CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Customs Appeal No. 85762 of 2019

(Arising out of Order-in-Original CAO No. CC-VA/23/2018-19 Adj(I) ACC dated 29.01.2019 passed by Commissioner of Customs (IMP-II), Mumbai-I)

Shri Amit Rajkumar Singhania **Appellant**
1st floor, Nivetia Bungalow,
Nivetia Road, Nivetia Nagar,
Behind Rani Sati Temple,
Malad (E), Mumbai 400 097.

Vs.

Commissioner of Cus. (ACC), Mumbai **Respondent**
Air Cargo Complex,
Sahar, Andheri (E),
Mumbai.

WITH

Customs Appeal No. 85763 of 2019

(Arising out of Order-in-Original CAO No. CC-VA/23/2018-19 Adj(I) ACC dated 29.01.2019 passed by Commissioner of Customs (IMP-II), Mumbai-I)

Shri Jitu Sharad Shirsat **Appellant**
R. No.501, B Wing,
Gavdevi Apartments,
Bhagatwadi Sabe Road,
Vitthal Rukmini Mandi,
Diva East 400 612.

Vs.

Commissioner of Cus. (ACC), Mumbai **Respondent**
Air Cargo Complex,
Sahar, Andheri (E),
Mumbai.

WITH

Customs Appeal No. 85812 of 2019

(Arising out of Order-in-Original CAO No. CC-VA/23/2018-19 Adj(I) ACC dated 29.01.2019 passed by Commissioner of Customs (IMP-II), Mumbai-I)

Anjana Nilesh Jadhav **Appellant**
R.No. 145, Jadhav Nivas,
Ambernath Road,
Ashok Nagar, Walduni,
Kalyan West 421 301.

Vs.

Commissioner of Cus. (ACC), Mumbai **Respondent**
Air Cargo Complex, Sahar, Andheri (E), Mumbai.

WITH

Customs Appeal No. 86211 of 2019

(Arising out of Order-in-Original CAO No. CC-VA/23/2018-19 Adj(I) ACC dated 29.01.2019 passed by Commissioner of Customs (IMP-II), Mumbai-I)

Shri Manish Dhirajlal Barot **Appellant**
B-311, Kamlesh Apt.,
Sher-e-Punjab,
Andheri (E), Mumbai-93.

Vs.

Commissioner of Cus. (ACC), Mumbai **Respondent**
Air Cargo Complex,
Sahar, Andheri (E),
Mumbai.

WITH

Customs Appeal No. 86436 of 2019

(Arising out of Order-in-Original CAO No. CC-VA/23/2018-19 Adj(I) ACC dated 29.01.2019 passed by Commissioner of Customs (IMP-II), Mumbai-I)

M/s. Chitalia Logistics P. Ltd. **Appellant**
119/20, Rex Chambers,
1st floor, W.H. Marg,
Ballard Estate, Mumbai-38.

Vs.

Commissioner of Cus. (ACC), Mumbai **Respondent**
Air Cargo Complex,
Sahar, Andheri (E),
Mumbai.

AND

Customs Appeal No. 86437 of 2019

(Arising out of Order-in-Original CAO No. CC-VA/23/2018-19 Adj(I) ACC dated 29.01.2019 passed by Commissioner of Customs (IMP-II), Mumbai-I)

Shri Harshwardhan Thakur **Appellant**
201, B-Wing, Sai Simran CHS Ltd.
Deonar Village Road,
Deonar, Mumbai-88.

Vs.

Commissioner of Cus. (ACC), Mumbai **Respondent**
Air Cargo Complex,
Sahar, Andheri (E),
Mumbai.

Appearance:

Shri Anil Balani, Advocate, for the Appellant
Shri R.K. Dwivedy, Additional Commissioner, Authorised Representative for the Respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

FINAL ORDER NO. A/**86567-86572/2019**

Date of Hearing: 01.08.2019
Date of Decision: 01.08.2019

PER: SANJIV SRIVASTAVA

The appeals as detailed in the table below are directed against the order in original CAO No CC-VA/23/2018-19 Adj (I) CC dated 29.01.2019 of Commissioner Customs (Import) Air Cargo Complex Sahar Mumbai.

Appeal No	Appellant	Remark
C/85762/2019	Amit Rajkumar Singhania	Appellant 1
C/85763/2019	Jitu Sharad Shirsat	Appellant 2
C/85812/2019	Anjana Nilesh Jadhav	Appellant 3
C/86211/2019	Manish Dhirajlal Barot	Appellant 4
C/86436/2019	Chitalia Logistics P Ltd	Appellant 5
C/86437/2019	Harshwardhan Thakur	Appellant 6

1.2 By the impugned order Commissioner has held as follow:

"82 In respect of the Importer namely M/s Amit Enterprise

i) The goods imported vide Bill of entry No 9278934, 9278938, 9278942, 9278944, 9278946 and 9278948 all dated 12.04.2017 value re-determined at Rs 19,17,873/-, Rs 44,16,744/-, Rs 26,00,401/-, Rs 22,98,117/-, Rs 20,49,352 and Rs 40,70,282/- (Total amounting to Rs

1,73,52,769/-) be confiscated under Section 111(d), 111(f), (l) & (m) of the Customs Act, 1962.

ii) I allow Redemption of the goods imported vide 9278934, 9278938, 9278942, 9278944, 9278946 and 9278948 all dated 12.04.2017 value re-determined at Rs 19,17,873/-, Rs 44,16,744/-, Rs 26,00,401/-, Rs 22,98,117/-, Rs 20,49,352 and Rs 40,70,282/- (Total amounting to Rs 1,73,52,769/-) for home consumption on payment of Redemption fine of Rs 35,00,000/- (Rupees Thirty Five Lakhs only), in addition to payment of applicable duty on the goods covered under the aforesaid Bills of entry at the redetermined values as stated above.. In the alternate I also give the option for re-export of the imported goods totally amounting to R 1,73,52,769/- on payment of Redemption Fine of Rs 35,00,000/- (Rupees Thirty Five Lakhs only). The redemption of goods for re-export may be exercised by the importer within 30 days of the issue of this order, after payment of fine & penalty.

iii) The 8999 pieces of Bluetooth/ Wireless Headset and Wireless Stereo Headset total value re-determined at Rs 562446/- imported vide bill of entry no 9278934/ 12.04.2017, 4614 pieces of Bluetooth LCD with Touchpad and Touchpad total value re-determined at Rs 2,92,596/- imported vide bill of entry no 9278938/ 12.04.2017, 44008 pieces of Bluetooth, Earphone, Handsfree, Headphones, Touchpad and Travel Adaptor total value re-determined at Rs 15,75,498/-/- imported vide bill of entry no 9278942/ 12.04.2017, 3300 pieces of backcover total value re-determined at Rs 49,500/- imported vide bill of entry no 9278944/ 12.04.2017, 3655 pieces of Touch Pad and Wireless Headset total value re-determined at

Rs 2,02,345/- imported vide bill of entry no 9278946/ 12.04.2017 and 1092 pieces of wireless Bluetooth, Bluetooth and sample glasses value re-determined at Rs 4,43,354/- imported vide bill of entry no 9278948/ 12.04.2017 9Totally amounting to Rs 31,25,739/-) be confiscated absolutely as the same were found in contravention of provision of IPR (Imported Goods), Enforcement Rules, 2007.

iv) The Re=determined Customs Duty including differential customs duty in respect of Bill of entry No 9278934, 9278938, 9278942, 9278944, 9278946 and 9278948 all dated 12.04.2017 amounting to Rs 3,61,985/-, Rs 8,46,791/-, Rs 3,01,742/-, Rs 6.62,015/-, Rs 4,74,049/- and Rs 10,50,666/- respectively (Total amounting to Rs 36,97,248/-) (excluding counterfeit items) be demanded and recovered under section 28(4) of the Customs Act, 1962 along with appropriate interest under Section 28AA of the Customs Act, 1962.

v) I impose penalty amounting to Rs 46,03,850/- (Rupees Forty Six Lakhs Three Thousand Eight Hundred and Fifty only) on the importer M/s Amit Enterprise under Section 114A of the Customs Act,1962 for his omission and commission and short levy of Customs duty on account of suppression of facts in terms of quantity, description, classification, brand and value.

vi) The amount paid vide manual Challans No 262 dated 21.04.2017, 253 dated 27.04.2017, 227 dated 21.04.2017, 245 dated 21.04.2017, 252 dated 27.04.2017, 228 dated 25.04.2017, 254 dated 27.04.2017, 248 dated 21.04.2017, 226 dated 25.04.2017, 272 dated 29.04.2017, 249 dated 21.04.2017, 257 dated 27.04.2017, 250 dated 21.04.2017, 255 dated 27.04.2017, 225 dated 25.04.2017, 251 dated 21.04.2017, 256 *dated 27.04.2017 and 224 dated 25.04.2017, in respect of said 06 Bs/E of M/s Amit Enterprise b appropriated against the liability of Customs Duty, Interest or any other liability so may arise.*

83. Shri Nilesh Ramesh Jadhav (the proprietor M/s Amit Enterprise) in respect of the bills of entry No 9278934, 9278938, 9278942, 9278944, 9278946 and 9278948 all dated 12.04.2017:

i) I impose penalty of Rs 4,50,000/- (Rupees Four Lakhs Fifty Thousand only) on Shri Nilesh Ramesh Jadhav under Section 112 of the Customs Act, 1962 for his wilful involvement in illegitimate import of subject goods under seizure.

ii) I impose penalty of Rs 1.8 Crore (Rupees One Crore Eighty Lakhs only) on Shri Nilesh Ramesh Jadhav under Section 114AA of the Customs Act, 1962 for his involvement in knowingly or intentionally making incorrect statement and signing incorrect declaration an documents.

