



भारत सरकार

वित्त मंत्रालय/ राजस्व विभाग

केंद्रीय अप्रत्यक्ष कर एवं सीमाशुल्क बोर्ड - मुंबई अंचल-1, भारतीय सीमाशुल्क

आयुक्त सीमाशुल्क (आयात-1) का कार्यालय

द्वितीय मंजिल, नवीन सीमाशुल्क भवन, शूरजी वल्लभदास मार्ग, बेलार्ड एस्टेट,
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फा.सं. : S/10-19/02 Adj Part-I & E-OFFICE F NO. GEN/ADJ/COMM/56/2021-ADJN

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

आदेश दिनांक: 29.03.2024
जारी दिनांक: 29.03.2024

सी.ए.ओ. क्रमांक : 89/2023-24/CAC/CC(IMPORT-1)/VP/ADJ(IMP-1)
DIN No. 2024037700000000E0D6

मूल आदेश

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



GOVERNMENT OF INDIA

MINISTRY OF FINANCE/ DEPARTMENT OF REVENUE

CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS, INDIAN CUSTOMS - MUMBAI ZONE - I

OFFICE OF THE COMMISSIONER OF CUSTOMS (IMPORT-I)

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F.No. : S/10-19/02 Adj Part-I & E-OFFICE F NO. GEN/ADJ/COMM/56/2021-ADJN

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

Date of Order: 29.03.2024

Date of Issue: 29.03.2024

C.A.O. No.: 89/2023-24/CAC/CC(IMPORT-I)/VP/ADJ(IMP-I)
DIN No. 2024037700000000E0D6

ORDER-IN-ORIGINAL

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

Subject: Second round of adjudication of Show Cause Notice¹ dated 13.10.2003 issued vide F. No. DRI/MZU/25/2001 by ADG DRI Mumbai to M/s Samudri International, M/s Mayur Enterprises, M/s Madhu Enterprises & others; in pursuance of the Hon'ble CESTAT's Remand Order No. A/1633-1638/14/CSTB/C-I dated 20.10.2014, regarding undervaluation in the import of star aniseeds, cubebbs and other spices of total CIF value of Rs. 45,42,315/- to evade customs duty of Rs. 38,99,043/- -reg.

The said SCN dated 13.10.2003 issued vide F. No. DRI/MZU/25/2001 was adjudicated in first round vide Order-in-Original No. 138/2008/CAC/CC/KS dated 26.09.2008 vide F.No. S/10-14/2004-Adjn². The noticees preferred appeals against the said OIO dated 26.09.2008 in Hon'ble CESTAT, Mumbai. Hon'ble CESTAT disposed of the said appeals vide Order No. A/1633-1638/14/CSTB/C-I dated 20.10.2014³ and observed:

"5.1 it is clear that there is gross violation of principle of natural justice in passing the adjudicating order, therefore such order deserves to be set aside and remanded. We therefore, set aside the order and remand the matter to the Adjudicating Authority and direct that all the submissions made by the appellants must be considered, sufficient opportunity of personal hearing be granted, all the relied upon documents be provide to the appellants and thereafter adjudication proceedings be completed. Since, all the appellants are before us, there is no difficulty in making the communication with them. We also direct the respective counsels as well as all the appellants to co-operate in denovo adjudication proceedings which should be completed by the Adjudicating Authority, preferably within the period of six months from the receipt of this order.

6. *Needless to say, since we passed this order only on the aspect of principle of natural justice, all the issues are kept open. All the appeals are disposed of by the way of remand."*

In pursuance of the said Hon'ble Tribunal's Order, the said SCN is now before me for adjudication.

Brief facts of the case

2. An intelligence was received by the Mumbai Zonal Unit of DRI in February-March 2001 which indicated that cloves of Madagascar, Zanzibar, Indonesia and Cameroon origin were being imported at grossly undervalued prices in the range of US \$ 2800 to 2900 PMT (per metric Ton) as against the prevailing international price of US \$ 4900 to 5500 PMT. Pursuant to such intelligence and upon causing necessary enquiries and verifications, it was ascertained from the circulars issued by the Directorate of Valuation, Customs Mumbai and also from the prices published in "The Public Ledger" (a weekly publication from London established since 1760) publishing worldwide commodity prices especially in agricultural commodities that prevailing

¹ Also referred to as the notice or the SCN

² Also referred to as 1st OIO

³ Also referred to as the Hon'ble Tribunal's Remand Order

international prices of cloves in the month of January/February 2001 were around US \$ 5500 per metric ton which had reached upto US \$ 6500 PMT by the end of February/beginning of March 2001.

3. In view of the above, documents pertaining to live consignments viz. Bills of Entry and other related documents of various importers of cloves were obtained and taken up for scrutiny and further necessary enquiries. Upon scrutiny of these documents and on receipt of further intelligence, the factory/ office premises of various importers of cloves and also the other premises connected with such imports such as those of importers, market brokers and indenting agents were also searched. During the course of investigation, the office and residential premises of one Sh. Bhumish Shah, working as an agent for foreign suppliers of various spices viz. M/s. IJIMASIA Pte. Ltd., Singapore engaged in the export of various spices to India were searched on 16.03.2001. The search of his residential premises situated at 1709/57, Pantnagar, Ghatkopar (East), Mumbai-75 resulted in the recovery of incriminating documents containing details of actually transacted price, as well as the invoiced values declared to Customs in respect of several imported consignments of cloves and other spices. The Officers also recovered and seized unaccounted Indian currency amounting to Rs. 1.02 Crores from his premises. Documents seized indicated both the actual as well as the invoice values of the consignments of various spices including cloves, star aniseeds, cassia, pepper etc. shipped by M/s. IJIMASIA consigned to various buyers in India. However, the actions and proceedings in respect of the aforesaid seized currency have been dealt separately under SCN No. DRI/BZU/21/2001 dated 13.03.2002.

4. Scrutiny of seized documents revealed that a large number of importers viz. M/s. Sachha Soudha Pedhi, M/s. Esjaypee Impex, M/s. Sheetal Medicare Products P. Ltd., M/s. Poonam Trading Co, M/s. Ganesh International, M/s. Radha V. Company and M/s. Sunil Dolatram had imported spices like cloves, star aniseeds, poppy seeds, cassia etc. from M/s. IJIMASIA, Singapore. Further, the seized documents on scrutiny were found to be in the nature of fax messages received from M/s. IJIMASIA, Singapore, mentioning therein the names of the respective importers and also the related details of import i.e. description of the consignment imported, the related export reference no., the invoice no., quantity imported, their values as shown in the invoices and also the actual transacted values of the consignment and the differential amount to be recovered from the importers.

5. Thus, the aforesaid seized documents were found to be basically containing two sets of prices (values) i.e. one which were in the nature of actual transaction prices, whereas the other set of prices which were lower than the actual transaction price and on enquiries were found to be exclusively meant for declaring to Customs on import for the purpose of assessment and clearance.

6(i) In context of the above, during the course of investigations, statements of Sh. Bhumish Mohanlal Shah were recorded on 16.03.2001, 17.03.2001, 27.04.2001, 06.03.2002 and 07.03.2002 under the provisions of section 108 of the Customs Act, 1962 (hereinafter referred as

'Act') wherein he interalia stated that he was dealing in the brokerage of imported spices like cloves, cassia, star aniseeds, maize, dried ginger etc; that these goods were being imported by various firms and used to be stored in warehouses and godowns; that in respect of such imported and warehoused goods, he used to solicit customers and arranged their delivery and collection of payments on behalf of the actual importers/owners; that he received a commission of 0.5%; that payments were mostly made in cash; that upon learning from Sh. Bhaskar Shah of M/s. Jabs international, Mumbai that M/s. IJIMASIA Pte. Ltd., Singapore were looking out for someone in India to act as their indenting agents, he had contacted Mr. Shabbir and Mr. Fuad of M/s. IJIMASIA and that he was appointed as intending agent. It was further stated by him that he had acted on behalf of local importers like M/s. Esjaypee Impex M/s. Sachha Saudha Pedhi, M/s. Poonam Trading Co., M/s. Radha V Company, M/s. Sunil Daulatram and M/s. Aroma International; that he did not have any proprietorship or partnership firm; that he was working only as an indenter in respect of imports of spices from M/s. IJIMASIA, Singapore; that for the purpose of indenting, he used to take daily quotations from them on phone; that prices obtained from M/s. IJIMASIA in respect of various spices were used to be conveyed to local buyers; that the buyers had negotiated with M/s. IJIMASIA, Singapore and confirmation of the transaction also used to be conveyed to local buyers by M/s. IJIMASIA, Singapore, through him; that for this work he used to receive a commission of 1% of the import value which was being paid to him in the form of Demand Drafts in US \$. When confronted with the fax messages contained in a file carrier recovered and seized from his residence, containing particulars of several consignments of imports by various importers wherein the values were shown and referred to as actual value, invoice value and also indicating their difference etc., Sh. Bhumish Shah upon inspection explained related details and confirmed that there had been differences between the values declared to the Customs at the time of clearance and the actual prices at which the goods were transacted and paid for.

6(ii) On being specifically asked about the wide variation between the actual prices of the consignments and the prices at which these consignments were declared to the Customs, Sh. Bhumish Shah informed that though the consignments of cloves were regularly purchased by importers at higher prices, the foreign shippers were obliging to the request of importers and used to issue invoices of much lower values and consequently there used to be difference in value. On being specifically asked Sh. Bhumish Shah upon inspection of the seized documents admitted that there had been differences in the actual value and the values contained in the invoices; that the payments towards differential value on account of difference between the invoiced value and the actual value were paid by the importers to the foreign suppliers. He also provided the details of the prices at which cloves of Zanzibar, Madagascar and Indonesian origin were sold in the Mumbai market for the last 10 months.

6(iii) He further stated that since June 2000 approximately 22 consignments had been indented through him for the different firms namely M/s. Sachha Saudha Pedhi, Pune, M/s. Esjaypee Impex (P) Ltd., M/s. Aroma International, M/s. Poonam Trading Co., M/s. Ganesh International,

M/s. Radha V. Company, M/s. S. Dolatram and others. On being further asked, he stated that he had started the job of indenting of M/s. IJIMASIA, Singapore, from June 2000 and that since then the price of cloves at international market had been rising continuously; that this was due to poor crop in Madagascar and Zanzibar, that the importers during this period had declared much lesser prices than the actual prices; that not a single consignment of cloves indented and imported through him were at actual price. On being specifically asked about the source in respect of the amount of Rs. 1.02 Crore recovered and seized from his residence under panchanama dated 16.03.2001, he stated that the same belonged to various traders of APMC market for whom he was doing commission basis. It was further clarified that the cloves imported by the traders were sold in APMC market mostly by cash; that he used to collect the cash payment from purchasers and used to settle the account periodically after deducting the 0.5% brokerage; that the amount of Rs. 1.02 Crores were the sale proceeds of various traders and that he did not remember their names; that the purpose of sending details of consignments imported by various firms to him was for pursuing the importers to expedite finalizing their dues to M/s. IJIMASIA, Singapore; that he also used to hold back the sale proceeds of such traders whose payments were pending.

6(iv) He further stated that the accounts in respect of the amount so collected were settled periodically; that the goods belonged to M/s. Sachha Saudha Pedhi, M/s. Esjaypee Impex, M/s. Poonam Trading Co., M/s. Ganesh International, M/s. Radha V. Company and M/s. Sunil Dolatram indented and imported through him from IJIMASIA, Singapore has been sold in the market; that the sale proceeds of the goods were released to the respective firms after receipt of the confirmation from IJIMASIA, Singapore about receipt of their dues (i.e. repatriation of the amount arising out of the difference in the declared values and actual values) from the respective importers.

6(v) In his statement, on being specifically shown the copies of the seized documents mentioned at Sr. No. 151 to 163 recovered from his residence and was asked to explain their contents, he stated that the said documents mainly comprised of material particulars of consignments indented and imported through him from M/s. IJIMASIA, Singapore, by various importers in Mumbai; that these documents contained import related details i.e. name of the importers, export reference number, description of the goods, actual value, vis-à-vis invoiced values and the differential amount payable thereof etc; that the same was periodically faxed from M/s IJIMASIA, Singapore for the purpose of pursuing the importers for payment of the differential values which had to be repatriated through non-banking channels.

6(vi) He further stated that all the consignments indented through him since his appointment as indenting agent of M/s. IJIMASIA, were imported at undervalued prices; that most of such consignments imported through him were also sold by him in the market and sale proceeds of such consignments sold in the market were held back by him so as to pursue and expedite payments to M/s IJIMASIA, Singapore; that the Indian currency amounting to Rs. 1.02 Crores recovered from his residence on 16.03.2001 were the sale proceeds of goods held back by him

for pursuing the payments to M/s. IJIMASIA, Singapore; that to the best of his memory of the total amount approximately Rs. 75 to Rs. 80 lakhs belonged to M/s. Sachha Saudha Pedhi, Pune, Rs. 12 lakhs belonged to M/s. Laxmi Impex and the balance amount belonged to M/s. Samudri International, Mumbai. He also stated that he had no concern with the said amount of Rs. 1.02 Crores as the same were the amounts accumulated out of the sale proceeds of spices of foreign origin belonging to the above firms; that he did not have any documents indicating such co-relation with regard to amount vis-à-vis respective importers.

7. Amongst such various importers appearing in the seized documents, M/s. Samudri International, M/s. Mayur Enterprises and M/s. Madhu Enterprises (reflected under heading 'Mehta') were also found to be such importers. As such the investigations and actions covered by this present proceeding are confined and restricted only to the import of star aniseeds, Cubebs and Mace by M/s. Samudri International, M/s. Mayur Enterprises and M/s. Madhu Enterprises. The amount of spices by other importers are the subject matter of separate investigations and are not covered by the present proceedings.

