

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 78068 of 2018

(Arising out of Order-in-Appeal No. KOL/CUS/COMMISSIONER/PORT/40/2018 dated 27.04.2018 passed by the Commissioner of Customs (Port), Custom House, 15/1, Strand Road, Kolkata – 700 001)

M/s. Akash Exports

: Appellant

Through its Proprietor Shri Raj Kumar Nahata (H.U.F.)
4, Clive Row, 4th Floor, Room No. 406,
Kolkata – 700 001

VERSUS

Commissioner of Customs (Port)

: Respondent

Custom House, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Dr. Samir Chakraborty, Senior Advocate,
Shri Arnab Chakraborty, Advocate,
For the Appellant

Shri A.K. Choudhary, Authorized Representative,
For the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77421 / 2025

DATE OF HEARING: 14.08.2025

DATE OF DECISION: 17.09.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

Being aggrieved by the Order-in-Original dated April 27, 2018 passed by the Ld. Commissioner of Customs (Port), Kolkata, the appellant has preferred the instant appeal.

2. The facts in brief leading to the impugned order of the Commissioner are that during the period May 2013 to August 2013, the appellant have imported goods, inter alia, glass chatons and other miscellaneous items such as toys, stationery, furniture and LED lights, among others (hereinafter referred to as the 'said goods') in the following containers and under the following Bills of Entry:

SL.No	CONTAINER	BILL OF ENTRY
1.	HDMU 6818505	Bill of Entry No. 2128503 dated May 14, 2013
2.	HDMU 6779116	Bill of Entry No. 2097821 dated May 10, 2013
3.	HDMU 6576145	Bill of Entry No. 2923787 dated August 6, 2013
4.	HDMU 6838097	Bill of Entry No. 2922947 dated August 6, 2013
5.	CAXU 9050011	Bill of Entry No. 2806407 dated July 25, 2013
6.	KKFU 751708	Bill of Entry No. 2125264 dated May 14, 2013
7.	GESU 5093422	Bill of Entry No. 2814129 dated July 25, 2013

2.1. The Directorate of Revenue Intelligence Officers intercepted the said consignments at the port on the allegation that the goods found in the said containers did not entirely conform to the declarations made in the respective Bills of Entry. On the basis of the said allegations, the said containers and the imported goods therein were seized and investigation was initiated by the officers of DRI.

2.2. During the course of investigation, the sole proprietor of the appellant, Sri Rajkumar Nahata, was summoned and his statements were recorded from time to time under Section 108 of the Customs Act, 1962 (in short, "**the Act**"). The residential and office premises of Sri Rajkumar Nahata were also searched and seizures effected.

2.3. Pursuant thereto, goods imported in **3 containers** i.e. HDMU6818505, HDMU 6779116 and KKFU 7517708 imported against B/E Nos. 2128503, 2097821, 2125264 were provisionally released under Section 110A of the Act upon payment of duty of Rs. 70,00,000/- and issuance of PD Bonds and Bank Guarantees. The appellant claimed that in the said Bank Guarantee and PD bonds, the goods in relation to 4 containers were declared to have been released upon provisional assessment. However, in respect of the container CAXU 9050011, the appellant having noticed the same to have sustained damage, requested the Additional Director General, DRI, by his letters dated November 18, 2013, December 17, 2013 and July 30, 2014 to provide for examination of the goods contained therein in order to determine their condition and find out as to whether they were fit for use. As there was no response from the officers, the

said container CAXU 9050011 was abandoned and left unclaimed by the appellant.

2.4. Thereafter, on August 29, 2014, a Show Cause Notice under Section 124 of the Act read with Section 28 thereof was issued by the DRI authorities alleging mis-declaration of quantity, classification and valuation of the said goods forming part of the subject imported consignments. The appellant was accordingly asked to show cause as to why the said goods should not be confiscated under Section 111(i), (m) and Section 119 of the Act and as to why differential duties specified in the show cause notice allegedly short paid should not be recovered from them, in terms of Section 28 of the Act, along with interest thereon under Section 28AB of the Act and the amount already deposited by the appellant under protest should not be adjusted against the same. The appellant was also called upon to show cause as to why penalties as specified in the show cause notice should not be imposed upon them.

2.5. On adjudication, the Id. adjudicating authority has passed the impugned order dated April 27, 2018, confirming the allegations contained in the show cause notice and a differential customs duty demand of Rs. 1,04,97,688/- against the appellant under Section 28 of the Act, along with interest thereon under Section 28AB thereof. The Commissioner further held that the said goods were liable to confiscation as proposed in the show cause notice, but allowed redemption thereof upon payment of a total redemption fine of Rs. 2,16,00,000/- by the appellant, under Section 125 of the Act. Penalties of a total of Rs. 1,04,97,688/- under Section 114A and Rs.

1,42,00,000/- under Section 114AA of the Act have also been imposed upon the appellant.

2.6. A tabulation summarising the demands raised vide the said order in respect of the goods assessed is provided hereunder:

SL	CONTAINER	BILL OF ENTRY	DUTY DEMAND	PENALTY s.114A	PENALTY s.114AA	RF
1.	HDMU6818505	B/E No. 2128503 dt. May 14, 2013	25,87,313	25,87,313	50,00,000	72,00,000
2.	HDMU6779116	B/E No. 2097821 dt. May 10, 2013	20,91,759	20,91,759	50,00,000	52,00,000
3.	HDMU6576145	B/E No.2923787 dt. 6.8.2013	18,09,352	18,09,352	15,00,000	9,00,000
4.	HDMU6838097	B/E No.2922947 dt. 6.8.2013	13,98,082	13,98,082	10,00,000	7,50,000
5.	CAXU 9050011	B/E No. 2806407 dt. 25.7.2013	13,71,565	13,71,565	10,00,000	70,00,000
6.	KKFU 7517708	B/E No. 2125264 dt. 14.5.2013	5,94,493	5,94,493	5,00,000	2,50,000
7.	GESU 5093422	B/E No. 2814129 dt. 25.7.2013	6,45,124	6,45,124	3,00,000	3,00,000
TOTAL (figures in Rs)			1,04,97,688	1,04,97,688	1,43,00,000	2,16,00,000

2.7. The contentions raised by the appellant are summarized in the following paragraphs.

3. The Proceedings in respect of goods in 4 containers being covered under provisional assessment orders, the impugned proceedings against them, in respect of the said four containers are illegal, invalid and void ab initio.

3.1. The particulars of such Bills of Entry which are provisionally assessed as per the provisions of Section 18 of the Act, as claimed by the appellant and the respective containers containing the said goods are:

Sl	Container	Bill of Entry particulars	Duty Demanded
1.	HDMU 6576145	Bill of Entry No. 2923787 dated August 6, 2013	Rs. 18,09,352/-
2.	HDMU 6838097	Bill of Entry No. 2922947 dated August 6, 2013	Rs. 13,98,082/-
3.	CAXU 9050011	Bill of Entry No. 2806407 dated July 25, 2013	Rs. 13,71,565
4.	GESU 5093422	Bill of Entry No. 2814129 dated July 25, 2013	Rs. 6,45,124/-

3.2. The appellant submits that it is evident from the PD Bonds furnished that the above said bills of entry are provisionally assessed. They point out that it is clearly stated in the PD Bond that the goods were subject to provisional assessment; the said Bonds contain the declaration that the Assistant Commissioner of Customs/Principal Appraiser at Customs House, Kolkata, had "agreed to make provisional assessment" of the said goods. Thus, the appellant submits that the show cause notice issued in terms of Sections 28 and 124 of the Act, vis-à-vis the said provisionally assessed 4 consignments is premature. Hence, on this reason alone, it is the appellant's contention that the subject adjudication proceedings initiated thereby in respect of these 4 consignments listed above are liable to be dropped.

3.3. In support of the above view, the appellant relied on the following decisions:

- (i) *A.S. Syndicate (Warehousing) P. Ltd. Vs. Commissioner of Cus (Port) [2011 (267) ELT 469 (Cal)]*
- (ii) *Tata Sky Ltd. Vs. Assistant Commissioner of Customs, Kolkata [judgment of the Calcutta High Court dated January 9, 2013 passed in WP No. 14452 (W) of 2012.]*
- (iii) *International Computers Indian Manufacturers Ltd. Vs. Union of India [1981 (8) E.L.T. 632 (Del.)]*
- (iv) *Commissioner of C.Ex.& Customs Vs. ITC Ltd. [2006 (203) ELT 532 (SC)]*

(a decision involving pari materia provisions of the Central Excise Act, 1944).

3.4. It is submitted by the appellant that in fact, in the case of *ITC Ltd. (supra)*, the Hon'ble Supreme Court has specifically held that the Tribunal in that case was correct in its finding that the impugned show cause notices "were illegal". It is submitted that the same applies to the instant case also as regards the imported goods covered under the subject 4 consignments.

3.5. Further, the appellant also submits that the finding of the Commissioner that the said consignments were provisionally released under Section 110A of the Act and not provisionally assessed, is ex-facie contrary to records and devoid of any merit or substance; it is plain that in terms of Section 18 of the Act, the proper officer had deemed it necessary to provisionally assess the goods imported in the said 4 containers i.e. HDMU 6576145, HDMU 6838097, CAXU 9050011 and GESU 5093422; that inevitably, the "type of assessment" was declared provisional in the Show Cause Notice. The appellant stresses that the said order, in spite of acknowledging the contents of the Show Cause Notice has failed to appreciate that the provisional assessment can be undertaken at the discretion of the proper officer under Section 18(1)(c) of the Act, particularly given that HDMU 6576145, HDMU 6838097 and GESU 5093422 were being assessed on "First Check" basis.

3.6. Reference is drawn by the appellant to the CBEC's Customs Manual of Instructions 2013 wherein it is provided, in paragraph 4.3 thereof, that "Under the EDI system, the Bill of Entry, after assessment by the appraising group or first appraisal, as the case may be, needs to be presented at the counter for registration for examination in the import shed; a

declaration for correctness of entries and genuineness of the original documents needs to be made at this stage; after registration, the Bill of Entry is passed on to the Shed Appraiser for examination of the goods. Along with the Bill of Entry, the Customs Broker is required to present all the necessary supporting documents. After examination of the goods, the Shed Appraiser enters the report in EDI system and transfers first appraisal Bill of Entry to the appraising group and gives 'out of charge' in case of already assessed Bills of Entry. Thereupon, the system prints Bill of Entry and order of clearance (in triplicate)". In the present case however, the appellant submits that the said goods that were subject to first appraisal, following their examination were sent to the concerned Appraising Group for final assessment, which was not done prior to their detention by the DRI. It is also stated that an online enquiry as on July 30, 2018 reveals the appraisal status of the said Bills of Entry that were subject to first check as aforesaid, as "N.A", indicating thereby that the final assessment thereof was yet to be concluded; further, no out of charge direction was issued by the concerned Appraising Group in respect of any of the said Bills of Entry.