84 In respect of the Importer namely M/s J S Enterprise

i) The goods imported vide Bill of entry No 9278929, 9278931, 9278937 and 9278939 all dated 12.04.2017 value re-determined at Rs 15,81,720/-, Rs 18,78,267/-, Rs 20,93,543/-, and Rs 29,64,231/- (Total amounting to Rs 85,17,761/-) be confiscated under Section 111(d), 111(f), (l) & (m) of the Customs Act, 1962.

ii) I allow Redemption of the goods imported vide Bs/E 9278929, 9278931, 9278937 and 9278939 all dated 12.04.2017 value re-determined at Rs 15,81,720/-, Rs 18,78,267/-, Rs 20,93,543/-, and Rs 29,64,231/- (Total amounting to Rs 85,17,761/-) for home consumption on payment of Redemption fine of Rs 17,00,000/- (Rupees Seventeen Lakhs only), in addition to payment of applicable duty on the goods covered under the *aforesaid Bills of entry at the redetermined values as stated above.. In the alternate I also give the option for re-export of the imported goods totally amounting to Rs 85,17,761/- on payment of Redemption Fine of Rs 17,00,000/- (Rupees Seventeen Lakhs only). The redemption of goods for re-export may be exercised by the importer within 30 days of the issue of this order, after payment of fine & penalty.*

iii) The 6130 pieces of Handsfree, Sun Glasses and Spectacle Frames of total value re-determined at Rs 5,21,707 imported vide bill of entry no 9278929/12.04.2017; 155 pieces of Adaptor and Earphone of total value re-determined at Rs 5,040 imported vide bill of entry no 9278931/12.04.2017; 8112 pieces of Backcover, Bluetooth, Earphone and Touchpad of total value re-determined at Rs 3,51,636 imported vide bill of entry no 92789378/12.04.2017 and 12994 pieces of Bluetooth head set , Samsung Cable, Samsung Cable (USB Data Line), Samsung Mini Micro USB Cable, Samsung Integrated Microphone, Travel Adapter and Bluetooth handsfree with USB slot of total value re-determined at Rs 8,34,653/- imported vide bill of entry no 9278939/12.04.2017 (total amounting to Rs 17,13,036) be confiscated absolutely as the same were found in contravention of provision of IPR (Imported Goods), Enforcement Rules, 2007.

iv) The Re-determined Customs Duty including differential customs duty in respect of Bill of entry No 9278929, 9278931, 9278937 and 9278939 all dated 12.04.2017 amounting to tune of Rs 3,03,471/-, Rs 4,31,594/-, Rs 4,45,033/-, and Rs 6.25,484/- (Total amounting to Rs 18,05,583/-) (excluding counterfeit items) be demanded and recovered under section 28(4) of the Customs

Act, 1962 along with appropriate interest under Section 28AA of the Customs Act, 1962.

v) I impose penalty amounting to Rs 23,05,362/- (Rupees Twenty Three Lakhs Five Thousand Three Hundred and Sixty Two only) on the importer M/s J S Enterprise under Section 114A of the Customs Act,1962 for his omission and commission and short levy of Customs duty on account of suppression of facts in terms of quantity, description, classification, brand and value.

vi) The amount paid vide manual Challans No 268 dated 28.04.2017, 261 dated 21.04.2017, 246 dated 21.04.2017, 251 dated 27.04.2017, 232 dated 25.04.2017, 247 dated 21.04.2017, 269 dated 28.04.2017, 230 dated 25.04.2017, 263 dated 21.04.2017, 270 dated 28.04.2017, 252 dated 21.04.2017 and 229 dated 25.04.2017, in respect of said 04 Bs/E of M/s J S Enterprise be appropriated against the liability of Customs Duty, Interest or any other liability so may arise.

85. Shri Jitu Sharad Shirsat (the proprietor M/s J S Enterprise) in respect of the Bill of entry No 9278929, 9278931, 9278937 and 9278939 all dated 12.04.2017:

i) I impose penalty of Rs 2,30,000/- (Rupees Two Lakhs Thirty Thousand only) on Shri Jitu Sharad Shirsat under Section 112 of the Customs Act, 1962 for his wilful involvement in illegitimate import of subject goods under seizure.

ii) I impose penalty of Rs 85,00,000/- (Rupees Eighty Five Lakhs only) on Shri Jitu Sharad Shirsat under Section 114AA of the Customs Act, 1962 for his involvement in knowingly or intentionally making incorrect statement and signing incorrect declaration an documents.

86 In respect of the Importer namely M/s Prakash Enterprise

i) *The goods imported vide Bill of entry No 9278932 all dated 12.04.2017 value re-determined at Rs 12,54,586/- be confiscated under Section 111(d), 111(f), (l) & (m) of the Customs Act, 1962.*

ii) *I allow Redemption of the goods imported vide Bs/E 9278932 all dated 12.04.2017 value re-determined at Rs 12,54,586/- for home consumption on payment of Redemption fine of Rs 2,50,000/- (Rupees Two Lakhs Fifty Thousand only), in addition to payment of applicable duty on the goods covered under the aforesaid Bills of entry at the redetermined values as stated above. In the alternate I also give the option for re-export of the imported goods totally amounting to R 12,54,586/- on payment of Redemption Fine of Rs 2,50,000/- (Rupees Two Lakhs Fifty Thousand only). The redemption of goods for re-export may be exercised by the importer within 30 days of the issue of this order, after payment of fine & penalty.*

iii) *The 5000 pieces of Head Phones (handsfree) of total value re-determined at Rs 3,29,500/- imported vide bill of entry no 9278932/ 12.04.2017, be confiscated absolutely as the same were found in contravention of provision of IPR (Imported Goods), Enforcement Rules, 2007.*

iv) *The Re-determined Customs Duty including differential customs duty in respect of Bill of entry No 9278932 dated 12.04.2017 amounting to Rs 2,72,354/-, as calculated (excluding counterfeit items) be demanded and recovered under section 28(4) of the Customs Act, 1962 along with appropriate interest under Section 28AA of the Customs Act, 1962.*

v) *I impose penalty amounting to Rs 3,69,363/- (Rupees Three Lakhs Sixty Nine Thousand Three Hundred and Sixty Three only) on the importer M/s Prakash Enterprise under Section 114A of the*

Customs Act,1962 for his omission and commission and short levy of Customs duty on account of suppression of facts in terms of quantity, description, classification, brand and value.

vi) The amount paid vide manual Challans No 254 dated 21.04.2017, in respect of said Bs/E of M/s Prakash Enterprise be appropriated against the liability of Customs Duty, Interest or any other liability so may arise.

87. Shri Rahul Prakash Sable (the proprietor M/s Prakash Enterprise) in respect of the bills of entry No 9278932 dated 12.04.2017: I impose penalty of Rs 35,000/- (Rupees Thirty Five Thousand only) on Shri Rahul Prakash Sable under Section 112 of the Customs Act, 1962 for his wilful involvement in illegitimate import of subject goods under seizure.

88 In respect of the Importer namely M/s Prism Enterprise

i) The goods imported vide Bill of entry No 9278936 all dated 12.04.2017 value re-determined at Rs 6,78,977/- be confiscated under Section 111(d), 111(f), (l) & (m) of the Customs Act, 1962.

ii) I allow Redemption of the goods imported vide Bs/E 9278936 all dated 12.04.2017 value re-determined at Rs 6,78,977/- for home consumption on payment of Redemption fine of Rs 1,35,000/- (Rupees One Lakh Thirty Five Thousand only), in addition to payment of applicable duty on the goods covered under the aforesaid Bills of entry at the redetermined values as stated above. In the alternate I also give the option for re-export of the imported goods totally amounting to R 6,78,977/- on payment of Redemption Fine of Rs 1,35,000/- (Rupees One Lakh Thirty Five Thousand only). The redemption of goods for re-export may be exercised by the *importer within 30 days of the issue of this order, after payment of fine & penalty.*

iii) The Re-determined Customs Duty including differential customs duty in respect of Bill of entry No 9278936 dated 12.04.2017 amounting to Rs 1,89,321/-, be demanded and recovered under section 28(4) of the Customs Act, 1962 along with appropriate interest under Section 28AA of the Customs Act, 1962.

iv) I impose penalty amounting to Rs 1,89,321/- (Rupees One Lakhs Eighty Nine Thousand Three Hundred and Twenty One only) on the importer M/s Prism Enterprise under Section 114A of the Customs Act,1962 for his omission and commission and short levy of Customs duty on account of suppression of facts in terms of quantity, description, classification, brand and value.

v) The amount paid vide manual Challans No 259 dated 27.04.2017, in respect of said Bs/E of M/s Prism Enterprise be appropriated against the liability of Customs Duty, Interest or any other liability so may arise.

89. Shri Shivaji Sajerao Salunkhe (the proprietor M/s Prism Enterprise) in respect of the bills of entry No 9278936 dated 12.04.2017: I impose penalty of Rs 18,000/- (Rupees Eighteen Thousand only) on Shri Shivaji Sajerao Salunkhe under Section 112 of the Customs Act, 1962 for his wilful involvement in illegitimate import of subject goods under seizure.