8(i) In view of the aforesaid findings as could be revealed from the deposition of Sh. Bhumish Shah, in the course of further investigation, upon causing further related enquiries, statement of Sh. Kejal Harendra Mehta was recorded under section 108 of the Act, on 01.05.2001, wherein he inter alia stated that he had started trading in spices locally in the year 1997; that upon learning about the trade related practices in the market, he decided to directly import spices like star aniseeds and Cubebs etc; that his father was against wholesale import and its trading; that therefore he requested his friend Sh. Alpesh Mehta to form and establish two proprietary firms, so that he could effect imports of spices; that for establishing the firms, he had offered a commission of 3% of the document value to Sh. Alpesh Mehta; that accordingly two firms namely M/s. Mayur Enterprises and M/s. Samudri International were established by Sh. Alpesh Mehta, somewhere in the year 1999/2000; that initially he imported one consignment of mace from Indonesia; that during this period he happened to meet an indenting agent by name Sh. Bhumish Shah in the market; that during one of their conversations, Sh. Bhumish Shah suggested to him regarding import of various spices where he could also arrange for under invoiced bills so as to evade substantial amounts of customs duty; that he (Sh. Bhumish Shah) also informed him that many traders were doing the same and thereby evading huge amounts of customs duty in their transactions; that he was tempted by the offer of Sh. Bhumish Shah to import consignments of spices at under invoiced rates; that accordingly he placed orders for four consignments of star aniseeds two consignments of cubebs, In his statement he furnished the material/ relevant import details which are as under;

Sr No	Invoice No. & Date	Importers Name (M/s.)	Quantity (MT)	Description of goods	Invoice Rate US \$/MT	Actual Rate US\$/MT
1	434/2K-01	Samudri Intl.	3.5	Star aniseeds	1450	7150

2	440/2K-01	Samudri Intl.	4.041	Star aniseeds	1450	7150
3	489/2K-01	Samudri Intl.	6.206	Star aniseeds	1450	6896
4	434/2K-01	Samudri Intl.	2.9375	Star aniseeds	1450	7475
5	434/2K-01	Samudri Intl.	10.00	Cubebs	1450	4675
6	434/2K-01	Samudri Intl.	9.40	Cubebs	1450	4650

8(ii) In the course of his statement, he also submitted copies of the invoices and related Bs/E in respect of the aforesaid 6 consignments on which he put his dated signatures in token of having produced the same. With reference to the said 6 imported consignments he further stated that the prices declared therein were under invoiced which were exclusively meant for declaring to Customs for the purpose of assessment at lower price and escaping the customs duty. He further stated that the amount accrued as differential value on account of the under invoiced values were either collected by Sh. Bhumish Shah or by unknown person(s) by using code words or code numbers. On being further questioned, he expressed his ignorance about the mode and method of remittance of the said amount to the foreign suppliers abroad. In his statement while informing about pending clearance of 1 consignment of 3 MTs of mace, he further stated that other than the aforesaid live consignments and the above said 6 imported and cleared consignments, he had not imported any other consignment either by himself or in the name of any other company. He also stated that he normally used to contact Sh. Bhumish Shah who used to do the needful in booking the consignments, negotiating their prices etc. and that on receipt of the details he used to confirm the imports if the same was found profitable.

9. Further, pursuant to admitting the under valuation in the import of star aniseeds by M/s. Samudri International, Sh. Kejal Mehta voluntarily submitted Demand Drafts totally worth Rs. 11 lakhs towards the differential duty, which were deposited in the Government Treasury.

10(i) Further statement of Sh. Kejal Mehta was recorded under section 108 of the Act, on 25.02.2002, wherein he stated that somewhere in the year 2000, he had got his friend Sh. Alpesh Mehta to establish the firm namely M/s. Samudri International and his (i.e. Sh. Kejal Mehta's) cousin, Sh. Mayur Ravani to establish the firm namely M/s. Mayur Enterprises and for effecting imports of various spices, he used to pay them commission of 3% of the CIF value of the imports.

10(ii) Sh. Kejal Mehta also re-iterated in his statement that he had been tempted by the offer made by Sh. Bhumish Shah, indenting agent for M/s. IJIMASIA Pte. Lte., Singapore with regard to arranging for imported consignments of star aniseeds and cubebs from M/s. IJIMASIA Pte. Ltd. at undervalued rates, which would help him in evading huge amounts of customs duty and making the cost of the goods very competitive; that accordingly he had verbally placed orders for star aniseeds and cubebs with Sh. Bhumish Shah; that Sh. Bhumish Shah used to

indent and arrange shipment of the material from M/s. IJIMASIA, Singapore and upon arrival of the consignment at Mumbai /Nhava Sheva Port, he (i.e. Sh. Kejal Mehta) used to retire the negotiable import documents from the banks by making payment for remittances; that for getting the documents cleared through banks, Sh. Alpesh Mehta and Sh. Mayur Ravani used to sign the requisite documents on his instructions.

10(iii) He further stated that he used to hand over the documents to his clearing agent, M/s. Durga International (holding CHA Licence No. 11/0962), for the clearance of import consignments of star aniseeds and also another clearing agent, M/s. S. Rajendra and Co. (holding CHA Licence No. 11/955) for the clearance of import consignments of cubebs; that after clearance of the imported material through Customs, he used to arrange for transporting it to a rented warehouse in Navi Mumbai; that from there depending on orders he used to arrange for the materials to be delivered to his customers within Maharashtra and outside Maharashtra; that nearly 50% of the consignments imported by him were sold in the above said manner and rest were sold by Sh. Bhumish Shah in APMC market; that he used to give him the brokerage commission of 1% for the same; that all sale transactions were effected on cash basis only.

10(iv) It was further stated by Sh. Kejal Mehta that since the material imported were undervalued as per the invoices of M/s IJIMASIA, he used to remit the invoice value through banking channels and the differential amount arising out the actual value and the invoice value was appropriated by Sh. Bhumish Shah by retaining part of the sale proceeds of his goods sold through him; that sometimes he used to hand over the differential amount to the representative of Sh. Bhumish Shah.

10(v) In his statement he was shown page no. 169, 171, 173 and 175 from the faxes (Xerox copies) received from M/s. IJIMASIA Pte. Ltd., Singapore by Sh. Bhumish Shah, which was earlier recovered and seized by DRI from the residence of Sh. Bhumish Shah on 16.03.2001. Upon inspection, he stated that the said fax messages, column heads such as 'particulars', 'reference', 'actual', 'invoice', 'difference', 'credit', 'remarks', 'status' and 'immediate' had been furnished. In his statement he explained that at pages 153, 169, 171, 173 and 175 in the said fax messages wherever under column head 'particulars', 'Mehta star aniseeds, Mehta cubebs or Mehta mace was shown, it referred to consignments of star aniseeds, cubebs or mace imported by him in the names of M/s. Samudri International, M/s. Madhu Enterprises and M/s. Mayur Enterprises. He further explained that against such imports under the column heads reference, the export reference no. shown, referred to individual import consignments imported; that the column heads 'Actual' shown in the said fax messages provided figures relating to quantity/rate/value, which referred to the actual quantity, actual rate / MT transacted and the actual transaction value in respect of the imported goods; that the column head 'Invoice' shown in the said fax messages provided figures relating to quantity / rate / value of the imported consignments which referred to the quantity/rate/MT and the total CIF value of the said consignments declared to customs for the purposes of assessment.

10(vi) He further stated that page no. 175 of the said fax message, the 'reference' given as EXP/2516/00 and 'particulars' given as 'Mehta star aniseeds' referred to the consignment of star aniseeds imported by him under the name of the firm M/s. Samudri International; that the actual transacted quantity, rate/MT and value was 6.9 MT, US \$ 6600 per MT and 45513.60 US \$ respectively. He further stated that with an intent to evade customs duty the quantity/rate/value of the said consignment of star aniseeds had been shown as 6.2 MT, US \$ 1450/MT and US \$ 8998.70 and therefore under the column 'difference' the figure 36514.90 US \$ had been given which represented the differential value which was to be sent / remitted through non-banking channels to M/s. IJIMASIA Singapore through Sh. Bhumish Shah.

10(vii) He also stated that in the same manner as described above the export reference nos. (1) EXP/2483/00, (2) EXP/2745/00, (3) EXP/2530/00, (4) EXP/2546/00, (5) EXP/2593/00 and (6) EXP/2702/01 contained/appearing at page Nos. 169, 171, 173, 175 of the said fax messages indicated the higher actual quantity/rate/values at which the respective import consignments had been transacted as against the lower quantity, rate and value declared in the respective invoices submitted to Customs for clearance purposes.

10(viii) Similarly on being shown page no. 131 of the same faxes recovered from the residence of Sh. Bhumish Shah and on scrutiny he stated that the export reference nos. 2280 and 2363 and 2373 shown under the column head 'exp. no.' (i.e. export reference), reflected details of consignment of mace and star aniseeds imported by him in the name of the said firm viz. M/s. Madhu Enterprises; that the amount reflected in the said pages under column head 'amount' for export reference nos. 2280, 2363 and 2373 were US\$ 22162.50, US\$ 22237.50 and US\$ 34965 respectively and these were the actual values at which the said respective consignments were transacted and imported.

11. Further statement of Sh. Kejal Mehta was recorded under section 108 of the Act, on 04.03.2002, wherein he inter alia stated that apart from the imports of star aniseeds and cubebs arranged and effected in the name of M/s. Samudri International and imports of mace and cubebs through M/s. Mayur Enterprises, he had also imported two (2) consignments of mace and 1 (one) consignment of star aniseeds through another firm by the name of M/s. Madhu Enterprises; that the proprietor of this firm was Sh. Mayur Ravani, whom he used to give 3% commission of the value of goods imported for use of his firm's name; that in these cases also there was under valuation done to avoid customs duty; that he stated that the 2 (two) consignments of mace and 1 (one) consignment of star aniseeds referred above were imported through Sh. Bhumish Shah with the supplier being M/s. IJIMASIA Pte. Ltd.

12. As Sh. Kejal Mehta in his depositions referred to Sh. Mayur Ravani and Sh. Alpesh Mehta as being the persons who had opened the firms namely M/s. Samudri International/ M/s. Mayur Enterprises and M/s. Madhu Enterprises respectively in names of which Sh. Kejal Mehta had effected the above said imports, summons were issued to Sh. Mayur Ravani and Sh. Alpesh Mehta to appear in DRI office on 01.03.2002 for giving their statements. However, they failed to

respond to the summons. Sh. Mayur Ravani, Sh. Alpesh Mehta and Sh. Kejal Mehta were again summoned vide summons dated 19.03.2002 to appear in DRI office on 05.04.2002 for giving their statements, but they failed to respond to the said summons.

13. Since the documents recovered from the residence of Sh. Bhumish Shah indicated that M/s. Samudri International, M/s. Madhu Enterprises, M/s. Mayur Enterprises had imported various spices viz star aniseeds, cubebs etc. and had undervalued the same, the details of import made by the firms were sought from Mumbai and Nhava Sheva Customs authorities. Further, as M/s. Durga International (CHA No. 11/0962) and M/s. S. Rajendra and Co. (CHA No. 11/955) were the clearing agents who had attended to the Customs clearance of the above said imports of M/s. Samudri International, M/s. Madhu Enterprises and M/s. Mayur Enterprises, all dockets related to the import of spices by the said firms were obtained from them.

14. The scrutiny of the seized documents from the residence of Sh. Bhumish Shah had revealed that M/s. Samudri International, M/s Mayur Enterprises and M/s Madhu Enterprises had imported 6 consignments of star aniseeds and 2 consignments each of mace and cubebs. The seized documents also revealed the prices declared by M/s. Samudri International, M/s Mayur Enterprises and M/s Madhu Enterprises to Customs with regard to the said consignments were far lower than the actual transacted prices of the said imported consignments. This fact of declaring lower values to Customs instead of actual transacted values in respect of the above consignments had already been confirmed by Sh. Bhumish Shah in his statements dt. 16.03.2001 and 17.03.2001. The actual transacted prices and the invoice prices mentioned in the subject documents recovered from Sh. Bhumesh Shah in respect of the imports of M/s Samudri International, M/s Mayur Enterprises and M/s Madhu Enterprises were co-related and verified with the respective import dockets obtained from the said clearing agents and also with the computer printouts obtained from Customs Houses, the material details relating to the quantities and values (declared values and actual transacted values) as contained in these documents have been enumerated in Annexure 'A' to this Show Cause Notice.

15. In order to get further evidence, the weekly bulletin of the spices market Published by the trade information services of the Spices Board, Ministry of Commerce & Industry, Govt. of India & the prices published by a London based publication, publishing prices of worldwide Agro Products normally traded/ transacted in the international market namely "The Public Ledger", were obtained for the relevant period i.e. from 01.04.1999 to 16.03.2001, in respect of the above said items. It was observed that no prices were published in respect of the product viz 'cubebs'. However, the prices of star aniseeds and mace were found published in the Public Ledger / Spices Market bulletin, which were compared with the prices declared by M/s Samudri International and M/s Madhu Enterprises in their respective import documents and the actual transacted prices mentioned in the seized documents. From the comparison, it was noticed that the prices published in the Public Ledger/ Spices Market weekly bulletin and the prices mentioned in the seized documents as the actual transaction prices were found to be in close proximity and almost same and the prices declared to the Customs were found to be much less

than the above two sets of prices. The material details bring out the above said three sets of prices were incorporated in Annexure 'B' to the Show Cause Notice.