3.7. In this regard, the appellant relies on the decision in the case of *Thermax Ltd. Vs. Commissioner of Central Excise [2015 (317) ELT 100 (T)]*, wherein it has been held that differential duty demand, if not raised after finalisation of assessment but as a part of and in process of finalisation of assessment, retains its provisional character for every purpose and therefore the assessment continues to remain a provisional assessment.

3.8 In these premises it is the appellant's contention that the duty demand in respect of the goods imported under the said 4 Bills of Entry, amounting to Rs. 52,24,123/-, is ex-facie illegal, invalid, untenable and unsustainable. Consequently, they also contest the redemption fines imposed on the goods imported in the said 4 containers and penalties of a total of Rs. 52,24,123/- under Section 114A of the Act and Rs. 38 lakhs under Section 114AA of the Act, as being without authority of law, illegal, invalid and bad.

4. The classification of imported glass chatons by the said order is contrary to law, illegal, invalid and bad.

4.1 The appellant submits that it is a settled law that glass chatons are classifiable under Tariff Item 70181020 of the Customs Tariff and not under Tariff Item 70181090; the Commissioner has wrongfully classified the said goods under Tariff Item 70181090 in order to determine duty payable thereon under an increased tariff rate and the valuation of the glass chatons have also been increased ignoring settled principles in this regard. By this process, the appellant argues that a patently illegal demand of short paid customs duties, amounting to a total of Rs. 96,55,622, has been confirmed on the consignments of glass chatons imported under the related Bills of Entry.

4.2 It is also argued by them that the Commissioner proceeded on the erroneous premise that since the appellant has itself declared the classification of the glass chatons under Chapter Heading 70181090 of the Tariff Act that any such declaration made by the

importer in respect of classification of chatons is to be accepted in spite of the said goods being subject to reassessment by the DRI. The appellant submits that they had specifically maintained in their reply to the Show Cause Notice that the officers of DRI compelled them to file revised Bills of Entry purporting to classify glass chatons under Tariff Item 70181090 post examination of the said goods, in order to apply a higher rate of tariff and thereby inflate the differential duty demand thereon; that the Commissioner also ignored their specific contention on this issue of classification and arrived at the incorrect inference.

4.3 The appellant submits that it is now settled that Tariff Heading 70181020 is the most specific and appropriate head of classification for glass chatons. In this respect, the appellant placed their reliance on the following decisions:

- (i) *VMB Impex Vs. Commissioner of C.Ex. Cus & Service Tax [2015 (321) ELT 522 (T)]*

- affirmed by the Supreme Court in Commissioner Vs. VMB Impex, 2015 (321) ELT A202 (SC)
- (ii) *Starlite Corporation Vs. Union of India [1989 (39) ELT 538 (Bom)]*
- (iii) *Art Beads Pvt. Ltd. Vs. Commissioner of Cus (Import) [2013 (292) ELT 472 (T)]*

4.4. They also contend that no cogent reason has been given by the Commissioner for ignoring these binding decisions while passing the said order.

5. Valuation Methodology

5.1. The appellant has submitted that for justifying the revaluation of all the goods imported, both declared and allegedly undeclared, the Commissioner has relied on the following justifications and purported evidences:

(i) Rejection of transaction value declared in invoices submitted the appellant

The transaction value declared by the appellant was rejected in the case of imports from the supplier namely, Yiches Group Co., China, on the purported basis that the invoices presented by the appellant did not contain the purported address of the registered office of the supplier as allegedly obtained through an overseas enquiry via the COIN office at Hong Kong. Accordingly, all the transaction values of the goods imported in 5 containers, being particularly, HDMU6818505 against B/E No. 2128503 dt. May 14, 2013, HDMU6779116 against B/E No. 2097821 dt. May 10, 2013, HDMU6576145 against B/E No. 2923787 dt. 6.8.2013, HDMU6838097 against B/E No. 2922947 dt. 6.8.2013, were rejected in entirety, treating the invoices as unoriginal.

(ii) Glass Chatons Valuation

As per **paragraph 41.4.3** of the said order it has been noted that the value of Glass Chatons had been redetermined/determined by the DRI in the Show Cause Notice on the basis of:

- (a) Evidence purportedly seized from the computer of the appellant (Ref: Panchnama dt. 28.5.2013, and Excel sheets of purported packing lists and a Commercial Invoice of Zheijiang Entive Electric Co. Ltd. dated 22.5.2010 and a closing stock list
- (b) NIDB import data of 2012 relating to 3 Bills of Entry bearing B/E Nos. 813540 dt. 5.10.2012, Nhava Sheva, B/E No. 8023896 dated 24.9.2012, Delhi Air Cargo, B/E No. 6486910 dt. 9.4.2012, Mumbai Air Cargo
- (c) E-commerce websites,
- (d) DRI Alert Circular dt. 23.10.2012 and a purported Complaint dt. 27.6.2011 of the All India Glass Beads Manufacturers and Traders Association, which was circulated by Circular bearing F. No. SG/Misc-56/LT/2010-SIIB (I) dated 11.7.2011 by the Deputy Commissioner of Customs, SIIB (Import), Officer of the Commissioner of Customs (Import), Mumbai

However, the appellant submits that the Commissioner, has proceeded to revalue the glass chatons under Rule 9 of the Valuation Rules holding that the same could not be valued under Rules 4 since the stated documents sought to be relied upon by the DRI could not be deemed to be contemporaneous in nature within the meaning thereof; that in spite of the non-contemporaneous nature of the evidence put forward by the DRI as admitted by the Commissioner in **paragraph 41.4.4** of the said order, the Commissioner held that the said 3

Bills of Entry of 2012 could be considered for the purpose of revaluing the glass chatons under Rule 9 of the Valuation Rules instead.

(iii) LED Emergency Light Valuation

In **paragraph 41.5** of the said order, it has been alleged that the LED Emergency Lights imported in the said containers, were revalued on the basis of the following materials, which the Commissioner found acceptable purported as per Rule 9 of the Valuation Rules:

- (a) Sale data evidence purportedly seized from the computer of the appellant (Ref: Panchnama dt. 28.5.2013 and Excel sheets of purported packing lists and a Commercial Invoice of Zheijiang Entive Electric Co. Ltd. dated 22.5.2010 and a closing stock list
- (b) B/E Nos 2184307 dt. 25.5.2013 of Mumbai Port and
- (c) Local market survey allegedly undertaken by the DRI

(iv) HID Lamp Valuation

In **paragraph 41.5.1** of the said order, it has been alleged that HID Lamps were valued by the DRI using similar means used to value the LED Emergency Lights, and that such method was acceptable to the Commissioner as per Rule 9 of the Valuation Rules. The appellant submits that DRI has relied only on purported retail/wholesale prices obtained from local market survey for valuing the said lamps, since there was no contemporaneous NIDB data available for such goods and e-commerce

websites such as www.vicky.in and www.ebay.com showed that the prices of such goods varied significantly with wide price differences.

(v) Miscellaneous Items Valuation

In respect of other miscellaneous items imported in the said 7 containers, the said order in **paragraph 41.5.2** thereof, alleges that the same have been valued on the basis of the following materials:

- (a) Evidence purportedly recovered from the appellant's computer (Ref: Panchnama dt. 28.5.2013, and Excel sheets of purported packing lists and a Commercial Invoice of Zheijiang Entive Electric Co. Ltd. dated 22.5.2010 and a closing stock list
- (b) NIDB data in respect of "some items"
- (c) Local market enquiry conducted in respect of "some common items"

5.2. The appellant submits that the manner in which the valuation of the imported glass chatons has been arrived at in the said order is erroneous; the purported value of glass chatons had been sought to be arrived at in the show cause notice under Rule 4(1)(b) of the Valuation Rules, considering the value found in three (3) Bills of Entry dated October 5, 2012, September 24, 2012 and April 9, 2012 taken allegedly from the NIDB database of 2012. The appellant also submits in this regard that in addition, reliance was

also placed upon an alleged complaint dated June 27, 2011 of All India Glass Beads Manufacturers and Traders Association and a Circular dated October 22, 2012 issued by the Commissioner of Customs, Jodhpur; however, no copies of these Bills of Entry or the complaint dated June 27, 2011 or Circular of Commissioner of Customs, Jodhpur dated October 22, 2012 was enclosed as relied upon documents nor copies thereof were made available to the appellant during the course of the adjudication proceedings. Hence, it is their contention that no reliance can therefore be placed nor value determined on the basis of such alleged documents, as per settled principles of law; that the Commissioner, however, has proceeded to rely upon the same and further, by travelling outside the scope of the show cause notice, proceeded to revalue the glass chatons under Rule 9 of the Valuation Rules holding that the same could not be valued under Rules 4 since the stated documents sought to be relied upon could not be deemed to be contemporaneous in nature. The appellant further points out that in paragraph 41.4.4 of the said order, the Commissioner held that the said 3 Bills of Entry of 2012 could be considered for the purpose of valuation under Rule 9 of the Valuation Rules instead, an incredible conclusion which has no legal sanctity.

5.3. The appellant's contention on this score is that it is well settled by the decisions of the Supreme Court and the Tribunal that the transaction value declared cannot be rejected merely on the basis of NIDB data. In support of this contention, the appellant relied on the following decisions:

- (i) *Eicher Tractors Ltd. Vs. Commissioner of Customs [2000 (122) ELT 321 (SC)]*
- (ii) *Agarwal Foundries (P) Ltd. Vs. Commissioner of Customs [2020 (37) ELT 859(T)]*
 - *Affirmed by Supreme Court in Commissioner Vs. Agarwal Foundries (P) Ltd. [2020 (371) ELT A 295(SC)]*
- (iii) *Commissioner of C.Ex. Vs. Om Sairam Trading Co. [2009 (241) ELT 536 (T)]*
- (iv) *Topsia Estate Pvt. Ltd. Vs. Commr. of Cus. (Import-Seaport) [2015 (330) ELT 799 (T)].*
- (v) *Panchagni Energies Pvt. Ltd. Vs. Commissioner of Customs [2024 (387) ELT 334(T)]*

5.4. Moreover, it is submitted that the glass chatons were imported undisputedly between May 2013 and July 2013. The Bills of Entry relied upon (taken from the NIDB data) are that of April 2012, September 2012 and October 2012; the complaint of All India Glass Beads Manufacturers and Traders Association showing alleged value of glass chatons is of June 2011, whereas the circular issued by the Commissioner of Customs, Jodhpur is dated October 22, 2012; thus, it is the appellant's argument that none of these documents/data, on application of the settled principle in this regard, can be said to be contemporaneous evidence of value of glass chatons imported. Reliance in this regard is placed on *Gypsie Impex Vs. Commissioner of Customs [(2024) 17 Centax, 136(T)]*. The appellant submitted that the Ld. Commissioner has himself held that the valuation could not be done under Rule 4 of the Valuation Rules, as proposed in the show cause notice, but had to be valued in terms of Rule 9 thereof.

5.5. Further reliance is placed by the appellant on the decision in *Commissioner of Customs Vs. J.D. Orgochem Ltd. [2008 (226) ELT 9 (SC)]* wherein it has been held by the Supreme Court that though transaction value declared by importer is not binding on the Customs authorities, contemporaneous evidence has to be produced to reject the invoice value and the onus in this respect is on the Department.

