, 1983 (13) ELT 1546 (SC)

¹⁴ Poonam Plastics Industries Vs CC, 1989(3) ELT 634(T)

the values given in import invoices and export declaration as filed by the foreign exporter, the value given in the latter may be treated as transaction value.

17.7 The Customs, Excise and Service Tax Appellate Tribunal in the case of **M/s. Konia Trading Co. Vs CC, Jaipur 2005(128) ECR 159 (Tri-Delhi)**, opined that report of Trade Licensing Bureau of Customs and Excise Department, Hongkong carries own evidentiary value without resorting to any presumption and facts of the documents are sufficient to establish that the appellant had undervalued the goods covered in the import invoices.

17.8 In the instant case, as discussed in detail in the previous paras, the values declared by the importers at the time of import are liable to be rejected as transaction values in terms of Rule 10A of the Customs Valuation Rules, 1988 as the invoices filed by the importer(s) were not the actual invoices of the suppliers/manufacturers and did not represent true transaction values as is evident from the above said Trade declarations filed with the Hong Kong Customs and one Purchase order discussed in before. Thus, in respect of the Bills of Entry (detailed in Annexure C-1 & C-4) where the actual price of the electronic components payable is available as per corresponding Trade declaration received from Hong Kong Customs or the above said Purchase order, the revised assessable value is to be determined under the Provisions of Rule 4 read with Rule 3 of the Customs Valuation Rules, 1988. However, where such corresponding Trade declaration filed with Hong Kong Customs or any other relevant document corresponding to the Bills of Entry filed in India is not available (as in case of Bills of Entry detailed in Annexure C-2 & C-3) showing the actual value paid or payable in respect of such goods, the value of said goods cannot be determined under the provisions of clause (i) of Rule 3 of the Customs Valuation Rules, 1988. As such, in terms of clause (ii) of the said Rule 3, the value is to be determined by proceeding sequentially through rules 5 to 8 of the said Customs Valuation Rules, 1988. In the instant case, the value in respect of such Bills of Entry as detailed in Annexure C-2 & C-3, is proposed to be determined under Rule 8 of the Customs Valuation Rules, 1988, based on the price of the subject goods declared in the trade declarations received from HKSAR Govt. and the contemporaneous Bills of Entry inasmuch as:

- a) The value of the said goods as mentioned above cannot be determined under Rule 5 of the Customs Valuation Rules, 1988 as the data about the transaction value of the identical goods in a sale at the same commercial level and in substantially the same quantity at or about same time of import is not available.
- b) The value of the said goods in this case as mentioned above cannot be determined under Rule 6 of the Customs Valuation Rules, 1988 as the data about the

- transaction value of the similar goods in a sale at the same commercial level and in substantially the same quantity at or about same time of import is not available.
- c) the value of the said goods as mentioned above cannot be determined under Rule 7 of the Customs Valuation Rules, 1988, because no reliable data, about the unit price at which the imported goods or identical goods or similar goods are sold in India, is available.
 - d) the value of the said goods as mentioned above cannot be determined under Rule 7 A of the Customs Valuation Rules, 1988, because no reliable data, about the cost or value of materials and fabrication or other processing employed in producing the imported goods is available.

Interpretative notes in respect of Rule 8 clearly state that the requirement that the identical or similar goods should be imported at or about the same time as the goods being valued could be flexibly interpreted. It also provides that identical or similar imported goods produced in a country other than the country of exportation of goods being valued could be the basis for the customs valuation.

Findings of investigation :

18. From the foregoing paras, it emerged that:

- i. Sh. C.P. Gupta is the proprietor of M/s. Sagar Electronics. Apart from the above, there were 16 other firms, the proprietors of which were found to be dummy as the activities of the said firms were under complete managerial and financial control of Sh. C.P. Gupta;
- ii. Sh. C.P. Gupta was indulged in under-invoiced import of various electronic components / parts including diode, transistors, ICs etc. in the names of his firm M/s. Sagar Electronics and the other said 16 firms under investigation by resorting to willful misdeclaration of value with an intent to evade appropriate customs duty;
- iii. the premises shown against the above said firms under investigations were not in possession of the respective dummy proprietors at the time of creation of the firms;
- iv. Sh. C.P. Gupta had been using the said firms under investigations for importing electronic components from Hong Kong, China and Singapore with due assistance from Sh. Surender Kumar alias Sh. Surender Sharma who helped him in arranging and manipulating the documents of the dummy proprietors, creating the said firms, obtaining IEC Numbers and opening their bank accounts;
- v. Sh. Surender Kumar alias Sh. Surender Sharma was paid consideration of Rs. 20,000/- to Rs. 40,000/- per month for the above said purpose;

- vi. even the firm M/s. Shivam Overseas Inc. of which Sh. Surender Kumar alias Surender Sharma was shown as the proprietor, was used by Sh. C.P. Gupta for the import of under-invoiced electronic components;
- vii. Sh. C.P. Gupta devised a novel modus-operandi to under-value the imports of electronic components from Hong Kong, Singapore and China. For example, while importing the goods from Singapore, Sh. C.P. Gupta placed orders for the supply of electronic components with the Indian representatives of the foreign based distributors / suppliers of electronic components like M/s. WPI International (I) Pvt. Ltd., M/s. Avnet Asia Pvt. Ltd. and others (as discussed herein above) after having negotiated the rates with them. Subsequently, on confirmation of the order, the purchase orders were communicated by these representatives to their principals abroad. On receipt of the cheque / cheque number from the party (i.e. M/s. Great Himalayan Pte Ltd., Singapore, M/s. Anjaneya Trading Pvt. Ltd. etc) on behalf of Sh. C.P. Gupta, the goods were billed and dispatched by the said foreign based suppliers i.e. M/s. WPI International Pvt. Ltd., Singapore etc. to the pre-determined/nominated shipper of Sh. C.P. Gupta i.e. Great Himalayan Pvt. Ltd., Singapore etc. M/s. Great Himalayan Pvt. Ltd., Singapore, in turn, shipped the goods to Sh. C.P. Gupta in the name of the firms as instructed by him (C.P. Gupta). Thus, Sh. C.P. Gupta appears to have followed the above modus-operandi with an intention to suppress the name of the actual foreign suppliers / distributors of the electronic components. He has deliberately introduced another firm i.e. M/s. Great Himalayan Pte Ltd., Singapore between him and WPI International to facilitate under-invoicing of the electronic components imported in the names of firms under investigation;
- viii. the above said modus-operandi appears to have been followed by Sh. C.P. Gupta while importing the said goods from Hong Kong, through another set of designated shippers M/s. Great Himalayan Shippers Ltd., M/s. J.N. Exports etc. to facilitate under-invoicing of the said goods;
- ix. Sh. C.P. Gupta, the proprietor of M/s. Sagar Electronics has solely organised and controlled the import transactions effected in respect of all the above said firms under investigation and made cash payments to the representatives of M/s. Great Himalayan Pte Ltd. and M/s. Great Himalayan Shippers Ltd. in India itself in respect of the electronic components imported in the name of M/s. Sagar Electronics and the other said firms under investigation;
- x. the negotiated rates shown in the e-mails tendered by M/s. Avnet Asia Pvt. Ltd. discussed at before were almost ten times higher than the rates declared for that particular component in the Bill of Entry filed in India;

- xi. the aspect of under-valuation of imports made by Sh. C.P. Gupta in M/s. Sagar Electronics and sixteen other firms under investigation is also brought out in the Trade Declarations received from HAKSAR discussed at pars 9.1 to 9.7 supra;
- xii. all the foreign suppliers' representatives have categorically and unanimously stated that Sh. C.P. Gupta used to give orders for supply of electronic components to them and since the orders were placed by Sh. C.P. Gupta, they related the entire booking in the name of M/s. Sagar Electronics;
- xiii. all the CHAs working for Sh. C.P. Gupta categorically and unanimously stated that all the import related documents were received from Sh. C.P. Gupta irrespective of the firms in which they were imported. All the goods and documents after customs clearance were sent to Sh. C.P. Gupta of M/s. Sagar Electronics irrespective of the said firms in the name of which they were actually imported. Consolidated CHA charges and customs duty drafts were paid and received from Sh. C.P. Gupta irrespective of the firm in which the said goods were imported;
- xiv. as arranged with Sh. C.P. Gupta, the goods after Customs clearance were sent through M/s. Godara Freight Carriers and M/s. Natraj Cargo & Couriers, to be delivered to Sh. C.P. Gupta. This has been confirmed by the partner / employees of the above said transporters in their written statement. The transporters were paid freight by Sh. C.P. Gupta for transportation of the said imported goods from Mumbai to his shop premises;
- xv. the firms under investigation having dummy proprietors namely Sh. Surender Kumar alias Surender Sharma, Mrs. Lata Kumar alias Lata Podesh alias Lata Pandey, Sh. Shashi Kapoor, Sh. Surender Kumar brother of Sh. Shashi Kapoor, Mrs. Babita Kapoor, Sh. Chandresh Kumar alias Chandresh Mishra, Sh. Atul Kumar, Sh. Ravinder Kumar and Smt. Anamika etc. were created by Sh. Surender Kumar alias Surender Sharma himself using forged copies of ration cards and Chartered Accountant's certificates. He also facilitated the opening of their bank accounts and obtained IEC Numbers in respect of the said firms under investigation at the instance of Sh. C.P. Gupta for a consideration received in cash from Sh. C.P. Gupta;
- xvi. the Bank Accounts of the said firms were used by Sh. C.P. Gupta for making payments of customs duty, CHA charges etc. in respect of under-invoiced imports;
- xvii. the drafts for payments of Customs duty and CHA charges etc. were got made under the instructions of Sh. C.P. Gupta from the Bank Accounts of the respective firms out of cash received from Sh. C.P. Gupta funds transferred from one firm to another, through Sh. Pawan Gupta, Sunil Kumar, Pappu etc.;

- xviii. the transfer of funds from one firm to another was never in respect of any sale or purchase but was to organised customs duty drafts depending on the need of the firm. The drafts made from the bank account of one firm have also been found to be used for the payment of customs duty in respect of goods imported in the name of another firm under investigation;
- xix. all the available dummy proprietors of the firms under investigations have unequivocally stated that they had nothing to do with the imports of the electronic components etc. made in the name of the respective firms in which they had been shown as proprietors. They have unequivocally stated that all the investments for the said import activities were arranged and made by Sh. C.P. Gupta alone. They were shown as proprietors of the said firms under investigation with an understanding that they would give blank signed cheques and for each firm which would be used by Sh. C.P. Gupta for making such imports, the respective proprietor would be paid an amount of Rs. 2,500/- per active firm per month by Sh. C.P. Gupta;
- xx. Sh. Surender Kumar, proprietor of M/s. Spectrum Overseas had taken the premises, 4078, Roshanara Road, Delhi on rent till June, 2003 whereas the IEC Number at that address was taken in April '04 i.e. after having left the said premises;
- xxi. the firms M/s. Shiva Enterprises, Allied Enterprises and Leo International were created in the names of Lata Kumar, Lata Podesh and Lata Kumar respectively. But, all three were found to be the names of one and the same lady Mrs. Lata Pandey. She has shown as resident of D-54, Shakar Pur, Delhi-92 during year 2003 & 2004. However, investigations revealed that Smt. Lata Pandey was on rent in the said premises only till 1994;
- xxii. Sh. C.P. Gupta always interacted directly with the customs clearing agents for all matters related to import of electronic components in the name of the above said seventeen firms including M/s. Sagar Electronics;
- xxiii. all the concerned CHAs, (namely M/s. Mehul & Company, M/s. Smith Enterprises, M/s. Unnati Shipping Agency and M/s. National Shipping Agency), transporter (namely M/s. Godara Roadways P. Ltd. & Natraj Cargo & Carriers) and suppliers of goods (namely M/s. Ritronics, M/s. WPI International Pte. (S) Ltd., M/s. Arrow Electronics and M/s. Avnet Asia Pte. Ltd.) have unequivocally and independently stated that Sh. C. P. Gupta was the person operating & controlling all the said firms.
- xxiv. all the Customs Clearing Agents involved in the clearance of the goods imported in the names of above said firms have never dealt with the dummy proprietors of any of the said firms and for all dealings in respect of these firms, they always

- received necessary directions, documents and payments towards their charges and customs duty from Sh. C.P. Gupta; the proprietor of M/s. Sagar Electronics.;
- xxv. all the transporters i.e., Godara Freight Carriers and Natraj Cargo and Couriers have admitted. that they have delivered the goods brought by them from Mumbai in respect of the above said dummy firms only to Sh. C.P. Gupta of M/s. Sagar Electronics, Delhi at his shops or to his representative at Railway station and received payments from Sh. C.P. Gupta only;
- xxvi. Sh. C.P. Gupta has conspired with Sh. Surender Kumar @ Surender Sharma and other dummy proprietors of the said firms and resorted to under-invoicing of import of electronic components in the name of the said firms. He deliberately tried to mis-guide the investigations by not disclosing the correct addresses and whereabouts of neither Sh. Surender Kumar alias Surender Sharma nor the dummy proprietors of the firms under investigation;
- xxvii. The values shown in the export declarations filed with the Hong Kong Customs discussed above have been found to be substantially higher as compared to the value shown in the respective Bills of Entry and on the invoices produced by the importer before the Indian Customs Authorities for assessment and payment of Customs duties. In view of the above, the invoice values declared in respect of 109 Bills of Entry for which corresponding Trade declarations filed at the time of Export with Hongkong Customs do not appear to be correct prices of the electronic components imported against the said Bills of Entry. According to Rule 4 of the Customs Valuations Rules, 1988, the transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export to India. Thus, the values shown in the Trade declarations received from Hong Kong Customs corresponding to 109 Bills of Entry detailed in Annexure C-1 appear to be the correct prices / transaction values (under the said Rule 4 of the Customs Valuation Rules, 1988) paid or payable for the said electronic components received against the said 109 Bills of Entry. Similarly, **M/s. Sagar Electronics appeared to have undervalued their import against Bill of Entry No. 514960 dated 2.11.02 (as detailed in Annexure C-4) for which the corresponding purchase order placed with M/s. Ritronics was recovered as per panchnama dated 22.12.04 and thus price shown in the said purchase order appeared to be the correct transaction value acceptable in this case in view of Rule 4 of the Customs Valuation Rules, 1988. Further, in view of averments made by Sh. C.P. Gupta, the values reflected on the invoices corresponding to Bills of Entry (as detailed in Annexure C-2 & C-3) filed by the firms under this investigation including M/s. Sagar Electronics cannot be considered as the sole consideration for sale, and values appearing on the import invoices as**

declared before the Indian Customs do not, therefore, fulfill the criteria of Section 14(1) of the Customs Act, 1962 and Rule 4 of the Customs Valuation Rules, 1988. Since, the values declared by the importers viz. M/s. Sagar Electronics, M/s. Allied Enterprises, M/s. Devika Enterprises, M/s. Galaxy Enterprises, M/s. Gemini Enterprises, M/s. Konark International, M/s Leo International, M/s. Prominent Enterprises, M/s. Royal International, M/s. Shiva International, M/s. Shivam Overseas Inc., M/s. Spectrum Overseas, M/s. Supreme Enterprises, M/s. Surya Enterprises, M/s. Shiva Enterprises, M/s. Magnum Overseas and M/s Mars International do not represent the genuine and actual transaction value, the same were liable to be rejected under Rule 10A(1) of the Customs Valuation Rules, 1988 and values of imported goods as detailed in Annexure C-2 & C- 3 were to be determined under Rule 8 of the Customs Valuation Rules, 1988 as discussed above; and

xxviii. Sh. C. P. Gupta deliberately mis-declared the exact description of the electronic components imported by him in certain Bills of Entry so as to prevent proper verification and valuation by the Customs authorities by comparing the said goods with the comparable contemporaneous imports by other importers. This fact is evident from the Bills of Entry under investigation and admission made by Sh. C.P. Gupta. He also deliberately mis-declared the description of Pick Up cartridges as Pick up Units, Parts of VCD or as CD Lense / CD Lense unit in the Bills of Entry and also mis-classified the same under Ch. Headings 8522.90.00 and 9002.90.00, instead of its correct classification under the Ch. Heading 8522.10.00;

19.1 Sh. C.P. Gupta, M/s. Sagar Electronics, M/s. Allied Enterprises, M/s. Devika Enterprises, M/s. Galaxy Enterprises, M/s. Gemini Enterprises, M/s. Konark International, M/s Leo International, M/s. Prominent Enterprises, M/s. Royal International, M/s. Shiva International, M/s. Shivam Overseas Inc., M/s. Spectrum Overseas, M/s. Supreme Enterprises, M/s. Surya Enterprises, M/s. Shiva Enterprises, M/s. Magnum Overseas and M/s Mars International willfully and knowingly mis-declared the value of the imported components as well as gave incomplete description of components in the invoices / Bills of entries (As per details in Annexure C-1 to C-4) submitted to the Customs. Authorities with an intent to evade Customs duty thereby rendering the goods liable for confiscation under 111 (m) of the Customs Act, 1962 and thereby rendered themselves liable for penal action under Section 112/114A of the Customs Act, 1962.

19.2. Sh. Surender Kumar alias Surender Sharma, proprietor of M/s. Shivam Overseas Inc. & M/s. Ganpati Sales Corporations who assisted Sh. C.P. Gupta in the creation of the

above said firms under investigation, arranged fake address proofs, introduced accounts of most of the said firms, completed formalities for obtaining IEC Numbers in respect of the above said firms of dummy proprietors, knowing that the said firms will be used by Sh. C.P. Gupta for the purpose of importing undervalued electronic components/VCD parts etc. Sh. Surender Sharma appears to have abetted the offences committed by Sh. C.P. Gupta and the above said firms under his (Sh. C.P. Gupta's) managerial and financial control and, thus, appears to have rendered himself liable for penal action under Section 112 of the Customs Act, 1962.

20. Since at the time of customs clearance of electronic components imported by M/s. Sagar Electronics and other said firms under the managerial and financial control of Sh. C.P. Gupta, have willfully mis-declared/mis-stated the value of the said imports in the Bills of Entry /Invoices filed by them (as detailed in Annexure C-I to C-4), the duty short paid on this account is recoverable from them in terms of the proviso to Section 28(1) of the Customs Act, 1962 invoking the extended period of upto five years.

21. In view of the foregoing, differential duty collectively amounting to Rs.12,22,20,723/-, Rs.1,16,68,840/-, Rs.2,45,03,785/-, and Rs. 1,05,204/- (Total amounting to Rs. 15,84,98,552/- as per detail in Annexures C-1, C-2, C-3 & C-4) appears to have been short levied/short paid at JNPT, Nhava Sheva, Mumbai, New Customs House, Ballard Estate, Mumbai, Air Cargo complex, Sahar, Mumbai and Delhi Air Cargo respectively.

22. As Sh. C. P. Gupta, Proprietor, M/s. Sagar Electronics also had full managerial and financial control over the other 16 firms deliberately created by him with the assistance of his associate Sh. Surender Kumar @ Surender Sharma, Sh. C.P. Gupta can be legally deemed to be the de-facto proprietor of the said firms under investigation. Thus, the customs duty evaded on account of willfully and deliberately undervaluing the said goods imported in the names of the said firms as detailed in Annexures C-1, C-2, C-3 and C-4 is recoverable jointly and severally from Sh. C.P. Gupta and M/s. Allied Enterprises, M/s. Devika Enterprises, M/s. Galaxy Enterprises, M/s. Gemini Enterprises, M/s. Konark International, M/s Leo International, M/s. Prominent Enterprises, M/s. Royal International, M/s. Shiva International, M/s. Shivam Overseas Inc., M/s. Spectrum Overseas, M/s. Supreme Enterprises, M/s. Surya Enterprises, M/s. Shiva Enterprises, M/s. Magnum Overseas and M/s Mars International in terms of the proviso to Section 28(1) of the Customs Act, 1962 along with the interest as applicable in terms of the provision of Section 28AB of the Customs Act, 1962 .

23. In view of the foregoing, SCN-1 was issued as under:-

23.1 Sh. C.P. Gupta, proprietor of M/s. Sagar Electronics was called upon to Show Cause to the Commissioner of Customs(Preventive), NCH, New Delhi - 110037 as to why:

- a) the goods valued at Rs. 64,02,751/- seized at his shop cum office at 599, Lajpat Rai Market, Delhi and as reflected in Chart C-1 should not be confiscated under the provisions of Section 111 (d) and 111 (m) of the Customs Act, 1962
- b) the duty amount of Rs. 11,86,934/- involved in respect of said goods seized at his shop cum office at 599, Lajpat Rai Market, Delhi should not be demanded and recovered from him under proviso to Section 28 (1) of the Customs Act, 1962
- c) Interest should not be recovered from them on duty short levied/not paid in terms of Section 28 AB of the Customs Act, 1962
- d) the penalty under Section 112(a) / 114A should not be imposed upon them

23.2 Sh. C.P. Gupta & Ms. Gemini Enterprises were jointly and severally called upon to show cause to the Commissioner of Customs(Import), NCH, New Delhi - 110037 as to why:

- a) Value declared for electronic components imported and cleared through New Custom House, Mumbai as mentioned in chart C-2 should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988
- b) Revised assessable value of Rs.12,47,913/- worked out in chart C-2 should not be considered for the purpose assessment under Rules 8 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962
- c) Consequential differential Customs duty worked out in chart C-2 amounting to Rs. 2,30,862/- should not be demanded and recovered from them under proviso to Section 28(1) of the Customs Act, 1962.
- d) Interest should not be recovered from them on duty short levied/not paid in terms of Section 28 AB of the Customs Act, 1962
- e) Said goods valued at Rs.12,47,913/- cleared through the Mumbai Port should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962
- f) Penalty should not be imposed upon them under Section 114A/112(a) of the Customs Act, 1962.

23.3 M/s. Spectrum Overseas and Sh. C. P. Gupta, jointly and severally were called upon to show cause to the Commissioner of Customs (Import), New Custom House, Ballard Estate, Mumbai as to why:

- a) Value declared for electronic components imported and cleared through New Custom House, Mumbai as mentioned in chart C-2 should not be rejected in terms of Rule 10(A) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988.
- b) Revised assessable value of Rs.6,17,464/- worked out in chart C-2 should not be considered for the purpose assessment under Rules 8 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;
- c) Consequential differential Customs duty worked out in chart C-2 amounting to Rs.84,218/- should not be demanded and recovered from them under proviso to Section 28(1) of the Customs Act, 1962
- d) Interest should not be recovered from them on duty short levied / no paid in terms of Section 28 AB of the Customs Act, 1962
- e) Said goods valued at Rs.6,17,464/- cleared through the Mumbai Port should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962
- f) Penalty should not be imposed upon them under Section 114A/112(a) of the Customs Act, 1962

24. Further, SCN - 2 was issued as under:

24.1 M/s Spectrum Overseas and Sh. C.P. Gupta were jointly and severally called upon to show cause to the Commissioner of Customs, JNPT as to why;

- a) The goods of three consignments seized on 24.06.2005 at CFS, CWC, Distr Parks, JNPT Nhava Sheva and Sea bird, CFS, JNPT Nhava Sheva as reflected in RC-1 at Sl. No. 1, 2 and 3 (imported vide Invoice No. SG/327/11/2004 dt. 11.11.04 (B/L No. FPSSEO411124 dt. 17.11.04), JNE/9547/11/2004 dt. 22.11.04 (B/L No. OOLU 28541060 dt. 24.11.04, JNE/9546/11/2004 dt. 16.11.04 (B/L No. OOLU 28511782 dt. 18.11.04)) should not be valued at Rs. 36,13,018/- and confiscated under Section 111 (d) and (m) of the Customs Act, 1962.
- b) The penalty under Section 112 (a) / 114A should not be imposed upon them.

24.2 M/s Shiva Enterprises and Sh. C.P. Gupta, were also jointly and severally called upon to show cause to the Commissioner of Customs (Import), Mumbai as to why:

- a) The goods seized on 07.11.2005 and 24.06.2005 at Shed No. 1, STP-1, Sewree, Mumbai and Shed No. 1, MOD, Mumbai Docks, Sewree, Mumbai respectively imported vide Invoice No. JNE/9560/12/2004 dt. 26.11.04 (B/L No. GETO 40646 BOM dt. 29.11.04). SO 858 dt. 29.10.04 (B/L No. 180114011866 dt. 06.11.04)

- reflected in RC-2, at SI No. 2, and 3 should not be valued at Rs. 1,29,68,177/- and confiscated under Section 111(d) and (m) of the Customs Act, 1962
- b) The penalty under Section 112 (a) / 114A should not be imposed upon them.

24.3 M/s Shiva Enterprises and Sh. C.P. Gupta, were jointly and severally called upon to show cause to the Commissioner of Customs, JNPT as to why:

- a) Value declared for electronic components seized on 24.06.2005 at ULA Dronagiri, Nhava Sheva, Dist. Raigad, imported vide B/E No. 762562 dt. 13.12.04 (B/L No. HLCU SHA 041186233 dt. 11.09.04) should not be rejected in terms of Rule 10 (A) (1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988
- b) Revised assessable value of Rs. 8,78,700/- worked out should not be considered for the purpose assessment under Rules 8 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962
- c) Consequential differential Customs duty worked out amounting to Rs. 3,54,781/- should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962
- d) Interest should not be recovered from them on duty short levied/not paid in terms of Section 28 AB of the Customs Act, 1962
- e) Said goods valued at Rs. 8,78,700/- cleared through Mumbai Port should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962.
- f) Penalty should not be imposed upon them under Section 114A/112(a) of the Customs Act.

25. SCN -3 was issued as under :

25.1 Sh. C. P. Gupta and M/s. Allied Enterprises were jointly and severally called upon to show cause, in respect of the goods imported by them through JNPT, Nhava Sheva as to why:

- a) values declared for electronic components imported and cleared through JNPT, Nhava Sheva, Mumbai under Bills of Entry detailed in Annexures C-1 & C-2 should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988.
- b) Revised assessable values worked out in Annexure C-1 & C-2 should not be considered for the purpose of assessment under Rule 4/Rule 8 (as applicable) read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;

- c) Pick up Units / Parts of VCD/ CD Lense/CD Lense unit should not be classified and assessed under CTH 8522100 as Pick Up cartridges and duty charged accordingly.
- d) Consequential differential Customs duty worked out in Annexures C-1 & C-2 collectively amounting to Rs. 1,59,33,699/- should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962.
- e) interest at the appropriate rate should not be recovered from them on duty short levied / short paid in terms of Section 28AB of the Customs Act, 1962;
- f) imported goods cleared through the said port i.e. JNPT, Nhava Sheva, Mumbai should not beheld liable to confiscation under Section 111 (m) of the Customs Act, 1962; and
- g) penalty under Section 112/114A of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid.

25.2 Sh. C.P. Gupta and M/s. Devika Enterprises were called upon to show cause in respect of the goods imported by them through JNPT, Nhava Sheva, Mumbai as to why:

- a) values declared for electronic components imported and cleared through JNPT, Nhava Sheva, Mumbai under Bills of Entry detailed in Annexure C-1 should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988.
- b) Revised assessable values worked out in Annexure C-1 should not be considered for the purpose assessment under Rule 4 read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;
- c) Pick up Units/ Parts of VCD/ CD Lense/CD Lense unit should not be classified and assessed under CTH 8522100 as Pick Up cartridges and duty charged accordingly.
- d) Consequential differential Customs duty worked out in Annexures C-I collectively amounting to Rs. 67,59,843/- should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962.
- e) interest at the appropriate rate should not be recovered from them on duty short levied/short paid in terms of Section 28AB of the Customs Act, 1962;
- f) imported goods cleared through the said port i.e. JNPT, Nhava Sheva, Mumbai should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962; and
- g) penalty under Section 112/114 A of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid.

25.3 Sh. C.P. Gupta and M/s. Galaxy Enterprises were called upon to show cause, in respect of the goods imported by them through JNPT, Nhava Sheva, Mumbai as to why:

- a) values declared for electronic components imported and cleared through JNPT, Nhava Sheva, Mumbai under Bills of Entry detailed in Annexures C-1 & C-2 should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988
- b) Revised assessable values worked out in Annexure C-1 & C-2 should not be considered for the purpose assessment under Rule 4/Rule 8 (as applicable) read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;
- c) Pick up Units/ Parts of VCD/ CD Lense/CD Lense unit should not be classified and assessed under CTH 8522100 as Pick Up cartridges and duty charged accordingly.
- d) Consequential differential Customs duty worked out in Annexures C-1- & C-2 collectively amounting to Rs. 1,25,63,492/- should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962.
- e) interest at the appropriate rate should not be recovered from them on duty short levied/short paid in terms of Section 28AB of the Customs Act, 1962;
- f) imported goods cleared through the said port i.e. JNPT, Nhava Sheva, Mumbai should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962; and
- g) penalty under Section 112/114 A of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid.

25.4 Sh. C.P. Gupta and M/s. Gemini Enterprises were called upon to show cause, in respect of the goods imported by them through JNPT, Nhava Sheva, Mumbai as to why:

- a) values declared for electronic components imported and cleared through JNPT, Nhava Sheva, Mumbai under Bills of Entry detailed in Annexures C-1 & C-2 should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988.
- b) Revised assessable values worked out in Annexure C-1 & C-2 should not be considered for the purpose assessment under Rule 4/Rule 8 (as applicable) read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;

- c) Pick up Units/ Parts of VCD/ CD Lense/CD Lense unit should not be classified and assessed under CTH 8522100 as Pick Up cartridges and duty charged accordingly.
- d) Consequential differential Customs duty worked out in Annexures C-1 & C-2 collectively amounting to Rs. 59,15,718/- should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962.
- e) interest at the appropriate rate should not be recovered from them on duty short levied/short paid in terms of Section 28AB of the Customs Act, 1962;
- f) imported goods cleared through the said port i.e. JNPT, Nhava Sheva, Mumbai should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962; and g) penalty under Section 112/114A of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid.

25.5 Sh. C.P. Gupta and M/s. Konark International were called upon to show cause in respect of the goods imported by them through JNPT, Nhava Sheva, Mumbai as to why:

- a) values declared for electronic components imported and cleared through JNPT, Nhava Sheva, Mumbai under Bills of Entry detailed in Annexures C-1 & C-2 should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988.
- b) Revised assessable values worked out in Annexure C-1 & C-2 should not be considered for the purpose assessment under Rule 4/Rule 8 (as applicable) read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;
- c) Pick up Units/ Parts of VCD/ CD Lense/CD Lense unit should not be classified and assessed under CTH 8522100 as Pick Up cartridges and duty charged accordingly.
- d) Consequential differential Customs duty worked out in Annexures C-1 & C-2 collectively amounting to Rs. 72,26,081/- should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962.
- e) interest at the appropriate rate should not be recovered from them on duty short levied/short paid in terms of Section 28AB of the Customs Act, 1962;
- f) imported goods cleared through the said port i.e. JNPT, Nhava Sheva, Mumbai should not be held• liable to confiscation under Section 111 (m) of the Customs Act, 1962; and
- g) penalty under Section 112/114A of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid.

25.6 Sh. C.P. Gupta and M/s. Leo International were jointly and severally called upon to show cause, in respect of the goods imported by them through JNPT, Nhava Sheva, Mumbai as to why:

- a) values declared for electronic components imported and cleared through JNPT, Nhava Sheva, Mumbai under Bills of Entry detailed in Annexures C-1 & C-2 should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988.
- b) Revised assessable values worked out in Annexure C-1 & C-2 should not be considered for the purpose assessment under Rule 4/Rule 8 (as applicable) read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;
- c) Pick up Units /Parts of VCD / CD Lense/CD Lense unit should not be classified and assessed under CTH 8522100 as Pick Up cartridges and duty charged accordingly.
- d) Consequential differential Customs duty worked out in Annexures C-1 & C-2 collectively amounting to Rs. 92,99,935/- should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962.
- e) interest at the appropriate rate should not be recovered from them on duty short levied/short paid in terms of Section 28AB of the Customs Act, 1962;
- f) imported goods cleared through the said port i.e. JNPT, Nhava Sheva, Mumbai should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962; and
- g) penalty under Section 112 / 114A of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid.

25.7 Sh. C.P. Gupta and M/s. Prominent Enterprises were jointly and severally called upon to show cause, in respect of the goods imported by them through JNPT, Nhava Sheva, Mumbai as to why:

- a) values declared for electronic components imported and cleared through JNPT, Nhava Sheva, Mumbai under Bills of Entry detailed in Annexures C-1 & C-2 should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988.
- b) Revised assessable values worked out in Annexure C-1 & C-2 should not be considered for the purpose assessment under Rule 4/Rule 8 (as applicable) read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;

- c) Pick up Units/ Parts of VCD/ CD Lense/CD Lense unit should not be classified and assessed under CTH 8522100 as Pick Up cartridges and duty charged accordingly.
- d) Consequential differential Customs duty worked out in Annexures C-1 & C-2 collectively amounting to Rs. 88,70,945/- should not be demanded and recovered from them under proviso to Section 28 (I) of the Customs Act, 1962.
- e) interest at the appropriate rate should not be recovered from them on duty short levied/short paid in terms of Section 28AB of the Customs Act, 1962;
- f) imported goods cleared through the said port i.e. JNPT, Nhava Sheva, Mumbai should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962; and
- g) penalty under Section 112/114A of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid.

25.8 Sh. C.P. Gupta and M/s. Royal International were jointly and severally called upon to show cause, in respect of the goods imported by them through JNPT, Nhava Sheva, Mumbai as to why:

- a) values declared for electronic components imported and cleared through JNPT, Nhava Sheva, Mumbai under Bills of Entry detailed in Annexures C-1 & C-2 should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988.
- b) Revised assessable values worked out in Annexure C-1 & C-2 should not be considered for the purpose assessment under Rule 4/Rule 8 (as applicable) read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;
- c) Pick up Units/ Parts of VCD/ CD Lense/CD Lense unit should not be classified and assessed under CTH 8522100 as Pick Up cartridges and duty charged accordingly.
- d) Consequential differential Customs duty worked out in Annexures C-1 & C-2 collectively amounting to Rs. 57,53,213/- should not be demanded and recovered from them under proviso to Section 28 (I) of the Customs Act, 1962.
- e) interest at the appropriate rate should not be recovered from them on duty short levied/short paid in terms of Section 28AB of the Customs Act, 1962;
- f) imported goods cleared through the said port i.e. JNPT, Nhava Sheva, Mumbai should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962; and
- g) penalty under Section 112/114A of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid.

25.9 Sh. C.P. Gupta and M/s. Shiva International were jointly and severally called upon to show cause, in respect of the goods imported by them through JNPT, Nhava Sheva, Mumbai as to why:

- a) values declared for electronic components imported and cleared through JNPT, Nhava Sheva, Mumbai under Bills of Entry detailed in Annexures C-1 & C-2 should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988.
- b) Revised assessable values worked out in Annexure C-1 & C-2 should not be considered for the purpose assessment under Rule 4/Rule 8 (as applicable) read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;
- c) Pick up Units/ Parts of VCD/ CD Lense/CD Lense unit should not be classified and assessed under CTH 8522100 as Pick Up cartridges and duty charged accordingly.
- d) Consequential differential Customs duty worked out in Annexures C-1 & C-2 collectively amounting to Rs. 97,48,956/- should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962.
- e) interest at the appropriate rate should not be recovered from them on duty short paid in terms of Section 28AB of the Customs Act, 1962;
- f) imported goods cleared through the said port i.e. JNPT, Nhava Sheva, Mumbai should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962: and
- g) penalty under Section 112 / 114A of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid.

25.10 Sh. C.P. Gupta and M/s. Shivam Overseas Inc. were jointly and severally called upon to show cause, in respect of the goods imported by them through JNPT, Nhava Sheva, Mumbai as to why:

- a) values declared for electronic components imported and cleared through JNPT, Nhava Sheva, Mumbai under Bills of Entry detailed in Annexures C-1 & C-2 should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988.
- b) Revised assessable values worked out in Annexure C-1 & C-2 should not be considered for the purpose assessment under Rule 4/Rule 8 (as applicable) read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;

- c) Pick up Units/ Parts of VCD/ CD Lense/CD Lense unit should not be classified and assessed under CTH 8522100 as Pick Up cartridges and duty charged accordingly.
- d) Consequential differential Customs duty worked out in Annexures C-1 & C-2 collectively amounting to Rs. 54,39,025/- should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962.
- e) interest at the appropriate rate should not be recovered from them on duty short levied/short paid in terms of Section 28AB of the Customs Act, 1962;
- f) imported goods cleared through the said port i.e. JNPT, Nhava Sheva, Mumbai should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962; and
- g) penalty under Section 112/114A of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid.

25.11 Sh. C.P. Gupta and M/s. Spectrum Overseas were jointly and severally called upon to show cause, in respect of the goods imported by them through JNPT, Nhava Sheva, Mumbai as to why:

- a) values declared for electronic components imported and cleared through JNPT, Nhava Sheva, Mumbai under Bills of Entry detailed in Annexures C-1, C-2.& C-3 should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988.
- b) Revised assessable values worked out in Annexure C-1, C-2 & C-3 should not be considered for the purpose assessment under Rule 4/Rule 8 (as applicable) read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;
- c) Pick up Units/ Parts of VCD/ CD Lense/CD Lense unit should not be classified and assessed under CTH 8522100 as Pick Up cartridges and duty charged accordingly.
- d) Consequential differential Customs duty worked out in Annexures C-1, C-2 & C-3 collectively amounting to Rs. 1,45,89,839/- should not be demanded and recovered from proviso to Section 28 (1) of the Customs Act, 1962.
- e) interest at the appropriate rate should not be recovered from them on duty short paid in terms of Section 28AB of the Customs Act, 1962;
- f) imported goods cleared through the said port i.e. JNPT, Nhava Sheva, Mumbai should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962; and
- g) penalty under Section 112/114A of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid.

25.12 Sh. C.P. Gupta and M/s. Supreme Enterprises were jointly and severally called upon to show cause, in respect of the goods imported by them through JNPT, Nhava Sheva, Mumbai as to why:

- a) values declared for electronic components imported and cleared through JNPT, Nhava Sheva, Mumbai under Bills of Entry detailed in Annexures C-1 & C-2 should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988.
- b) Revised assessable values worked out in Annexure C-1 & C-2 should not be considered for the purpose assessment under Rule 4/Rule 8 (as applicable) read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;
- c) Pick up Units/ Parts of VCD/ CD Lense/CD Lense unit should not be classified and assessed under CTH 8522100 as Pick Up cartridges and duty charged accordingly.
- d) Consequential differential Customs duty worked out in Annexures C-1 -& C-2 collectively amounting to Rs. 95,95,472/- should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962.
- e) interest at the appropriate rate should not be recovered from them on duty short levied/short paid in terms of Section 28AB of the Customs Act, 1962;
- f) imported goods cleared through the said port i.e. JNPT, Nhava Sheva, Mumbai should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962; and
- g) penalty under Section 112 /114A of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid.

