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

File No: CUS/APR/MISC/4404/2022-GR-5(AB)
DIN: 20251177000000222D63

Date of Order: 07.11.2025
Date of Issue: 07.11.2025

Order Passed by: **Ms. Deepika Kartik Tangadkar,**
Joint Commissioner of Customs, Import-I
New Custom House, Mumbai

Order No. 15/JC/DKT/ADJN/2025-26

Name of Party/Noticee: M/s. Madiha Trading Company

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मूलआदेश

1. यह प्रति उस व्यक्ति के उपयोग के लिए निःशुल्क दी जाती है जिसे यह जारी की गई है।
This copy is granted free of charge for the use of the person to whom it is issued.

2. इस आदेश के खिलाफ अपील इस आदेश के संचार की तारीख से साठ दिनों के भीतर और सीमाशुल्क अधिनियम, 1962 कीधारा 128(1) केतहत सीमाशुल्क आयुक्त) अपील (न्यूकस्टमहाउस, बलार्डएस्टेट, मुंबई400001 के समक्ष होगी। मांग किए गए शुल्क के 7.5% काभुगतान जहां शुल्क या शुल्कऔर जुर्माना विवाद में है या जुर्माना जहां अकेले दंड विवाद में है।

An appeal against this order shall lie before the Commissioner of Customs (Appeals), New Custom House, Ballard Estate, Mumbai 400001 under Section 128(1) of the Customs Act, 1962 within Sixty days from the date of communication of this order and on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty where penalty alone is in dispute.

3. अपील सीमाशुल्क) अपील (नियम 1982 में प्रदर्शित फॉर्म सी-.ए.। में दो प्रति में की जानी चाहिए।अपील रुपये -/ 1.50 के न्यायालय फीस स्टांप तथा इस आदेश या आदेश की प्रति के साथ संलग्न होनी चाहिए। यदि आदेश की प्रति संलग्न की जाती है तो इसमें भी न्यायालय फीस अधिनियम 1970 कीअनुसूची 1 मेंप्रदर्शित रूपये -/1.50 की न्यायालय फीस स्टांप भी होना चाहिए।
The appeal should be in duplicate and should be filed in Form CA – 1 appeared in Custom (Appeals) Rule, 1982. The appeal should bear a court fee stamp of Rs. 1.50 paise paid only and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should also bear a court fee stamp of Rs. 1.50 paise only as prescribed under Schedule 1, item 6 of the Court Fees Act, 1970.

4. इस निर्णय या आदेश के खिलाफ अपील करने वाला कोई भी व्यक्ति, अपील लंबित होनेपर, सीमाशुल्क अधिनियम, 1962 की धारा 129 ईके तहत उपरोक्त पैरा 2 के अनुसार राशि जमा करेगा, अपील के साथ इस तरहके भुगतान का प्रमाण प्रस्तुत करेगा, जिसमें विफलरहने पर अपील की जास कती है।सीमाशुल्क अधिनियम, 1962 की धारा 128(1) के प्रावधानों का अनुपालन न करने के कारण खारिज कर दिया गया।

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

SUB: Order-in-Original No.07/ADC/MKJ/ADJ/2024-25 dated 08.04.2024 remanded back vide Order-in-Appeal No.MUM-CUS-TK-IMP-232/2024-25/NCH dated 26.03.2025

BRIEF FACTS OF THE CASE

The case of import of goods vide Bill of Entry No. 9853531 dated 03.08.2022 filed by Customs Broker M/s S. S. International Logistics on behalf of Importer M/s Madiha Trading Company (IEC No. EWBPS2362N) had been investigated by CIU, Mumbai Zone-I. The goods declared in the Bill of Entry were namely "Cleaning Mop, Electric Lunch Box, Self-Stirring Coffee Mug, Egg Poacher, Inflatable Pillow, Mini Pocket Shaver, Derma Roller Massager, Electric Kettle 2L, Baby Kneecap, Navrang Ball, Mini Hair Dryer, Hair Trimmer, Waterproof Crack Silicone Tube, Hot Air Brush, Razor (6 Pcs/card/doz), Mini Ufo Lamp, Main Hair Straightener, Silicone Heel Anti Crack Sets, Star Projection Lamp, Mini USB Lamp, Wax Heater". The total declared assessable value of the goods was Rs.10,39,031/-.