16. Thus the aforesaid investigations revealed that M/s. Samudri International, M/s Mayur Enterprises and M/s Madhu Enterprises had undervalued the prices of their import consignments viz. star aniseeds, mace and cubebs to the Customs during 99-2000 & 2000-2001 (upto 16.03.2001) and thereby paid less customs duty. Investigations revealed that during the material period the prevailing prices of star aniseeds, mace and cubebs are much higher when compared to the prices declared by the importers to customs which had been substantiated and proved from the aforesaid seized fax messages received from M/s. IJIMASIA by Sh. Bhumish Shah and also indicated from the prices published in Spices market weekly/Public Ledger pertaining to the relevant period. This fact had also been corroborated and confirmed by Sh. Bhumish Shah in his statement dt. 16.03.2001 and 17.03.2001 and had been accepted by Sh. Kejal Mehta in his statements dt. 01.05.2001, 25.02.2002 and 04.03.2002.

17. In view of the above findings of investigation, the details of import of star aniseeds, Mace and cubebs effected by the respective importing firms viz M/s Samudri International, M/s Mayur Enterprises and M/s Madhu Enterprises, during 1999-2000 and 2000-2001 (upto 16.3.2001) and the duty paid and the differential duty payable (in view of the difference in value on the basis of Sh. Bhumish Shah's fax messages and Spices Market weekly/Public Ledger prices) have been worked out and the same are enumerated in Annexure-'C' to the show cause notice.

18. The provisions of section 14 of the Act stipulate that the value of the imported goods shall be the deemed price at which such or like goods are ordinarily sold in the course of international trade, where the buyer and seller have no interest in the business of each other and the price is the sole consideration for sale. In respect of imports of star aniseeds, Mace and cubebs effected by M/s. Samudri International, M/s Mayur Enterprises and M/s Madhu Enterprises, it can be seen from the details contained in fax messages recovered from the residence of Sh. Bhumish Shah that there were two sets of prices i.e. the one set comprising of low prices as declared in the invoices and the other set of prices being higher and were in the nature of actual transacted prices. Hence the lower invoice values which were found misdeclared by M/s. Samudri International, M/s Mayur Enterprises and M/s Madhu Enterprises cannot be considered as the actual or correct values for the purposes of assessment of customs duty and therefore the same are liable to be rejected.

19. Further, the price of the imported goods has to be in accordance with the provisions of section 14(1) of the Act read with Customs Valuation (Determination of the Price of the Imported goods) Rules, 1988 (hereinafter referred as CVR 1988). As per Rule 3(1) of the CVR 1988, the value of the goods shall be the transaction value and should not be in violation of Rule 10A of the said Rules. For the purpose of fair determination of the assessable value of the imported goods, Rule 10A (which deals with the rejection of declared value) of the CVR 1988 was introduced and as per Rule 10A, the importer shall furnish a declaration disclosing full and

accurate details relating to the value of the imported goods and in the absence of response of importer, it shall be deemed that the value of such imported goods cannot be determined under the provisions of sub rule (1) of the Rule 4 of the CVR 1988. Therefore the values of above said imported spices declared by M/s Samudri International, M/s Mayur Enterprises and M/s Madhu Enterprises are not acceptable and the same are liable to be rejected.

20(a) The aforesaid findings have been further substantiated by the recovery of the relevant fax messages/documents earlier seized from the premises of Sh. Bhumish Shah which had undoubtedly been sent by the foreign suppliers, M/s IJIMASIA Pte Ltd., Singapore indicating two sets of prices i.e. actually transacted prices and the declared prices which were found to be very low as compared to the actually transacted prices. Further, the declared prices were exclusively meant for the purpose of assessment and clearance of goods at lesser prices. These findings have been further corroborated by the contents of the statements of Sh. Bhumish Shah and also by the importers who themselves have admitted such undervaluation of import prices.

20(b) Thus, the importers admittedly resorted to mis-statement and mis-represented the above discussed import related details while making declaration and claiming assessment and clearance of the subject imports and resultantly the duty actually chargeable on the said imports could not be levied and as such these findings have come to light subsequent to investigations initiated by this directorate which revealed the willful suppression of actual values and mis-statement/mis-representation on the part of importers leading to evasion of customs duty amounting to Rs. 38,99,043/-, in respect of subject imports, which are liable to be recovered along with interest chargeable under the proviso to section 28 of the Act read with the provisions of section 28AB of the Act, respectively.

21(a) Further in the light of the foregoing findings, it appears that the declared value of the goods covered by the Bs/E (mentioned in Annexure 'C') were not correct and were thus not acceptable for determination of price for the purpose of assessment of goods to duty in terms of the provisions of section 14(1) of the Act read with Rule 4 and 10 of the CVR 1988 and merit to be rejected.

21(b) As per the provisions of section 46 of the Act, the importers are required to declare and certify the correctness of the material particulars, including the prices of the imported goods furnished in the respective Bs/Entry which are under reference. In this regard investigations conducted so far have brought out clearly that the importers in respect of the imports under reference had been admittedly declaring the lesser prices to evade the customs duty chargeable on such goods. The said position relating to misdeclaration of values upon further investigations has also been substantiated by the evidences i.e. the seized fax messages of incriminating nature containing two sets of values i.e. one representing the actual transacted prices whereas the second set of values were exclusively meant for declaring to Customs authorities for the purpose of claiming assessment and clearance of goods at lower values. These findings have revealed that the subject consignments were imported by misdeclaration of import values and on account of

such misdeclaration (as detailed in Annexure C to Show Cause Notice) the said goods are thus liable to confiscation under the provisions of section 111(m) of the Act.

22. Further, as per the Import Policy and based on ITC-HS Classifications to the said Policy 97-02, the import of star aniseeds, mace and cubebs into India during the material period were restricted and were permitted only against appropriate licence. On account of the misdeclaration of value which was ascertained to be Rs. 1,27,55,534/- against the declared value of Rs. 38,62,990/- in respect of the imported spices covered by the 09 Bills of Entry as included in Annexure C-1 to the Show Cause Notice the differential CIF Value of Rs. 88,92,544/-, which were found not covered by a valid import licence and consequently, the Import of star aniseeds of CIF Value of Rs. 88,92,544/- are also thus found liable to confiscation under the provisions of section 111(d) of the Act.

23 A(i) Thus from the above facts and circumstances, it is observed that during the period from April 1999 till March 2001, different undervalued consignments of different spices comprising of star aniseeds, mace and cubebs were effected in the names of firms namely M/s Samudri International, M/s Madhu Entreprises and M/s Mayur Enterprises. The said consignments of spices were supplied by M/s IJIMASIA Pte. Ltd., Singapore. Such consignments were found to be in the nature of undervalued imports which were ascertained to have been made to escape and evade customs duty chargeable on the actual transaction value and thereby such undervalued imports were effected for availing more margin of profit.

23 A(ii) In this regard, investigations revealed that Sh. Kejal Mehta had admittedly arranged to float and establish the impugned three proprietary concerns, with the active association and knowledge of the respective proprietors Sh. Alpesh Mehta and Mayur Ravani who were being provided 3% of the import value towards the consideration for allowing such undervalued imports in the names of their respective importing firms and also providing facilities for transacting such imports through banks in the names of their respective importing firms.

23 A(iii) On investigations, it was also ascertained that Sh. Kejal Mehta, upon floating the said importing firms had thereafter admittedly arranged undervalued imports of star aniseeds, cubebs and mace through Sh. Bhumish Shah, the indenting agent of M/s IJIMASIA Pte Ltd., Singapore, the concerned supplier firm. In this regard, Sh. Kejal Mehta used to admittedly place the orders with Sh. Bhumish Shah for effecting undervalued imports in the names of the above said respective firms and used to remit the invoiced value of the respective import consignments through banking channels and the differential amount arising out of the actual value and the invoice value was either handed over to the representative of Sh. Bhumish Shah or used to be appropriated by Sh. Bhumish Shah by retaining part of the sale proceeds of his goods sold through him.

23 A(iv) Thus, the above facts relating to undervaluation in respect of the goods imported from M/s IJIMASIA have since been admitted by Sh. Kejal Mehta, the person who had effected the imports in the names of firms viz. M/s. Samudri International/M/s. Mayur Enterprises/M/s.

Madhu Enterprises. This fact has been corroborated and supported by the details of actual rate and invoiced rate (which was declared to customs) which are available in the documents seized from the residence of Sh. Bhumish Shah, the indenting agent of M/s IJIMASIA Pte. Ltd. Singapore. Further, Sh. Kejal Mehta admittedly resorted to submission of such invoices pertaining to various import consignments to the Customs for getting the same cleared at lower values than the actual values and thereby avoided payment of appropriate customs duty. Thus Sh. Kejal Mehta, the main person behind the imports effected by M/s Samudri International/M/s Mayur Enterprises/M/s Madhu Enterprises is found to have resorted to willful suppression of the actual values to the Customs by submitting generated and fabricated documents containing misrepresented and misdeclared values in order to avoid payment of appropriate customs duty. Under the circumstances, the declared price / value of the star aniseeds, mace and cubebs referred to in Annexure 'A' to the SCN are found liable to be rejected. Consequently, the true and correct prices (transacted values) available in the documents seized from the residence of Sh. Bhumish Shah for the relevant period being in the nature of transaction values are therefore required to be taken for the purpose of assessment and levy of duty, which has been short paid. Therefore, such differential duty is liable to be recovered alongwith interest under the proviso to section 28 of the Act read with the provisions of 28AB of the Act.

23(B) Further, on account of the said misdeclaration on the part of the importers had led to the evasion of duty and also circumvented the import restriction. On account of the aforesaid acts of fraudulent misrepresentation, willful suppression and also for having resorted to mis-declaration, which have rendered the above said imports liable to confiscation and also led to evasion of customs duty, M/s. Samudri International/M/s. Mayur Enterprises/M/s. Madhu Enterprises have rendered themselves liable to penalty under section 114A of the Act and Sh. Kejal Mehta, Sh. Alpesh Mehta and Sh. Mayur Ravani have rendered themselves liable to penalty under section 112(a) of the Act.

24. Further, with reference to the imports in question, on scrutiny of the documents/fax messages earlier seized from the residential premises of Sh. Bhumish Shah revealed that he was fully aware of the facts that the consignments of Spices were being imported from M/s IJIMASIA Pte. Ltd. (for whom he was the indenting agent) at grossly undervalued prices. In fact, Sh. Bhumish Shah admittedly used to arrange such undervalued imports from M/s. IJIMASIA Pte Ltd., Singapore, for various importers including the importers in question whose imports are covered by the show cause notice. In this regard, besides arranging such imports, he was found instrumental in arranging/procuring two sets of prices, i.e, one set of prices/value actually transacted for the impugned goods and also the other set of prices which were exclusively meant for declaring to Customs authorities for the purpose of assessment and clearance of goods at a lower/lesser prices and thereby actively arranged a mechanism to suppress the actual transacted prices by the trade. As a consequence, not only he assisted actively in misdeclaration of values but was instrumental in evasion of customs duty which was chargeable on impugned consignments of spices imported through him, but in view of the above discussed suppression,

could not be levied which is liable to be recovered under the proviso to section 28 of the Act. On account of such mis-representation, suppression and mis-declaration, Sh. Bhumish Shah has also rendered himself liable to penal action under the provisions of section 112(a) of the Act. On investigations, it was further ascertained that these spices imported from M/s IJIMASIA Pte Ltd., Singapore by M/s. Samudri International/M/s. Mayur Enterprises/M/s. Madhu Enterprises were subsequently sold by Sh. Bhumish Shah who had knowledge that these were imported at undervalued prices. Besides, he admittedly used to ensure that upon sale of such goods differential amount incurred on account of undervalued imports were dispatched to the foreign suppliers. Thus, Sh. Bhumish Shah was fully aware that he was selling the spices which had been imported at undervalued rates by M/s. Samudri International/M/s. Mayur Enterprises/M/s. Madhu Enterprises and thus has actively associated with the said firms and Sh. Kejal Mehta in the aforesaid transactions and affairs and has thereby rendered himself liable to penal action under section 112(a) of the Act as brought out above.

25A. A Show Cause Notice, bearing F. No. DRI/MZU/D/25/2001 dated 13.10.2003 was issued to M/s Mayur Enterprises, its proprietor Sh. Mayur Ravani, Sh. Kejal Mehta and Sh. Bhumish Shah asking them to show cause why: -

- a) the imported consignment of cubebs covered by B/E No. 174473/15.3.01, cleared for home consumption of an aggregate declared CIF value of Rs. 6,79,325/- as given in the notice should not be rejected for the purpose of assessment of the goods to duty in terms of the provisions of section 14 (1) of the Act read with the valuation rules made there under.
- b) the above goods of an aggregate declared CIF value of Rs. 6,79,305/- as given in the notice, should not be held liable to confiscation in terms of the provisions of section 111 (m) of the Act as these goods are misdeclared with reference to the value.
- c) the differential duty of Rs. 3,00,492/- in respect of the said consignments of cubebs imported by M/s. Mayur Enterprises, should not be demanded and recovered from them under the proviso to section 28 of the Act.
- d) interest on the above differential duty amount should not be recovered under section 28AB of the Act.
- e) penalty under the provisions of section 114 A of the Act, should not be imposed on M/s. Mayur Enterprises, with regard to the evasion of customs duty on account of undervaluation of imports by resorting to misrepresentation and wilful suppression of facts.
- f) penalty under the provisions of section 112(a) of the Act, should not be imposed on Sh. Kejal Mehta, Sh. Mayur Ravani and the concerned indenting agent Sh. Bhumish Shah with regard to their acts of commission and omission which have rendered the above said goods liable to confiscation.