25.13 Sh. C.P. Gupta and M/s. Surya Enterprises were jointly and severally called upon to show cause, in respect of the goods imported by them through' JNPT, Nhava Sheva, Mumbai as to why:

- a) values declared for electronic components imported and cleared through JNPT, Nhava Sheva, Mumbai under Bills of Entry detailed in Annexures C-1 & C-2 should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988.
- b) Revised assessable values worked out in Annexure C-1 & C-2 should not be considered for the purpose assessment under Rule 4/Rule 8 (as applicable) read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;

- c) Pick up Units/ Parts of VCD/ CD Lense/CD Lense unit should not be classified and assessed Icier CTH 8522100 as Pick Up cartridges and duty charged accordingly.
- d) Consequential differential Customs duty worked out in Annexures C-1 & C-2 collectively counting to Rs. 79,92,930/- should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962.
- e) interest at the appropriate rate should not be recovered from them on duty short levied/short paid in terms of Section 28AB of the Customs Act, 1962;
- f) imported goods cleared through the said port i.e. JNPT, Nhava Sheva, Mumbai should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962; and
- g) penalty under Section 112/114A of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid.

25.14 Sh. C.P. Gupta and M/s. Mars International were jointly and severally called upon to show cause, in respect of the goods imported by them through JNPT, Nhava Sheva, Mumbai as to why:

- a) values declared for electronic components imported and cleared through JNPT, Nhava Sheva, Mumbai under Bills of Entry detailed in Annexure C-3 should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988.
- b) Revised assessable values worked out in Annexure C-3 should not be considered for the purpose assessment under Rule 8 read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;
- c) Consequential differential Customs duty worked out in Annexures C-3 collectively amounting to Rs. 25,31,575/- should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962.
- d) interest at the appropriate rate should not be recovered from them on duty short levied/short paid in terms of Section 28AB of the Customs Act, 1962;
- e) imported goods cleared through the said port i.e. JNPT, Nhava Sheva, Mumbai should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962; and
- f) penalty under Section 112/114A of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid.

25.15 Sh. Surender Kumar alias Sh. Surender Sharma, proprietor of M/s Shivam Overseas and M/s Ganpati Sales Corporation were called upon to show cause, in

respect of the goods imported through JNPT, Nhava Sheva, Mumbai as to why penalty should not be imposed upon him under Section 112(a) of the Customs Act, 1962 on the grounds discussed above.

25.16. M/s. Sagar Electronics through its proprietor Sh. C.P. Gupta were called upon to show cause, in respect of the goods imported by them through Air Cargo Complex, Sahar, Mumbai as to why:

- a) values declared for electronic components imported and cleared through Air Cargo Complex, Sahar, Mumbai under Bills of Entry detailed in Annexures C-1, C-2, C-3 & C-4 should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988.
- b) Revised assessable values worked out in Annexure C-1, C-2, C-3 & C-4 should not be considered for the purpose assessment under Rule 41 Rule 8 (as applicable) read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;
- c) Consequential differential Customs duty worked out in Annexures C-1, C-2, C-3 & C-4 collectively amounting to Rs. 19,83,331/- should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962.
- d) interest at the appropriate rate should not be recovered from them on duty short levied / short paid in terms of Section 28AB of the Customs Act, 1962;
- e) imported goods cleared through the Air Cargo Complex, Sahar, Mumbai should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962;
- f) penalty under Section 112/114A of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid.

25.17 Sh. C.P. Gupta and M/s. Galaxy Enterprises were jointly and severally called upon to show cause, in respect of the goods imported by them through Air Cargo Complex, Sahar, Mumbai as to why:

- a) values declared for electronic components imported and cleared through Air Cargo Complex, Sahar, Mumbai under Bills of Entry detailed in Annexure C-1 should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988.
- b) Revised assessable values worked out in Annexure C-1 should not be considered for the purpose assessment under Rule 4 read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;

- c) Consequential differential Customs duty worked out in Annexure C-1 collectively amounting to Rs.85,24,862/- should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962.
- d) interest at the appropriate rate should not be recovered from them on duty short levied/short paid in terms of Section 28AB of the Customs Act, 1962;
- e) imported goods cleared through the Air Cargo Complex, Sahar, Mumbai should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962;
- f) penalty under Section 112/114A of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid.

25.18 Sh. C.P. Gupta and M/s. Gemini Enterprises were jointly and severally called upon to show cause, in respect of the goods imported by them through Air Cargo Complex, Sahar, Mumbai as to why:

- a) values declared for electronic components imported and cleared through Air Cargo Complex, Sahar, Mumbai under Bills of Entry detailed in Annexures C-1 & C-3 should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988.
- b) Revised assessable values worked out in Annexure C-1 & C-3 should not be considered for the purpose assessment under Rule 4/Rule 8 (as applicable) read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;
- c) Consequential differential Customs duty worked out in Annexures C-1 & C-3 collectively amounting to Rs. 51,90,833/- should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962.
- d) interest at the appropriate rate should not be recovered from them on duty short levied/short paid in terms of Section 28AB of the Customs Act, 1962;
- e) imported goods cleared through the Air Cargo Complex, Sahar, Mumbai should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962;
- f) penalty under Section 112/114A of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid

25.19 Sh. C.P. Gupta and M/s Shiva Enterprises were jointly and severally called upon to show cause, in respect of the goods imported by them through Air Cargo Complex, Sahar, Mumbai as to why:

- a) values declared for electronic components imported and cleared through Air Cargo Complex, Sahar, Mumbai under Bills of Entry detailed in Annexure C-1

- should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rules 1988.
- b) Revised assessable values worked out in Annexure C-1 should not be considered for the purpose assessment under Rule 4 read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;
 - c) Consequential differential Customs duty worked out in Annexure C-1 collectively amounting to Rs.10,04,010/- should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962.
 - d) interest at the appropriate rate should not be recovered from them on duty short levied/short paid in terms of Section 28AB of the Customs Act, 1962;
 - e) imported goods cleared through the Air Cargo Complex, Sahar, Mumbai should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962; .
 - f) penalty under Section 112/114A of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid.

25.20 Sh. C.P. Gupta and M/s. Devika Enterprises were jointly and severally called upon to show cause, in respect of the goods imported by them through Air Cargo Complex, Sahar, Mumbai as to why:

- a) values declared for electronic components imported and cleared through Air Cargo Complex, Sahar, Mumbai under Bills of Entry detailed in Annexure C-I should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988.
- b) Revised assessable values worked out in Annexure C-1 should not be considered for the purpose assessment under Rule 4 read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;
- c) Consequential differential Customs duty worked out in Annexure C-1 collectively amounting to Rs.16,42,696/- should not be demanded and recovered from them under proviso to Section 28 (I) of the Customs Act, 1962.
- d) interest at the appropriate rate should not be recovered from them on duty short levied/short paid in terms of Section 28AB of the Customs Act, 1962;
- e) imported goods cleared through the Air Cargo Complex, Sahar, Mumbai should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962;
- f) penalty under Section 112/114A of the Customs Act, 1962 should not be imposed up on them for their acts of omission and commission as aforesaid.

25.21 Sh. C.P. Gupta and M/s. Mars International were jointly and severally called upon to show cause, in respect of the goods imported by them through Air Cargo Complex, Sahar, Mumbai as to why:

- a) values declared for electronic components imported and cleared through Air Cargo Complex, Sahar, Mumbai under Bills of Entry detailed in Annexures C-1 & C-3 should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988.
- b) Revised assessable values worked out in Annexure C-1 & C-3 should not be considered for the purpose assessment under Rules 4/Rule 8 (as applicable) read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;
- c) Pick up Units Parts of VCD/ CD Lense/CD Lense unit should not be classified and assessed under CTH 8522100 as Pick Up cartridges and duty charged accordingly.
- d) Consequential differential Customs duty worked out in Annexures C-I & C-3 collectively amounting to Rs. 61,58,053/- should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962.
- e) interest at the appropriate rate should not be recovered from them on duty short levied/short paid in terms of Section 28AB of the Customs Act, 1962;
- f) imported goods cleared through the Air Cargo Complex, Sahar, Mumbai should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962;
- g) penalty under Section 112/114A of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid.

25.22 Sh. Surender Kumar alias Sh. Surender Sharma, proprietor of M/s. Shivam Overseas and M/s. Ganpati Sales Corporation was called upon to show cause, in respect of the goods imported through Air Cargo Complex, Sahar, Mumbai as to why penalty should not be imposed upon him under Section 112 (a) of the Customs Act, 1962 on the grounds discussed above.

25.23 Sh. C.P. Gupta & M/s. Gemini Enterprises were jointly and severally called upon to show cause, in respect of the goods imported by them through Mumbai Sea Port as to why:

- a) values declared for electronic components imported and cleared through Mumbai Sea Port, New Customs House, Ballard Estate, Mumbai under Bills of Entry detailed in Annexure named as C-I should not be rejected in terms of Rule

10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988.

- b) Revised assessable values worked out in Annexure C-1 should not be considered for the purpose assessment under Rule 4 read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;
- c) Consequential differential Customs duty worked out in Annexure C-I collectively amounting to Rs. 19,75,866/- should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962.
- d) interest at the appropriate rate should not be recovered from them on duty short levied/short paid in terms of Section 28AB of the Customs Act, 1962;
- e) imported goods cleared through the said port i.e. Mumbai Sea, New Customs House, Ballard Estate, Mumbai should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962.
- f) penalty under Section 112/114A of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid.

25.24 Sh. C.P. Gupta & M/s. Spectrum Overseas were jointly and severally called upon to show cause, in respect of the goods imported by them through Mumbai Sea Port as to why:

- a) values declared for electronic components imported and cleared through Mumbai Sea Port, New Customs House, Ballard Estate, Mumbai under Bills of Entry detailed in Annexures C-1 & C-3 should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988.
- b) Revised assessable values worked out in Annexure C-1 & C-3 should not be considered for the purpose assessment under Rules 4/Rule 8 (as applicable) read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;
- c) Consequential differential Customs duty worked out in Annexures C-1 & C-3 collectively amounting to Rs.27,93,388/- should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962.
- d) interest at the appropriate rate should not be recovered from them on duty short levied/short paid in terms of Section 28AB of the Customs Act, 1962;
- e) imported goods cleared through the said port i.e. Mumbai Sea, New Customs House, Ballard Estate, Mumbai should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962.
- f) penalty under Section 112/114A of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid.

25.25 Sh. C.P. Gupta & M/s. Mars International were jointly and severally called upon to show cause, in respect of the goods imported by them through Mumbai Sea Port as to why:

- a) values declared for electronic components imported and cleared through Mumbai Sea Port, New Customs House, Ballard Estate, Mumbai under Bills of Entry detailed in Annexure C-1 should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988.
- b) Revised assessable values worked out in Annexure C-1 should not be considered for the purpose assessment under Rule 4 read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;
- c) Consequential differential Customs duty worked out in Annexure C-1 collectively amounting to Rs.10,58,911/- should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962
- d) interest at the appropriate rate should not be recovered from them on duty short levied/short paid in terms of Section 28AB of the Customs Act, 1962;
- e) imported goods cleared through the said port i.e. Mumbai Sea, New Customs House, Ballard Estate, Mumbai should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962.
- f) penalty under Section 112/114 A of the Customs Act, 1962 should not be imposed for their acts of omission and commission as aforesaid.

25.26 Sh. C.P. Gupta & M/s. Shiva International were jointly and severally called upon to show cause, in respect of the goods imported by them through Mumbai Sea Port as to why:

- a) values declared for electronic components imported and cleared through Mumbai Sea Port, New Customs House, Ballard Estate, Mumbai under Bills of Entry detailed in Annexure C-I should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988.
- b) Revised assessable values worked out in Annexure C-1 should not be considered for the purpose assessment under Rule 4 read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;
- c) Pick up Units/ Parts of VCD/ CD Lense/CD Lense unit should not be classified and assessed under CTH 8522100 as Pick Up cartridges and duty charged accordingly.

- d) Consequential differential Customs duty worked out in Annexure C-I collectively amounting to Rs.20,33,509/- should not be demanded and recovered from them under proviso to Section 28 (I) of the Customs Act, 1962.
- e) interest at the appropriate rate should not be recovered from them on duty short levied/short paid in terms of Section 28AB of the Customs Act, 1962;
- f) imported goods cleared through the said port i.e. Mumbai Sea, New Customs House, Ballard Estate, Mumbai should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962.
- g) penalty under Section 112/114A of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid.

25.27 Sh. C.P. Gupta & M/s. Galaxy Enterprises were jointly and severally called upon to show cause, in respect of the goods imported by them through Mumbai Sea Port as to why:

- a) values declared for electronic components imported and cleared through Mumbai Sea Port, New Customs House, Ballard Estate, Mumbai under Bills of Entry detailed in Annexure C-1 should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988.
- b) Revised assessable values worked out in Annexure C-1 should not be considered for the purpose assessment under Rule 4 read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;
- c) Consequential differential Customs duty worked out in Annexure C-I collectively amounting to Rs.9,85,592/- should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962.
- d) interest at the appropriate rate should not be recovered from them on duty short levied/short paid in terms of Section 28AB of the Customs Act, 1962;
- e) imported goods cleared through the said port i.e. Mumbai Sea, New Customs House, Ballard Estate, Mumbai should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962.
- f) penalty under Section 112/114A of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid.

25.28 Sh. C.P. Gupta & M/s. Konark International were jointly and severally called upon to show cause, in respect of the goods imported by them through Mumbai Sea Port as to why:

- a) values declared for electronic components imported and cleared through Mumbai Sea Port, New Customs House, Ballard Estate, Mumbai under Bills of Entry

- detailed in Annexure C-1 should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988.
- b) Revised assessable values worked out in Annexure C-I should not be considered for the purpose assessment under Rule 4 read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;
 - c) Consequential differential Customs duty worked out in Annexure C-1 collectively amounting to Rs.10,15,320/- should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962
 - d) interest at the appropriate rate should not be recovered from them on duty short levied/short paid in terms of Section 28AB of the Customs Act, 1962;
 - e) imported goods cleared through the said port i.e. Mumbai Sea, New Customs House, Ballard Estate. Mumbai should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962.
 - f) penalty under Section 112/114A of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid.

25.29 Sh. C.P. Gupta & M/s. Allied Enterprises were hereby jointly and severally called upon to show cause, in respect of the goods imported by them through Mumbai Sea Port as to why:

- a) values declared for electronic components imported and cleared through Mumbai Sea Port, New Customs House, Ballard Estate, Mumbai under Bills of Entry detailed in Annexure C-1 should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988.
- b) Revised assessable values worked out in Annexure C-1 should not be considered for the purpose assessment under Rule 4 read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;
- c) Consequential differential Customs duty worked out in Annexure C-1 collectively amounting to Rs.7,09,960/- should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962
- d) interest at the appropriate rate should not be recovered from them on duty short levied/short paid in terms of Section 28AB of the Customs Act, 1962;
- e) imported goods cleared through the said port i.e. Mumbai Sea, New Customs House, Ballard Estate, Mumbai should not be held liable to confiscation under Section 111 (m) of the Customs Act, 1962.
- f) penalty under Section 112 / 114A of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid.

25.30 Sh. C.P. Gupta & M/s. Shiva Enterprises were jointly and severally called upon to show cause, in respect of the goods imported by them through Mumbai Sea Port as to why:

- a) values declared for electronic components imported and cleared through Mumbai Sea Port, New Customs House, Ballard Estate, Mumbai under Bills of Entry detailed in Annexure C-3 should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988.
- b) Revised assessable values worked out in Annexure C-3 should not be considered for the purpose assessment under Rule 8 read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;
- c) Consequential differential Customs duty worked out in Annexure C-3 collectively amounting to Rs.8,77,294/- should not be demanded and recovered from them under proviso to Section 28(1) of the Customs Act, 1962
- d) interest at the appropriate rate should not be recovered from them on duty short levied / short paid in terms of Section 28AB of the Customs Act, 1962;
- e) imported goods cleared through the said port i.e. Mumbai Sea, New Customs House, Ballard Estate, Mumbai should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962.
- f) penalty under Section 112/114A of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid.

25.31 Sh. C.P. Gupta & M/s. Magnum Overseas were jointly and severally called upon to show cause in respect of the goods imported by them through Mumbai Sea Port as to why:

- a) values declared for electronic components imported and cleared through Mumbai Sea Port, New Customs House, Ballard Estate, Mumbai under Bills of Entry detailed in Annexure C-3 should not be rejected in terms of Rule 10(A)(1) of Customs Valuation (Determination of Price of Imported Goods) Rule 1988.
- b) Revised assessable values worked out in Annexure C-3 should not be considered for the purpose assessment under Rule 8 read with Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rule 1988 read with Section 14 of the Customs Act, 1962;
- c) Consequential differential Customs duty worked out in Annexure C-3 collectively amounting to Rs.2,19,000/- should not be demanded and recovered from them under proviso to Section 28 (1) of the Customs Act, 1962

- d) interest at the appropriate rate should not be recovered from them on duty short levied/short paid in terms of Section 28AB of the Customs Act, 1962;
- e) imported goods cleared through the said port i.e. Mumbai Sea, New Customs House, Ballard Estate, Mumbai should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962.
- f) penalty under Section 112/114A of the Customs Act, 1962 should not be imposed upon them for their acts of omission and commission as aforesaid.

25.32 Sh. Surender Kumar alias Sh. Surender Sharma, proprietor of M/s. Shivam Overseas and M/s. Ganpati Sales Corporation was called upon to show cause in respect of the goods imported through the said port as to why penalty should not be imposed upon him under Section 112(a) of the Customs Act, 1962 on the grounds discussed above.

26. First Round of adjudication of SCN-1 : The Adjudicating Authority adjudicated SCN-1 vide O-in-O No. CAO No. 23/2008/CAC/CC(I)/SP/Gr.VB dated 04.02.2008 and Corrigendum dated 07.03.2008. The operative part of the order is reproduced as below :

“45. Hence, I pass the following order:

(i) I order for confiscation of the goods valued at Rs. 64,02,751/- seized at Shop-cum-office of Sh. C.P. Gupta, Proprietor, M/s. Sagar Electronics at 599, Lajpatrai Market, Delhi under Section 111(d) of the Customs Act, 1962. I impose a redemption fine of Rs. 10,00,000/- (Rs. Ten lakhs only) in lieu of confiscation for the goods seized at the Shop-cum-office at 599, Lajpatrai Market, Delhi under Section 125 of the Customs Act, 1962.

(ii) I confirm the demand of duty amounting Rs. 11,86,934/- (Rs. Eleven lakhs eighty six thousand nine hundred and thirty four only) under Section 28(2) of the Customs Act, 1962 and order the recovery thereof along with the interest payable under Section 28AB of Customs Act, 1962 read with Section 125 ibid from Sh. C.P. Gupta, Proprietor, M/s. Sagar Electronics.

(iii) I order for confiscation of the goods under Section 111(m) of the Customs Act, 1962 imported vide Bill of Entry No. 516093 dated 29.11.2004 of revised assessable value Rs. 12,47,913/- imported in the name of M/s Gemini Enterprises. I impose redemption fine of Rs. 2,00,000/- (Rs. Two lakhs only) in lieu of confiscation for the goods imported vide Bill of Entry No. 516093 dated 29.11.2004 under Section 125 of the Customs Act, 1962.

(iv) I order for confiscation of the goods under Section 111(m) of the Customs Act, 1962 imported vide Bill of Entry No. 516908 dated 30.11.2004 of revised assessable value Rs. 6,17,464/- imported in the name of M/s. Spectrum Overseas. I impose a redemption fine of Rs. 1,00,000/- (Rs. One lakh only) in lieu of confiscation for the goods imported vide Bill of Entry No. 516908 dated 30.11.2004 under Section 125 of the Customs Act, 1962.

(v) I confirm the demand of differential duty amounting Rs. 2,30,862/- (Rs. Two lakhs thirty thousand eight hundred and sixty two only) under Section 28(2) Customs Act, 1962 in respect of goods imported under Bill of Entry No. 516093 dated 29.11.2004 and order recovery thereof along with the interest payable thereon under Section 28AB *ibid* from Sh. C.P. Gupta and M/s Gemini Enterprises.

(vi) I confirm the demand of differential duty amounting Rs. 84,218/- Eighty (Rs. four thousand two hundred and eighteen only) under Section 28(2) of Customs Act, 1962 in the respect of goods imported under Bill of Entry No. 516098 dated 30.11.2004 and order recovery thereof along with the interest payable thereon under Section 28AB *ibid* from Sh. C.P. Gupta and M/s. Spectrum Overseas.

(vii) I impose a penalty of Rs. 11,86,934 + Rs. 2,30,862 Rs. 84,218 Rs. 15,02,014/- (Rs. Fifteen lakhs two thousand and fourteen only) on Sh. C.P. Gupta under Section 114A of the Customs Act, 1962.

(viii) I impose a penalty of Rs. 1,00,000/- (Rs. One lakh only) on M/s Gemini Enterprises and Rs. 35,000/- (Rs. Thirty five thousand only) on M/s Spectrum Overseas under Section 112(a) of the Customs Act, 1962.”

27. First Round of adjudication of SCN-2 : The Adjudicating Authority adjudicated SCN-2 vide O-in-O No. CAO No. 32/2008/CAC/CC(I)/SP/Gr.VB dated 29.02.2008. The operative part of the order is reproduced as below :

“1. (i) I order for confiscation of the goods under Section 111(d) of the Customs Act, 1962 imported vide Invoice No. SG/327/11/2004 dt. 11.11.04 (B/L No. FPSSE0411124 dt. 17.11.04), JNE/9546/11/2004 dt. 16.11.04 (B/L No. OOLU 28511782 dt. 18.11.04) and JNE/9547/11/2004 dt. 22.11.04 (B/L No. OOLU 28541060 dt. 24.11.04), of value Rs 36,13,018/- in the name of M/s. Spectrum Overseas. However, I give an option to Sh. C.P. Gupta to redeem the goods imported vide JNE/9546/11/2004 dt. 16.11.04 (B/L No. OOLU 28511782 dt. 18.11.04) and JNE/9547/11/2004 dt. 22.11.04 (B/L No. OOLU 28541060 dt. 24.11.04) of value Rs. 29,39,504 (Rs. 25,64,592 + Rs. 3,74,912) on payment of fine of Rs. 9,00,000/- (Rs. Nine lakhs only) in lieu of confiscation under Section 125 of the Customs Act, 1962.

(ii) I order to recover the duty, payable on the said goods amounting to Rs. 14,58,781/- (Rs. Fourteen lakhs fifty eight thousand seven hundred and eighty one only) imported in the name of M/s. Spectrum Overseas. I appropriate Rs. 12,95,325/- (Rs. Twelve lakhs ninety five thousand three hundred and twenty five only) received as the sale proceeds of the consignment imported under Inv. No. SG/327/11/2004 and order the balance of Rs. 1,63,456/- (Rs. One lakh sixty three thousand four hundred and fifty six only) to be recovered from Sh. C.P. Gupta.

2. (i) I order for confiscation of the goods under Section 111(d) of the Customs Act, 1962 imported vide Invoice No. JNE/9560/12/2004 dt. 26.11.04 (B/L No. GETO 40646 BOM dt. 29.11.04), SO 858 dt. 29.10.04 (B/L No. 180114011866 dt. 06.11.04) and confiscation of the goods under Section 111(d) & 111(m) of Customs Act, 1962 imported vide B/E No. 762562 dt. 13.12.04 (B/L No. HLCU

SHA 041186233 dt. 11.09.04) of total value Rs. 1,38,46,877/- in the name of M/s Shiva Enterprises. However, I give an option to redeem the goods imported under the invoice No. JNE/9560/12/2004 dt. 26.11.04 (B/L No. GETO 40646 BOM dt. 29.11.04) and SO 858 dt. 29.10.04 (B/L No. 180114011866 dt. 06.11.04) of value Rs. 1,29,68,176 [Rs. 36,68,175 + 93,00,001] on payment of redemption fine of Rs. 39,00,000/- (Rs. Thirty nine lakhs only) in lieu of confiscation under Section 125 of the Customs Act, 1962.

(ii) I order to recover the duty payable on the said goods amounting to Rs. 25,13,516/- (Rs. Twenty five lakhs thirteen thousand five hundred and sixteen only) imported in the name of M/s. Shiva Enterprises. I appropriate Rs. 11,12,121/- (Rs. Eleven lakhs twelve thousand one hundred and twenty one only) received as sale proceeds of the consignment imported vide B/E No. 762562 dated 13.12.2004 and order the balance of Rs. 14,01,395/- (Rs. Fourteen lakhs one thousand three hundred and ninety five only) to be recovered from Sh. C.P. Gupta.

3. I impose a penalty of Rs. 10,00,000/- (Rs. Ten lakhs only) on Sh. C.P. Gupta under Section 112 (a) of the Customs Act, 1962 for the improper importation of the goods in name of fictitious firms M/s. Spectrum Overseas and M/s. Shiva Enterprises.

4. I impose penalty of Rs. 1,00,000/- on Sh. Surender Kumar under Section 112(a) of Customs Act, 1962.

5. I impose penalty of Rs. 4,00,000/- (Rs. Four lakhs only) on Smt. Lata Kumar under Section 112(a) of Customs Act, 1962.”

28. First Round of adjudication of SCN-3 : The Adjudicating Authority adjudicated SCN-3 vide O-in-O No. CAO No. 104/2008/CAC/CC(I)/SP/Gr.VB dated 28.05.2008.

The operative part of the order is mentioned in the tables below :

Table No. 26 First round adjudication of SCN-3 in respect of goods imported at JNPT, Nhava Sheva

Sr. No.	Goods imported in the name of	Subject goods	rejected the declared value of the goods of column 3	Re-determined value of the goods of column 3	ordered for classification and assessment of	Confiscation of the goods of column 3	Redemption fine imposed in lieu of confiscation under Section 125 of the Act	Confirmation of demand of differential duty	Penalty imposed	
									under Section 114A of the Act	under Section 112(a) and (b) of the Act
1	2	3	4	5	6	7	8	9	10	11

1	M/s. Allied Enterprises	Annexures C-1 & C-2 of SCN -3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 4,68,42,546/- (Rs. Four Crores Sixty Eight Lakhs Forty Two Thousand Five Hundred Forty Six Only)	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	Rs. 70,00,000/- (Rs. Thirty Lakhs Only)	Rs. 1,59,33,699/- (Rs. One Crore Fifty Nine Lakhs Thirty Three Thousand Six Hundred and Ninety Nine Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act	Rs. 1,59,33,699/- (Rs. One Crore Fifty Nine Lakhs Thirty Three Thousand Six Hundred and Ninety Nine Only) on Sh. C.P. Gupta	Rs. 23,00,000/- (Rs. Twenty Three Lakhs Only) on M/s Allied Enterprises
2	M/s. Devika Enterprises	Annexure C-1 of SCN -3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 2,05,47,572/- (Rs. Two Crores Five Lakhs Forty Seven Thousand Five Hundred and Seventy Two Only)	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	Rs. 30,00,000/- (Rs. Thirty Lakhs Only)	Rs. 67,59,843/- (Rs. Sixty Seven Lakhs Fifty Nine Thousand Eight Hundred and Forty Three Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act	Rs. 67,59,843/- (Rs. Sixty Seven Lakhs Fifty Nine Thousand Eight Hundred and Forty Three Only) on Sh. C.P. Gupta	Rs. 10,00,000/- (Rs. Ten Lakhs Only) on M/s Devika Enterprises
3	M/s. Galaxy Enterprises	Annexure C-1 & C-2 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 3,69,89,516/- (Rs. Three Crores Sixty Nine Lakhs Eighty Nine Thousand Five Hundred Sixteen Only)	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	Rs. 55,00,000/- (Rs. Fifty Five Lakhs Only)	Rs. 1,25.63,492/- (Rs. One Crore Twenty-Five Lakhs Sixty-Three Thousand Four Hundred and Ninety-Two Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act	Rs. 1,25.63,492/- (Rs. One Crore Twenty-Five Lakhs Sixty-Three Thousand Four Hundred and Ninety-Two Only) on Sh. C.P. Gupta	Rs. 18,00,000/- (Rs. Eighteen Lakhs Only) on M/s Galaxy Enterprises

4	M/s. Gemini Enterprises	Annexure C-1 & C-2 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 2,23,60,218/- (Rs. Two Crores Twenty Three Lakhs Sixty Thousand Two Hundred Eighteen Only)	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	Rs. 33,00,000/- (Rs. Thirty Three Lakhs Only)	Rs. 59,15,718/- (Rs. Fifty Nine Lakhs Fifteen Thousand Seven Hundred Eighteen Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act	Rs. 59,15,718/- (Rs. Fifty Nine Lakhs Fifteen Thousand Seven Hundred Eighteen Only) on Sh. C.P. Gupta	Rs. 8.00,000/- (Rs. Eight Lakhs Only) on M/s Gemini Enterprises
5	M/s. Konark International	Annexure C-1 & C-2 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 1,96,67,910/- (Rs. One Crore Ninety Six Lakhs Sixty Seven Thousand Nine Hundred Ten Only)	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	Rs. 50,00,000/- (Rs. Fifty Lakhs Only)	Rs. 72,26,081/- (Rs. Seventy Two Lakhs Twenty Six Thousand and Eighty One Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act	Rs. 72,26,081/- (Rs. Seventy Two Lakhs Twenty Six Thousand and Eighty One Only) on Sh. C.P. Gupta	Rs. 10,00,000/- (Rs. Ten Lakhs Only) on M/s Konark International
6	M/s. Leo International	Annexure C-1 & C-2 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 3,34,24,816/- (Rs. Three Crores Thirty Four Lakhs Twenty Four Thousand Eight Hundred Sixteen Only)	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	Rs. 50,00,000/- (Rs. Fifty Lakhs Only)	Rs. 92,99,935/- (Rs. Ninety Two Lakhs Ninety Nine Thousand Nine Hundred Thirty Five Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act	Rs. 92,99,935/- (Rs. Ninety Two Lakhs Ninety Nine Thousand Nine Hundred Thirty Five Only) on Sh. C.P. Gupta	Rs. 14,00,000/- (Rs. Fourteen Lakhs Only) on M/s Leo International

7	M/s. Prominent Enterprises	Annexure C-1 & C-2 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 2,95,99,700/- (Rs. Two Crores Ninety Five Lakhs Ninety Nine Thousand Seven Hundred Only)	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	Rs. 44,00,000/- (Rs. Forty Four Lakhs Only)	Rs. 88,70,945/- (Rs. Eighty Eight Lakhs Seventy Thousand Nine Hundred Forty Five Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act	Rs. 88,70,945/- (Rs. Eighty Eight Lakhs Seventy Thousand Nine Hundred Forty Five Only) on Sh. C.P. Gupta	Rs. 13,00,000/- (Rs. Thirteen Lakhs Only) on M/s Prominent Enterprises
8	M/s. Royal International	Annexure C-1 & C-2 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 2,45,04,379/- (Rs. Two Crores Forty Five Lakhs Four Thousand Three Hundred Seventy Nine Only)	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	Rs. 36,00,000/- (Rs. Thirty Six Lakhs Only)	Rs. 57,53,213/- (Rs. Fifty Seven Lakhs Fifty Three Thousand Two Hundred Thirteen Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act	Rs. 57,53,213/- (Rs. Fifty Seven Lakhs Fifty Three Thousand Two Hundred Thirteen Only) on Sh. C.P. Gupta	Rs. 8,00,000/- (Rs. Eight Lakhs Only) on M/s Royal International
9	M/s. Shiva International	Annexure C-1 & C-2 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 2,42,18,485/- (Rs. Two Crores Forty Two Lakhs Eighteen Thousand Four Hundred Eighty Five Only)	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	Rs. 36,00,000/- (Rs. Thirty Six Lakhs Only)	Rs. 97,48,956/- (Rs. Ninety Seven Lakhs Forty Eight Thousand Nine Hundred Fifty Six Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act	Rs. 97,48,956/- (Rs. Ninety Seven Lakhs Forty Eight Thousand Nine Hundred Fifty Six Only) on Sh. C.P. Gupta	Rs. 14,00,000/- (Rs. Fourteen Lakhs Only) on M/s Shiva International

10	M/s. Shivam Overseas Inc.	Annexure C-1 & C-2 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 1,50,97,645/- (Rs. One Crore Fifty Lakhs Ninety Seven Thousand Six Hundred Forty Five Only)	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	Rs. 22,00,000/- (Rs. Twenty Two Lakhs Only)	Rs. 54,39,025/- (Rs. Fifty Four Lakhs Thirty Nine Thousand Two Hundred Fifty Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act	Rs. 54,39,025/- (Rs. Fifty Four Lakhs Thirty Nine Thousand Two Hundred Fifty Only) on Sh. C.P. Gupta	Rs. 8,00,000/- (Rs. Eight Lakhs Only) on M/s Shivam Overseas Inc.
11	M/s. Spectrum Overseas	Annexure C-1, C-2 & C-3 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 5,28,76,773/- (Rs. Five Crores Twenty Eight Lakhs Seventy Six Thousand Seven Hundred Seventy Three Only)	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	Rs. 79,00,000/- (Rs. Seventy Nine Lakhs)	Rs. 1,45,89,839/- (Rs. One Crore Forty Five Lakhs Eighty Nine Thousand Eight Hundred Thirty Nine Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act	Rs. 1,45,89,839/- (Rs. One Crore Forty Five Lakhs Eighty Nine Thousand Eight Hundred Thirty Nine Only) on Sh. C.P. Gupta	Rs. 22,00,000/- (Rs. Twenty Two Lakhs) on M/s Spectrum Overseas
12	M/s. Supreme Enterprises	Annexure C-1 & C-2 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 2,61,53,805/- (Rs. Two Crores Sixty One Lakhs Fifty Three Thousand Eight Hundred Five Only)	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	Rs. 39,00,000/- (Rs. Thirty Nine Lakhs Only)	Rs. 95,95,472/- (Rs. Ninety Five Lakhs Ninety Five Thousand Four Hundred Seventy Two Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act	Rs. 95,95,472/- (Rs. Ninety Five Lakhs Ninety Five Thousand Four Hundred Seventy Two Only) on Sh. C.P. Gupta	Rs. 14,00,000/- (Rs. Fourteen Lakhs Only) on M/s Supreme Enterprises

13	M/s. Surya Enterprises	Annexure C-1 & C-2 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 3,36,67,171/- (Rs. Three Crores Thirty Six Lakhs Sixty Seven Thousand One Hundred Seventy One Only)	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	Rs. 50,00,000/- (Rs. Fifty Lakhs Only)	Rs. 79,92,930/- (Rs. Seventy Nine Lakhs Ninety Two Thousand Nine Hundred Thirty Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act	Rs. 79,92,930/- (Rs. Seventy Nine Lakhs Ninety Two Thousand Nine Hundred Thirty Only) on Sh. C.P. Gupta	Rs. 12,00,000/- (Rs. Twelve Lakhs Only) on M/s Surya Enterprises
14	M/s. Mars International	Annexure C-3 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 1,33,78,070/- (Rs. One Crore Thirty Three Lakhs Seventy Eight Thousand Seventy Only)		under Section 111(m) of the Customs Act, 1962	Rs. 20,00,000/- (Rs. Twenty Lakhs Only)	Rs. 25,31,575/- (Rs. Twenty Five Lakhs Thirty One Thousand Five Hundred Seventy Five Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act,	Rs. 25,31,575/- (Rs. Twenty Five Lakhs Thirty One Thousand Five Hundred Seventy Five Only) on Sh. C.P. Gupta	Rs. 3,00,000/- (Rs. Three Lakhs Only) on M/s Mars International

Table No. 27 : First round adjudication of SCN-3 in respect of goods imported at ACC, Mumbai port

Sr.No.	Goods imported in the name of	goods imported vide Bills of Entry at ACC Mumbai as shown in	rejected the declared value of goods of column 3	Re-determined value of goods of column 3	ordered for classification and assessment of	Confiscation of the goods of column 3	Redemption fine in lieu of confiscation under Section 125 of the Act	Confirmation of demand of differential duty	Penalty imposed	
									under Section 114A of the Act	under Section 112(a) of the Act
1	2	3	4	5	6	7	8	9	10	11

1	M/s. Sagar Electronics	Annexure C-1, C-2, C-3 & C-4 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 1,29,22,644/- (Rs. One Crore Twenty Nine Lakhs Twenty Two Thousand Six Hundred Forty Four Only)		under Section 111(m) of the Customs Act, 1962	Rs. 19,00,000/- (Rs. Nineteen Lakhs Only)	Rs. 19,83,331/- (Rs. Nineteen Lakhs Eighty Three Thousand Three Hundred Thirty One Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act,	Rs. 19,83,331/- (Rs. Nineteen Lakhs Eighty Three Thousand Three Hundred Thirty One Only) on Sh. C.P. Gupta	
2	M/s. Galaxy Enterprises	Annexure C-1 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 3,69,89,516/- (Rs. Three Crores Sixteen Lakhs Ninety Eight Thousand Sixty One Only)		under Section 111(m) of the Customs Act, 1962	Rs. 47,00,000/- (Rs. Forty Seven Lakhs Only)	Rs. 85,24,862/- (Rs. EightyFive Lakhs Twenty Four Thousand Eight Hundred Sixty Two Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act,	Rs. 85,24,862/- (Rs. EightyFive Lakhs Twenty Four Thousand Eight Hundred Sixty Two Only) on Sh. C.P. Gupta	Rs. 12,00,000/- (Rs. Twelve Lakhs Only) on M/s Galaxy Enterprises
3	M/s. Gemini Enterprises	Annexure C-1 & C-3 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 2,79,37,078/- (Rs. Two Crores Seventy Nine Lakhs Thirty Seven Thousand Seventy Eight Only)		under Section 111(m) of the Customs Act, 1962	Rs. 41,00,000/- (Rs. Forty One Lakhs)	Rs. 51,90,833/- (Rs. Fifty One Lakhs Ninety Thousand Eight Hundred Thirty Three Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act,	Rs. 51,90,833/- (Rs. Fifty One Lakhs Ninety Thousand Eight Hundred Thirty Three Only) on Sh. C.P. Gupta	Rs. 7,00,000/- (Rs. Seven Lakhs Only) on M/s Gemini Enterprises
4	M/s Shiva Enterprises	Annexure C-1 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 38,19,199/- (Rs. Thirty Eight Lakhs Nineteen Thousand One Hundred Ninety Nine Only)		under Section 111(m) of the Customs Act, 1962	Rs. 5,00,000/- (Rs. Five Lakhs Only)	Rs. 10,04,010/- (Rs. Ten Lakhs Four Thousand Ten Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act,	Rs. 10,04,010/- (Rs. Ten Lakhs Four Thousand Ten Only) on Sh. C.P. Gupta	Rs. 1,00,000/- (Rs. One Lakh Only) on M/s Shiva Enterprises

5	M/s. Devika Enterprises	Annexure C-1 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 64,45,519/- (Rs. Sixty Four Lakhs Forty Five Lakhs Five Hundred Nineteen Only)		under Section 111(m) of the Customs Act, 1962	Rs. 9,00,000/- (Rs. Nine Lakhs Only)	Rs. 16,42,696/- (Rs. Sixteen Lakhs Forty Two Thousand Six Hundred Ninety Six Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act,	Rs. 16,42,696/- (Rs. Sixteen Lakhs Forty Two Thousand Six Hundred Ninety Six Only) on Sh. C.P. Gupta	Rs. 2,00,000/- (Rs. Two Lakhs Only) on M/s Devika Enterprises
6	M/s. Mars International	Annexure C-1 & C-3 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 2,96,64,248/- (Rs. Two Crores Ninety Six Lakhs Sixty Four Thousand Two Hundred Forty Eight Only)	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	Rs. 44,00,000/- (Rs. Forty Four Lakhs Only)	Rs. 61,58,053/- (Rs. Sixty One Lakhs Fifty Eight Thousand Fifty Three Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act	Rs. 61,58,053/- (Rs. Sixty One Lakhs Fifty Eight Thousand Fifty Three Only) on Sh. C.P. Gupta	Rs. 9,00,000/- (Rs. Nine Lakhs Only) on M/s Mars International