5.6. Thus, the appellant submits that unless such contemporaneous evidence is produced by the Revenue, the transaction value declared has to be accepted. In support of this claim, the appellant relied on the following decisions:

(i) *Commissioner of Customs Vs. Mahalaxmi Gems [2008 (231) ELT 198 (SC)]*

(ii) *Commissioner of Customs Vs. J.D. Orgochem Ltd. (supra).*

(iii) *Bharat Marketing Vs. Commissioner of Customs [2015 (327) ELT 662 (T)]*

(iv) *PNP Polytex Pvt. Ltd. Vs. Commissioner of Cus. [2015 (318) ELT 649 (T)].*

(v) *Commr. of Cus (Preventive) Vs. Tanmay International [2018 (363) ELT 181 (T)].*

5.7. The appellant also submits in this context that the Valuation Rules provide that the domestic price/value of goods cannot form the basis for determination of value of imported goods and hence, reliance in the impugned order upon the values purportedly declared of glass chatons in the complaint dated June 27, 2011 of All India Glass Beads Manufacturers and Traders Association is thus ex-facie contrary to law.

5.8. It is stated by the appellant that the allegation and finding of undervaluation of glass chatons and redetermination of the values thereof have been done on the basis of the following materials in the show cause notice and the said order:

- (i) An excel sheet titled "packing list" carrying the date June 2010 and a purported commercial invoice dated September 25, 2012 relating to the sale of Table Lamp bearing the name of the consignee "Sanjay Novelty";
- (ii) Information allegedly obtained from the National Import Database (NIDB);
- (iii) Allegedly relevant e-commerce websites; and
- (iv) DRI Alert Circulars.

5.8.1. It is their submission that the excel sheet bearing the title "packing list" purportedly seized from the computer of the appellant's office premises, was not a packing list per se and the same bore the date June 2010, almost 2-3 years prior to the said period; the excel sheet does not bear the stamp, seal or signature of any entity and appears to be a draft document stored on the hard drive of the computer seized from the appellant's office premises. As recorded in the statement dated June 13, 2013 under Section 108 of the Act of Raj Kumar Nahata, the appellant submits that they are unaware of any transaction related to the contents of such packing list; that the show cause notice alleged (in page 9

thereof) that the excel sheet contained a container reference number KKFU 7279549 which allegedly contained cargo that was imported by the appellant; there is nothing to indicate however that the said cargo had any relation to the contents shown in the packing list or that the entire list of items shown in the excel sheet had been imported by the appellant.

5.8.2. The appellant also submitted that the commercial invoice issued to the consignee "Sanjay Novelty", and allegedly obtained from the computer seized from the appellant's office premises, does not appear to contain any seal, stamp or signature of any issuing authority; furthermore, the consignee is not related to the appellant in any manner whatsoever. The appellant submits that this fact was duly recorded in the statement of R.K. Nahata dated June 13, 2013 recorded by the DRI authorities and forming a part of the RUDs.

5.8.3. Further, the appellant submits that the excel sheet and the commercial invoice are random documents totally unrelated to the facts and circumstances of the instant case; these cannot be considered to be relevant evidentiary material. It is also the appellant's case that there is also no corroborative evidence by way of a statement or otherwise that confirms the authenticity and reliability of the said documents purportedly retrieved from the computer at the appellant's office premises; the information allegedly obtained from NIDB, e-commerce websites and Alert Circulars also disclose significant variation in price. In some cases, the price variation is almost 100 times. For instance, at page 548 of the RUD to the show cause notice, "Head Massager" is valued in respect of one Bill of Entry at

Rs. 2.47 per unit. In the premises, as per settled principle, such vastly varied data cannot form the basis for alleging undervaluation of goods and consequent redetermination of value thereof. It is contended that significantly, no reasoning or basis has been disclosed in the said order as to how the prices/values of the subject goods were selected from the NIDB data available and/or from other sources.

5.9. In view of the above submissions, the appellant contends that the values of glass chatons declared by them is correct and accordingly, the demand of differential duty of Rs. 96,55,622/- on glass chatons is erroneous and untenable.

6. The valuation of the remaining imported goods under the subject Bills of Entry are also contrary to the evidence on record and hence untenable and unsustainable.

6.1 In this regard, it is submitted by the appellant that Belts were imported in two consignments [Bill of Entry No. 2125264 dated 14.05.2013 (KKFU7517708) and 2814129 dated 25.07.2013 (GESU5093422) – incorrectly mentioned as GESU5093433]; No mis-declaration was found in these consignments. However, they would submit that it is evident from Annexure-F and Annexure-G that DRI in its show cause notice proposed to reject the declared value and proposed redetermination of value at Rs. 15 per pc under Rule 9 of the Valuation Rules; it is also submitted that the basis of market enquiry, if any, has not been disclosed by the DRI; on the other hand, the importer has submitted several Bills of Entry Nos., such as, 9886942 dated 17.04.2013 (USD 0.48 per

doz) and 2721762 dated 16.07.2013 (USD 0.05 per pc) both from Kolkata Port, Bill of Entry Nos. 4556460 dated 05.02.2014, 6230471 dated 24.07.2014; that in spite thereof, the Commissioner has wrongfully confirmed demand of short paid customs duty, on such patently erroneous premises. It is the appellant's submission on this count that it is a settled principle that the value of the imported goods shall be redetermined using Rules 4 to 9 sequentially; when the value under Rule 4 and Rule 5 are available, DRI cannot resort Rule 9 to redetermine the value of belt and that too without disclosing the details of market enquiry. Therefore, it is pleaded that the value of the belt imported is required to be assessed on declared value thereof and hence, the demand of differential duty on the belts is also unsustainable.

6.2. Furthermore, it is contended that there has been complete non-compliance and ignoring of the settled principles of valuation of the other imported goods also, which is illustrated from the basis on which it has been alleged in the show cause notice that there has been alleged undervaluation of LED Super Capacity Emergency Light (in short, "**LED Lights**") imported by the appellant under Bill of Entry No. 2128503 dated May 14, 2013 (Container No. HDMU6818505) and redetermining the purported value thereof in the show cause notice; Rule 9 of the Valuation Rules has been applied in spite of the fact that evidence of contemporaneous imports of like and similar goods were available to the DRI authorities, which evidenced the correctness of the declared values of the said goods. Applying Rule 9, the show cause notice relied upon an alleged commercial invoice of a Table Lamp purportedly retrieved from the

appellant's computer, which is no way similar or identical to an emergency light, for revaluing the same. Moreover, the appellant specifically submits that the said commercial invoice annexed in page 179 of the RUD to the show cause notice, bears no mark, sign, seal or signature of any issuing entity, and records the name of a different consignee, having relations with the appellant. It is their argument that it is settled law that such a document cannot be relied upon to allege undervaluation of goods and to reject the declared value thereof; in addition, herein also domestic wholesale price has been taken into account for justifying the allegation of undervaluation of goods and redetermining the value thereof in spite of the Valuation Rules explicitly prohibiting such reliance upon local market price of goods, whether in wholesale or retail. In spite thereof, they submit that the Commissioner has erroneously upheld the said allegation and the demand of Rs. 1,51,433/- as short paid customs duty. It is thus the appellant's contention that this is completely contrary to law and hence untenable.

Arguments of the Appellant in respect of Non-declaration, Valuation and Confiscation of goods

7. Concealment of goods

7.1. It is the appellant's submission that in respect of containers HDMU6818505 and HDMU6779116, the allegation of concealment is misconceived; it is their case that the discrepancy in goods occurred because the overseas supplier, Yiches Group Co. Limited, China mistakenly mixed articles meant for other importers with the appellant's consignments, which is evident from the Reply dt. 11.5.2016 submitted by

them to the SCN. They state that upon discovering this, the supplier issued corrected original invoices which were duly filed before the Customs authorities on June 17, 2013. The appellant proprietor also confirmed this position in his statements dated 13.6.2013 and 17.6.2013 that the undeclared items were not ordered by the appellant and were in fact meant for another importer by the supplier. Thus, the appellant submits that there was no deliberate suppression or non-declaration in respect of the goods contained in these two containers.

7.2. As regards container CAXU9050011, the appellant submits that the allegation of undeclared glass chatons is equally untenable. They have referred to **paragraph 6** of the impugned order wherein it has been recorded that the Bill of Entry No. 2806407 dated 25.7.2013, "**contained declaration of all the goods found on examination**"; that the Bill of Entry filed by the appellant fully matched the results of the physical examination by Customs. The appellant submits in this regard that the charge of concealment was based solely on a **bill of lading** copy obtained from the CFS, which cannot override the Bill of Entry — the statutory declaration under the Act. In support of this view, the appellant relied on the decision in the case of *Mangalore Refinery & Petrochemical Ltd Vs. CC, Mangalore* [(2015) 323 ELT 433 (SC)] which decision of the Hon'ble Supreme Court has been followed in, inter alia, *Reliance Industries Ltd. Vs. Commissioner of Customs (Prev.)* [(2023) 13 Centax 77(T)]. Thus, the appellant submits that once the declared contents tallied with actual examination, there could be no finding of non-declaration.

7.3. In respect of the goods imported in the container CAXU9050011 imported against Bill of Entry No. 2806407 dated July 25, 2013, the appellant submits that a demand of differential duty of Rs. 13,71,565/- has been made, in spite of the fact that the appellant has not taken delivery of the said goods due to the same being damaged. It is their submission that they had, vide letters dated November 18, 2013, December 17, 2013, July 30, 2014, September 11, 2014, informed the authorities of the damaged state of the said container, and had requested an examination of the goods contained therein. In these set of facts, the appellant argues that they cannot be required under the Act, to pay duty against the said goods which the appellant has not been able to clear yet. In support of this contention, they rely on the decision in the case of *Symphony Services Corp India Pvt. Ltd Vs. CC, Bangalore [(2008) 228 ELT 300 (Tri. -Bang)]*, as affirmed in *CC, Bangalore Vs. Symphony Services Corp India Pvt. Ltd. [(2012) 275 ELT 369 (Kar.)]*.

7.4. In this context, the appellant adds that in paragraph 12.4 of the reply to the Show Cause Notice, the appellant had specifically brought to the attention of the Commissioner, that the seizure panchnamas for Container Nos. HDMU6576145 and HDMU6838097 prepared at the time of inspection did not correspond with the particulars in the annexures to the show cause notice, where the undeclared items were listed and valued; this internal inconsistency shows that the inventory of undeclared items was disputed and required reconciliation with the Panchnamas which the Commissioner failed to do and deal with in the said order. It is the appellant's submission that this clearly demonstrates that the purported chart(s) annexed to

the SCN on the basis whereof the allegation of misdeclaration and undervaluation has been made against the appellant in the SCN in respect of the goods imported in the subject containers are wholly erroneous, contrary to law, untenable and unsustainable.