90. Shri Amit Rajkumar Singhania who appears to be the actual owner in respect of the bills of entry No 9278934, 9278938, 9278942, 9278946 and 9278948 all dated 12.04.2017 filed in name of M/s Amit Enterprise and Bs/E 9278929, 9278931,9278937, 9278939 all dated 12.04.2017 filed in the name of M/s J S Enterprise :

i) *I impose penalty of Rs 6,00,000/- (Rupees Six Lakhs only) on Shri Amit Kumar Singhania under Section 112 for knowingly abetting/ supporting the illegal activity of some unscrupulous firms/ persons in order to earn money by unfair means, for his act of omission and commission and due to his major role in respect of misdeclaration of quantity, value, brand and description of the subject import goods.*

ii) *I impose penalty of Rs 2,00,00,000 (Rupees Two Crore only) on Shri Amit Kumar Singhania under Section 114AA of the Customs Act, 1962 for his major involvement in knowingly or intentionally making, using or causing to be made, signed or used declaration, statement or document which is false or incorrect to customs authorities for clearance purposes.*

91. Shri Dhiren Kukreja who is the claimant in respect of the Bs/E 9278944 all dated 12.04.2017 filed in the name of M/s Amit Enterprise :

i) *His claim of ownership in respect of the Bs/E 9278944 all dated 12.04.2017 filed in the name of M/s Amit Enterprise be rejected as he has failed to produce/ submit any agreement/ No Objection from M/s Amit Enterprise or its proprietor Shri Nilesh Jadhav.*

ii) *I impose penalty of Rs 65,000 /- (Rupees Sixty Five Thousand only) on Shri Dhiren Kukreja under Section 112 for his involvement in omission and commission in respect of misdeclaration of quantity, value, brand and description of the subject import goods.*

iii) *I impose penalty of Rs 22,00,000 (Rupees Twenty Two Lakhs only) on Shri Dhiren Kukreja under Section 114AA of the Customs Act, 1962 due to his involvement in making, using or causing documents using a proxy IEC.*

92. Shri Ashraf Mohammed Husain Kolswalia who is the claimant in respect of the Bs/E 9278932 all dated 12.04.2017 filed in the name of M/s Prakash Enterprise :

i) His claim of ownership in respect of the Bs/E 9278932 all dated 12.04.2017 filed in the name of M/s Prakash Enterprise be rejected as he has failed to produce/ submit any agreement/ No Objection from M/s Amit Enterprise or its proprietor Shri Rahul Prakash Sankhule.

ii) I impose penalty of Rs 35,000 /- (Rupees Thirty Five Thousand only) on Shri Ashraf Mohammed Husain Kolswalia under Section 112 for his role in respect of misdeclaration of quantity, value, brand and description of the subject import goods, he has thus rendered himself liable to penalty under Section 112 of Customs Act, 1962.

iii) I impose penalty of Rs 12,00,000 (Rupees Twelve Lakhs only) on Shri Ashraf Mohammed Husain Kolswalia under Section 114AA of the Customs Act, 1962 for his involvement knowingly and intentionally in making, using and submitting false/ incorrect documents to customs authorities for clearance purposes.

93. Shri Nasir Phundan Khan who is the claimant in respect of the Bs/E 9278936 all dated 12.04.2017 filed in the name of M/s Prism Enterprise :

i) His claim of ownership in respect of the Bs/E 9278932 all dated 12.04.2017 filed in the name of M/s Prakash Enterprise be rejected as he has failed to produce/ submit any agreement/ No Objection from M/s Prism Enterprise or its proprietor Shri Shivaji Sajerao Salunkhe.

ii) I impose penalty of Rs 18,000 /- (Rupees Eighteen Thousand only) on Shri Nasir Phundan Khan under Section 112 for his role in respect of misdeclaration of quantity, value, brand and description of the subject import goods, he has *thus rendered himself liable to penalty under Section 112 of Customs Act, 1962.*

iii) I impose penalty of Rs 3,00,000 (Rupees Three Lakhs only) on Shri Nasir Phundan Khan under Section 114AA of the Customs Act, 1962 for his involvement knowingly and intentionally in making, using and submitting false/ incorrect documents to customs authorities for clearance purposes.

94. M/s Chitalia Logistics Pvt Ltd., the Customs Broker in respect of the Bs/E 9278929, 9278931,9278932, 9278936, 9278937/ 12.04.2017 and 9278939, 9278934, 9278938, 9278942, 9278944, 9278946 and 9278948 all dated 12.04.2017:

i) I impose penalty of Rs 5,00,000 /- (Rupees Five Lakhs only) on M/s Chitalia Logistics Pvt Ltd under Section 112 for their wilful involvement in illegitimate import of subject goods under seizure.

ii) I impose penalty of Rs 10,00,000 (Rupees Ten Lakhs only) on M/s Chitalia Logistics Pvt Ltd under Section 114AA of the Customs Act, 1962 for his involvement knowingly and intentionally in making, using and causing to be made and used false/ incorrect documents to customs authorities for clearance purposes as in the fake/ false invoices, packing list and other documents were being prepared in their office.

95. Shri Manish Barot, Manager and Power of Attorney holder in M/s Chitalia Logistics Pvt Ltd., in respect of the Bs/E 9278929, 9278931, 9278932, 9278936, 9278937, 9278939, 9278934, 9278938, 9278942, 9278944, 9278946 and 9278948 all dated 12.04.2017:

i) I impose penalty of Rs 7,50,000 /- (Rupees Seven Lakhs Fifty Thousand only) on Shri Manish Barot, Manager and Power of Attorney holder under Section 112 for his major role in respect *misdeclaration of quantity, value, brand and description of the subject import goods.*

ii) I impose penalty of Rs 25,00,000 (Rupees Ten Lakhs only) on Shri Manish Barot, Manager and Power of Attorney holder under Section 114AA of the Customs Act, 1962 for his involvement knowingly and intentionally in making, using and submitting false or incorrect declaration and documents to customs authorities for clearance purposes.

95. Shri Harshwardhan Thakur, Director of M/s Chitalia Logistics Pvt Ltd., in respect of the Bs/E 9278929, 9278931, 9278932, 9278936, 9278937, 9278939, 9278934, 9278938, 9278942, 9278944, 9278946 and 9278948 all dated 12.04.2017:

i) I impose penalty of Rs 1,00,000 /- (Rupees One Lakhs only) on Shri Harshwardhan Thakur, Director of M/s Chitalia Logistics Pvt Ltd. under Section 117 for his wilful involvement in illegitimate import of the subject goods under seizure."

1.3 Early hearing applications filed by the Appellant 1, Appellant 2 and Appellant 3 have been allowed vide Misc Order No M/ 85321-85323/2019 dated 23.04.2019. Hence the matter has been listed and taken up for hearing on 11.06.2019, 0.06.2019, 27.06.2019. While adjourning the matter on request of revenue, bench had specifically recorded:

"Revenue sought adjournment on the ground that the documents relevant for the appeals are in the process of compilation at the Commissionerate. Accordingly, the matter is adjourned to 01.08.2019 with the direction for not seeking any adjournment on the said date of hearing. It is made clear that if Revenue is not able to produce the relevant documents the appeal will be decided on the available records."

1.4 Finally appeals were heard on 01.08.2019. At the time of hearing the three appeals in which early hearing was allowed, it was brought to the notice of bench that three more appeals against the same order have been filed which are before the single member. Accordingly these appeals were also called for and all six appeals were heard simultaneously and taken up for disposal.

1.5 In table below the details of appellants whose appeals have been taken up for disposal indicated:

Appellant	**Charge against Appellant**
Amit Rajkumar Singhania	Actual owner of imported goods which have been confiscated.
Jitu Sharad Shirsat	Proprietor of J S Enterprise, imported goods against four bill of entry. The goods have been confiscated and penalties imposed on him.
Anjana Nilesh Jadhav	Proprietor of Amit Enterprise, imported goods against four bill of entry. The goods have been confiscated and penalties imposed on him.
Manish Dhirajlal Barot	Manager and Power of Attorney Holder of CHA. Responsible for filing the bills of entry. Penalty has been imposed.
Chitalia Logistics P Ltd	Custom House Agent who is responsible for filing the bill of entries. Penalty has been imposed.
Harshwardhan Thakur	Director of CHA. Penalty has been imposed on him.

2.1 Based on the specific information that certain unscrupulous persons using the bogus/ forged documents to smuggle substantial quantity and undeclared items of mobile accessories/ readymade garments/ fabrics from China, Hong Kong South Korea Istanbul and other countries to evade payment of duty, investigations were initiated and consignments imported against 12 Bill of Entries detailed in table below, filed by M/s Chitalia Logistics Pvt Ltd (CHA No AABCC2034LCH001) were intercepted-

B/E No	Importer	Declared Value	Declared Duty	Examined On
9278929	J S Enterprise	1164292.62	251397.40	15.04.2017
9278931	J S Enterprise	1309187.58	275938.70	16.04.2017
9278937	J S Enterprise	1364822.25	272887.10	17.04.2017
9278939	J S Enterprise	778697.05	196976.90	17.04.2017
9278932	Prakash Enterprise	1071285.07	244496.80	17.04.2017
9278936	Prism Enterprise	504246.89	126620.00	19.04.2017
9278934	Amit Enterprise	1443053.00	281474.00	29.04.2017
9278938	Amit Enterprise	1113109.00	222357.10	14.04.2017
9278942	Amit Enterprise	8654486.97	205627.60	15.04.2017
9278944	Amit Enterprise	834085.44	218131.20	13.04.2017
9278946	Amit Enterprise	939096.58	203778.10	15.04.2017
9278948	Amit Enterprise	1295767.98	276129.30	15.04.2017

2.2 After completion of investigations show cause notice was issued to the importers and all other concerned with import of the said goods asking them to show cause as to why the imported goods which have been-

- misdeclared in respect of value be not confiscated;
- imported in contravention of provisions of IPR (Imported Goods) Enforcement Rules, 2007 be not confiscated absolutely;
- differential duty on the imported goods be not demanded and recovered from them under section 28(4) of the Customs Act, 1962 along with appropriate interest under Section 28AA ibid;
- penalties should not be imposed on them under Section 112 or 114A of the Customs Act, 1962;

- Amounts already deposited by them during the course of investigation be not appropriated against the liability of Customs duty, Interest or any another liability that may arise.