Table No. 28 : First round adjudication of SCN-3 in respect of goods imported at NCH, Mumbai port

Sr. No.	Goods imported in the name of	goods imported vide Bills of Entry at NCH, Mumbai	rejected the declared value of goods of column 3	Re-determined value of goods of column 3	ordered for classification and assessment of	Confiscation of the goods of column 3	Redemption fine in lieu of confiscation under Section 125 of the Act	Confirmation of demand of differential duty	Penalty imposed	
									under Section 114A of the Act	under Section 112(a) of the Act
1	2	3	4	5	6	7	8	9	10	11
1	M/s. Gemini Enterprises	Annexure C-1 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 75,57,070/- (Rs. Seventy Five Lakhs Fifty Seven Thousand Seventy Only)		under Section 111(m) of the Customs Act, 1962	Rs. 11,00,000/- (Rs. Eleven Lakhs Only)	Rs. 19,75,866/- (Rs. Nineteen Lakhs Seventy Five Thousand Eight Hundred Sixty Six Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act	Rs. 19,75,866/- (Rs. Nineteen Lakhs Seventy Five Thousand Eight Hundred Sixty Six Only) on Sh. C.P. Gupta	Rs. 3,00,000/- (Rs. Three Lakhs Only) on M/s Gemini Enterprises

2	M/s. Spectrum Overseas	Annexure C-1 & C-3 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 1,32,95,390/- (Rs. One Crore Thirty Two Lakhs Ninety Five Thousand Three Hundred Ninety Only) .		under Section 111(m) of the Customs Act, 1962	Rs. 20,00,000/- (Rs. Twenty Lakhs Only)	Rs. 27,93,388/- (Rs. Twenty Seven Lakhs Ninety Three Thousand Three Hundred Eighty Eight Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act,	Rs. 27,93,388/- (Rs. Twenty Seven Lakhs Ninety Three Thousand Three Hundred Eighty Eight Only) on Sh. C.P. Gupta	Rs. 4,00,000/- (Rs. Four Lakhs Only) on M/s Spectrum Overseas
3	M/s. Mars International	Annexure C-1 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 43,40,765/- (Rs. Forty Three Lakhs Forty Thousand Seven Hundred Sixty Five Only)		under Section 111(m) of the Customs Act, 1962	Rs. 6,00,000/- (Rs. Six Lakhs Only)	Rs. 10,58,911/- (Rs. Ten Lakhs Fifty Eight Thousand Nine Hundred Eleven Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act,	Rs. 10,58,911/- (Rs. Ten Lakhs Fifty Eight Thousand Nine Hundred Eleven Only) on Sh. C.P. Gupta	Rs. 1,00,000/- (Rs. One Lakh Only) on M/s Mars International
4	M/s. Shiva International	Annexure C-1 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 54,19,470/- (Rs. Fifty Four Lakhs Nineteen Thousand Four Hundred Seventy Only)	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	of Rs. 8,00,000/- (Rs. Eight Lakhs Only)	Rs. 20,33,509/- (Rs. Twenty Lakhs Thirty Three Thousand Five Hundred Nine Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act	Rs. 20,33,509/- (Rs. Twenty Lakhs Thirty Three Thousand Five Hundred Nine Only) on Sh. C.P. Gupta	Rs. 3,00,000/- (Rs. Three Lakhs Only) on M/s Shiva International

5	M/s. Galaxy Enterprises	Annexure C-1 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 28,83,914/- (Rs. Twenty Eight Lakhs Eighty Three Thousand Nine Hundred Fourteen Only)		under Section 111(m) of the Customs Act, 1962	Rs. 4,00,000/- (Rs. Four Lakhs Only)	Rs. 9,85,592/- (Rs. Nine Lakhs Eighty Five Thousand Five Hundred Ninety Two Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act	Rs. 9,85,592/- (Rs. Nine Lakhs Eighty Five Thousand Five Hundred Ninety Two Only) on Sh. C.P. Gupta	Rs. 1,00,000/- (Rs. One Lakh Only) on M/s Galaxy Enterprises
6	M/s. Konark International	Annexure C-1 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 30,05,770/- (Rs. Thirty Lakhs Five Thousand Seven Hundred Seventy Only)		under Section 111(m) of the Customs Act, 1962	Rs. 4,00,000/- (Rs. Four Lakhs Only)	Rs. 10,15,320/- (Rs. Ten Lakhs Fifteen Thousand Three Hundred Twenty Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act	Rs. 10,15,320/- (Rs. Ten Lakhs Fifteen Thousand Three Hundred Twenty Only) on Sh. C.P. Gupta	Rs. 1,00,000/- (Rs. One Lakh Only) on M/s Konark International
7	M/s. Allied Enterprises	Annexure C-1 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 21,65,329/- (Rs. Twenty One Lakhs Sixty Five Thousand Three Hundred Twenty Nine Only) .		under Section 111(m) of the Customs Act, 1962	Rs. 3,00,000/- (Rs. Three Lakhs Only)	Rs. 7,09,960/- (Rs. Seven Lakhs Nine Thousand Nine Hundred Sixty Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act	Rs. 7,09,960/- (Rs. Seven Lakhs Nine Thousand Nine Hundred Sixty Only) on Sh. C.P. Gupta	Rs. 1,00,000/- (Rs. One Lakh Only) on M/s Allied Enterprises

8	M/s Shiva Enterprises	C-3 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 66,42,858/- (Rs. Sixty Six Lakhs Forty Two Thousand Eight Hundred Fifty Eight Only)		under Section 111(m) of the Customs Act, 1962	Rs. 10,00,000/- (Rs. Ten Lakhs Only)	Rs. 8,77,294/- (Rs. Eight Lakhs Seventy Seven Thousand Two Hundred Ninety Four Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act	Rs. 8,77,294/- (Rs. Eight Lakhs Seventy Seven Thousand Two Hundred Ninety Four Only) on Sh. C.P. Gupta	Rs. 1,00,000/- (Rs. One Lakh Only) on M/s Shiva Enterprises
9	M/s. Magnum Overseas	Annexure C-3 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 15,27,857/- (Rs. Fifteen Lakhs Twenty Seven Thousand Eight Hundred Fifty Seven Only)		under Section 111(m) of the Customs Act, 1962	Rs. 2,00,000/- (Rs. Two Lakhs Only)	Rs. 2,19,000/- (Rs. Two Lakhs Seventy Nineteen Thousand Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act	Rs. 2,19,000/- (Rs. Two Lakhs Seventy Nineteen Thousand Only) on Sh. C.P. Gupta	Rs. 30,000/- (Rs. Thirty Thousand Only) on M/s Magnum Overseas

Table No. 29: First round adjudication of SCN-3 in respect of goods imported at ACC, New Delhi

Sr. No.	Goods imported in the name of	goods imported vide Bills of Entry at ACC, New Delhi as shown in	rejected the declared value of goods of column 3	Re-determined value of goods of column 3	Confiscation of the goods of column 3	Redemption fine in lieu of confiscation under Section 125 of the Act	Confirmation of demand of differential dut	Penalty imposed	
								under Section 114A of the Act	under Section 112(a) of the Act
1	2	3	4	5	6	7	8	9	10

1	M/s. Sagar Electronics	Annexure C-3 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 10,41,020/- (Rs. Ten Lakhs Forty One Thousand Twenty Only)	under Section 111(m) of the Customs Act, 1962	Rs. 1,50,000/- (Rs. One Lakh Fifty Thousand Only)	Rs. 1,05,204/- (Rs. One Lakh Five Thousand Two Hundred Four Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act,	Rs. 1,05,204/- (Rs. One Lakh Five Thousand Two Hundred Four Only) on Sh. C.P. Gupta	
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103. I impose a penalty of Rs. 50,00,000/- (Rs. Fifty Lakhs Only) on Sh. Surender Kumar alias Sh. Surender Sharma under Section 112(a) and (b) of the Customs Act, 1962.”

29. Sh. C. P. Gupta filed Appeals No: C/544 & 545/2008 in the CESTAT against Orders-in-Original No CAO No. 23/2008/CAC/CC(I)/SP/Gr.VB dated 04.02.2008 and CAO No. 32/2008/CAC/CC(I)/SP/Gr.VB dated 29.02.2008 passed by the Commissioner of Customs (Import), Mumbai-I. Hon'ble CESTAT vide order No A/89970-89971/17/CB dated 20.09.2017 remanded the matter back to deal with the preliminary issue of jurisdiction and adjudicate on merits. Hon'ble CESTAT also notes that the Adjudicating Authority did not properly examine corroborative evidence gathered by the investigation . and instructed to record pleadings and evidence and to pass a reasoned and speaking order. Relevant part of the order is reproduced as below :

“It is preliminary submission of the respondent that the adjudication order suffers from lack of jurisdiction. Learned Counsel says that notices have been issued in this case by the DRI Officer having no jurisdiction under law to do so. This has been held in the case of Mangali Impex vs. Union of India - 2016 (335) ELT 605 (Del.) by Hon'ble High Court of Delhi. However, such decision is under challenge by Revenue in Civil Appeal No. 20453/2016 before Apex Court and Hon'ble Apex Court has stayed the decision of the High Court on 01.08.2016 as reported in 2016 (339) ELT A49 (SC).

..... Therefore, as a rule of consistency, this matter may also go back to the Adjudicating Authority for appropriate decision on the basis of outcome of the Apex Court judgment in the case of Mangali Impex (supra).

4. Apart from the above, when the review is read, that also exhibits that the Adjudicating Authority has not examined the corroborative evidence gathered by investigation. This is also a ground for remand of the matter for re-adjudication. Unless the evidence is properly appraised and evaluated, an order may suffer from legal infirmity.

6. *As we have not touched the merit of the case, while making fresh adjudication on the basis of outcome of Apex Court decision, as stated here before, appellant shall be granted reasonable opportunity of hearing to argue both on facts and law as well as on merit before, learned Adjudicating Authority. That authority, recording pleading as well as evidence, shall pass a reasoned and speaking order. 3 Appeal No. C/544 & S545/08*

7. *In the result, appeal is remanded to the Adjudicating Authority.”*

30. Sh. C. P. Gupta and Sh. Surendra Sharma filed appeals vide APPEAL NO: C/1012/2008 and APPEAL NO: C/1021/2008 in the CESTAT against Order-in-Original No CAO No. 104/2008/CAC/CC(I)/SP/Gr.VB dated 28/05/2008 passed by the Commissioner of Customs (Import), Mumbai - I. Hon'ble CESTAT vide order No A/89929/17/CB and A/89930/17/CB dated 18.09.2017 remanded the matter back to the Adjudicating Authority with directions to address the preliminary issue of jurisdiction, as well as the merits of the case, following due process of justice.

“3. *In view of the rivalry submissions as above and also the Tribunal having taken a view that the appeal should go back to the Adjudicating Authority, it is proper to send back the appeals to the Adjudicating Authority who shall pass appropriate order on the basis of outcome of the apex Court judgment in Mangali Impex case which has been admitted in Civil Appeal No. 20453 of 2016 as reported in 2016 (339) ELT A49 (SC), granting reasonable opportunity of hearing to both the sides.*

.....

5. *In the result appeal is remanded to the Adjudicating Authority with the above direction to deal with the preliminary issue of jurisdiction as well as on merits, following due process of justice,”*

31. **Records of Personal Hearings (PH)**

Table No. 30

Details of Personal Hearing Memorandums issued		
Date of PH memo issued	Date given to the noticee for appearing	PH details
Noticee No.1 : Sh. C.P. Gupta, Proprietor, M/s. Sagar Electronics		
05.10.2023	13.10.2023	Adv Ms. Kiran Doiphode attended on 19.10.2023 and submitted a copy of grounds of appeal submitted in the Tribunal. and again reiterated request for documents and cross examination of 14 persons made vide letter dtd 19.04.2023 and 09.10.2019 which were not conducted earlier
12.10.2023	19.10.2023	
19.10.2023	25.10.2023	Did not appear for PH

Noticee No.2 : M/s.Shiva Enterprises,		
05.10.2023	13.10.2023	PH memo returned from postal authority with remark "No such firm"
12.10.2023	19.10.2023	
24.11.2023	30.11.2023	
Noticee No.3 : M/s. Spectrum Overseas,		
05.10.2023	13.10.2023	PH memo returned from postal authority with remark "No such firm"
12.10.2023	19.10.2023	
24.11.2023	30.11.2023	
Noticee No. 4 : M/s Gemini Enterprises		
05.10.2023	13.10.2023	PH memo returned from postal authority with remark "No such firm"
12.10.2023	19.10.2023	
24.11.2023	30.11.2023	
Noticee No. 5 : M/s Mars International		
05.10.2023	13.10.2023	PH memo returned from postal authority with remark "No such firm"
12.10.2023	19.10.2023	
24.11.2023	30.11.2023	
Noticee No. 6 : M/s Shivam Overseas Inc.		
05.10.2023	13.10.2023	PH memo returned from postal authority with remark "No such firm"
12.10.2023	19.10.2023	
24.11.2023	30.11.2023	
Noticee No. 7 : M/s Shiva International		
05.10.2023	13.10.2023	PH memo returned from postal authority with remark "No such person on this address"
12.10.2023	19.10.2023	
24.11.2023	30.11.2023	
Noticee No.8 : M/s Royal International		
05.10.2023	13.10.2023	PH memo returned from postal authority with remark "No such firm"
12.10.2023	19.10.2023	
24.11.2023	30.11.2023	
Noticee No. 9 : M/s Leo International		
05.10.2023	13.10.2023	PH memo returned from postal authority with remark "No such firm"
12.10.2023	19.10.2023	

24.11.2023	30.11.2023	
Noticee No.10 : M/s Supreme Enterprises		
05.10.2023	16.10.2023	PH memo returned from postal authority with remark "No such m/s on this address"
17.10.2023	25.10.2023	
24.11.2023	30.11.2023	
Noticee No.11 : M/s Allied Enterprises		
05.10.2023	16.10.2023	PH memo returned from postal authority with remark "No such m/s on this address"
17.10.2023	25.10.2023	
24.11.2023	30.11.2023	
Noticee No.12 : M/s Devika Enterprises		
05.10.2023	16.10.2023	PH memo returned from postal authority with remark "No such firm"
17.10.2023	25.10.2023	
24.11.2023	30.11.2023	
Noticee No.13 : M/s Prominent Enterprises		
05.10.2023	16.10.2023	PH memo returned from postal authority with remark "No such person on this address"
17.10.2023	25.10.2023	
24.11.2023	30.11.2023	
Noticee No.14 : M/s Surya Enterprises		
05.10.2023	16.10.2023	PH memo returned from postal authority without remark.
17.10.2023	25.10.2023	
24.11.2023	30.11.2023	
Noticee No.15 : M/s Konark International		
05.10.2023	16.10.2023	PH memo returned from postal authority with remark "No such person on this address"
17.10.2023	25.10.2023	
24.11.2023	30.11.2023	
Noticee No.16 : M/s Galaxy Enterprises,		
05.10.2023	16.10.2023	PH memo returned from postal authority with remark "No such firm on this address"
17.10.2023	25.10.2023	
24.11.2023	30.11.2023	

Noticee No.17 : M/s Magnum Overseas		
05.10.2023	16.10.2023	PH memo returned from postal authority with remark "No such firm"
17.10.2023	25.10.2023	
24.11.2023	30.11.2023	
Noticee No.18 : Sh. Surender Kumar, Prop. M/s Ganpati Sales Corporation		
05.10.2023	16.10.2023	Adv Sh. Jatan Modgal attended the hearing on 08.11.2023 on virtual mode and requested for another hearing on 17.11.2023 to argue the case on merits. On 17.11.2023 he again asked for a short time for submitting their submission on merit which was allowed on 23.11.2023. On 23.11.2023 PH held through VC wherein he submitted his final defence reply and concluded his arguments.
17.10.2023	25.10.2023	
-	08.11.2023	
09.11.2023	17.11.2023	
17.11.2023	23.11.2023	

32. Records of Cross Examination

Table No. 31

Sr. No.	Name of the person	1 st notice issued 25.10.2023	2 nd notice issued on 31.10.2023	3 rd notice issued on 01.11.2023	Remarks
1	Sh. Jayesh vador, M/s Unnati Shipping Agency	31.10.2023	08.11.2023	13.11.2023	All the cross-examination memos returned from postal authority with remark as "No such person on this address"
2	Sh. DharmendraS. Shah, Customs Clerk with M/s Mehul & Co				
3	Sh. Mehul H. Sanghavi, Partner of M/s Mehul & Co				
4	Sh. PrayagNath Singh, Helper with M/s. Natraj Cargo & Courier,				
5	Sh. Basava Raj, Partner, M/s. Natraj Cargo & Courier				
6	Sh. Gurvinder Singh				
7	Mrs. Chander Mohini and Sh. S. P. Mahajan				

8	Sh. Prem Prakash Mahajan, Proprietor of Mahajan Properties				
9	M/s Ajay Agarwal & Co., Chartered Accountants				
10	Sh. Tarun Tripathi, M/s Arrow Electronics India Ltd				
11	Sh. Surender Sharma, Prop. M/s Ganpati Sales Corporation / Shivam Overseas Inc				
12	Shashi Kapoor				
13	Mrs. Lata Pandey, w/o Kamal Pandey				
14	Mrs Babita Kapoor w/o Sh. Hemant Kapoor				

33. Summary of submissions of the noticees in the first round of adjudication.

33.1 M/s. V. M. Doiphode & Co., Advocate, filed reply dated 13.12.2007 to the show cause notice on behalf of noticee Sh. C.P. Gupta, wherein they reiterated their submissions made in their reply dt. 21.8.2007 submitted in show cause notice F. No. DRI/50D/126/2004-CI/CPG-1 dt. 5.12.2005, which is as follows

- A. it was relied on the statement dated 28.02.2005 of Sh. C.P. Gupta wherein he stated that he has imported electronic items in the name of 17 firms including M/s. Gemini Enterprises, M/s. Spectrum Overseas and M/s. Sagar Electronics and that he was paying a lump sum amount of Rs. 10,000/- per firm to Sh. Surender Kumar and providing money for the payment of customs duties;
- B. that the Notfn. No. 52/1968 dtd. 27.03.1968 is no longer in existence as Notfn. No. 204 dated 20.07.1984 was issued in supersession of Notfn. No. 52/1968 deleting serial numbers pertaining to transistors;
- C. that the goods seized are freely importable in the EXIM Policy and are not notified goods and therefore the same are not liable to confiscation under Section 111 (d) of the said Act; that Section 111(m) will also not apply as it can be applied only if Bill of Entries are available;
- D. that during investigation it was repeatedly stated that the seized goods were purchased on cash basis from grey market at Lajpat Nagar and therefore does not have import documents and such goods are freely traded in large quantities; that the statement was also later retracted;

- E. that the subject goods being not notified and Section 123 being not applicable, the burden of proving that the same are smuggled lies on the department. In support of the claim, the decision in the case of **M/s. S. K. Jain**¹⁵ has been cited;
- F. that no duty can be demanded from Sh. C.P. Gupta as he was neither owner nor claimed to be importer of the subject goods at the time of import; that he is a bonafide purchaser for valuable consideration and even if he purchased the subject goods in grey market without bills, even then no duty can be demanded;
- G. that in the absence of exact date of filing Bills of Entries, relevant date also cannot be determined and therefore duty cannot be demanded under Section 28(1) of Customs Act, 1962; that it is well settled by various judgements that duty can be demanded only from an importer;
- H. that similar or identical goods are imported during the relevant period at or about the same price and the Department cannot pick on few bills of entries and propose valuation without disclosing prices of all such imports;
- I. that there is no reference either in the show cause notice or in the list of relied upon documents regarding market enquiry conducted in respect of these electronic items;
- J. that if the Department considered M/s. Gemini Enterprises and M/s. Spectrum Overseas as dummy proprietors, how is that the show cause notice has also been issued and demanding customs duty and proposing custom duties against them;
- K. that demands of duty can be made against a specific person and not jointly or severally on more than one person. In support of their claim, they cited the following decisions **Surya Prabha Sales Corpn**¹⁶ **Biren Shah**¹⁷ **JB Trading Corpn**¹⁸ and **J.K. Pharma**¹⁹.

33.2 In continuation of the above submissions, a reply dated 01.02.2008 was filed wherein it was inter alia submitted that:

- A. regarding the allegations that the noticee Sh. C. P. Gupta has created the 16 firms and that he can be legally deemed to be the de-facto proprietor of the said firms, apart from the case laws already submitted in reply dated 21.08.07, they further referred to the decision in the case of **BM sood**²⁰.
- B. the very fact that the SCN demands duty from the 16 firms itself shows that the 16 firms are in existence and that the department is demanding duty even from them. The Bills of Entry have been signed by the respective persons of the 16

¹⁵ M/s. S. K. Jain vs. CC Preventive, Mumbai reported in 2001 (127) ELT 415 (Tri Mum)

¹⁶ Surya Prabha Sales Corpn. Vs. Collector of Customs [1993(67)ELT571 (Tri)

¹⁷ Biren Shah vs. Collector of Customs, Bombay 1994(72) ELT 660 (Tri)

¹⁸ JB Trading Corpn. vs. I-JOI [1990(45) ELT 9(Mad.)

¹⁹ J.K. Pharma vs. CC (Import), Mumbai [2004 (166) ELT 407 (Tri)-Mum.

²⁰ BM sood vs. C.C. Kandla [2007 (217)ELT 570 (Tri. Ahmed)]

- firms, they had obtained IEC Code, Bank Accounts were in their names and therefore the allegations that those firms are dummies cannot be legally sustained merely because the noticee had financial control as alleged or otherwise;
- C. the revision of values proposed on the basis of 109 Export Declarations is not sustainable as the SCN admits that there is a difference in description
 - D. that Section 138-C will not apply to the adjudication proceedings as it is quasi judicial in nature. This Section comes under Chapter XVI which deals with offences and prosecution and therefore these provisions would apply only in criminal proceedings before criminal court when a person is charged for imprisonment;
 - E. The computer printouts obtained do not comply with the conditions of Section 138-C of Customs Act, 1962 as these are generated on dated 21.08 05, 06.09 05, 0109.05 etc., the Bills of Entry are filed between February,2003 to September, 1004 and the export declarations would have been filed at least one month earlier. Therefore these are not produced by the computer during the period over which the computer was used regularly to store or process information. It would be admissible only if they are generated subsequently. The certificate verifying the computer produced documents is signed by Senior Trade Control Officer, however there is no signature of the said Senior Trade Control Officer on the computer printouts to give credibility that these documents are actually generated from the computer regularly and maintained by the Hong Kong Customs;
 - F. There is no evidence in the Show Cause notice other than a presumption that there are no export incentives to the exporter so as to over value the export of electronic components. Further, there is no evidence that the 16 firms in whose names the imports were made or the noticee has remitted any foreign exchange over and above the value declared in the Bills of Entry;
 - G. The Show Cause notice does not adopt the mandatory basis provided by Customs Valuation Rules but takes the minimum values of export declarations without referring to other bills of entry for identical or similar goods and adopting the lowest transaction value;
 - H. There is no direct and primary evidence gathered during investigation and an attempt is made to rely on secondary evidence which is not admissible.

33.3 M/S V.M. Doiphode & Co. vide their letter dated 23.10.2006 requested for certain documents and for cross-examination of witnesses. All the requisite documents were then supplied to the Advocate of the Noticee, Sh. C.P. Gupta. Further, cross-examination of the witness as desired by the Advocate was granted. However, only three Custom House Agents and Manager of M/S Godra Roadways Pvt. Ltd came forward and cross examination of these witnesses were held before me by Ms. Kiran

Doiphode. Detailed records of the cross examination is discussed in the following paragraphs.

33.4 Sh. Pranesh, Advocate filed reply dated 31.01.2008 to the said show cause notice on behalf of noticees Smt. Lata Pandey Proprietor of (M/s. Shiva Enterprises 10, M/s. Allied Enterprises 6, M/s. Leo International 5 and her son Sh. Rohan Kumar (M/s. Royal International 13) wherein they submitted that :

- A. that the investigations conducted by the various agencies very clearly and vividly suggest that Smt.Lata Pandey and her son Sh. Rohan Kumar are not the owners of the goods in question;
- B. that the notice has nothing to do with the import of the electronic components by M/s.Sagar Electronics & other related firms under investigation;
- C. that merely if somebody misuses the name and style of the firm by forging the signatures, documents like ration card etc. and that too without the knowledge of the Proprietor concerned, the real/dummy Proprietor cannot be held liable for the conduct of the forge;
- D. that the noticee was lured into the mess by fraud and undue influence made unto her to deliver her signatures and the signatures of her son Sh. Rohan Kumar through her and certain documents such as ration card No. 156079 etc. which have been misused to create dummy firms by Sh. Surendra Sharma, the agent of Sh. C.P.Gupta
- E. that they did not even have any inkling that certain trading activities (import and export) were going on in their names and in the name of certain firms i.e. M/s. Shiva Enterprises, M/s. Allied Enterprises, M/s. Leo International and M/s.Royal International which later on they learned that they were the proprietors of these firms,
- F. that even the name of Smt.Lata Pandey has not been correctly and properly spelt out as the proprietor of the dummy firms; that the noticee could have straight away denied that it is no she whose name appears as name of the proprietor but instead chose to assist the investigating agencies so that the real culprits are nabbed; that even her ration card has been forged which was abandoned by the noticee way back when Sh. Surendra Sharma refused to return the same; that they are not responsible for the misuse of the ration card by Sh. Surendra,
- G. that all the acts, omissions and commissions vis-à-vis the trading activities were made by Sh. C.P.Gupta as told to her by Sh. Surendra Sharma and Smt.Babita Kapoor; that all the documents shown by the investigating agencies during interrogations of the noticee under Section 108 of the Customs Act purported to be belonging to the noticee and her son were obtained by Sh. Surendra Sharma and Smt. Babita Kapoor from them by allurements and undue influence of monetary gains of mere Rs.2500/- a month,

- H. that they deny all the allegations made against them with respect to any liability, financial or otherwise;
- I. that they are not in a position to attend any personal hearing proceedings.

33.5 Summary of submissions of Noticee-18 : M/s. Shivam Overseas and Sh. Surendra Sharma, Noticees in the above said Show Cause Notice filed their reply dt. 30.07.07 wherein they submitted that :

- A. without alleging the truth or accuracy of the value declared in the invoice, it is proposed to apply Rule 10A of the Valuation Rules. It is proposed to value the goods based on the domestic price of the goods in the exporting country without explaining as to how can it be done in the presence of Rule 8(2)(ii) of the Valuation Rules;
- B. that unverified statements has been made without any basis like there is no export incentive in Hong Kong which is a part of China and that there are no contemporaneous import when it is a known fact to all that the market flooded with such and similar goods imported from China and Hong Kong. Further the Show Cause notice rejects the deductive and computed value method, without asking from them whether they can provide the required data;
- C. the investigation does not question the manufacturers as to what value they supplied the goods to the overseas supplier; at what value they import the goods in the country. The investigation goes to Hong Kong Customs, but does not ask them a copy of the invoice submitted by the overseas supplier or whether transaction value can be less than the FOB value or not;
- D. that the show-cause notice is ambiguous and capable of interpretation and requires inference drawn from the notice, the notice is liable to be quashed. The noticee relied on the following decision to prove their point **Mehta Pharmaceuticals**²¹ and **Bhikhalal Dwarkadas**²²
- E. that all the imports are more than 6 months old and the time period can be extended to five years only when there is 'collusion, willful mis-statement or suppression of facts', that it is mandatory to allege in the Show Cause Notice as to what commissions or omissions are there which will bring the proviso of the Section 28 into play and time period will be extended. In support of this, they have relied on the following decisions **HMM Limited**²³ and **Raj Bahadur**²⁴.
- F. In view of the fact that the notice fails to refer to any of the acts of omission enumerated in the relevant proviso to Rule 10, the notice, given more than six months after the date of the order of refund, is time barred. The following

²¹ Mehta Pharmaceuticals Vs. CCE [203(157)ELT 105])

²² CCE vs. Bhikhalal Dwarkadas [1998 (99) ELT 438)

²³ CCE vs. HMM Limited [1995(76) ELT 497 (SC)

²⁴ Raj Bahadur vs. UOI [1996 (88) ELT 24(SC)

- decisions were relied upon **Kaur & Singh**²⁵, **Aban Lloyd**²⁶, **Devans Modern**²⁷, **Nasir Ahmed**²⁸, **Asanand Sons**²⁹, **Indian Telephone Inds. Ltd**³⁰ and **TN Housing Board**³¹.
- G. that the 'intention to evade payment of duty' is not a requirement of Section 28 of the Customs Act, however the burden to establish collusion, mis-statement etc. has to be discharged by the department. The case laws of **Jalani Enterprises**³² and **Dedha Pharma**³³ were relied upon by the noticee. As far as the trade declaration filed by the overseas supplier is concerned, that it is a restricted document and the importer cannot get it; when the importer has no knowledge of something, they cannot misdeclared or suppress that fact;
- H. that the invoice value represents the true and correct transaction value of the goods in question since there was no allegation in the SCN that the invoice is not genuine or a different invoice was submitted by the supplier to the Hong Kong Customs, or any extra payment was made by the buyer to the supplier and therefore such value cannot be rejected. In support of their claim, they have relied upon the following decisions, **Eicher Tractors**³⁴, **PVU**³⁵, **Dwaraka International**³⁶, **Rajnath Motors**³⁷, **Ambika Nahar Exports**³⁸, and **Bureau Veritas**³⁹.
- I. that the transaction value cannot be declared under Rule 10A as it is only a procedural provision and it cannot be rejected unless until the invoice is impeached. The following cases were cited in this regard : **Venus Insulation**⁴⁰, **Kanahailal & Co**⁴¹, **Radhey Shyam Ratanlal**⁴², **Bayer India**⁴³, **G.K. & Sons**⁴⁴, **Bharat Pulverising Mills**⁴⁵, **CC vs. Overseas Trading Corpn**⁴⁶.
- J. that the copy of the trade declaration clearly showed that they are not authenticated, that they are mere computer copy available with the Hong Kong Customs and it is not known as to when they were filed or if at any point they were amended. In support of their claim, the notice relied on the decisions in the

²⁵ Kaur & Singh vs. CCE [1997 (94) ELT 289 (SC)]

²⁶ Aban Lloyd vs. CCE [2006 (200) ELT 370 (SC)]

²⁷ Devans Modern vs. CCE (2006 (202) ELT 744 (SC)]

²⁸ Nasir Ahmed vs. Asstt. Custodian [AIR 1980 SC 1157]

²⁹ Asanand Sons vs. CC [2000 (119) ELT 683]

³⁰ Indian Telephone Inds. Ltd. vs. CC [2002 (122) ELT 543]

³¹ TN Housing Board vs. CCE [1994 (74) ELT 9 (SC)]

³² CCE Vs. Jalani Enterprises [2001 (134) ELT 813]

³³ Dedha Pharma vs. CCE [2003 (152) ELT 251 (SC)]

³⁴ Eicher Tractors vs. CC (2000 (122) ELT 321 (SC)]

³⁵ PVU vs. CC [2005 (187) ELT 489]

³⁶ Dwaraka International vs. CC [1999 (107) ELT 59]

³⁷ Rajnath Motors vs. CC [2000 (118) ELT 598]

³⁸ CC vs. Ambika Nahar Exports [2005 (190) ELT 348]

³⁹ CC vs. Bureau Veritas [(181) ELT 3 (SC)]

⁴⁰ Venus Insulation vs. CC (2002 (143) ELT 364]

⁴¹ Kanahailal & Co vs. CC [2004 (163) ELT 33]

⁴² Radhey Shyam Ratanlal vs. CC [2005 (190) ELT 244]

⁴³ Bayer India vs. CC (2006 (198) ELT 240)

⁴⁴ G.K. & Sons vs. CC [1998 (101) ELT 172]

⁴⁵ Bharat Pulverising Mills vs. CC [1998 (102) ELT 401]

⁴⁶ CC vs. Overseas Trading Corpn. [1998 (102) ELT 453]

cases of **Punjab Tractors**⁴⁷, **South India Television (P) Ltd**⁴⁸ and **Taito Watch**⁴⁹.

- K. That the investigation sent inquiry to Hong Kong Customs but failed to ask the invoice number of the supplier; whether the invoice supplied by the overseas supplier is same as the invoice supplied by the importer to Indian Customs; they failed to ask the basis constituent of FOB value as declared in the trade declaration; how much money the supplier has received; they also failed to ask if he has received less money than the declared value; whether the transaction value can be less than FOB value as declared in the trade declaration; if there is any law in Hong Kong which prohibits export of goods at a price less than the declared FOB based on cost.

34. Summary of submissions of the notices in second round of adjudication

34.1 Ms. Kiran Diaphode, Advocate for Sh. C. P. Gupta submitted copy of Grounds of Appeal for the APPEAL NO: C/1012/2008 filed by her in the CESTAT against Order-in-Original No CAO No. 104/2008/CAC/CC(I)/SP/Gr.VB dated 28/05/2008 passed by the Commissioner of Customs (Import), Mumbai.

34.2 Surendra Sharma gave written submissions dated 17.11.2023, 23.11.2023 and 30.11.2023 in the second round of adjudication :

- A. Jurisdiction Issue: At the outset, Sh. Surendra Sharma has raised the issue of jurisdiction of DRI to issue the show cause notices. He has cited pending matters before the Supreme Court and Bombay High Court regarding DRI's jurisdiction. He argues that the issue of jurisdiction needs to be decided first before adjudicating on merits. **M/s Canon India Pvt. Ltd**⁵⁰ and **Idea Cellular Ltd**⁵¹.
- B. Time Barred Demand: Sh. Surendra Sharma has argued that the demand is time barred as per Section 28 of the Act since there is no allegation of collusion, willful misstatement or suppression of facts. The time limit cannot be extended to 5 years. **HMM Limited**⁵², **Raj Bahadur**⁵³, **Kaur & Singh**⁵⁴, **Aban Lloyd**⁵⁵ and **Devans Modern**⁵⁶
- C. Rejection of Transaction Value Incorrect: Sh. Surendra Sharma has submitted that the transaction value declared cannot be rejected arbitrarily without evidence of violation of Rule 4(2) conditions. The valuation has to be done under Rules 5 and

⁴⁷ Punjab Tractors vs. CC [1988 (34) ELT 98]

⁴⁸ Commissioner of Customs, Calcutta v South India Television (P) Ltd (2007 ECR 1 (SC))

⁴⁹ Taito Watch vs. CC [2004 (173) ELT 17]

⁵⁰ M/s Canon India Pvt. Ltd. v/s Commissioner of Customs (2021(376) ELT3 (SC))

⁵¹ Idea Cellular Ltd. v/s Union of India (WP No. 1204 of 2018 dated 06.06.2023)

⁵² CCE v HMM Limited (1995(76) ELT 497 (SC))

⁵³ Raj Bahadur v Union of India (1996 (88) ELT 24(SC))

⁵⁴ Kaur & Singh v CCE (1997 (94) ELT 289 (SC))

⁵⁵ Aban Lloyd v CCE (2006 (200) ELT 370 (SC))

⁵⁶ Devans Modern v CCE (2006 (202) ELT 744 (SC))

- 6 by showing evidence of contemporaneous imports. The noticee has relied upon the case laws of **Eicher Tractors**⁵⁷, **International Conveyors Ltd**⁵⁸, **Tolin Rubbers Pvt Ltd**⁵⁹, **South India Television (P) Ltd**⁶⁰ and **Ganpati Overseas**⁶¹.
- D. Non-Applicability of Rule 10A: Sharma argues that Rule 10A is only a procedural rule and can not override Rule 4. Once transaction value is found to be accurate as per Rule 4, Rule 10A cannot be applied. The noticee has relied upon the case laws of **Venus Insulation**⁶² and **Kanahailal & Co**⁶³.
- E. No Connection with Other Noticees: Sharma submits that merely conducting business with other noticees cannot lead to allegations against him of being part of a plan to evade customs duty.
- F. Denial of Opportunity to Cross-Examine: Sharma argues that statements recorded from other noticees and witnesses cannot be relied upon without opportunity to cross-examine them. Principles of natural justice have been violated. The noticee relied upon the following case laws of **Kisan Ratan Singh**⁶⁴, **Swadeshi Polytex Limited**⁶⁵, **Bareilly Electricity Supply**⁶⁶, **Kalpena Industries Ltd**⁶⁷, **Sameer Shah**⁶⁸, **Basudev Garg**⁶⁹, **Kurele Pan Products Pvt Ltd**⁷⁰ and **M. S. Naina**⁷¹
- G. No Evidence to Impose Penalty: Finally, Sh. Surendra Sharma argued that conditions necessary for imposing penalty under Section 112(a) are not met and interpretation issues can not lead to penalty.. He has relied upon **Coolade Beverages Ltd**⁷² and **Uniflex Cables Ltd**⁷³.

Discussion and Findings

35. The number of noticees in the 3 Show Cause Notices No. 50D/126/2004-C.I. (C.P.G.-I) dated 05.12.2005 (SCN-1), No. 50D/126/2004-C.I. (C.P.G.-II) dated 16.12.2005 (SCN-2) and No. 50D/126/2004-C.I. (C.P.G.-III) dated 18.05.2006 (SCN-3) are as below :

35.1 The SCN- 1 involves the following 4 noticees :

⁵⁷ Eicher Tractors v UOI (2000 (122) ELT 321 (SC))

⁵⁸ International Conveyors Ltd vs Commissioner of Customs (2016 (331) E.L.T. 108)

⁵⁹ Tolin Rubbers Pvt Ltd vs Commissioner of Customs (2004 (163) E.L.T. 289 (S.C.))

⁶⁰ Commissioner of Customs, Calcutta v South India Television (P) Ltd (2007 ECR 1 (SC))

⁶¹ Commissioner of Customs (Imports) vs Ganpati Overseas (Civil Appeal No. 4735 of 2009 order dated 06.10.2023)

⁶² Venus Insulation v CC (2002 (143) ELT 364)

⁶³ Kanahailal & Co v CC (2004 (163) ELT 33)

⁶⁴ Union of India vs Kisan Ratan Singh (2020 SCC Online Bom 39)

⁶⁵ Swadeshi Polytex Limited vs CCE (2000 (122) ELT 641 (SC))

⁶⁶ Bareilly Electricity Supply vs Workmen (1971) 2 SCC 617

⁶⁷ Kalpena Industries Ltd & Ors vs UOI & Ors (2018-TIOL-397-HC-MUM-CUS)

⁶⁸ Sameer Shah vs UOI (Writ Petition (L) No.3220 of 2020)

⁶⁹ Basudev Garg vs Commissioner of Customs (2013 (294) ELT 353 (Del))

⁷⁰ Commissioner of Central Excise vs Kurele Pan Products Pvt Ltd (2014 (307) ELT 42 (All))

⁷¹ M. S. Naina vs Collector of Customs, West Bengal (2000(123) E.L.T. 39 (Cal.))