7.5. It has also been submitted by the appellant that for the goods imported in the Container No. GESU5093422 (not GESU5093433 as wrongly mentioned in the said order), on a completely wrongful and illegal basis, prices quoted as RSP on stickers allegedly attached to the goods imported has been taken as the basis to allege that the RSP of the said goods imported declared by the appellant was incorrect and accordingly the said goods **have been alleged to be undervalued**. They contend that this allegation has been made completely ignoring the fact that the RSP stickers were never pasted by the appellant nor do they belong to it, and were allegedly found on inspection by the DRI. First, no specimen copies or examination report or panchnama provides any evidence of these stickers being attached; second, even presuming that the goods had RSP stickers, it is to be noted that such RSPs will pertain to **values** in the exporting country, and not that declared by the appellant. It is further contended that there is also no corroborative evidence by means of any confession or any witness statement that would indicate that the RSP stickers contained the actual value of the goods, as opposed to the invoices submitted by the appellant; the stickers themselves as aforesaid, are not incorporated in the RUDs to the Show Cause Notice. In particular, the appellant submits, a perusal of the panchnama dated 12.9.2013

drawn in relation to the Container No. GESU5093422 shall reveal that there is absolutely no mention of any RSP stickers being found on the goods in the said container; notably, only representative samples of goods stuffed in the container were extracted whilst the rest remained inside the container. It is pointed out that there is no examination report of any sort that reveals any presence of RSP stickers on the said goods, and none has been referred in the said order passed by the Commissioner or in the Show Cause Notice. In any event, the appellant submits that as maintained by the Supreme Court in *Eicher Tractors Ltd. v. CC, Mumbai [2000 (122) ELT 321 (SC)]*, (para 22), the price list of the foreign supplier/vendor is not a proof of transaction value and cannot be a sole basis for rejecting the transaction value of the goods declared by the assessee.

8. Miscellaneous Items Valuation

8.1 In this regard, the appellant submits that the said order purports to rely on the said excel sheets allegedly obtained from the computers and hard drives of the appellant; for some items, NIDB data has purportedly been used, although no reference to the contemporaneous Bills of Entry have been relied upon or disclosed by the Commissioner and for some other items, the said quotations obtained from the alleged local market survey, have been purportedly relied upon for rejecting the transaction value.

8.2 It is the appellant's submission on this score that without any reference to the corresponding Bills of Entry purportedly obtained from NIDB for determining the contemporaneous value of goods imported, it is not possible to actually verify how such

purported NIDB data has been relied upon in the instant case; the excel sheets were not accompanied by any metadata indicating its source or its date and time of creation. They also contend that there is no corroboration of these excel sheets, given that the appellant proprietor has clearly denied the applicability of these sheets to the imports and the same even otherwise contain a date of June, 2010, several years prior to the subject imports.

8.3. As regards the local market survey data, the appellant submits that the quotations are unauthenticated, unsealed or unsigned, and contain significant price variability, and are hence unreliable; even otherwise, which values from these quotations have been adopted for the purpose of reassessing all the miscellaneous items imported is not apparent from the annexures to the Show Cause Notice or from the said order.

8.4. Even otherwise, the appellant submits that items such as belts were imported in two consignments [Bill of Entry No. 2125264 dated 14.05.2013 (KKFY7517708) and 2814129 dated 25.07.2013 (GESU5093422)]; that no goods were found concealed in these containers. However, it is evident from Annexure-F and Annexure-G that DRI in its show cause notice proposed to reject the declared transaction value and proposed redetermination of value at Rs. 15 per pc under Rule 9 of the Valuation Rules; that the basis of market enquiry, if any, has not been disclosed by the DRI. On the other hand, the importer has submitted several Bills of Entry Nos., such as, 9886942 dated 17.04.2013 (USD 0.48 per doz) and 2721762 dated 16.07.2013 (USD 0.05 per pc) both from Kolkata Port, Bill of Entry Nos. 4556460

dated 05.02.2014, 6230471 dated 24.07.2014; in spite thereof, the Commissioner has wrongfully confirmed demand of short paid customs duty, made based on such patently erroneous premises. It is the appellant's case that it is a settled principle that the value of the imported goods shall be redetermined using Rules 4 to 9 sequentially; when the value under Rule 4 and Rule 5 are available, DRI cannot resort to Rule 9 to redetermine the value of items and that too without disclosing the details of market enquiry.

8.5. Accordingly, the appellant submits that there can be no basis for rejecting the transaction value of the said goods.

9. Declared value of 5 consignments imported under Bills of Entry Nos. 2128503 dated 14.05.2013, 2097821 dated 10.05.2013, 2806407 dated 25.07.2013, 2923787 dated 06.08.2013 and 2922947 dated 06.08.2013.

9.1 In respect of the goods imported under the aforesaid Bills of Entry, the appellant puts forth the contention that the finding of misdeclaration of quantity, value, description, etc., thereof in the impugned order is based on incorrect materials on record; they submit that in all these cases, the relevant records would show that revised invoices were duly filed by the appellant on June 18, 2013; the said invoices contained complete details of all goods imported, their respective description, quantities and values. In view of the said revised invoices, copies thereof are contained in Annexure "D" to the reply to show cause notice; it is thus submitted by the appellant that the finding of mis-declaration of the goods does not and cannot survive.

9.2 Further, the appellant have also submitted that the discrepancy found on initial inspection of the goods contained in the said containers was not due to any fault on the part of the appellant. They explained that the supplier, being Yiches Group Co. Limited, China, in the instant case, had despatched the appellant's consignments by combining with their goods of other importers by mistake; thus, goods that the appellant had not purchased or ordered for import, and consignments which were meant for other importers, were despatched to the appellant by mistake; that on coming to know about the discrepancy in the said consignments in May, 2013, the appellant had sought clarification from the supplier from whom the appellant had purchased the said goods, being Yiches Group Col Limited, Hong Kong, who replied explaining that the goods meant for other importers had been combined with the appellant by error, and were therefore not reflected in the import documents made available to the appellant. Subsequent to learning of such erroneous despatch, the supplier issued replacement invoices by email in respect of consignments particularised under Sl. Nos. 1 and 2 of the said chart, copies of which were duly submitted to the Customs authorities on June 17, 2013.

9.3. The appellant had also informed the DRI authorities of the aforesaid error committed by the supplier. In support, the appellant relied on the statement recorded on June 13, 2013 of the appellant's sole proprietor, Mr. Raj Kumar Nahata who, in answer to Question 11 regarding the alleged concealed articles found with the said consignments, stated that the supplier had informed that the subject

consignments/goods, allegedly concealed, were actually meant for a different importer. However, the appellant states that in both the show cause notice and the impugned order, the said statement which has been recorded under Section 108 of the Act, has been completely omitted by the adjudicating authority, thus rendering the finding of misdeclaration erroneous.

10. Re: Container No. CAXU9050011 and goods imported therein.

10.1. In respect of the goods imported under Bills of Entry referred under the above stated container, the allegation is that the glass chatons imported thereunder were allegedly concealed and not declared in the bill of lading and that there has been undervaluation of the said goods.

10.2. It is submitted by the appellant that both the allegations have no substance or merit; the Bill of Entry in respect of the subject consignment was filed on July 25, 2013 and the contents of the said Bill of Entry matches in all respect with the result of the physical examination of the said goods. The appellant contends that a purported bill of lading allegedly obtained from the Container Freight Station cannot render the contents of the Bill of Entry filed by the appellant irrelevant and no allegation of misdeclaration of quantity of the subject goods imported can be made on the basis of such purported bill of lading; in fact, it is their stand that the import documents submitted by the appellant, including the bill of lading, contained correct declarations which are consistent with the inventory drawn up by the Customs authorities on physical examination of the

imported goods. Hence, the appellant contends that the charge of mis-declaration made in the show cause notice and confirmed by the impugned order is wholly erroneous, contrary to law and unsustainable. The appellant submits that the aforesaid bills of lading purportedly obtained from CFS shows the gross weight of the goods imported, which has not been disputed in the show cause notice; that it is an established principle, that the quantity of goods imported cannot be determined on the basis of the particulars shown in the bill of lading, since what is relevant is the quantity that is actually received at the load port, and not what was despatched from the discharge port. It is submitted that the bill of lading does not reflect the quantity of goods actually received at the time of import as held by the Hon'ble Apex Court in the case of *Mangalore Refinery & Petrochemical Ltd Vs. CC, Mangalore [(2015) 323 ELT 433 (SC)]* which decision of the Hon'ble Supreme Court has been followed in, inter alia, *Reliance Industries Ltd. Vs. Commissioner of Customs (Prev.) [(2023) 13 Centax 77(T)]*.

10.3. The appellant submits that in respect of the goods imported in the above stated container, a demand of differential duty of Rs. 13,71,565/- has been made in spite of the fact that the appellant has not taken delivery of the said goods due to the same being damaged. The appellant had not only informed the proper officer of this development immediately when they came to know about the damage. They pointed out that by letters dated November 18, 2013, December 17, 2013, July 30, 2014, September 11, 2014, they had informed the authorities of the damaged state of the said container, and had

requested an examination of the goods contained therein; since they have not received any response from the authorities, the appellant had abandoned the goods imported in the said container. Hence, it is contended that the appellant cannot be required to pay duty against the said goods, as held by the Tribunal, Bangalore in the case of *Symphony Services Corp India Pvt. Ltd Vs. CC, Bangalore [(2008) 228 ELT 300 (Tri. – Bang)]* as affirmed in *CC, Bangalore Vs. Symphony Services Corp India Pvt. Ltd. [(2012) 275 ELT 369 (Kar.)]*. It has been urged that in spite of the aforesaid, the appellant had to deposit a part of the customs duty covered by the subject consignment on June 14, 2013 of Rs. 11,00,000/-, on June 17, 2017 of Rs. 4,00,000/-, on June 20, 2013 of Rs. 35,00,000/- and on June 25, 2013 of Rs. 20,00,000/- Accordingly, it is contended that this amount ought to be refunded to the appellant.

11. Duty quantification

11.1. The appellant submits that an arbitrary rate of 28.44% (inclusive of BCD, CVD, Ed. Cess and Additional Duty) has been applied in respect of all the miscellaneous imported goods, irrespective of their classification and applicable tariff rate as prescribed in the Customs Tariff Act, 1975. Hence, it is contended that such calculation of duty demanded has no legal basis whatsoever and, hence, is liable to be set aside in its entirety.

11.2. Consequently, it is the appellant's contention that the duty demands confirmed by the said order and interest thereon are unsustainable.

11.3. The appellant submits that the aforesaid evidences conclusively establishes that the duty

demands confirmed by the said order are contrary to law; as such, the interest demands confirmed are also unsustainable; neither Section 28 nor Section 28AB of the Act are applicable. Consequently, they contend that the order of appropriation of the amounts deposited by the appellant during the course of investigation towards the said wrongfully confirmed duty demands are unsustainable.

12. Penalties imposed by the said order are also contrary to law.

12.1 In view of the aforesaid submissions, the appellant contends that the conditions for imposing penalty under Section 114A or Section 114AA of the Act cannot also be said to have been satisfied in the instant case. Thus, they pray for setting aside the penalties imposed in the impugned order in terms of Section 114A and/or 114AA of the Act.