25B. The same Show Cause Notice, bearing F. No. DRI/MZU/D/25/2001 dated 13.10.2003 was also issued to M/s. Samudri International, M/s Madhu Enterprises, Sh. Kejal Mehta, Sh. Alpesh Mehta, Sh. Mayur Ravani and Sh. Bhumish Shah asking them to show cause why: -

- a) The imported consignments of spices covered by the Bills of Entry (excluding BE No. 174473 dt. 15.3.2001) cleared for home consumption of an aggregate declared CIF value of Rs. 38,62,990/- as given in the notice should not be rejected for the purpose of assessment of the goods to duty in terms of the provisions of section 14 (1) of the Act read with the valuation rules made there under.
- b) above goods of an aggregate declared CIF value of Rs. 38,62,990/- as given in the notice, should not be held liable to confiscation in terms of the provisions of section 111 (m) of the Act as these goods are misdeclared with reference to the value.
- c) the imported and cleared spices, involving a differential value of Rs. 88,92,544/- (being the difference between the declared CIF value and ascertained CIF value) should not be held liable to confiscation under the provisions of section 111(d) of the Act for being violative of the import restrictions.
- d) the differential duty of Rs. 28,00,771/- in respect of the said consignments of spices imported by M/s. Samudri International should not be demanded and recovered from them under the proviso to Sec. 28 of the Act and the amount of Rs. 11,00,000/- paid voluntarily as revenue deposit towards the differential duty by M/s. Samudri International should not be adjusted against the differential duty recoverable.
- e) the differential duty of Rs. 7,97,780/- in respect of the said consignments of spices imported by M/s Madhu Enterprises should not be demanded and recovered from them under the proviso to Sec. 28 of the Act.
- f) interest on the above differential duty amounts should not be recovered under section 28AB of the Act.
- g) penalty under the provisions of section 114 A of the Act should not be imposed on M/s. Samudri International/M/s. Madhu Enterprises, with regard to the evasion of customs duty on account of undervaluation of imports by resorting to mis-representation and wilful suppression of facts.
- h) penalty under the provisions of section 112(a) of the Act should not be imposed on Sh. Kejal Mehta, Sh. Alpesh Mehta, Sh. Mayur Ravani and the concerned indenting agent Sh. Bhumish Shah with regard to their acts of commission and omission which have rendered the above said goods liable to confiscation.

Details of the first round of adjudication

26. The above said SCN dated 13.10.2003 issued vide F. No. DRI/MZU/D/25/2001 was adjudicated by the Commissioner of Customs (Adjudication), NCH, Mumbai in first round of adjudication vide Order-in-Original No. 138/2008/CAC/CC/KS dated 26.09.2008 vide F.No. S/10-14/2004-Adjn. Vide said Order, the Adjudicating Authority confirmed the differential duty along with interest under section 28 and penalty under section 114A and 112(a) of the Act.

27. Noticees filed appeal against the said OIO dated 26.09.2008 in Hon'ble CESTAT, Mumbai and Hon'ble CESTAT disposed of the said appeal vide Order No. A/1633-1638/CSTB/C-I dated 20.10.2014. Observation of CESTAT are reproduced as below: -

"5. The counsels emphatically submitted that adjudication order was passed on gross violation of principles of natural justice in as much as the appellants were not supplied the relied upon documents, the cross examination was not conducted and most of the written submissions were even not referred in the impugned order. Therefore, before going into merits we examined the aspect whether Ld Commissioner violated the principles of natural justice or otherwise. We found that the relied upon documents were not supplied to the appellants except to Sh. Kejal Mehta. The demand was confirmed against M/s. Samudri International, M/s. Mayur Enterprises and M/s. Madhu Enterprises on the basis of statements of Sh. Bhumish Shah and Sh. Kejal Mehta. Sh. Alpesh Shah is the proprietor of M/s Samudri International and Bhupendra Ravani is the proprietor of M/s Mayur Enterprises and M/s Madhu Enterprises. It is very surprising that the statements of persons against whom the custom duty demand was confirmed were never recorded, even the said importers were not made confronted with the statements of Sh. Bhumish Shah and Sh. Kejal Mehta. In such a situation it becomes necessary that the cross examination must be granted. It is also observed from the records that Commissioner has not considered the written submissions made vide letters dated 8/12/2006 and 26/12/2007 filed by Sh. Alpesh Mehta, proprietor of M/s Samudri International. Similarly, in the case of M/s Mayur Enterprises and M/s Madhu Enterprises, the Commissioner has not considered the submissions made vide letter dated 4/12/2004, 27/12/2007, 2/6/2008, hence order was passed ex-parte.

5.1 In view of our above observations, it is clear that there is gross violation of principle of natural justice in passing the adjudicating order; therefore such order deserved to be set aside and remanded. We therefore, set aside the order and remanded the matter to the Adjudicating Authority and directed that all the submissions made by the appellants must be considered, sufficient opportunity of personal hearing be granted, all the relied upon documents be provide to the appellants and thereafter adjudication proceedings be completed. Since, all the appellants are before us, there is no difficulty in making the communication with them. We also direct the respective counsels as well as all the appellants to co-operate in de novo adjudication proceedings which should be

completed by the Adjudicating Authority, preferably within the period of six months from the receipt of CESTAT order.

6. *Needless to say, since we passed this order only on the aspect of principle of natural justice, all the issues were kept open. All the appeals were disposed of by the way of remand."*

28. In pursuance of re-organization of the commissionerates under Mumbai Customs, the Commissioner of Customs (Import-I), NCH Mumbai was appointed as Common Adjudicating Authority for the said SCN dated 13.10.2003 vide Notification No. 6/2016-Customs (N.T./CAA/DRI) dated 01.12.2016 .

Record of Personal Hearing (PH) & Written Submission

29. Personal Hearings on 12.09.2023, 05.10.2023, 19.10.2023, 22.11.2023 & 07.03.2024 were granted during this second round of adjudication. Cross examination of Sh. Bhumish Shah by Sh. Kejal Mehta & M/s Mayur Enterprises and vice versa was provided and scheduled on 11.12.2023. The submissions made during these personal hearings are summed up in paras below.

29.1 Sh. Anil Balani, Advocate on behalf of Sh. Kejal Mehta vide letter dated 12.09.2023 requested to supply all the Relied Upon Documents (RUDs). Sh. Anil Balani & Ms. Priyasha Pawar on behalf of Sh. Kejal Mehta & M/s Mayur Enterprises attended PH on 05.10.2023, wherein they once again submitted that they will submit the final defence reply after examining the RUDs. Sh. Anil Balani vide letter dated 06.10.2023 & 22.11.2023 submitted that CESTAT had asked to de-novo adjudicate the matter within 6 months. However, the period of 6 months has expired, neither RUDs were supplied nor cross-examination was granted and in fact no communication was received from the Department for 9 years from the CESTAT Order dated 20.10.2014. He submitted that the CESTAT in its Order dated 20.10.2014 had given 6 months time for adjudicating the matter after supplying all the RUDs. Department has not supplied a copy of the extension taken from the CESTAT for adjudicating the matter after such a long delay. He also submitted that the proceedings are hit by delays and laches and the delay is not attributable to his clients. He submitted that the proceedings have already attained closure and cannot be reopened in this matter. The following judgements were relied upon to claim that adjudication proceedings cannot be continued after such inordinate long delay.

- (a) Rachana Garments Pvt.Ltd. - 2023 (383) ELT 15 (Bom.)
- (b) Bombay Dyeing & Mfg. Co.Ltd.-2022 (382) ELT 206 (Bom.)
- (c) Mckinsey & Co. Inc. -2022 (382) ELT 179 (Bom.)
- (d) Sushitex Exports (India) Ltd. 2022 (380) E.L.T. 244 (Bom.)

- (e) Parle International Ltd. 2021 (375) E.L.T. 633 (Bom.)
- (f) Lanvin Synthetics Pvt.Ltd.-2015 (322) ELT 429 (Bom.)
- (g) Reliance Industries Ltd.- 2019 (368) ELT 854 (Bom.)
- (h) Raymond Ltd. 2019 (368) ELT 481 (Bom.);
- (i) Premier Ltd. 2017 (354) ELT 365 (Bom)
- (j) UOI v Premier Ltd.-2018 (360) ELT A181(SC)
- (k) Reliance Transport & Travel P.Ltd.-2022 (3)TMI 1169-B.H.C
- (l) ATA Freight Line (1) Pvt.Ltd. - 2022 (3) TMI 1161-B.H.C.

He further submitted that copy of the SCN No. DRI/MZU/D/25/Samudri/2001 dated 13.10.2003 and RUDs were served for the first time by mail on 19.10.2023 after hearing on the same day. He submitted that the CESTAT directed that cross-examination must be given. However, this direction of the Tribunal is also not followed by the Department till date and even today the hearing was fixed without granting cross-examination. He further submitted that the allegation of undervaluation is based on faxes recovered from the premises of Bhumish Shah, the recovery of faxes was challenged by Bhumish Shah because Panchanama was not prepared and issued on the spot to Sh. Bhumish Shah. On this ground the proceedings against Sh. Bhumish and importers were dropped by Order-in-Original No. 12/2005/CAC/RJM dated 28.04.2005. As no appeal was preferred by the Department against the importers, the case of undervaluation sought to be made in the second SCN dated 13.10.2003 cannot survive. Ms. Priyasha Pawar attended PH on 22.11.2023 and confirmed that she has received all the RUDs; she has mentioned the need of cross-examination on 22.11.2023 for the first time, but no names of witnesses have been mentioned in her letter dated 22.11.2023; the Adjudicating Authority observed that already 4 PH have been given and no demand for cross-examination was made earlier, this appears to be an afterthought; she mentioned that RUDs were not complete; final defence reply to be given on 24.11.2023. Sh. Anil Balani vide letter dated 24.11.2023 referred to Record of PH on 22.11.2023, it was falsely recorded that application for cross-examination was made on behalf of my clients for the first time as an afterthought. It was submitted by referring to the CESTAT Order dated 20.10.2014 that applications for cross-examination were made from inception of this case. He further stated to approach the CESTAT to bring to its notice the violation of its Order. He requested to stop the adjudication forthwith.

29.2 A personal hearing was held on 19.10.2023, which was attended by Ms. Priyasha Pawar, Advocate on behalf of Sh. Kejal Mehta & M/s Mayur Enterprises and Ms. Dishya Pandey, Advocate on behalf of Sh. Bhumish Shah, wherein they requested for another hearing for checking all the RUDs and pages from adjudication and to ensure that all the records are complete.

29.3 In reply to the PH Memos, Sh. Bhumish Shah vide letter dated 27.09.2023, requested for Relied Upon Documents (RUDs) to enable him to make detailed submission in reply and stated that most of his RUDs have been misplaced, being the matter 20 years old. RUDs along with SCN were provided by mail dated 05.10.2023 and in pendrive. Advocate Sh. Stebin Methew on behalf of Sh. Bhumish Shah vide letter dated 18.10.2023 submitted that Show Cause Notice dated 13.03.2002 is issued for the limited purpose of proposing confiscation of the seized cash under section 121 of the Act and requested to keep the proceedings in respect of SCN dated 13.03.2002 in abeyance till such time the SCN dated 13.10.2003 is not adjudicated and the issue whether the undervaluation of goods took place resulting in smuggling, has been addressed. In the event, the Adjudicating Authority finds that there was no undervaluation in respect of the consignments covered under the SCN dated 13.10.2003 would not be sustainable and requested to take up the SCN dated 13.10.2003 for adjudication first. He further stated that RUDs to SCN dated 13.10.2003 have not been provided to his client in the email received. He also stated that in SCN dated 13.10.2003, heavy reliance has been placed on the statements of one Mr. Kejal Mehta and requested to provide the cross examination of Mr. Kejal Mehta, in terms of the directions contained in the Hon'ble CESTAT Order dated 20.10.2014, for a date one week after the list of RUDs, RUDs and the Bs/E for SCN dated 13.10.2023 are provided to his client. Further, he stated that the SCN seeks to rely upon the statement of his client Sh. Bhumish Shah and requested that before the said statements are read as evidence, the validity and veracity of the same may kindly be ascertained in terms of section 138B of the Act and requested the Adjudicating Authority to fix a date for examination to enable him to be present personally.

29.4 M/s Samudri International, M/s Madhu Enterprises, Sh. Alpesh Mehta & Sh. Mayur Ravani have neither attended any personal hearing nor submitted any reply for the personal hearing memos.

DISCUSSIONS AND FINDINGS

30. The case involves 7 noticees. The noticees are:

Noticee-1 (M/s. Samudri International)

Noticee-2 (M/s. Mayur Enterprises)

Noticee-3 (M/s. Madhu Enterprises)

Noticee-4 (Sh. Kejal Mehta)

Noticee-5 (Sh. Alpesh Mehta)

Noticee-6 (Sh. Mayur Ravani)

Noticee-7 (Sh. Bhumish Shah)

31. I have gone through all the case records, especially SCN dated 13.10.2003, OIO dated 26.09.2008, Hon'ble Tribunal's Remand Order dated 20.10.2014, defence replies of the noticees

and their submissions made during the personal hearings. RUDs were also again provided to the noticees during this second round of adjudication.

32. The subject SCN was adjudicated in first round adjudication vide Order-in-Original No. 138/2008/CAC/CC/KS dated 26.09.2008 issued vide F. No. S/10-14/2004-Adj by Commissioner of Customs(Adjudication) New Customs House, Mumbai. Noticees preferred appeal against the said Order in Hon'ble Tribunal, Mumbai. Hon'ble Tribunal vide final Order No. A/1633-1638/14/CSTB/C-I dated 20.10.2014 remanded the case back to the Original Adjudicating Authority on the aspect of principle of natural justice keeping all the issues open. In compliance with the Order of the Hon'ble Tribunal, the matter is now being taken up for de novo adjudication.

