आयुक्त सीमाशुल्क) आयात-I (का कार्यालय
OFFICE OF THE COMMISSIONER OF CUSTOMS (IMPORT - I)
नवीन सीमाशुल्क भवन, वेलार्ड इस्टेट, मुंबई - ४०० ००१
New Customs House, Ballard Estate, Mumbai- 400 001
Email-adjn-adc-jc-imp1@gov.in

File No: CUS/SIIB/SCN/ADC/17/2025-GR-5 **Date of Order**: 10.02.2026
DIN: 20260277000000000F915 **Date of Issue**: 10.02.2026

Order No: 22/JC/AS/ADJ/2025-26
Order Passed by: Shri Arshdeep Singh,
Joint Commissioner of Customs, Import-I,
New Custom House, Mumbai Customs Zone-I

Name of Party/Noticee: M/s. Gurunanak Crane Service

मुल आदेश
ORDER-IN-ORIGINAL

१. यह प्रति जिस व्यक्ति को जारी की जाती है, उसके उपयोग केलिए नि:शुल्क दी जाती है।

1. This copy is granted free of charge for the use of the person to whom it is issued.

२. इस आदेश के विरूद्ध अपील सीमाशुल्क अधिनियम ,१९६२ की धारा १२८ (१) के तहत आदेश की संसूचना की तारीख से साठ दिन के भीतर ऐसे मामले जहां शुल्क या शुल्क और जुर्माना विवादित हैं या जुर्माना जहां सिर्फ जुर्माना ही विवादित है, की ७.५ %राशि अदा करने पर सीमाशुल्क (आयुक्त) अपील का कार्यालय, नवीन सीमाशुल्क भवन, बेलार्ड इस्टेट, मुंबई – ४०० ००१ के समक्ष की जा सकतीहै।

2. An appeal against this order shall lie before the Commissioner of Customs (Appeals), New Custom House, Ballard Estate, Mumbai - 400 001 under Section 128(1) of the Customs Act, 1962 within **Sixty days** from the date of communication of this order and on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty where penalty alone is in dispute.

३. अपील सीमाशुल्क अपील नियम १९८२ में प्रदर्शित फॉर्म सी.ए.-१ में दो प्रति में की जानी चाहिए। अपील रुपये ५.०० के न्यायालय फीस स्टांप तथा इस आदेश या आदेश की प्रति के साथ संलग्न होनी चाहिए। यदि आदेश की प्रति संलग्न की जाती है तो इसमें भी न्यायालय फीस अधिनियम १९७० की अनुसूची १ में प्रदर्शित रूपये ५.०० की न्यायालय फीस स्टांप भी होना चाहिए।

3. The appeal should be in duplicate and should be filed in Form CA – 1 appeared in Custom (Appeals) Rule, 1982. The appeal should bear a court fee stamp of Rs. 5.00 only and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should also bear a court fee stamp of Rs. 5.00 only as prescribed under Schedule 1, item 6 of the Court Fees Act, 1970.

४. जो व्यक्ति इस निर्णय या आदेश के विरूद्ध अपील कर रहा हैं वह अपील को अनीर्णित रखेगा,और सीमाशुल्क अधिनियम,१९६२ की धारा १२९ ई के उपबंधों के अंतर्गत पैरा२ के अनुसार धनराशि जमा कराएगा तथा अपील के समय उन भुगतान का प्रमाण प्रस्तुत करेगा, जिसके अनुपालनन किए जाने पर सीमाशुल्क अधिनियम १९६२ की धारा १२८ (१) के उपबंधों के अधीन अपील अस्वीकार कर दी जाएगी।

4. Any person appealing against this decision or order shall, pending the appeal, deposit the amount as per Para 2 above under Section 129E of the Customs Act, 1962 are produce proof of such payment along with the appeal, failing which the appeal is liable to be rejected for noncompliance with the provisions of Section 128(1) of the Customs Act, 1962.

BRIEF FACTS OF THE CASE

M/s. Gurunanak Crane Service (IEC: 0813025028), a proprietorship firm having registered office at 25-1 Sundar Colony Samrat Nagar near Isanpur cross road Ghodasar, Ahmedabad 380050 [hereinafter referred to as "importer"] had filed six Bills of Entry, 2476125 dated 23.01.2021, 3027456 dated 05.03.2021, 5729265 dated 06.10.2021, 4271365 & 4270889, both dated 20.01.2023, and 5825788 dated 06.05.2023, through their Customs Brokers M/s. Damani Shipping Pvt. Ltd. (License No. AAACD5533ACH001) for import of old and used cranes, which are classifiable under Custom Tariff Head 8426 4100 as per the Customs Tariff Act, 1975 and the applicable duty structure for assessment is Basic Customs Duty @7.5%, Cess@10% and IGST@18%.

2.1 There were ongoing investigations in the Special Intelligence and Investigation Branch (Import-I), New Custom House, Ballard Estate, Mumbai [hereinafter referred to as "SIIB"] in respect of cases where the importers were mis-declaring the new machine as relatively old, by mis-declaring the actual YOM of the machine before the Customs Department and consequently declaring the lower assessable value. By declaring a lower assessable value for the old and used cranes, the importers were paying less Customs Duty than the amount actually applicable. These cases revealed substantial duty evasion by the importers.

2.2 Accordingly, the data of cranes imported by M/s Gurunanak Crane Service at Mumbai port (INBOM1) was analysed, and the importer was summoned to submit documents related to the imports made by them.

2.3 A letter was issued to the Commissioner of Transport Office, Gandhinagar, Gujarat for providing Registration Number of cranes on the basis of Chassis number of imported cranes. Further, another letter was issued vide F. No. CUS/SIIB/INT/728/2023-SIIB-(I) dated 14.06.2024 addressed to the Commissioner of Transport office Gandhinagar, Gujarat, by referring the chassis number and registration number, called for the Registration Certificate and Vehicle Particulars of the cranes registered with their RTO. The Commissioner of Transport office Gandhinagar, Gujarat vide their mail dated 18.04.2024 provided Registration Certificate of one crane registered under vehicle particular GJ17AS3984, and RTO Godhra vide their mail dated 02.08.2024 provided other documents submitted in RTO for registration of crane under vehicle particular GJ17AS3984.

2.4 On scrutiny of the import documents and above said vehicle particulars, it was noticed that for a specific old and used crane imported vide Bill of Entry No. 4270889 dated 20.01.2023, having Chassis No. LXGDPA531BA001714, registered at the Regional Transport Office, RTO Office, Godhra, Dist: Panchmahal, Gujarat – 396001 under Vehicle Registration No. GJ17AS3984; the Year of Manufacturing declared in the Bill of Entry presented before the customs department was 2011, whereas the same was declared as 11/2020 before the RTO, Godhra.

2.5 These vehicle particulars show the YOM mentioned as 11/2020, whereas the YOM declared in the Bill of Entry No. 4270889 dated 20.01.2023 was 2011, which is one of the evidences that the importer had mis-declared the YOM before the Customs department to evade the applicable customs duty.

2.6 Impact of mis-declaration of Year of Manufacture on assessable value and evasion of Customs Duty as per as per CBIC's Circular No. 493/124/86-Cus.VI dated 19.11.1987.

2.6.1 The Valuation of Second-Hand Machinery and fixation of Scale of depreciation is governed by the CBIC's Circular No. 493/124/86-Cus.VI dated 19.11.1987. As per the aforementioned circular, the maximum depreciation allowed with age of the old machines is according to Table-1 as below. This depreciation in value increases with increase in age of the machines.

Table-1 Rate of Depreciation

Sr. No.	Age of Machine	Depreciation per quarter of the year	Depreciation for the whole year	Cumulative Depreciation till this year
1.	First Year	4%	4x4%=16%	16%
2.	Second Year	3%	4x3%=12%	28%
3.	Third Year	2.5%	4x2.5%=10%	38%
4.	Fourth Year	2%	4x2%=8%	46%
5.	Fifth Year	2%	4x2%=8%	54%
6.	Sixth Year	2%	4x2%=8%	62%
7.	Seventh Year	2%	4x2%=8%	70%
8.	Eighth Year and on onwards	0%	4x0%=0%	70%

2.6.2 Effect of mis-declaration in YOM and capacity of crane on Valuation of the goods (for illustration purpose only):

2.6.2.1 In respect of the BE No. 4270889 dated 20.01.2023, the Importer had declared the YOM as 2011 and availed 58% depreciation. Though as per RC, the YOM of the crane is 2020. Therefore, the importer is entitled for a claim of only 30.50% depreciation as per above mentioned circular, in the assessable value of the crane.

2.6.2.2 From valuation of the goods in the instant case, considering the actual month/YOM (Month & Year: 11/2020) in terms of Circular No. 493/124/86-Cus.VI dated 19.11.1987, the valuation may be ascertained as per Tables - 2, 3 & 4 below:

Table – 2

Valuation of new Goods	Valuation of the goods in Jan 2023 done as per YOM Nov, 2020 (Depreciated Value for 9 Quarters)
100%	100%- [16% (for first year 4 quarters) + 12% (for second year 04 quarters) + 2.5%(for third year 01 quarters)] = 100 %– 30.5% = 69.50%

Table – 3

Description of the goods	Valuation of New goods in YOM	Valuation of the goods in Jan, 2023 as per YOM: Nov, 2020 Total quarters	Valuation of the goods done by CE in Jan, 2023 as per YOM: 2011
Old and Used XCMG Crane value CF (in USD)	2,20,000	2,20,000 – 30.50 % (depreciation) = 1,52,900	92,000
Approx. Insurance Cost(in USD)	1000	1000	1000
Total Cost (In USD)	2,21,000	1,53,900	93,000
Value in INR (1 USD = 82.30 INR)	1,81,88,300	1,26,65,970	76,53,900

2.6.2.3 In view of Table – 3 above, the differential duty evaded by the importer due to mis-declaration of YOM and capacity is as per Table – 4 below:

Table – 4

Value (in INR)			Duty (in INR)		
Valuation as per Circular	**Declared Value/Value as per CE report**	**Difference**	**Duty Payable (Total Effective Duty-27.735%)**	**Duty Paid**	**Difference**
1,26,65,970/-	76,53,900/-	50,12,070/-	35,12,907/-	21,22,809/-	13,90,098/-

During the course of scrutiny of the Bill of Entry No. 4270889 dated 20.01.2023, the customs duty evasion was found to be Rs. 13.90 Lakhs. (For illustration purpose only).

3. Verification of the past imports made by Importer during the last 5 years:

3.1 On detection of the above modus operandi adopted by the importer to evade customs duty, past data of import made by the said importer M/s. Gurunanak Crane Service was scrutinized to unearth complete modus operandi and tax evasion with respect to 06 units of old and used cranes of different make and models such as XCMG/SANY/ZOOMLION. For seeking the details of RCs of cranes registered in various states across the country, various emails and letter dated 14.06.2024 and 13.02.2025 were written to various RTOs.