2.3 The show cause notice has been adjudicated as per the impugned order referred in para 1, supra.

2.4 Aggrieved by the order some of persons are in appeal before the appellants.

2.5 Specific direction was given to registry by the bench on 11.06.2019, to find out if any other appeal of any other person against whom the impugned order has been passed, was pending and to get all the appeals connected. As on the date of hearing of matter registry was not able to locate any appeal filed by M/s Prism Enterprise, M/s Prakash Enterprise, , Shri Rahul Prakash Sable, Shri Shivaji Sarjerao Salunkhe, Shri Dhiren Kukreja, Shri Ashraf Mohammed Husain Kolsawala and Shri Nasir Phundan Khan.

3.1 We have heard Shri Anil Balani, Advocate for the Appellants and Shri R K Dwivedi, Additional Commissioner for the Revenue.

3.2 Arguing for the appellants, learned advocated submitted that-

- Since the inception of proceedings, Shri Nilesh Ramesh Jadhav Proprietor of M/s Amit Enterprises has expired and hence the proceedings against him should be abated.
- The adjudication order has proceeded to confiscate the goods alleged to imported by mis-declaring the value etc and also simultaneously proceeded to demand the duty under section 28 of the Customs Act, 1962 along with the interest under Section 28AA. Accordingly the penalties have been imposed simultaneously under Section 112, 114A and 114AA of the Customs Act, 1962.

- As per the SCN para 2, goods were intercepted prior to payment of duty and all the bill of entries were pending registration and examination.
- Once the goods were intercepted and seized prior to assessment, registration and examination demand of duty in terms of Section 28(4) of Customs Act, 1962 cannot be sustained. As per the Explanation 1 to Section 28, "relevant date" for issuing the show cause notice is the date of "order for clearance' or the date of "payment of duty". In the present case since none of the exigency leading to invocation of Section 28 have occurred the demand made under Section 28 is bad in law.
- Since demand under Section 28 cannot be sustained, the penalty imposed under Section 114A and demand of interest under Section 28AA too cannot be sustained.
- As per table 27.1 on page 56 of SCN the differential duty demanded is around Rs 40 Lakhs whereas during the course of investigation for provisional release of the goods they were made to deposit Rs 90 lakhs.
- The entire case of revenue against the appellants is based on flimsy and dubious material. No market enquiry report, or panchnama etc has been placed on records. Even the documents sought to be relied upon are illegible and unintelligible.
- Natural Justice has been violated as they have been denied opportunity of cross examination without any valid and justifiable reason.
- Penalty under Section 114AA cannot be sustained in view of the decision in case of Bosch Chassis Systems India Ltd [Final Order No 52701-52703/2015 of Delhi Bench)]wherein it has been specifically held that this section applies only in case of export of goods, and the present case of import of goods.

- Penalties on proprietor and proprietorship concern have been imposed contrary to settled position in law.
- Because of lapse of two years, the entire profit associated with the goods under import has been wiped off and only the losses need to be minimized, hence the redemption fine imposed against the confiscated goods is excessive and needs to be set aside.

3.3 Arguing for the revenue learned Authorized Representative while reiterating the findings of Commissioner in impugned order submitted that-

- The case is against the appellants is not only of importation of goods by undervaluing, but is much beyond. Undisputedly at the time of examination of goods, certain goods which were not declared , certain goods which were imported in contravention of IPR (Imported Goods), Enforcement Rules, 2007, were also found, apart from the goods which were grossly undervalued.
- The counterfeit goods imported by the appellant have been absolutely confiscated.
- In respect of the other goods the charges of undervaluation are based on the market enquiries undertaken and the as per table 30 to Show Cause Notice, this market enquiry report is listed at Annexure LXXVI
- Since appellants have by their acts of omission and commission rendered the imported goods liable for confiscation either absolutely or allowed to be redeemed against redemption fine, they are liable for penalty under Section 112 of the Customs Act, 1962.
- Since the duty has been short paid by the appellant demand of duty under Section 28 is justified and imposition of penalties under Section 114A of the Customs Act, 1962 too cannot be faulted with.

- Since the appellants have made use of forged/fake invoices etc for the purpose of clearance of the goods they are also liable for penalty under Section 114AA of the Customs Act, 1962.

4.1 We have considered the impugned order along with submissions made in appeals and during the course of arguments. From the facts of case before us we find that, the goods imported by the appellants have been confiscated in the impugned order under following categories:

a. Counterfeit goods imported in contravention of IPR (Imported Goods) Enforcement Rules, 2007, - These goods have been confiscated absolutely in terms of Section 111(d), (l) & (m) of Customs Act, 1962. Appellants do not seriously dispute the order of confiscation of these goods.

b. Imported goods misdeclared in terms of value. These goods have been confiscated but have been allowed to be redeemed on the payment of redemption fine imposed.

4.2 In respect of two importer namely M/s Amit Enterprises and M/s J S Enterprises who are appellants before us in the table below we list the quantum of undervaluation and also the differential duty that is sought to be levied on the importers.

B/E No	Importer	Value			Duty		
		Declared	Assessed	Difference	Declared	Assessed	Difference
9278929	J S Enterprise	11,64,292.62	15,81,720	4,17,427	2,51,397	3,03,471	52,074
9278931		13,09,187.58	18,78,267	5,69,079	2,75,939	4,31,594	1,55,655
9278937		13,64,822.25	20,93,543	7,28,721	2,72,887	4,45,033	1,72,146
9278939		7,78,697.05	29,64,231	21,85,534	1,96,977	6,25,484	4,28,507
Total		**46,16,999.50**	**85,17,761**	**39,00,762**	**9,97,200**	**18,05,582**	**8,08,382**
9278934	Amit Ente	14,43,053.00	19,17,873	4,74,820	2,81,474	3,61,985	80,511

9278938	rprise	11,13,109.00	44,16,744	33,03,635	2,22,357	8,46,791	6,24,434
9278942		8,65,486.97	26,00,401	17,34,914	2,05,628	3,01,742	96,114
9278944		8,34,085.44	22,98,117	14,64,031	2,18,131	6,62,015	4,43,884
9278946		9,39,096.58	20,49,352	11,10,255	2,03,778	4,74,049	2,70,271
9278948		12,95,767.98	40,70,282	27,74,514	2,76,129	10,50,666	7,74,537
Total		**64,90,598.97**	**1,73,52,769**	**1,08,62,170**	**14,07,497**	**36,97,248**	**22,89,751**

4.3 Despite the appellants submissions that value has been sought to be enhanced on the basis of dubious and flimsy material we are not in position to accept the said submissions. In para 19.3 of his order Commissioner has while rejecting the declared value observed as follows:

"19.3 It has emerged during investigations that the invoices and packing lists produced in respect of the 12 Bs/E in question were manipulated documents and the declared value, based on such manipulated documents is liable to be rejected. Further, a clear relationship has emerged between the main player in this scheme of duty evasion, Shri Amit Singhania that he held interests in the overseas suppliers as well as in the imported goods in 9 of the 12 Bills of Entry in question which renders the declared value of goods liable to rejection. The declared values in the remaining three Bills of Entry were similar and identical to Bills of Entry in which Shri Amit Singhania was involved as the real owner of imported goods and the same had been manipulated and prepared with the active connivance of the CB Shri Manish Barot of Chitalia Logistics Pvt Ltd and hence the declared value in these three Bills of Entry are also liable to be rejected."

4.4 Detailing the process for determination of value, Commissioner has in para 21 observed as follows:

"21. Accordingly, valuation of the subject goods in the instant case (except mentioned at Point III of Para 20 above) was done as per the said Rule 7 of the CVR, 2007

and in order to re-determine the value of the goods under seizure, the procedure followed for valuation purpose is:

- *i) A list of unique items of each B/E was prepared.*
- *ii) Market enquiry was done in respect of price/ value/ rates (per unit) of different types of item under seizure. Further, the value/ rates (per unit) of different items under seizure were re-determined by the department after giving 30% of discount on wholesale market enquiry based value of different items.*
- *iii) Wherever, price/ value/ rates could not be obtained by market enquiry, the e-commerce rates from different websites such as amazon.in, flipkart.com, e-bay.in, snapdeal.com and aliexpress.in were also considered for finalization of the revised values and computation of customs duty. The average price from the said websites was taken and 40% of the said e-commerce price was taken.*
- iv) *Three types of values were taken into consideration -unbranded items, items tagged brands as Apple and the items tagged as other brands."*

4.5 From the above paras though, we are convinced that the importers had misdeclared the value, but we also find that the value determined by the revenue also determined in arbitrary and on the basis of various assumptions and presumptions. Hence the quantum of undervaluation determined by the revenue can always be debated. Further it is fact that appellants have before the Commissioner asked for cross examination of various persons associated with market enquiry. In para 11 to 13 of their interim reply to show cause notice, appellants have stated-

"11) Before proceeding further, the names of the officers who conducted the market inquiry must be disclosed and they should be made available for cross examination. The shopkeepers who issued the proforma invoices, quotations

and bills relied upon in annexure LXXVI must be identified and should be made available for cross examination.

12) The copies of Bills of entry and invoices referred to in NIDB data (annexure LXXV) must also be supplied.

13). A date must be fixed for examination of all the persons whose statements are relied upon in the notice in terms of Section 138B of the Customs Act. Thereafter, they should be offered for cross examination as per the well settled law on the subject. In the meantime, the allegations in the statements of Manish Barot are strongly denied."