33. The SCN demands differential duty due to undervaluation of cloves, spices, etc. under 10 BEs filed by M/s. Samudri International, M/s. Mayur Enterprises and M/s. Madhu Enterprises along with consequent interest and penalty .

34. Issues for determination: - Based on the charges laid down in the SCN , observations of the Hon'ble Tribunal and submissions of the noticees; the following issues arise for determination in this adjudication:

- I. Impact of Hon'ble Bombay High Court Order dated 08.12.2023 in Writ Petition (WP) No. 33946 of 2023 staying the SCN against Sh. Kejal Mehta , Noticee-4.
- II. Whether proceedings are hit by delays and laches and the instant proceedings deserve to be dropped on this ground alone ?
- III. Whether the directions given in the Hon'ble Tribunal's Remand Order dated 20.10.2014 have been complied with and natural justice given to the parties in this 2nd round of adjudication?
- IV. Whether duty, interest and penalty be confirmed on the three importer firms, M/s. Samudri International, M/s. Mayur Enterprises and M/s. Madhu Enterprises, without recording the statements of their proprietors?
- V. Whether valuation, demand of duty, RF and Penalty is legal and proper ?

Now let me take up the issues one by one:

35. Impact of Hon'ble Bombay High Court Order dated 08.12.2023 in Writ Petition (WP) No. 33946 of 2023 staying the SCN against Sh. Kejal Mehta , Noticee-4.

35.1 Sh. Kejal Mehta filed Writ Petition (WP) No. 33946 of 2023 with Bombay High Court, wherein Hon'ble Court has passed an interim Order dated 08.12.2023, para 14 of the Court Order is as follows:

“(i) Rule. Learned counsel waives service on behalf of the respondents.

(ii) The impugned show cause notice dated 13th October 2003 shall remain stayed pending hearing and final disposal of the present petition.

(iii) The respondents shall file a reply affidavit within a period of eight weeks from today.

(iv) The respondents are at liberty to move this Court for vacating the interim stay if the respondents are of the opinion that such orders ought not to be continued and/or after decision of the Supreme Court on the review proceedings filed in M/s. Cannon India Pvt. Ltd. and of the final adjudication on the challenge to the Finance Act, 2022.”

35.2 This office has already filed an affidavit in reply on 18.01.2024 in the subject matter along with the following prayer:

“12. It is also submitted that adjudication is only determination of liabilities under the Act. Department is not going to take any coercive action against petitioner without leave of the Hon'ble Court. Hence, it is humbly prayed to the Hon'ble Court to allow the adjudication process to continue and lift the stay on adjudication. So, the Hon'ble Court may be pleased to substitute the sentence in para 14 of the Order reading as:

14 (ii) The adjudication of the impugned show cause notice dated 13th October 2003 is allowed to continue with the condition that Department will not take any coercive action against the petitioner without the leave of the Court.”

35.3 However, only noticee Sh. Kejal Mehta has approached the Court and no other noticee has approached the Court. The principle of **res judicata** states that once a matter has been adjudicated by a competent court, it cannot be re-litigated between the same parties. In other words, the decision in a case is final and conclusive, and no one else can benefit from it except the appellant (the party who appealed the original decision). If a court grants a stay during adjudication proceedings, it applies solely to the appellant. Other parties involved in the case are not affected by that stay Order. Hence, in this present case, it is treated as a stay on proceedings against Sh. Kejal Mehta only, proceedings against other noticees are open for adjudication. So I am taking the matter for adjudication against 6 noticees only other than Sh. Kejal Mehta.

36. Whether proceedings are hit by delays and laches and the instant proceedings deserve to be dropped on this ground alone ?

36.1 It is relevant here to go through the chronology of the case as shown below:

Dated	Details
13.10.2003	SCN F. No. DRI/MZU/D/25/Samudri/2001 issued to 7 noticees by DRI, Mumbai Zonal Unit

26.09.2008	1st round Order in Original No. 138/2008/CAC/CC/KS issued by Commissioner of Customs, Adjudication, Mumbai
20.10.2014	Hon'ble CESTAT, Mumbai Order No. A/1633-1638/14/CSTB/C-I remanding the case back for fresh adjudication
16.09.2014	Re-organization of Commissionerates under Mumbai Customs Zone-I vide Notification 77/2014-Customs (N.T.)
01.12.2016	DRI vide Notification No. 6/2016-Customs (N.T./CAA/DRI) dated 01.12.2016 appointed Commissioner of Customs (Import-I), NCH as Common Adjudicating Authority
29.06.2016 & 28.12.2016	CBIC Instruction F. No. 276/104/2016-CX.8A (Pt.) directed all the Commissioners to keep the SCNs pending and not to adjudicate in view of Mangali Impex matter
03.11.2017	CBIC Office Memorandum F. No. 437/143/2009-Cus.IV not to adjudicate in view of Judgement of Mangali Impex
27.11.2017	Case transferred to call book due to the Judgement of Mangali Impex Ltd.
17.03.2021 & 16.04.2021	CBIC Instruction F. No. 450/72/2021-Cus IV directed all the Commissioners to keep the SCNs pending and not to adjudicate in view of Judgement of Canon India
26.03.2021	Case continued in call book due to the Judgement of Canon India
13.07.2022	Case taken out of call book & taken up for adjudication after Finance Act, 2022 came into force
27.11.2017-13.07.2022	Matter was in the call book for 5 years

It is seen from the chronological table above, This matter was remanded back by Hon'ble CESTAT, Mumbai vide Order no. A/1633-1638/14/CSTB/C-I dated 20.10.2014 for de novo adjudication. After re-designation of the post of Commissioner of Customs (Adjudication) in 2015 as ADG (Adjudication) DRI; Commissioner of Customs (Import-I), NCH, Mumbai was appointed as Common Adjudicating Authority (CAA) vide Notification No. 6/2016-Customs (N.T./CAA/DRI) dated 01.12.2016. It could not be adjudicated due to an Order dated 03.05.2016 of the Hon'ble High Court, Delhi in the matter of M/s Mangali Impex. CBIC vide Instruction F. No. 276/104/2016-CX.8A (Pt.) dated 29.06.2016 & 28.12.2016 and Office Memorandum F. No. 437/143/2009-Cus.IV dated 03.11.2017 directed to keep pending all the SCNs issued by DRI, DGCEI, SIIB, Preventive prior to 06.07.2011. Hence, this case was transferred to the call-book on 27.11.2017. Further, it could not be adjudicated due to the Judgement of Hon'ble Supreme Court in the matter of Canon India. CBIC vide Instruction F. No. 450/72/2021-Cus IV dated 17.03.2021 and 16.04.2021 directed to keep the said SCNs pending for the present and till further Orders. So, this matter was in the call-book from 27.11.2017 to 13.07.2022. Hence, the matter was pending in compliance of various CESTAT, High Court & Supreme Court Orders

relating to the cases of Mangali Impex & M/s Canon India and also due to CBIC directions relating to these cases. This matter was taken up for adjudication on 13.07.2022 after coming into force of the Finance Act, 2022. Further, extensions dated 14.03.2023 & 21.09.2023 were taken from the competent authority i.e. Pr. Chief Commissioner of Customs under section 28(9) of the Act and duly communicated to the noticees. However, these extensions were taken without prejudice to the official stand of the Department taken before the Bombay High Court in Writ Petition no. 33946 of 2023 (Kejal Mehta Vs. Union of India & Ors) that Show Cause Notices issued prior to 29.03.2018 will not have the mandatory time limit (as also explained in explanation 4 to amended section 28 of the Act). Hence, there is no unjustifiable or undue delay in the adjudication of the case as argued by the noticees.

36.2 Law does not compel a person to do something impossible: - As seen from discussion above, the reasons for not adjudicating the case were beyond the control of the Adjudicating Authority i.e. the Commissioner of Customs (Import-I), NCH. The principles embodied in the legal maxims 'lex non cogit ad impossibilia' and 'impotentia excusat legem' (Impossibility excuses the law and Inability excuses the non-observance of the law) simply put that law does not compel a man to do that which cannot possibly be performed (lex non cogit ad impossibilia), and law will generally excuse a default if a party is unable to perform a duty created by law without any default in him and where he has no remedy (impotentia excusat legem).

36.3 Noticees have also relied upon the cases on the issue of delay in adjudication proceedings.

- (a) Rachana Garments Pvt.Ltd. - 2023 (383) ELT 15 (Bom.)
- (b) Bombay Dyeing & Mfg. Co.Ltd.-2022 (382) ELT 206 (Bom.)
- (c) Mckinsey & Co. Inc. -2022 (382) ELT 179 (Bom.)
- (d) Sushitex Exports (India) Ltd. 2022 (380) E.L.T. 244 (Bom.)
- (e) Parle International Ltd. 2021 (375) E.L.T. 633 (Bom.)
- (f) Lanvin Synthetics Pvt.Ltd.-2015 (322) ELT 429 (Bom.)
- (g) Reliance Industries Ltd.- 2019 (368) ELT 854 (Bom.)
- (h) Raymond Ltd. 2019 (368) ELT 481 (Bom.)
- (i) Premier Ltd. 2017 (354) ELT 365 (Bom)
- (j) UOI v Premier Ltd.-2018 (360) ELT A181(SC)
- (k) Reliance Transport & Travel P.Ltd.-2022 (3)TMI 1169-B.H.C
- (l) ATA Freight Line (1) Pvt.Ltd. - 2022 (3) TMI 1161-B.H.C.

36.3.1 In the above cases, the matter was not adjudicated for a long period of time. Petitioners were not informed/intimated about the SCN/matter being kept in the call book by the respondent. Even in the case of **Mckinsey & Co. Inc.**⁴, the Adjudicating Authority was given a time period of 6 weeks to adjudicate the SCN and to pass a detailed reasoned order. However, this present case was already adjudicated in the first round of adjudication vide 1st round OIO dated 26.09.2008. Noticees appealed with Hon'ble CESTAT, Mumbai in December 2008 and January 2009. Hon'ble CESTAT vide Order dated 20.10.2014 remanded back the matter. However, this matter could not be adjudicated till 2022 due to reorganization of the Department and transfer of case to call book due to the Hon'ble Court Orders in Mangli Impex and Canon India cases. Noticees were duly intimated about the transfer of case to call-book vide letter dated 07.12.2017 & 31.03.2021.

36.3.2 As evident from the above discussion, the case was pending with Hon'ble CESTAT for 6 years & in the call book for 5 years; there has been regular action during the rest of the period. The noticees have been duly informed about the case being taken out of the call book and the extensions granted in adjudication period by the competent authority. Personal hearings have been given and the noticees have participated in those hearings. The delay in adjudication of the SCN, if any, was due to justifiable grounds well beyond the control of the Adjudicating Authority. Hence, the present case is different from the cases relied upon by the noticees. Therefore, I find that these case laws are of no help to the noticees in the present case.

36.4 Direction of Hon'ble Supreme Court on issue of delay in adjudication: - I also find that Department had filed SLP (C) No. 20072/2021 (converted into Civil Appeal No. 4320/2023) before the Hon'ble Supreme Court against the Hon'ble High Court of Punjab & Haryana Order dated 17.05.2021 in CWP No. 9340/2021, whereby, 2

SCNs issued to M/s. Swati Menthol & Allied Chemicals Ltd., Rampur, were quashed on the grounds of delay in adjudication. The Hon'ble Supreme Court has disposed the aforesaid SLP vide Order dated 10.07.2023, whereby, aforesaid Order dated 17.05.2021 of the Hon'ble High Court has been set aside and the matter has been remanded back to the Commissioner of GST (Adjudicating Authority) with a direction to conclude the proceedings within the time-period specified in the Order. Hon'ble Supreme Court, vide Order dated 18.02.2022 in SLP (C) No. 18214/2017, has held that if the assessee raises the issue of delay in adjudication on the ground of correctness of the call-book regime, that contention must await the outcome of the proceedings pending before the Hon'ble Supreme Court.

36.5 Hence, I find there is no unjustifiable or undue delay in the adjudication of the case as argued by the noticees. I reject the demand of the noticees to drop the instant proceedings on this ground alone.

⁴ Mckinsey & Co. Inc. -2022 (382) ELT 179 (Bom.)

37. Whether the directions given in the Hon'ble Tribunal's Remand Order dated 20.10.2014 have been complied with and natural justice given to the parties in this 2nd round of adjudication?

37.1 Issue of RUDs: As recorded in para 14.2 of the 1st round OIO dated 26.09.2008, during the course of the first round of adjudication, noticees were provided the opportunity to collect the RUDs co-ordinating with DRI. Even noticee Sh. Kejal Mehta had collected the RUDs from DRI. However, other noticees failed to utilize the opportunity of collecting RUDs. Three noticees M/s Mayur Enterprises, Sh. Kejal Mehta and Sh. Bhumish Shah out of 7 noticees participated in the 2nd round of adjudication. During the present proceedings of adjudication, noticees at the time of personal hearing were informed to collect the RUDs from this office. Finally, the 3 noticees (out of 7) who participated in this 2nd round of adjudication submitted their email ids, on which SCN alongwith RUDs of the case was once again forwarded vide e-mail dated 19.10.2023 to comply with the Hon'ble Tribunal's direction.

37.2 Issue of Cross-Examination: During the course of the first round of adjudication, noticees were provided the opportunity of cross-examination on 21.08.2008 and 16.09.2008 as detailed in para 14.7 of 1st OIO dated 26.09.2008. However, neither noticees nor witnesses appeared for cross-examination. During the present 2nd round adjudication, noticees Sh. Kejal Mehta & M/s Mayur Enterprises were provided the opportunity of cross-examination of Sh. Bhumish Shah and vice-versa on 11.12.2023. However, none of them appeared for the same, probably as they were opposing the adjudication process itself on grounds of delay and laches.