3.2 Further, the importer also submitted RC copies of cranes. The RCs received from State RTO and the importer were cross checked with the declaration made by the importer in the Bills of Entry filed before the customs department at the time of import. On verification, it was found that the importer had mis-declared YOM in 06 cranes and also mis-declared the capacity in 04 cranes. The average mis-declaration in the age of the cranes ranged between 10-12 years. The details of Bills of Entry where mis-declaration in terms of YOM/capacity was noticed after scrutiny of RCs with Bills of Entry are tabulated below in Table-6:

Table – 6

Sr. No.	**Bill of Entry**	**Chassis No. & Registration No.**	**YOM as per BE**	**YOM as per RC**	**Capacity as per RC (in Tons)**	**Capacity as per BE (in tons)**	**Assessable value**	**Duty already paid (in Rs.)**
1	4271365 dated 20.01.2023	LXGAJJ3945 A000962 & GJ17AS3673	Oct-13	Oct-20	50	50	42,79,600.00	11,86,947.10
2	4270889 dated 20.01.2023	LXGDPA531 BA001714 & GJ17AS3984	Nov-11	Nov-20	**100**	**90**	76,56,780.50	21,23,608.10
3	5729265 dated 06.10.2021	L5E5H4D309 A001699 & GJ27CQ1297	Aug-09	Feb-19	**80**	**70**	56,42,775.00	15,65,023.60
4	2476125 dated 23.01.2021	W09464500S EL05058 & GJ27CQ1410	Dec-95	Oct-18	**100**	**90**	90,09,700.00	24,98,840.40
5	3027456 dated 05.03.2021	LXGCPA426 GC011387 & GJ27CQ1597	Mar-12	Mar-18	50	50	41,10,225.63	11,39,971.10
6	5825788 dated 06.05.2023	L5E6H5D46 AA000227 & HR85G9343	Dec-13	Aug-22	**100**	**90**	76,81,800.00	21,30,547.20

4. Statements recorded under Section 108 of the Act:

4.1 Statement of authorized representative of the importer, Shri Sukhdevsingh Ramsingh Khosa, Power of Attorney holder of the importer M/s Gurunanak Crane Service was recorded on 10.01.2024 under section 108 of custom act 1962 in which he inter-alia stated that:

i. He is the Power of Attorney holder on behalf of M/s Gurunanak Crane Service;
ii. His wife Smt. Mandeep Kaur is the proprietor of M/s Gurunanak Crane service but he alone looks after all work related to import, purchase sale, service or any other nature;
iii. On being asked about the mis-declaration in year of manufacture/capacity of imported old and used crane in past by M/s Gurunanak Crane service he replied that they did not mis-declare the YOM/Capacity of cranes to Customs and submitted all documents correctly to Customs.
iv. On being questioned that RTO registration certificate is an authentic document for a vehicle and from registration certificate it is evident that they have mis-declared year of manufacture/capacity to customs for undervaluing the goods and evade customs duty he replied that he had never mis-declared these to customs department instead they had mis-declared these to respective RTOs.

4.2 Further Statement of authorized representative of importer, Shri Sukhdevsingh Ramsingh Khosa, Power of Attorney holder of M/s Gurunanak Crane Service was recorded on 25.07.2024 under section 108 of custom act 1962 in which he inter-alia stated that:

i. He gave documents to RTO agent for registration purpose but he did not have details of RTO agent.
ii. On being asked about the Modus Operandi, how he mis-declared YOM/Capacity of the cranes to Customs to get undue advantage of Customs duty, he replied that he had not mis-declared YOM/Capacity of cranes to Customs and had submitted all documents correctly to Customs. He stated that they have registered the cranes stating newer YOMs to RTO for project.
iii. He had not tampered plate and declared correct year of manufacture and capacity of crane to Customs.
iv. All the cranes were checked and verified by chartered engineer and all the declaration made to the customs were correct.
v. All the documents are RCs submitted by him and are original.

4.3 Statement of Mrs. Mandipkaur Sukhdevsingh Khosa proprietor of M/s Gurunanak Crane Service was recorded on 22.10.2024 under section 108 of custom act 1962 in which she inter-alia stated that:

i. She is the proprietor of the firm but she did not have any working knowledge about the company, all the work is done by her husband Shri Sukhdevsingh Ramsingh Khosa.
ii. She signed all the documents on her husband's instruction. All the work related to transactions, importing of Cranes to selling them in the market is done by her husband only.
iii. She agreed with all the statements and commitments/undertakings given by her husband Shri Sukhdevsingh Ramsingh Khosa before Customs

department during entire investigation of this case and consequential duty implication arisen out of the same.

iv. On being asked about the details of owner of bank account which is being used for doing transactions on behalf of the firm M/s Gurunanak Crane Service, she replied that his husband maintains all the transactions of the account and she puts her signature as directed by her husband.

v. She did not know anything about the working of M/s Gurunanak Crane Service. All she knows is that her husband does some business related to cranes and all the work is managed by her husband only.

vi. On being asked about the mis-declaration of 06 cranes in respect of their YOM/capacity found in RCs to evade Customs duty and who will pay the differential duty/fine/penalty or bear any other repercussions and consequences that may arise out of the investigation of the subject case i.e. "Import of old and used cranes by M/s Gurunanak Crane Service", she stated that she didn't know anything about it, her husband deals with all the work related to the firm M/s Gurunanak Crane Service".

4.4 Further Statement of authorized representative of importer, Shri Sukhdevsingh Ramsingh Khosa, Power of Attorney holder of M/s Gurunanak Crane Service was recorded on 22.10.2024 under section 108 of custom act 1962 in which he inter-alia stated that:

i. His wife Smt. Mandeep Kaur is the proprietor of M/s Gurunanak Crane service but he alone looks after all work related to import, purchase sale, service or any other nature;

ii. His wife did not know anything about the business; he takes care of all the work from placing of the order of crane from the foreign suppliers to selling them in the market;

iii. All the transactions are handled by him and his wife signs the documents on his instructions as she does not know anything about the business of M/s. Gurunanak Crane Service.

iv. On being asked about the Modus Operandi, how he mis-declared YOM/Capacity of the cranes to Customs to get undue advantage of Customs duty, he replied that they did not mis-declare YOM/Capacity of cranes to Customs and submitted all documents correctly to Customs.

4.5 Further Statement of authorized representative of importer, Shri Sukhdevsingh Ramsingh Khosa, Power of Attorney holder of M/s Gurunanak Crane Service was recorded on 17.03.2025 under section 108 of custom act 1962 in which he inter-alia stated that:

i. Their firm has bank account in AXIS Bank, Maninagar, (A/c No. 914020016525515), Ground Floor, Rudraksh Complex, Opp. Ram Baugh Police Station, Maninagar, 380008, Ahmedabad, Gujarat. They have an office situated at: 25/1 Sector, Sundar Colony Co-Op-H Society, Samratnagar, Isanpur, Ahmedabad, Gujarat, 382443.

ii. He supervises and makes decisions with regards to import related work in their firm.

iii. He agreed with his and his wife's submission in the statements. He further stated that his wife did not know anything about the business. He takes care of all the work from placing of the order of crane from the foreign suppliers to selling them in the market. All the transactions are handled by him. She signs the documents on his instructions as she does not know anything about the business of M/s. Gurunanak Crane Service.

iv. He agreed that crane was registered with newer year of manufacture in RTO. He stated that didn't mis-declare the fact with customs and had submitted all documents correctly to Customs. They have registered the cranes with newer year to RTO as per demand of the customers. Customers prefer to buy the cranes that are less than 05 years old.

v. For the registration purposes, he manipulated the YOM of crane and then handover the manipulated documents to RTO agent who further submitted the documents to RTO.

vi. RTO agent was not aware about the manipulation. He completes the procedure of registration on the basis of documents submitted by him.

vii. He doesn't file Bill of Entry himself. For filing Bill of Entry, he hired services of Customs Broker, M/s. Damani Shipping Pvt. Ltd.

viii. He had not mis-declared YOM to Customs. He had mailed the certificate which is provided by Liebherr, and as per the Liebherr certificate, for Chassis No. W09464500SEL05058, model LTM1090/1 the YOM is 1995.

4.6 Statement of Shri Jitendra Narayan Darunkar, proprietor of M/s A.G. Associates and an empanelled CE was recorded on 23.07.2024 under Section 108 of the Act in which he inter-alia stated that:

i. He is the proprietor of M/s A.G Associates and an empanelled Chartered Engineer.

ii. He verified the physical condition of the machinery presented before him along with its usage, residual life, accessories etc. and also checked the identity of the goods with the help of documents like Bill of Entry, Invoice, Packing List, Bill of Lading and catalogue of the subject machinery provided by the importer/Custom broker.

iii. The chassis number is generally found embossed on the chassis of the crane and YOM is generally found on manufacturer's plate riveted or screwed on the body of the crane. It can be on any of the accessories or parts like hook, engine etc., if mentioned. Sometime it is found on cabin as well.

iv. On being asked about the importance of YOM and Model in case of import of old and used Cranes and its impact on valuation, he stated that YOM affects the value of the machinery because the older the machinery lesser is the value. For calculation of depreciation in value, the YOM is a factor. If the YOM is relatively new, the depreciation will be minimal. Similarly, Model of the crane is also a deciding factor of value.

v. He had done inspection of approximately 15-16 consignments of M/s Gurunanak Crane Service and they are importer of old and used cranes.

vi. On being asked about the difference in YOM & Model No. in the CE certificate No. CE/0382/2020-21 dated 27.01.2021 issued by him and YOM & Model No. in corresponding RC particulars issued by RTO, Gujarat (1995, LTM 1100 and 2018, LTM 1090/1 respectively), also the discrepancies in five other CE certificate and corresponding RCs, he stated the he had issued CE certificate on the basis of documents and machinery produced before him at the time of inspection. On perusal of documents, he was of the opinion that the specification plate affixed on the body of the crane and produced for examination might be tampered in the term of YOM and model number because without tampering it is not possible. The importer is entitled for less depreciation benefit and the value of the concerned imported cranes may be ascertained again keeping in mind the applicable scale of depreciation in terms of actual YOM as shown in RTO documents.

5. Submission of the Manufacturer's Certificate & Export Certificates by the importer for verification of YOM:

5.1 During the course of investigation, the importer had submitted a manufacturer's certificate vide email for justifying the YOM declared by them before Customs. The importer had submitted copy of Manufacturer's Certificates from Liebherr with regards to crane manufactured by Liebherr.

5.2 The efforts were made by this office to verify the certificate by sending emails to one, Mr. Subhajit Chandra, Divisional head, the person who had provided the certificates, to his email id - <subhajit.chandra@liebherr.com>. Mr. Subhajit Chandra vide email dated 05.09.2024 confirmed the authenticity of certificates provided by M/s Gurunanak Crane service.

5.3 However, the letter/certificate was provided by the Divisional head of Liebherr, with regards to cranes manufactured by Liebherr companies based in GERMANY, with specific remarks that the data was based on their records. Since, the certificate/letter was without substantial evidence/records from the manufacturer company based in Germany, they could not be construed to defy the records/inspection done by the officers of RTO.

6. Summary of the investigation:

6.1 It appears that the importer has mis-declared the description of goods in as much as they did not declare the true and correct 'Year of Manufacturing' and resorted to undervaluation as the actual value of the said goods after applying applicable depreciation as per CBIC Circular No. 493/124/86-Cus.VI dated 19.11.1987 is Rs. 5,37,59,500.00 /- (Rupees Five Crore Thirty-Seven Lakh Fifty-Nine Thousand Five Hundred only). The goods imported were mis-declared with respect to description and value, hence invoice presented at the time of import do not reflect the correct credentials and value of the goods for collection of customs duty. It appears that the declared value of cranes and respective invoices are liable for rejection and re-determination of value can be done as per revised value provided by the empanelled Chartered Engineers.

6.2 It is apparent that the Importer has intentionally and deliberately mis-declared the YOM to get undue benefit of depreciated value for the relevant year and evade the legitimate applicable duty. From the copies of Registration Particulars obtained from various state RTO offices, it is established that the imported cranes are relatively new as compared to the declarations made in import documents.

6.3 During investigation, it is revealed that the importer has also mis-declared capacity of the cranes. In import documents, they have declared lesser lifting capacity whereas the cranes registered with the State RTOs are having higher lifting capacities. This was done to show lesser value than the actual value of the goods to evade applicable Customs duty.