⁷² Coolade Beverages Ltd vs Commissioner of Central Excise, Meerut (2004 (172) E.L.T. 451 (Allahabad))

⁷³ Uniflex Cables Ltd vs CCE (2011 (271) E.L.T. 161 (S.C.))

1. Sh. C P Gupta Proprietor M/s. Sagar Electronics
2. M/s Sagar Electronics
3. M/s Gemini Enterprises
4. M/s. Spectrum Overseas

35.2 The SCN- 2 involves the following 3 noticees :

1. Sh. C P Gupta Proprietor M/s. Sagar Electronics
2. M/s Shiva Enterprises
3. M/s. Spectrum Overseas

35.3 The SCN- 3 involves the following 18 noticees :

1. Sh. C.P. Gupta, Proprietor, M/s. Sagar Electronics
2. M/s. Spectrum Overseas
3. M/s Mars International
4. M/s Shiva International
5. M/s Leo International
6. M/s Allied Enterprises
7. M/s Prominent Enterprises
8. M/s Konark International
9. M/s Magnum Overseas
10. M/s. Shiva Enterprises
11. M/s Gemini Enterprises
12. M/s Shivam Overseas Inc.
13. M/s Royal International
14. M/s Supreme Enterprises
15. M/s Devika Enterprises
16. M/s Surya Enterprises
17. M/s Galaxy Enterprises
18. Sh. Surender Kumar, Proprietor of M/s Ganpati Sales Corporation, M/s Shivam Overseas and M/s Spectrum Overseas

36. The allegations of offences outlined in the three SCNs revolve around a novel modus operandi of gross under-valuation of consignments of electronic components imported through various ports, the involvement of numerous dummy /fictitious firms controlled by Sh. C.P. Gupta assisted by Sh. Surender Sharma, and the obtaining of Hong Kong Trade Declarations by DRI to establish undervaluation. The investigations conducted by the DRI involve searches at various premises, verification of addresses and KYC documents of various importer firms (IEC holders), statements recorded from dummy owners, relevant individuals and entities, and inquiries conducted with Customs House Agents, transporters, and local representatives of overseas suppliers/manufacturers.

37. The SCN-1 deals with seizure of imported electronic goods at the shop cum office of Sh. C.P. Gupta and at the transporters premises. The SCN-2 deals with 5 consignments of goods lying at different ports not yet cleared and 1 consignment (imported in the name of M/s. Shiva Enterprises) cleared from Nhava Sheva port. The SCN-3 deals with 109 consignments (detailed in Annexure C-1 of SCN-3) whose Hong Kong Trade Declarations were received and used for redetermining value under Rule 4 of the CVR, 1988; 42 consignments (detailed in Annexure C-2 of SCN-3) whose Hong Kong Trade Declarations were not received but value of the goods was re-determined on the the basis of identical/similar goods detailed in Annexure C-1 of SCN-3; 13 consignments (detailed in Annexure C-3 of SCN-3) containing goods, some identical/similar to detailed in Annexure C-1 of SCN-3 and some whose transaction value was redetermined on the basis of contemporaneous imports; and 1 consignment (detailed in Annexure C-4 of SCN-3) for which a purchase order reference no. JT/061 dated 29.10.2002 was recovered from the office of M/s. Ritronic and M/s. Shin Semiconductors, New Delhi. Thus, the SCN-3 covers 165 consignments.

38. The evidence gathered from Hong Kong Customs, particularly the certified export trade declarations, forms a significant basis for the allegations made in the SCNs. Given the interconnected nature of the offences, the evidence collected, and the proposed actions outlined in the SCNs, I find it proper to adjudicate all the three SCNs in a single comprehensive order to enable holistic examination of the case.

39. SCN-1, SCN-2 and SCN-3 were earlier adjudicated by the Commissioner of Customs (Import), Mumbai-I vide OIO-1 dated 07.03.2008, OIO-2 dated 29.02.2008 and OIO-3 dated 28.05.2008 respectively. In the first round of adjudication of the SCN-3, the Adjudicating Authority ordered for confiscation of goods, imposition of redemption fines, confirmation of duty demands, and imposition of penalties on the noticees and appropriation of sale proceeds for confirmed duty demand and imposed penalties. The noticees appealed against OIO-1, OIO-2 and OIO-3 in the Hon'ble CESTAT. The history of legal proceedings in the case can be summed up in the Table below.

Table No. 32 (Legal History/ Chronology of the case)

Show Cause Notices	SCN No. 50D/126-2004 C.I(CPG-I) dated 05.12.2005 (SCN-1)	50D/126-2004 C.I(CPG-II) dated 16.12.2005 (SCN-2)	50D/126-2004 C.I(CPG-III) dated 18.05.2006 (SCN-3)
Issue/subject matter	seizure of imported electronic goods at the shop cum office of Sh. C.P. Gupta and at the transporters premises	5 consignment of goods lying at different ports not yet cleared and 1 consignment (imported in the name of M/s. Shiva	Total 165 past consignments of the said noticees

		Enterprises) cleared from Nhava Sheva port	
1st round of adjudication	CAO No. 23/2008/CAC/CC(I)/SP/Gr. VB dated 04.02.2008 and Corrigendum dated 07.03.2008 (OIO-1)	CAO No. 32/2008/CAC/CC(I)/SP/Gr. .VB dated 29.02.2008 (OIO-2)	CAO No. 104/2008/CAC/CC(I)/SP/Gr.VB dated 28.05.2008 (OIO-3)
Appeals against the OIO	Sh. C. P. Gupta filed Appeals No: C/544 & 545/2008 in the CESTAT against OIO-1 and OIO-2 respectively		APPEAL NO: C/1012/2008 filed by Sh. C. P. Gupta and APPEAL NO: C/1021/2008 filed by Sh. Surendra Sharma against OIO-3
CESTAT Orders on appeals	A/89970-89971/17/CB dated 20.09.2017		CESTAT Order Nos A/89929/17/CB and A/89930/17/CB both dated 18.09.2017
Grounds for remand	Hon'ble CESTAT remanded the appeal to address the jurisdictional issue in light of the pending Hon'ble Supreme Court judgment, to reevaluate evidence properly, and to provide Sh. C. P. Gupta with a fair opportunity for hearing.		Hon'ble CESTAT remanded the appeals with directions to address the preliminary issue of jurisdiction, as well as the merits of the case, following due process of justice.
Transferred to call-book	On 11.03.2019		The case was transferred to the call book due to the impact of the Judgement of Mangali Impex Ltd.
Taken out of call-book	On 30.11.2022		The case was taken out of the call book in view of amendments made in the Customs Act, 1962 by the Finance Act, 2022

40. It is seen from the chronological table above, This matter was remanded back by Hon'ble CESTAT, Mumbai vide Order No. A/89970-89971/17/CB dated 20.09.2017 & No. A/89929/17/CB and A/89930/17/CB both dated 18.09.2017 for de novo adjudication. De novo adjudication was impacted by the Order dated 03.05.2016 of the Hon'ble High Court, Delhi in the matter of M/s Mangali Impex. Further, CBIC vide Instruction F. No. 276/104/2016-CX.8A (Pt.) dated 29.06.2016 & 28.12.2016 and Office Memorandum F. No. 437/143/2009-Cus.IV dated 03.11.2017 directed to keep pending all the SCNs issued by DRI, DGCEI, SIIB, Preventive prior to 06.07.2011. Accordingly, this case was transferred to the call-book on 11.03.2019. In view of amendments made in the Customs Act, 1962 by Finance Act, 2022, the case was taken out of the call book for adjudication on 30.11.2022. Further, extensions for adjudication were given by the competent authority i.e. Pr. Chief Commissioner of Customs, Mumbai, Zone -1 under section 28(9) of the Act on 14.03.2023 and 21.09.2023 and duly communicated to the noticees. However, these extensions were taken without prejudice to the official stand of the Department taken before the Bombay High Court in Writ Petition no. 33946 of 2023

(Kejal Mehta Vs. Union of India & Ors) that Show Cause Notices issued prior to 29.03.2018 will not have the mandatory time limit (as also explained in explanation 4 to amended section 28 of the Act). Hence, there is no unjustifiable or undue delay in the adjudication of the case as argued by the noticees.

41. I have carefully gone through the case records, supporting documents placed before me, revelations during investigation, written replies, written submission made by the noticees in the first and second rounds of adjudications, the first round of Orders-in-Original for the SCN-1, SCN-2 and SCN-3, Remand Orders of the Hon'ble CESTAT and submissions made during the personal hearings, I find the following key issues to be addressed in this adjudication order:

- i. Issue of jurisdiction of DRI to issue SCN
- ii. Issue of cross-examination of 14 witnesses
- iii. Whether the extended period is rightly invoked under Section 28 of the Act in the show cause notices?
- iv. Whether duty can be demanded from Sh. C.P. Gupta on imports in the name of dummy firms?
- v. Role & liability of Sh. Surendra Sharma.
- vi. Issue of admissibility of Hong Kong Export Trade Declarations under Section 138C of the Act as evidence.
- vii. Whether the Department's rejection of the declared transaction value is correct?
- viii. Whether the re-determination of transaction value is correct?
- ix. whether the goods imported by various firms are liable for confiscation and penal action.

Let me take up the issues one by one.

42. Issue of jurisdiction of DRI to issue SCN

42.1 I find that the issue in the case of **Mangali Impex**⁷⁴ was the jurisdiction of DRI officers to issue SCNs under Section 28 of the Act. Similar issue came up later before the Hon'ble Supreme Court in **Canon India**⁷⁵ case, wherein the Hon'ble Court ruled that DRI officers do not have power to issue SCN under Section 28 of the Act. It is clear that the remand by the Hon'ble Tribunal is on the limited issue of jurisdiction of DRI officers to issue SCN. So the issue before me is the legality of the SCNs with respect to **Mangali Impex (supra)** judgement of the Hon'ble Delhi High Court and **Canon India (supra)** judgement of the Hon'ble Supreme Court.

⁷⁴ Mangali Impex vs. Union of India-2016 (335) ELT 605 (Del.)

⁷⁵ Canon India Pvt. Ltd. vs Commissioner of Customs-2021 (376) E.L.T. 3 (S.C.)

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

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

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

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

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

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

(e) *Principal Commissioner of Customs (Appeals)*;

(f) *Commissioner of Customs (Appeals)*;

(g) *Additional Commissioner of Customs or Additional Commissioner of Customs (Preventive) or **Additional Director of Revenue Intelligence** or Additional Commissioner of Customs (Audit)*;

(h) *Joint Commissioner of Customs or Joint Commissioner of Customs (Preventive) or **Joint Director of Revenue Intelligence** or Joint Commissioner of Customs (Audit)*;

(i) *Deputy Commissioner of Customs or Deputy Commissioner of Customs (Preventive) or **Deputy Director of Revenue Intelligence** or Deputy Commissioner of Customs (Audit)*;

(j) *Assistant Commissioner of Customs or Assistant Commissioner of Customs (Preventive) or **Assistant Director of Revenue Intelligence** or Assistant Commissioner of Customs (Audit)*;

(k) *such other class of officers of customs as may be appointed for the purposes of this Act.*”. (emphasis added)

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

(b) after sub-section (3), the following sub-sections shall be inserted, namely:— “(4) In specifying the conditions and limitations referred to in sub-Section (1), and in assigning functions under sub-Section (1A), the Board may consider any one or more of the following criteria, including, but not limited to— (a) territorial jurisdiction; (b) persons or class of persons; (c) goods or class of goods; (d) cases or class of cases; (e) computer assigned random assignment; (f) any other criterion as the Board may, by notification, specify.

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

.....

97. Notwithstanding anything contained in any judgment, decree or order of any court, tribunal, or other authority, or in the provisions of the Customs Act, 1962 (hereinafter referred to as the Customs Act),—

*(i) anything done or any duty performed or any action taken or purported to have been taken or done under Chapters V, VAA, VI, IX, X, XI, XII, XIII, XIV, XVI and XVII of the Customs Act, as it stood prior to its amendment by this Act, **shall be deemed to have been validly done or performed or taken;***

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

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

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

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

43.4 I also refer to the judgement of the Hon'ble Madras High Court in the matter of **N. C. Alexander**⁷⁶ wherein the validity of SCNs issued by DRI was challenged through various writ petitions in the wake of **Canon India (supra)** judgement and after enactment of the Finance Act, 2022. Hon'ble High Court while disposing of the said writ

⁷⁶ N.C.. Alexander Vs. Commissioner of Customs and others-2022 (381) ELT 148 (Mad.)

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

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

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

298. Insofar as completed proceedings i.e. where proceedings have been dropped prior to passing of Finance Act, 2022 is concerned, the proceedings cannot be revived. However, the pending proceedings have to be decided in the light of the validation in Section 97 of the Finance Act, 2022.

299. In the light of the above discussion, the challenges to the impugned show cause notices and the Orders-in-Original on the strength of the decision of the Hon'ble Supreme Court in Canon India Private Limited v. Commissioner of Customs, 2021 (376) E.L.T. 3 (S.C.) fail.

308. Rest of the writ petitions in Table-II challenging the impugned show cause notices are dismissed by directing the jurisdictional Adjudicating Authority to pass appropriate orders on merits and in accordance with law preferably within a period 120 days from the date of receipt of a copy of this order.”

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

43.5 I find that the **N. C. Alexander Judgement (supra)** has not been dissented/stayed by the Hon'ble Supreme Court in any proceedings so far. Therefore, in view of the above, I find that the three SCNs issued by ADG, DRI, are legal and proper.

44. Issue of cross-examination of 14 witnesses

44.1 (a) I find that in the first round of adjudication, Ms. Kiran Doiphode, Advocate of Sh. C. P. Gupta demanded cross examination of the following 18 persons, whose statements were recorded under Section 108 of the Act during investigation by DRI :

1. Sh. Krishna Kumar, M/S. Godara Roadways Pvt Ltd Delhi

2. Sh. Manish Sangani, Partner of M/S. National Shipping Agency, CHA.
3. Sh. Manish G. Amlani, Prop.of M/s. Smith & Enterprises, CHA
4. Sh. Jayesh Vador, Partner of M/S Unnati Shipping Agency, CHA
5. Sh. Dharmendra S. Shah, Customs Clerk of M/S Mehul & Co, CHA.
6. Sh. Mehul H Sanghavi, Partner of M/S Mehul & Co
7. Sh. Prayagath Singh, Helper with M/S Natraj Cargo & Courier
8. Sh. Basava Raj. Partner of M/S. Natraj Cargo & Courier.
9. Sh. Gurvinder Singh, owner of the premises at 4078 Roshanara Road, Delhi-110 007
10. Sh. SP. Mahajan and his wife, Mrs. Chander Mohini
11. Sh. Prem Prakash Mahajan, owner of M/S. Mahajan Properties.
12. Sh. Ajay Kumar Agarwal, Chartered Accountant.
13. Sh. Tarun Tripathi & Arrow Electronics Ltd
14. Sh. Surendra Sharma. (Proprietor of M/s. Spectrum Overseas, M/s. Shivam Overseas)
15. Sh. Sunil Kumar (Employee of Sh. C. P. Gupta)
16. Sh. Shashi Kapoor (Proprietor of M/s. Surya Enterprises)
17. Mrs. Lata Pandey (Proprietor of M/s. Shiva Enterprises, M/s. Leo International, M/s. Allied Enterprises,
18. Mrs. Babita Kapoor(Proprietor of M/s. Galaxy Enterprises)

(b) It is on record that three opportunities were given for cross examination of above mentioned 18 witnesses in the first round of adjudication. However, only 4 witnesses as mentioned below came forward and cross examination of these witnesses were held before the Adjudicating Authority in the first round of adjudication:

- (i) Sh. Manish R. Sanjani C.H.A.
- (ii) Sh. Manish G. Amlani CHA
- (iii) Sh. Jayesh R. Vador, CHA
- (iii) Sh. Krishan Kumar Manager of M/s. Godara Roadways Pvt Ltd

44.2 In the second round of adjudication, during the personal hearing on 19.10.2023, Ms. Kiran Doiphode, Advocate of Sh. C. P. Gupta, demanded cross examination of the following 15 persons:

1. Sh. Jayesh Vador, Partner of M/S Unnati Shipping Agency, CHA
2. Sh. Dharmendra S.Shah, Customs Clerk of M/S Mehul & Co, CHA.
3. Sh. Mehul H Sanghavi, Partner of M/S Mehul & Co
4. Sh. Prayagath Singh, Helper with M/S Natraj Cargo & Courier

5. Sh. Basava Raj. Partner of M/S. Natraj Cargo & Courier.
6. Sh. Gurvinder Singh, owner of the premises at 4078 Roshanara Road, Delhi-110 007
7. Sh. SP. Mahajan and his wife, Mrs. Chander Mohini
8. Sh. Prem Prakash Mahajan, owner of M/S. Mahajan Properties.
9. Sh. Ajay Kumar Agarwal, Chartered Accountant.
10. Sh. Tarun Tripathi & Arrow Electronics Ltd
11. Sh. Surendra Sharma.
12. Sh. Sunil Kumar
13. Sh. Shashi Kapoor
14. Mrs. Lata Pandey
15. Mrs. Babita Kapoor

44.3 As per record of the first round of adjudication, cross- examination of Sh. Jayesh Vador, Sh. Manish R. Sanjani and Sh. Manish G. Amlani has been done by Ms. Kiran Doiphode, advocate representing Sh. C.P. Gupta on 10.07.2007. Furthermore, cross-examination of Sh. Krishan Kumar Manager of M/s. Godara Roadways Pvt Ltd has been done by Ms. Kiran Doiphode on 18.07.2007.

44.4 (a) I find it on record that during cross-examination by Ms. Kiran Doiphode on 10.07.2007, Sh. Manish G. Sangani of M/s National Shipping Agency confirmed the name of the companies for whom he cleared the consignment of “electronic components” as M/S Gemini Enterprises, M/S Mars International, M/S Spectrum Enterprises, Shivam Overseas, Shiva International Magnum Enterprises, Royal International, Leo International and others, for whom Sh. C.P. Gupta provided the documents such as invoices, Airway Bills, Bill of Lading, and the importer's IEC code for customs clearance. He also affirmed that all the companies were represented by Sh. C.P. Gupta. He admitted that investigations by the DRI revealed discrepancies regarding the existence of these companies, despite Sh. C.P. Gupta providing required documentation. Similarly, cross-examination of Sh. Manish G. Amlani and Sh. Jayesh R. Vador, CHAs at M/S Mehul & Company and M/S Mehta & Mehta respectively, corroborated the facts confirmed in cross-examination of Sh. Manish G. Sangani. They also admitted to not directly interacting with the importers and relying on Sh. C. P. Gupta's instructions.

44.5 Furthermore, I find it on record that during cross-examination by Ms. Kiran Doiphode on 18.07.2007, Sh. Krishan Kumar, Manager at M/s Godra Roadways Pvt Ltd, provided insight into the transportation aspect of the transactions. He confirmed delivering goods in the name of 17 noticee dummy firms to Sh. C. P. Gupta as instructed by the CHAs. He also affirmed that delivery instructions came from Sh. C. P. Gupta, not

the importers and payments were received at the place of delivery; in case of non-receipt of payment, Sh. C. P. Gupta was the person to contact for. His cross examination reinforced the facts confirmed in cross-examination of 3 Customs Brokers. Thus, 4 persons cross-examined by the Defence Advocate have confirmed the charges laid down in the SCNs.

44.6 In the second round of adjudication, memorandums for cross examination were sent to the remaining 14 witnesses on 25.10.2023, 31.10.2023 and 03.11.2023. No witness turned up for cross examination on the scheduled dates. I find that the statements of above mentioned witnesses, recorded under Section 108 of the Act, are voluntary and confessional in nature, and have not been retracted. I find that cross-examination is the process of natural justice which allows a noticee to test the veracity and reliability of evidence presented against them. Now the question arises whether non-appearance of the 14 persons for cross-examination violate the principles of natural justice or not.

44.7 Cross-examination of Co-noticees: In the instant case 4 out of the 14 witnesses whose cross-examination is sought are co-noticees and proprietors of the dummy noticee firms. **It is on record that 3 opportunities were given to the 14 witnesses and Sh. C. P. Gupta appeared for cross examination, but no witness appeared on all three scheduled dates.** In such a situation, proceeding for adjudication without cross examination of 4 co-noticees will not result in a violation of the principles of natural justice, as co-noticees can not be compelled to provide testimony that may incriminate them. So, I am of view that proceeding for adjudication without the cross-examination of the 4 co-noticees will not violate the principles of natural justice. For this view, I take support from the following judicial pronouncements :

- i. The Hon'ble Principal Bench of CESTAT at New Delhi in the case of **Jagdish Shankar Trivedi**⁷⁷ has held that *“denial of cross examination of co-noticees / accused does not result in violation of principles of natural justice and cannot be insisted on as a matter of right by them otherwise each of the accused can claim right against testimonial compulsions under Article 20(3) of the Constitution of India and thereby by their joint efforts bring out violation of natural justice.”*
- ii. In the case of **N.S. Mahesh**⁷⁸ Hon'ble High Court upheld denial of *“cross-examination of co-noticee. Adjudicating Authority denied cross-examination of co-noticee on ground that firstly no specific reasons given for such cross-examination and secondly, co-noticee cannot be directed to be a part of proceedings that may incriminate him. It was held that there is no illegality in aforesaid reasoned order warranting interference by High Court.”*

⁷⁷ Jagdish Shankar Trivedi Vs. CC, Kanpur reported as 2006 (194) ELT 290 (Tri. Delhi)

⁷⁸ N.S. Mahesh vs CC, Cochin reported in 2016 (331) ELT 402 (Ker.)

- iii. In the case of **Laxmi v/s. Collector of Customs, Lucknow**⁷⁹, Hon'ble Tribunal held that *“Statement of co-noticees corroborated by another person- Denial of permission of cross-examination of co-noticees not violated principles of natural justice,”*

44.8 From the case records, I find that there is substantial corroborative evidence against Sh. C. P. Gupta as mentioned below:

- a. Sh. C.P. Gupta's own confessional statement dated 28.02.2005 is a strong piece of evidence wherein he has conceded to importing electronic items through various noticee fictitious firms. He attempted to retract his statements after a gap of few months. As per settled legal position, mere retraction without evidence of coercion does not take away the evidentiary value, especially when corroborated by other evidence.
- b. The export trade declarations filed by the foreign supplier with the Hong Kong Customs authorities hold substantial legal significance and evidentiary value in cases of undervaluation of imported goods in India. These documents are considered authentic, credible, and a reliable source to establish the actual transaction value.
- c. **Confessional statements of co-noticees of Sh. Surendra Sharma, Smt. Lata Pandey, Smt. Babita Kapoor, Sh. Shashi Kapoor :** Sh. Surendra Kumar confessed to creating the chain of firms, obtaining IECs using forged documents, opening bank accounts on Sh. C.P. Gupta's instructions against monthly payments. Smt. Lata Kumar, proprietor of firms like M/s. Shiva Enterprises, admitted to providing documents like ration card on Sh. C.P. Gupta's instructions and received monthly payments from him. Sh. Sunil Kumar and Sh. Shashi Kapoor, Sh. C.P. Gupta's employees, admitted depositing cash in firms' accounts, obtaining drafts for duty payments, all as per his directions. Smt. Babita Kapoor, proprietor of M/s. Galaxy Enterprises, admitted receiving monthly payments from Sh. C.P. Gupta and introducing dummy names like Lata Pandey at her behest.
- d. Statements of 3 CHAs and 1 transporter, which have been cross examined as requested by Sh. C. P. Gupta has established that documents for imports, IEC codes and duty payments for all the 16 firms were given by Sh. C.P. Gupta and the goods were delivered to him finally. Various bank transactions among the noticee firms to adjust duty payments on the directions of Sh. C.P. Gupta also establish that he was operating and controlling the imports through the dummy noticee firms.

44.9 Based on the above discussion and findings, it is evident that in the second round of adjudication, despite multiple opportunities provided, the 14 witnesses failed to appear

⁷⁹ Laxmi v/s. Collector of Customs, Lucknow [2001 (138) ELT 1090 (Tri. Delhi)]

for cross-examination. I also find that in the first round of adjudication, despite opportunities provided for cross-examination to the 18 witnesses, only 4 witnesses appeared, yet their cross-examination provided substantial corroboration of Sh. C. P. Gupta's involvement. Furthermore, confessional statements of the co-noticees along with documentary evidence such as Hong Kong Export trade declarations and bank transactions, further solidify the case against Sh. C. P. Gupta. I also find that Sh. C. P. Gupta's confessional statement, even though later retracted after 7 months, holds weight when considered alongside corroborative evidence. Therefore, based on the totality of evidence, I find that Sh. C.P. Gupta was intricately involved in the fraudulent import scheme and non-appearance of remaining 14 witnesses for cross-examination does not prejudice the noticee's case. Accordingly, I find that adequate natural justice has been provided to the noticee.

45. Whether the extended period is rightly invoked under Section 28 of the Act?

45.1 Sh. Surendra Sharma, in his written submission, has argued that the show cause notices have been issued beyond the normal period of 6 months and no allegations have been made in the SCNs regarding any collusion, suppression of facts etc. Therefore, he has argued that the extended period of 5 years can not be invoked which makes the demand time barred. Sh. Surendra Sharma has relied upon the case laws **HMM Limited**⁸⁰, **Raj Bahadur**⁸¹, **Kaur & Singh**⁸², **Aban Lloyd**⁸³, **Devans Modern**⁸⁴.

45.2 Let me discuss these case laws. In the case of **HMM Limited (supra)**, Hon'ble Supreme Court held that for invoking the extended period under proviso to Section 28(1) of the Act, the notice must clearly spell out which particular obligation under the proviso has been violated by the noticee, thereby extending the time limit. In the case of **Raj Bahadur (supra)**, Hon'ble Supreme Court held that show cause notice must clearly convey allegations of collusion, willful mis-statement or suppression of facts for time limit to be enhanced to 5 years, otherwise notice issued after 6 months becomes time barred. In the case of **Kaur & Singh (supra)**, it was held that specific commissions/omissions need to be identified in the notice for proviso of Section 28 of the Act to apply. In the case of **Aban Lloyd (supra)**, Hon'ble Supreme Court stated that invocation of extended time limit requires show cause notice to spell out clearly and unambiguously the particular violation committed by the noticee. Similarly in the case of **Devans Modern (supra)** it was held that the notice must specifically convey which

⁸⁰ CCE v HMM Limited (1995(76) ELT 497 (SC))

⁸¹ Raj Bahadur v Union of India (1996 (88) ELT 24(SC))

⁸² Kaur & Singh v CCE (1997 (94) ELT 289 (SC))

⁸³ Aban Lloyd v CCE (2006 (200) ELT 370 (SC))

⁸⁴ Devans Modern v CCE (2006 (202) ELT 744 (SC))

obligation under proviso to Section 28(1) of the Act has been breached for extending the time limit.

45.3 All these 4 case laws are on the same principle that show cause notices must be specific and unambiguous in alleging violations such as collusion, willful misstatement, or suppression of facts in order to invoke the extended time limit under the Act and failure to meet this standard may result in notices being deemed time-barred. I find that Sh. Surendra Sharma's reliance on above discussed case laws is misplaced. In the present case, I find that Para 13.1 and Para 13.2 of the SCN-3 clearly convey allegations of collusion, willful misstatement or suppression of facts and the time limit of 5 years are correctly invoked. Para 13.1 and 13.2 of the SCN-3 are reproduced below for reference:

"13.1 Sh. C.P. Gupta, M/s. Sagar Electronics, M/s. Allied Enterprises, M/s. Devika Enterprises, M/s. Galaxy Enterprises, M/s. Gemini Enterprises, M/s. Konark International, M/s. Leo International, M/s. Prominent Enterprises, M/s. Royal International, M/s. Shiva International, M/s. Shivam Overseas Inc., M/s. Spectrum Overseas, M/s. Supreme Enterprises, M/s. Surya Enterprises, M/s. Shiva Enterprises, M/s. Magnum Overseas and M/s. Mars International willfully and knowingly mis-declared the value of the imported components as well as gave incomplete description of components in the invoices / Bills of entries (As per details in Annexure C-1 to C-4) submitted to the Customs Authorities with an intent to evade Customs duty thereby rendering the goods liable for confiscation under 111 (m) of the Customs Act, 1962 and thereby rendered themselves liable for penal action under Section 112/114A of the Customs Act, 1962.

13.2. Sh. Surender Kumar alias Surender Sharma, proprietor of M/s. Shivam Overseas Inc. & M/s. Ganpati Sales Corporations who assisted Sh. C. P. Gupta in the creation of the above said firms under investigation, arranged fake address proofs, introduced accounts of most of the said firms, completed formalities for obtaining IEC Numbers in respect of the above said firms of dummy proprietors, knowing that the said firms will be used by Sh. C.P. Gupta for the purpose of importing undervalued electronic components/VCD parts etc. Sh. Surender Sharma appears to have abetted the offences committed by Sh. C.P. Gupta and the above said firms under his (Sh. C.P. Gupta's) managerial and financial control and, thus, appears to have rendered himself liable for penal action under Section 112 of the Customs Act, 1962." (emphasis added).

45.4 The Hong Kong Trade Declaration also show that the value of the goods were undervalued/mis-declared to Customs 4-5 times lower than the actual, with clear intention to evade duty and elaborate plan to escape punishment through a network of 16 dummy firms. Hence I find that the extended period under Section 28 of the Act is rightly invoked in the SCNs.

46. Whether duty can be demanded from Sh. C. P. Gupta on imports in the name of dummy firms?

46.1 In the first round of adjudication of SCN-3 vide Order-in-Original No. 104/2008/CAC/CC(I)/SP/Gr.VB dated 28.05.2008, the Adjudicating Authority has discussed in detail on the role of the noticee Sh. C. P. Gupta. The findings of the Adjudicating Authority in the 1st round OIO-3 on this issue are reproduced below :

“Role of Sh. C.P. Gupta.

*37.1 Sh. C.P. Gupta, the proprietor of M/s Sagar Electronics had adopted a novel modus operandi and cleared several consignments of electronic components in the name of various fictitious and non-existent firms including M/s Gemini Enterprises, M/s Mars International, M/s Shivam Overseas Inc., M/s Shiva International, M/s Shiva Enterprises, M/s Royal International, M/s Leo International, M/s Supreme Enterprises, M/s Allied Enterprises, M/s Devika Enterprises, M/s Prominent Enterprises, M/s Spectrum Overseas, M/s Surya Enterprises, M/s Konark International, M/s Galaxy Enterprises and M/s Magnum Enterprises. The statement of all the concerned persons revealed that the said Sh. C.P. Gupta was clearing the goods clandestinely with intent to defraud the Government exchequer. **The statement of the transporter, their employee and the Custom House Agents also corroborate the above allegations.***

37.2 Sh. Krishan Kumar, the Manager of M/s Godara Roadways Pvt. Limited (the transporter) in his voluntary statement recorded on 09.12.2004, inter-alia, stated that, Sh. C.P. Gupta, the owner of M/s Sagar Electronics was their regular client; that Sh. C.P. Gupta was the owner of many firms viz M/s Gemini Enterprises, M/s Mars International, M/s Shivam Overseas Inc., M/s Shiva International, M/s Shiva Enterprises, M/s Royal International, M/s Leo International, M/s Supreme Enterprises, M/s Allied Enterprises, M/s Devika Enterprises, M/s Prominent Enterprises, M/s Spectrum Overseas, M/s Surya Enterprises, M/s Konark International, M/s Galaxy Enterprises, M/s Magnum Enterprises; that the consignments booked for all these firms were delivered to Sh. C.P. Gupta or his associate Sh. Pawan Gupta.

*37.3 This fact has also been confirmed by Sh. Prayag Nath Singh, helper with M/s Natraj Cargo and Couriers who in his statement recorded under Section 108 of Customs Act, 1962 on 30.1.2006 revealed that the goods received with different consignee firms were delivered to representative of Sh. C.P. Gupta. Sh. Basvaraj, Partner, M/s Natraj Cargo and Couriers, 3214/165, Ram Bazaar, Mori Gate, Delhi-6 in his statement recorded on 6.2.2006 admitted that Sh. C.P. Gupta used to enquire about his courier cargo arrival from Mumbai in respect of M/s Surya Enterprises, M/s Supreme Enterprises, M/s Galaxy Enterprises, M/s Gemini Enterprises, M/s Mars International, M/s Royal International, M/s Shiva Enterprises and M/s Royal Enterprises. Sh. Basvaraj also revealed that **Sh. C.P. Gupta had instructed them that if any cargo received in the name of the above mentioned firm it belongs to him only.** He further added that cargo was*

delivered at Shop No. 493, Old Lajpat Rai Market, Chandni Chowk, Delhi-6 and at Shop No. 599, Old Lajpat Rai Market, Delhi which belonged to Sh. C.P. Gupta. Sh. Basvaraj also confirmed that the money for freight / courier charges was always given in cash at the shop of Sh. C.P. Gupta located at 493/599, Old Lajpatrai Market, Delhi. It was also disclosed by Sh. Basvaraj that the courier receipts of M/s Natraj Cargo and Couriers were also given to Sh. C.P. Gupta which he (C.P. Gupta) used to destroy immediately before the cash payment of the freight or courier charges.

37.4 Furthermore, Sh. Manish Sangani of M/s National Shipping Agency, Sh. Jayesh Vador of M/s Unnati Shipping Agency and Sh. Manish G. Amlani of M/s Smith Enterprises (CHAs) has also confirmed that they used to receive import clearance documents from Sh. C.P. Gupta in respect of various firms operated and controlled by Sh. C.P. Gupta. In his statement, the concerned CHA also submitted that the duty payment were provided by Sh. C.P. Gupta in all cases and further goods were delivered to him through transport agencies; that **firm-wise statement of account for consignment charges were sent to Sh. C.P. Gupta** through courier irrespective of which firms the consignment was imported for.

37.5 Further, statement of various supplier's representatives in India were recorded by the department which includes M/s WPI International, M/s Arrow Electronics, M/s BBS Electronics Pvt. Limited, M/s Avnet Asia Pte Ltd. also confirmed that for all the companies as mentioned in the show cause notice, **Sh. C.P. Gupta used to negotiate** the price of various electronic components and accordingly their local office confirmed the deal to their overseas headquarters and then they supplied the material to the actual shipper of Sh. C.P. Gupta i.e. M/s Great Himalyan Pvt. Ltd / M/s Anjaneya Trading Pvt Limited/ M/s. J.N. Exports/ M/s. Great Himalayan Shippers Ltd., for further shipment to India. It was also investigated by the department that **all the consignment was routed through these shippers only** and not dispatched directly from the original supplier; the reason obviously for manipulation of values that to be declared to customs for the purpose of assessment and payments of duties on these electronic components.

38. **Statement of Sh. Surender Kumar @ Sh. Surinder Sharma** was recorded by the department on 2.2.2006 under Section 108 of the Customs Act, 1962 wherein he admitted that he used to work for Sh. C.P. Gupta under consideration of Rs. 20000 and his basic work is to set up companies in various names; to obtain IEC for the companies; to open bank accounts in the name of companies and to make demand draft out of the cash received from Sh. C.P. Gupta for payment of Customs duties. He further added in his statement that he used to get Rs. 10000 for each additional firm set up by him and out of the said Rs. 10000 he used to give Rs. 2500 to each of the dummy proprietors. He also admitted that on consideration of profit in setting up new firms and allowing them to be used by Sh. C.P. Gupta for the said import he set up a chain of firms in the name of various friends of him and those nominated by Sh. C.P. Gupta. He also admitted for setting up of the firms viz. M/s Gemini Enterprises, M/s Mars International, M/s Shivam Overseas Inc., M/s Shiva International, M/s Shiva Enterprises, M/s Royal International, M/s Leo International, M/s Supreme Enterprises, M/s Allied Enterprises, M/s Devika Enterprises, M/s Prominent

Enterprises, M/s Spectrum Overseas, M/s Surya Enterprises, M/s Konark International, M/s Galaxy Enterprises, M/s Magnum Enterprises. In his confessional statement he also admitted that he had simply used the name of the dummy proprietors their photographs and signatures and further get various blank letter heads signed by these dummy proprietors and given to Sh. C.P. Gupta for using the name of the above mentioned firms.

39. **Sh. Sunil Kumar, one of the employee of Sh. C.P. Gupta** in his statement dated 6.2.2006 admitted that he used to deposit the cash amount given by Sh. C.P. Gupta in account of various companies and to get drafts from the cash deposited in that accounts for payment of customs duties. Sh. Shashi Kapoor, another employee of Sh. C.P. Gupta and also the proprietor of M/s Surya Enterprises admitted in his voluntary statement dated 6.2.2006 that Sh. C.P. Gupta was controlling / managing several firms for import of electronic components including M/s Sagar Electronics, Sh. Ganpati Sales Corp., M/s Payal Enterprises, M/s Shiva-Enterprises, M/s Shivam Overseas, M/s Surya Enterprises and M/s Spectrum Overseas. He also revealed that out of the seven companies mentioned above M/s Surya Enterprises was opened in his name by Sh. C.P. Gupta while M/s Spectrum Overseas under the proprietorship of his brother Sh. Surinder Kumar. He also admitted that all the necessary documents like ration card copy, photograph of his brother and for himself were given to Sh. C.P. Gupta. He also stated in his statement that for these firms he was paid Rs. 2500 per month apart from his salary per company.

40.1 The said to be proprietor of M/s Shiva Enterprises, M/s Leo International and M/s Allied Enterprises, Smt. Lata Kumar @ Lata Pandey in her voluntary statement dated 22.3.2006 admitted that during the period of 1991 to 1994 she was residing at D-54, Shakarpur, Delhi - 92 and for that address she got a ration card made in the name of her husband Sh. Anil Pandey which included her name and that of her son Rohan and daughter Neelam. She admitted that the ration card no. 156079 bearing her photograph in the name of Sh. Anil Podesh, D-54, Shakar Pur, Delhi used to open account of M/s Shiva Enterprises, 7/318, IInd Floor, Lalita Park, Laxmi Nagar, Delhi was a forged document as her ration card was in the name of her husband Sh. Anil Pandey bearing his photograph while in the photocopy which is used for getting IEC No. and for opening of the bank account the head of the family name has changed from 'Anil Pandey to Anil Podesh' and her photograph has been super imposed on her husband's photograph. She also stated that one of her friend Smt. Babita Kapoor introduced her to Sh. Surinder Kumar for setting of this dummy firm for which she was paid Rs. 2500 per month by Sh. C.P. Gupta through Smt. Babita Kapoor. She also added that she signed blank cheques in respect of all the three companies in her name and sent them to Sh. C.P. Gupta through her friend Smt. Babita Kapoor. She also added that the office addresses shown against the 3 firms, M/s Shiva Enterprises, M/s Allied Enterprises and M/s Leo International were not under her control nor did she sign any rent deed or sale deed and she never visited those addresses. It was also revealed by Smt. Lata Pandey that copy of her ration card no. 156079 also used for opening the account of M/s Devika Enterprises and M/s Supreme Enterprises had been forged and the two names shown as added to the said ration card were in no way related to her or her husband. It was also added by her that one more firm in the name of M/s Royal

international was opened by Sh. C.P. Gupta showing her son Sh. Rohan Kumar as Proprietor and it is she who provided the required photographs and signature of her son to Sh. C.P. Gupta. She was also paid Rs. 2500 per month for this firm as well.