37.2.1 It is noted that in the instant case, cross-examination of co-noticees was sought but no one appeared from either side on 11.12.2023. I find that there are judicial pronouncements on the issue that adjudication proceedings without opportunity of cross examination of co-noticees will not result in a violation of the principles of natural justice, as co-noticees cannot be compelled to provide testimony that may incriminate them. The same are summed up below :

- i. The Hon'ble Principal Bench of CESTAT at New Delhi in the case of **Jagdish Shankar Trivedi**⁵ has held that *"denial of cross examination of co-noticees / accused does not result in violation of principles of natural justice and cannot be insisted on as a matter of right by them otherwise each of the accused can claim right against testimonial compulsions under Article 20(3) of the Constitution of India and thereby by their joint efforts bring out violation of natural justice."*(para 9)
- ii. In the case of **N. S. Mahesh**⁶ Hon'ble High Court upheld denial of cross-examination of co-noticee *"on ground that firstly no specific reasons given for such cross-examination and secondly, co-noticee cannot be directed to be a part of proceedings that may incriminate him. It was held that there is no illegality in aforesaid reasoned order warranting interference by High Court"* [paras 1, 2]

⁵ Jagdish Shankar Trivedi Vs. CC, Kanpur reported as 2006 (194) ELT 290 (Tri. Delhi)

⁶ N.S. Mahesh vs CC, Cochin reported in 2016 (331) ELT 402 (Ker.)

iii. In the case of **Laxmi v/s. Collector of Customs, Lucknow**⁷, Hon`ble Tribunal held that
“Statement of co-noticees corroborated by another person- Denial of permission of
cross-examination of co-noticees not violated principles of natural justice.” (Para 6)

37.3 Issue of considering Written Submissions: Hon`ble CESTAT vide Order dated 20.10.2014 directed to consider the written submissions made vide letters dated 8/12/2006 and 26/12/2007 filed by Sh. Alpesh Mehta, proprietor of M/s Samudri International and vide letter dated 4/12/2004, 27/12/2007, 2/6/2008 filed by M/s Mayur Enterprises and M/s Madhu Enterprises. However, these submissions made 17-20 years back were not available in the records of the Adjudication section. The same were sought from the noticees through mail dated 28.02.2024 and 01.03.2024. However, the same have not been provided by the noticees till date, probably as they were opposing the adjudication process itself on grounds of delay and laches. Sh. Anil Balani, Advocate representing the Noticees-2 & 4 , vide his mail dated 01.03.24 responded to the Adjudication section stating that these old submissions of the period 2004 to 2008 are not readily traceable. Hence, the submissions by the noticees made during the course of present 2nd round adjudication proceedings have been considered and stated herein above.

37.4 Personal hearings conducted: Sufficient number of personal hearings 12.09.2023, 05.10.2023, 19.10.2023, 22.11.2023 & 07.03.2024 were granted to all the 7 noticees during the present proceedings. Only Noticees-2, 4 & 7 participated in the hearings.

37.5 Hence, Hon`ble Tribunal’s directions issued vide Order dated 20.10.2014 to provide RUDs, cross-examination and to consider the submissions of the noticees; and principles of natural justice have been fully complied with.

38. Whether duty, interest and penalty be confirmed on the three importer firms, M/s. Samudri International, M/s. Mayur Enterprises and M/s. Madhu Enterprises, without recording the statements of their proprietors?

38.1 Sh. Alpesh Mehta, proprietor of M/s. Samudri International and Sh. Mayur Ravani, proprietor of M/s Mayur Enterprises and M/s Madhu Enterprises were issued Summons under section 108 of the Act to appear in DRI office on 01.03.2002 & 05.04.2002. Statement of these two could not be recorded because of non-appearance of them in front of investigating agency i.e. DRI, Mumbai Zonal Unit as detailed in para 11 of the SCN dated 13.10.2003.

“11. summons were issued to S/Sh. Mayur Ravani and Alpesh Mehta to appear in DRI office on 01.03.2002 for giving their statements. However, they failed to respond to the summons. Mayur Ravani, Alpesh Mehta and Kejal Mehta were again summoned vide summons dated 19.03.2002 to appear in DRI office on 05.04.2002 for giving their statements, but they failed to respond to the said summons.”

⁷ Laxmi v/s. Collector of Customs, Lucknow [2001 (138) ELT 1090 (Tri. Delhi)]

38.2 Sh. Alpesh Mehta and Sh. Mayur Ravani did not submit a reply to SCN as detailed in para 21b(ii) of the 1st OIO dated 26.09.2008.

"21 b(ii) No reply has been received for the show cause notice. In fact the importer did not appear for personal hearing at all"

38.3 Sh. Alpesh Mehta and Sh. Mayur Ravani did not participate in the 1st round of adjudication proceedings as detailed in para 14.7 of the 1st OIO dated 26.09.2008.

"14.7Despite the fact that number of hearings and cross examination opportunities have been granted to Sh. Alpesh Mehta, Sh. Mayur Ravani and Sh. Bhumish Shah, they never appeared for hearing nor presented themselves for cross examination....."

38.4 All the communications were duly sent by speed post to Sh. Alpesh Mehta and Sh. Mayur Ravani at their permanent addresses given by them in their voluntary statements. They did not inform any change of their address to this office, if any. They also did not even participate in the 2nd round of adjudication proceedings.

38.5 It can be seen from the facts that Sh. Alpesh Mehta and Sh. Mayur Ravani appeared to appeal in Hon'ble CESTAT, Mumbai. However, they have never participated in proceedings before the Department. It shows their evasive nature. They choose to appear before Hon'ble Tribunal but not before DRI or Adjudicating Authority; thereby adopting a strategy of selective litigation.

38.6 **Law aids the vigilant and not the sleepy:** Department has given them an ample number of opportunities for considering their defence. The principles embodied in the legal maxims '*Vigilantibus non dormientibus subvenit lex*' (Law aids the vigilant and not the sleepy) simply put that law does not help those who sleep on their rights.

38.7 However, the statement of Sh. Bhumish Shah, Sh. Kejal Mehta and the documents recovered from the residence of Sh. Bhumish Shah are found to be sufficient enough to establish the case of undervaluation in imports against Sh. Alpesh Mehta and Sh. Mayur Ravani. Hence, I find that non-recording of their statements does not affect the case against them.

39. Whether valuation, demand of duty, RF & Penalty is legal & proper ?

39.1 On the merits of the case, I find that my predecessor Commissioner of Customs in the 1st OIO dated 26.09.2008 has discussed in detail all the issues / submissions / arguments raised by the noticees and has given detailed findings on them, which I find reasonable and just. The same are reproduced below:

"16. I find that the scrutiny of the seized documents from the residence of Sh. Bhumish Shah had revealed that M/s. Samudri International, M/s. Mayur

Enterprises and M/s. Madhu Enterprises had imported 6 consignments of star aniseeds and 2 consignments each of mace and cubebs. The seized documents also revealed the prices declared by M/s. Samudri International, M/s. Mayur Enterprises and M/s. Madhu Enterprises to Customs with regard to the said consignments were far lower than the actually transacted prices of the said imported consignments. This fact of declaring lower values to Customs instead of actual transacted values in respect of the above consignments had already been confirmed by Sh. Bhumish Shah in his statements dt. 16.3.2001 and 17.3.2001. The actual transacted prices and the invoice prices mentioned in the subject documents recovered from Sh. Bhumish Shah in respect of the imports of M/s. Samudri International, M/s. Mayur Enterprises and M/s. Madhu Enterprises were co-related and verified with the respective import dockets obtained from the said clearing agents and also with the computer printouts obtained from Customs Houses. In order to get further evidence, the weekly bulletin of the spices market published by the trade information services of the Spices Board, Ministry of Commerce & Industry, Govt. of India & the prices published by a London based publication publishing prices of worldwide Agro Products normally traded/ transacted in the international market namely "The Public Ledger", were obtained for the relevant period i.e. from 1.4.1999 to 16.3.2001, in respect of the above said items. It was observed that no prices were published in respect of the product viz. 'cubebs'. However, the prices of star aniseeds and mace were found published in the Public Ledger/Spices Market bulletin, which were compared with the prices declared by M/s. Samudri International and M/s. Madhu Enterprises in their respective import documents and the actual transacted prices mentioned in the seized documents. From the comparison, it was noticed that the prices published in the Public Ledger/Spices Market weekly bulletin and the prices mentioned in the seized documents as the actual transaction prices were found to be in close proximity and almost the same and the prices declared to the Customs were found to be much less than the above two sets of prices.

17. Thus, it has been revealed that M/s. Samudri International, M/s. Mayur Enterprises and M/s. Madhu Enterprises had undervalued the prices of their import consignments viz. star aniseeds, mace and cubebs to the Customs during 99-2000 & 2000-2001 (upto 16.3.2001) and thereby paid less customs duty. Investigations revealed that during the material period the prevailing prices of star aniseeds, mace and cubebs were much higher when compared to the prices declared by the importers to Customs which had been substantiated and proved from the seized fax messages received from M/s. IJIMASIA by Sh. Bhumish Shah

and also indicated from the prices published in Spices market weekly/Public Ledger pertaining to the relevant period. This fact had also been corroborated and confirmed by Sh. Bhumish Shah in his statement dt. 16.03.2001 and 17.03.2001 and had been accepted by Sh. Kejal Mehta in his statements dt.1.5.2001, 25.2.2002 and 4.3.2002.

18. Thus, I find that the details of import of star aniseeds, Mace and cubebs effected by the respective importing firms viz: M/s. Samudri international, M/s Mayur Enterprises and M/s. Madhu Enterprises, during 1900-2000 and 2000-2001 (upto 16.3.2001) and the duty paid and the differential duty payable have been worked out to Rs. 17,02,475/- and Rs. 38,99,043/- respectively.

19. The provisions of section 14 of the Act stipulate that the value of the imported goods shall be the deemed price at which such or like goods are ordinarily sold in the course of International trade, where the buyer and seller have no interest in the business of each other and the price is the sole consideration for sale in respect of imports of star aniseeds, Mace and cubebs effected by M/s. Samudri International, M/s. Mayur Enterprises and M/s. Madhu Enterprises, it is evident from the details contained in fax messages recovered from the residence of Sh. Bhumish Shah that there were two sets of prices i.e. the one set comprising of low prices as declared in the invoices and the other set of prices being higher and were in the nature of actual transacted prices. Hence, the lower invoice values which were found misdeclared by M/s. Samudri International, M/s. Mayur Enterprises and M/s. Madhu Enterprises cannot be considered as the actual or correct values for the purposes of assessment of customs duty and therefore the same are liable to be rejected.

20. Further, the price of the imported goods has to be in accordance with the provisions of section 14(1) of the Act read with CVR 1988. As per Rule 3(i) of the CVR, 1988, the value of the goods shall be the transaction value and should not be in violation of Rule 10A of the said Rules. For the purpose of fair determination of the assessable value of the imported goods, Rule 10A (which deals with the rejection of declared value) of the CVR 1988 was introduced and as per Rule 10A, the importer shall furnish a declaration disclosing full and accurate details relating to the value of the imported goods and in the absence of response of importer, it shall be deemed that the value of such imported goods cannot be determined under the provisions of sub rule (1) of the Rule 4 of the Customs Valuation Rules 1988. Therefore the values of above said imported spices declared

by M/s. Samudri International, M/s. Mayur Enterprises and M/s. Madhu Enterprises are not acceptable and the same are liable to be rejected.

21. Tribunal in *CC, Bangalore Vs. H.M. Leisure* [2006 (199) ELT 464 (Tri-Bang)], had held that even if circumstances particularized in Rule 4(2) of CVR were not there, the transaction value could be rejected by the authorities in terms of Rule 10A of CVR. Rule 10A reads as follows:

“10A. Rejection of declared value- (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the value of such imported goods cannot be determined under the provisions of sub- rule (1) of Rule 4.” (different font chosen to distinguish quoted portions from the finding of the Ld. Adjudicating Authority)

b(ii) No reply has been received from the importer for the show cause notice. In fact, the importer did not appear for a personal hearing at all. Consequently, the value of imported goods could not be determined under the provision of sub rule (1) of rule 4. Hence, it has to be proceeded sequentially through Rules 5 to 8. It is seen that there are no contemporaneous imports from the same country of origin at the same commercial level, hence the provisions of Rules 5 to 6 are inapplicable. It has also been observed that there is no sale of like goods in India, hence, Rules 7 and 7A are not applicable. Once the invoice value is found to be false, the assessing authority can adopt any reasonable method in order to ascertain the assessable value as held by the Tribunal in the case of *Atlas Castings & Metal Impregnation Vs. CC, Hyderabad* 2005 (186) ELT 575 (Tri- Bang).

(c) Rule 4 sub-rule (2) provides that the transaction value of imported goods shall be accepted. The transaction value has been defined in sub-rule(1) of Rule 4 as the price actually paid or payable for the goods when sold for export to India subject to certain adjustments as enquiry was made as required under Rule 10A of CVR.

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

(i) *Hon'ble Tribunal in N.K. Agarwal [1994 (74) ELT 83]* had upheld the rejection of transaction value holding that where the Department detected some acts of forgery with regard to declaration of value.

(ii) *In Orson Electronics Pvt. Ltd. [1996(82) ELT 499]* had held that the Collector's order on determination of assessable value, therefore, calls for no interference.