13. On the other hand, the Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order. It is his submission that the appellant has not declared many goods imported in the said consignments; that there are lot of variations in the goods declared in the bills of entry and the actual goods available at the time of examination. He contends that the appellant has not declared the glass chains imported in two consignments and the glass chains were also found to be undervalued as evidenced by the value of contemporaneous import of similar goods.

13.1. Regarding the claim of the appellant that the goods in respect of four containers were provisionally assessed, the Ld. Departmental Representative submits that the goods were only provisionally

released under Section 110A of the Customs Act, 1962 and there was no provisional assessments as claimed by the appellant.

13.2. It is the further submission of the Ld. Authorized Representative of the Revenue that the mis-declaration and under valuation of the glass chains and other goods were admitted by the Director in various statements. Accordingly, he submits that the Ld. Adjudicating authority has confirmed the demands of customs duties along with interest and imposed penalties on the basis of material evidences available on record.

13.3. Thus, the Revenue prays for rejecting the appeal filed by the appellant by upholding the impugned order.

14. Heard both sides and perused the appeal records.

15. We observe that the appellant have imported glass chatons and other miscellaneous items such as toys, stationery, furniture and LED lights, amongst others, in seven containers and filed bills of entry in respect of each container separately. Officers of the DRI intercepted the containers and initiated investigation on the allegation of mis-declaration and undervaluation. On completion of the investigation, a Show Cause Notice was issued, which ultimately resulted in passing of the impugned order dated April 27, 2018, wherein the Ld. adjudicating authority has confirmed a differential customs duty demand of Rs.1,04,97,688/- against the appellant, along with interest, and also imposed penalties on the appellant under Section 114A and 114AA of the Customs Act.

The goods were confiscated but allowed to be redeemed on payment of redemption fine.

15.1. In respect of goods imported in the following 4 containers, we find that the appellant's submission is that the said bills of entry were provisionally assessed on execution of PD bonds as required under Section 18 of the Customs Act, 1962 and hence the demand confirmed in the impugned order would be unsustainable, as the said Bills of Entry were not finally assessed. The particulars of such Bills of Entry and the respective containers containing the said goods are as under: -

1.	HDMU 6576145	Bill of Entry No. 2923787 dated August 6, 2013
2.	HDMU 6838097	Bill of Entry No. 2922947 dated August 6, 2013
3.	CAXU 9050011	Bill of Entry No. 2806407 dated July 25, 2013
4.	GESU 5093422	Bill of Entry No. 2814129 dated July 25, 2013

[GESU 5093422 has been incorrectly mentioned as GESU 5093433 in the impugned order]

15.2. We observe that the goods imported in 4 containers, namely, HDMU 6576145, HDMU 6838097, CAXU 9050011 and GESU 5093422

(incorrectly mentioned as GESU 5093433), imported against Bills of Entry Nos. 2923787, 2922947, 2806407 and 2814129 respectively, were assessed provisionally, as acknowledged at paragraph 17.5 of the impugned Order-in-Original. For ease of reference, the relevant portion of the said order is reproduced below: -

	DMU6779116	2097821 dtd. 10/05/13	3,89,669	1,10,747	77,44,394	22,02,506	20,91,759	Final	B-1, B-1 & B-3
	CAXU9050011	2806407 dtd. 25/07/13	25,91,99 1	7,37,162	74,14,650	21,08,727	13,71,565	Provisio nal	C-1 & C-2
4	HDMU6576145	2923787 dtd. 06/08/13	31,71,91 2	9,16,954	95,86,169	27,26,306	18,09,352	Provisio nal	D-1 & D-2
5	HDMU6838097	2922947 dtd. 06/08/13	27,65,25 6	7,99,778	77,28,058	21,97,860	13,98,082	Provisio nal	E-1 & E-2
6	KKFU7517708	2125264 dtd. 14/05/13	7,79,336	2,24,788	28,69,510	8,16,089	5,94,493	Final	F
7	GESU5093433	2814129 dtd. 25/07/13	9,48,447	2,74,561	31,61,280	9,19,685	6,45,124	Provisio nal	G
8	Goods seized in the godown of M/s Akash Exports	Diff. Bills of Entry as per Annexure - I	35,09,47 2	11,60,391	75,89,608	21,58,485	9,98,094	Final	H

[Ref. paragraph 17.5, page 29 of the impugned Order-in-Original dated 27.04.2018]

15.2.1. However, we find that due to one of these four containers i.e., CAXU9050011 imported against the Bill of Entry No. 2806407 dated 25.7.2013, being damaged, the appellant refused to take possession of the goods in such damaged container without prior inspection of the same, in the presence of the Department and requested examination of the goods therein. As the Department did not oblige and the appellant's request was not accepted, the goods imported in this container were abandoned by the appellant and the goods therein were never claimed by them.

15.3. It is a fact that the appellant has cleared the goods imported under the said four bills of entry after furnishing PD bonds as required under Section 18 of the Customs Act, 1962. The contention of the Revenue is that the said goods were not provisionally assessed, but only released provisionally. We do not agree with the contention of the Revenue. Although the goods have been provisionally released under Section 110A, it is an admitted position that the assessments of the goods in the above said four containers were provisional in nature, as seen from the Show Cause Notice as well as the adjudication order. The appellant has also furnished documentary evidence in support of their contentions. Sample Copy of one such Bank Guarantee executed by the appellant in this regard along with the relevant correspondences issued by the appellant to the Department upon execution of the PD Bond / Bank Guarantee, are reproduced below: -



पश्चिम बंगाल WEST BENGAL

P 796298

Bank Guarantee No. - 13147 Bk 000136

Date of Issue : 08-11-2013

Amount : Rs. 11,43,375/-

Bank Guarantee Valid up to 07-11-2015



To
The President of India
Acting through the Asstt. / Deputy Commissioner of Customs
For : Appraising Group: III
Customs House, 15/1, Strand Road,
Kolkata - 700 001.

Whereas the president of India acting through The Asstt. Commissioner of Customs, Appraising Group : III, Custom House, Kolkata, Ministry of Finance, Govt. of India (hereinafter referred to as the Govt.) has agreed to make Provisional Assessment of goods described in the schedule below imported by M/s. Akash Exports. 4, Clive Row, 4th Floor, Mukti Chamber, Kolkata - 700 001. India hereinafter referred to as Importer pending submission of further enquires.

For KARNATAKA BANK LTD.

Senior Branch Manager
Overseas Branch, Kolkata

B. CHANDRASHEKARA
SENIOR BRANCH MANAGER
STAFF - No. 4043 / P.A. No. 1588

For KARNATAKA BANK LTD. Contd.p/2

Officer / Manager
Overseas Branch, Kolkata
RAYALA RAMESH BABU
OFFICER
ST. NO. 8967, P.A. NO. 3785

Verified with Original
Karnataka Bank Ltd.
Senior Branch Manager
Overseas Br., Kolkata

448

Bank Guarantee No. - 1314726000136

Date of Issue : 08-11-2013

Amount : Rs. 11,43,375/-

Bank Guarantee Valid up to 07-11-2015

SCHEDULE

1. Bill of Entry No. & Date	:	2814129 & 25-07-2013
2. Name of the Vessel	:	Unisea
(A) Rot. No.	:	2060607
(B) Line.	:	294
3. Description of Goods	:	Ordinary Belt, Purse, Clock
4. No. of Cartons & Pkgs.	:	586 CTNS
5. Assessable Value of the Goods	:	3176040.00
6. Rate of Duty Leviable	:	10%+12%C.V+3%+4%SAD
7. Admitted Duty Payable	:	274561.00

1. We, Karnataka Bank Ltd. Park Street Branch, Kolkata, (hereinafter referred to as the Bank) at the request of the Importer, do hereby unconditional and irrevocable undertake to offer Government and amount not exceeding Rs. 1143375.00 (Rupees Eleven Lac Fourty Three Thousand Three hundred Seventy Five Only) against any loss, damage caused to or suffered by the Government by reason of failure on the part of the said Importer in respect of the consignment mentioned in the schedule.

2. We, Karnataka Bank Ltd. Park Street Branch, Kolkata, do hereby undertake to pay the amount due and the amount due and payable under this Guarantee without any demur or protest, merely on a demand from the Government starting the amount claimed is due by way of loss or damage caused or suffered by the Government. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this President.

3. We undertake to pay to the Govt. any money so demand not withstanding any dispute or disputed raised by the importer if any suit or proceeding pending before any unequivocal.

FOR KARNATAKA BANK LTD. Contd.p/3

Officer / Manager
Overseas Branch, Kolkata
RAYALA RAMESH BABU
OFFICER
ST. NO. 8967, P.A. NO. 3785

Verified with Original
Karnataka Bank Ltd.
Overseas Branch, Kolkata

Senior Branch Manager
Overseas Branch, Kolkata
B. CHANDRASHEKARA
SENIOR BRANCH MANAGER
STAFF NO. 40431 P.A. NO. 1938

AKASH EXPORTS4, CLIVE ROW, 4TH FLOOR
KOLKATA-700 001Phone : 2221-1511
Fax : 2221-1556

450

Date: 27.08.2013

To,
The Commissioner of Customs (Port),
Custom House, Kolkata

Sir,

Sub: - request for provisional release of the goods: regarding

This has reference to your office letter F.No.S60(Misc.)-71/13A(Gr.3) dated 19.08.2013, whereby you have directed to submit the following:

- (i) Cash payment of entire differential duty of Rs.18,10,691/-, Rs.21,24,142/- (including admitted duty), and Rs.8,69,468/- respectively for the bills of entry no.2097821 dt.10.05.13, 2806407 dt.25.07.13, and 2125264 dt.14.05.13;
- (ii) P.D.Bond for amount of Rs.66,59,599/-, Rs.73,62,453/-, and Rs.37,92,781/- respectively equivalent to 100% re-determined assessable value for the bills of entry no.2097821 dt.10.05.13, 2806407 dt.25.07.13, and 2125264 dt.14.05.13;
- (iii) Bank Guarantee / Cash Security for an amount of Rs.65,00,000/- towards probable fine and penalty w.r.to all above three bills of entry.

On this issue this is submitted that a case has been initiated by DRI, Kolkata and after investigation they have allowed me to take provisional release of the goods. However, I humbly submitted that value proposed by the DRI is totally unjustified and in fact this Custom House still releasing the goods at a value less than what is proposed by the DRI, Kolkata.

However, as the amount demanded by the Department is too high and I am unable to take the delivery of all goods at a time.

Therefore, I am requesting for permission to allow to take delivery of the goods for the bills of entry no.2152264 dated 14.05.2013 and 2097821 dated 10.05.2013 only.

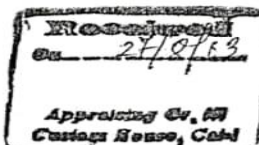
I am also hereby submitting proportionate bank guarantee for the amount of Rs.13,83,851/- and Rs.24,29,851/- along-with PD.Bonds equivalent to the 100% re-determined value for the bills of entry no.2152264 dated 14.05.2013 and 2097821 dated 10.05.2013 respectively.