4.6 Commissioner ahs in para 62 of his order denied the cross examination stating as follows:

"62 The cross examination was denied on the grounds that the case is basically about gross mis-declaration of quantity, description and value; the inventory of seized goods prima facie indicate mis declaration in terms of quantity, description and value and the nature of some of the seized goods figuring in the inventory also prima facie indicated violation of IPR as well as other norms. To sum up it was clear that the case is built on the grounds of seizure of offending goods and so far the factotum of seizure neither appears to suffer from deficiency nor does the offending nature of goods appear mitigated in any manner. Further it is seen that the learning advocate at sort cross examination of departmental officers and shop keepers but the records of case make it clear that none of these persons statement (recorded under the statutory provision of Section 108 of Customs Act) are part of the case file or have been relied upon in the case. Merely by saying that market inquiry is vague, the learned advocate does not prepare the ground for assailing the market enquiry report. In absence of any prima facie case being made out by the learning advocate showing ex facie defect in the market enquiry, I was not inclined to allow cross examination."

In the case of the type before us where the value has been determined on the basis of the market inquiry Commissioner should have normally allowed cross examination and supplied all the documents, which formed the basis of valuation to the appellants. In normal course for determination of the value, after allowing cross examination and supplying all, the documents to the appellant importers. However in view of specific concession made by the appellants counsel during the course of hearing that with the passage of time (nearly two years from date of importation), the goods have become junk and they do not intend to clear the same for DTA market, the issue in respect of the re-determination of the assessable value under Section 14 has become a mere technical and administrative formality and dispute. Suffice to say that appellant importer had misdeclared the goods in terms of value, quantity and description. For the misdeclaration of the goods in terms of value, quantity and description we hold that goods are liable for confiscation under Section 111 (m) and (o) of the Customs Act, 1962.

4.7 In para 25 of the impugned order Commissioner has discussed the role of IEC Holders in whose name the 12 Bs/ E were filed. In table 29 he records the facts about each of IEC holder as follows:

S. No.	IEC Code	IEC Holder	IEC Address	Name of Importer	Remarks
1	316966452	Nilesh Ramesh Jadhav	R No 145 Jadhav Niwas, Ambernath Road, Ashoknagar, Walduni, kalyan West 421301	Amit Enterprise	Report dt 24.4.2017 IEC holder denied knowledge in statement
2	316502472	Jitu Sharad Shirsat	R No 501 B Wing Gavdevi Apartments, Bhagatwadi Sabe Road,	J S Enterprise	Report dt 2.5.2017 No sign Board. IEC Holder present denied

			Vitthal Rukmini Mandi, Diva East 400612		knowledge in statements
3	316508829	Rahul Prakash Sable	Room No 23, Sant Rohidas Wada, Opp Jokar Plaza Kalyan West 421301	Prakash Enterprise	Report dt 22.03.2018 No sign Board. Address and IEC Holder found
4	316977390	Shivaji Sarjerao Salunkhe	6 Mohite Lane, New Jimmy Baug near Nalanda Schooll Lokgram Police Chowky Kalyan East 421306	Prism Enterprise	Report dt 22.03.2018 No sign Board. Address and IEC Holder found

"25.2 The statements of Shri Jitu Sharad Shirsat, Proprietor of J S Enterprise and Shri Nilesh Ramesh Jadhav, Proprietor of Amit Enterprise were recorded on 27.07.2017 and 15.09.2017 respectively. Inter alai both these IEC holders have admitted that they had no knowledge of the import consignments covered by the above said Bs/E filed in name of J S Enterprise and Amit Enterprise which were seized by the Customs. At the time of address verification, Shri Rahul Prakash Sable Proprietor of Prakash Enterprise Shri Shivaji Sarjerao Salunkhe, Proprietor of Prism Enterprise, refused to have any knowledge of any import consignments filed in their company/ fir's name which were seized by Customs ...."

"25.4 Prima facie, the manner of the present imports appear to be part of a larger modus operandi of a syndicate of related overseas suppliers and local importers to misdeclared and undervalue mobile accessories and clear them on basis of manipulated documents such as invoices and packing lists that are printed in India and not sent by the overseas suppliers. This view further finds support by the fact that the remittance of import has not

been sent from the Bank Account of the IEC Holder. The actual owner of the goods have deposited customs duty for the live 12 consignments- not from the bank account of IEC holder or form the bank account of the importer – but from some third party bank account. A combined reading of the above mentioned facts makes the transaction value of the goods under seizure to be rejected as under the customs valuation rules."

4.8 Since the goods have been intercepted and seized prior to the clearance of the goods, the proceedings against the said goods could have been initiated only under Section 124 of the Customs Act, 1962 and the goods confiscated under Section 125 (1) ibid. In case the goods not confiscated absolutely, the officer adjudging the case is required to give the option to redeem the goods against the redemption fine which needs to be determined by him. In the present case in respect of the -

i. four Bill of Entries filed in the name of Appellant 2, Commissioner has imposed redemption fine of Rs 17,00,000/- (Rupees Seventeen Lakhs). However Commissioner has in the entire order not pointed out any reason for determining the redemption fine. Even if the extent of undervaluation is taken into account the total difference in the value as declared and the value as determined by the revenue in these proceedings is Rs 39,00,762/-. Taking into account the value redetermined we are of the view that redemption fine imposed is much on higher side and we reduce the same to Rs 3,50,000/- (Rupees Three Lakhs Fifty Thousand only)

ii. six Bill of Entries filed in the name of Appellant 3, Commissioner has imposed redemption fine of Rs 35,00,000/- (Rupees Thirty Five Lakhs). However Commissioner has in the entire order not pointed out any reason for determining the redemption fine. Even if the extent of undervaluation is taken into account the total difference in the value as declared and the value as determined by the revenue in these proceedings is Rs 1,08,62,170/-. Taking into account the value redetermined we are of the view that redemption fine imposed is much on higher side and we reduce the same to Rs 7,00,000/- (Rupees Three Lakhs Fifty Thousand only).

4.9 In terms of Section 125 (2), it is only after the person given the option to redeem the goods, redeems the said goods then only the question of payment of duty under section 125(2) of the Customs Act, 1962 will come. In case-

- he does not redeem the goods for clearance in DTA there cannot be question of payment of duty.
- he redeems the goods but seeks the permission for export of redeemed goods and the permission to export is allowed by the competent person, then also there cannot be any question of payment of duty.

Hence the demand of duty made by invoking the provisions of Section 28, prior to redemption of the goods is totally premature. Hon'ble Supreme Court has in case of Jagdish Cancer & Research Centre [2001 (132) ELT 257 (SC)] laid the law stating as follows:

"11. Whenever an order confiscating the imported goods is passed, an option, as provided under sub-section (1) of Section 125 of the Customs Act, is to be given to the person to pay fine in lieu of the confiscation and on such an order being passed according to sub-section (2) of Section 125, the person "shall in addition be liable to any duty and charges payable in respect of such goods". A reading of sub-sections (1) and (2) of Section 125 together makes it clear that liability to pay duty arises under sub-section (2) in addition to the fine under sub-section (1). Therefore, where an order is passed for payment of customs duty along with an order of imposition of fine in lieu of confiscation of goods, it shall only be referable to sub-section (2) of Section 125 of the Customs Act. It would not attract Section 28(1) of the Customs Act which

covers the cases of duty not levied, short levied or erroneously refunded etc. The order for payment of duty under Section 125 (2) would be an integral part of proceedings relating to confiscation and consequential orders thereon, on the ground as in this case that the importer had violated the conditions of notification subject to which exemption of goods was granted, without attracting the provisions of Section 28(1) of the Customs Act. A reference may beneficially be made to a decision of this Court reported in Mohan Meakins Ltd. v. Commissioner of Central Excise, Kochi, 2000 (115) E.L.T. 3 (S.C.) = (2000) 1 SCC 462 wherein it has been observed in Para 6 "….. Therefore, there is a mandatory requirement on the adjudicating officer before permitting the redemption of goods, firstly, to assess the market value of the goods and then to levy any duty or charge payable on such goods apart from the redemption fine that he intends to levy under sub-section (1) of that section." In this view of the matter the objection raised by the Centre that Section 28 of the Customs Act would be attracted is not sustainable."

Hence we are in agreement with the counsel for the appellants that proceedings for demand of duty under section 28(4) cannot be sustained prior to redemption of goods.

4.10 Penalties on Appellant 1 to 5

Since we hold that the goods were liable for confiscation under Section 111 for the reason of misdeclaration of description, quantity and value, penalties imposed on the persons are justified. Commissioner has by the impugned order imposed penalties as tabulated in table below under section 112, 114A and 114AA on the Appellants.

Appellant	Role	Penalty Under Section in Rs		
		112	114A	114AA
1	Owner of Goods	6,00,000		2,00,00,000
2	Proprietor of Firm in whose name B/E filed	2,30,000	-	85,00,000
	Firm in whose		23,05,362	-

	name B/E filed			
3	Proprietor of Firm in whose name B/E filed	4,50,000	-	1,80,00,000
	Firm in whose name B/E filed		46,03,850	-
4	Custom Broker (CB)	5,00,000		10,00,000
5	Power of Attorney holder Custom Broker	7,50,000		25,00,000

4.11 The sections under which the penalties have been imposed are reproduced below:

SECTION 112. Penalty for improper importation of goods, etc.- Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

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

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer *determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;*

(iii) ………;

(iv) ………..;

(v) *………..*

SECTION 114A. Penalty for short-levy or non-levy of duty in certain cases*. - Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:*

Provided ……:

Provided ….. :

Provided …..

Provided ……

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

Explanation. - For the removal of doubts, it is hereby declared that –

(i) …..