6.4 Shri Sukhdevsingh Ramsingh Khosa had tried to divert the investigation by saying that he did not mis-declare the YOM of cranes to Customs. In his statement dated 10.01.2024, 25.07.2024, 22.10.2024 and 17.03.2025 recorded under Section 108 of the Act, on being asked about the mis-match in the YOM declared in the bill of entry before customs and that of state RTO, he said that he had mis-declared YOM in RTO at the time of registration of cranes, but in customs he did not mis-declare YOM of second-hand cranes.

6.5 From the investigation it is clear that he had conscious knowledge about the act of mis-declaration which was done by him in a calculated manner. Investigation also indicates that the importer is the ultimate beneficiary in this case, as by declaring older cranes before customs authority he has got the benefit of maximum depreciation and paid lesser duty and on the other hand, declaring the same crane newer before RTO authorities qualified for the benefit of longer residual life.

6.6 CE certificate on the basis of records produced by importer as guidance in valuation

6.6.1 All imports of second-hand machinery/old and used cranes should be ordinarily accompanied by an inspection report issued by an overseas Chartered Engineer prepared on examination of the goods at the place of sale. In the event of the importer failing to procure an overseas report of inspection of the goods, he may have the goods inspected by any one of the Chartered Engineers empanelled locally by the respective Custom House. The value declared by the importer should be examined with respect to the depreciated value of the goods determined in terms of the circular No. 493/124/86-Cus.VI dated 19.11.1987. The depreciation is then calculated on the original value of the machinery (old & used crane) under import.

6.6.2 In respect of imports made by M/s Gurunanak Crane Service, empanelled Chartered Engineer had tendered their report on the basis of documents provided to them by the importer and physical inspection of goods**.** In Chartered Engineer reports, it is categorically mentioned that original invoices relating to the subject machine were not provided by the importer. During investigation, it is found that the importer might be indulged in tampering of specification plates and mis-declaration with respect to year of manufacturing. Further, vehicle particulars obtained from State RTOs reflect the true and correct YOM declared by the importer himself and certified by the Regional Transport Officers.

6.7 Reasons for invalidation/rejection of first valuation report submitted by the CE and need for re- valuation by a second CE:

6.7.1 The process of valuation of second-hand machinery and fixation of scale of depreciation is governed by CBIC Circular No. 493/124/86-Cus.VI dated 19.11.1987 and CBIC Circular No. 07/2020-Customs dated 05-02-2020. The guidelines for the valuation of second-hand machinery are as follows (para 6 of the Circular 07/2020):

"(a) All imports of second hand machinery/used capital goods shall be ordinarily accompanied by an inspection/appraisement report issued by an overseas CE or equivalent, prepared upon examination of the goods at the place of sale.

(b) The report of the ***overseas CE*** *or equivalent should be as per the* ***Form A*** *annexed to this circular.*

(c) In the event of the importer failing to procure an overseas report of inspection/appraisement of the goods, he may have the goods inspected by any one of the CEs empanelled locally by the respective Custom Houses.

(d) In cases where the report is to be prepared by the ***CEs empanelled by Custom Houses****, the same shall be in the* ***Form B*** *annexed to this circular.*

(e) The value declared by the importer shall be examined with respect to the report of the CE. Similarly, the declared value shall be examined with respect to the depreciated value of the goods determined in terms of the circular No. 493/124/86-Cus. VI dated 19-11-1987 and dated 4-1-1988. If such comparison does not create any

doubt regarding the declared value of the goods, the same may be appraised under rule 3 of the CVR, 2007. If there are significant differences arising from such comparison, Rule 12 of the CVR, 2007 requires that the proper officer shall seek an explanation from the importer justifying the declared value. The proper officer may then evaluate the evidence put forth by the importer and after giving due consideration to factors such as depreciation, refurbishment or reconditioning (if any), and condition of the goods, determine whether the declared transaction value conforms to Rule 3 of CVR, 2007. Otherwise, the proper officer may proceed to determine the value of the goods, sequentially, in terms of rule 4 to 9." ***(emphasis added)***

As per Form A and Form B annexed with the Circular, the CE, apart from other information, has to state the YOM of the machinery and the estimated sale price of the machinery when it was new (in its YOM). For this purpose, the CE inspect the old machinery, checks the specification plates fixed on the chassis and documents submitted by the importer and accordingly mentions the YOM in their reports. For estimating the sale price in the YOM of the crane, there is no set rule and therefore they have to follow an empirical method based on various factors like:

i. Details and condition of the old machinery revealed through examination.
ii. Technical literature of the goods and search through internet.
iii. Documents/evidence related to YOM of machines submitted by the importer at the time of examination of the goods.
iv. Valuation details in the original invoice of the manufacturer (if available)
v. Their past experience in respect of the valuation of similar old and used goods.
vi. Historical data of clearances available with them

6.7.2 On verification from the RTO records, mis-declaration of age/ capacity has been detected in 06 cranes. This indicates that the importer is involved in mis-declaring the YOM/capacity of the machines before the customs, consequently resulting in the lesser payment of Custom duty by declaring lesser assessable value of these cranes. Thus, it appears that the initial/first valuation reports at the time of import given by CE in these past 06 imports of cranes, being based on false declarations by the importer were not reflecting the correct transaction value under section 14 of the Act. Regional Transport Authority (RTO) is a specialized agency and legal authority for inspection and registration of motor vehicles under the Motor Vehicles Act, 1988. Each imported crane was inspected by RTO authorities and subsequently the RCs were issued. Hence, after getting the correct YOM/capacity of the cranes from the RTO certificates, RCs, there was a need for rectification in the CE's report.

6.7.3 Further, during the recording of statement on 23.07.2024 of CE, Shri Jitendra Narayan Darunkar, Proprietor of the Consultation and Valuer firm M/s. A.G. Associates, who gave initial reports for the Bills of Entry cleared by the M/s. Gurunanak Crane Service, opined that in view of manipulation done by the importer, the valuation of these Imported cranes under investigation may be ascertained again keeping in mind the applicable scale of depreciation in terms of the Actual YOM as shown in RTO documents.

6.7.4 CE, A.G. Associates Shri Jitendra Narayan Darunkar, was informed about the mis-declaration of the YOM in respect of Bills of Entry vide email dated 10.10.2024 for which the first CE report/valuation was provided. The mis-declaration was identified upon scrutiny of the Registration Certificates (RCs), which indicated the correct YOM. The CE on the basis of the import documents and the correct YOM as per RCs, re-evaluated the value of the imported cranes and submitted their re-

evaluated values. Copies of the RCs were also shown to the CE, who signed them as a token of having seen the same.

6.7.5 The details of Year of Manufacture, Make and model of the used cranes were taken from the documents/RCs received from the Road Transport Authority (RTO). Based on the evidentiary value of the facts ascertained from the Govt. Agencies where the said cranes were registered for use in India, an independent revaluation was undertaken by the Chartered Engineer on the said parameters considering the fact that the role of YOM is pivotal and has a direct correlation to the value of imported goods in question. The yardstick adopted by the Chartered Engineer is well within the boundaries of valuation rules and the same has been relied upon in the investigation. The second revised report dated 01.04.2025 of CE, A.G. Associates Shri Jitendra Narayan Darunkar, is based on the correct YOM/capacity as recorded by the RTO during its inspection of the crane. Hence, in view of the above discussion, the rejection/invalidation of the first CE report and assessment of customs duty on the 06 past consignments based on the revised /second CE reports appears to be legal and proper.

6.8. Findings of RTO (Registration Authority for Cranes)

6.8.1 The Central Motor Vehicle Rules, 1989 in Section 2(ca) defines Construction Equipment Vehicle as:

(ca) "construction equipment vehicle" means rubber tyred (including pneumatic tyred), rubber padded or steel drum wheel mounted, self-propelled, excavator, loader, backhoe, compactor roller, dumper, motor grader, ***mobile crane****, dozer, fork lift truck, self-loading concrete mixer or any other construction equipment vehicle or combination thereof designed for off-highway operations in mining, industrial undertaking, irrigation and general construction but modified and manufactured with "on or off" or "on and off" highway capabilities.*

As per above definition, all mobile cranes are considered as 'Construction Equipment Vehicle' and are required to be registered as per Section 39 of the Motor Vehicle Act, 1988. The process of registration has been provided under Section 41 of the Motor Vehicle Act, 1988 and the documents required for registration have been specified in Rule 47 of the Central Motor Vehicle Rules, 1989 which is reproduced below:

47. Application for registration of motor vehicles.—(1) An application for registration of a motor vehicle shall be made in Form 20 to the registering authority within a period of seven days from the date of taking delivery of such vehicle, excluding the period of journey and shall be accompanied by—

(a) sale certificate in Form 21;
(b) valid insurance certificate;
(c) copy of the proceedings of the State Transport Authority or Transport Commissioner or such other authorities as may be prescribed by the State Government for the purpose of approval of the design in the case of a trailer or a semi-trailer;
(d) original sale certificate from the concerned authorities in Form 21 in the case of ex-army vehicles;
(e) proof of address by way of any one of the documents referred to in rule 4;
(f) temporary registration, if any;
(g) road-worthiness certificate in Form 22 from the manufacturers, Form 22-A from the body builders;
(h) ***custom's clearance certificate in the case of imported vehicles along with the license and bond, if any:***

Provided that in the case of imported vehicles other than those imported under the Baggage Rules, 1998, the procedure followed by the registering authority shall be same as those procedures followed for registering of vehicles manufactured in India

6.8.2 For the purpose of registration of vehicles, Regional Transport Officers in Regional Transport Offices are the Registering and Taxation Authority. The documents submitted at the time of registration of the vehicle needs to be personally checked and verified by the Regional Transport Officer. After checking and verifying the documents, engine number/chassis number, the RTO authority issues a certificate certifying that the particulars in the application are true and that the vehicle complies with the requirements of Motor Vehicles Act, 1988. The owner of a vehicle is required to produce his vehicle physically for registration before the Registering Authority for inspection and to verify the particulars contained in the application. Before issuing orders for registration and taxation of the vehicle, the Regional Transport Officer inspects the vehicle in person. Considering the functions and powers conferred on Regional Transport Officer, the certificate issued by him is a legal document authenticating true details of vehicles being registered.

6.8.3 Also, the Registering and Taxation Authority is a specialized agency for inspection and registration of motor vehicles. Therefore, the findings recorded by an RTO authority cannot be simply rejected. In the case of M/s. Gurunanak Crane Service each and every crane has been inspected in person by RTO authorities and vehicle particulars recorded in their database shows actual YOMs which are different than that which was declared before customs.

6.9 Procedure followed for verification of details from the RTO:

6.9.1 Bills of Entry of the importer were analyzed and Chassis Number of the cranes were obtained from the Bills of Entry filed by the importer. The details of these chassis' numbers were sent to the RTO, office in Mumbai. RTO Office in Mumbai provided the details of the crane/vehicle number registered against the Chassis numbers provided by the Customs Department to them. The registration number of cranes/vehicles indicated that these cranes/vehicles are registered in many states in the country. Based on the registration number letters were sent to the respective RTO office in these states. RTO offices in respective states provided the details of the cranes/vehicles registered with them.

6.9.2 State RTO offices provided the RC copies of the cranes registered in their offices through email/registered post. During the analysis of the RC copies received from the state RTO offices it was found that YOM in all 06 cranes and capacity of 04 cranes shown before the RTO offices is different from YOM and capacity declared in the CE report uploaded with the Bills of Entry at the time of import.