C.C to Group-3 (A.C)

For AKASH EXPORTS

Raj Kumar Nahata

KARTI

**AKASH EXPORTS**4, CLIVE ROW, 4TH FLOOR
KOLKATA - 700 001
PHONE : 2231 1511
FAX : 2231 1556

Date: 21.06.2013

To
The Additional Director General,
Directorate of Revenue Intelligence,
Kolkata

Dear Sir,

Sub: Payment of Customs duty of Rs. 35,00,000/-

We are depositing under protest custom duty with provisional assessment against container nos.(1) HDMU6818505, (2) HDMU6779116, (3) CAXU9050011. Details of pay order are as under:-

Sl no.	Bank Name	P.O No.	Date	Amount
1.	HDFC BANK	032536	20/06/2013	Rs.20,00,000/-
2.	HDFC BANK	032537	20/06/2013	Rs. 2,50,000/-
3.	HDFC BANK	032538	20/06/2013	Rs. 3,50,000/-
4.	HDFC BANK	032539	20/06/2013	Rs. 5,00,000/-
5.	HDFC BANK	032540	20/06/2013	Rs. 4,00,000/-

Total amount of Rs. Thirty Five Lakh only.

Thanking You,

Yours faithfully,

For AKASH EXPORTS

Authorised Signature

15.3.1. Perusal of the PD bond executed by the appellant conclusively establishes that the goods imported under the said four bills of entry were assessed provisionally.

15.4. At paragraph 4.3 of the CBEC's Customs Manual of Instructions 2013, it has been clarified that "Under the EDI system, the Bill of Entry, after assessment by the appraising group or first appraisalment, as the case may be, needs to be presented at the counter for registration for examination in the import shed. A declaration for correctness of entries and genuineness of the original documents needs to be made at this stage. After registration, the Bill of Entry is passed on to the Shed Appraiser for examination of the goods. Along with the Bill of Entry, the Customs Broker is required to present all the necessary supporting documents. After examination of the goods, the Shed Appraiser enters the report in EDI system and transfers first appraisalment Bill of Entry to the appraising group and gives 'out of charge' in case of already assessed Bills of Entry. Thereupon, the system prints Bill of Entry and order of clearance (in triplicate)". In the present case, we observe that the said goods that were subjected to first appraisalment, following their examination were sent to the concerned Appraising Group for final assessment, which was not done prior to their detention by the DRI. An online enquiry as on July 30, 2018 by the appellant revealed that the appraisalment status of the said Bills of Entry that were subject to first check as aforesaid, as "N.A", indicating thereby that the final assessment thereof was yet to be concluded. Further, no out of charge direction was issued by the concerned Appraising Group in respect of any of the

said Bills of Entry. Thus, we find that there is no evidence of final assessment available on record in respect of the said four bills of entry. Thus, we hold that the demands confirmed in respect of the said four bills of entry are not sustainable.

15.5. We observe that the above said view has been held in the case of ***Thermax Ltd. Vs. Commissioner of Central Excise [2015 (317) ELT 100 (T)]***, wherein it has been held as under: -

"5.5 As regards the reliance placed by the appellant in the Mafatlal Industries case, in Para 95 of the said decision, the Hon'ble Apex Court had, inter alia, held as follows :-

"95. Any recoveries or refunds consequent upon the adjustment under sub-rule (5) of Rule 9B will not be governed by Section 11A or Section 11B, as the case may be. However, if the final orders passed under sub-rule (5) are appealed against or questioned in a writ petition or suit, as the case may be, assuming that such writ or suit is entertained and is allowed/decreed then any refund claim arising as a consequence of the decision in such appeal or such other proceedings as the case may be, would be governed by Section 11B. It is also made clear that if an independent refund claim is filed after the final decision under Rule 9B(5) reagitating the issues already decided under Rule 9B assuming that such a refund claim lies and is allowed, it would obviously be governed by Section 11B. It follows logically that position would be the same in the converse situation."

In the facts of the case before us, in the order dated 22-1-2009, this Tribunal set aside the final assessment done by the lower authorities and directed the assessing officer to undertake reassessment as per the classification decided by the Tribunal and to re-compute the differential duty liability. Thus the remand order passed by the Tribunal restored the provisional assessment resorted to earlier by setting aside the final

assessment order and it is in pursuance of the said remand order, the jurisdictional Dy. Commissioner passed the reassessment order and confirmed the differential duty liability. This is clearly evident in Paragraph 14(ii) and (iii) of the order dated 31-12-2009 wherein it has been held as follows :-

*"(ii) I confirm the classification of the MVAC under Chapter sub-heading 8418.10 of the Central Excise Tariff as a 'Refrigerating equipment' and accordingly confirm the differential duty demand of Rs. 5,30,86,840/-
.....*

(iii) All the provisional assessment orders issued under erstwhile Rule 9B of the Central Excise Rules, 1944 are hereby finalized accordingly."

Thus the assessing officer has finalized the provisional assessments vide the impugned order. Therefore, the differential duty demand was raised not after the finalization of the assessment but as a part of and in the process of finalization of assessment. Therefore, the Mafatlal Industries decision does not support the case of the appellant but on the contrary supports the case of Revenue.

5.6 The settled legal position that a show cause notice under Section 11A of the Act cannot be issued during the pendency of assessment proceedings clearly emerges from the decision of the Hon'ble Apex Court in the case of ITC Limited (cited supra by Revenue) wherein it was held as follows : -

"Completion of an assessment proceedings whether is a sine qua non for issuance of notice under Section 11A of the Central Excise Act, 1944 (for short 'The Act') is the question involved in this appeal which arises of a judgment and order dated 18-6-2004 as modified by an order dated 2-7-2004.

...17. Section 11A of the Act provides for a penal provision. Before a penalty can be levied, the procedures laid down therein must be complied with. For construction of a penal provision, it is trite, the golden rule of literal interpretation should be applied. The difficulty which may be faced by the Revenue is of no

consequence. The power under Section 11A of the Act can be invoked only when a duty has not been levied or paid or has been short-levied or short-paid. Such a proceeding can be initiated within six months from the relevant date which in terms of sub-section (3)(ii)(b) of Section 11A of the Act (which is applicable in the instant case) in a case where duty of excise is provisionally assessed under the Act or the Rules made thereunder, the date of adjustment of duty after the final assessment thereof. A proceeding under Section 11A of the Act cannot, therefore, be initiated without completing the assessment proceedings."

The Hon'ble Delhi High Court reiterated the above view in the case of ITC Limited - [2010 \(250\) E.L.T. 189](#) and further held that, -

"12.6

(i)

(v) *In our view, the process of assessment would involve not only the ascertainment of the basis on which the duty is to be calculated, but also the determination of the final amount. In our opinion, assessment is an "integrated process". The assessee is as interested in knowing the basis; as he is in the determination of final liability, which he is mulcted with by the Department."*

(vii) *..... The reason being the provisions of Section 11A get triggered only upon a final assessment of duty. It is so because, a bare reading of the provisions of Section 11A of the Act would show that the 'relevant date' for commencement of limitation begins from the date on which the Excise duty, which is provisionally assessed, is adjusted against final assessment. This is quite clear if regard is had to the provisions of Section 11A(3)(ii)(b)."*

5.7 We also find merit in the argument advanced by the Revenue that a provisional assessment retains its provisional character for every purpose.

In CCE v. Indian Oil Corporation Ltd. (supra), the Hon'ble Madras High Court had held that, -

"2. The assessment is either provisional or final, and if it is provisional, it retains that character of being provisional for every purpose and cannot be treated as final in respect of a matter not considered. What is material is the ultimate character of the order of assessment whether it is provisional or final."

The same was reiterated by this Tribunal in the case of Orient Pre-stressed Products (P) Ltd. and L.M. Glassfiber (India) P. Ltd. cases cited supra."

15.5.1. The same has been held in the case of **Tata Sky Ltd. Vs. Assistant Commissioner of Customs, Kolkata**, wherein the Hon'ble Calcutta High Court has held the same in its order dated January 9, 2013 passed in WP No. 14452 (W) of 2012.

15.6. In view of the above, we hold that the duty demand in respect of the goods imported under the said 4 Bills of Entry, amounting to Rs.52,24,123/-, is not sustainable. Hence, the redemption fines imposed on the goods imported in the said 4 containers and penalties imposed under Sections 114A and 114AA of the Act, pertaining to the goods imported under these four bills of entry, are also not sustainable and hence we set aside the same. Consequently, three out of the said four Bills of Entry, except the one in which the goods have been abandoned/ relinquished are returned back to the assessing officer for final assessment and determination of the duty liability on the basis of the observations made in this order.

CLASSIFICATION OF GLASS CHATONS

16. The next issue raised in the impugned order is classification of glass chatons. We observe that it is a settled law that glass chatons are classifiable under Tariff Item 70181020 of the Customs Tariff and not under Tariff Item 70181090. For ready reference, the said Tariff Item No. 70181090 available in the Customs Tariff is reproduced below:

"CTH 7018 - Glass Beads, imitation pearls, imitation precious or semi-precious stones and similar glass smallwares and articles thereof other than imitation jewellery, glass eyes other than prosthetic articles; statuettes and other ornaments of lamp-worked glass, other than imitation jewellery; glass microspheres not exceeding 1 mm in diameter,

7018 10-Glass Beads, imitation pearls, imitation precious or semi-precious stones and similar glass smallwares

7018 10 10-Bangles.

7018 10 20 Beads.

7018 10 90- Other".

16.1. From the above, it is evident that Tariff Entry 70181020 specifically covers 'Beads' whereas Tariff Entry 70181090 is a residuary entry. As per Interpretative Rules for Classification of goods in the Customs Tariff, a specific entry should always be preferred over a residuary entry. The 'Glass Chatons' imported by the appellant are specifically covered under the Tariff Entry 70181020 and hence we are of the view that the goods namely 'Glass Chatons' imported by the appellant are rightly classifiable under the CTH 70181020.

16.2. In this regard, it is seen that the Ld. Commissioner has classified the said goods under Tariff Item 70181090 on the premise that since the appellant themselves has declared the classification of the glass chatons under Chapter Heading 70181090 of the Tariff Act, the said declaration made by the importer in respect of classification of chatons is to be accepted. We do not agree with the reasoning given by the Ld. Commissioner for classifying the 'Glass Chatons' under the CTH 70181090. An importer may classify the goods imported by them under a particular CTH, but it is the duty of the assessing officer to classify the goods imported under the correct CTH for the purpose of payment of customs duty. It is the submission of the appellant before us that the officers of DRI compelled them to file the revised Bills of Entry classifying the goods viz., glass chatons under Tariff Item 70181090 post examination of the said goods, in order to apply a higher rate of tariff. Even though the appellant has not submitted any evidence to substantiate the allegation that they have filed the said Bills of Entry at the insistence of the officers of DRI, we are of the opinion that it is the duty of the assessing officers to determine the correct classification.