(iii) *In the case of Somel Enterprises [2000 (1260 ELT 1038]* where there were fraudulent documentation by way of two invoices, the Tribunal upheld rejection of transaction value by observing as under:

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

(iv) *In the case of Kayvee Aeropharma [2001 (135) ELT 284]* the Tribunal upheld the charge of under valuation.

(v) *Hon'ble Supreme Court in the case of Shibani Engineering System [1996 (86) ELT 453 (SC)]* overruled the Tribunal decision reported in [1992 (62) ELT 463] and upheld rejection of transaction value because it was a totally unrealistic value.

(vi) *In Metal & Alloys Industries Vs. Collector of Customs [1989 (40) ELT 207 (Tribunal)]* it was held that "the circumstances of the case do not leave any room for doubt regarding the deliberate and wilful misdeclaration of value."

(e) *Hon'ble Supreme Court in Eicher Tractors (2000 (122) ELT 321 (SC)]* had observed to accept the declared value. In that case the Apex court formed that the transaction did not notice the special circumstances statutorily particularized in valuation rule (2) of the CVR and ordered that the transaction value had to be accepted for assessment. It is seen that CVR has undergone changes since the above judgement. In the present case provisos to CVR 4(2) and Rule 10A can be

invoked which were not in existence at the time when the material transactions considered in the Eicher Tractors case took place. Therefore the ratio of the Apex Courts judgement in Eicher Tractors case is not applicable to the facts of the present case.

(f) In Gira Enterprises V. CC, Ahmedabad 2006 (194) ELT 92 (Tri.-Mumbai)] the Tribunal held as follows:

"It is not the case of the appellants that the impugned goods are akin to the kind of goods dealt in the case of Eicher Tractors (supra) where 77% discount was allowed by the manufacturer on one time sale of five years old stock. Moreover, the decision of the three Member Bench of the Hon'ble Supreme Court in the case of Rajkumar Knitting Milts (supra) interpreting section 14(1) of the Act is binding on us in view of the fact that the relevant words of section 14(1) have not undergone any change and there is no contrary decision of any Large Bench of the Hon'ble Supreme Court. section 14(1) of the Act requires customs valuation to correspond to ordinary competitive prices in international trade. Transaction value method is one of the methods of valuation under the Customs (Valuation) Rules, 1988. The transaction value has been defined to be the actual price paid or payable. The declared value may not represent the transaction value in every case. When the declared value is ridiculously low compared to the ordinary competitive price of comparable goods contemporaneously imported, such declared values cannot be adopted as customs value. In such cases, the transaction value method is clearly inapplicable as the declared value does not conform to the requirement of the said section 14(1)... On the other hand, where the declared value is ridiculously low and does not correspond to the ordinary competitive price in international trade, then the other methods of valuation under the Rules are to be used to arrive at the customs value....."

I find that the above observations squarely apply to the instant case.

(ix) In the Ispat Industries Ltd, v. CC, Mumbai [2006 (202) ELT 561 (SC)] the Apex Court recently made the following observations which also support the present case.

"section 14(1) states that the value of the imported goods shall be the deemed price at which such or like goods are ordinarily sold or offered for sale, for delivery at the time and place of importation in the course of international trade. The word "ordinarily" in section 14(1) is of great importance. In section 14(1) we are not to see the actual value of the goods, but the value at which such goods or like goods are ordinarily sold or offered for sale for delivery at the time

of import. Similarly, the words "in the course of international trade" are also of great importance. We have to see the value of the goods not for each specific transaction, but the ordinary value which it would have in the course of international trade at the time of its import."

(x) *Hon'ble CESTAT in the Saffire Lithographers Vs. CC, Tuticorin has held that:*

"In the light of the above observations of the Apex Court the FOB value determined by the Commissioner as the basis for normal price for assessment in terms of section 14(1) of the Act is appropriate. This is the first import of such machines into India. Therefore no relevant data is available to apply Rules 5,6, 7 & 7A of CVR to value the impugned machine. The Commissioner has therefore rightly applied Rule 8 of CVR. We affirm the value determined by the Commissioner. We are convinced that the assessee had misdeclared that value of the imported goods with intent to evade payment of full duty thereby rendering the impugned goods liable for confiscation and themselves liable for penalty. We find that the Commissioner has ordered a reasonable amount of fine to redeem the confiscated goods and imposed a very reasonable amount of penalty on the importer. We sustain the Commissioner's order as regards the fine and penalty also."

Ratio of the said decision is squarely applicable to the present case.

22. *I find that the recovery of the relevant fax messages/documents earlier seized from the premises of Sh. Bhumish Shah which had undoubtedly been sent by the foreign suppliers, M/s. IJIMASIA Pte. Ltd., Singapore indicating two sets of prices i.e. actually transacted prices and the declared prices which were found to be very low as compared to the actually transacted prices. Further, the declared prices were exclusively meant for the purpose of assessment and clearance of goods at lesser prices. These findings have been further corroborated by the contents of the statements of Sh. Bhumish Shah and also by the importers who themselves have admitted such undervaluation of import prices. Thus, the importers admittedly resorted to mis-statement and mis-represented the above discussed import related details while making declaration and claiming assessment and clearance of the subject imports which led to evasion of customs duty amounting to Rs. 38,99,043/-, in respect of subject Imports, which are liable to be recovered along with interest chargeable under the proviso to section 28 of the Act read with the provisions of section 28AB of the Act, respectively.*

23(a) Further in the light of the foregoing findings, it appeared that the declared value of the goods covered by the B's/E were not correct and were thus not acceptable for determination of price for the purpose of assessment of goods to duty in terms of the provisions of section 14(1) of the Act read with Rule 4 and 10 of the Customs Valuation (Determination of the Price of the Imported goods) Rules 1988 and merit to be rejected. Accordingly, I apply Rules 8 & 9 of the CVR for assessment of value of the goods under import.

23(b) As per the provisions of section 46 of the Act, the importers are required to declare and certify the correctness of the material particulars, including the prices of the imported goods furnished in the respective Bs/Entry. Contrary to that it has been revealed that the importers in respect of imports under reference had been admittedly declared the lesser prices to evade the customs duty chargeable on such goods. The said position has also been substantiated by the evidence viz. seized fax messages containing two sets of values i.e. one representing the actual transacted prices whereas the second set of values were exclusively meant for declaring to Customs authorities for the purpose of claiming assessment and clearance of goods at lower values. These findings have revealed that the subject consignments were imported by misdeclaration of import values and on account of such misdeclaration the said goods are thus liable to confiscation under the provisions of section 111 (m) of the Act.

24. Further, as per the Import Policy and based on ITC-HS Classifications to the said Policy 97-02, the import of star aniseeds, mace and cubebs into India during the material period were restricted and were permitted only against appropriate licence. On account of the misdeclaration of value which was ascertained to be Rs. 1,27,55,534/- against the declared value of Rs. 38,62,990/- in respect of the imported spices covered by the 09 Bills of Entry as included in Annexure C-1 to the Show Cause Notice the differential CIF Value of Rs. 88,92,544/-, which were found not covered by a valid import licence and consequently, the import of star aniseed of CIF Value of Rs. 88,92,544/- are also thus found liable to confiscation under the provisions of section 111(d) of the Act.

25. It is seen that Sh. Kejal Mehta, who is the main person behind the imports effected by M/s. Samudri International/M/s. Mayur Enterprises/M/s. Madhu Enterprises is found to have resorted to wilful suppression of the actual values to the Customs by submitting generated and fabricated documents containing misrepresented and misdeclared values in order to evade payment of appropriate customs duty. Therefore, the differential duty is liable to be recovered alongwith

interest under the proviso to section 28 of the Act read with the provisions of 28AB of the Act.

26. *On account of the fraudulent misrepresentation, wilful suppression and also for having resorted to mis-declaration, which have rendered the said imports liable to confiscation and also led to evasion of customs duty, M/s. Samudri International/M/s. Mayur Enterprises/M/s. Madhu Enterprises have rendered themselves liable to penalty under section 114A of the Act and Sh. Kejal Mehta, Sh. Alpesh Mehta and Sh. Mayur Ravani have rendered themselves liable to penalty under section 112(a) of the Act.*

27. *Sh. Bhumish Shah not only assisted actively in misdeclaration of values but was instrumental in evasion of customs duty which was chargeable on impugned consignments of spices imported through him, but in view of the above discussed suppression, duty could not be levied which is liable to be recovered under the proviso to section 28 of the Act. On account of such mis-representation, suppression and mis-declaration, Sh. Bhumish Shah has also rendered himself liable to penal action under the provisions of section 112(a) of the Act. On investigations it was further ascertained that these spices imported from M/s. IJIMASIA Pte. Ltd., Singapore by M/s. Samudri International/M/s. Mayur Enterprises/M/s. Madhu Enterprises were subsequently sold by Sh. Bhumish Shah who had knowledge that these were imported at undervalued prices. Besides, he admittedly used to ensure that upon sale of such goods a differential amount incurred on account of undervalued imports were dispatched to the foreign suppliers. Thus, Sh. Bhumish Shah was fully associated with M/s. Samudri International/M/s. Mayur Enterprises/M/s. Madhu Enterprises and Sh. Kejal Mehta in the aforesaid transactions and affairs and has thereby rendered himself liable to penal action under section 112(a) of the Act as brought out above.*

28. *In the present case goods imported are liable to confiscation as held by the following decisions:*

(i) *CESTAT South Zonal Bench, Chennai in **Venus Enterprises Vs. CC, Chennai** has held that misdeclaration and suppression of value, maintenance of parallel invoices goods liable for confiscation, penalty imposable - fine even if goods not available for confiscation section 111(m), 112(a) and 125 of the Act.*

(ii) *Hon'ble Supreme Court of India in **Western Components Ltd. Vs. CC, New Delhi** had held that redemption fine imposable even after release of goods on execution of bond mere fact that the goods were released on bond would not take*

away the power of the Customs Authorities to levy redemption fine if subsequent to release of goods was found not valid or that there was any other irregularity which would enable the Customs authorities to confiscate the said goods-section 125 of the Act.

*(iii) Hon'ble High Court of Judicature at Madras in **Dadha Pharma Pvt. Ltd. Vs. Secretary to Govt. of India** had held that "Action can be taken under section 112 of the Act even if goods not available for confiscation - section 110 as well as section 111 ibid speaks of liability to confiscation and not actual confiscation."
(emphasis added)*

39.2 I find the above findings of 1st OIO dated 26.09.2008 to be just & reasonable and agree with the same. In addition, I find that there is sufficient evidence regarding the role of Sh. Bhumish Shah in the undervaluation of imported spices in the form of communications that were held with foreign supplier M/s. IJIMASIA, Singapore, through fax messages retrieved from the residence of Sh. Bhumish Shah under Panchanama dated 16.03.2001. Analysis of the fax messages makes it clear that directions to follow up and expedite the local importers to pay the differential amount in respect of the consignments were received from M/s IJIMASIA, Singapore by Sh. Bhumish Shah (as can be seen from snapshot-2 below). Further, it is evident that the modus operandi of undervaluation of imported spices was well known to Sh. Bhumish Shah as the details of actual value, invoice value and differential value for particular consignment were communicated through faxes (as can be seen from snapshot-1 below). To illustrate these points, snapshot of two out of the many fax messages recovered from the residence of Sh. Bhumish shah on 16.03.2001 are reproduced below as sample :

(intentionally kept blank)

JAN-2001 11:05

IJIMASIA PTE LTD

F.01



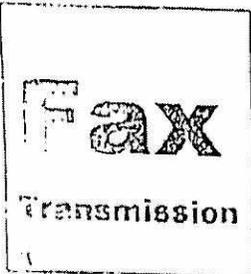
IJIMASIA PTE LTD

industrial & commercial enterprise

1 North Bridge Road
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Tel : (65) 339 7860 Fax : (65) 339 5963
Telex : 39157 IJIMAS HS
E-Mail : ijimasia@singnet.com.sg
Website : www.ijimasia.com

Mailing Address:
Raffles City
P.O. Box 7860
Singapore 911799



TO	BHUMISH SHAH / Mumbai
ATTN	Mr Bhumish Shah
FAX	91 22 5158825
DATE	19/01/01
REF	2628/00
PGS	1 of 3
CC	

1. USA Parcel rechecked today -- not arrived -- will have to push faster otherwise process too slow.
2. Cubebs awaiting fresh offer as still one container to ship. Please inform when can go ahead with shipment. It is important to clear old pending first pls as 3 FCL 's of Star anis seeds have been shipped already.
3. Zanzibar cloves - Dubai yesterday is bidding Singapore at US\$ 5,300/- pmt because market has improved even there. We are not selling. We have given this price especially for Indian market. Will call you later.
4. Star anis seeds - Singapore daily empty. Vietnam now closed for 10 - 15 days for New Year.
5. Star anis seeds - we have rechecked all our documentation - final tally is as follows :-

EXP/ 2592/00 - SSP (declared 3 kgs less)

Actual: 3,3925 tons x US\$ 7,175.00=US\$ 25,358.94
Invoice: 2,9425 tons x US\$ 1,450.00=US\$ 4,266.63
Diff: US\$ 21,092.31

EXP/ 2593/00 - Mehta (declared 3 kgs less)

Actual: 3,3875 tons x US\$ 7,475.00=US\$ 25,321.56
Invoice: 2,9375 tons x US\$ 1,450.00=US\$ 4,259.38
Diff: US\$ 21,062.19

Seen
and other items
16/3/2001

TOTAL P. 02

21-FEB-2001

09:35

IJIMASIA PTE LTD

F.01

83



IJIMASIA PTE LTD

Industrial & commercial enterprises

1 North Bridge Road
#17 05 High Street Centre
Singapore 178094
Republic of Singapore

Tel : (65) 339 7860 Fax : (65) 330 5963
Telex : 39157 IJIMAS RS
E-Mail : ijimasia@singnet.com.sg
Website : www.ijimasia.com