6.9.3 Further, investigation indicated that importer is wilfully mis-declaring the YOM and capacity of these cranes with the target of decreasing the assessable value of these cranes and consequentially paying lesser amount of duty. The nature of import duty on these goods is in the form of ad-valorem type, which indicates that lesser the declared assessable value of these cranes lesser will be the applicable duty. From this, it appears that sole intention of the importer behind the above mis-declaration is to evade the applicable duty on these cranes and to increase his profit margin.

6.9.4 The details of the crane-wise YOM provided by the State RTO were shown to the concerned CE who had given the valuation report during examination of these goods at the time of their import. The CE inter-alia stated that proper documents

such as Invoice of manufacturer of the machine, etc. were not provided by the importer at the time they examined the goods for valuation and they provided the valuation report on the basis of specification plate attached to the crane.

6.9.5 Based on the newer YOM (Actual), the CE revised their earlier valuation and provided their re-valuation which is higher than the value declared by the importer at the time of clearance of the goods from the Mumbai Customs. A substantial increase in the value of these old and used cranes resulted in the demand of the substantial amount of differential duty from the importer.

6.10. Invocation of extended period of limitation:

6.10.1 As per Section 46(4) of the Act, it is mandatory for the importer to make a truthful declaration regarding the contents of the Bills of Entry filed by an importer under Section 46(1) of the Act. Also, as per Section 46(4A) of the Act, it is mandatory for the importer to ensure the accuracy and completeness of the information given therein, the authenticity and validity of any document supporting it and compliance with the restriction or prohibition, if any, relating to the goods under the Act or under any other law for the time being in force.

6.10.2 Further, in terms of section 17 of the Act, read with the definition of assessment specified under Section 2(2) ibid, it is obligatory for the importer to correctly self-assess the duty on the imported goods, with reference to the classification as well as value of the goods being entered by them in the Bill of Entry. It is specified that an incorrect self-assessment results in re-assessment of the duty and renders the importer liable to action in terms of the provisions of the Act.

6.10.3 It is apparent that goods not corresponding in respect of value or in any other particular with the entry made under the Act are liable to confiscation in terms of Section 111(m) and the consequent penalty is imposable in terms of Section 112, in the case of dutiable goods. Further, in cases where duty has not been levied on account of wilful mis-statement or suppression of facts, apart from the liability of recovery of duty so evaded under the provisions of Section 28 of the Act, the person liable to pay the duty so demanded and determined is also liable for penalty under Section 114A equal to the duty or interest so determined.

6.10.4 As mentioned in the above paras the importer is mis-declaring the year of manufacturing with intention to evade the customs duty. Importer is deliberately mis-declaring the year of manufacturing and wilfully suppressing the facts about the actual YOM of these old and used cranes, which is one of the guiding factors in determining valuation of such cranes, and consequentially evading the customs duty.

6.10.5 This wilful mis-statement and suppression of facts on the part of the importer makes this case fit for invocation of extended period of limitation and accordingly the demand under section 28(4) of the Act is raised in respect of the Bills of Entry cleared by the importer in the past 5 years. Further, in this case where duty has not been levied on account of wilful mis-statement or suppression of facts, apart from the liability of recovery of duty so evaded under the provisions of Section 28 of the Act, the person liable to pay the duty so demanded and determined is also liable for penalty under Section 114A equal to the duty or interest so determined

7. Rejection of declared Assessable Value (transaction value) and Re-determination of Assessable Value of the 06 Bills of Entry having 06 old and used cranes:

7.1 Scrutiny of evidence on record revealed that the declared transaction values of the old and used cranes imported and cleared in the name of M/s. Gurunanak Crane Service (as detailed in Table – 6) are liable for rejection in terms of the provisions of rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR, 2007), read with the provisions of section 14(1) of the Act.

7.2 The Valuation of Second-Hand Machinery and fixation of Scale of depreciation is governed by the CBIC's Circular No. 493/124/86-Cus.VI dated 19.11.1987 amended by letter dated 04.01.1988. In para 3 of the Circular, it is stated that the depreciation will be calculated on the original value of the machinery under import and that officers of the custom houses would have to determine the original value of machinery on the basis of current CIF value of the machinery shown in the certificate of chartered engineer. In this regard, it has been reported to the Board that a Chartered engineer's certificate generally mentions the price of the new machinery and does not mention clearly as to whether this is the current price or it is the price of the new machine in the year of its manufacture. Accordingly, where a certificate mentions the current price of the new machinery only, the customs officers do not have sufficient evidence to deduce the original value of the machinery as in its year of manufacture.

7.3 It has accordingly been decided that where the chartered engineer's certificate does not specifically mention the price of the new machinery as in its year of manufacture, the scale or depreciation should be calculated on the basis of the price of the new machinery as declared in the chartered engineer's certificate without going into the question as to whether this price pertains to the current CIF price or in the year of its manufacture.

7.4 In the instant case, the values at which these cranes were imported could not be accepted as the correct transaction value in terms of Rule 3 of the CVR, 2007, ibid and the provisions of Section 14 Act. Accordingly, the declared value is liable to be rejected under the Rule 12 of the CVR, 2007.

7.5 Application of Rule-4 of the CVR, 2007:

From the plain reading of Rule 4, it is evident that the said Rule provides for the determination of transaction value of the imported goods by comparing the declared value with the contemporaneous imports of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods. The transaction value of the identical goods which are having same YOM and having identical specification and identical conditions as that of the old and used machine were not readily available for comparison. Further since the goods are old and used it is difficult to find data relating to sales of such goods to India, which could be considered as identical goods. Accordingly, the transaction value of these impugned old and used cranes could not be re-determined under the Rule 4 of the CVR, 2007.

7.6 Application of Rule-5 of the CVR, 2007:

Proceeding further, Rule 5 of the CVR 2007 provides for the determination of transaction value of imported goods by comparing declared transaction value of similar goods imported by other importer(s) at or around the same time and goods which can be considered as similar goods are specified in Rule 2(f) of the CVR, 2007. The transaction value of the similar goods which are having same YOM and having similar specification and similar conditions as old and used machine were not readily available for comparison. Further since the goods are old and used it is difficult to

find data relating to sales of such goods to India, which could be considered similar goods. Accordingly, the transaction value of these impugned old and used cranes could not be re-determined under the Rule 5 of the CVR, 2007.

7.7 Application of Rule-6 of the CVR, 2007:

Since the transaction value of these impugned goods could not be determined by sequentially following Rule 3 to Rule 5 of the CVR, 2007, accordingly, as per Rule 6 the value of these goods to be determined by sequentially following the Rule 7 onwards.

7.8 Application of Rule-7 of the CVR, 2007:

Rule 7 of the CVR, 2007, provides for 'deductive value', i.e. the value is to be determined on the basis of unit price of goods being valued for identical goods or similar imported goods sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, subject to deductions stipulated under the rule. However, in the instant case, it is evident that the importer had declared vague descriptions/manipulated descriptions and importer has not declared the YOM in the Bills of Entry which is one of the crucial factors for determining the valuation of the goods. Further, the similar or identical imported goods, having similar or identical specification and having similar or identical condition of at the time of import were not readily available for comparison in the domestic market. This is because the generally the old and used goods are being imported for use rather than for resale purpose. Accordingly, the transaction value of these impugned old and used cranes could not be re-determined under the Rule 7 of the CVR, 2007.

7.9 Application of Rule-8 of the CVR, 2007:

For application of Rule 8, ibid, the cost of materials and fabrication or processing involved in the manufacturing of the imported goods are required. This too is not available in the instant case. The imported goods were generally manufactured in China and therefore, the authentic data in respect of the value of raw materials used in manufacture of the said goods imported from China are not available. Therefore, the valuation of the impugned goods could not be determined because the no authentic details or authentic data regarding the cost or value of the material used and fabrication costs plus the amount for profit and general expenses incurred while manufacturing of these cranes were readily available. Accordingly, the value could not be determined under Rule-8 of the CVR, 2007.

8. Re-determination of Transaction value under Rule-9 of the CVR, 2007:

8.1 As per the CBIC Circular No. 07/2020-Customs dated 05-02-2020 where the old and used capital goods cannot be appraised under Rule-3 and where there may be difficulty in applying Rules 4 to 8 of the CVR, 2007 the proper officer may be required to apply the residual method under Rule 9 for determining the valuation of the old and used goods. Accordingly, the valuation of these impugned goods was re-determined on the basis of the RCs unless otherwise proved, received from the importer/respective RTOs, and valuation report provided by the empanelled chartered engineers based on the YOM mentioned in these RCs.

8.2 Keeping the above instruction as guidelines, re-assessed CIF have been obtained by the Chartered Engineers vide their letter dated 12.12.2024. The CE's valuation report was based on their study as well as their analysis of the international

trade in such goods and also based on their past experience. While arriving at the present market value of the 'old & used crane' imported and cleared by M/s. Gurunanak Crane Service in question, they had also taken into consideration the accrued depreciation and its present prospective serviceability as compared to the new cranes of similar make/model, reconditioning/ repairing/ replacement/ function/ utility and reusability. He has also considered the current market supply and demand of cranes as well as its reasonable economic residual life span. Accordingly, they have arrived at the estimated present market values of these 06 cranes.

9. Duty Calculation for 06 Bills of Entry

The duty leviable in respect of the above imports is computed on the basis of the values re-determined as above. The details of the duty leviable, duty paid at the time of clearances of the impugned cranes and the duty short paid on them were shown in Annexure-I to the show cause notice. A total amount of Rs 1,49,10,197.34/- (One Crore Forty-Nine Lakh Ten Thousand One Hundred Ninety-Seven Rupees and Thirty-Four Paisa) was leviable as duty on the aforesaid used cranes, computed on the basis of the values re-assessed as discussed supra. As against this amount, an amount of Rs. 1,06,44,937.50 /- (One Crore Six Lakh Forty-Four Thousand Nine Hundred Thirty-Seven Rupees and Fifty Paisa) was paid as customs duty at the time of clearance of the aforesaid cranes. Therefore, remaining amount of Rs. 42,65,259.84/- (Forty-Two Lakh Sixty-Five Thousand Two Hundred Fifty-Nine Rupees and Eight-Four Paisa) was short paid in respect of these 06 cranes, while seeking its clearance from Customs.

Table – 7

Total No. of Bills of Entry	Declared Assessable Value (In Rs.)	Total Duty Paid (in Rs.)	Total Re-determined Assessable Value (in Rs.)	Duty Payable (in Rs.)	Total Differential Duty (in Rs.)
06	3,83,80,881.13/-	1,06,44,937.50/-	5,37,59,500/-	1,49,10,197.34/-	42,65,259.84/-

10. Role of the Importer

10.1 Shri Sukhdevsingh Ramsingh Khosa, Power of Attorney holder of M/s. Gurunanak Crane Service, has devised a modus-operandi for evading the Customs Duty on the import of the Old and Used second hand cranes being imported at the Mumbai Sea Port. This Modus operandi works by mis-declaring the actual YOM of the machine before the Customs Department and showing the new machine as relatively old and consequentially declaring the lower assessable value of the machine before the customs and accordingly paying less amount of customs duty.

10.2 To succeed in his target of mis-declaration of the YOM of the cranes, importer colluded with the foreign supplier and convinced the foreign supplier to not to declare actual YOM on the Invoice and Bill of Lading. Based on this modus operandi Importer started filing of Bills of Entry without mentioning the actual YOM in the description column of the Bills of Entry and declaring relatively less assessable value for these old and used cranes before the Customs Department. By declaring the lesser assessable value of the old and used cranes before the customs, importer is paying the lesser amount of Customs Duty than actually applicable duty.