16.3 We also take note of the fact that it is now settled that Tariff Heading 70181020 is the most specific and appropriate head of classification for glass chatons. In support of the above said classification, we place our reliance on the following decisions: -

- (i) *VMB Impex Vs. Commissioner of C.Ex.Cus& Service Tax [2015 (321) ELT 522 (T)]*

- *affirmed by the Supreme Court in Commissioner Vs. VMB Impex [2015 (321) ELT A202 (SC)]*
- (ii) *Starlite Corporation Vs. Union of India [1989 (39) ELT 538 (Bom)]*
- (iii) *Art Beads Pvt. Ltd. Vs. Commissioner of Cus (Import) [2013 (292) ELT 472 (T)]*

16.4. From a perusal of the impugned order, we observe that no cogent reason has been given by the Ld. Commissioner for ignoring these binding decisions in the impugned order.

16.5. Thus, by relying on the decisions cited supra, we hold that 'Glass Chatons' imported by the appellant are appropriately classifiable under the CTH 70181020 and thus, we reject the classification of the same under the CTH 70181090 as determined by the Id. adjudicating authority in the impugned order.

VALUATION OF GLASS CHATONS:

17. The next issue to be decided is valuation of the 'Glass Chatons'. We observe that the value of the Glass Chatons had been sought to be arrived at in the Show Cause Notice under Rule 4(1)(b) of the Valuation Rules on the basis of the value found in three (3) Bills of Entry dated October 5, 2012, September 24, 2012 and April 9, 2012 taken allegedly from the NIDB database of 2012. In addition, reliance was also placed upon an alleged complaint dated June 27, 2011 of All India Glass Beads Manufacturers and

Traders Association and a Circular dated October 22, 2012 issued by the Commissioner of Customs, Jodhpur. However, it is a fact that neither the copies of these Bills of Entry or the complaint dated June 27, 2011 or Circular of Commissioner of Customs, Jodhpur dated October 22, 2012 were enclosed as relied upon documents to the Notice nor the copies thereof were made available to the appellant during the course of the adjudication proceedings. Thus, we find that no reliance can be placed on these documents for re-determining the value of the 'Glass Chatons' imported by the appellant. However, the Ld. Commissioner has proceeded to rely upon the said documents and re-determined the value, which is legally not sustainable.

17.1. From the impugned order, it is observed that the Ld. Commissioner has proceeded to revalue the glass chatons under Rule 9 of the Valuation Rules holding that the same could not be valued under Rule 4 since the stated documents sought to be relied upon could not be deemed to be contemporaneous in nature. We find that the Ld. Commissioner has travelled beyond the scope of the Notice, which proposed re-determination of value under Rule 4, and held that the said 3 Bills of Entry of 2012 could be considered for the purpose of valuation under Rule 9 of the Valuation Rules, which has no legal sanctity.

17.2. It is well settled by the decisions of the Hon'ble Supreme Court and the Tribunal that the transaction value declared cannot be rejected merely on the basis of NIDB data. In support of this contention, we refer to the following case-law cited by the appellant: -

- (i) *Eicher Tractors Ltd. Vs. Commissioner of Customs [2000 (122) ELT 321 (SC)]*
- (ii) *Agarwal Foundries (P) Ltd. Vs. Commissioner of Customs [2020 (37) ELT 859 (T)]*
 - *Affirmed by Supreme Court in Commissioner Vs. Agarwal Foundries (P) Ltd. [2020 (371) ELT A 295 (SC)]*
- (iii) *Commissioner of C.Ex. Vs. Om Sairam Trading Co. [2009 (241) ELT 536 (T)]*
- (iv) *Topsia Estate Pvt. Ltd. Vs. Commr. of Cus. (Import-Seaport) [2015 (330) ELT 799 (T)].*
- (v) *Panchagni Energies Pvt. Ltd. Vs. Commissioner of Customs [2024 (387) ELT 334 (T)]*

17.3. The above decisions cited by the appellant are squarely applicable to this case.

17.4. Moreover, it is pertinent to note that the glass chatons were imported between May 2013 and July 2013 and the Bills of Entry taken from the NIDB data, which are relied upon to re-determine the value are that of April 2012, September 2012 and October 2012. We also find that the complaint of All India Glass Beads Manufacturers and Traders Association showing alleged value of glass chatons is of June 2011, whereas the circular issued by the Commissioner of Customs, Jodhpur is dated October 22, 2012. Thus, we observe that none of these documents can be said to be contemporaneous evidence of value of glass chatons imported. In fact, the Commissioner has himself held that the valuation could not be done

under Rule 4 of the Valuation Rules, as proposed in the show cause notice, but had to be valued in terms of Rule 9 thereof.

17.5. In this connection, it may also be relevant to refer to the decision in the case of ***Commissioner of Customs Vs. J.D. Orgochem Ltd. [2008 (226) ELT 9 (SC)]***, wherein it has been held by the Hon'ble Supreme Court that though transaction value declared by importer is not binding on the Customs authorities, contemporaneous evidence has to be produced to reject the invoice value and the onus in this respect is on the Department.

17.6. It is also well settled that unless corroborative evidence in respect of contemporaneous imports of similar goods is produced by the Revenue, the transaction value declared has to be accepted. In this regard, we find the following case law relied upon by the appellant relied to be squarely applicable: -

(i) Commissioner of Customs Vs. Mahalaxmi Gems [2008 (231) ELT 198 (SC)]

(ii) Commissioner of Customs Vs. J.D. Orgochem Ltd. (supra).

(iii) Bharat Marketing Vs. Commissioner of Customs [2015 (327) ELT 662 (T)]

(iv) PNP Polytex Pvt. Ltd. Vs. Commissioner of Cus. [2015 (318) ELT 649 (T)].

(v) Commr. of Cus (Preventive) Vs. Tanmay International [2018 (363) ELT 181 (T)].

17.7. We also agree with the contention of the appellant that the domestic price/value of goods cannot form the basis for determination of value of imported goods. Hence, reliance in the impugned order upon the values purportedly declared of Glass Chatons in the complaint dated June 27, 2011 of All India Glass Beads Manufacturers and Traders Association is ex-facie contrary to law.

17.8. In view of the above discussions, we hold that the value of 'Glass Chatons' redetermined in the impugned order is not sustainable. There is no reason to reject the transaction value declared by the appellant importer in the Bills of Entry. Accordingly, we reject the value of 'Glass Chatons' re-determined by the Id. adjudicating authority in the impugned order and hold that the value declared by the appellant in the Bills of Entry should be accepted, in respect of Glass Chatons declared and undeclared.

VALUATION IN RESPECT OF GOODS OTHER THAN GLASS CHATONS:

18. Regarding the issue of valuation in respect of the goods imported under the two Bills of Entry, we find that Belts were imported in two consignments, Bill of Entry No. 2125264 dated 14.05.2013 (KKFU7517708) and 2814129 dated 25.07.2013 (GESU5093422) – incorrectly mentioned as GESU5093433]. No mis-declaration was found in these consignments. However, the impugned order rejected the declared value and redetermined the value at Rs. 15 per pc under Rule 9 of the Valuation Rules, on the basis of market enquiry. We also find that the basis of market enquiry conducted has not been disclosed by the DRI.

It is seen from the records that the importer has submitted several Bills of Entry Nos., such as, 9886942 dated 17.04.2013 (USD 0.48 per doz) and 2721762 dated 16.07.2013 (USD 0.05 per pc) both from Kolkata Port, Bill of Entry Nos. 4556460 dated 05.02.2014, 6230471 dated 24.07.2014. However, the value declared in these bills of entry were rejected by the Commissioner, without giving any valid reason for the rejection. It is a settled principle that the value of the imported goods shall be redetermined using Rules 4 to 9 sequentially. When the value under Rule 4 and Rule 5 are available, DRI cannot resort to Rule 9 to redetermine the value of belt and that too without disclosing the details of market enquiry. Thus, the value of the belt imported is required to be assessed on the declared value thereof.

18.1. With regard to the valuation of the other imported goods, we are of the view that the same is also to be determined on the basis of established principles under the Valuation Rules. It is observed that Rule 9 of the Valuation Rules has been applied to re-determine the value in spite of the evidence of contemporaneous imports of like and similar goods submitted by the appellant. It is seen that the Valuation has not been re-determined by applying the Valuation Rules sequentially. From the impugned order, we find that the Ld. Adjudicating authority has admitted that the value of the goods imported cannot be redetermined as per Rule 4(1)(b) of the Valuation Rules and proceeded to determine the value as per Rule 9, on the basis of market enquiry. However, we find that domestic wholesale price has been taken into account for justifying the allegation of undervaluation of goods and redetermining the value thereof in spite

of the Valuation Rules explicitly prohibiting such reliance upon local market price of goods, whether in wholesale or retail.

18.2. In respect of the goods imported in the Container No. GESU5093422, where valuation has been confirmed on the basis of RSPs purportedly found on the goods, we find that the Appellant has rightly contended that (i) no specimen copies or examination report or panchnama provides any evidence of these stickers being attached; (ii) even presuming that the goods had RSP stickers, such RSPs will pertain to **values** in the exporting country; (iii) the stickers themselves as aforesaid, are not incorporated in the RUDs to the Show Cause Notice (iv) the panchnama dated 12.9.2013 drawn in relation to the Container No. GESU5093422 reveals that there is absolutely no mention of any RSP stickers being found on the goods in the said container. In such situation we find that no reliance can be placed on such RSPs purportedly found on the goods and the RSPs declared by the appellant in the Bill of Entry have to be accepted.

18.3. We also take note of the appellant's submission that in respect of the declared value of goods imported under the five consignments vide Bills of Entry Nos. 2128503 dated 14.05.2013, 2097821 dated 10.05.2013, 2806407 dated 25.07.2013, 2923787 dated 06.08.2013 and 2922947 dated 06.08.2013, we observe that the impugned order has alleged undervaluation. In all these cases, we find that the revised invoices duly filed by the appellant on June 18, 2013, contain complete details of all goods imported, their respective description, quantities and values. In

view of the said revised invoices, the allegation of mis-declaration of value of the goods does not survive.

18.4. Thus, we are of the view that wherever the appellant have submitted invoices / revised invoices, containing the complete details of all goods imported along with their description and value, the same is to be accepted and the duty may be calculated on the basis of the value contained in such revised invoices.

18.5. In respect of the goods where no invoice has been submitted by the appellant, the valuation of corresponding goods adopted by the adjudicating authority in the impugned order may be followed to determine the duty liability.