40.2 M/s Shiva Enterprises, 7/318, Lalita Park, Laxmi Nagar, Delhi-92 was in the name of Lata Kumar wife of Sh. Anil Kumar 54-D, Vikas Marg, Delhi. They had taken the IEC code No. 0504047361 dtd. 1.10.04. The bank account No. was 2869 of the Kangra Co-operative Bank, Jagat Puri Delhi-92. The account opening form showed that the bank account was opened on the instructions of M/s Ganapati Sales Corporation, Govindpuri, Delhi. M/s Ganapati Sales Corporation was found to be in the name of Sh. Surendra Kumar resident of D-45, Jawahar Park, Delhi which was a non-existent address. For the opening of the bank account, Ration Card No.156079 dtd. 23.12.99 issued in the name of Sh. Anil Podesh was used. Smt Lata Kumar used different names and addresses for different purposes. For example – for the account opening form Lata Kumar used 54-D Vikas Marg, Shakarpur, Delhi, in the PAN No. ALHPP3795P, her name was Lata Pandey, and in Ration Card she declared her to be Lata wife of Sh. Anil Podesh, D-54, Shakarpur, Delhi-92. Telephone bill in the name of Lata Pandey showed address as R-39, Vikas Marg, Shakarpur, Delhi. In Shakarpur, the changed addresses were shown to keep the exact identity under wrap viz. 54-D, Vikas Marg, D-54, Vikas Marg and R-39, Vikas Marg. The Rent Agreement dated 20.09.2003 in respect of R-39, Vikas Marg was signed between Lata Pandey, w/o Sh. Kamal Pandey and Sh. Atul Kumar. Signature of Lata Pandey in lease deed and Lata Kumar in account opening form proved that the signatures are same. Smt. Lata declared the name of the husband differently with the malafide intention to keep her identity unknown viz. Anil Kumar, Anil Podesh and Kamal Pandey. The residence address of D-54 (or 54-D), Shakarpur has been used for opening

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|-------------------------------|--|
| <i>1. Shiva Enterprises</i> | <i>- Proprietor Lata Kumar, w/o Anil Kumar</i> |
| <i>2. Leo International</i> | <i>- Proprietor Lata Kumar, w/o Anil Kumar</i> |
| <i>3. Allied Enterprises</i> | <i>- Proprietor Lata Podesh, w/o Anil Podesh</i> |
| <i>4. Royal International</i> | <i>- Proprietor Rohan Kumar, s/o Anil Kumar</i> |
| <i>5. Supreme Enterprises</i> | <i>- Proprietor Raj Bala, w/o Atul Kumar</i> |
| <i>6. Devika Enterprises</i> | <i>- Proprietor Atul Kumar, s/o Girija Shankar</i> |

All the above firms, except M/s Devika Enterprises have opened their bank account in the Kangra Cooperative Bank, Jagatpuri, Delhi having account nos. 2869, 2730, 2587, 2731 and 2612 respectively. All these bank accounts were introduced by Sh. Surender Kumar @ Surender Sharma, Proprietor of M/s Ganapati Sales Corporation. Perusal of account statements revealed that there were frequent unexplained fund transfers from these accounts to M/s Ganapati Sales Corporation and M/s Shivam Overseas Inc. both being the proprietorship firms of M/s Surender Kumar @ Surender Sharma. All these evidences indicate the unholy nexus between Smt. Lata Kumar with Sh. Surender Kumar with a view to abet and facilitate illegal import by Sh. C.P. Gupta. On visit it was found that no firm in the name of M/s Shiva Enterprises exists at 7/318, 1st floor, Laxmi Nagar, Delhi-92. On visit to Vikas Marg, Shakarpur it was found that no person in the name of. Lata stay in D-54, Shakarpur. M/s Leo International and M/s Royal

International were found not to exist at the declared office premises at H-31, Vijay Chowk, Laxmi Nagar, Delhi, but one Sh. Narendra Kumar and Rajneesh Sharma were found to be there for last 30 years. The declared office premises of M/s Allied Enterprises and Supreme Enterprises were found to be the same, but the number was reversed, 2/63 for M/s Allied Enterprises and 63/2 for M/s Supreme Enterprises. It was found to be occupied by an Advocate and a doctor. The declared office premises of M/s Devika Enterprises were found to be a three-storeyed commercial building where no firm in the name of M/s Devika Enterprises ever operated.

41. *Smt. Babita Kapoor said to be the Proprietor of M/s Galaxy Enterprises in her statement admitted that the ration card no. 73856 had been used to open account of M/s Galaxy Enterprises. She added that she never involved herself in any of the import activities in that firm and the bank account was operated and controlled by Sh. C.P. Gupta as she simply used to sign the blank cheques and handed over them to Sh. C.P. Gupta, Sh. Pawan Gupta, Sh. Sanjay Gupta or Sh. Sunil. **She admitted that she used to get an amount of Rs.2500 per month for permitting Sh. C.P. Gupta to use the name of her company.** She also admitted that she introduced Mrs. Lata Pandey to Sh. C.P. Gupta for creating M/s Shiva Enterprises, M/s Allied Enterprises and M/s Leo International. She also admitted that as per the understanding with Sh. C.P. Gupta she also arranged the necessary documents for creating another firm in the name of M/s Konark International under the proprietorship of her brother Sh. Chandresh Gupta who never met Sh. C.P. Gupta at any instance. She added that she also knew Sh. Surinder Sharma and Sh. Pawan Gupta who are representatives of Sh. C.P. Gupta.*

42. *M/s Spectrum overseas having the IEC code No. 05040047 dtd. 1.4.2004 has shown the address of the firm as 4078, Roshanara Road, Delhi-17. The name of the proprietor is Surendra Kumar residing at 8575, Roshanara Road, Delhi. He has opened the bank account No. CA5068 at Kangra Bank at Paharganj, New Delhi. The bank account was opened on the introduction of M/s Ganpati Sales Corporation, Govindpuri, Delhi. This Ganpati Sales Corporation is also in the name of Sh. Surendra Kumar resident at D-45, Jawahar Park, Delhi -92. For the opening of the bank account, the ration card No.178576 dtd. 16.5.2000 has been used which has been issued in the name of Sh. Surendra Kumar resident of D-45, Jawahar Park, Delhi-92. The address at Jawahar Park was found to be a non-existent one. At 4078, Roshanara Road, Delhi, Sh. Gurbinder Singh was found to be running a tea stall for last 5 years. No firm by the name of M/s Spectrum Overseas was in existence in that building. The address at 8575, Roshanara Road, Delhi was found to be the residential address of one Sh. Shashi Kapoor. On visit it was found that Sh. Surendra Kumar does not stay there. From the above findings it appears that IEC code was obtained by M/s Spectrum Overseas, Proprietor Surendra Kumar, fraudulently by giving false statements and declarations.*

43. ***Sh. C. P. Gupta in his voluntary statement** recorded on 28/02/2005 has conceded the fact that he was importing electronic items **in the name of various fictitious firms** viz. M/s Sagar Electronics, M/s Spectrum Overseas, M/s Shiva Enterprises, M/s Gemini Enterprises, M/s Mars International, M/s Shivam Overseas Inc., M/s Shiva International, M/s*

*Royal International, M/s Leo International, M/s Supreme Enterprises, M/s Allied Enterprises, M/s Devika Enterprises, M/s Prominent Enterprises, M/s Surya Enterprises, M/s Konark International, M/s Galaxy Enterprises, M/s Magnum Enterprises. He also confirmed that all the firms except M/s. Sagar Electronics were got opened by one Sh. Surendra Kumar and he was paying a lump sum amount of Rs. 10,000/- per month per firm to Sh. Surendra Kumar. It was also confessed by Sh. C.P. Gupta that **he used to send** IEC codes, invoice, packing list, AWB/BL etc. to the CHA in respect of all the firms and he was also providing money for the payment of customs duties. This can be further corroborated from the statement of Sh. Manish Sangani, CHA, recorded on 27/09/2005 under Section 108 of the Customs Act, 1962, wherein he has confirmed the said fact and stated that **he used to receive import clearance documents from Sh. C. P. Gupta** in respect of various firms operated and controlled by Sh. C. P. Gupta. It is stated that, after clearance Sh. Manish Sangani used to send the post clearance documents to Sh. C.P. Gupta of M/s. Sagar Electronics irrespective of whether the firm was M/s. Sagar Electronics, M/s. Shiva Enterprises, M/s. Spectrum Overseas or any other firm operated and controlled by Sh. C.P. Gupta. Sh. C.P. Gupta also used to send money in the form of drafts to M/s. National Shipping Agency (CHA), at their disposal, to be utilized for the purpose of payment of customs duty and other related expenses in respect of various firms including Sagar Electronics and Gemini Enterprises, operated and controlled by Sh. C.P. Gupta. Sh. Manish Sangani further stated that, they (CHA) used to send the expenditure report of money sent to Sh. C.P. Gupta of M/s. Sagar Electronics irrespective of in which firm the said money was utilized. The other two CHAs ie. Jayesh Vador of M/s. Unnati Shipping Agency and Sh. Manish G. Amlani of M/s Smith Enterprises also confirmed the facts that for all the consignments, irrespective of any company as named in earlier paragraphs, Sh. C.P. Gupta used to make the payment and for delivery of the imported goods also it is Sh. C.P. Gupta to give all directions. It is thus seen that, the said Sh. C.P. Gupta was having the complete managerial and financial control over the said firms and Sh. Surender Kumar and Smt. Lata Kumar and other said to be proprietors were just the dummy proprietors of the said firms.*

44. *Further, it is not unusual for unscrupulous persons to use the name and IEC code numbers of existing firms, to place orders for import of the goods and try to clear them. At the hint of any suspicion they just vanish and no liability can be fixed on such unscrupulous persons as their names do not figure anywhere in the import documents. It is seen that, Sh. Surendra Kumar, R/o. 8575, Roshanara Road, Delhi, obtained IEC Code 0504000047 in respect of M/s. Spectrum Overseas said to be his proprietary concern at 4078, Roshanara Road, Delhi-110 017 had allowed Sh. C.P. Gupta to import the electronic components at the under-declared prices in the name of M/s. Spectrum Overseas. Similarly, Smt. Lata Kumar W/o. Sh. Anil Kumar, R/o. 54-D, Vikas Marg, Delhi, obtained IEC Code 0504047361 in respect of M/s. Shiva Enterprises said to be his proprietary concern at 7/318, Lalita Park, Laxmi Nagar, Delhi - 92 and allowed Sh. C. P. Gupta to import the electronic components at the under-declared prices in the name of M/s. Shiva Enterprises. It is seen that, Sh. Surendra Kumar and Smt. Lata Kumar were summoned to join the investigation and they*

gave the evidence of permitting their firms to Sh. C.P. Gupta for importation of various electronic parts.

45. *This is not the case of these IECs only but in all the 16 IECs which were used for importing the electronic goods in the name of various 16 above mentioned importing firms where forged documents were used for obtaining these IECs. It is revealed by the investigation that only 3 ration cards bearing nos. "178576, 73856 and 156079 have been used to set up the firms either in the name of the persons mentioned in the subject ration cards or in the name of persons which were illegally added to the ration card. It was also revealed during investigation that a set of names, parentage and addresses have been used by twisting the first name, middle name, surname of a person and using the same for creating more than one firm. Similarly, the addresses used for setting up the firms and opening the Bank A/cs have been changed in such a way that the digits / alphabets shown in the addresses have been reversed to give an impression that these are different like '54 D' & 'D 54', 2/63 & 63/2.*

46. *During the course of investigation, it was also revealed that in most of the cases where the bank accounts were opened in the name of above mentioned 16 firms, the bank accounts have been introduced by Sh. Surender Kumar @ Surender Sharma. In a couple of cases, the bank accounts were introduced based on forged chartered accountant's certificate purported to have been issued by Sh. Ajay Agarwal, who has denied having issued any such certificate during the course of investigation. It was also observed that there are frequent fund transfers from the bank accounts of one firm to those of others under investigation i.e. amongst one another, not on account of any sale of purchase amongst the firms but for utilization and for making draft for payment of customs duties / CHA charges as and when it was required in the respective firms. This inter transfer of funds among the firms under investigation indicates that the firms were mutually related / interconnected with one another and this fact was accepted by Sh. Surender Kumar @ Surender Sharma that he used the forged documents for creating the firms and opening bank accounts for import of electronic components by Sh. C.P. Gupta. Further, Sh. C.P. Gupta who had the managerial control on all of these above mentioned firms acceded to the fact in his voluntary statement dated 28.2.2005. On the basis of above facts which were brought out by the investigation made it clear that Sh. C.P. Gupta has managerial / financial control over all the aforementioned firms and in the normal course of working Sh. Surinder Kumar, Sh. Pawan Gupta helped him for obtaining the various IECs, opening of Bank Accounts, transfer of hard cash from Sh. C.P. Gupta to the banks for preparation of drafts, for transferring of funds from one company to another etc.*

47. *the contention of the said Sh. C. P. Gupta that no duty can be demanded from him as he was neither the owner nor claimed to be the importer of the subject goods at the time of import is not acceptable. In all clandestine activities/ illicit import, the only intention is to evade the customs duty and it is not unusual that goods are cleared in the names of fictitious firms to defraud the government exchequer. I find that there is sufficient corroboration to hold that the said Sh. C.P. Gupta was using the names of various fictitious firms for clearance of undervalued goods. I am bound to*

rely upon the **confessional statement** of Sh. C.P. Gupta which was **corroborated with the statements** of different CHA's and transporter, local Representatives of Overseas Suppliers and also non-existent addresses of firms which were used for importing goods and manipulation in various documents, and, thus prima-facie it has been established that, Sh. C. P. Gupta is the person who caused the import of goods which were undervalued. He caused the import by dummy firms who were unmasked by DRI to identify the actual person i.e. Sh. C.P. Gupta who is behind the veil. On the other hand, the said Sh. C. P. Gupta failed to establish his case, in the light of the evidence gathered by the department in the form of statements of the CHA and the transporter. A transaction cannot be extended isolated from the context to which it belongs by applying meticulous methods of statutory construction. If a transaction is intended to have effect as part of a nexus or series of transactions or as an ingredient of a wider transaction intended as a whole, it is the series or combination which must be regarded to ascertain the legal nature of such transactions. "The fiscal consequences of a preordained series of transactions, intended to operate as such, are generally to be ascertained by considering the result of the series as a whole, and not by dissecting the scheme and considering each individual transaction separately." If the nature of the imports and the transaction as well as the attended circumstances show that imports were part of larger design the department is entitled to determine the true legal relation resulting from all transactions. "Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honorable to avoid the payment of tax by resorting to dubious methods." I rely on the Apex Court's decision in the case of **Calcutta Chromotype Ltd. Vs. Collector of Central Excise, Calcutta reported in 1998 (99) ELT 202 (SC)**, where its earlier order [1985(3) SCC 230] passed in case of McDowell and Co. Ltd., Vs. CTO was relied upon. It is thus seen that, **the said Sh. C. P. Gupta was the mastermind behind clandestine removal of electronic components and floating of fictitious firms to cover up his illicit imports. In quasi-judicial proceedings what is important is to establish the case with preponderance of probability and not beyond reasonable doubt. It is not necessary to prove the offence with pinpoint accuracy.** (Santharam Vs CCE & C, Madurai — 2 reported in 1995 (79) ELT 564 (Mad.) and Mahesh Kumar Goyal V/s CCE, Calcutta-II reported in 2004 (177) ELT 561 (Tri. Kolkata. This has been done in the instant case.

48. Sh. C.P. Gupta tried to establish through his advocate, at the time of personal hearing and during cross examination of CHA's and transporter that **he was the financier** of the various importing firm. It was also tried to establish that **he was representing the importers**. It was observed by the investigation that all the companies on whose name subject goods were imported did not exist at all at their given addresses and further residential addresses of the proprietor of said firms were also not these proprietors. Investigation also proved that these IECs were obtained by Sh. Surender Kumar, who is also proprietor of M/s. Spectrum Overseas on the basis of bogus documents for Sh. C.P. Gupta. Sh. C.P. Gupta has admitted this facts of payment. of Rs. 10,000/- per IEC, per month to Sh. Surender Kumar for importing the electronic goods and this fact was also acceded to by Sh. Surinder Kumar in his voluntary statement. It was proved by the

investigation that Sh. C.P. Gupta is the only person to finalise the deal with the overseas supplier, send the documents (invoices, B/L, AWB, P/L) to CHAs, instruct CHA the addresses of godown for sending imported goods, made payment to CHAs for duty of imported goods. On the basis of above facts, **I hold that Sh. C.P. Gupta is the importer for the purpose of Section 2(26) of the Customs Act, 1962.**

49. Sh. C.P. Gupta has tried to rely on the ratio of decision in case of **Brij Mohan Sood Vs Commissioner of Customs, Kandla** [2007(217) ELT 570 (Tri- Ahmedabad)] wherein the Tribunal held that financier of the goods or owner does not become importer and any liability which may arise would fall upon the person who filed the B/E and in whose name goods have been imported. Each and every case has its own peculiar facts and accordingly it should be decided. The present case is totally distinguishable in facts from the case of Brij Mohan Sood. In the present case Sh. C.P. Gupta is not only the financier but also the importer in as much as he is the person who dealt in the import activities since the act of finalization of placing import order to the final delivery of the goods after clearance from Customs. As per Section 2(26) of the Customs Act, 1962, importer in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer. This is an inclusive definition which is wide enough to include persons other than the person filing the B/E. Sh. C.P. Gupta in his confessional statement recorded on 28.2.2005 has agreed that he was importing goods in the names of subject firms, and has held himself out to be the importer. **The investigations have revealed with not only one confessional statement but also many corroborated evidences and statements of Transporter, Courier Agent, CHAs and also some of proprietors of the bogus non-existent firms that Sh. C.P. Gupta is the actual owner of the goods imported in the name of these fictitious/bogus firms.** In the similar matter two SCN Nos.50D/126/2004 C-I (CPG-I) dated 5.12.2005 and 50D/126-2004 C-I (CPG-II) dated 16.12.2005 mentioned in para 2. iv of this order, have been decided by me under CAO No.23/ 2008/ CAC/ CC(I)/ SP/ Gr.VB dated 4.2.2008 and CAO No. 32/2008/CAC/CC(I)/SP/Gr.VB dated 21.02.2008 respectively wherein Sh. C.P. Gupta interalia was found to be importing goods in the name of various importing firms. These orders expose the doubtful track record and unreliable dishonest trade practices of Sh. C.P.Gupta.

50. Sh. C. P. Gupta has further sought to retract his statement of having "imported" the subject goods through various fictitious firms including M/s. Shiva Enterprises and M/s. Spectrum Overseas. It is seen that, there are number of decisions supporting the case of the department regarding admissibility of retracted statements. In the case of **Mahesh Kumar Goel Vs. Commissioner of Central Excise, Calcutta** [2004 (177) ELT 561 (Trib. Kolkata)], it was held by the larger bench of the CESTAT that mere retraction without evidence of duress or coercion do not deflect from the evidentiary value of statements, especially if facts stated therein are corroborated by other evidence. Further, in the case of **Krishnanand S. Bhatt Vs. Commissioner** [2002 (148) ELT 492 (Trib. Mumbai)], it was held that the retraction of statement could not be upheld on the ground of duress as no representation was made against the officer who allegedly committed duress. This has attained finality after dismissal of the Civil

*Appeal filed by the petitioner by Supreme Court [2003(155) ELT A 157 (SC)]. Furthermore, in case of **Hanuman Prasad Vs. CC, Jaipur [1998 9990 ELT 658]**, it was held that the effect of retraction of the statement by the appellant in his bail application as also by the subsequent telegram sent by his brother and duly sworn affidavit filed after his release does not by itself reflect upon the evidentiary value of the statement which has been recorded u/s. 108. In the case in hand, it is not the case of the importer that the statements were recorded under coercion or duress, and thus, the mere fact of retraction of confessional statements by itself is not sufficient. In case of **Surjeet Singh Vs. Union of India [1997 (89) ELT 646 SC]**, it was held by the Apex Court that confessional statement made before customs officer though retracted within 6 days, is an admission and binding since Customs Officers are not police officers.” (emphasis added at various places)*

46.2 Based on the detailed investigation, evidence on record and findings in the first round of adjudication, I find that Sh. C.P. Gupta's involvement in the import operations through the 16 dummy firms is extensively supported by various forms of detailed evidence. The entire modus operandi, including the incorporation of dummy firms, forging identity documents, fund transfers, and instructions to employees, establishes Sh. C.P. Gupta as the central figure exercising full control over the import activities. I find that on the basis of the comprehensive evidence presented, it is evident that Sh. C. P. Gupta acted as the kingpin, exercising full operational and financial control over the import activities through the 16 dummy firms and his proprietorship firm M/s Sagar Electronics. Therefore, I agree with the findings of the Adjudicating Authority in the first round of adjudication of OIO -3 to recognise Sh. C.P. Gupta as the real owner of the imported goods.

46.3 It is also relevant here to discuss Let me now discuss invoking the doctrine of **lifting of the corporate veil** in the present case against Sh. C.P. Gupta and the importer firms.

46.3.1 The entire import operations carried out by Sh. C.P. Gupta were based on corporate misconduct, fraud and improper use of the corporate form to evade payment of legitimate customs duties. This comes under the recognized exceptions for lifting the corporate veil as laid down in various judicial precedents. The investigation has conclusively established that Sh. C.P. Gupta incorporated and used 16 dummy/fictitious firms like a veil to conceal his real involvement in the import operations. The firms were created by furnishing false information and concealing material facts during the incorporation process by using forged documents like ration cards and adopting fraudulent means like creating chains of non-existent firms. I find that such fraudulent incorporation and misuse of the corporate form clearly falls under the exceptions provided in the Companies Act, 2013 as mentioned below:

- a. Sections 7(6) and 7(7) of the Companies Act, 2013 which allow lifting of the corporate veil when the company has been incorporated by fraudulent means or by furnishing false or incorrect information.
- b. Section 339 of the Companies Act, 2013 which states that when a company conducts business to defraud creditors or others, the persons actually involved can be held personally liable.

46.3.2 I find that numerous judicial precedents have allowed lifting of the corporate veil in cases of fraud, improper conduct and where companies acted as a cloak. In the landmark case of **Jones v. Lipman**⁸⁵, the veil was lifted to examine if the company has committed fraud or improper conduct. The rule was also applied in the landmark case of **Gilford Motor v. Horne**⁸⁶, on the ground that the company was a sham and was incorporated for carrying fraudulent activities. Hon'ble Supreme Court in the case of **Sh. Meenakshi Mills Ltd**⁸⁷ held that Revenue authorities are entitled to pierce the veil of corporate entities and look at the reality of the transaction to examine if the corporate entity is used for tax evasion. Also in the landmark case of **Littlewoods Mail Order Stores Ltd**⁸⁸, it was observed that a court can always pierce the corporate veil and look behind the mask to find out the actual perpetrator who is hiding behind the veil. It was thus held in the case that generally a company will be regarded as separate legal entity, however when this privilege of legal entity is used to defeat the purpose of the same, then for the interest of public at large, the notion of legal entity will be disregarded by the courts, and the company will be treated as association of members. The ratio of these precedents squarely applies to the present case where the 16 noticee dummy firms are merely sham entities operating as a cloak for Sh. C. P. Gupta for fraudulent evasion of customs duties.

46.3.3 In view of the above discussions and judicial precedents, I invoke the doctrine of lifting the corporate veil to disregard separate legal personalities of the 16 dummy firms created by Sh. C.P. Gupta solely as a veil to perpetrate customs duty evasion for determining duty liabilities.

46.4 Let me now examine whether **Sh. C. P. Gupta can be treated as the 'importer'** under the Customs Act, 1962 for the purposes of determining duty liabilities on imports relating to 16 dummy firms.

46.4.1 Once the corporate veil is lifted, it is established that Sh. C.P. Gupta is the real owner of the goods imported in the name of 16 dummy firms; the mere absence of import documents filed in his name or in the name of his firm M/s. Sagar Electronics does not absolve him of liabilities of 16 dummy firms. The concept of separate legal entity,

⁸⁵ [1962] 1 W.L.R 832

⁸⁶ [1933] Ch. 935.

⁸⁷ AIR 1967 SC 819

⁸⁸ MANU/WB/0281/1969

associated with filling bills of entry in the name of dummy firms, can not be exploited as a means for Sh. C. P. Gupta to evade the liability of duties on goods imported in the name of 16 dummy noticee firms.

46.4.2 Hon'ble Apex Court in the case of **M/s. Vellanki Frame Works**⁸⁹ has emphasised on the inclusive definition of the importer given in section 2(26) of the Act. The term 'importer' includes the actual owner of the goods even if his name is not mentioned on the bills of entry. It was held that if any individual named as the importer in the bill of entry person disputes their status as the owner or importer of the goods, they bear a substantial burden to provide evidence demonstrating that someone else indeed holds ownership or importer status. From discussion above, I have concluded that Sh. C. P. is the real owner of the goods. Sh. C.P. Gupta has not been able to discharge this burden at any stage of investigation or adjudication . Infact, he is found to have accepted ownership in his voluntary statements before DRI , which he has sought to retract after a gap of many months without giving any evidence as to why he is not the owner of the said goods.

46.4.3 I find that the proprietors of the dummy firms have unequivocally stated that Sh. C. P. Gupta is the owner of the goods imported in the name of the dummy firms and the same has been corroborated with the evidence on record. In light of the above facts, legal provisions and judicial precedents I find that Sh. C. P. Gupta squarely satisfies the inclusive definition of "importer" under Section 2(26) of the Act, in relation to the goods imported through his firm M/s. Sagar Electronics and 16 dummy noticee firms in the three SCNs.

46.5 I find that in the first round of adjudication, Sh. C. P. Gupta has argued that demands of duty can be made against a specific person and not jointly or severally on more than one person. In support of his claim, he has cited the decisions **Surya Prabha Sales Corp (supra), Biren Shah (supra), JB Trading Corpn (supra) and J.K. Pharma (supra)**. Let me discuss the case laws relied upon by the noticee in this regard .

A. In the case of **M/s. Surya Prabha Sales Corp (supra)**, goods were confiscated because the import license used, issued to M/s. Mount Abu Agro Industries, was discovered to be fraudulent. The Hon'ble CEGAT, New Delhi, ruled that such licenses invalidate imports, leading to confiscation, rejecting the argument that the license remained valid until formally suspended or canceled. Similarly, in the case of **M/s. J.B. Trading Corporation (supra)**, mulberry silk consignments were imported using a license obtained fraudulently by a fictitious entity. When confiscation proceedings were initiated, M/s. J.B. Trading Corporation attempted to substitute as the importer to avoid confiscation. Additionally, in the case of **Sh. Biren Shah (supra)**, goods were imported

⁸⁹ 2021 (375) E.L.T. 289 (S.C.)

using a fraudulently obtained import-export passbook. When the fraud was detected, the original firm disclaimed ownership, and Sh. Biren Shah tried to become the importer. The circumstances of the cited cases are markedly different from the present case where evidence and statements have established that Sh. C. P. Gupta is the owner of the goods, and squarely satisfies the inclusive definition of "importer" under Section 2(26) of the Act as also explained by Hon'ble Apex Court in the case of **M/s. Vellanki Frame Works (supra)**.

B. In the case of **M/s. J.K. Pharma (supra)**, the issue was concerned with recovery of duty jointly and severally from the importer (appellant M/s. J.K. Pharma) and the exporter (M/s. Vantage Leathers India Pvt. Ltd.) by both the importer (appellant - J.K. Pharma). The issue at hand was the failure to reverse the MODVAT (Modified Value Added Tax) credit availed on inputs used in manufacturing exported goods, which was a requirement under the DEEC (Duty Entitlement Passbook Scheme) license. The Hon'ble CESTAT Mumbai ruled that the burden of proof regarding meeting export obligations and availing the credit rested with the original licensee (exporter) rather than the importer who received the transferred license. The factual disparity of the cited case fails to draw parallels to the circumstances of the present case. In the cited case, demand of duty was done jointly and severally from the two separate legal entities. However, in the present case, after lifting the corporate veil, it has been concluded that Sh. C. P. Gupta and the 16 dummy firms, created by him solely as a veil to perpetrate customs duty evasion, are not separate legal personalities. So, in the case of demands of duty jointly and severally from Sh. C. P. Gupta and the dummy firms, should be treated as demand done from the existent legal entity Sh. C.P. Gupta.

46.6 Thus, I find that Sh. C. P. Gupta's significant involvement in orchestrating the import activities, coupled with the invocation of the doctrine of lifting the corporate veil and the determination of his status as an importer, substantiates his liability for the customs duty obligations associated with the importations conducted through and in the name of the 16 dummy firms. Therefore, I hold that customs duty in the said three show cause notices is to be demanded from Sh. C.P. Gupta. Furthermore, Sh. C. P. Gupta being the importer, involved in evasion of customs duties through collusion, wilful mis-statement and suppression of facts, is also liable for penal action under Section 114A of the Act.

47. Role and liability of Sh. Surendra Sharma.

47.1 I find that in the first round of adjudication, the Adjudicating Authority has discussed in detail the role of Sh. Surender Kumar from Paragraphs 67 to 70 of OIO-3 dated 28.05.2008. Relevant part of the OIO -3 is reproduced below :

“Role of Sh. Surender Kumar Sh. Surender Sharma

67. *Sh. C.P. Gupta in his statement recorded on 28.02.2005 has confirmed that except M/s Sagar Electronics, all the rest 16 firms were got opened by Sh. Surender Kumar and he was paying a lump sum of Rs. 10,000/- per month per firm to Sh. Surender Kumar. Sh. Surender Kumar @ Surender Sharma in his statement dated 02.02.2006 has admitted that he used to work for Sh. C.P. Gupta under consideration of Rs.20,000/- and his basic work is to set up companies in various names, to obtain IEC for the companies, to open bank accounts in the name of companies, to make demand drafts out of the cash received from Sh. C.P. Gupta to pay Customs duties. He further added in his statement that he used to get Rs.10000 for each additional firm set up by him and out of the said Rs.10000 he used to give Rs.2500 to each of the dummy proprietors. He also admitted that on consideration of profit in setting up new firms and allowing them to be used by Sh. C.P. Gupta for the said import he set up a chain of firms in the name of various friends of him and those nominated by Sh. C.P. Gupta. He also admitted for setting up of the firms viz. M/s Gemini Enterprises, M/s Mars International, M/s Shivam Overseas Inc., M/s Shiva International, M/s Shiva Enterprises, M/s Royal International, M/s Leo International, M/s Supreme Enterprises, M/s Allied Enterprises, M/s Devika Enterprises, M/s Prominent Enterprises, M/s Spectrum Overseas, M/s Surya Enterprises, M/s Konark International, M/s Galaxy Enterprises, M/s Magnum Enterprises. In his confessional statement he also admitted that he had simply used the name of the dummy proprietors their photographs and signatures and further get various blank letter heads signed by these dummy proprietors and given to Sh. C.P. Gupta for using the name of the above mentioned firms. Smt. Lath Kumar in her statement dated 22.03.2006 has admitted that she was introduced to Sh. Surender Kumar by Smt. Babita Kapoor for setting up the dummy firm M/s Shiva Enterprises. Apart from three firms M/s Ganpati Sales Corporation, M/s Spectrum Overseas and M/s Shivam Overseas Inc of which he is the proprietor, he is guilty of abetting Sh. C.P. Gupta in the conspiracy of defrauding Government. While opening the fictitious firms, the bank accounts were introduced by Sh. Surender Kumar. It was also observed that there are frequent transfers from the bank accounts of one firm to those of others under investigation i.e. amongst one another, not on account of any sale of purchase amongst the firms but for utilization and for making draft for payment of customs duties / CHA charges as and when it was required in the respective firms. This inter transfer of funds among the firms under investigation indicates that the firms were mutually related / interconnected with one another and this fact was accepted by Sh. Surinder Kumar @ Surinder Sharma that he used the forged documents for creating the firms and opening bank accounts for import of electronic components by Sh. C.P. Gupta. 3 ration cards, 178576 in his own name, 73856 in name of Ram Kishore and 156079 in name of Smt. Lata Kumar were used in the conspiracy. Since he was introduced to Smt. Lata Kumar, he used the ration*

card 156079 for proving residential address of Smt. Lata Kumar for opening M/s Shiva Enterprises and forged the card by adding two names for proving the residential address of Sh. Atul Kumar for opening the firm M/s Devika Enterprises. Sh. Surender Kumar declared his father's name as Chiranje Lal in case of M/s Shivam Enterprises and P. S. Kumar in case of Spectrum Overseas. While opening the firm M/s Shivam Overseas Inc., Sh. Surender Kumar has declared his residential address as D-45, Jawahar Park, Laxmi Nagar which was found to be non-existent. The same address was used for M/s Gemini Enterprises, M/s Mars International (D-45 was changed to 45-D) and M/s Magnum Overseas. To misguide the law, D-45, Jawahar Park, Pushp Vihar was shown for opening M/s Shiva International though somebody else was found to be residing there. His nexus with Smt. Lata Kumar and Smt. Babita Kapoor to open fictitious firms has been established in foregoing paras.

67.2 He is the basic helping hand and the right hand to Sh. C.P. Gupta for his basic operation and in obtaining various IECs on forged documents. At every point of event, he was present i.e. during cash transactions at the time of opening of bank accounts. I observed on the basis of facts discussed in various paragraphs that he is the person who forged all the documents viz. Ration cards, Chartered Accountant's Certificate as he accepted the fact that he obtained Rs. 10000/- per additional IECs. He must be aware that these IECs were going to be used for improper importation but still he abetted and aid Sh. C.P. Gupta in evading Customs duties by resorting to undervaluation. He also dealt with the goods knowing / having reason to believe that the goods are liable to confiscation. So he is liable for penal action under Section 112(a) and 112(b) of the Customs Act, 1962.”

68. Sh. Surender Sharma contended that the department without alleging the truth and accuracy of the value declared in the invoices proposed to apply Rule 10A of Customs Valuation Rules, 1988 and it is proposed to value the goods based on the domestic price of goods in the exporting country without explaining as to how it can be done in the presence of Rule 8(2)(iii) of Customs Valuation Rules, 1988. This contention of the noticee is not correct. **As discussed in the earlier paras, truth and accuracy had already been doubted and it has been observed that there is a huge under invoicing in the import of electronic components which were imported in various names of companies. In earlier paras a corporate veil has been lifted and it was found that the actual invoices of the goods not submitted for the purpose of assessment of duty in the present case and these actual invoices showing the transaction value of the electronic components obtained from Hong Kong Customs through proper channel. Further the values suggested are not on the basis of domestic prices of the goods in the country of origin of export. It is the actual transaction values which were as per the export trade declarations submitted by the overseas supplier before the Hong Kong Customs. Sh. Surender Kumar also contended that unverified statements have been made without any basis like there are no export incentives in Hong Kong and no contemporaneous import of the similar goods were relied upon. Here I want to state that once genuine / original invoices of the electronic component have been obtained from the Hong Kong government which shows comparatively 4 to 5 times higher prices than that declared to Indian Customs for assessment and**

payment of duty purposes. It appears that there is no need to compare these original / genuine transaction values of the electronic components with contemporaneous imports. As soon as the genuineness of the invoices received from Hong Kong Customs through proper official channel is proved, it will become the transaction value of the goods in terms of Rule 4(1) of the Customs Valuation Rules, 1988 read with Section 14(1) of the Customs Act, 1962 and these values also become the contemporaneous import for the purpose of comparing data of identical / similar goods in broad perspective. The noticee, Sh. Surender Kumar alias Sh. Surender Sharma also contended that the investigation does not question the manufacturers as to what value they supplied the goods to the overseas supplier. I observe that this claim of the noticee is also baseless as the department has made efforts in obtaining the supplier / manufacturer invoices as it is only possible to obtain the invoice which were filed by the overseas supplier before the Hong Kong Customs. Further, Sh. Surender Kumar also failed to supply the manufacturer invoices to the investigating authority to prove his stand. Once a doubt has been raised by the department, the onus of proving the correct transaction value shifts to the importer which in the present case they failed to do so. Further, in his confessional statement Sh. Surender Kumar confessed that all these IECs were obtained on the basis of false and fabricated documents on the instructions of Sh. C. P. Gupta. On the other hand, at the time of submission of reply to the SCN Sh. Surender Sharma is contesting about the valuation of the goods etc. which itself is a contradiction. As on one way he stated that he was unaware of the imports made in the name of companies where he was shown as the proprietor and on the other hand he stated / contended that department has not followed the procedures for correct valuation.

69. Sh. Surender Sharma also contended that the SCN is ambiguous and capable of interpretation and require inferences drawn from the notice and it is liable to be quashed. The noticee relied upon the two judgements *Mehta Pharmaceuticals Vs CCE* [2003(157) ELT 105] and *CCE Vs Bhikhalal Dwarkadas* [1998 (99) ELT 438]. I observe that the two case laws referred wherein it was held that notice should spell out exact charges. In the SCN I found that exact charges on the noticee has been levied and therefore the cited case laws are not of any help to the noticees and are having different facts. He also contended that the imports are more than six months old and the time period can be extended to 5 years only when there is a collusion / suppression and misdeclaration of facts. He also referred two case laws *CCE Vs HMM Limited* [1995 (76) ELT 497 (SC)] and *Raj Bahadur Vs U01* [1996 (88) ELT 24(SC)]. The noticee's contention that the demand was made after 6 months and not maintainable is not correct. I find that the investigations have already proved the collusion and misdeclaration of facts, therefore the contention of the noticee is of no help and also is of no help is the case laws quoted in this regard. As the SCN clearly brought out the misstatement and collusion on part of w. the noticee the case law relied are of no help to the noticees. Noticee relied upon *CCE Vs Jalani Enterprises* and *Dadha Pharma Vs CCE* which I found are distinguishable on facts with the relevant case. In the referred case law, the Tribunal held that presumptions regarding concealment or suppression of facts cannot be drawn when SCN issued for the past period. I observe that

the subject case is related to the past import, however there are no presumptions as the basis of SCN. These are documentary evidences along with other corroborated statements etc. and therefore the referred case law cannot be helpful to the importer. Similarly in the other case law relied upon i.e T.N Dadha Vs CCE reported in [1994(74) ELT 9 (SC)] wherein the Apex Court held that the department has not discharged its burden to prove suppression of fact. However in the subject case suppression of not producing the original invoices which were later on obtained from the Hong Kong Custom through a proper and legal manner clearly brought out. Therefore the referred case law also is of no help to the noticee. Noticee claimed that the transaction values shown in the invoices are true and correct. This contention of the noticee cannot be accepted in view of findings of the investigation agency wherein the original invoices were obtained from Hong Kong Customs wherein the value of the imported goods were shown approximately 4 to 5 times of the value declared before Indian customs and these allegations are very much clear in the SCN where the genuineness of the invoices were challenged. Further proving the payment of extra remittance is no longer a valid ground in view of various case laws. Importer submitted various case laws which I find are distinguishable on facts to the present case. However, on the other hand this is no longer relevant to establish undervaluation in view of the CESTAT's decision in the case of Commissioner Vs Multimetals [2002 (144) ELT 574 (Trib-Mumbai)] and subsequently upheld by the Apex Court [2008(151) ELT A 309].