10.3 The above acts of omission and commission on the part of Shri Sukhdevsingh Ramsingh Khosa, done on behalf of Mrs. Mandipkaur Sukhdevsingh

Khosa, Proprietor of M/s. Gurunanak Crane Service proves their willful mis-statement and suppression of the facts while declaring the details of the goods in the impugned Bills of Entry under section 46 of the Act. Accordingly, Shri Sukhdevsingh Ramsingh Khosa, having power of attorney of the M/s. Gurunanak Crane Service, and Mrs. Mandipkaur Sukhdevsingh Khosa, Proprietor of M/s. Gurunanak Crane Service appear liable to penalty under section 112(a)/112(b), 114A and 114AA of the Act, in relation to the fraudulent import of the 06 old and used cranes as mentioned in Table – 6.

11. Relevant provisions of the Customs Act, 1962:

Section 14 - Valuation of the goods.

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

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

……

(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

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

Section 46 of Customs Act, 1962. Entry of goods on importation.

……

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

Section 111. Confiscation of improperly imported goods, etc.

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

……..

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

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

……

Section 112. Penalty for improper importation of goods, etc.—

(a) 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 or abets the doing or omission of such an act, or

.....

shall be liable, -

.....

[(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher :

.....

114A. Penalty for short-levy or non-levy of duty in certain cases.—

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under [sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

.....

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

Section 114AA.Penalty for use of false and incorrect material. —

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

Customs Valuation (Determination of Value of Imported Goods) Rules, 2007:

.....

Rule-9. Residual method

(1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India;

Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

(2) No value shall be determined under the provisions of" this rule on the basis of -
(i) the selling price in India of the goods produced in India;
(ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
(iii) the price of the goods on the domestic market of the country of exportation;
(iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8;
(v) the price of the goods for the export to a country other than India;
(vi) minimum customs values; or
(vii) arbitrary or fictitious values.

12. Show Cause Notice

Show Cause Notice No. 21/2025-26/Gr-V dated 22.07.2025 [hereinafter referred to as SCN] was issued calling upon the following noticees:

i. **M/s Gurunanak Crane Service (IEC: 0813025028)** to show cause as to why the declared value of Rs. 3,83,80,881.13/- should not be rejected in terms of the Rule 12 of the CVR, 2007 and re-determined as Rs. 5,37,59,500/- in terms of the Rules 9 of the CVR, 2007 read with section 14 of the Customs Act, 1962, with consequential duty liability; the goods

imported vide Bills of Entry, as per Annexure-I to the Show Cause Notice, should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962; differential duty of Rs. 42,65,259.84/- should not be demanded and recovered as per the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under section 28AA of the Customs Act, 1962; penalty should not be imposed upon them under Section 112(a) and/or 114 A and 114AA of the Customs Act, 1962.

ii. **Shri Sukhdevsingh Ramsingh Khosa**, Power of Attorney of M/s. Gurunanak Crane Service, to show cause as to why penalty should not be imposed upon him under Section 112(a) and/or 114A and 114AA of the Customs Act, 1962.

iii. **Mrs. Mandipkaur Sukhdevsingh Khosa,** Proprietor of M/s. Gurunanak Crane Servic**e**, to show cause as to why penalty should not be imposed upon her under Section 112(a) and/or 114A and 114AA of the Customs Act, 1962.

13. Reply to Show Cause Notice

13.1 The importer through their authorised representatives, M/s. LAWTM ADVISORS, submitted written reply dated 17.11.2025 to the SCN, key points of which are as below:

i. The past data of noticee when cross matched with RC copies of RTO data showed that average mis-declaration in the age of the cranes ranged between 10-12 years. It is contended that, even otherwise, a post import mis-declaration before RTO may be some issue in Motor Vehicle Act but not in the Customs Act.

ii. Further, during the course of investigation, the noticee had submitted a manufacturer's certificate from Liebherr, Germany vide email dated 05.09.2024 for justifying the YOM declared by them before Customs. The certificate received on a mail from the manufacture “LIEBHERR”.

iii. The allegations appear to have been mainly based upon the statement dated 23.07.2024 of Shri, Jitendra Narayan Darunkar, Proprietor of M/s. A. G, Associates, the Chartered Engineer. His statement itself indicate that he is now of opinion that specifications plate is easy to temper with subsequently and that when he inspected the crane, he identified the article vis-a-vis BE, BL and catalogue and found the same in order. This means that the details mentioned in imports documents were matching with specifications plate during import and same is changed subsequently.

iv. Subsequently, the noticee had requested for cross-examination of chartered engineer. However, the adjudicating authority granted a personal hearing vide F. No. CUS/SIIB/SCN/ADC/17/2025-GR-5 dated 28.10.2025 wherein the adjudicating authority also denied the request of noticee for cross-examination.

v. NATURAL JUSTICE: REJECTION OF CROSS EXAMINATIONS: - It is contended that the Adjudicating Authority rejected the request for cross-examinations of relevant person, the Chartered Engineer, upon whose statement the allegations are based. The request was rejected on the ground that the adjudicating authority has not found any merit in granting any further cross-examination. For this submission, reliance is placed upon the decision in the matters of Hon’ble Supreme Court:

- Ramesh Chandra Agarwal v/s Regency Hospital Ltd., reported (2009) CPJ 27 (SC) has held that for the admissibility of expert evidence, the evidence must be based on reliable principles and in order to bring the evidence of a witness as that of an expert it has to be shown that he has made a special study of the subject or acquired a special experience therein or in other words that he is skilled and has adequate knowledge of the subject.

- It is stated in Titli v. Jones (AIR 1934 All 237) that the real function of the expert is to put before the court all the materials, together with reasons which induce him to come to the conclusion, so that the court, although not an expert, may form its own judgment by its own observation of those materials.
- An expert is not a witness of fact and his evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the Judge to form his independent judgment by the application of these criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with other evidence of the case. The credibility of such a witness depends on the reasons stated in support of his conclusions and the data and material furnished which form the basis of his conclusions. [Criminal Appeal Nos. 1191-1194 of 2005 along with Civil Appeal No. 1727 of 2007, decided on 7.8.2009].
- In the case of State of Maharashtra v. Damu s/o Gopinath Shinde and others., [AIR 2000 SC 1691 at page 1700], it has been laid down that without examining the expert as a witness in Court, no reliance can be placed on an opinion alone. In this regard, it has been observed in The State (Delhi Administration) v. Pali Ram, [AIR 1979 SC 14] that "no expert would claim today that he could be absolutely sure that his opinion was correct, expert depends to a great extent upon the materials put before him and the nature of question put to him."
- In the Article "Relevancy of Expert's Opinion" it has been opined that the value of expert opinion rest on the facts on which it is based and his competency for forming a reliable opinion. The evidentiary value of the opinion of expert depends on the facts upon which it is based and also the validity of the process by which the conclusion is reached. Thus, the idea that is proposed in its crux means that the importance of an opinion is decided on the basis of the credibility of the expert and the relevant facts supporting the opinion so that its accuracy can be cross checked.
- The caution, the Court must exercise while considering an opinion rendered by an expert is expressed in Murarilal Vs. State of M.P. AIR 1980 SC 531, where the Court held – "But, the hazard in accepting the opinion of any expert, handwriting expert or any other kind of expert, is not because experts, in general, are unreliable witnesses……, but because all human judgment is fallible and an expert may go wrong because of some defect of observation, some error of premises or honest mistake of conclusion. The more developed and the more perfect a science, the less the chance of an incorrect opinion and the converse if the science is less developed and imperfect. The science of identification of finger-prints has attained near perfection, and the risk of an incorrect opinion is practically non-existent. On the other hand, the science of identification of handwriting is not nearly so perfect and the risk is, therefore, higher. An expert deposes and not decides. His duty is to furnish the judge with the necessary scientific criteria for testing the accuracy of his conclusion, so as to enable the judge to form his own independent judgment by the application of these criteria to the facts proved in evidence'." (Para 4)
- In State Vs. Kanhu Charan Barik 1983 Cr.L.J. 133, a Division Bench of Orissa High Court held – "Evidence of experts after all is opinion evidence. The opinion is to be supported by reasons. The Court has to evaluate the same like any other evidence. The reasons in support of

the opinion, if convincing, make the opinion acceptable. There is no place for ipse dixit of the expert. It is for the court to judge whether the opinion has been correctly reached on the data available and for the reasons stated."

- It would be prudent to quote the following passage from Taylor's Law of Evidence, page 1344, para 1877 about the admissibility of evidence of experts – "Still as experts usually come with a bias on their minds to support the cause in which they are embarked, little weight will in general be attached to the evidence which they give, unless it be obviously based on sensible reasoning."
- In Palaniswamy Vaiyapuri Vs. State AIR 1968 Bombay 127, a Division Bench of Bombay High Court in para 11 of the judgment said – "The opinion of an expert must be supported by reasons and it is the reasons and not ipse dixit which is of importance in assessing the merit of the opinion."
- In Haji Mohammad Ekramul Haq Vs. The State of West Bengal, AIR 1959 SC 488, the Court held that an opinion of expert unsupported by any reason is not to be relied on.
- Special Bench of HIGH COURT OF JUDICATURE AT ALLAHABAD in Sunni Central Board of Waqfs Vs. Sri Gopal Singh Visharad and others 2010 ADJ Page 1 (SFB)(LB) (in my judgment) in paras 3586 to 3596 said as under – \"3586. Expert evidence thus is only a piece of evidence and external evidence. It has to be considered along with other pieces of evidence. Which would be the main evidence and which is the corroborative one depends upon the facts of each case. An expert's opinion is admissible to furnish the Court a scientific opinion which is likely to be outside the experience and knowledge of a Judge. This kind of testimony, however, has been considered to be of very weak nature and expert is usually required to speak, not to facts, but to opinions. It is quite often surprising to see with what facility, and to what extent, their views would be made to correspond with the wishes and interests of the parties who call them. They do not, indeed, wilfully misrepresent what they think, but their judgment becomes so warped by regarding the subject in one point of view, that, when conscientiously deposed, they are incapable of expressing a candid opinion."

vi. However, they reiterate that chartered engineer cross-examination was required to confirm the following issues: -

- Whether he had tallied chassis number from the plate before issuing the CE Certificate?
- Was he required to write in his certificate about the status of the specification plate? Did he enclose a photograph of the plate in his certificate?
- While inspecting, did he note that the plate was original or tempered?
- Can he give any opinion on the present state of the plate without inspecting the machine?

vii. REJECTION OF MANUFACTURER DISTRIBUTORS CERTIFICATE PROVIDED BY THE NOTICEE: - It is to submit that our baffled clients were constrained to approach manufacturer's contacts for clarifications of Cranes and their chassis number and YOM. By the manufacturer's agents, our clients were provided the certificate of the crane with chassis No. 9464500SEL0508 imported under Bill of Entry No. 2476125 dated 23.01.2021 (Entry No. 4, Table No. 6, SCN page no. 5 & 6) with declared YOM as 1995. This crane is reported in RTO documents as of October-18. Since RTO documents are post import activity and since the old and used cranes were not imported under any end use condition, the burden of proof

that RTO documents are correct and import documents are manipulated, is on the department. All evidences on records indicate just reverse situation.

viii. It would be incorrect to ratify RTO documents and challenge the import assessment documents –

- When Imports and assessments were compulsorily under first check clearance and when machines were certified by departmentally empanelled Chartered Engineers.
- Where declared values were rejected and compared with depreciated value.
- Where No investigations are made to verify whether model of imported cranes were still in production till year of manufacture found in RTO.
- Where No investigations are made as to whether the mistake is to be treated under MV Act 1988 or the Customs Act 1962.
- Where the noticee were forced to ask on 14.08.2024 the manufacturer about the YOM of this chasis no. The Manufacturer certificate was provided by the email on 19.08.2024 and was shared with the department vide email dated 05.09.2024. It is contended that the scn has rejected the certificate stating that it cannot override the RTO records or their inspections.