1.1. The details of the Bill of Entry mentioned above are tabulated as below: -

Sr. No.	PARTICULARS	SPECIFICATIONS
1	B/E No & Date	9853531 dated 03.08.2022
2	Importer's Name	M/s Madiha Trading Company. (IEC No.EWBPS2362N)
3	Customs Broker	M/s SS International Logistics
4	Container No.	TEMU7820012
5	B.L. No./Date	KMTCNB06270229
6	IGM No/Date	2318345 dated 03.08.2022
7	Items Declared	1) Cleaning Mop 2) Electric Lunch Box 3) Self-Stirring Coffee Mug 4) Egg Poacher 5) Inflatable Pillow 6) Mini Pocket Shaver 7) Derma Roller Massager 8) Electric Kettle 2L 9) Baby Kneecap 10) Navrang Ball 11) Mini Hair Dryer 12) Hair Trimmer 13) Waterproof Crack Silicone Tube 14) Hot Air Brush 15) Razor (6 Pcs/card/doz) 16) Mini Ufo Lamp 17) Main Hair Straightener 18) Silicone Heel Anti Crack Sets 19) Star Projection Lamp 20) Mini USB Lamp 21) Wax Heater
8	Total Assessable Value declared	Rs. 10,39,031/-

2. The goods covered by the above mentioned Bill of entry were examined 100% by the officers of CIU, NCH under *panchnama* dated 17.08.2022. The comparison of the goods declared vs goods found is as tabulated below:

Sr. No.	Description of Goods (Declared)	Declared Qty Per Pkg (in pcs)	Declared No. of pkgs	Declared Total Quantity (in Pcs)	Description of Goods (Found)	Qty. Per pkg Found (in Pcs.)	No. of pkgs Found	Total Quantity Found (in pcs.)	Remarks/Observation
1	Cleaning Mop	20	20	400	(SPIN) Electric Cleaning Mop	20	20	400	Found in pre-packaged condition. No labelling mentioning name of importer, Address of importer, MRP, manufacturer's name, year of manufacturing etc. found on individual piece. Labelling sticker is pasted on each carton. Cleaning mops are not ordinary mops but electric cleaning mops.
2	Electric Lunch Box	32	20	642	Electric Lunch Box	32	20	640	Found in pre-packaged condition. No labelling found mentioning name of importer, Address of importer, MRP, manufacturer's name, year of manufacturing etc. found on individual piece. Labelling sticker is pasted on each carton.
3	Self-Stirring Coffee Mug	60	20	1200	Self- Stirring Coffee Mug	60	20	1200	Found in pre-packaged condition. No labelling mentioning name of importer, Address of importer, MRP, manufacturer's name, year of manufacturing etc. found on individual piece. Labelling sticker is pasted on each carton.
4	Egg Poacher	30	50	1500	Egg Poacher	30	50	1500	Found in pre-packaged condition. No labelling mentioning name of importer, Address of importer, MRP, manufacturer's name, year of manufacturing etc. found on individual piece. Labelling sticker is pasted on each carton.
5	Inflatable Pillow	360	5	1800	Inflatable Pillow	360	5	1800	Found in Bulk Condition
6	Mini Pocket Shaver	100	10	1002	Mini Pocket Shaver found without charger.	100	10	1000	Found in pre-packaged condition. No labelling mentioning name of importer, Address of importer, MRP, manufacturer's name, year of manufacturing etc. found on individual piece. Labelling sticker is pasted on each carton.
7	Derma Roller Massager	300	12	3600	Derma Roller Massager (mechanical)	300	12	3600	Found in pre-packaged condition. No labelling mentioning name of importer, Address of importer, MRP, manufacturer's name, year of manufacturing etc. found on individual piece. Labelling sticker is pasted on each carton.
8	Electric Kettle 2L	16	100	1602	(Scarlett) Electric Kettle 2L	16	100	1600	Found in pre-packaged condition. No labelling mentioning name of importer, Address of importer, MRP, manufacturer's name, year of manufacturing etc. found on individual piece. Labelling sticker is pasted on each carton.
9	Baby Kneecap	1000	25	25008	Baby Kneecap	1000	25	25000	Found in Bulk Condition
10	Navrang Ball	500	155	77502	Navrang Ball	500	155	77500	Found in Bulk Condition
11	Mini Hair Dryer	100	20	2004	(HNova) Mini Hair Dryer	100	20	2000	Found in pre-packaged condition. No labelling mentioning name of importer, Address of importer, MRP, manufacturer's name, year of manufacturing etc.