70. *Sh. Surender Kumar also claimed that the transaction value cannot be rejected unless and until the invoices are impeached. Noticees referred a number of case laws in this regard. I had gone through these case laws and found are not applicable in the present case and are distinguishable on facts. **In the present case the rejection of the transaction value under Rule 10A of Customs Valuation Rules, 1988 is not merely on the doubt but this doubt based on certain facts which include the documentary evidences in the form of copies of invoices received from the Hong Kong Customs which the overseas supplier filed before the Hong Kong Customs as export / trade declaration.** Therefore, the case laws referred in this regard is of no help to the importer. Noticee also claimed that the trade declarations are not authenticated and relied upon the judgement passed by the Tribunal in the case of East Punjab Traders and Others Vs Collector of Customs, Bombay [1988(34) ELT 98 (Tribunal)]. In the subject case the Tribunal rejected the export declaration as neither the quantity nor the weight mentioned in it correctly tally with those in the invoices. But in the present case, this is not the case. All the quantity found in the trade declarations matches with the quantity as declared in the Bs/E and further other particulars like Bill of Lading / AWB nos., quantity and description etc. also matches and so no help to the noticee of the quoted case law. Another case law relied upon is **South India Television (P) Ltd. Vs Commissioner of Customs, Calcutta [2001 (136) ELT 243 (Tri-Kolkatta)]**. In that case, Commissioner in his order agreed to some extent that export declaration might be inflated to earn incentive on value and CESTAT held that the same declaration cannot be made basis for enhancing value by making general observation that Indian importers are indulging in under-valuation of goods. **In the present case, it is not merely some export***

declarations but also all the corroborated evidences in the form of various statements of said to be proprietors, representative of supplier, transporter etc. which proved beyond doubt that the import has made in the name of bogus/ non-existent firm name for the purpose to defraud Government exchequer by way of under-invoicing these documents. So I am not putting any reliance on the quoted case laws.” (emphassis added)

47.2 Sh. Surendra Sharma in his submissions has argued that merely conducting business with other noticees can not lead to allegations against him of being part of a plan to evade customs duty. He has also argued that conditions necessary for imposing a penalty under Section 112(a) of the Act are not met and interpretation issues can not lead to penalty. He has relied upon the case laws of **Coolade Beverages Ltd**⁹⁰ and **Uniflex Cables Ltd**⁹¹. In the case of **Coolade Beverages Ltd (supra)** penalties were questioned when no duty was found to be payable. The High Court ruled that if no duty is payable, penalties cannot be imposed. However, this case differs from the present one because investigations have established that Sh. Surendra Sharma actively participated in facilitating duty evasion through the establishment of fictitious firms and the provision of forged documents. In the case of **Uniflex Cables Ltd (supra)**, Hon'ble Apex Court nullified imposed penalties, emphasizing that penalties should not be enforced when authorities themselves did not perceive willful duty evasion in matters of interpretation. In the instant case, investigations have substantiated Sh. Surendra Sharma's direct involvement in facilitating duty evasion through fraudulent means. The case laws cited by Sh. Surendra Sharma are not directly applicable to the present case, as they deal with different factual situations and do not establish a precedent relevant to the current circumstances.

47.3 Based on the findings of the Adjudicating Authority on Sh. Surendra Sharma, evidence and statements on record, I find that Sh. Surendra Sharma has played a significant role in facilitating the importation of goods through fraudulent means. Sh. Surendra Sharma's confessional statement of his involvement in setting up these firms, using dummy proprietors, forging documents, and facilitating cash transactions for customs duties strongly establishes his knowledge and active participation in the illegal activities orchestrated by Sh. C.P. Gupta. Furthermore, the inter-transfer of funds among the firms, as well as the use of forged documents and false declarations, indicate a systematic effort to evade customs duties and manipulate import processes for personal gain. After considering the totality and gravity of evidence presented, including confessional statements and corroborating statements from other involved parties, I conclude that Sh. Surendra Sharma abetted the importation of goods liable for confiscation. Accordingly, I hold that Sh. Surendra Sharma/ Surendra Kumar is liable for penal action under Section 112(a) of the Customs Act, 1962 .

⁹⁰ Coolade Beverages Ltd vs CCE, Meerut (2004 (172) E.L.T. 451 (Allahabad))

⁹¹ Uniflex Cables Ltd vs CCE (2011 (271) E.L.T. 161 (S.C.))

48. Admissibility of Hong Kong Export Trade Declarations under Section 138C of the Act as evidence.

48.1 Ms. Kiran Doiphode, Advocate of Sh. C.P. Gupta in the first round of adjudication, has argued regarding the validity and admissibility of evidence and procedural aspects in the adjudication proceedings. Further, concerns were raised by them regarding the computer printouts obtained, with assertions made that they do not meet the conditions outlined in Section 138C of the Customs Act, 1962. .

48.2 Let me first deal with the admissibility of export trade declarations under Section 138C of the Act as evidence. Section 138C of the Act is reproduced below :

“Section 138C. Admissibility of micro films, facsimile copies of documents and computer print outs as documents and as evidence. -

(1) Notwithstanding any thing contained in any other law for the time being in force, -

(a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or

(b) a facsimile copy of a document; or

(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a "computer printout"), if the conditions mentioned in sub-Section (2) and the other provisions contained in this Section are satisfied in relation to the statement and the computer in question,

shall be deemed to be also a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-Section (1) in respect of a computer printout shall be the following, namely :-

(a) the computer printout containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of

that period was not such as to affect the production of the document or the accuracy of the contents; and

(d) the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of the said activities.

.....”

48.3 I find it crucial to examine Section 138C to determine compliance with its conditions. **Section 138C (1) of the Act establishes that microfilms, facsimile copies, and computer printouts are deemed documents under the Act and admissible as evidence without the need for further proof of the original. This provision sets the foundation for considering the trade declarations received.** Section 138C (2) of the Act outlines the conditions necessary for the admissibility of computer printouts as evidence. This includes requirements such as regular use of the computer system for storing and processing information related to activities carried out by the department, proper functioning of the computer system, and the accuracy of the reproduced information.

48.4 I find that the DRI made a request to the Department of Justice, Hong Kong seeking documents in the case of import of electronic goods by Sh. C. P. Gupta of M/s Sagar Electronics, Delhi and others from M/s. Himalayan Shippers Ltd, Hong Kong and others. The Consulate General of India, Hong Kong forwarded the duly certified caveat free trade declarations filed with regard to the export declarations of electronic goods from Hong Kong received from HKSAR Government. I find that the certificates are signed by the Trade Controls Officer certifying that the trade declarations annexed to the certificate are copies of documents produced from the Government TDEC System. Based on the certificate provided, I find that the conditions outlined in Section 138C(2) of the Customs Act, 1962, are met with respect to the 109 trade declarations as mentioned below:

- i. The computer (Government TDEC System) was used to store, process, or retrieve information for the purposes of the activities carried on by the Hong Kong Customs and Excise Department.
- ii. The information contained in the Hong Kong Export Trade Declarations is derived from information supplied to the computer in the course of the Department's activities.
- iii. Appropriate measures were in force for preventing unauthorized interference with the computer, and the computer was operating properly during the relevant period.

48.5 I find that the certificates signed by the Senior Trade Control Officer provide a detailed explanation of the nature and contents of the document and establish that the trade declarations are true copies of the records of information sent using services provided by a specified body within the meaning of the Hong Kong law (Import and Export Ordinance, Cap. 60). This certification establishes that the details provided in Annexure 'A' to the certification are the exact details mandatorily submitted by the shipper at the time of exports of the subject goods.

48.6 The Adjudicating Authority in the first round of adjudication has discussed in detail on admissibility of trade declarations from Hong Kong. The relevant part of the discussion is reproduced below :

“60... Noticee Sh. C.P. Gupta through his advocate also contended that the computer printouts obtained do not comply with Section 138C of Customs Act, 1962 as these are generated on 21.8.2005, 6.9.2005, 01.09.2005 etc., however the Bs/E are filed between February 2003 to September 2004. I have gone through all the trade declarations and the covering letter written by Hong Kong, Customs and Excise Department wherein the Senior Trade Control officer of the Customs and Excise Department of Hong Kong certified that

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

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

(3) (a) The said computer was used to store, process or retrieve information for the purposes of the activities carried on by the Department;

(b) the information contained in the statement in the document reproduces, or is derived, information supplied to the computer in the course of the activities of the Department; and

(c) while the computer was so used in the course of those activities:

i) appropriate measures were in force for preventing unauthorized interference with the computer; and

(ii) the computer was operating properly, or if not, that any respect in which it was not operating properly or was out of operation was not such as to affect the production of the document or the accuracy of its contents.

(4) I give the following explanation of the nature and contents of the document:

That this document is a true copy of the record of the information sent using services provided by a specified body within the meaning of the Import and Export Ordinance, Cap. 60 which is an

import / export declaration required to be lodged under the said Ordinance in relation to the importation / exportation of the articles mentioned in the document.”

48.7 On the case laws **East Punjab Traders**⁹², **Taito Watch Manufacturing**⁹³ and **South India Television**⁹⁴ relied upon by the noticees, I find that the export declarations in the cited cases were without the signature of any customs officials at Hong Kong, and without any Customs seal. However, in the present case, these trade declarations are bearing the seal and signatures of the Customs Officials at Hong Kong Customs. A sample scanned copy of the same is shown below.

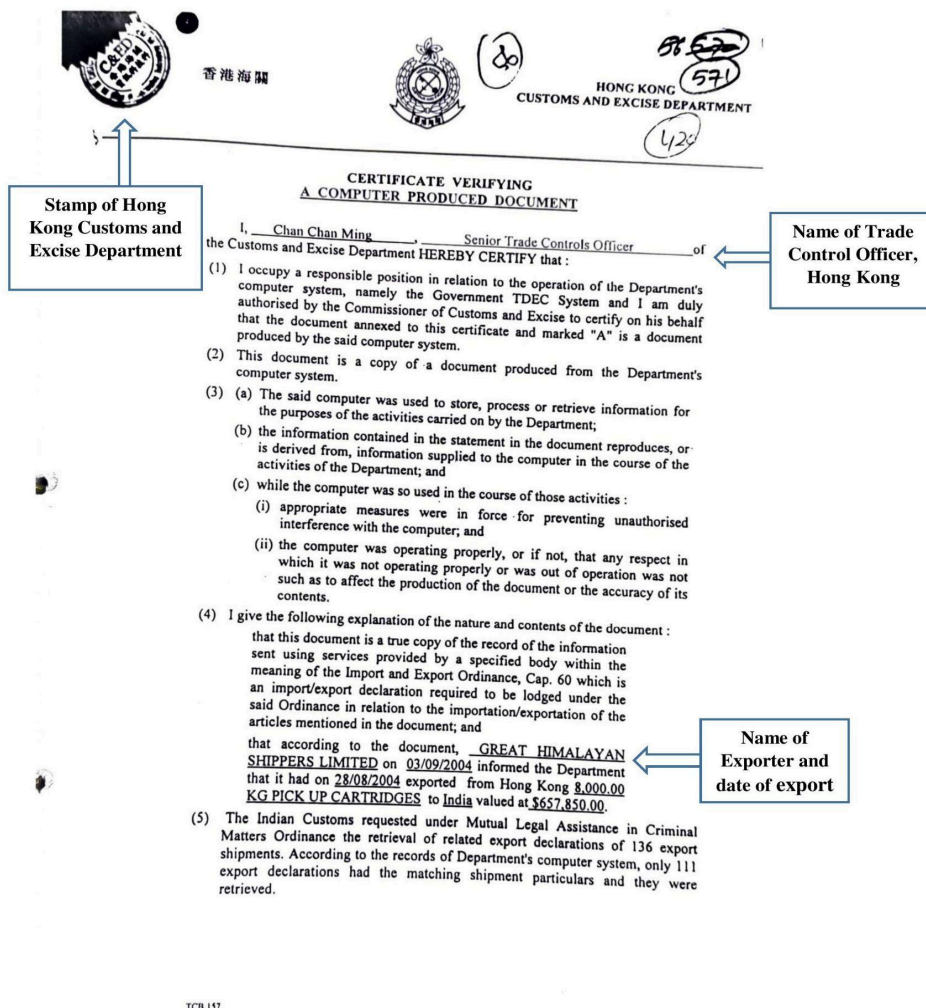


Image No. 1

⁹² East Punjab Traders and others Vs. CC [1988 (34) ELT 98]

⁹³ Taito Watch Manufacturing Inds.-2004 (173) ELT 17 (T)

⁹⁴ South India Television Vs. CC [2001 (136) ELT 243]



Image No. 2

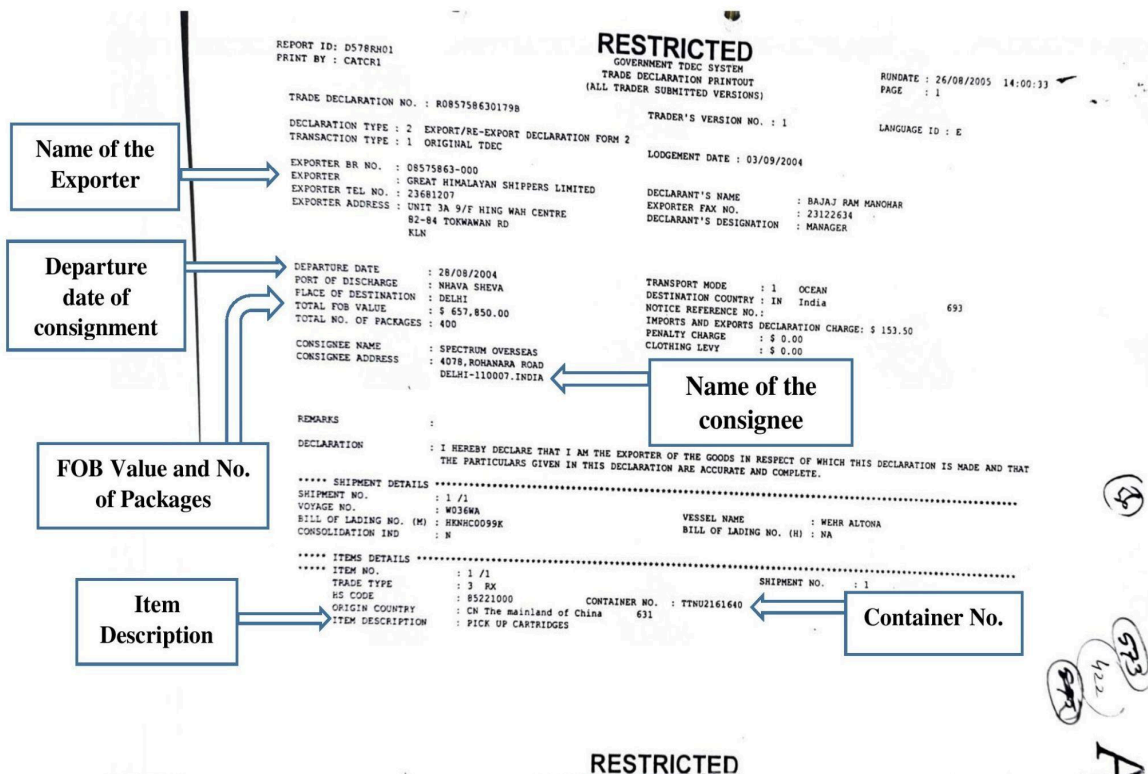


Image No. 3

48.8 I find that the above-depicted sample trade declaration has been provided by the Trade Controls Officer, Customs & Excise Department of Hong Kong. I find that each document has been signed by the Hong Kong Customs Authorities. I find that the trade declarations are having information with regard to the number of cartons with total weight for each individual product with their value. In addition to that they have the name and address of exporter, port of discharge, consignee name and address, bills of lading no. and container number. I find that when bills of lading number and container number mentioned in the trade declarations at Hong Kong are tallying with the bills of entry filed

in India, it has to be inferred that the details submitted by the Hong Kong Customs and Excise department are only with regard to declarations submitted at Indian Customs by the above mentioned importers in respect of concerned bills of entry as mentioned in the Annexure C-1 of the SCN-3.

48.9 Based on the above discussion, I find that the 109 export trade declarations being relied upon in the said SCNs, meet the criteria set forth in section 138C of the Customs Act, 1962 and are thus admissible as evidence and hold significant gravity.

49. Whether the Department's rejection of the declared transaction value is correct?

49.1 On the issue of rejection of declared value, I agree with the findings of the Adjudicating Authority in the first round of adjudication vide OIO-3. Relevant part of the findings in the OIO-3 dated 28.05.2008 is reproduced below :

*“51. The investigating agency has made a reference to the Hong Kong Special Administrative Region (HKSAR) through Consulate General of India, Hong Kong. The HKSAR Government forwarded 111 duly certified export trade declarations, out of which 109 trade declarations were found relevant to 109 import shipments under investigation. These 109 trade declarations were scrutinized by the investigation with a view to correlate them with the corresponding import effected by the above said dummy / bogus firms and by M/s Sagar Electronics. On the basis of B/L no. and other particulars appearing in the trade declaration received from Hong Kong, it was observed by the investigation that for every trade declaration, 1 B/E was filed under which electronic goods were imported and cleared. On the basis of above a total of 109 B/E corresponding to 109 trade declarations have been identified. **It was also observed that the value declared in the 109 export declarations were much higher and approximately 4 to 5 times more than that of the value declared in the corresponding Bs/E and other import documents filed by Sh. C.P. Gupta in the name of various fictitious firms. On the basis of the above, the department has the reason to doubt regarding the genuineness of the transaction value shown in the invoices before the Customs against the 109 Bs/E against which 109 trade declarations were obtained from the overseas country.***

52. On scrutiny of the export trade declaration, it is observed that details of the consignee, B/L, A/W Bill No, total nos. of pkgs, item description, quantity FOB value of the individual items exported and also container nos in some cases where the containerized cargo has been imported were reflected and the department considered all the details for correlating these trade declarations with respective B/E filed before Indian Customs at Air Cargo Complexes, Mumbai / New Customs House, Mumbai / Jawaharlal Nehru Customs House, Nhava Sheva. It was also observed that for some of the items, Sh. C.P. Gupta has deliberately mis-declared the description of Pick up cartridges as Pick up units, Parts of VCD or as

CD lens / CD lens unit in the B/E and also misclassified these items under CTH 85229000 and 90029000 instead of its correct classification under CTH 85221000. Since the noticees have not contested the proposed classification, I do not feel the necessity to dwell upon the classification issue and order classification under CTH 85221000. It is thus observed that Sh. C. P. Gupta, the proprietor of M/s. Sagar Electronics was indulging in evasion of customs duty by grossly under-valuing the consignments of electronic components at the time of import in the name of M/s. Sagar Electronics and various other firms, which were found to be fictitious, bogus or non-existent.

53. Thus, it is observed on the basis of Export declarations filed by the overseas supplier to Hong Kong Customs that, the price of the goods as shown in the import documents by various 17 firms including M/s Sagar Electronics are lower than the actual prices of the said goods. **As such the price declared by Sh. C.P. Gupta in the name of various bogus / non-existent firms for the purpose of payment of customs duties did not appear to be the transaction value in terms of Section 14 of the Customs Act, 1962 as well as Rule 4 of the Customs Valuation Rules, 1988 and thus liable to be rejected in terms of Rule 10A of the Customs Valuation Rules, 1988 as they have not been able to justify lower price and further failed to submit the manufacturer's invoice for the subject goods.** Investigation also revealed that the importer intentionally not submitted those manufacturer invoice against which purchase order has been finalized by Sh. C.P. Gupta at local office of the manufacture or authorized dealers of such electronic component. **The invoice produced by the importer did not have several attributes of being an acceptable transaction value.** On the similar ground, the goods imported are liable for confiscation under Section 111 (m) of the Customs Act, 1962 and importer and Sh. C.P. Gupta are also liable for penal action under the provisions of the Customs Act, 1962. It is further seen that, **the importer has been unable to adduce any such evidence as the invoice submitted by them are at wide variance with the value declared by other importers for identical/ similar goods, thus suggesting that the price reflected on the invoice submitted at the time of assessment of the subject B/Es was grossly understated and therefore not genuine.** The importers have, thus, failed to "discharge the onus" which shifts/ rests on them to show that the invoice value has got the attributes of transaction value. In case of **Ruchi Associates Vs. Commissioner of Customs [1992 (59) ELT 155]**, the Tribunal has held that, "where the importer has not laid any basis for acceptance of invoice price as transaction value then the authorities are legally right to proceed to fix the price under Valuation Rules 5 onwards". This case has attained the finality after the dismissal of Civil Appeal filed by the party by Supreme Court [1992(61) ELT A 134 (SC)]. **Furthermore, the Hon'ble Apex Court has held in the case of Commissioner of Customs, Madras Vs. D. Bhurmal, [1983 (13) ELT 1546 (SC)] that, "the department would be deemed to have discharged its burden if it adduces only so much evidence, circumstantial or direct, as is sufficient to raise a presumption in its favour with regard to the existence of the fact sought to be proved".** Similarly, the Tribunal in case of **Poonam Plastics Industries Vs. CC, [1989 (39) ELT634 (T)]** has held that, "the Department was not required to prove actual value with mathematical precision and

that reasonable help could be taken of the documents available and other circumstances to arrive at the correct value.

54. In the present case apart from export declarations, transactions have been investigated by the investigating agency and Sh. C.P. Gupta acceded this fact of undervaluation. If it was not so then there was no need to forge documents and obtain IECs for importation. If these were genuine transaction, then the import can be made on genuine documents and in the name of existing firm and Sh. C.P. Gupta might have been imported in his company's name. In these facts and circumstances, I am convinced that the value reported by the Hong Kong Customs & Excise department constituted the correct transaction value of the goods under import as discussed in the above paragraphs and these goods were required to be assessed at those values. I also observe that these values can also be used as common evidences where the exact details of the Bills of Entry were not tallied. I find that the department has correctly compared these common evidences.”

49.2 The Noticee Sh. Surendra Sharma has argued that the transaction value declared can not be rejected arbitrarily without evidence of violation of Rule 4(2) conditions. The noticee further argued that valuation has to be done under Rules 5 and 6 by showing evidence of contemporaneous imports. The noticee has relied upon the case laws of **Eicher Tractors**⁹⁵, **International Conveyors Ltd**⁹⁶ **Tolin Rubbers Pvt Ltd**⁹⁷, **South India Television (P) Ltd**⁹⁸ and **Ganpati Overseas**⁹⁹. The noticee also argued that Rule 10A is only a procedural rule and cannot override Rule 4. It has been argued that once transaction value is found to be accurate as per Rule 4, Rule 10A cannot be applied. The noticee relied upon the case laws of **Venus Insulation**¹⁰⁰ and **Kanahailal & Co**¹⁰¹. Let me deal with these case laws :

A. In the case of **Eicher Tractors (supra)**, the import involved second-hand and old stock of bearings from a long-standing supplier. In the cited case, the importer declared a value, which represented a 77% discount on the vendor's list price and the declared transaction value was rejected primarily considering the high discount as abnormal. Hon'ble Apex Court held that the rejection of the declared value solely based on the vendor's price list was erroneous. In the present case, under-invoicing and misdeclaration of value has been established based on conclusive evidence gathered through thorough investigation and mismatch between the declared value and export trade declarations. The circumstances and facts in the present case are distinguishable from the cited case law.

B. The present case is distinct from cases of **Tolin Rubbers (supra)** and **International Conveyors (supra)** where the issue revolved around the validity of declared transaction values for imported goods. The relied upon cases dealt with

⁹⁵ Eicher Tractors v UOI (2000 (122) ELT 321 (SC))

⁹⁶ International Conveyors Ltd vs Commissioner of Customs (2016 (331) E.L.T. 108)

⁹⁷ Tolin Rubbers Pvt Ltd vs Commissioner of Customs (2004 (163) E.L.T. 289 (S.C.))

⁹⁸ Commissioner of Customs, Calcutta v South India Television (P) Ltd (2007 ECR 1 (SC))

⁹⁹ CC (Imports) vs Ganpati Overseas (Civil Appeal No. 4735 of 2009 order dated 06.10.2023)

¹⁰⁰ Venus Insulation v CC (2002 (143) ELT 364)

¹⁰¹ Kanahailal v CC (2004 (163) ELT 33)

second-hand machinery and the acceptability of declared values supported by Chartered Engineers' certificates. In the present cases the declared value was rejected based on substantial evidence gathered through thorough investigations. Unlike the insufficient evidence provided in **Tolin Rubbers** and **International Conveyors**, the Department in the present case has procured evidence, including statements from involved parties, premises searches, and certified export trade declarations from Hong Kong Customs, demonstrating a consistent undervaluation pattern. Additionally, in the **International Conveyors** (supra) case, an explanation by the overseas supplier on over-invoicing for claiming incentives was given and accepted, but in the present cases, no such explanation has been given by the noticees. Therefore, given the disparity in evidence and circumstances, the present case is distinguishable from **Tolin Rubbers (supra)** and **International Conveyors (supra)**.

C. In the **South India Television (supra)** case, the invoice value declared by the importer was rejected placing reliance on Hong Kong Export Trade Declarations. In the cited case, the foreign supplier in Hong Kong offered an explanation that the manufacturer in China had over-invoiced the export value to claim incentives/rebates from their Government which was accepted by the Commissioner. However, in the present case, no such explanation was provided by the foreign suppliers regarding over-invoicing of export values to claim incentives. Also, in the **South India Television (supra)**, the importer relied on contemporaneous imports of identical goods from the same supplier at similar prices, which was accepted by the Department. However, in the present case, there is no mention of the importer providing such evidence of contemporaneous imports at similar prices. The circumstances and facts in the present case are distinguishable from the cited case law.

D. In the case of **Ganpati Overseas (supra)**, the foreign supplier retracted the original Hong Kong Export Trade Declarations and subsequently filed new declarations, aligning the declared price with the price shown in the import invoices. These subsequent declarations were accepted by the Hong Kong customs authority along with imposition of penalties that were paid by the supplier. Additionally, the importer presented invoices of contemporaneous imports at prices comparable to those declared by them. In contrast, in the present case, there was no retraction of export declarations by the exporters, and the noticees failed to provide any evidence of contemporaneous imports to support their declared value. Furthermore, the noticees did not comply with the department's request to produce manufacturer invoices. Therefore, the key distinctions between the present case and **Ganpati Overseas (supra)** highlight the unique circumstances and underscore that the ratio of **Ganpati Overseas (supra)** is not directly applicable to the present matter.

49.3 Hon'ble Tribunal in the case of **H.M. Leisure**¹⁰² had held that even if circumstances particularized in Rule 4(2) of CVR, 1988 were not there, the transaction value could be rejected by the authorities in terms of Rule 10A of CVR, 1988.

¹⁰² CC, Bangalore Vs. H.M. Leisure [2006 (199) ELT 464 (Tri- Bang)]

49.4 I find that in submissions Sh. Surendra Sharma has argued on applicability of Rule 10A. Sh. Surendra Sharma has argued that Rule 10A is only a procedural rule and can not override Rule 4. It is argued that once transaction value is found to be accurate as per Rule 4, Rule 10A cannot be applied. He has relied upon the cases of **Venus Insulation (supra)** and **Kanahailal & Co (supra)**. Let me discuss these cases :

A. In the case of **Venus Insulation (supra)**, Hon'ble CEGAT dealt with the issue of whether Rule 10A can be invoked after exhausting the sequential scheme of Rules 5 to 8 for determining the value of imported goods. The Adjudicating Authority invoked Rule 10A after sequentially attempting to apply Rules 5 to 8 and finding them inapplicable. The Tribunal held that Rule 10A is a procedural provision to determine whether Rule 4(1) or Rules 5 to 8 will apply. It is to be invoked at the initial stage, not after the sequential scheme has been exhausted. Hon'ble Tribunal established that invoking Rule 10A after exhausting Rule 8 (the residuary rule) is legally infirm. In the present case, under-invoicing and misdeclaration of value has been established based on conclusive evidence gathered through thorough investigation, statements and corroborated confessional statements of Sh. C.P. Gupta and co-noticees. In the present case Rule 10A is applied for rejection of value at the initial stage and later the value was re-determined under Rule 4 and 8 of the CVR, 1988. The circumstances and facts of the relied upon case significantly differ from those in the present case.

B. In the case of **Kanahailal & Co (supra)**, the Department relied on a study report and the Chief Commissioner's letter to reject the transaction value which was not part of the documents in the show cause notice or supplied to the importer. Accordingly, in the cited case, Hon'ble Tribunal held that the procedure prescribed under Rule 10A(1) for rejecting the declared value was not followed. In the present case, the declared value was rejected based on conclusive evidence gathered through investigation, Hong Kong Export Trade Declarations, statements and corroborated confessional statements of Sh. C.P. Gupta and co-noticees which were part of the SCNs.

49.5 It is a settled position that declared transaction value under Rule 4 can be rejected when there is fraudulent/manipulated documentation as held in the following case laws:

- (i) Hon'ble Tribunal in **N.K. Agarwal**¹⁰³ had upheld the rejection of transaction value where the Department detected some acts of forgery with regard to declaration of value.

¹⁰³ N.K. Agarwal [1994 (74) ELT 83]

(iii) In the case of **Somel Enterprises**¹⁰⁴ where there were fraudulent documentation by way of two invoices, Hon'ble Tribunal upheld rejection of transaction value by observing as under:

"We have heard both sides. The fax messages indicate the modus operandi that was adopted. The existence of these fax messages addressed to the appellants is not denied. This clearly indicates how prices were undervalued. Apart from this, the proceedings indicate the value of LNB-BCH 027 to all other buyers as \$ 30 or 32 and the goods were invoiced only as \$ 10. The collector at internal page 5 of her order has referred to a query as to how the difference between true value and value of customs was proposed to be arranged, in any case, the fax message and invoices clearly indicate how the transaction was undervalued."

(iv) In the case of **Kayvee Aeropharma**¹⁰⁵, Hon'ble Tribunal upheld the charge of under valuation.

49.6 During Personal Hearing, Advocate of Sh. C. P. Gupta requested for 2 documents mentioned as below:

- i. Copy of Mutual Legal Assistance in Criminal Matters Ordinance of the Hong Kong Special Administrative Region
- ii. Documents showing that there are no export incentives in Hong Kong

49.6.1 During Personal Hearing on 19.10.2023, it was informed that Copy of "Mutual Legal Assistance in Criminal Matters Ordinance of the Hong Kong Special Administrative Region" is available on the internet (<https://www.doj.gov.hk/en/external/pdf/lawdoc/Guidelines>) and the same can be used for reference.

49.6.2 For the "Documents showing that there are no export incentives in Hong Kong" I find that para 9.1.1 of the SCN-3 states that in Hong Kong there are no export incentives on the subject goods and therefore, there is no reason for the exporter to over-value the export goods. I find that for such an observation, the SCN has not produced any corroborative evidence. I also find that the noticees have not submitted any evidence that value on export trade declarations by the shipper is inflated for some incentives. I also find that the noticees did not produce the manufacturer invoice on repeated request by the Department as mentioned in the findings of the Adjudicating Authority in OIO-3 dated 28.05.2008

¹⁰⁴ Somel Enterprises [2000 (1260 ELT 1038]

¹⁰⁵ Kayvee Aeropharma [2001 (135) ELT 284]

*“53.As such the price declared by Sh. C.P. Gupta in the name of various bogus / non-existent firms for the purpose of payment of customs duties did not appear to be the transaction value in terms of Section 14 of the Customs Act, 1962 as well as Rule 4 of the Customs Valuation Rules, 1988 and thus liable to be rejected in terms of Rule 10A of the Customs Valuation Rules, 1988 as **they have not been able to justify lower price and further failed to submit the manufacturer's invoice for the subject goods. Investigation also revealed that the importer intentionally not submitted those manufacturer invoice against which purchase order has been finalized by Sh. C.P. Gupta at local office of the manufacture or authorized dealers of such electronic component. The invoice produced by the importer did not have several attributes of being an acceptable transaction value...**” (Emphasis added)*

49.6.3 As per the discussions above, I have concluded that the certification provided by the Senior Trade Control Officer confirms the accuracy of trade declarations and validates that the details in the provided Annexure 'A' are consistent with the information required during exports from Hong Kong. I find that each certificate has been duly signed by the Hong Kong Customs Authorities and contains essential information such as product details, quantities, values, exporter and consignee information, as well as bill of lading and container numbers. On the issue of absence of export incentives in Hong Kong, as stated in para 9.1.1 of the SCN-3, I find that this observation of SCN lacks supporting evidence. However, I also find that the noticees have not provided any evidence to refute these claims or to demonstrate inflated values on export declarations, as had been done in the cases of **South India Television (supra)** and **Ganpati Overseas (supra)** relied upon the noticee himself. I find that instead of challenging the claim made in the SCN-3 regarding this matter, the noticee should have provided evidence to justify why exporters might overvalue goods. This becomes particularly pertinent considering that the certified details in the export trade declarations align with the SCN-3 assertion and have not been contradicted by the noticee. Additionally, the noticees have failed to produce manufacturer invoices despite repeated requests from the Department.

49.7 In view of above discussions, I find that in the first round of adjudication, the Adjudication Authority highlighted the importance of manufacturer invoices in determining the accuracy of declared values for customs purposes and failure to provide such invoices raises questions about the validity of the declared values of subject goods on the SCNs. It was also highlighted that the submitted invoices lacked several attributes of acceptable transaction values. I also find that export declarations filed by overseas suppliers to Hong Kong Customs revealed that the prices declared in import documents by various firms were lower than the actual prices of the goods. Further, it is on record that Sh. C.P. Gupta acknowledged the undervaluation during the investigation, evidenced by the fabrication of documents and acquisition of Importer Exporter Code (IEC) for

importation purposes. I find that these all instances indicate the lack of authenticity in the declared transaction value. Therefore, in view of discussions above, I conclude that the Department has correctly rejected the declared transaction value under Rule 10(A) of the CVR, 1988.

50. Whether the redetermined value is correct?

50.1 Relevant Provisions of law : Before proceeding further, it is prudent to make reference to the pertinent legal provisions applicable during the timeframe of the importation of the goods in question in the Show Cause Notices, for the purposes of valuation.

(a) Under Section 2(41) of the Customs Act, 1962, the word “value” is defined as under

“(41) "value", in relation to any goods, means the value thereof determined in accordance with the provisions of sub-Section (1) or sub-Section (2) of Section 14.”

(b) Section 14 of the Act provides for valuation of goods. Before the amendment in 2007, Section 14 read as under:

14. Valuation of goods for purposes of assessment-

(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation or exportation, as the case may be, in the course or international trade, where-

(a) the seller and the buyer have no interest in the business of each other;
or

(b) one of them has no interest in the business of the other, and the price is the sole consideration for the sale or offer for sale:

Provided that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under Section 46, or a shipping bill or bill of export, as the case may be, is presented under Section 50;

(1A) Subject to the provisions of sub-Section (1), the price referred to in that sub-Section in respect of imported goods shall be determined in accordance with the rules made in this behalf.

(2) Notwithstanding anything contained in sub-Section (1) or sub-Section (1A) if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

.....

(c) Rule 2(1)(f) of the CVR, 1988 defines 'transaction value' as :

(f) "transaction value" means the value determined in accordance with Rule 4 of these rules.

(d) Rule 3 of the CVR, 1988 outlines the methodology for determining the value of imported goods.

3. Determination of the method of valuation.

For the purpose of these rules,–

(i) subject to rules 9 and 10A, the value of imported goods shall be the transaction value;

(ii) if the value cannot be determined under the provisions of clause (i) above, the value shall be determined by proceeding sequentially through Rules 5 to 8 of these rules.

(e) Rule 4 of the CVR, 1988 provides guidance on determining the transaction value of imported goods.

4. Transaction value:-

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

2) *The transaction value of imported goods under sub-rule (1) above shall be accepted:*

Provided that

a) *the sale is in the ordinary course of trade under fully competitive conditions;*

b) *the sale does not involve any abnormal discount or reduction from the ordinary competitive price;*

c) *the sale does not involve special discounts limited to exclusive agents*

d) *objective and quantifiable data exist with regard to the adjustments required to be made, under the provisions of rule 9, to the transaction value;*

e) *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;

f) *the sale or price is not subject to same condition or consideration for which a value cannot be determined in respect of the goods being valued;*

g) *no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller;*

unless an appropriate adjustment can be made in accordance with the provisions of Rule 9 of these rules; and

- h) the buyer and seller are not related, or where the buyer and seller are related, 'that transaction value is acceptable for Customs purposes under the provisions of sub-rule (3) below.*

.....

50.2 Hon'ble Apex Court court in the case of **Eicher Tractors Limited**¹⁰⁶ held as follows:

“The value, according to Section 14(1), shall be deemed to be the price at which such or like goods are ordinarily sold or offered for sale, for delivery at the time and place and importation in the course of international trade. The word “ordinarily” implies the exclusion of special circumstances. This position is clarified by the last sentence in Section 14(1) which describes an “ordinary” sale as one where the seller or the buyer have no interest in the business of each other and the price is the sole consideration for the sale or offer for sale. Therefore, when the above conditions regarding time, place and absence of special circumstances stand fulfilled, the price of imported goods shall be decided under Section 14(1-A) read with the Rules framed thereunder. The said Rules are the Customs Valuation Rules, 1988. ”

50.3 Furthermore, Hon'ble Apex Court, in the case of **South India Television (P) Ltd (supra)**, examined and analyzed Section 2(41) and Section 14(1) of the Customs Act, 1962 in the following manner :

“10...Under Section 2(41) of the Customs Act, 1962, the word "value " is defined in relation to any goods to mean the value determined in accordance with the provisions of Section 14(1). The value to be declared in the Bill of Entry is the value referred to above and not merely the invoice price.

*11. On a plain reading of Section 14(1) and Section 14(1- A), it envisages that the value of any goods chargeable to ad valorem duty has to be the deemed price as referred to in Section 14(1). Therefore, determination of such price has to be in accordance with the relevant rules and subject to the provisions of Section 14(1). **It is made clear that Section 14(1) and Section 14(1-A) are not mutually exclusive. Therefore, the transaction value under Rule 4 must be the price paid or payable on such goods at the time and place of importation in the course of international trade.** Section 14 is the deeming provision. It talks of deemed value. The value is deemed to be the price at which such goods are ordinarily sold or offered for sale, for delivery at the time and place of importation in the course of international trade where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale or for offer for sale. Therefore, what has to be seen by the Department is the value or cost of the imported goods at the time of importation i.e. at the time when the goods reach the customs barrier. Therefore, the invoice price is not sacrosanct.” (emphasis added)*

¹⁰⁶ Eicher Tractors Limited Vs. Commissioner of Customs, (2001) 1 SCC 315

50.4 I find that when goods are imported into India, for the Bill of Entry, the value to be declared is the value referred to in Section 2(41) of the Act, which is the value determined in accordance with Section 14(1). Section 14(1) of the Act defines the value of goods for assessment purposes considering the price at which such goods are ordinarily sold or offered for sale at the time and place of importation. An "ordinary" sale is one where price is the sole consideration, and there is no mutual interest between the seller and buyer. Hon'ble Apex Court in the cases of **Eicher Tractors (supra)** and **South India Television (P) Ltd (supra)** examined the statutory framework under the Customs Act, 1962, specifically addressing the definition and determination of "value" concerning goods. The term "value" is explicitly linked to the provisions of Section 14(1), emphasizing that the value to be declared in the Bill of Entry should not merely reflect the invoice price and shall be determined according to the rules established for this purpose. The rules made for this purpose were the Customs Valuation Rules, 1988. Rule 3 of the CVR, 1988 states that subject to rules 9 and 10A, the value of imported goods shall be the transaction value. Rule 2(1)(f) of the CVR, 1988 defines 'transaction value' as the value determined in accordance with Rule 4 of the CVR, 1988. Rule 4 states that the transaction value declared should reflect the actual price paid or payable for the goods at the time and place of importation in the course of international trade adjusted in accordance with the provisions of Rule 9 of the CVR, 1988.