ix. It is pertinent to mention that what emerges out of the records appears to be on below: -

- Indian infrastructure hirers are insisting that cranes to be hired should not be more than 5 years old. (Ref. Sukhdev Khosa statement 17.03.2025, (SCN para 4.5 (iv)).
- To avoid this the importers were presenting incorrect document plates, before RTO (SCN para 4.5 (v)).
- It appears that since RTO is getting higher fees for newer year mention they have no qualms.
- The SCN has not collected evidence from crane hirer customers or RTO agents involved.
- The manufacturer's certificate was wrongly rejected on the ground that the said certificate was not substantial evidence from the manufacturer company.

x. BURDEN TO PROVE: - It is submitted that the burden to prove that the import documents / specific plates were manipulated prior to import is not discharged by the department. On the contrary, the records of the case, CE statement and importers statement suggest that mistake committed, if any, are post import and are in relation to the Motor Vehicle Act, 1988 and there are no customs violations.

xi. CONSIDERATION OF DEPRECIATION AND VALUATION OF THE CRANES: - It is to submit that the SCN had re-determined the valuation of the cranes on the basis of the statement of chartered engineer and the registration details of the cranes. It is to submit that the depreciation and valuation should be done on the basis of the manufacturing evidence and not registration details. It is to submit that the YOM in customs records cannot be changed merely based on registration records or chartered engineer assumptions by discarding manufacture evidence.

xii. In view of submissions above there are no customs violations and the declared particulars in customs records are true and correct. On our humble submissions, post imports use of cranes cannot be challenged under customs laws.

xiii. The cranes have been cleared under first check without any conditions. For any subsequent mis-declaration cannot at the best are required to be dealt under other laws, if proved.

xiv. There are no evidences of –

- Any manipulation of import documents.

- Any suppression of value. The declared value is paid through banking channels.
- There are no evidence of use of other channels for payment of consideration.
- Imports of used cranes are first check by default. There is no evidence that CE had given any wrong certificate during imports.
- The YOM has been correctly declared and duty has been correctly paid.

13.2 The importer through their authorised representatives, M/s. LAWTM ADVISORS, submitted further written reply dated 03.01.2026 to the SCN, key points of which are as below:

i. CHASIS NUMBER CHECK AS CONCLUSIVE EVIDENCE: - When a check of chasis number is run on website of National Institute of Safety Research, USA at their website https://www.nisrinc.com in "cmvid" link such chasis number confirmed year of make as per the Bill of Entry referred in table given at para 3.2 of the scn. This confirms that the Year of Manufacture is correctly indicated in import documents. The relevant prints are attached as Annexure-C. The statement dated 23.07.2024 given by the chartered engineer in answer to question 14 is vague and presumptive. There are no forensic conducted in respect of the specification plate during the investigation. Consequently, the revaluation given by the chartered engineer in their letter dated 01.04.2025 is merely speculative and no duty can be demanded on the basis on such grounds.

ii. FIRST CHECK: - It appears that the proper officer had correctly evaluated the goods in view of the 1st chartered engineer certificate issued after complete verification, photographs and examination of machine plate available on the crane. There is nothing to indicate that such machine plates were altered or damaged during the imports. In such certificates, the chartered engineer has also enclosed the photographs of the machine plate which indicate manufacturer's name, chasis number and the year of manufacture. Unfortunately, such certificate has not been placed on records of the crane and same are enclosed herewith. It cannot be the case of the department that such machine plates are manipulated nor is there any evidence in their regards. We are submitting herewith copies of such discharge port chartered engineer certificate as evidence of correctness of declared year of manufacture as Annexure -A-1 to A-6. We also rely upon the email dated 19.08.2025 (14.03 hrs.) received from subhajit.chandra@leibherr.com to gurunanakcraneservice@gmail.com confirming chasis number pertaining to crane imported under Bill of Entry No. 2476125 dated 23.01.2021 is year of Manufacture as 1995 as is declared in the Bill of Entry (Annexure-B).

iii. VOID EVIDENCE: - As has been submitted during investigation no physical verification of the cranes was conducted and therefore, the chartered engineer's subsequent statement does not stand as evidence in absence of any physical inspection of the machinery during the investigation. The relevance of such evidence is also diminished for any reliance purposes in absence of his cross-examination.

iv. REQUEST FOR COMPLIANCE OF SECTION 138: - It is to submit that the Statement made against the noticee is not proved under Section 138 of the Customs Act 1962 as the law laid down by Hon'ble Bombay high Court in CIABRO ALEMAO, JOAQUIM ALEMAO CHURCHILL ALEMAO, ANTHONY JOHN RODRIGUES, & SUBHASH PANDEY VERSUS THE COMMISSIONER OF CUSTOMS reported 2017 (10) TMI 521 - BOMBAY HIGH COURT (Para 42 of Pg. 14 Of Compilation of Case Laws). The noticee also relies upon –
   - Andaman Timber Industries Versus Commissioner of Central Excise, Kolkata-II reported 2015 (10) TMI 442 - SUPREME COURT.

- M/S. Patwari Clothing Pvt. Ltd., Versus the Commissioner of Customs, Tuticorin, The Assistant Commissioner of Customs, Tuticorin reported 2020 (11) TMI 759 - MADRAS HIGH COURT.
- M/S Veetrag Enterprises, Chetan Kumar Ranka, Nirmal Kumar Lunkad Versus the Commissioner of Customs (Seaport Exports) reported 2015 (8) TMI 781 - MADRAS HIGH COURT.

v. BILL OF ENTRY FILED AS PER SUPPLIER'S DOCUMENTS: It is contended that the bills of entry for the subject imports was filed by the noticee based on the documents made available to them by the suppliers prior to filing the bills of entry. The noticee had received the documents such as Commercial Invoice, Packing List, etc. in respect of subject import from the suppliers. In accordance with the said documents, bill of entries was filed. As can be seen from the copy of the Bill of Entry No. 5729265 dated 06.10.2021 incorporated in the scn the same was not manipulated for RTO purposes. The notice has filed the Bills of Entry as per the documents received from the supplier of the old and used cranes for all customs purposes. The noticee believed that the chasis number and Year of Manufacture mentioned in the packing list was true and correct. There is no evidence of any manipulation documents filed with the customs which are same as received from bank. There are no evidence to indicate that the documents released by the bank deferred with the documents filed with the customs. There is also no evidence to indicate any additional amount paid by the noticee through any non-banking channel. There are no grounds to challenge the declared transaction value. Further there are no evidences of any expenses for any reconditioning, refurbishment, modernization or any improvement in the cranes prior to imports. Therefore, there are no additions and the declared transaction value is the correct value for customs purposes.

vi. Further, no evidence on records of following –
- Any manipulation of import documents.
- Any suppression of value. The declared value is paid through banking channels.
- Use of other channels for payment of consideration.
- Imports of used cranes are first check by default. There is no evidence that CE had given any wrong certificate during imports.
- The YOM has been correctly declared, and duty has been correctly paid.

vii. ABSENCE OF PHYSICAL VERIFICATION: - It is contended that the investigations were carried out on the basis of scrutiny of the past data of the import made by the noticee. Also, the details of the RCs of the cranes were requested from the RTO offices. In view of the alleged past import data and RCs details, it was alleged that the noticee had mis-declared the YOM of the imported cranes. It is to submit that in absence of physical verification of the cranes the allegations were merely on the basis of the import documents and the statement of the chartered engineer. However, the statement of the chartered engineer was recorded without inspection of the crane and only on the basis of the RC book.

viii. PENALTIES PROPOSED ON FIRM: NO SEPARATE PENALTIES IMPOSABLE ON PROPRIETOR- It is to submit that the SCN has unfairly proposes unjustifiable penalties on both proprietor firm and proprietor i.e., M/s. Gurunanak Crane Service and its Proprietor Mrs. Mandipkaur Ramsingh Khosa u/s 112(a) and /or 114A and 114AA of the Customs Act, 1962. Impugned scn is liable to be set aside on this ground alone. The noticee relies upon the decision of ANIL KUMAR MAHENSARIA VERSUS COMMISSIONER OF CUSTOMS – 2007 (12) TMI 175 – HIGH COURT DELHI where the substantial question of law framed for consideration was -

> *"Whether the Custom Excise and Service Tax Appellate Tribunal was Correct in upholding the imposition of penalty on the proprietorship*

concern M/s. B.G. Overseas Corporation as well as its sole proprietor Anil Kumar Mahensaria (Appellant)?"

As per the facts of the above quoted case the only contention of learned counsel for the Appellant was that the penalty cannot be imposed both on M/s. Overseas Corporation the proprietorship firm, and the appellant who is its sole proprietor, since there is no difference between them. It was held in para 6 of the judgement of Hon'ble Delhi High Court and reproduced as below:

"Under the circumstances, we answer the substantial question of law in negative, that is, in favour of the Appellant and against the Revenue. We hold that the only one set of penalty can be imposed against either the appellant Anil Kumar Mahensaria or the proprietorship firm M/s. B.G. Overseas Corporation…..". We further direct that since Mr. Anil Kumar Mahensaria is the Appellant before us, the penalty amount is required to be paid by him and not by the proprietorship firm. The appeal and application are disposed with the aforesaid directions.

14. Record of Personal Hearing

Personal Hearing (PH) opportunities were granted to the noticees on 13.10.2025, 04.11.2025, 19.11.2025, 05.01.2026 and 12.01.2026. In respect of the personal hearings scheduled on 13.10.2025 and 04.11.2025, adjournment was requested vide letters dated 11.10.2025 and 03.11.2025. Further, in respect of personal hearing scheduled on 19.11.2025, vide letter dated 19.11.2025 received from the noticee's authorized representatives, it was requested that since they were trying to obtain certain supporting documents (VIN certification and transport registration) from China and the same was getting delayed due to year end vacation period, another hearing may be fixed in the first week of January 2026. Accordingly, a personal hearing was fixed on 05.01.2026 but the same could not be conducted. Accordingly, another hearing was fixed on 12.01.2026 which was attended by Shri Anil Kumar Mishra, Advocate on behalf of the noticees, M/s. Gurunanak Crane Service, Smt. Mandipkaur Ramsingh Khosa, Shri Sukhdevsingh Ramsingh Khosa. Shri Anil Kumar Mishra reiterated the contentions put forth in submissions dated 17.11.2025 and 03.01.2026. He submitted that despite efforts, no official confirmation could be obtained from Chinese authorities regarding the Year of Manufacture (YOM) of the cranes; however, relevant open-source information was submitted on 03.01.2026. He highlighted that for Bill of Entry No. 2476125, the manufacturer Liebherr confirmed the YOM as 1995, matching the declared import documents, and therefore requested exclusion of this entry from the proceedings. For the remaining Bills of Entry, he relied on VIN-based data from a verified open-source platform and explained that decoded YOM details generally matched the declared values, with some inconsistencies attributable to old/damaged plates. He contended that the SCN primarily relies on RTO records and that any discrepancies, if at all, arose post-import and do not constitute Customs violations.

He further argued that the revised valuation was based solely on a revised opinion of the Chartered Engineer without fresh physical inspection and without proper application of the Customs Valuation Rules. He also submitted that a proprietorship concern and its proprietor are a single legal entity and cannot be subjected to separate penalties. He concluded that no Customs offence is made out, no differential duty is payable, and requested liberty to submit further documents. On the request of Shri Anil Kumar Mishra, it was agreed that further submissions, if filed within the permissible time, shall be taken on record.