Container No. CAXU9050011 (Abandoned / Relinquished):

19. In respect of the goods imported in the container CAXU9050011 imported against Bill of Entry No. 2806407 dated July 25, 2013, we observe that it is an admitted position that the Bill of Entry contained declaration of all the goods found on examination. Misdeclaration/non-declaration has been alleged only on the basis of Bill of Lading description, which in our view is not sustainable. We also find that a demand of differential duty of **Rs. 13,71,565/-** has been made, in spite of the fact that the appellant has not taken delivery of the said goods due to the same being damaged. In this regard, it has been submitted by the appellant that they had, vide letters dated November 18, 2013, December 17, 2013, July 30, 2014, September 11, 2014, informed the authorities of the damaged state of the said container, and had

requested an examination of the goods contained therein. Thus, we find that the appellant cannot be required under the Act to pay duty against the said goods which the appellant has not been able to clear yet. In support of our view, we rely on decision in the case of ***Symphony Services Corp India Pvt. Ltd Vs. CC, Bangalore [(2008) 228 ELT 300 (Tri.-Bang.)]*** as affirmed in ***CC, Bangalore Vs. Symphony Services Corp India Pvt. Ltd., (2012) 275 ELT 369 (Kar.)]***. Thus, we agree with the submission of the appellant that they are entitled to a refund of the duty appropriated against the goods imported in the said container CAXU9050011 against Bill of Entry No. 2806407 dated July 25, 2013. We observe that this issue, though specifically brought to the attention of the Commissioner, has not been addressed in the discussion and findings of the impugned order. Thus, we are of the view that the issue needs to be remanded back to the adjudicating authority for the purpose of reconsideration of the demand and consequent refund of duty, on the basis our observations supra.

UNDECLARATION/MISDECLARATION:

20. The next issue to be decided is undeclaration / mis-declaration of goods. It is alleged that upon examination undeclared goods were found in respect of Container Nos. HDMU 6818505, HDMU 6779116, HDMU 6576145 and HDMU 6838097. We observed that although initially the Container No. CAXU9050011 was alleged to have contained undeclared items, at paragraph 6 of the impugned order it has been thereafter observed that the Bill of Entry in respect of the said container "contained declaration of all the goods found on examination".

Further, no allegation of undeclaration has been made in respect of Container Nos. KKFU 7517708 and GESU 5093422, as submitted by the appellant.

20.1. Glass Chatons were found in a total of five Containers. The Investigation alleged that the said goods were mis-declared as Glass Chatons were not declared in respect of five containers. It is alleged by DRI that for two other consignments, the description and quantity of the goods declared in the Bills of Entry were at variance with the IGM declarations and the declaration available in the Bills of Lading obtained from the respective CFSs. In respect of consignment imported through Container No. CAXU9050011, the goods imported have been abandoned by the appellant. Further, it has been alleged that the Bills of Entry were filed subsequent to investigation and examination of the goods and therefore the importer had to declare the goods found earlier during examination by DRI. On the basis of the above, the Revenue contends that the mis-declaration of the goods has been established.

20.2. A summary / tabulation of the status of containers and the purported undeclared goods allegedly found therein is provided hereunder:

Container No.	Status of Concealment Allegation & Defence by the Appellant
HDMU6818505	Alleged undeclared chatons, HID lamps, LED lights, dolls. Supplier mistakenly mixed goods of other importers; replacement invoices filed on 17–18 June 2013; Proprietor’s Sec. 108 statement confirmed no concealment.

Container No.	Status of Concealment Allegation & Defence by the Appellant
HDMU6779116	Alleged undeclared chatons and HID lamps. Similar to HDMU6818505 — supplier's error, corrected invoices submitted, and disclosure made to DRI; no deliberate suppression.
CAXU9050011	Alleged undeclared chatons based on mismatch with Bill of Lading. Bill of Entry tallied with physical examination; Bill of Lading cannot override statutory declaration; hence no concealment
HDMU6576145	Alleged undeclared miscellaneous items (soft balls, hooks, mats, toys, etc.). Seizure panchnamas did not tally with SCN annexures; charge of undeclared goods fabricated from inconsistent records; full disclosure made in B/E
HDMU6838097	Same as HDMU6576145 — allegation of undeclared miscellaneous goods; panchnama vs. SCN mismatch proves no concealment
GESU5093422	No concealment allegation of goods per se; goods "were found as per declaration"; charge related to valuation (RSP stickers). Hence, not relevant under "non-declaration of goods."
KKFU7517708	No allegation of undeclared goods. Goods "were found to tally with the declaration". SCN itself recorded that description and quantity matched declarations.

Based on the above, the appellant has contended that there has been no concealment / undeclaration on their part.

20.3. In this regard, we find that the goods imported in respect of the four containers, as mentioned in paragraph 15.1 of this order, were subjected to first appraisal. Following their examination, the bills of entry in respect of the same were assessed provisionally. Thus, on this count, we find that the allegation of mis-declaration in respect of the goods imported through these four containers is not sustainable.

20.4. In respect of the goods imported in the remaining containers, we take note of the submission of the appellant, inter alia, that the import documents submitted by them, including the bill of lading, contained correct declarations which are consistent with the inventory drawn up by the Customs authorities on physical examination of the imported goods. However, we are not able to verify the claim of the appellant. If the inventory drawn at the time of physical examination of the goods matches with the declaration made by the appellant in the remaining bills of entry, then the allegation of mis-declaration is not sustainable. However, if there is any variation found in the inventory drawn at the time of physical examination of the goods with the declaration made by the appellant in the remaining bills of entry, then the appellant is liable to pay duty on these excess goods found, along with interest. The appellant would also be liable for penalty equal to the duty liable to be paid on the excess quantity of goods found at the time of physical examination, if any.

CONFISCATION:

21. In respect of the goods which are not declared, we hold that the said undeclared goods are liable for confiscation. However, the said goods are eligible to be redeemed upon payment of redemption fine and penalty. The appellant cited various decisions of this Tribunal where redemption fine is imposed @10% of the value. As these orders have attained finality, the Id. adjudicating authority may adopt the same of fine for the undeclared goods.

21.1. The goods other than the excess/undeclared quantity of goods found at the time of physical examination, are not liable for confiscation. Hence, the order of confiscation of such other goods and the redemption fine imposed on those goods are set aside.

DUTY QUANTIFICATION:

22. From a perusal of the records, it is apparent that duty was calculated at a flat presumed rate of 28.44% [BCD @10%+CVD @12% Ed. Cess @3%+ ADD@ 4%], which, as submitted by the appellant, has been done without examining the independent classification of the numerous items declared and undeclared, purportedly found in all the said containers. In this regard, we are of the opinion that for goods that were properly declared, the transaction value declared by the appellant ought to be accepted. For goods that were undeclared, we are of the view that the duty cannot be quantified using an arbitrary and presumed rate of 28.44% and the Id. adjudicating authority is required to appropriate the duty only to the extent leviable in terms of the applicable Tariff.

PENALTY:

23. Regarding the penalties imposed under section 114A and 114AA are concerned, we observe that penalty equal to the duty payable on the excess/ undeclared goods found during physical examination of the goods is imposable under Section 114A *ibid*.

23.1. As the conditions for imposing penalty under Section 114AA of the Act have not been satisfied in this case, we are of the view that no penalty is imposable in this case under Section 114AA of the Act. Accordingly, the penalty imposed under Section 114AA *ibid*. is set aside.

CONCLUSION:

24. As the duty liability is to be re-examined afresh on the basis of the observations made in this order, we set aside the demands of duty, interest and penalty confirmed in the impugned order and remand the matter back to the adjudicating authority to re-determine the duty, interest, fine and penalty on the basis of the observations made in the preceding paragraphs.

25. In view of the above discussions, we summarize our observations and pass the following order: -

- (i) We hold that the goods imported under the four bills of entry as mentioned in paragraph 15.1 *supra* are provisionally assessed. Hence, the duty demand in respect of the goods imported under the said 4 Bills of Entry, amounting to Rs.52,24,123/- is not sustainable. Thus, we set aside the same. Consequently, the redemption

finer imposed on the goods imported in the said 4 containers and penalties imposed under Sections 114A and 114AA of the Act, pertaining to the goods imported under these four bills of entry, are also not sustainable and hence we set aside the same. Three out of the said four Bills of Entry, except the one in which the goods have been abandoned/ relinquished are returned back to the assessing officer for final assessment and determination of the duty liability on the basis of the observations made in this order.

- (ii) Regarding the fourth Bill of Entry bearing No. 2806407 dated July 25, 2013, where goods imported in container CAXU9050011 have been abandoned / relinquished, the issue of refund of the duty paid by the appellant is to be examined. If the appellant is eligible for the refund, then the same may be adjusted towards the duty liability, interest, fine and penalty, if any, determined by the assessing officer. For that purpose, the issue is remanded back to the adjudicating authority, on the basis of our observations supra.
- (iii) We hold that 'Glass Chatons' imported by the appellant are appropriately classifiable under the CTH 70181020 and reject the classification under CTH 70181090 as determined by the Id. adjudicating authority in the impugned order.
- (iv) We reject the value of 'Glass Chatons' as re-determined by the Ld. Adjudicating authority in the impugned order and hold that the value declared by the appellant in the Bills of Entry

and the revised invoices issued by the supplier should be accepted, in respect of Glass Chatons declared as well as undeclared.

- (v) Regarding the other goods (other than glass chatons) imported by the appellant, if there is any variation found in the inventory drawn at the time of physical examination of the goods with the declaration made by the appellant in the bills of entry, then the appellant is liable to pay duty on these excess/undeclared goods found, along with interest. The appellant would also be liable for penalty equal to the duty liable to be paid on the excess quantity of goods, if any, found at the time of physical examination. The invoice value declared by the appellant on similar goods are to be adopted to demand customs duty on the goods found excess/undeclared.
- (vi) In respect of other goods (other than glass chatons), if the appellant have submitted invoices / revised invoices, containing the complete details of all goods imported along with their description and value, the same is to be accepted and the duty may be calculated on the basis of the value contained in such revised invoices.
- (vii) In respect of such other goods (other than glass chatons) where no invoice has been submitted by the appellant, the adjudicating authority may adopt the value of similar goods, to determine the duty liability, as done in the impugned order.

- (viii) In respect of the goods which are not declared, we hold that the said undeclared goods are liable for confiscation. However, the goods are eligible to be redeemed on payment of redemption fine and penalty. The adjudicating authority may allow redemption of the goods on payment of fine @10% of the value.
- (ix) The goods other than the excess/undeclared quantity of goods found at the time of physical examination, are not liable for confiscation. Hence, the order of confiscation of such other goods and the redemption fine imposed on those goods are set aside.
- (x) Re-determination of RSP of the goods on the basis of stickers purportedly found on the goods is set aside. The RSPs declared by the appellant are to be accepted for calculation of CV duty.
- (xi) As regards duty quantification, for goods that were properly declared, the transaction value declared by the appellant ought to be accepted. For goods that were undeclared, we are of the view that the duty cannot be quantified using an arbitrary and presumed rate of 28.44% and the Id. adjudicating authority is required to appropriate the duty only to the extent leviable in terms of the applicable Tariff.
- (xii) No penalty is imposable on the appellant under Section 114AA of the Customs Act and hence the same are set aside. Penalties under Section 114A of the Act are restricted to the equivalent duty, if any, confirmed on the excess / undeclared goods.

26. We set aside the demands of duty, interest and penalty as confirmed in the impugned order and remand the matter back to the adjudicating authority to re-determine the duty, interest, fine and penalty on the basis of the observations made in the preceding paragraphs.

27. The Id. adjudicating authority is directed to complete the de-novo adjudication within a period of four months from the date of receipt of this Order.

28. The appeal is disposed of by way of remand, on the above terms.

(Order pronounced in the open court on **17.09.2025**)

Sd/-

(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)