50.5 On the issue of redetermination of the transaction value of goods in SCN-1, SCN-2 and SCN-3, I agree with the findings of the Adjudicating Authority in the first round of adjudication in OIO-1, OIO-2 and OIO-3. For re-determination of transaction value of the goods imported vide the Bills of Entry mentioned in Annexures C-1 and C-4 of SCN-3, I agree with the findings of the Adjudicating Authority in the first round of adjudication in OIO-3, as reproduced below :

“55. In the subject case the investigating agency has investigated about 165 Bs/E which were bifurcated in 4 Annexures C1, C2, C3 and C4 to the SCN.

- 1. Annexure C 1 contains details of 109 Bs/E where the trade declaration from the overseas supplier has been received.*
- 2. Annexure C2 contains details of 42 Bs/E for which trade declaration from the Hong Kong Customs have not been received and where values of the goods imported in these 42 Bs/E were compared with the value of the identical goods as found in the trade declaration for 109 Bs/E.*
- 3. Annexure C3 contains details of 13 Bs/E wherein the imported goods have been compared with the identical / similar goods with respect to trade declaration and also wherein some of the items were compared with the contemporaneous import.*
- 4. Annexure C4 contains the detail of a single B/E for which purchase order reference no. JT/061 dated 29.10.2002 for import of 1 lakh pieces of IC (CXA 1619 BS) was recovered from the*

office of M/s Ritronics and M/s Shin Semiconductors, New Delhi.

56. *Regarding 109 Bs/E which are mentioned Annexure C1 against which export trade declaration where obtained from the Hong Kong Customs, Show Cause Notice proposed for the application of Rule 4 read with Rule 3 of the Customs Valuation Rules, 1988. As it has already been discussed in earlier paras that the invoices submitted against the 109 Bs/E because for all these invoices the export trade declarations filed by the overseas supplier are available which invariably show a higher value of the goods approximately 4 to 5 times of the declared value. Rule 4(1) of the Customs Valuation Rules, 1988 says that the transaction value of imported goods shall be the price actually paid or payable for the goods when sold for export to India. The export trade declaration price gives the actual price paid /payable for the goods covered under 109 Bills of Entry when sold for export to India. So the trade declaration price constitutes the transaction price under Rule 4(1) of Customs Valuation Rules, 1988.*

57. *Under Section 2(41), "Value" is defined to mean value determined in accordance with Section 14(1) of the Act. Section 14 of the Customs Act, 1962 is the sole repository of law governing valuation of goods. The Customs Valuation Rules, 1988, have been framed only in respect of imported goods. In the present case the investigation has charged the imported alleging misdeclaration of value and this charge of under invoicing / misdeclaration has supported by the evidences in the form of export trade declaration which were obtained by the department by legal means from Hong Kong Customs. Under Section 2(41) of the Customs Act, 1962, the word "value is defined in relation to any goods to mean the value determined in accordance with the provisions of Section 14(1). The value to be declared in the Bill of Entry is the value referred to above and not merely the invoice price. On a plain reading of Section 14(1) and Section 14 (1A), it envisages that the value of any goods chargeable to ad valorem duty has to be in accordance with the relevant rules and subject to the provisions of Section 14(1). It is made clear that Section 14(1) and Section 14(1A) are not mutually exclusive. Therefore, the transaction value under Rule 4 must be the price paid or payable on such goods at the time and place of importation in the course of international trade. In case of Winstar Electronics Vs of Commissioner of Customs, Jaipur [2006 (201) ELT 76 (Tri-Del)] the confiscation of the goods was upheld by the Tribunal on the basis of export documents submitted by the foreign supplier before the country's Customs which shows much higher as than stated in the invoices submitted before Indian Customs and the demand under Section 28(1) of the Customs Act, 1962 was confirmed. In the same case the Tribunal has observed that "We find that under Rule 4(1) of the Customs Valuation Rules, 1988, the transaction value of imported goods shall be the price actually paid or payable for the goods when goods sold for export to India adjusted in accordance with the provisions of Rule 9 of these rules. Since the export value of the goods at Hong Kong has been obtained on investigation by the DRI through the official channel from the customs authorities at Hong Kong. That is correct FOB value at Hong Kong and assessable value for import into India has to determined on that basis. The goods imported by the appellant are the same goods, which were exported from Hong Kong and for which the export value was*

declared. This is apparent from the fact that in the Bill of Entry and the Airway Bill, same supply No. and same marks and numbers as declared in the export declaration at Hong Kong are mentioned."

58. The CESTAT in case of Ram Khazana Electronics Vs Commissioner of Customs, Air Cargo, Jaipur [2003(156) ELT 122 (Tri-Del)] held that the export declarations can be used for enhancement of value and the difference in the tariff classification was irrelevant. In the above mentioned case the export declaration of foreign supplier shows value which were widely varying from that of the invoice to Indian importer and the official declaration obtained by the DRI through the legal and diplomatic channels wherein in the name of the party, AWB No. and the description of the goods tallying with that of documents submitted before Indian Customs. The Hon'ble Supreme Court in the case of M/s Orson Electronic Pvt. Ltd. Vs Collector [1997(93) ELT A133 (SC)] dismissed the appeal on merits against the CESTAT ruling. The CESTAT in its order had held that adoption of the export declaration of value by the supplier before Japanese Customs along with related invoices was in order for arriving at the assessable value of the imported goods under Section 14 of the Customs Act, 1962. The CESTAT was also of the view that authenticity of the documents forwarded by the Japanese Government authorities to DRI is not doubted. The Hon'ble Tribunal further in the case of M/s Indian Watch Parts Mfg. Vs Commissioner [2004(171) ELT 141 (Tri-Delhi)] ruled that in case of difference between the value given in import invoices and export declaration as filed by the foreign exporter, the value given in the latter may be treated as transaction value. The CESTAT in the case of M/s Kania Trading Co. Vs CC, Jaipur [2005 (128) ECR 159(Tri-Delhi), opined that report of Trade Licensing Bureau of Customs and Excise Department, Hongkong carries own evidentiary value without resorting to any presumption of facts of the documents are sufficient to establish that the appellant had undervalued the goods covered in the import invoices.

59. In case of Konia Trading Co. Vs CC, Jaipur [2006 (199) ELT 689(Tri-Del)] it was held by the Tribunal that value can be enhanced on the basis of the invoices which were submitted by the overseas supplier before the Hong Kong Customs & Excise (overseas export country) department. In that case the CESTAT overruled their own decision as held in Truwoods Pvt. Ltd. where the Tribunal held that the value of the imported goods cannot be enhanced on the basis of photocopy of export documents obtained from the country of export. It was held by the CESTAT that the case does not depend on these photocopies of invoices but these are the information supplied by the Customs Authorities of the export country. Further it is well settled by the Supreme Court [1996 (82) ELT 499] and [1997 (93) ELT A133 (SC)] that export declaration could form basis for proceedings.

60. Sh. C.P. Gupta also contended that the value proposed on the basis of 109 export trade declarations are not legally sustainable as there is a difference in description. I observe that there is no difference in description but it is the misdeclaration on the part of the importer who himself misstated the goods not only in respect of values but also in respect of description to evade proper duty liability and this is in a very few cases where the importer misstated the goods. Moreover, all other details which includes the quantity, the AWB etc. matches in complete with

the Bs/E. It was also contended that Section 138C will not apply to the adjudication proceedings as it is quasi-judicial in nature. This claim on part of noticee cannot be accepted because I do not find any legal bar in adopting Section 138C in the quasi-judicial proceedings. Noticee Sh. C.P. Gupta through his advocate also contended that the computer printouts obtained do not comply with Section 138C of Customs Act, 1962 as these are generated on 21.8.2005, 6.9.2005, 01.09.2005 etc., however the Bs/E are filed between February 2003 to September 2004. I have gone through all the trade declarations and the covering letter written by Hong Kong, Customs and Excise department wherein the Senior Trade Control officer of the Customs and Excise department of Hong Kong certified that

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

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

(3) (a) The said computer was used to store, process or retrieve information for the purposes of the activities carried on by the Department;

(b) the information contained in the statement in the document reproduces, or is derived, information supplied to the computer in the course of the activities of the Department; and

(c) while the computer was so used in the course of those activities:

i) appropriate measures were in force for preventing unauthorized interference with the computer; and

(ii) the computer was operating properly, or if not, that any respect in which it was not operating properly or was out of operation was not such as to affect the production of the document or the accuracy of its contents.

(4) I give the following explanation of the nature and contents of the document: That this document is a true copy of the record of the information sent using services provided by a specified body within the meaning of the Import and Export Ordinance, Cap. 60 which is an import / export declaration required to be lodged under the said Ordinance in relation to the importation / exportation of the articles mentioned in the document.'

61. From the above declaration and certification by the Hong Kong Customs it is very much clear that this data provided by them and it is an official document provided under mutual legal assistance under Criminal Matters Ordinance. This is a retrieval of the data maintained in the computer system. All the Government organizations are keeping data in the form of soft copy in computers in this era of 21st century and I do not find anything which is not legal or not proper in the declarations. Regarding the run date when this data has been retrieved from the computer systems which is mentioned as of 2005 is a retrieval date. It does not mean that the data related to 2005. I have gone through all these declarations, computer printouts wherein lodgement date corresponds to

the departure date of flights or vessels and therefore the noticee's contention cannot be relied upon.

62. I therefore, fully agree with the investigating agency's view for accepting the trade declaration value as transaction value under Rule 4(1) read with Rule 3(i) of the Customs Valuation Rules, 1988. Similar is the case of 1 B/E details of which is reflected in Annexure C4 where the actual purchase order has been obtained from the office of the supplier which gives the true transaction value of the goods under Rule 4(1) of the Customs Valuation Rules, 1988 imported vide that particular B/E.”

50.6 For re-determination of transaction value of the goods imported vide the Bills of Entry mentioned in Annexure C-2 and C-3 of the SCN-3, I agree and reproduce the findings of the Adjudicating Authority in the OIO-3 as

“63. Regarding 42 Bs/E which are covered in Annexure C2 and 13 Bs/E which are covered Annexure C3, the department has adopted Rule 8 of Customs Valuation Rules, 1988 for finalization of the goods imported vide these Bs/E after proceeding sequentially through Rule 5 to 8 of the Customs Valuation Rules, 1988. I find that the method adopted by the department is correct and fair. Once it has been proved that the IECs obtained are on non-existent addresses on the basis of all fake documents by a single person in various names and the said to be proprietors also give evidence that they had not imported any of the said imported goods and further various statements of CHAs representative of supplier, courier agents, transporter and other related persons stated that the actual proprietor of the said goods is Sh. C.P. Gupta, the department has the proper reason to doubt regarding the truth and accuracy of the value declaration in relation to the imported goods. Further, the trade declarations of 109 Bs/E approximately 4 to 5 times value as against the declaration before Customs for the purpose of payment of duties provide sufficient corroborative evidence to reasonably doubt the true and accurate nature of declared values. In such a situation, the value of said imported goods cannot be determined under the provisions of Rule 4(1) of Customs Valuation Rules, 1988. In view of all evidences, I reject the declared value under Rule 10A of the Customs Valuation Rules, 1988. In terms of Rule 3(ii) of Customs Valuation Rules, 1988, if the value cannot be determined under Rule 3(i) i.e. if the transaction value under Rule 4(1) cannot be determined, the value shall be determined proceeding sequentially through Rule 5 to Rule 8. So I proceed sequentially through Rule 5 to 8 to determine the assessable value under Section 14 of the Customs Act, 1962. The value of the goods imported in question cannot be determined under Rule 5 of the Customs Valuation Rules, 1988 as the data about the transaction value of the identical goods in a sale at the same commercial level and in substantially same quantity at or about the same time is not available and on the basis of above reason only Rule 6 of the Customs Valuation Rules, 1988 is also not applied for these goods imported vide 42 + 13 Bs/E which were mentioned in Annexure C2 and C3. Further, Rule 7 is also not applicable as no reliable data about the unit price at which the identical / similar / imported goods are sold in India. Again Rule 7A is also not applicable because the cost or the value of the material and the fabrication and processing etc. is also not available. Rule 8 which is the most suitable for the application in the

subject matter because in this Rule the value shall be determined using the reasonable means consistent with the principles and the general provisions of these Rules and sub-Section 1 of Section 14 of the Customs Act, 1962. Further, in his submission, through his Advocate, Sh. C.P. Gupta submitted that for some Bs/E country of origin, for some quantity did not match with the comparable Bs/E of contemporaneous import. I find that if the quantity and the country of origin would have matched with the comparable B/E then it would be a case covered under Rule 5 or Rule 6, as valuation under Rule 8 would not have been adopted by the department. I concur with this method of best judgement proposed / followed by the department. In this best judgement method, I am accepting the value suggested by the investigation which is based on the values of the identical / similar goods where the export declaration has been received from the exporting countries. Similar is the case with Annexure-C3 where the values of the goods have been taken on the basis of the value of contemporaneous import of such goods. Though the contemporaneous imports are not either of identical goods or of similar goods as defined under Rule 2(c) and 2(d) of the Customs Valuation Rules, 1988 respectively, but according to my judgement, they are the best approximates.”

50.7 For re-determination of transaction value for goods seized from the shop of Sh. C. P. Gupta in SCN-1, I agree with the findings of the Adjudicating Authority in the OIO-1 which are reproduced below :

“34. I am placing reliance on the above mentioned two cases and find with other circumstantial evidences that the goods are, therefore, treated to be smuggled goods making them liable for confiscation under Section 111 (d) of Customs Act, 1962 for which no legal procurement document has been produced by the owner of the shop from where the goods are seized. In the absence of any documents relating to the subject goods showing their value, valuation of the subject goods is not possible under Rule 4, 5, 6, 7 and 7A of the Customs Valuation Rules, 1988. Consequently, the valuation has to be done under best judgment Rule 8 of the Valuations Rules of 1988 based on the import price of subject goods as declared by other importers.”

50.8 For re-determination of transaction value of the imported goods in the cases of **M/s. Gemini Enterprises and M/s. Spectrum Overseas vide B/E No. 516093 dated 29/11/2004 and B/E No. 516908 dated 30/11/2004** in SCN-1, I agree with the findings of the Adjudicating Authority in the OIO-1 which are reproduced as below :

“38. It is observed that, the price of the goods as shown in the import documents of M/s. Gemini Enterprises and M/s. Spectrum Overseas are lower than the actual prices of the said goods as declared by other importers. As such the price declared by M/s. Gemini Enterprises and M/s. Spectrum Overseas for the purpose of payment of customs duties did not appear to be the transaction value in terms of Section 14 of the Customs Act, 1962 as well as Rule 4 of the Customs Valuation Rules, 1988 and thus liable to be rejected in terms of Rule 10A of the Customs Valuation Rules, 1988 as they have not been able to justify lower price and further failed to

*submit the manufacturer's invoice for the subject goods, though the investigation revealed that the goods were actually supplied by manufacturer to overseas shipper of importer who further raise another invoice of lower value. Investigation also revealed that the importer intentionally not submitted those manufacturer invoice against which purchase order has been finalized by Sh. C.P. Gupta at local office of the manufacture or authorized dealers of such electronic component. The invoice produced by the importer did not have several attributes of being an acceptable transaction value. On the similar ground, the goods imported are liable for confiscation under Section 111 (m) of the Customs Act, 1962 and importer and Sh. C.P. Gupta are also liable for penal action under Section 112(a) of the Customs Act. It is further seen that, the importer has been unable to adduce any such evidence as the invoice submitted by them are at wide variance with the value declared by other importers for identical/ similar goods, thus suggesting that the price reflected on the invoice submitted at the time of assessment of the subject B/Es was grossly understated and therefore not genuine. The importers have, thus, failed to "discharge the onus" which shifts/ rests on them to show that the invoice value has got the attributes of transaction value. In case of **Ruchi Associates Vs. Commissioner of Customs [1992 (59) ELT 155]**, the Tribunal has held that, "where the importer has not laid any basis for acceptance of invoice price as transaction value then the authorities are legally right to proceed to fix the price under Valuation Rules 5 onwards". This case has attained the finality after the dismissal of Civil Appeal filed by the party by Supreme Court [1992(61) ELT A 134 (SC)]. Furthermore, the Hon'ble Apex Court has held in the case of **Commissioner of Customs, Madras Vs. D. Bhurmal, [1983 (13) ELT 1546 (SC)]** that, "the department would be deemed to have discharged its burden if it adduces only so much evidence, circumstantial or direct, as is sufficient to raise a presumption in its favour with regard to the existence of the fact sought to be proved". Similarly, the Tribunal in case of **Poonam Plastics Industries Vs. CC, [1989 (39) ELT 634(T)]** has held that " the Department was not required to prove actual value with mathematical precision and that reasonable help could be taken of the documents available and other circumstances to arrive at the correct value.*

39. *The value of the imported goods in the cases of **M/s. Gemini Enterprises and M/s. Spectrum Overseas vide B/E No. No. 516093 dated 29/11/2004 and B/E No. 516908 dated 30/11/2004** respectively cannot be determined under Rules 5 and 6 of the Customs Valuation Rules, 1988 as the data about the transaction value of the identical/ similar goods in a sale at the same commercial level and substantially the same quantity at or about the same time of import is not available. Similarly, the value of the subject goods cannot be determined under Rule 7 of the Customs Valuation Rules, 1988 because no reliable data about the unit price at which the imported goods or identical goods or similar goods are sold in India, is available. The value of these goods also cannot be determined under Rule 7A of the Rules of 1988 since no reliable data about the cost or value of materials and fabrication or other processing employed in producing the imported goods is available. In these circumstances, the value of the subject goods is therefore required to be determined under Rule 8 of the Customs Valuation Rules, 1988 on the basis of import price*

of subject goods as declared by other importers. In his submission Sh. C.P. Gupta submitted that the department has relied only on one bill of entry, there may be many more, however, I find that the department has compared the details of bills of entry with respect to description, quantity, model, make and country of origin and the suitable found was then quoted as per Rule 8 which is a best judgment method adopted in absence of import of identical or similar goods. Department has rightly compared and propose the value under Rule 8 of Customs Valuation Rules 1988. Further, in his submission, through his advocate, the importer submitted that for some bills of entry country of origin, for some quantity did not match with the comparable bills of entry of contemporaneous import. I find that if the quantity and the country of origin would have exactly matched with the comparable bill of entry then it would have been definitely covered under Rule 5 or Rule 6 of Valuation Rules. But because the same did not match exactly as discussed earlier the value could not be fixed under Rule 5 or 6, recourse was taken to valuation under Rule 8. Under Rule 8, to ones best judgment, the value of the goods though not identical or similar, but coming closest to identical/similar goods, is fairly accurate and can form the basis of comparison.”

50.9 For re-determination of transaction value of the imported goods in the case of SCN-2, I agree with the findings of the Adjudicating Authority in the OIO-2 which are reproduced as below :

“34. Goods imported vide invoice No. SG/327/11/2004 dated 11.11.2004 (B/L No. FPSSE041124 dated 17.11.2004) in the name of M/s. Spectrum Overseas, Delhi found in excess in terms of quantity. In the said consignment, item wire 2RCA found 5400 pcs in excess and cord found 2,70,000 pcs in excess. Similarly IC CXA 1619 imported vide Invoice No. JNE/9560/12/2004 dated 26.11.2004 (B/L No. GETO 40646 BOM dated 29.11.2004) in the name of M/s. Shiva Enterprises found in excess by 1200 pcs. Thus the invoice / Bills of Lading did not indicate the correct full particulars of the goods and, therefore, the invoice value can not form the transaction value for the purpose of Section 14 of Customs Act, 1962 read with Rule 4 of Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 and thus liable to be rejected. [Apex Court decision in the case of Collector of Customs V/s Sanjay Chandiram — 1995 (77) ELT 241 (SC) —where the declared price was rejected on the ground that country of origin of the goods was wrongly declared]. Also refer Vikas Shipping Agency V/s C.C. Mumbai — 2005 (185) ELT 95 (Tri. Mumbai). In case of Collector of Customs, Madras V/s Universal Synthetics [2000 (117) ELT 534 (SC)] it has held that the department would be justified in rejecting the transaction value in the absence of particulars like index number and the strength of the imported goods. Further, in the case of Prashant Glassware Pvt. Limited V/s Collector [1996 (87) ELT 518 (TH.)] the CESTAT has held that the burden of proving mis-declaration of value in the invoice is not on the department when inadequate, incomplete, incorrect or misleading description is given by the assessee. This decision was upheld by the Apex Court as reported in [1997 (89) ELT A 179 (SC)]. Also refer case of Mohan Sales India reported in 2004 (170) ELT 552 (Tri. — Delhi).

35. *The price of the goods as shown in the invoices of M/s. Shiva Enterprises and M/s. Spectrum Overseas are lower than the actual prices of the said goods as declared by other importers. As such the invoice price did not appear to be the transaction value for the purpose of payment of customs duties. The transaction value is liable to be rejected in the absence of the manufacturer's invoice for the subject goods. The investigation has revealed that the goods were actually supplied by manufacturer or the authorized dealers to overseas shipper of importer who further raise another invoice of lower value. Investigation also revealed that the those manufacturer or the authorized dealer's invoice against which purchase order has been finalized by Sh. C.P. Gupta at local office of the manufacture or authorized dealers of such electronic components have been intentionally not submitted. The invoice recovered for the subject import did not have several attributes of being an acceptable transaction value. It is further seen that, the noticees have been unable to adduce any such evidence as the invoice submitted by them are at wide variance with the value declared by other importers for identical/ similar goods, thus suggesting that the price reflected on the invoice are grossly understated and therefore not genuine. The noticees have, thus, failed to "discharge the onus" which shifts on them to show that the invoice value has got the attributes of transaction value. In case of Ruchi Associates Vs. Commissioner of Customs [1992 (59) ELT 155], the Tribunal has held that, "where the importer has not laid any basis for acceptance of invoice price as transaction value then the authorities are legally right to proceed to fix the price under Valuation Rules 5 onwards". This case has attained the finality after the dismissal of Civil Appeal filed by the party by Supreme Court [1992(61) ELT A 134 (SC)]. Furthermore, the Hon'ble Apex Court has held in the case of Commissioner of Customs, Madras Vs. D. Bhurmal, [1983 (13) ELT 1546 (SC)] that, "the department would be deemed to have discharged its burden if it adduces only so much evidence, circumstantial or direct, as is sufficient to raise a presumption in its favour with regard to the existence of the fact sought to be proved". Similarly, the Tribunal in case of Poonam Plastics Industries Vs. CC, [1989 (39) ELT 634 (T)] has held that, "the Department was not required to prove actual value with mathematical precision and that reasonable help could be taken of the documents available and other circumstances to arrive at the correct value".*

36. *The value of the imported goods in the cases of M/s. Shiva Enterprises and M/s. Spectrum Overseas vide Invoice No. SG/327/11/2004 dt. 11.11.04 (B/L No. FPSSE0411124 dt. 17.11.04), JNE/9547/11/2004 dt. 22.11.04 (B/L No. OOLU 28541060 dt. 24.11.04), JNE/9546/11/2004 dt. 16.11.04 (B/L No. OOLU 28511782 dt. 18.11.04), JNE/9560/12/2004 dt. 26.11.04 (B/L No. GETO 40646 BOM dt. 29.11.04), SO 858 dt. 29.10.04 (B/L No. 180114011866 dt. 06.11.04) and B/E No. 762562 dt. 13.12.04 (B/L No. HLCU SHA 041186233 dt. 11.09.04) cannot be re-determined under Rules 5 and 6 of the Customs Valuation Rules, 1988 as the data about the transaction value of the identical/ similar goods in a sale at the same commercial level and substantially the same quantity at or about the same time of import is not available. Similarly, the value of the subject goods cannot be determined under Rule 7 of the Customs Valuation Rules, 1988 because no reliable data about the unit price at which the imported*

goods or identical goods or similar goods are sold in India, is available. The value of these goods also cannot be determined under Rule 7A of the Rules of 1988 since no reliable data about the cost or value of materials and fabrication or other processing employed in producing the imported goods is available. In these circumstances, the value of the subject goods is therefore required to be determined under Rule 8 of the Customs Valuation Rules, 1988 on the basis of import price of subject goods as declared by other importers. In his submission Sh. C.P. Gupta submitted that the department has relied only on one bill of entry, there may be many more, however, I find that the department has compared the details of bills of entry with respect to description, quantity, model, make and country of origin and the suitable found was then quoted as per Rule 8 which is a best judgment method adopted in absence of import of identical or similar goods. The manner in which the Advocate of Sh. C.P. Gupta was trying to oppose the redetermination of value strengthens my belief that Sh. C.P. Gupta is the real importer; M/s. Spectrum Overseas and M/s. Shiva Enterprises are the front firms created solely with the unholy purpose to hoodwink the department. Coming to the present issue of valuation, I observe that the department has rightly compared and proposed the value under Rule 8 of Customs Valuation Rules 1988. Further, in his submission, through his advocate, Sh. C.P. Gupta submitted that for some bills of entry country of origin, for some quantity did not match with the comparable bills of entry of contemporaneous import. I find that if the quantity and the country of origin would have matched with the comparable bill of entry then it would be a case covered under Rule 5 or Rule 6, as valuation under Rule 8 would not have been adopted by the department. I concur with this method of best judgment proposed/ followed by the department. Further, the noticees have not provided any data showing lower value of the goods than that given in the two Annexures C-I and C-II. The noticees' submission therefore is baseless in the absence of any documentary evidence. The duty payable on the re-determined value as calculated vide corrigendum dated 24.01.2007 comes to Rs. 14,58,780.67 in respect of goods imported in the name of M/s. Spectrum Overseas and Rs. 25,13,516/- in respect of goods imported in the name of M/s. Shiva Enterprises.”

50.10 I have carefully examined the evidence on record, applied the relevant legal provisions, and discussed the issues pertaining to the redetermination of transaction values for the imported goods using appropriate methods prescribed under the CVR, 1988. For the Bills of Entry listed in Annexure C-1 of SCN-3, where trade declarations from the overseas suppliers were obtained, I re-determine the transaction value based on the higher export trade declaration price, as per Rule 4(1) of the CVR, 1988. Regarding the Bills of Entry mentioned in Annexures C-2 and C-3 of SCN-3, where trade declarations were unavailable or goods were compared with contemporaneous imports, I re-determine the transaction value under Rule 8 the CVR, 1988, considering the values of identical/similar goods from the available trade declarations or contemporaneous imports. In the case of 1 B/E mentioned in Annexure C4 where the actual purchase order has been obtained from the office of the supplier, I re-determine the transaction value of the goods

under Rule 4(1) of the CVR, 1988. Further, For the goods seized from Sh. C.P. Gupta's shop in SCN-1, I re-determine the transaction value under Rule 8 of the CVR, 1988 based on the import price declared by other importers. In the cases of imports in the name of M/s. Gemini Enterprises and M/s. Spectrum Overseas in SCN-1 and M/s. Shiva Enterprises, M/s. Spectrum Overseas in SCN-2, where the invoice values were found unreliable or inconsistent with other importers' declarations, I re-determine the transaction value under Rule 8 the of CVR, 1988, using the transaction value of identical/similar goods declared by other importers.

51. Whether the goods imported by various firms are liable for confiscation and penal action?

51.1 For confiscation of goods seized from the shop of Sh. C.P. Gupta in SCN -1, I agree with the findings of the Adjudicating Authority in the first round of adjudication in OIO-1 No. 23/2008/CAC/CC(I)/SP/Gr.VB dated 04.02.2008 (Corrigendum dated 07.03.2008). Relevant part of the OIO-1 is reproduced below :

“32. In case of Narinder Nagpal Vs Commissioner of Customs (Appeals), Mumbai (2005 (192) ELT 169 (Tri.Mumbai) confiscation and penalty was upheld by the Tribunal as the party has not produced evidence of licit acquisition of non-notified goods and the product of any purchase documents from legal sources was not explained. In this case, it was observed by the Tribunal that am of the view that considering the circumstances of seizure, statements recorded and the fact that licit acquisition of the impugned goods is not explained by production and purchase documents from legal sources, the lower authorities have reasonably concluded that the impugned goods were smuggled and therefore, the action taken by them also is justified under the law'. In an another case Commissioner of Central Excise, Indore Vs Bhupendra Kisnani (2004 (177) ELT 1031 (Tri. Del.)) it was observed by the Tribunal that onus although is on Revenue to prove illicit importation of non-notified goods, but bills produced by the assessee showing purchase of certain goods found to be false and consequently, onus to show legal importation of the goods falls on assessee, confiscation of goods under Section 111 (d) warranted.

*34. Sh. C.P. Gupta has tried to establish the bonafides by saying that the subject goods are freely importable and are available in grey market at large quantities at Lajpat Nagar; that the seized goods were purchased on cash basis from grey market at Lajpat Nagar and therefore there are no import documents and such goods are freely traded in large quantities. He submitted that the goods are not covered under Notification 52/68 as the same has been superceded by Notification No. 204/84 dated 20.02.1984 and this Notification deleted the serial number of transistor from the list of notified goods. **I concur with the plea of the noticee that the goods seized from the shop of Sh. C.P. Gupta are not notified goods under Section***

123 of the Customs Act, 1962. However, I hasten to state that it does not imply that the owner of the premises from where the goods have been recovered has no liability to prove the legality of import where it has been already been proved on the above para that the said importer imported the various electronic component goods by mis-declaring the value of the goods and the description under various fictitious firms. Though it is the department to prove that the goods are smuggled goods on the other hand Sh. C.P. Gupta fails to submit any account of the goods in the form of any purchase receipt or any other transaction in respect of this goods. The noticee's submission at the time of final reply of this show cause notice that they had purchased these goods from the grey market has not been acceptable at this stage because the same has neither been revealed by Sh. C.P. Gupta at any stage of investigation nor during his confessional statement dated 28.02.2005. This appears to be clear after thought and so I am not placing any reliance on the submission of the noticee at this stage. In the light of other two seizures affected in the subject case from the two godowns of the transporter wherein the goods imported in the name of M/s Spectrum Overseas and M/s Gemini Enterprises, it can be implied easily that the goods seized from the shop of Sh. C.P. Gupta at Lajpat Rai Market also belong to the same racket of import under fictitious firms for which documents of import has not been produced by Sh. C.P. Gupta. Even though the goods are not notified under Section 123 of the Act, the burden of proof shifts to the noticee in case where he has accepted the foreign origin of the goods and then it is upon him to show their legal importation. In view of above, though the goods are not covered under the definition of notified goods and are not liable for confiscation under Section 123 of Customs Act, 1962 but are clearly liable for confiscation under Section 111(d) of the Customs Act, 1962.” (emphasis added)

51.2 For confiscation of goods imported and cleared in the names of the fictitious firms M/s. Gemini Enterprises through Mumbai port vide Bill of Entry No. 516093 dated 29.11.2004 and M/s. Spectrum Overseas vide Bill of Entry No. 516908 dated 30.11.2004, through Mumbai port in SCN-1, I agree with the findings of the Adjudicating Authority in the first round of adjudication in OIO-1. Relevant part of the Order is reproduced below :

“38. It is observed that the price of the goods as shown in the import documents of M/s. Gemini Enterprises and M/s. Spectrum Overseas are lower than the actual prices of the said goods as declared by other importers. As such the price declared by M/s. Gemini Enterprises and M/s. Spectrum Overseas for the purpose of payment of customs duties did not appear to be the transaction value in terms of Section 14 of the Customs Act, 1962 as well as Rule 4 of the Customs Valuation Rules, 1988 and thus liable to be rejected in terms of Rule 10A of the Customs Valuation Rules, 1988 as they have not been able to justify lower price and further failed to submit the manufacturer's invoice for the subject goods, though the investigation revealed that the goods were actually supplied by manufacturer to overseas shipper of importer who further raise another invoice of lower value. Investigation also revealed that the importer

intentionally not submitted those manufacturer invoice against which purchase order has been finalized by Sh. C.P. Gupta at local office of the manufacture or authorized dealers of such electronic component. The invoice produced by the importer did not have several attributes of being an acceptable transaction value. On the similar ground, the goods imported are liable for confiscation under Section 111 (m) of the Customs Act, 1962 and importer and Sh. C.P. Gupta are also liable for penal action under Section 112(a) of the Customs Act. It is further seen that, the importer has been unable to adduce any such evidence as the invoice submitted by them are at wide variance with the value declared by other importers for identical/ similar goods, thus suggesting that the price reflected on the invoice submitted at the time of assessment of the subject B/Es was grossly understated and therefore not genuine. The importers have, thus, failed to "discharge the onus" which shifts/ rests on them to show that the invoice value has got the attributes of transaction value. In case of Ruchi Associates Vs. Commissioner of Customs [1992 (59) ELT 155], the Tribunal has held that, "where the importer has not laid any basis for acceptance of invoice price as transaction value then the authorities are legally right to proceed to fix the price under Valuation Rules 5 onwards". This case has attained finality after the dismissal of Civil Appeal filed by the party by the Supreme Court [1992(61) ELT A 134 (SC)]."

51.3 For confiscation of 6 consignments of M/s. Shiva Enterprises and M/s. Spectrum Overseas mentioned in Chart C-2 of SCN-2, I agree with the findings of the Adjudicating Authority in OIO-2 dated 29.02.2008 on the issue of confiscation of the said goods in the SCN-2 in the first round of adjudication. Relevant part of the Order is reproduced below :

*"32. As per Section 7 of the Foreign Trade (Development & Regulation) Act, 1992 no person shall make any import except under the IEC code granted by the DGFT. Any import with invalid IEC code shall tantamount to contravention of Section 11 ibid. Rule 14 of the Foreign Trade (Regulation) Rules, 1993 prohibits any person to use or cause to use any document for importing any goods knowing and having reason to believe that such document is false in any material particular. Sub rule 2 of Rule 14 requires that no person shall employ any 'corrupt or fraudulent practice for the purpose of importing any goods. By contravening the provisions of Section 7, Section 11 of Foreign Trade (Development & Regulation) and rule 14 of Foreign Trade (Regulation) Rules, the goods have become 'prohibited goods' as defined under Section 2(33) of Customs Act, 1962. As per Section 2(33), 'prohibited goods' means any goods the import of which is subject to any prohibition under Customs Act or any other law for the time being in force. **Since these goods are imported and/or attempted to be imported by Sh. C.P. Gupta in the name of fictitious /bogus/non-existing firms having IEC codes obtained through fraudulent means contrary to prohibitions imposed under Exim Policy read with FT(DR) Act and FT (R) Rules, the goods are liable to confiscation under Section 111(d) of the Customs Act, 1962. Sh. C.P. Gupta who in relation to these goods masterminded the import of the said goods in the name of fictitious /bogus /non-existing firms by heavily under-invoicing the value to evade payment of legitimate customs duty.....***

33. *Noticee Sh. C.P. Gupta has placed his reliance on the decision of Bombay High Court in case of CC&E, Goa Vs Kabul Textiles (LLC) reported in [2006 (206) ELT 1173 (Boni)] and contended that question of mis-declaration and confiscation under Section 111(m) of the Customs Act, 1962 cannot arise as bill of entry is not filed in respect of the subject goods except one B/E in the present case. I hold that for the Bill of Entry 762562 dt.13.12.2004 filed by M/s Shiva Enterprises for the import of Transformers, Section 111(m) is applicable as the goods were highly undervalued. For the rest, Section 111(m) is not attracted as 'entry' under Section 111(m) shall mean a Bill of Entry and without a Bill of Entry, the goods would not fall under the mischief of Section 111(m). This has been upheld after the dismissal of Department's Petition for Special Leave to Appeal by Hon'ble Supreme Court in case of Kabul Textiles[2007(218) ELT A 122(SC)].*

.....

38. *The investigating Agency, the DRI vide their letter F. No. DRI/MZU/E/MISC-29/2004-Part 1/7869 dated 26.09.2007 informed this office that two consignments imported vide Invoice No. SG/327/11/2004 DT. 11.11.2004 (OOLU 5005810) in the name of M/s. Spectrum Overseas and imported vide B/E No. 762562 dt. 13.12.2004 (HLXU 2207787) in the name of M/s. Shiva Enterprises has been disposed of by the department under the laid down procedure and the same proceeds amounting Rs. 12,95,325/- and Rs. 11,12,121/- respectively deposited in the government treasury.”*

51.4 I agree with the finding of the Adjudicating Authority in the first round of adjudication on confiscation and penal action on the 16 noticee firms in the SCN-3. Relevant part of the OIO-3 dated 28.05.2008 is reproduced below :

“ 71. Now coming to M/s Sagar Electronics, M/s Spectrum Overseas, M/s Shiva Enterprises, M/s Gemini Enterprises, M/s Mars International, M/s Shivam Overseas Inc., M/s Shiva International, M/s Royal International, M/s Leo International, M/s Supreme Enterprises, M/s Allied Enterprises, M/s Devika Enterprises, M/s Prominent Enterprises, M/s Surya Enterprises, M/s Konark International, M/s Galaxy Enterprises, M/s Magnum Enterprises, I find that by their acts of omission and commission they rendered the goods liable to confiscation under Section 111(m) of Customs Act, 1962. They dealt with the goods knowing / having reason to believe that the goods are liable to confiscation under Section 111. Thus, they are liable for penal action under Section 112(a) and Section 112(b) of the Customs Act, 1962.”

52. I find the OIO-1, OIO-2 and OIO-3 to be just and reasonable and I agree with the quantum of redemption fine and penalties imposed therein by the Adjudicating Authority in the first round of adjudication of the SCNs.

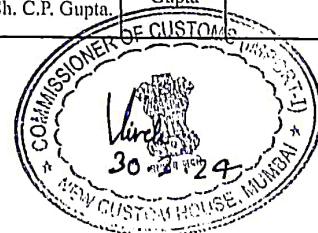
Order

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

53.1 In respect of the 3 SCNs of this case; I reject the declared value of imported goods under Rule 10A(1), redetermine their transaction value, confiscate the goods, allow redemption in lieu of confiscation or appropriate sale proceeds wherever applicable, confirm duty demand and impose penalties, as indicated in Table No. 33 for SCN-1, Table No. 34 for SCN-2, and Table No. 35.1, 35.2 35.3 and 35.4 for SCN -3 as below.