15. Discussion and Findings

I have gone through the facts of the case, material evidence on record, the Show Cause Notice dated 22.07.2025, oral & written submissions of the noticees. I now proceed to decide upon the issues involved in the case.

15.1 Request for Cross-Examination of Chartered Engineer

15.1.1 Before examining the merits of the case, I consider the preliminary objection regarding the denial of cross-examination of the Chartered Engineer (CE), Shri Jitendra Narayan Darunkar, whose statement was recorded under Section 108 of the Customs Act, 1962. The noticee has relied upon judicial precedents to contend that expert evidence is only opinion evidence of an advisory nature and cannot be treated as admissible unless it is based on reliable principles, relevant data and reasons stated in support of conclusions; that the real role of an expert is to place material and scientific criteria before the adjudicating authority to enable independent evaluation rather than to decide the issue; that mere ipse dixit of an expert is unacceptable and the evidentiary value of such opinion depends on the credibility of the expert and the reasoning furnished; and that expert evidence is a weak and corroborative piece of evidence which must be assessed along with other substantive evidence on record before being acted upon. On this basis, it is contended that denial of cross-examination violates principles of natural justice.

15.1.2 On careful examination of the records, I find that the case laws cited by the noticee are not squarely applicable in the instant case. The statement of the Chartered Engineer is neither the primary nor the sole basis of the allegations. The case is based on independent evidence obtained from statutory authorities, namely Registration Certificates (RCs) issued by various State RTOs, vehicle particulars recorded after physical inspection, and the clear mismatch between YOM/capacity declared in the Bills of Entry and those recorded in the RCs. Even without reliance on the CE's statement, the following undisputed facts remain:

(i) the YOM declared to Customs materially differs from the YOM declared by the importer himself before the RTOs; and

(ii) the RTO-certified YOM directly affects depreciation and valuation in terms of CBIC Circular No. 493/124/86-Cus.VI dated 19.11.1987.

15.1.3 I find that the RTO is a statutory authority under the Motor Vehicles Act, 1988, and the RCs issued after physical inspection constitute independent, statutory documents, carrying higher evidentiary value than opinion evidence.

15.1.4 The role of the Chartered Engineer in the present case is ancillary and corroborative, limited to examining the impact of YOM and capacity on valuation, assessing the feasibility of plate tampering, and re-valuing the goods based on the correct YOM and capacity as established from RTO records. The CE's statement merely supplements the RTO evidence and aids in completing the investigation as well as quantification of duty, and therefore is not the sole basis of the demand.

15.1.5 The Hon'ble Supreme Court in Andaman Timber Industries v. Commissioner [2015 (324) E.L.T. 641 (S.C.)] held that denial of cross-examination vitiates proceedings only where the statement sought to be cross-examined constitutes the sole basis of the demand. I also rely on the judgment of the Hon'ble Madras High Court in Jet Unipex v. Commissioner of Customs, Chennai [2020 (373) E.L.T. 649 (Mad.)], which held that cross-examination is not an absolute right and need not be allowed if the relevant statements are merely intended for corroboration of independent evidence.

15.1.6 In the present case, all relied-upon documents including RCs, revised CE valuation reports, and statements were supplied to the noticee, and adequate

opportunity of written submissions and personal hearings was granted. No prejudice has been demonstrated as to how cross-examination of the CE would dislodge the undisputed RTO records.

15.1.7 Accordingly, I find no force in the request for cross-examination of the Chartered Engineer made by the noticee and the same is rejected.

15.2 Having dealt with the issue of cross-examination, I now proceed and observe that in the present case, the following issues are required to be determined:

i. Whether the Year of Manufacture (YOM) and lifting capacity of the old and used cranes were mis-declared at the time of import, resulting in undervaluation and consequent short-payment of customs duty?
ii. Whether the declared value is liable to be rejected under Rule 12 of the CVR 2007, and appropriately re-determined in the Show Cause Notice under Rule 9 of the CVR 2007, read with section 14 of the Customs Act, 1962?
iii. Whether the impugned goods are to be held liable for confiscation under Section 111(m) of the Customs Act, 1962?
iv. Whether the extended period of limitation under Section 28(4) of the Customs Act, 1962 is invocable, and whether the consequential duty liability along with applicable interest be confirmed?
v. Whether the noticees are liable for penalty under Section 112(a) and/or 114A and 114AA of the Customs Act, 1962?

15.3 Whether the Year of Manufacture (YOM) and lifting capacity of the old and used cranes were mis-declared at the time of import, resulting in undervaluation and consequent short-payment of customs duty?

15.3.1 The Show Cause Notice contends that the importer mis-declared the Year of Manufacture (YOM) and, in four cases, the lifting capacity of the imported old and used cranes at the time of import. It is alleged that while older YOMs and lower capacities were declared in the Bills of Entry for customs clearance, the Registration Certificates (RCs) issued by various State Transport Authorities after physical inspection of the cranes reflect newer YOMs and higher capacities. The SCN alleges that such mis-declaration directly impacted the admissible depreciation and assessable value, resulting in undervaluation and short-payment of customs duty.

15.3.2 The noticee has contended that there was no mis-declaration on their part as the Year of Manufacture (YOM) declared to Customs was based on the information and documents available at the time of import from the supplier, including the identification plates affixed on the cranes; that RTO records are not reliable for customs purposes and any variation in YOM, if observed, could be attributable to subsequent modifications or manipulations carried out to meet commercial requirements; that data obtained from an open-source VIN/CMVID-based platform for five Bills of Entry and manufacturer's correspondence in respect of one Bill of Entry generally substantiates their claim; and that since the assessable value had already been checked and finalized by Customs at the time of import, no allegation of mis-declaration or undervaluation can be sustained at a later stage.

15.3.3 I find that the Registration Certificates issued by the respective RTOs are statutory documents prepared after physical inspection and verification of the cranes by competent authorities under the Motor Vehicles Act, 1988, and therefore carry substantial evidentiary value. I further note that the noticee has referred to data obtained from an open-source VIN/CMVID-based platform for five Bills of Entry. However, as admitted by the noticee himself, the said CMVID/VIN-based

data yields inconsistent results, including instances of invalid VIN decoding and variations in the Year of Manufacture, which the noticee attributes to old or damaged plates or incomplete chassis numbers. Such inconsistencies render the open-source CMVID data unreliable for dislodging statutory and consistent RTO records.

15.3.4 I find that with regard to Bill of Entry No. 2476125 dated 23.01.2021, reliance is placed by the noticee on an email purportedly issued by the manufacturer. However, no contemporaneous official document from the Chinese transport or registration authorities has been produced, despite opportunity being granted. In contrast, the RTO records and transport authority data relied upon in the Show Cause Notice are official statutory documents. I find that, in view of lacking supporting evidence for the manufacturer's correspondence and the inconsistency in the results obtained from open-source data, I am inclined to place reliance on the RTO records, which are statutory in nature and carry higher evidentiary value.

15.3.5 Since the Year of Manufacture is a crucial parameter for valuation of second-hand machinery under CBIC Circular No. 493/124/86-Cus.VI dated 19.11.1987, mis-declaration thereof has directly affected the admissible depreciation, assessable value, and consequently the customs duty liability.

15.3.6 Accordingly, I hold that the Year of Manufacture and lifting capacity of the imported old and used cranes were mis-declared at the time of import, which resulted in incorrect depreciation, undervaluation, and consequent short-payment of customs duty.

15.4 Whether the declared value is liable to be rejected under Rule 12 of the CVR, 2007 and appropriately re-determined in the Show Cause Notice under Rule 9 of the CVR, 2007 read with section 14 of the Customs Act, 1962?

15.4.1 The SCN contends that the transaction value declared by the importer is not acceptable as the essential parameters forming the basis of valuation, namely Year of Manufacture (YOM) and lifting capacity, were mis-declared at the time of import. It is alleged that such mis-declaration rendered the declared value unreliable and raised reasonable doubt about its truth and accuracy. The SCN further contends that in view of the incorrect particulars furnished by the importer, the declared value was rightly rejected under Rule 12 of the Customs Valuation Rules, 2007. Since contemporaneous import data of identical or similar old and used cranes with comparable specifications was not available, the value was re-determined under Rule 9 of the CVR, 2007 on the basis of revised valuation reports prepared by the Chartered Engineer using the correct YOM and lifting capacity as evidenced by RTO records, in terms of Section 14 of the Customs Act, 1962.

15.4.2 The noticee has contended that the initial assessment was conducted under first check and was duly verified by the department at the time of import. It has been submitted that the revised valuation is based solely on a subsequent opinion of the Chartered Engineer, rendered without any fresh physical inspection of the cranes, and is therefore legally unsustainable. By accepting revised valuation on the basis of assumptions of the Chartered Engineer unsupported by evidence, the department has neither properly applied Rules 4, 5 and 6 of the Customs Valuation Rules nor validly rejected the declared transaction value under Rule 12.

15.4.3 I find that the mis-declaration of YOM and lifting capacity, which are critical determinants for valuation of second-hand machinery, has been clearly established from statutory RTO records. Such mis-declaration directly impacts

depreciation admissibility and assessable value and therefore gives rise to reasonable doubt regarding the truth and accuracy of the declared transaction value. In terms of Rule 12 of the CVR, 2007, once such doubt exists and the importer fails to satisfactorily justify the declared value with reliable documentary evidence, the same is liable to be rejected. I further find that due to the non-availability of contemporaneous imports of identical or similar used cranes with comparable age, condition and specifications, valuation could not be sequentially determined under Rules 4 to 8 of the CVR, 2007. Consequently, recourse to the residual method under Rule 9 of the CVR, 2007 was warranted. The re-determined value has been arrived at on the basis of revised Chartered Engineer valuation reports prepared using the correct YOM and capacity parameters and in terms of Section 14 of the Customs Act, 1962 and CBIC guidelines for valuation of second-hand machinery.

15.4.4 Accordingly, I hold that the declared transaction value was rightly rejected under Rule 12 of the Customs Valuation Rules, 2007 and that the re-determination of value under Rule 9 of the CVR, 2007 read with Section 14 of the Customs Act, 1962, as proposed in the Show Cause Notice, is legal, proper and sustainable.

15.5 Whether the impugned goods are to be held liable for confiscation under Section 111(m) of the Customs Act, 1962?

15.5.1 The SCN contends that the imported old and used cranes are liable to confiscation under Section 111(m) of the Customs Act, 1962 as the goods do not correspond in respect of value and material particulars with the declarations made in the Bills of Entry. It is alleged that mis-declaration of Year of Manufacture and lifting capacity has resulted in incorrect valuation and duty evasion, thereby rendering the goods liable to confiscation.

15.5.2 The noticee contends that the goods were duly cleared after assessment by Customs and there was no mis-declaration or concealment of facts at the time of import. It has been argued that any discrepancy, if at all, pertains to post-import declarations made before RTO authorities.

15.5.3 I find that the mis-declaration of YOM and lifting capacity, which are material particulars having direct bearing on valuation and duty assessment, has already been established. Section 111(m) of the Customs Act, 1962 provides for confiscation of goods where the value or any material particular is mis-declared. The fact that the goods were assessed and cleared earlier does not dilute the liability for confiscation when the assessment itself was based on incorrect declarations. The subsequent detection of mis-declaration renders the goods liable to confiscation under the said provision.