(ii) *……*

SECTION 114AA. Penalty for use of false and incorrect material. - *If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.*

4.12 Commissioner has in para 67 onwards recorded the role of Appellants as follows for imposing penalties-

"67. Noticee No 1 M/s Amit Enterprises:

The role of Notice No 1 is detailed in para 27.1 of the subject show cause notice. There are six Bills of Entry which were imported under the IEC of Notice No 1. As is already been stated supra, the goods were misdeclared/ non-declared rendering the goods liable to confiscation. I am in full agreement of liability of confiscation of the goods imported under the IEC of Noticee No 1. From the records of case it is clear that Noticee No 1 was simply functioning as a dummy to allow import under its IEC; the premises of Noticee No 1 as mentioned in the IEC was found to nonexistent, no sign board or office or any company in the name of M/s Amit Enterprises was found to be functioning at the said address. Summons and other correspondence were issued to M/s Amit Enterprises but most of them were returned undelivered with remarks from the postal authority "Addressee doesn't residing in this address". Hence I hold that the goods covered under the six bills of Entry of M/s Amit Enterprises whose collective value has been re-determined as Rs 1,73,52,769/- liable to confiscation under Section 111 of Customs Act. I also hold that the goods contravening the provisions of IPR norm liable for absolute confiscation. It follows that the duty liability on the confiscated goods which if allowed to be redeemed shall be based on the re-determined value. As far as penalty under section 112 is concerned, I find that though Noticee No 1 (proprietorship firm) has rendered the goods liable to confiscation and therefore rendered itself liable to penalty under section 112, considering the fact that the sole proprietor of Noticee No 1 is also a Notice in this SCN, I would opt to refrain from imposing penalty on Noticee No 1 (proprietorship firm) under Section 112 but rather consider imposing it on the sole proprietor of Noticee No 1 i.e. Notice No 2 (Shri Nilesh Jadhav). Whereas the fact remains that when duty is being rightly *demanded under Section 28(4) of the Customs Act, penalty under Section 114A is mandatorily imposable on Noticee No 1.*

68. Noticee No 2 Shri Nilesh Ramesh Jadhav (proprietor of Noticee No 1):

The role of Noticee No 2 is given out in para 27.2 of the SCN. In his statement recorded under Section 108 of the Custom Act, 1962, Noticee No 2 has clearly admitted that he had given his credentials to Amit Singhania; though he claims that he had nothing to do with imports or the Writ Petition filed in his name in the High Court, it is clear that his credentials were used to create the proprietorship firm 9Noticee No 1) and IEC was obtained utilizing his credentials in the name of Noticee No 1. It is an established fact that IEC of Noticee No 1 of which Noticee No 2 is the sole proprietor was utilized for affecting the imports in the name and style of Noticee No 1. Hence I have no hesitation in holding Noticee No 2 as the person whose acts of commission and omission rendered the goods imported under the name of Noticee No 1 liable to confiscation and therefore he rendered himself liable to penalty under section 112 of Customs Act.

69. Noticee No 3 M/s J S Enterprises:

The role of Noticee No 3 is detailed in para 27.3 of the subject show cause notice. There are four Bills of Entry which were imported under the IEC of Noticee No 3. As is already been stated supra, the goods were misdeclared/ non-declared rendering the goods liable to confiscation. I am in full agreement of liability of confiscation of the goods imported under the IEC of Noticee No 3. From the records of case it is clear that Noticee No 3 was simply functioning as a dummy to allow import under its IEC; the premises of Noticee No 3 as mentioned in the IEC was found to nonexistent, no sign board or office or any company in the name of M/s J S Enterprises was found to be functioning at the said address. Summons and other correspondence were issued to M/s J S Enterprises but most of them were *returned undelivered with remarks from the postal authority "Addressee doesn't residing in this address". Hence I hold that the goods covered under the four bills of Entry of M/s J S Enterprises whose collective value has been re-determined as Rs 85,17,761/- liable to confiscation under Section 111 of Customs Act. I also hold that the goods contravening the provisions of IPR norm liable for absolute confiscation. It follows that the duty liability on the confiscated goods which if allowed to be redeemed shall be based on the re-determined value. As far as penalty under section 112 is concerned, I find that though Noticee No 3 (proprietorship firm) has rendered the goods liable to confiscation and therefore rendered itself liable to penalty under section 112, considering the fact that the sole proprietor of Noticee No 3 is also a Noticee in this SCN, I would opt to refrain from imposing penalty on Noticee No 3 (proprietorship firm) under Section 112 but rather consider imposing it on the sole proprietor of Noticee No 3 i.e. Notice No 4 (Shri Jeetu Sharad Shirsat). Whereas the fact remains that when duty is being rightly demanded under Section 28(40 of the Customs Act, penalty under Section 114A is mandatorily imposable on Noticee No 3.*

70. Noticee No 4 Shri Jeetu Sharad Shirsat (proprietor of Noticee No 3):

The role of Noticee No 4 is given out in para 27.4 of the SCN. In his statement recorded under Section 108 of the Custom Act, 1962, Noticee No 4 has clearly admitted that he had given his credentials to Amit Singhania for a consideration of Rs 7000/- per consignments (import) of mobile accessories; he had been paid about Rs 25,000/- in five-six instalments by the assistant of Amit Singhania; though he had no knowledge of the import consignments arrived at Air Cargo Complex in the name of Noticee No 3 and the goods did not belong to him, he had blindly signed documents concerning the Writ Petition filed in his name in the High Court. It is clear that his credentials were used to *create the proprietorship firm (Noticee No 3) and IEC was obtained utilizing his credentials in the name of Noticee No 3. It is an established fact that IEC of Noticee No 3 of which Noticee No 4 is the sole proprietor was utilized for affecting the imports in the name and style of Noticee No 3. Hence I have no hesitation in holding Noticee No 4 as the person whose acts of commission and omission rendered the goods imported under the name of Noticee No 3 liable to confiscation and therefore he rendered himself liable to penalty under section 112 of Customs Act.*

71 to 74 Role of Noticees who are not appellant before us discussed.

75. Noticee No 9 Shri Amit Rajkumar Singhania

The role of Noticee No 9 is detailed in para 27.9 of the subject show cause notice. It is clear from the records of the case that Noticee No 9 is claimant of goods imported under 9 Bs/E filed by utilizing the IECs of M/s Amit Enterprises/ J S Enterprises; this is further supported by the fact that vide letter dated 3.11.2017 both the entities i.e. M/s Amit Enterprises and J S Enterprises have given sole ownership of the goods covered under the said 9 Bs/E to Noticee No 9. Further the case records including the statements of Noticee No 9 make it amply clear that he was one of the main persons in this sordid saga of smuggling of mobile accessories and other connected goods by utilizing proxy IECs. Although the learned advocate during the course of personal hearing vaguely stated that confessional statements have been retracted, he did not specify as to which statement he was referring. I have perused the case records and I find that not only the retraction was after a considerable time lag, the Revenue 9Supdt of Customs CIU, ACC, Mumbai) had filed an effective rebuttal against the retraction. In view of the aforesaid I do not find any reason to give credence to the retraction as it is basically an afterthought to escape the punitive actions. I hold Noticee No 9 as the person whose acts of commission/ omission rendered the subject goods *(covered by 9 BOEs) liable to confiscation and therefore he has rendered himself liable to penalty under Section 112 of the Customs Act. It is also clear that the documents utilized for filing the Bs/E and declaring the goods were basically forged/ fabricated documents. I have no hesitation in recording that Noticee No 9 is one of the main person involved in creating such forged/ fabricated documents which act amounts to wilful mis statement, suppression of facts and collusion for the purpose of evading duties. Hence I hold Noticee No 9 liable to penalty under Section 114AA of Customs Act, for his major involvement in knowingly/ intentionally making, signing, using declaration, statement, document which evidently conveyed false or incorrect information to Customs authorities for clearance of mis declared/ non declared goods.*

4.13 Discussing the role of M/s Chitalia Logistics P Ltd and Shri Manish Barot, Commissioner has in para 79 and 80 of his order recorded as follows:

"79 Noticee No 13 M/s Chitalia Logistics P Ltd:

The role of Noticee No 13 i given in para 27.13 of the Show Cause Notice. The Noticee No 13 is Custom Broker whose conduct is specifically governed under the Customs Broker Licensing Regulation, 2013. As far as action under the aforesaid Regulation is concerned the same is started at Para 27.13.1. As per the records of the case it is clear that Shri Manish Barot (Noticee No 14) held Power of Attorney of Noticee No 13 and he was acting without fetters in as much as he was facilitating clearance of import transaction on behalf of proxy IECs and he was aware that not only proxy IECs were being utilized even the supporting documents were forged/ fabricated. The Customs Broker i.e. Notice No 13 as an entity was certainly responsible for keeping a check on its employee (and power of attorney holder), to ensure that neither the CBLR, 2013 was violated nor Customs Act was violated. I find that lack of diligence by Noticee No 13 allowed Noticee

No 14 to carry on the smuggling of goods. Hence I am in full agreement with the role as ascribed to Noticee No 13 in para 27.13 of the SCN and therefore I hold Noticee No 13 liable to penalty under Section 112 of the Customs Act as well as Section 114AA of the Custom Act.