Table No. 33 : Order in respect of SCN-1

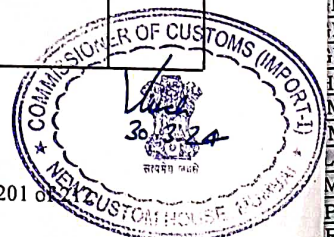
Sl.No.	Goods imported in the name of	Details of subject goods	I reject the declared value of the goods of column 3	I re-determine value of the goods of column 3	I uphold confiscation of the goods of column 3	I impose redemption fine in lieu of confiscation, upheld in column 6, under Section 125 of the Act	I confirm demand of differential duty on the goods of column 3	I impose penalty	
								under section 114A of the Act	under section 112(a) of the Act
1	2	3	4	5	6	7	8	9	10
1	—	Seized at Shop-cum-office of Sh. C.P. Gupta, as in Chart C-1 of SCN-1	—	—	valued at Rs. 64,02,751/- under Section 111(d) of the Act.	Rs. 10,00,000/- (Rs. Ten lakhs only) for the goods of column 3	Rs. 11,86,934/- (Rs. Eleven lakhs eighty six thousand nine hundred and thirty four only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, read with Section 125 ibid from Sh. C.P. Gupta.	Rs. 11,86,934/- (Rs. Eleven lakhs eighty six thousand nine hundred and thirty four only) along with applicable interest on Sh. C.P. Gupta	—
2	M/s. Gemini Enterprises	Goods imported at NCH, Mumbai vide Bill of Entry No. 516093 dated 29.11.04 as in Chart C-2 of SCN-1	in terms of Rule 10A(1) of the Customs Valuation Rules, 1988	Rs. 12,47,913/- (Rs. Twelve Lakhs Forty Seven Thousand Nine Hundred Thirteen Only) in terms of Rule 8 of the Customs Valuation Rules, 1988	under Section 111(m) of the Act.	Rs. 2,00,000/- (Rs. Two lakhs only) to be recovered from Sh. C. P. Gupta	Rs. 2,30,862/- (Rs. Two lakhs Thirty thousand and Eight Hundred Sixty Two only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C.P. Gupta.	2,30,862/- (Rs. Two lakhs Thirty thousand and Eight Hundred Sixty Two only) along with applicable interest on Sh. C.P. Gupta	Rs. 1,00,000/- (Rs. One lakh only) on M/s Gemini Enterprises



3	M/s. Spectrum Overseas	Goods imported at NCH, Mumbai vide Bill of Entry No. 516908 dated 30.11.04 as in Chart C-2 of SCN-1	in terms of Rule 10A(1) of the Customs Valuation Rules, 1988	Rs. 6,17,464/- (Rs. Six Lakhs Seventeen Thousand Four Hundred Sixty Four Only) in terms of Rule 8 of the Customs Valuation Rules, 1988	under Section 111(m) of the Customs Act, 1962	of Rs. 1,00,000/- (Rs. One lakh only) to be recovered from Sh. C. P. Gupta .	Rs. 84,218/- (Rs. Eighty Four thousand and Two Hundred Eighteen only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C.P. Gupta.	Rs. 84,218/- (Rs. Eighty Four thousand and Two Hundred Eighteen only) along with applicable on Sh. C.P. Gupta	Rs. 35,000/- (Rs. Thirty five thousand only) on M/s Spectrum Overseas
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Table No. 34 : Order in respect of SCN-2

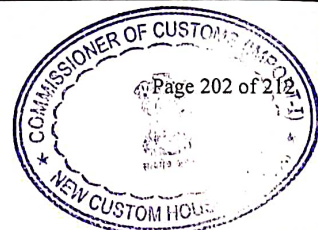
Sr. No.	Goods imported in the name of	Subject goods imported through JNPT, Nhava Sheva	I reject the declared value of goods of column 3	I re-determine value of goods of column 3	I uphold confiscation of the goods of column 3	I order for appropriation of the sale proceeds of the goods of column 3	I confirm demand of differential duty on the goods of column 3	I impose penalty		
								under Section 114A of the Act	under Section 112(a) of the Act	
1	2	3	4	5	6	7	8	9	10	
1	M/s. Spectrum Overseas	vide Invoice No. SG/327/11/2004 dt. 11.11.04 (B/L No. FPSSE0411124 dt. 17.11.04)			valued at Rs. 6,73,514/- under Section 111(d) of the Customs Act, 1962	I appropriate Rs. 12,95,325/- (Rs. Twelve lakhs ninety five thousand three hundred and twenty five only) received as the sale proceeds of the consignment for confirmed duty demand, penalties under Section 114A and 112(a). The remaining amount to be appropriated for confirmed duty demand on goods imported in the name of M/s. Spectrum Overseas in SCN -1	Rs. 2,71,937/- (Rs. Two lakhs Seventy One thousand and Nine Hundred Thirty Seven only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C.P. Gupta.	Rs. 2,71,937/- (Rs. Two lakhs Seventy One thousand and Nine Hundred Thirty Seven only) along with applicable interest on Sh. C.P. Gupta	Rs. 1,00,000/- (Rs. One lakh only) on M/s. Spectrum Overseas	
		vide Invoice No. JNE/9546/11/2004 dt. 16.11.04 (B/L No. OOLU 28511782 dt. 18.11.04)			valued at Rs. 25,64,592/- under Section 111(d) of the Act,					
		vide Invoice No. JNE/9547/11/2004 dt. 22.11.04 (B/L No. OOLU 28541060 dt. 24.11.04)			valued at Rs. 3,74,912/- under Section 111(d) of the Act,					



2	M/s. Shiva Enterprises	vide Invoice No. JNE/9560/12/2004 dt. 26.11.04			valued at Rs. 36,68,175/- under Section 111(d) of the Act.				
		vide Invoice No. SO 858 dated 29.11.04			valued at Rs. 93,00,001/- under Section 111(d) of the Act.				
		vide B/E No. 762562 dated 13.12.04	in terms of Rule 10A(1) of the Customs Valuation Rules, 1988	Rs. 8,78,700/-Rs. Eight Lakhs Seventy Eight Thousand Seven Hundred Only) in terms of Rule 8 of the Customs Valuation Rules, 1988	under Section 111(m) of the Act.	I appropriate Rs. 11,12,121/- (Rs. Twelve Lakhs Ninety Five Thousand Three Hundred and Twenty Five only) received as the sale proceeds of the consignment for confirmed duty demand, penalties under Section 114A and 112(a). The remaining amount to be appropriated for confirmed duty demand on goods imported in the name of M/s. Shiva Enterprises in SCN-3	Rs. 3,54,781/- (Rs. Three lakhs Fifty Four thousand and Seven Hundred Eighty One only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act from Sh. C.P. Gupta.	Rs. 3,54,781/- (Rs. Three lakhs Fifty Four thousand and Seven Hundred Eighty One only) along with applicable interest on Sh. C.P. Gupta	Rs. 1,00,000/- (Rs. One lakh only) on M/s. Spectrum Overseas

Table No. 35.1 : Order in respect of goods imported through JNPT, Nhava Sheva in SCN-3

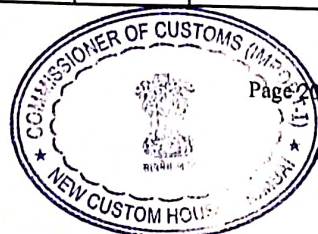
Sr. No.	Goods imported in the name of	Subject goods covered /listed as per	I reject the declared value of the goods of column 3	I re-determine value of the goods of column 3	I order for classification and assessment of	I uphold confiscation of the goods of column 3	I impose redemption fine lieu of confiscation, upheld in column 7, under Section 125 of the Act	I confirm demand of differential duty on the goods of column 3	I impose penalty	
									under Section 114A of the Act	under Section 112(a) of the Act
1	2	3	4	5	6	7	8	9	10	11
1	M/s. Allied Enterprises	Annexures C-1 & C-2 of SCN -3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 4,68,42,546/- (Rs. Four Crores Sixty Eight Lakhs Forty Two Thousand Five Hundred Forty Six Only) in terms of Rule 4 (for Annexure C-1) and Rule 8 (for Annexure C-2) of the CVR, 1988.	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	Rs. 70,00,000/- Rs. Thirty Lakhs Only) to be recovered on Sh. C. P. Gupta	Rs. 1,59,33,699/- (Rs. One Crore Fifty Nine Lakhs Thirty Three Thousand Six Hundred and Ninety Nine Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C. P. Gupta	Rs. 1,59,33,699/- (Rs. One Crore Fifty Nine Lakhs Thirty Three Thousand Six Hundred and Ninety Nine Only) along with applicable interest on Sh. C.P. Gupta	Rs. 23,00,000/- (Rs. Twenty Three Lakhs Only) on M/s Allied Enterprises



2	M/s. Devika Enterprises	Annexure C-1 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 2,05,47,572/- (Rs. Two Crores Five Lakhs Forty Seven Thousand Five Hundred and Seventy Two Only) in terms of Rule 4 of the Customs Valuation Rules, 1988	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(n) of the Customs Act, 1962	Rs. 30,00,000/- (Rs. Thirty Lakhs Only) to be recovered from Sh. C. P. Gupta	Rs. 67,59,843/- (Rs. Sixty Seven Lakhs Fifty Nine Thousand Eight Hundred and Forty Three Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C. P. Gupta	Rs. 67,59,843/- (Rs. Sixty Seven Lakhs Fifty Nine Thousand Eight Hundred and Forty Three Only) along with applicable interest on Sh. C.P. Gupta	Rs. 10,00,000/- (Rs. Ten Lakhs Only) on M/s Devika Enterprises
3	M/s. Galaxy Enterprises	Annexure C-1 & C-2 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 3,69,89,516/- (Rs. Three Crores Sixty Nine Lakhs Eighty Nine Thousand Five Hundred Sixteen Only) in terms of Rule 4 (for Annexure C-1) and Rule 8 (for Annexure C-2) of the CVR, 1988.	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	Rs. 55,00,000/- (Rs. Fifty Five Lakhs Only) to be recovered from Sh. C. P. Gupta	Rs. 1,25,63,492/- (Rs. One Crore Twenty-Five Lakhs Sixty-Three Thousand Four Hundred and Ninety-Two Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C. P. Gupta	Rs. 1,25,63,492/- (Rs. One Crore Twenty-Five Lakhs Sixty-Three Thousand Four Hundred and Ninety-Two Only) along with applicable interest on Sh. C.P. Gupta	Rs. 18,00,000/- (Rs. Eighteen Lakhs Only) on M/s Galaxy Enterprises
4	M/s. Gemini Enterprises	Annexure C-1 & C-2 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 2,23,60,218/- (Rs. Two Crores Twenty Three Lakhs Sixty Thousand Two Hundred Eighteen Only) in terms of Rule 4 (for Annexure C-1) and Rule 8 (for Annexure C-2) of the CVR, 1988.	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	Rs. 33,00,000/- (Rs. Thirty Three Lakhs Only) to be recovered from Sh. C. P. Gupta	Rs. 59,15,718/- (Rs. Fifty Nine Lakhs Fifteen Thousand Seven Hundred Eighteen Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act from Sh. C. P. Gupta	Rs. 59,15,718/- (Rs. Fifty Nine Lakhs Fifteen Thousand Seven Hundred Eighteen Only) along with applicable interest on Sh. C.P. Gupta	Rs. 8,00,000/- (Rs. Eight Lakhs Only) on M/s Gemini Enterprises
5	M/s. Konark International	Annexure C-1 & C-2 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 1,96,67,910/- (Rs. One Crore Ninety Six Lakhs Sixty Seven Thousand Nine Hundred Ten Only) in terms of Rule 4 (for Annexure C-1) and Rule 8 (for Annexure C-2) of the CVR, 1988.	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	Rs. 50,00,000/- (Rs. Fifty Lakhs Only) to be recovered from Sh. C. P. Gupta	Rs. 72,26,081/- (Rs. Seventy Two Lakhs Twenty Six Thousand and Eighty One Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C. P. Gupta	Rs. 72,26,081/- (Rs. Seventy Two Lakhs Twenty Six Thousand and Eighty One Only) along with applicable interest on Sh. C.P. Gupta	Rs. 10,00,000/- (Rs. Ten Lakhs Only) on M/s Konark International



6	M/s. Leo International	Annexure C-1 & C-2 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 3,34,24,816/- (Rs. Three Crores Thirty Four Lakhs Twenty Four Thousand Eight Hundred Sixteen Only) in terms of Rule 4 (for Annexure C-1) and Rule 8 (for Annexure C-2) of the CVR, 1988.	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	Rs. 50,00,000/- (Rs. Fifty Lakhs Only) to be recovered from Sh. C. P. Gupta	Rs. 92,99,935/- (Rs. Ninety Two Lakhs Ninety Nine Thousand Nine Hundred Thirty Five Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C. P. Gupta	Rs. 92,99,935/- (Rs. Ninety Two Lakhs Ninety Nine Thousand Nine Hundred Thirty Five Only) along with applicable interest on Sh. C.P. Gupta	Rs. 14,00,000/- (Rs. Fourteen Lakhs Only) on M/s Leo International
7	M/s. Prominent Enterprises	Annexure C-1 & C-2 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 2,95,99,700/- (Rs. Two Crores Ninety Five Lakhs Ninety Nine Thousand Seven Hundred Only) in terms of Rule 4 (for Annexure C-1) and Rule 8 (for Annexure C-2) of the CVR, 1988.	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	Rs. 44,00,000/- (Rs. Forty Four Lakhs Only) to be recovered from Sh. C. P. Gupta	Rs. 88,70,945/- (Rs. Eighty Eight Lakhs Seventy Thousand Nine Hundred Forty Five Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C. P. Gupta	Rs. 88,70,945/- (Rs. Eighty Eight Lakhs Seventy Thousand Nine Hundred Forty Five Only) along with applicable interest on Sh. C.P. Gupta	Rs. 13,00,000/- (Rs. Thirteen Lakhs Only) on M/s Prominent Enterprises
8	M/s. Royal International	Annexure C-1 & C-2 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 2,45,04,379/- (Rs. Two Crores Forty Five Lakhs Four Thousand Three Hundred Seventy Nine Only) in terms of Rule 4 (for Annexure C-1) and Rule 8 (for Annexure C-2) of the CVR, 1988.	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	of Rs. 36,00,000/- (Rs. Thirty Six Lakhs Only) to be recovered from Sh. C. P. Gupta	Rs. 57,53,213/- (Rs. Fifty Seven Lakhs Fifty Three Thousand Two Hundred Thirteen Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C. P. Gupta	Rs. 57,53,213 /- (Rs. Fifty Seven Lakhs Fifty Three Thousand Two Hundred Thirteen Only) along with applicable interest on Sh. C.P. Gupta	Rs. 8,00,000 /- (Rs. Eight Lakhs Only) on M/s Royal International
9	M/s. Shiva International	Annexure C-1 & C-2 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 2,42,18,485/- (Rs. Two Crores Forty Two Lakhs Eighteen Thousand Four Hundred Eighty Five Only) in terms of Rule 4 (for Annexure C-1) and Rule 8 (for Annexure C-2) of the CVR, 1988.	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	Rs. 36,00,000/- (Rs. Thirty Six Lakhs Only) to be recovered from Sh. C. P. Gupta	Rs. 97,48,956/- (Rs. Ninety Seven Lakhs Forty Eight Thousand Nine Hundred Fifty Six Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the	Rs. 97,48,956/- (Rs. Ninety Seven Lakhs Forty Eight Thousand Nine Hundred Fifty Six Only) along with applicable interest on	Rs. 14,00,000/- (Rs. Fourteen Lakhs Only) on M/s Shiva International



Handwritten signature and date: 20.3.24

								Act, from Sh. C. P. Gupta	Sh. C.P. Gupta	
10	M/s. Shivam Overseas Inc.	Annexure C-1 & C-2 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 1,50,97,645/- (Rs. One Crore Fifty Lakhs Ninety Seven Thousand Six Hundred Forty Five Only) in terms of Rule 4 (for Annexure C-1) and Rule 8 (for Annexure C-2) of the CVR 1988.	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	Rs. 22,00,000/- (Rs. Twenty Two Lakhs Only) to be recovered from Sh. C. P. Gupta	Rs. 54,39,025/- (Rs. Fifty Four Lakhs Thirty Nine Thousand Twenty Five Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C. P. Gupta	Rs. 54,39,025/- (Rs. Fifty Four Lakhs Thirty Nine Thousand Twenty Five Only) along with applicable interest on Sh. C.P. Gupta	Rs. 8,00,000/- (Rs. Eight Lakhs Only) on M/s Shivam Overseas Inc.
11	M/s. Spectrum Overseas	Annexure C-1, C-2 & C-3 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 5,28,76,773/- (Rs. Five Crores Twenty Eight Lakhs Seventy Six Thousand Seven Hundred Seventy Three Only) in terms of Rule 4 (for Annexure C-1) and Rule 8 (for Annexure C-2 and C-3) of the CVR, 1988.	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	Rs. 79,00,000/- (Rs. Seventy Nine Lakhs) to be recovered from Sh. C. P. Gupta	Rs. 1,45,89,839/- (Rs. One Crore Forty Five Lakhs Eighty Nine Thousand Eight Hundred Thirty Nine Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C. P. Gupta	Rs. 1,45,89,839/- (Rs. One Crore Forty Five Lakhs Eighty Nine Thousand Eight Hundred Thirty Nine Only) along with applicable interest on Sh. C.P. Gupta	Rs. 22,00,000/- (Rs. Twenty Two Lakhs) on M/s Spectrum Overseas
12	M/s. Supreme Enterprises	Annexure C-1 & C-2 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 2,61,53,805/- (Rs. Two Crores Sixty One Lakhs Fifty Three Thousand Eight Hundred Five Only) in terms of Rule 4 (for Annexure C-1) and Rule 8 (for Annexure C-2) of the CVR 1988.	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	Rs. 39,00,000/- (Rs. Thirty Nine Lakhs Only) to be recovered from Sh. C. P. Gupta	Rs. 95,95,472/- (Rs. Ninety Five Lakhs Ninety Five Thousand Four Hundred Seventy Two Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C. P. Gupta	Rs. 95,95,472/- (Rs. Ninety Five Lakhs Ninety Five Thousand Four Hundred Seventy Two Only) along with applicable interest on Sh. C.P. Gupta	Rs. 14,00,000/- (Rs. Fourteen Lakhs Only) on M/s Supreme Enterprises
13	M/s. Surya Enterprises	Annexure C-1 & C-2 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 3,36,67,171/- (Rs. Three Crores Thirty Six Lakhs Sixty Seven Thousand One Hundred Seventy One Only) in terms of Rule 4 (for Annexure C-1) and Rule 8 (for Annexure C-2) of the CVR, 1988.	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	Rs. 50,00,000/- (Rs. Fifty Lakhs Only) to be recovered from Sh. C. P. Gupta	Rs. 79,92,930/- (Rs. Seventy Nine Lakhs Ninety Two Thousand Nine Hundred Thirty Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C. P. Gupta	Rs. 79,92,930/- (Rs. Seventy Nine Lakhs Ninety Two Thousand Nine Hundred Thirty Only) along with applicable interest on Sh. C.P. Gupta	Rs. 12,00,000/- (Rs. Twelve Lakhs Only) on M/s Surya Enterprises



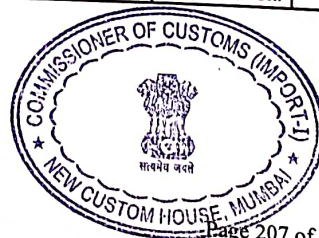
14	M/s. Mars International	Annexure C-3 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 1,33,78,070/- (Rs. One Crore Thirty Three Lakhs Seventy Eight Thousand Seventy Only) in terms of Rule 8 of the CVR, 1988.		under Section 111(m) of the Customs Act, 1962	Rs. 20,00,000/- (Rs. Twenty Lakhs Only) to be recovered from Sh. C. P. Gupta	Rs. 25,31,575/- (Rs. Twenty Five Lakhs Thirty One Thousand Five Hundred Seventy Five Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C. P. Gupta	Rs. 25,31,575/- (Rs. Twenty Five Lakhs Thirty One Thousand Five Hundred Seventy Five Only) along with applicable interest on Sh. C.P. Gupta	Rs. 3,00,000/- (Rs. Three Lakhs Only) on M/s Mars International
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Table No. 35.2 : Order in respect of goods imported through ACC, Mumbai port in SCN-3

Sr.No.	Goods imported in the name of	Goods imported vide Bills of Entry at ACC Mumbai as shown in	I reject the declared value of goods of column 3	I re-determine value of goods of column 3	I order for classification and assessment of	I uphold confiscation of the goods of column 3	I impose redemption fine in lieu of confiscation, upheld in column 7, under Section 125 of the Act	I confirm demand of differential duty on the goods of column 3	I impose penalty	
									under Section 114A of the Act	under Section 112(a) of the Act
1	2	3	4	5	6	7	8	9	10	11
1	M/s. Sagar Electronics	Annexure C-1, C-2, C-3 & C-4 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 1,29,22,644/- (Rs. One Crore Twenty Nine Lakhs Twenty Two Thousand Six Hundred Forty Four Only) in terms of Rule 4 (for Annexure C-1 and C-4) and Rule 8 (for Annexure C-2 and C-3) of the CVR, 1988.		under Section 111(m) of the Customs Act, 1962	Rs. 19,00,000/- (Rs. Nineteen Lakhs Only) to be recovered from Sh. C. P. Gupta	Rs. 19,83,331/- (Rs. Nineteen Lakhs Eighty Three Thousand Three Hundred Thirty One Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C. P. Gupta	Rs. 19,83,331/- (Rs. Nineteen Lakhs Eighty Three Thousand Three Hundred Thirty One Only) along with applicable interest on Sh. C.P. Gupta	



2	M/s. Galaxy Enterprises	Annexure C-1 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 3,69,89,516/- (Rs. Three Crores Sixteen Lakhs Ninety Eight Thousand Sixty One Only) in terms of Rule 4 of the Customs Valuation Rules, 1988.		under Section 111(m) of the Customs Act, 1962	of Rs. 47,00,000/- (Rs. Forty Seven Lakhs Only) to be recovered from Sh. C. P. Gupta	Rs. 85,24,862/- (Rs. EightyFive Lakhs Twenty Four Thousand Eight Hundred Sixty Two Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C. P. Gupta	Rs. 85,24,862/- (Rs. EightyFive Lakhs Twenty Four Thousand Eight Hundred Sixty Two Only) along with applicable interest on Sh. C.P. Gupta	Rs. 12,00,000/- (Rs. Twelve Lakhs Only) on M/s Galaxy Enterprises
3	M/s. Gemini Enterprises	Annexure C-1 & C-3 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 2,79,37,078/- (Rs. Two Crores Seventy Nine Lakhs Thirty Seven Thousand Seven Eight Only) in terms of Rule 4 (for Annexure C-1 of SCN 3) and Rule 8 (for Annexure C-3 of SCN 3) of the CVR, 1988.		under Section 111(m) of the Customs Act, 1962	Rs. 41,00,000/- (Rs. Forty One Lakhs) to be recovered from Sh. C. P. Gupta	Rs. 51,90,833/- (Rs. Fifty One Lakhs Ninety Thousand Eight Hundred Thirty Three Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C. P. Gupta	Rs. 51,90,833/- (Rs. Fifty One Lakhs Ninety Thousand Eight Hundred Thirty Three Only) along with applicable interest on Sh. C.P. Gupta	Rs. 7,00,000/- (Rs. Seven Lakhs Only) on M/s Gemini Enterprises
4	M/s Shiva Enterprises	Annexure C-1 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 38,19,199/- (Rs. Thirty Eight Lakhs Nineteen Thousand One Hundred Ninety Nine Only) in terms of Rule 4 of the Customs Valuation Rules, 1988.		under Section 111(m) of the Customs Act, 1962	Rs. 5,00,000/- (Rs. Five Lakhs Only) to be recovered from Sh. C. P. Gupta	Rs. 10,04,010/- (Rs. Ten Lakhs Four Thousand Ten Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C. P. Gupta	Rs. 10,04,010/- (Rs. Ten Lakhs Four Thousand Ten Only) along with applicable interest on Sh. C.P. Gupta	Rs. 1,00,000/- (Rs. One Lakh Only) on M/s Shiva Enterprises
5	M/s. Devika Enterprises	Annexure C-1 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 64,45,519/- (Rs. Sixty Four Lakhs Forty Five Lakhs Five Hundred Nineteen Only) in terms of Rule 4 of the Customs Valuation Rules, 1988		under Section 111(m) of the Customs Act, 1962	Rs. 9,00,000/- (Rs. Nine Lakhs Only) to be recovered from Sh. C. P. Gupta	Rs. 16,42,696/- (Rs. SixteenLakhs Forty Two Thousand Six Hundred Ninety Six Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh.	Rs. 16,42,696/- (Rs. SixteenLakhs Forty Two Thousand Six Hundred Ninety Six Only) along with applicable interest on Sh. C.P. Gupta	Rs. 2,00,000/- (Rs. Two Lakhs Only) on M/s Devika Enterprises



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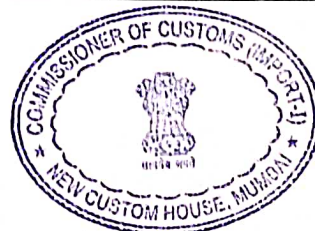
6	M/s. Mars International	Annexure C-1 & C-3 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 2,96,64,248/- (Rs. Two Crores Ninety Six Lakhs Sixty Four Thousand Two Hundred Forty Eight Only) in terms of Rule 4 (for Annexure C-1 of SCN 3) and Rule 8 (for Annexure C-3 of SCN 3) of the CVR, 1988.	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	Rs. 44,00,000/- (Rs. Forty Four Lakhs Only) to be recovered from Sh. C. P. Gupta	Rs. 61,58,053/- (Rs. Sixty One Lakhs Fifty Eight Thousand Fifty Three Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C. P. Gupta	Rs. 61,58,053/- (Rs. Sixty One Lakhs Fifty Eight Thousand Fifty Three Only) along with applicable interest on Sh. C.P. Gupta	Rs. 9,00,000/- (Rs. Nine Lakhs Only) on M/s Mars International
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Table No. 35.3 : Order in respect of goods imported through Mumbai Sea Port in
SCN-3

Sr. No.	Goods imported in the name of	Goods imported vide Bills of Entry at NCH, Mumbai	I reject the declared value of goods of column 3	I re-determine value of goods of column 3	I order for classification and assessment of	I uphold confiscation of the goods of column 3	I impose redemption fine in lieu of confiscation, upheld in column 7, under Section 125 of the Act	I confirm demand of differential duty on the goods of column 3	I impose penalty	
									under Section 114A of the Act	under Section 112(a) of the Act
1	2	3	4	5	6	7	8	9	10	11
1	M/s. Gemini Enterprises	Annexure C-1 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 75,57,070/- (Rs. Seventy Five Lakhs Fifty Seven Thousand Seventy Only) in terms of Rule 4 of the Customs Valuation Rules, 1988.		under Section 111(m) of the Customs Act, 1962	of Rs. 11,00,000/- (Rs. Eleven Lakhs Only) to be recovered from Sh. C. P. Gupta	Rs. 19,75,866/- (Rs. Nineteen Lakhs Seventy Five Thousand Eight Hundred Sixty Six Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C. P. Gupta	Rs. 19,75,866/- (Rs. Nineteen Lakhs Seventy Five Thousand Eight Hundred Sixty Six Only) along with applicable interest on Sh. C.P. Gupta	Rs. 3,00,000/- (Rs. Three Lakhs Only) on M/s Gemini Enterprises

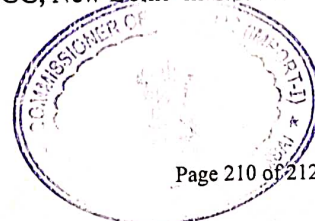


2	M/s. Spectrum Overseas	Annexure C-1 & C-3 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 1,32,95,390/- (Rs. One Crore Thirty Two Lakhs Ninety Five Thousand Three Hundred Ninety Only) in terms of Rule 4 (for Annexure C-1) and Rule 8 (for Annexure C-3) of the CVR, 1988.		under Section 111(m) of the Customs Act, 1962	of Rs. 20,00,000/- (Rs. Twenty Lakhs Only) to be recovered from Sh. C. P. Gupta	Rs. 27,93,388/- (Rs. Twenty Seven Lakhs Ninety Three Thousand Three Hundred Eighty Eight Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C. P. Gupta	Rs. 27,93,388/- (Rs. Twenty Seven Lakhs Ninety Three Thousand Three Hundred Eighty Eight Only) along with applicable interest on Sh. C.P. Gupta	Rs. 4,00,000/- (Rs. Four Lakhs Only) on M/s Spectrum Overseas
3	M/s. Mars International	Annexure C-1 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 43,40,765/- (Rs. Forty Three Lakhs Forty Thousand Seven Hundred Sixty Five Only) in terms of Rule 4 of the Customs Valuation Rules, 1988.		under Section 111(m) of the Customs Act, 1962	Rs. 6,00,000/- (Rs. Six Lakhs Only) to be recovered from Sh. C. P. Gupta	Rs. 10,58,911/- (Rs. Ten Lakhs Fifty Eight Thousand Nine Hundred Eleven Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C. P. Gupta	Rs. 10,58,911/- (Rs. Ten Lakhs Fifty Eight Thousand Nine Hundred Eleven Only) along with applicable interest on Sh. C.P. Gupta	Rs. 1,00,000/- (Rs. One Lakh Only) on M/s Mars International
4	M/s. Shiva International	Annexure C-1 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 54,19,470/- (Rs. Fifty Four Lakhs Nineteen Thousand Four Hundred Seventy Only) in terms of Rule 4 of the Customs Valuation Rules, 1988.	pick up units / parts of VCD/ CD Lense / CD Lense Unit under CTH 8522100 as pick up cartridges	under Section 111(m) of the Customs Act, 1962	of Rs. 8,00,000/- (Rs. Eight Lakhs Only) to be recovered from Sh. C. P. Gupta	Rs. 20,33,509/- (Rs. Twenty Lakhs Thirty Three Thousand Five Hundred Nine Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C. P. Gupta	Rs. 20,33,509/- (Rs. Twenty Lakhs Thirty Three Thousand Five Hundred Nine Only) along with applicable interest on Sh. C.P. Gupta	Rs. 3,00,000/- (Rs. Three Lakhs Only) on M/s Shiva International
5	M/s. Galaxy Enterprises	Annexure C-1 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 28,83,914/- (Rs. Twenty Eight Lakhs Eighty Three Thousand Nine Hundred Fourteen Only) in terms of Rule 4 of the Customs Valuation Rules, 1988.		under Section 111(m) of the Customs Act, 1962	Rs. 4,00,000/- (Rs. Four Lakhs Only) to be recovered from Sh. C. P. Gupta	Rs. 9,85,592/- (Rs. Nine Lakhs Eighty Five Thousand Five Hundred Ninety Two Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C. P. Gupta	Rs. 9,85,592/- (Rs. Nine Lakhs Eighty Five Thousand Five Hundred Ninety Two Only) along with applicable interest on Sh. C.P. Gupta	Rs. 1,00,000/- (Rs. One Lakh Only) on M/s Galaxy Enterprises



6	M/s. Konark International	Annexure C-1 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 30,05,770/- (Rs. Thirty Lakhs Five Thousand Seven Hundred Seventy Only) in terms of Rule 4 read with Rule 3 of the Customs Valuation Rules, 1988.	under Section 111(m) of the Customs Act, 1962	of Rs. 4,00,000/- (Rs. Four Lakhs Only) to be recovered from Sh. C. P. Gupta	Rs. 10,15,320/- (Rs. Ten Lakhs Fifteen Thousand Three Hundred Twenty Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C. P. Gupta	Rs. 10,15,320/- (Rs. Ten Lakhs Fifteen Thousand Three Hundred Twenty Only) along with applicable interest on Sh. C.P. Gupta	Rs. 1,00,000/- (Rs. One Lakh Only) on M/s Konark International
7	M/s. Allied Enterprises	Annexure C-1 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 21,65,329/- (Rs. Twenty One Lakhs Sixty Five Thousand Three Hundred Twenty Nine Only) in terms of Rule 4 of the Customs Valuation Rules, 1988.	under Section 111(m) of the Customs Act, 1962	Rs. 3,00,000/- (Rs. Three Lakhs Only) to be recovered from Sh. C. P. Gupta	Rs. 7,09,960/- (Rs. Seven Lakhs Nine Thousand Nine Hundred Sixty Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C.P. Gupta	Rs. 7,09,960/- (Rs. Seven Lakhs Nine Thousand Nine Hundred Sixty Only) along with applicable interest on Sh. C.P. Gupta	Rs. 1,00,000/- (Rs. One Lakh Only) on M/s Allied Enterprises
8	M/s Shiva Enterprises	Annexure C-3 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 66,42,858/- (Rs. Sixty Six Lakhs Forty Two Thousand Eight Hundred Fifty Eight Only) in terms of Rule 8 of the Customs Valuation Rules, 1988.	under Section 111(m) of the Customs Act, 1962	Rs. 10,00,000/- (Rs. Ten Lakhs Only) to be recovered from Sh. C. P. Gupta	Rs. 8,77,294/- (Rs. Eight Lakhs Seventy Seven Thousand Two Hundred Ninety Four Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C.P. Gupta	Rs. 8,77,294/- (Rs. Eight Lakhs Seventy Seven Thousand Two Hundred Ninety Four Only) along with applicable interest on Sh. C.P. Gupta	Rs. 1,00,000/- (Rs. One Lakh Only) on M/s Shiva Enterprises
9	M/s. Magnum Overseas	Annexure C-3 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 15,27,857/- (Rs. Fifteen Lakhs Twenty Seven Thousand Eight Hundred Fifty Seven Only) in terms of Rule 8 of the Customs Valuation Rules, 1988.	under Section 111(m) of the Customs Act, 1962	of Rs. 2,00,000/- (Rs. Two Lakhs Only) to be recovered from Sh. C. P. Gupta	Rs. 2,19,000/- (Rs. Two Lakhs Seventy Nineteen Thousand Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act, from Sh. C.P. Gupta	Rs. 2,19,000/- (Rs. Two Lakhs Seventy Nineteen Thousand Only) along with applicable interest on Sh. C.P. Gupta	Rs. 30,000/- (Rs. Thirty Thousand Only) on M/s Magnum Overseas

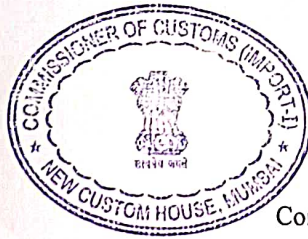
Table No. 35.4 : Order in respect of goods imported at ACC, New Delhi in SCN-3



Sr. No.	Goods imported in the name of	Goods imported vide Bills of Entry at ACC, New Delhi as shown in	I reject the declared value of goods of column 3	I re-determine the value of goods of column 3	I uphold confiscation of the goods of column 3	I impose redemption fine in lieu of confiscation, upheld in column 6, under Section 125 of the Act	I confirm demand of differential duty	I impose penalty	
								under Section 114A of the Act	under Section 112(a) of the Act
1	2	3	4	5	6	7	8	9	10
1	M/s. Sagar Electronics	Annexure C-3 of SCN-3	in terms of Rule 10A (1) of the Customs Valuation Rules, 1988	Rs. 10,41,020/- (Rs. Ten Lakhs Forty One Thousand Twenty Only) in terms of Rule 8 of the Customs Valuation Rules, 1988.	under Section 111(m) of the Customs Act, 1962	Rs. 1,50,000/- (Rs. One Lakh Fifty Thousand Only) to be recovered from Sh. C. P. Gupta	1,05,204/- (Rs. One Lakh Five Thousand Two Hundred Four Only) under Section 28(1) of the Act, along with the interest payable thereon under Section 28AB of the Act. from Sh. C. P. Gupta	Rs. 1,05,204/- (Rs. One Lakh Five Thousand Two Hundred Four Only) along with applicable interest on Sh. C.P. Gupta	

54. In addition to Orders given in the Tables 33, 34, 35.1, 35.2, 35.3 and 35.4 above; I also impose a penalty of Rs. 50,00,000/- (Rs. Fifty Lakhs Only) on Sh. Surender Kumar alias Sh. Surender Sharma under Section 112(a) of the Customs Act, 1962.

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



Vivek
30.03.24

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

To,

1. Sh. C. P. Gupta, Proprietor, M/s. Sagar Electronics, 599, Lajpat Rai Market, Delhi-110006
2. M/s. Spectrum Overseas, 4078, Roshanara Road, Delhi-110 017.
3. M/s Mars International, B-1, Gali No. 14, Madhu Vihar, Delhi – 110 092.
4. M/s Shiva International, 1-A, Guru Angad Nagar, Laxmi Nagar, Delhi 110 092.
5. M/s Leo International, H-31, Vijay Chowk, Laxmi Nagar, Delhi - 110 092.

6. M/s Allied Enterprises, 2/63, Lalita Park, Laxmi Nagar, Delhi - 110 092.
7. M/s Prominent Enterprises, 1-A, West Guru Azad Nagar, Laxmi Nagar, Delhi - 110 092.
8. M/s Konark International, A-1, West Guru Azad Nagar, Delhi - 110 092.
9. M/s Magnum Overseas, 7/315, 1 Floor, Lalita Park, Laxmi Nagar, Delhi - 110 092.
10. M/s. Shiva Enterprises, B-1, Gali No.14, Madhivihar, Delhi-110 092
11. M/s Gemini Enterprises, B-1, Gali No. 14, Madhu Vihar, Delhi - 110 092.
12. M/s Shivam Overseas Inc. B-1, Gali No. 14, Madhu Vihar, Delhi - 110 092.
13. M/s Royal International, H-31, Vijay Chowk, Laxmi Nagar, Delhi – 110 092.
14. M/s Supreme Enterprises, 2/63, Lalita Park, Laxmi Nagar, Delhi – 110 092.
15. M/s Devika Enterprises, R-39, Vikas Marg, Shakarpur, Delhi - 110 092.
16. M/s Surya Enterprises, 4078, Roshaara Road, Delhi - 110 007.
17. M/s Galaxy Enterprises, A-1, West Guru Azad Nagar, Delhi– 110092
18. Sh. Surender Kumar, Prop. M/s Ganpati Sales Corporation / Shivam Overseas Inc.,
A-26, Aram Park, Ram Nagar, Delhi – 51.

Copy to:

1. The Pr. Chief Commissioner of Customs,
New Customs House, Mumbai Customs Zone–I,
Mumbai-400001.
2. The Additional Director General,
Central Economic Intelligence Bureau,
A-Wing, 1 st Floor, Janpath Bhawan, Janpath, New Delhi
3. The Pr. Additional Director General,
Directorate of Revenue Intelligence Hqrs ,
'D' Block, I. P. Bhavan, 7th Floor, I. P. Estate, New Delhi-11000.
5. The Dy./Asst. Commissioner of Customs,
Appraising Gr. VA
New Customs House, Mumbai Customs Zone–I,
Mumbai-400001.
6. The Supdt./CHS, NCH,
New Customs House, Mumbai Customs Zone–I,
Mumbai-400001.– For Display on Notice Board.
7. Office Copy.