15.5.4 Once the goods have been held liable for confiscation, a crucial aspect which arises for consideration is whether redemption fine under Section 125 of the Customs Act, 1962 can be imposed even when the goods are no longer physically available for confiscation. In this regard, I place reliance upon the judgment in the case of M/s Visteon Automotive Systems India Limited reported in 2018 (9) G.S.T.L. 142 (Mad.), wherein the Hon'ble Madras High Court observed as under:

> "*The penalty directed against the Importer under Section 112 and the fine payable sunder Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting*

the goods to payment of duty and other charges, the Improper and irregular importation is sought to be regularised, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated Hence, the availability of the goods is not necessary for imposing the redemption fine. The opening words of Section 125, "Whenever confiscation of any goods is authorized by this Act brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorisation for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act."

15.5.5 In view of the above, I hold that the impugned goods are liable to confiscation under Section 111(m) of the Customs Act, 1962, and the case merits imposition of redemption fine under Section 125(1) of the Customs Act, 1962, notwithstanding the fact that the goods are not physically available

15.6 Whether the extended period of limitation under Section 28(4) of the Customs Act, 1962 is invocable, and whether the consequential duty liability along with applicable interest be confirmed?

15.6.1 The SCN contends that the importer deliberately mis-declared the Year of Manufacture and lifting capacity of the imported old and used cranes with intent to evade payment of customs duty. It is alleged that older YOMs were declared before Customs to avail higher depreciation while newer YOMs were declared before RTO authorities to facilitate commercial use. The SCN further contends that the material facts relating to the correct YOM and capacity were suppressed from the Department and came to light only during investigation through verification with Transport Authorities. Therefore, the SCN proposes invocation of the extended period of limitation under Section 28(4) of the Customs Act, 1962 and recovery of differential duty along with applicable interest under Section 28AA of the Act.

15.6.2 The noticee has contended that there was no manipulation of documents or suppression of value and that the declarations made in the Bills of Entry were strictly in accordance with the documents furnished by the suppliers. It has been submitted that the Bills of Entry were duly assessed by Customs at the time of import and that all relevant documents were disclosed to the Department. The noticee has further argued that any discrepancy, if at all, pertains to post-import declarations made before the RTO authorities and cannot be construed as suppression within the Customs domain. It has also been contended that the issue is valuation-related and interpretational in nature and, therefore, the demand is barred by limitation.

15.6.3 I find that the mis-declaration of YOM and lifting capacity has been established on the basis of statutory RTO records. These parameters were declared differently before Customs at the time of import and before Transport Authorities at the time of registration. Such conduct cannot be attributed to clerical error or interpretational difference. The fact that the correct particulars were not disclosed to Customs and came to light only during investigation clearly establishes suppression of material facts. Further, the benefit of higher depreciation and lower assessable value accrued directly to the importer, demonstrating intent to evade duty. The plea that assessment was finalized at the time of import is also not

acceptable, as the assessment itself was based on incorrect declarations furnished by the importer.

15.6.4 Accordingly, I hold that the extended period of limitation under Section 28(4) of the Customs Act, 1962 has been rightly invoked in the present case. I further hold that the differential customs duty arising from re-determination of value is liable to be confirmed along with applicable interest under Section 28AA of the Customs Act, 1962.

15.7 Whether the noticees are liable for penalty under Section 112(a) and/or 114A and 114AA of the Customs Act, 1962?

15.7.1 The SCN contends that M/s. Gurunanak Crane Service deliberately mis-declared material particulars and suppressed facts with intent to evade customs duty. Mrs. Mandipkaur Sukhdevsingh Khosa, being the proprietor of M/s. Gurunanak Crane Service, is responsible for the acts and omissions of the proprietary concern and is therefore liable to penalty for the alleged mis-declaration and suppression committed by the firm. Further, Shri Sukhdevsingh Ramsingh Khosa, as Power of Attorney holder, actively handled import documentation and knowingly facilitated mis-declaration and suppression of material facts, thereby rendering himself liable to penalty. It is alleged that such acts render the noticees liable to penalty under Sections 112(a), 114A and 114AA of the Customs Act, 1962.

15.7.2 The noticee contends that there was no manipulation or suppression, as the Bills of Entry were filed strictly on the basis of supplier documents, duly assessed by Customs, with full disclosure of all relevant records, negating any intent to evade duty. It is contended that any alleged discrepancy relates to post-import declarations before RTO authorities and does not amount to suppression under Customs law. It is further submitted that imposition of penalty on both the proprietary concern and the proprietor amounts to duplication of penalty for the same alleged offence, which is not legally sustainable.

15.7.3 I find that in the instant case, mis-declaration of Year of Manufacture and lifting capacity and suppression of material facts have been established, resulting in short-payment of duty. In respect of the importer, M/s. Gurunanak Crane Service, since the duty demand has been confirmed under Section 28(4) of the Customs Act, 1962 on account of suppression and intent to evade duty, penalty under Section 114A is attracted. I note that in view of the proviso to Section 114A, separate penalty under Section 112(a) on the importer is not warranted.

15.7.4 I further find that the importer, M/s. Gurunanak Crane Service, made use of false declarations in respect of the year of manufacture and lifting capacity of the cranes in the Bill of Entry. Further, since the year of manufacture and lifting capacity were declared correctly before the RTO authorities, and the mis-declaration before Customs directly benefitted the importer by lowering the duty liability, the same cannot be treated as inadvertent and is clearly attributable to knowledge and intent. Accordingly, the importer is liable to penalty under Section 114AA of the Customs Act, 1962.

15.7.5 In respect of the proprietor, Mrs. Mandipkaur Sukhdevsingh Khosa, I note that it is a settled legal position that a proprietary concern does not have a separate legal existence distinct from its proprietor. When penalty is imposed on the proprietary concern, imposition of a separate penalty on the proprietor for the same set of acts and omissions is not sustainable in law, unless a distinct violation attributable to the proprietor in her personal capacity, independent of her role as proprietor, is specifically established.

15.7.6 In view of the above, I hold that M/s. Gurunanak Crane Service is liable to penalty under Sections 114A and 114AA of the Customs Act, 1962, and I refrain from imposing separate penalty on Mrs. Mandipkaur Sukhdevsingh Khosa, proprietor of M/s. Gurunanak Crane Service.

15.7.7 In respect of the Power of Attorney holder, Shri Sukhdevsingh Ramsingh Khosa, I find that he has admitted his active involvement in the preparation and submission of import documents and in exercising de-facto control over import-related operations. The deliberate and material mis-declaration of the Year of Manufacture and lifting capacity could not have occurred without his participation. By knowingly facilitating submission of incorrect declarations, he abetted the improper importation of the goods and rendered the same liable to confiscation under Section 111(m) of the Customs Act, 1962. Therefore, the essential ingredients for imposition of penalty under Section 112(a), namely commission of acts or omissions rendering the goods liable to confiscation or abetment thereof, stand clearly satisfied.

15.7.8 I further find that penalty under Section 114A is applicable only in cases where duty is demanded and confirmed under Section 28(4) against the person who is liable to pay such duty. The statutory scheme also makes it clear that where penalty under Section 114A is attracted, separate penalty under Section 112(a) is not to be imposed on the same person for the same offence. In the present case, Shri Sukhdevsingh Ramsingh Khosa is neither the importer nor the person on whom duty liability has been fastened. Therefore, Section 114A is not applicable to him. His liability arises only under Section 112(a) for acts of abetment rendering the goods liable to confiscation, which has already been established hereinabove.

15.7.9 I also find from the records of the case that Shri Sukhdevsingh Ramsingh Khosa handled the preparation and furnishing of declarations and documents relating to the import of cranes, including the Bill of Entry. Therefore, he is responsible for the preparation and use of false and incorrect declarations in respect of the year of manufacture and lifting capacity of the cranes. Further, since the relevant parameters, namely the year of manufacture and lifting capacity, were declared correctly before the RTO authorities, the misdeclaration before Customs is clearly not inadvertent and must have been made with knowledge and intent. Accordingly, the intentional use of false and incorrect material in the transaction of business relating to Customs renders him liable to penalty under Section 114AA of the Customs Act, 1962.

15.7.10 Accordingly, I hold that Shri Sukhdevsingh Ramsingh Khosa is liable to penalty under Section 112(a) and Section 114AA of the Customs Act, 1962.

ORDER

16. In view of the findings and observations as made above, I pass the following order:

i. I reject the declared assessable value of Rs. 3,83,80,881.13/- of old and used cranes imported by 06 Bills of Entry listed in Annexure-I to the Show Cause Notice, under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determine the same as Rs. 5,37,59,500/- in terms of the Rule 9 of the said Rules read with section 14 of the Customs Act, 1962.

ii. I determine and confirm the demand of differential customs duty amounting to Rs. **42,65,259.84/- (Rupees Forty Two Lakhs, Sixty Five Thousand,**

Two Hundred Fifty Nine and Eighty Four paise only) against M/s. Gurunanak Crane Service, under Section 28(8) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

iii. I hold the cranes imported by 06 Bills of Entry listed in Annexure-I to the Show Cause Notice, having redetermined assessable value of Rs. 5,37,59,500/-, liable to confiscation under Section 111(m) of the Customs Act, 1962. However, as the goods are not physically available for confiscation, I order the appropriation of redemption fine of **Rs. 53,00,000/- (Rupees Fifty Three Lakhs only)** in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

iv. I impose a penalty equal to the differential duty Rs. **42,65,259.84/- (Rupees Forty Two Lakhs, Sixty Five Thousand, Two Hundred Fifty Nine and Eighty Four paise only)** and applicable interest thereupon on M/s. Gurunanak Crane Service under Section 114A of the Customs Act, 1962.

v. I impose a penalty of **Rs. 40,00,000/- (Rupees Forty Lakhs only)** on M/s. Gurunanak Crane Service under Section 114AA of the Customs Act, 1962.

vi. I impose a penalty of **Rs. 4,00,000/- (Rupees Four Lakhs only)** on Shri Sukhdevsingh Ramsingh Khosa, Power of Attorney holder of M/s. Gurunanak Crane Service, under Section 112(a) of the Customs Act, 1962.

vii. I impose a penalty of **Rs. 40,00,000/- (Rupees Forty Lakhs only)** on Shri Sukhdevsingh Ramsingh Khosa, Power of Attorney holder of M/s. Gurunanak Crane Service, under Section 114AA of the Customs Act, 1962.

17. This order is passed without prejudice to any other action which may be taken or purported to be taken against the noticees or any other concerned person under the Customs Act, 1962, or any other act for the time being in force in the Union of India.

10.02.2026

(Arshdeep Singh)
Joint Commissioner of Customs
Import-I, New Custom House

To,

1. Smt. Mandipkaur Ramsingh Khosa
Proprietor of M/s. Gurunanak Crane Service (IEC: 0813025028)
Registered office at 25-1 Sundar Colony Samrat Nagar near Isanpur cross road,
Ghodasar Ahmedabad 380050
Email id: gurunanakcraneservice@gmail.com

2. Smt. Mandipkaur Ramsingh Khosa
Proprietor of M/s. Gurunanak Crane Service (IEC: 0813025028)
B-187 Murlidhar Part 2 Vatva, Isanpur Daskrol, Ahmedabad 380050

3. Shri Sukhdevsingh Ramsingh Khosa
Power of attorney of M/s. Gurunanak Crane Service (IEC: 0813025028)
Registered office at 25-1 Sundar Colony Samrat Nagar near Isanpur cross road,
Ghodasar Ahmedabad 380050

Copy to:

1. The Commissioner of Customs (Import – I), New Custom House, Mumbai.
2. The Joint Commissioner of Customs, SIIB(I), Import-I, New Custom House, Mumbai.
3. The Deputy Commissioner of Customs, Review Cell, Import-I, New Custom House, Mumbai.
4. The Asstt./Dy. Commissioner of Customs, Gr. V, NCH, Mumbai.
5. EDI Section for upload in Mumbai Customs Zone – I website.
6. Office Copy.
7. Notice Board.