80. Notice No 14 Shri Manish Barot:

The role of Noticee No 14 is given in para 27.14 of the Show Cause Notice. On perusal of the records of the case, I am in full agreement of the role of Noticee as stated in para 27.13 of the Show Cause Notice. Notice No 14 happens to be the lynchpin of this smuggling racket. He is common factor in all the import transactions covered under these adjudication proceedings. His culpability is further aggravated by the fact that he was essaying the role of Custom Broker and therefore he had added responsibility to shoulder which he has not only failed to do but went many steps down the unlawful path by actually facilitating the smuggling. Although the learned advocate during the course of personal hearing vaguely stated that confessional statements have been retracted, he did not specify as to which statement he was referring. I have perused the case records and I find that not only the retraction was after a considerable time lag, the Revenue 9Supdt of Customs CIU, ACC, Mumbai) had filed an effective rebuttal against the retraction. In view of the aforesaid I do not find any reason to give credence to the retraction as it is basically an afterthought to escape the punitive actions. I hold Noticee No 14 as the person whose acts of commission/ omission rendered the subject goods (covered by 12 BOEs) liable to confiscation and therefore he has rendered himself liable to penalty under Section 112 of the Customs Act. It is also clear that the documents utilized for filing the Bs/E and declaring the goods were basically forged/ fabricated documents. I have no hesitation in recording that Noticee No 14 is the main person who played the most important role in this smuggling racket and who involved in creating such *forged/ fabricated documents which act amounts to wilfull mis statement, suppression of facts and collusion for the purpose of evading duties. Hence I hold Noticee No 14 liable to penalty under Section 114AA of Customs Act, for his major involvement in knowingly/ intentionally making, signing, using declaration, statement, document which evidently conveyed false or incorrect information to Customs authorities for clearance of mis declared/ non declared goods."*

4.13 From the plain reading of Section 114A supra it is evident that penalty under the said section can be imposed only if there is demand confirmed under Section 28(8) of the Customs Act, 1962. Since we are not in position to uphold the demand of duty made under the section 28, we are not in position to uphold the penalties imposed under Section 114A. Further as per the proviso to Section 114A, the penalties could not have been imposed simultaneously under that section and Section 112. To overcome the said proviso, Commissioner has imposed penalty under Section 114A on the firm and penalty under section 112 on the proprietor of firm. We cannot agree with the said approach as it is settled law that the proprietor and proprietorship firm are single identity for all the purpose. Thus we set aside the penalties imposed by the Commissioner under Section 114A of the Customs Act, 1962.

4.14 Penalties under Section 114AA could have been imposed if the revenue was able to prove that forged/ fake documents were caused to be filed for clearance of the goods in the entire order we do not find that commissioner has recorded a finding to that effect. In para 65, commissioner records as follows:

"65. As far as liability of penalty under Section 112 of Customs Act is concerned my opinion is that by allowing their IECs to be utilized in effecting import of mis declared goods liable to confiscation, the owners of firms whose IECs were thus utilized have rendered themselves liable to penalty under Section 112 of Customs Act. I am also of

putting it on record that I am considering the sole proprietor of proprietorship firm and the concerned proprietorship firma as a single entity for the purpose of applicability of section 112 of Customs Act, in terms of various precedents set by higher judicial/ quasi judicial authorities. In this regard, I place reliance on the Hon'ble judgement in Hasmukh Dalpatrai Ganantara Vs Collector of Customs {1987 (30) ELT 782 Tri Mumbai}. In this context I must put it on record that the material of the case at hand does not indicate that the persons whose credentials were used for obtaining IECs have actively colluded or suppressed facts o made wilful mis-statements, hence ***I do not find these persons viz the proprietors of the firms in whose name IECs were obtained, to be liable to penalty under Section 114A/ 114AA of Customs Act****. But at the same time I am fully conscious of the fact that there was collusion, wilful misstatement as well as wilful suppression of facts in carrying out the smuggling activity by utilizing the proxy IEC; the blame in my opinion rests with the firms whose IECs were utilized in addition to other persons who played the major role in this case. Hence, I am of the opinion that penalty under Section114A/ 114AA is liable to be imposed on the firms whose IECs were utilized as well as on the persons who played major role amounting to collusion, wilful mis-statement as well as wilful suppression of facts."*

We cannot agree with the above reasoning of the Commissioner for imposing penalties under section 114A/ 114AA of the Customs Act, without even considering the material facts on records to show as to how these persons have filed or caused to file the fraudulent/ fake documents for clearance of goods. We also are not in position to agree with the reasoning given by the Commissioner, whereby he holds that sole proprietor of proprietorship firms is not liable under Section 114A/ 114AA, and proprietorship firm is liable under these sections. Accordingly the penalties imposed under Section 114A and 114AA are set aside.

4.15 Since we have held that goods imported are liable to confiscation under Section 111, the persons who have by their Act of omission or commission rendered the goods liable to confiscation are liable to penalty under Section 112. Hence we uphold the penalties imposed under Section 112. In terms of Section 112(ii), the penalty imposed could have been upto 10% of the duty sought to be evaded. In respect of Appellant No 2, the total duty sought to be evaded is Rs 8,08,382/- and in respect of Appellant No 3 it is Rs 22,89,751, accordingly the maximum penalty that could have been imposed in terms of the said section could have been Rs 80,838 on appellant 2 and Rs 2,28,975/- on Appellant 3. In our view the ends of justice will be met if the penalty imposed on Appellant 1 to 5 under Section 112 of the Customs Act reduced to 10% of that has been imposed by the Commissioner. Accordingly the penalties imposed on each of appellant under Section 112 are reworked as indicated in table below:

Appellant		Penalty under Section 112 Customs Act, 1962 in Rs	
No	Name	Imposed by Commissioner	Penalty upheld
1	Amit Singhania	6,00,000	60,000
2	Jitu Sharad Shirsat Proprietor J S Enterprises	2,30,000	23,000
3	Nilesh Ramesh Jadhav Proprietor Amit Enterprises	4,50,000	45,000
4	M/s Chitalia Logistics Pvt Ltd	5,00,000	50,000
5	Shri Manish Barot	7,50,000	75,000

4.16 In his written submissions filed after hearing of the matter learned Counsel for appellant have submitted that since the initiation of proceedings Shri Nilesh Ramesh Jadhav Proprietor of Amit Enterprises have expired and hence the proceedings against him and his proprietorship concern should abate. In case of Shabina Abraham [2015 (322) ELT 372 (SC)] following has been held-

***"24.** It is clear that on a conjoint reading of these paragraphs this Court found that the machinery provisions contained in the Bombay Sales Tax Act, 1953, were* *sufficient to reassess a dissolved firm in respect of income that had escaped assessment before its dissolution. A distinction was drawn between an individual who dies and a firm that is dissolved as a device to evade tax. The Court laid great stress on the provision contained in Section 15(1) of the said Act by which the jurisdiction to assess or reassess under Section 15(1) is equated with the original jurisdiction to assess the dealer under Section 14. By this method, the Court found the continuity of the legal personality of the assessee is maintained in order to enable the assessment of turnover which has escaped assessment. The crucial difference, therefore, between Section 15(1) of the Bombay Sales Tax Act, 1953 and Section 11A of the Central Excises and Salt Act is that Section 11A does not contain any such provision as is contained in Section 15(1) which equates the jurisdiction to assess or reassess with the original jurisdiction to assess the dealer in the very first place. Further, this Court also construed Section 19 of the Bombay Sales Tax Act, 1959 which would throw light on the earlier Bombay Sales Tax Act, 1953, as containing the necessary machinery provisions to assess dissolved firms in respect of escaped turnover pre-dissolution. Hence, this Court added :*

"35. It is relevant, though we did not refer to this aspect while dealing with the provisions of the 1953 Act, that section 19(3) of the 1959 Act contains a clear indication that the legislature intended that a dissolved firm could be assessed under the 1953 Act also. Section 19(3) speaks of the liability of partners for the tax due from a dissolved firm and provides that they shall be jointly and severally liable to pay the tax due from the firm under the Act of 1959 or "under any earlier law", whether such tax has been assessed before or after dissolution. Section 2(12) of the 1959 Act defines "earlier law" to mean, inter alia, the Bombay Sales Tax Act, 1953. Thus, one of the postulates of section 19(3) at any rate is that a dissolved firm could be assessed under the 1953 Act. Such a postulate accords

with the principle that if the legislature provided for a charge of sales-tax, it could not have intended to render that charge ineffective by permitting the partners to dissolve the firm, an easy enough thing to do. Nothing, in fact, would be easier to evade a tax liability than to declare that the firm, admittedly liable to pay tax, has been dissolved. Section 19(3) of the 1959 Act not only makes clear what was necessarily implied in the 1953 Act, but it throws additional light on the true construction of the earlier law. But we thought it advisable to keep section 19(3) of the 1959 Act apart while construing the 1953 Act because it is the Courts, not the legislature, who have to construe the laws of the land authoritatively. As said in Craies on Statute Law :

Except as a parliamentary exposition, subsequent Acts are not to be relied on as an aid to the construction of prior unambiguous Acts. (6th Ed., p. 146).

The limited use which may be made of the language of Section 19(3) of the 1959 Act, though such a course is unnecessary, is for saying that it serves to throw some light on the Act of 1953, in case the argument is that the Act of 1953 is ambiguous.

36. Section 19(3) being quite clear and explicit, it is unnecessary to dwell on the other provisions of the Act of 1959 in order to show that a dissolved firm can be assessed under it. We may only point out that the Act of 1959 contains provisions similar to those in Sections 15, 15A and 35 of the Act of 1953 on which we have dwelt at some length. Those provisions can be found in Sections 35, 35A and 62 of the Act."