Mailing Address:
Raffles City
P.O. Box 7860
Singapore 911799

Fax

Transmission

TO	BHUMISH SHAH / Mumbai
ATTN	Mr Bhumishi Shah
FAX	91 22 5158825
DATE	21/02/01
REF	2818/01
PAGES	1 of 1
CC	

- 1) Samples 60K still not received - taking too long - request give more details as process slow.
- 2) Laxmi cubebs - + stems - Shipped, please ask him to process funds.
- 3) Jain Bros - Difference 2,295 we received 2,076 = Balance 219. This only for your info. -

Thanks + regards / FUAD

39.3 Thus I conclude that there is sufficient direct evidence (in the form of faxes, documents seized from the residence of Sh. Bhumish Shah and corroborating confessional statements of Sh. Bhumish Shah and Sh. Kejal Mehta) to prove undervaluation of imported spices (star aniseeds, cubebs, mace) of more than 300% in the 10 BEs filed during the period 2000-01 by the 3 importer firms M/s Samudri International, M/s Mayur Enterprises & M/s Madhu Enterprises. The weekly bulletins of the Indian spices market published by the Indian Government and the international market prices given in the international journal " The Public Ledger " of the relevant period also show that the values of spices declared to Customs were almost one-third of the actual market prices of spices prevailing then. The Indian currency of Rs. 1.02 Crores seized/recovered by DRI from the residence of Sh. Bhumish Shah on 16.03.2001 and his confessional statement is also a significant evidence to show that the cash transactions were involved in undervalued imports and payment of differential value was being made in cash to the foreign supplier (M/s IJIMASIA, Singapore). This currency seizure is covered under another SCN F. No. DRI/BZU/D/21/2001 dated 13.03.2002 and being adjudicated concurrently vide OIO No. 88/2023-24/CAC/CC(Import-I)/VP/Adj(Import-I) dated 28.03.2024. The proprietors of the three importer firms Sh. Alpesh Mehta & Sh. Mayur Ravani, evaded DRI summons and also did not appear before the Adjudicating Authority in the first and the present second round of adjudication (even though they filed appeal before Hon'ble Tribunal) which indicates their evasive nature and non-cooperation to legal process. I find that the declared prices of spices has been rightly proposed to be rejected under Rule 4 and 10 of the CVR 1988 and redetermined under Rule 8 & 9 of CVR 1988 with consequent demand for differential duty and interest from the importer firms. The evidence unearthed in the DRI's investigation shows the active role was played by Sh. Bhumish Shah in coordinating the entire chain of this fraudulent foreign trade in spices. Evidence shows that Sh. Alpesh Mehta and Sh. Mayur Ravani allowed their proprietorship firms to be used by Bhumish Shah and Kejal Mehta for undervalued imports at a commission of 3% which shows the meeting of minds and hatching of conspiracy to profit from import of spices in a planned manner. The role of Sh. Kejal Mehta is not being adjudicated here due to the Hon'ble High Court stay. The importer firms have indulged in misrepresentation, wilful suppression and misdeclaration while clearing the imported goods from Customs. Their acts of omission and commission as discussed in detail in the paras above have rendered the goods liable for confiscation under section 111(d) & 111(m) of the Act. Hence, I find that the three importer firms have rendered themselves liable for penal action under section 114A of the Act. I also find that Sh. Alpesh Mehta, Sh. Mayur Ravani and Sh. Bhumish Shah have rendered themselves liable for penal action under section 112(a) of the Act.

39.4 Penalty in remand proceedings not to be enhanced: I find that various Courts in the cases of **Banshi Dhar Lachhman Prasad**⁸, **SPL Industries Limited**⁹ and **Gautam Diagnostic Centre**¹⁰ have held that remand proceedings ordered on a person's own appeal cannot be subjected to a greater penalty than that imposed on him in the original order unless specifically

⁸ Banshi Dhar Lachhman Prasad & Anr-1978 (2) E.L.T. (J 385) (S.C.)

⁹ SPL Industries Limited vs Commissioner of Central Excise, New Delhi-II-2003(159) ELT 720(T)

¹⁰ Gautam Diagnostic Centre vs Commissioner Of Customs, Mumbai-2003(159) ELT 678 (T)

stated in the remand order. Therefore, I am inclined to agree with the 1st round Order-in-Original No. 138/2008/CAC/CC/KS dated 26.09.2008 on the quantum of RF and penalty to be imposed, which appears justified in the facts and circumstances of the case.

40. Accordingly, I pass the following Order: -

ORDER

40.1 In respect of B/E No. 174473/15.3.01 filed by M/s. Mayur Enterprises

- a) I reject the aggregate declared CIF value of Rs. 6,79,325/- for the imported consignment of cubebs covered by B/E No. 174473/15.3.01 filed by M/s. Mayur Enterprises, cleared for home consumption under section 14(1) of the Act read with Rule 4 and 10A of the CVR 1988 and re-ascertain at Rs. 21,78,525/- (as detailed in Annexure C-2 to the SCN) under section 14 of the Act read with Rule 8 & 9 of CVR 1988.
- b) I order confiscation of the above goods imported by M/s. Mayur Enterprises of an aggregate declared CIF value of Rs. 6,79,325/- and re-ascertained CIF value of Rs. 21,78,525/- under section 111 (m) of the Act. Since the goods are not available for confiscation, I impose a redemption fine of Rs. 1,69,830/- (Rupees One Lakh Sixty-Nine Thousand Eight Hundred and Thirty only) in lieu of confiscation under section 125 of the Act.
- c) I confirm the demand of differential duty of Rs. 3,00,492/- (Rupees Three Lakhs Four Hundred and Ninety-Two only) under section 28 of the Act from M/s. Mayur Enterprises along with applicable interest under section 28AA (erstwhile section 28AB) of the Act.
- d) I impose a penalty equal to duty of Rs. 3,00,492/- (Rupees Three Lakhs Four Hundred and Ninety-Two only) alongwith interest upon M/s. Mayur Enterprises under section 114A of the Act, provided that where such duty and interest is paid within thirty days from the date of the order of the proper officer determining such duty, the amount of penalty liable to be paid under this section shall be twenty-five percent of the duty and interest, as the case may be, so determined. The benefit of reduced penalty shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days.
- e) I impose a penalty of Rs. 75,000/- (Rupees Seventy-Five Thousand only) on Sh. Mayur Ravani under section 112(a) of the Act.
- f) I impose a penalty of Rs. 75,000/- (Rupees Seventy-Five Thousand only) on Sh. Bhumish Shah under section 112(a) of the Act.

40.2 In respect of 9 BEs as per Annexure C-1 to the SCN filed by M/s. Samudri International & M/s. Madhu Enterprises

a) I reject the aggregate declared CIF value of Rs. 38,62,990/- for the imported consignments of spices covered by the 9 Bills of Entry (excluding B/E No. 174473 dt. 15.3.2001) cleared for home consumption in terms of the provisions of section 14 (1) of the Act read with Rule 4 and 10A of the CVR 1988 and re-ascertain at Rs. 1,27,55,534/- (as detailed in Annexure C-1 to the SCN) under section 14 of the Act read with Rule 8 & 9 of CVR 1988.

b) I order confiscation of the above goods imported by M/s. Samudri International and M/s. Madhu Enterprises of declared CIF value of Rs. 20,49,736/- and Rs. 18,13,254/- respectively, under section 111 (m) of the Act. Since the goods are not available for confiscation, I impose a redemption fine of Rs. 5,12,433/- (Rupees Five Lakhs Twelve Thousand Four Hundred and Thirty-Three only) for the goods imported by M/s. Samudri International and Rs. 4,53,312/- (Rupees Four Lakhs Fifty-Three Thousand Three Hundred and Twelve only) for the goods imported by M/s. Madhu Enterprises in lieu of confiscation under section 125 of the Act.

c) I order confiscation of the above goods imported by M/s. Samudri International and M/s. Madhu Enterprises, involving a differential value of Rs. 70,98,791/- and Rs. 17,93,753/- (being the difference between the declared CIF value and ascertained CIF value) respectively, under section 111(d) of the Act. Since the goods are not available for confiscation, I impose a redemption fine of Rs. 17,74,697/- (Rupees Seventeen Lakhs Seventy-Four Thousand Six Hundred and Ninety-Seven only) for the goods imported by M/s. Samudri International and Rs. 4,48,438/- (Rupees Four Lakhs Forty-Eight Thousand Four Hundred and Thirty-Eight only) for the goods imported by M/s. Madhu Enterprises in lieu of confiscation under section 125 of the Act.

d) I confirm the demand of differential duty of Rs. 28,00,771/- (Rupees Twenty-Eight Lakhs Seven Hundred and Seventy-One only) under section 28 of the Act from M/s. Samudri International alongwith interest under section 28AA (erstwhile 28AB) of the Act and I appropriate the amount of Rs. 11,00,000/- paid voluntarily as revenue deposit towards the differential duty by M/s. Samudri International.

e) I confirm the demand of differential duty of Rs. 7,97,780/- (Rupees Seven Lakhs Ninety-Seven Thousand Seven Hundred and Eighty only) under section 28 of the Act from M/s. Madhu Enterprises alongwith interest under section 28AA (erstwhile 28AB) of the Act.

f) I impose a penalty equal to duty of Rs. 28,00,771/- (Rupees Twenty-Eight Lakhs Seven Hundred and Seventy-One only) alongwith interest upon M/s. Samudri International under section 114A of the Act, provided that where such duty and interest is paid within thirty days from the date of the order of the proper officer determining such duty, the amount of penalty

liable to be paid under this section shall be twenty-five percent of the duty and interest, as the case may be, so determined. The benefit of reduced penalty shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days.

g) I impose a penalty equal to duty of Rs. 7,97,780/- (Rupees Seven Lakhs Ninety-Seven Thousand Seven Hundred and Eighty only) alongwith interest upon M/s. Madhu Enterprises under section 114A of the Act, provided that where such duty and interest is paid within thirty days from the date of the order of the proper officer determining such duty, the amount of penalty liable to be paid under this section shall be twenty-five percent of the duty and interest, as the case may be, so determined. The benefit of reduced penalty shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days.

h) I impose a penalty of Rs. 7,50,000/- (Rupees Seven Lakhs Fifty Thousand only) on Sh. Alpesh Mehta under section 112(a) of the Act.

i) I impose a penalty of Rs. 7,50,000/- (Rupees Seven Lakhs Fifty Thousand only) on Sh. Mayur Ravani under section 112(a) of the Act.

j) I impose a penalty of Rs. 7,50,000/- (Rupees Seven Lakhs Fifty Thousand only) on Sh. Bhumish Shah under section 112(a) of the Act.

40.3 The case (charges laid in SCN dated 13.10.2003) against Sh. Kejal Mehta is not being adjudicated for the time being, in view of stay granted by Hon'ble Bombay High Court vide its Order dated 08.12.2023 in Writ Petition (WP) No. 33946 of 2023.

40.4 This Order may be read along with the OIO No. 88/2023-24/CAC/CC(Import-I)/VP/Adj(Import-I) dated 28.03.24 passed on the SCN No. DRI/BZU/D/21/2001 dated 13.03.2002 related to cash seizure in this case.

40.5 This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or on the persons, companies concerned, covered and/or not covered by this order or under any other provisions of the Act and/or any other law for the time being in force in the Republic of India.



Vivek
29.03.24
(Vivek Pandey)
आयुक्त सीमा शुल्क (आयात-I)
Commissioner of Customs (Import-I),
नवीन सीमा शुल्क भवन मुंबई-01
New Custom House, Mumbai-01

To,

1. M/s. Samudri International,
131/3605, Pant Nagar, Ghatkoper (E), Mumbai-400 077.
2. M/s. Mayur Enterprises,
197/5429, Shantivan, Pant nagar, Ghatkoper(E), Mumbai-75.
3. M/s Madhu Enterprises,
197/5429, Shantivan, Pant nagar, Ghatkoper Mumbai-75
4. Sh. Kejal Mehta,
6, Moararbaug, 60 Ft. Road, Ghatkoper (E), Mumbai-77
5. Sh. Alpesh Mehta,
131/3605, Pant nagar, Ghatkoper (E), Mumbai-75
6. Sh. Mayur Ravani,
197/5429. Shantivan BLD Pantnagar, Ghatkoper(E), Mumbai-75.
7. Sh. Bhumish Shah,
F/48, APMC-1, Vashi, Navi Mumbai-400 703

Copy to:

- 1) The Pr. Chief Commissioner of Customs,
New Customs House, Mumbai Customs Zone-I,
Mumbai-400001.
- 2) The Principal ADG,
Directorate of Revenue Intelligence, Mumbai Zonal Unit,
13, Vithaldas Thackersay Marg, Opp. Patkar Hall,
New Marine Lines, Mumbai - 400 020.
- 3) The Additional Director General,
Central Economic Intelligence Bureau,
A-Wing, 1st Floor, Janpath Bhawan, Janpath, New Delhi-110 001
- 4) The Commissioner of Customs (Import-I),
JawaharLal Nehru Customs House,
Nhava Sheva, Post Uran, Dist. Raigad, Maharashtra-400 707
- 5) The Commissioner of Customs (Import-II)
New Customs House, Mumbai Customs Zone-I
(For record in their arrears register & necessary recovery action as per law)
- 6) The Additional Commissioner (Adjudication Cell), Import-I, NCH, Mumbai

-to keep record of the case pending against Sh. Kejal Mehta and to process it for adjudication on vacation of stay by Hon'ble High Court in WP No. 33946 of 2023.

- 7) Office copy.
- 8) Notice Board