***25.** A reading of the ratio of the majority decision contained in Murarilal's case (supra) would lead to the conclusion that the necessary machinery provisions were already contained in the Bombay Sales Tax Act, 1953 which were good enough to bring into the tax net persons who wished to evade taxes by the expedient of dissolving a partnership firm. The fact situation in the present case is* *entirely different. In the present case an individual proprietor has died through natural causes and it is nobody's case that he has maneuvered his own death in order to evade excise duty. Interestingly, in the written submissions filed by revenue, revenue has argued as follows :-*

"It is pertinent to mention that in the present case, Shri George Varghese (predecessor in interest of the appellants herein) was doing business in the name of manufacturing unit namely M/s. Kerala Tyre & Rubber Company and after the death of Shri George Varghese, his legal representatives (appellants herein) might have been in possession of the plant, machinery, stock, etc., and continuing the same business, but might be in some other name in order to avoid the excise duty chargeable to the previous manufacturing unit."

26. *It is clear on a reading of the aforesaid paragraph that what revenue is asking us to do is to stretch the machinery provisions of the Central Excises and Salt Act, 1944 on the basis of surmises and conjectures. This we are afraid is not possible. Before leaving the judgment in Murarilal's case (supra), we wish to add that so far as partnership firms are concerned, the Income Tax Act contains a specific provision in Section 189(1) which introduces a fiction qua dissolved firms. It states that where a firm is dissolved, the Assessing Officer shall make an assessment of the total income of the firm as if no such dissolution had taken place and all the provisions of the Income Tax Act would apply to assessment of such dissolved firm. Interestingly enough, this provision is referred to only in the minority judgment in M/s. Murarilal's case (supra).*

27. *The argument that Section 11A of the Central Excises and Salt Act is a machinery provision which must be construed to make it workable can be met by stating that there is no charge to excise duty under the main charging provision of a dead person, which has been referred to* *while discussing Section 11A read with the definition of "assessee" earlier in this judgment.*

28. *Learned counsel for the revenue also relied upon the definition of a "person" under the General Clauses Act, 1897. Section 3(42) of the said Act defines "person" as under :-*

"(42) "Person" shall include any company or association or body of individuals whether incorporated or not."

It will be noticed that this definition does not take us any further as it does not include legal representatives of persons who are since deceased. Equally, Section 6 of the Central Excises Act, which prescribes a procedure for registration of certain persons who are engaged in the process of production or manufacture of any specified goods mentioned in the schedule to the said Act does not throw any light on the question at hand as it says nothing about how a dead person's assessment is to continue after his death in respect of excise duty that may have escaped assessment. Also, the judgments cited on behalf of revenue, namely, Yeshwantrao v. The Commissioner of Wealth Tax, Bangalore, AIR 1967 SC 135 at pages 140, 141 para 18 : (1966) Suppl. SCR 419 at 429 A-B, C.A. Abraham v. The Income-Tax Officer, Kottayam & Another, AIR 1961 SC 609 at 612 para 6 : (1961) 2 SCR 765 at page 771, The State of Tamil Nadu v. M.K. Kandaswami & Others, AIR 1975 SC 1871 (para 26) : (1975) 4 SCC 745 (para 26), Commissioner of Sales Tax, Delhi & Others v. Shri Krishna Engineering Co. & Others, (2005) 2 SCC 695, page 702, 703 paras 19 to 23, all enunciate principles dealing with tax evasion in the context of construing provisions which are designed to prevent tax evasion. The question at hand is very different - it only deals with whether the Central Excises and Salt Act contains the necessary provisions to continue assessment proceedings against a dead man in respect of excise duty payable by him after his death, which is a question which has no *relation to the construction of provisions designed to prevent tax evasion.*

29. *Learned counsel for the revenue also cited Girja Nandini Devi & Ors. v. Bijendra Narain Choudhury, (1967) 1 S.C.R. 93 at paragraph 15, and Shri Rameshwar Manjhi (deceased) through his son Shri Lakhiram Manjhi v. Management of Sangramgarh Colliery & Ors., (1994) 1 SCC 292 at paragraph 12, in support of the general principle that an action begun in a Court of law by a person does not cease with his death. The context of both decisions was very different. The first decision was in the context of proceedings in relation to partition of a joint family whereas the second was under the Industrial Disputes Act. Neither judgment has any direct bearing on the controversy before us.*

30. *It remains to consider a judgment cited by learned counsel for the appellants, namely, Commissioner of Central Excise, Bangalore-III v. Dhiren Gandhi, 2012 (281) E.L.T. 64 (Karnataka) = 2012 (27) S.T.R. 452 (Kar.). This judgment is correct in its conclusion that while interpreting the provisions of the Central Excises and Salt Act, legal heirs who are not the persons chargeable to duty under the Act cannot be brought within the ambit of the Act by stretching its provisions. To the extent that this judgment holds what is set out hereinbelow, it is correct :-*

"We do not find any provision in the Act which foists any such liability in the case of intestate succession. In other words, there is no provision which empowers the authorities to recover due from a deceased assessee by proceeding against his legal heirs. The way Section 11 and 11A are worded, it is amply clear, the legislature has consciously kept away the legal heirs from answering to liabilities under the Act." (at page 69)

31. *The impugned judgment in the present case has referred to Ellis C. Reid's case but has not extracted the real ratio contained therein. It then goes on to say that this is a case of short-levy which has been noticed during* *the lifetime of the deceased and then goes on to state that equally therefore, legal representatives of a manufacturer who had paid excess duty would not by the self-same reasoning be able to claim such excess amount paid by the deceased. Neither of these reasons are reasons which refer to any provision of law. Apart from this, the High Court went into morality and said that the moral principle of unlawful enrichment would also apply and since the law will not permit this, the Act needs to be interpreted accordingly. We wholly disapprove of the approach of the High Court. It flies in the face of first principle when it comes to taxing statutes. It is therefore, necessary to reiterate the law as it stands. In Partington v. A.G., (1869) LR 4 HL 100 at 122, Lord Cairns stated :*

"If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable, construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute".

32. *In Cape Brandy Syndicate v. IRC, (1921) 1 KB 64 at 71, Rowlatt J. laid down :*

"In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.""

In view of the law laid down by the Apex Court the proceedings initiated against the deceased appellant should abate. However only those proceedings which are in personam can abate under the Customs Act, 1962. Proceedings qua the clearance of imported goods cannot abate because in that case the ownership of the goods will be lost and any person who claims to legal heir of said person cannot get the goods cleared. Thus in our view the order in respect of the goods imported against the six bill of entries filed by M/s Amit Enterprises will have to be modified to permit the redemption of the goods to legal heirs of the importer.

4.17 Penalty on Director of the Custom Broker:

Commissioner has by the impugned order imposed penalty under Section 117 of the Customs Act, 1962 on the Appellant 6, who is Director of the Custom Broker firm. In para 81 he discusses his role as follows:

"81. Noticee No 15 Shri Harshwardhan Thakur:

The role of Noticee No 15 is described in para 27.15 of the Show Cause Notice. On perusal of the case records and the statement of Notice No 15, I am in full agreement of the role of Noticee as described in para 27.15 of the Show Cause Notice. It is uncontroverted fact that as the Director of the company which happens to be the custom broker, he had onerous responsibility towards ensuring that the company under his charge ensured compliance with the norms mandated under the Customs Act and rules/ regulations made thereunder. In this context, I find that though he had appointed noticee No 14 as an employee of the firm (Customs Broker) where he (Noticee No 15) held the position of director, he (noticee no 15) utterly failed in his responsibility in ensuring that noticee no 14 acted in compliance of norms mandated under Customs Act and rules/ regulations made thereunder. This failure on the part of noticee no 15 ultimately resulted in unlawful import transactions which are the subject matter of this adjudication proceedings. Hence I hold the noticee no 15 liable to penalty under Section 117 of the Customs Act."

Section 117 of the Custom Act, 1962 reads as follows:

"Penalties for contravention, etc., not expressly mentioned. –

Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding one lakh rupees."

From the reading of the said section it is quite evident that penalty under this section could be imposed only for contravention of the provisions of the Custom Act, either directly or indirectly by abetting in such contravention or for failure to comply with the provisions of the of the act ibid. Commissioner has while discussing the role of Appellant 6 (Noticee No 15), not identified the provision of Custom Act, 1962, which has been contravened by him directly or indirectly by him we are not in position to uphold the penalty imposed by the Commissioner under the said section. Supervisory failure by the employer over his employee cannot be the ground for imposition of penalty under this section, even if the employee has been found abetting or involved in the ac of smuggling of goods by misdeclaration, suppression or fraud. Penalty which is punitive in personam cannot be imposed for the offences committed by someone else (employee) for the reason of employment contract. Hence the penalties imposed by the Commissioner on Appellant No 6, under Section 117 are set aside.

5.1 In view of discussions as above dispose of the appeals filed by the six appellants before us as follows:

i. The goods imported against the Bill of Entries filed in the name of proprietorship concerns of appellant 2 and 3 are confiscated as per the impugned order.

ii. The goods which are not in contravention of IPR (Imported Goods) Enforcement Rules, 2007 are allowed to be redeemed on payment of redemption fine of Rs 3,50,000/- (Rupees Three Lakhs Fifty

Thousand only) by Appellant 2 and Rs 7,00,000/- (Rupees Seven Lakhs only) by Appellant 3.

iii. Penalties imposed under Section 114A, Section 114AA and Section 117 of the Customs Act, 1962 on appellant 1, appellant 2, appellant 3, appellant 4, appellant 5 & appellant 6 are set aside.

iv. Penalties imposed under Section 112 on appellant 1, appellant 2, appellant 3, appellant 4 and appellant 5 are upheld but are reduced as indicated in para 4.15 supra. Upon death of proprietor of M/s Amit Enterprise (Appellant 3) the penalty proceedings against him abate.

v. With the above modification the impugned order in respect of six appellants before us is upheld.

vi. We make it clear that nothing in this order should be construed as a finding or decision in respect of any other person referred to in the impugned order but not in appeal before us.

vii. All the appeals are disposed off accordingly.

(Order pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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