									found on individual piece. Labelling sticker is pasted on each carton.
12	Hair Trimmer	60	25	1500	(New Nova) Hair Trimmer	60	25	1500	Found in pre-packaged condition. No labelling mentioning name of importer, Address of importer, MRP, manufacturer's name, year of manufacturing etc. found on individual piece. Labelling sticker is pasted on each carton.
13	Waterproof Crack Silicone Tube	100	25	2502	Waterproof Crack Silicone Tube	100	25	2500	Found in Bulk Condition
14	Hot Air Brush	30	20	600	(One Step) Hot Air Brush (Plug & Use)	30	20	600	Found in pre-packaged condition. No labelling mentioning name of importer, Address of importer, MRP, manufacturer's name, year of manufacturing etc. found on individual piece. Labelling sticker is pasted on each carton.
15	Razor (6 Pcs/Card)	360	7	2520	(Max) Razor (6Pcs/Card)	360	7	2520	Found in pre-packaged condition. No labelling mentioning name of importer, Address of importer, MRP, manufacturer's name, year of manufacturing etc. found on individual piece. Labelling sticker is pasted on each carton.
16	Mini UFO Lamp	300	50	15000	Mini UFO Lamp	300	50	15000	Found in Bulk Condition
17	Mini Hair Straightener	120	20	2400	(Make Time) Mini hair Straightener (Plug & Use)	120	20	2400	Found in pre-packaged condition. No labelling mentioning name of importer, Address of importer, MRP, manufacturer's name, year of manufacturing etc. found on individual piece. Labelling sticker is pasted on each carton.
18	Silicone Heel Anti-Crack Sets	300	25	7500	Silicone Heel Anti-Crack Sets	300	25	7500	Found in Bulk Condition
19	Star Projection Lamp	60	34	2040	Star Projection Lamp	60	34	2040	Found in pre-packaged condition. No labelling mentioning name of importer, Address of importer, MRP, manufacturer's name, year of manufacturing etc. found on individual piece. Labelling sticker is pasted on each carton.
20	Mini USB Lamp	3000	15	45000	Mini USB Lamp	3000	15	45000	Found in Bulk Condition
21	Wax Heater	24	20	480	(Pot Wax 100) Wax Heater	24	20	480	Found in pre-packaged condition. No labelling mentioning name of importer, Address of importer, MRP, manufacturer's name, year of manufacturing etc. found on individual piece. Labelling sticker is pasted on each carton

2.1. A total of 678 cartons were declared in the B/E, and the same number of cartons were found during the examination. On examination, following violations were observed:

(a) **RE 44:** Goods declared as Cleaning MOP, Electric Lunch Box, Self-Stirring Coffee Mug, Egg Poacher, Mini Pocket Shaver, Derma Roller Massager, Electric Kettle 2L, Mini Hair Dryer, Hair Trimmer, Hot Air Brush, Razor (6 Pcs/Card), Mini Hair Straightener, Star Projection Lamp, Wax Heater were found in pre-packaged condition and thus falling under the purview of General Note 5 "Packaged products" of ITC (HS) read with DGFT Notification No. 44 (RE-2000)/1997-2002 dated 24.11.2000 and the corresponding provisions of the Legal Metrology Act, 2009 and the Legal Metrology (Packaged Commodities) Rules, 2011 which required the declaration of:

- Name and address of the importer
- Generic or common name of the commodity packed
- Net quantity in terms of standard unit of weights and measures. If the net quantity in the imported package is given in any other unit, its equivalent in terms of standard units shall be declared by the importer
- Month and year of packing in which the commodity is manufactured or packed or imported
- Maximum retail sale price at which the commodity in packaged form may be sold to the ultimate consumer. This price shall include all taxes local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertising, delivery, packing, forwarding and the like, as the case maybe

However, the aforesaid declarations were not made. However, the importer had produced application for registration of manufacturers/packers/importers under Rule 27 of the Legal Metrology (Packaged Commodities) Rules, 2011.

(b) **Mis-declaration:** Mis-declaration regarding description was found in serial no. 1 cleaning mop which was not ordinary mop but actually electric cleaning mop.

(c) **Misclassification:** For Serial No. 10 - Navrang Ball, description was found matching, as in both shape and appearance it was an inflatable ball. However, relying on judgement of various forums and looking at three criteria of classification, i.e., Use of the ball, Build quality or structure and Marketability, it was evident that Navrang ball at serial number 10 was appropriately classifiable as a toy under CTH 95030090. The reasons for classification of Navrang ball as toys are:

- The prime use of Navrang ball was amusement and entertainment and not sports or outdoor games.
- The build quality of Navrang Ball was not up to the standard of outdoor and sports ball.
- As per the market survey and inquiry, these balls were sold in toys shop. Hence, it should be appropriately classifiable as Toys.

(d) **BIS Compliance:** Goods at Serial no. 10 were more appropriately classifiable as Toys, falling under the purview of the Safety of Toys as per IS 9873 for Self-Declaration of conformity (i.e. Scheme-I of Bureau of Indian Standards).

(e) **Short Quantity:** The details of items found in short quantity is as follows:

Sr. No.	Item Sr. No.	Item description	Quantity unit	Quantity declared	Quantity found	Differential Quantity
1	2	Electric Lunch Box	Pcs	642	640	2
2	6	Mini Pocket Shaver	Pcs	1002	1000	2
3	8	Electric Kettle	Pcs	1602	1600	2
4	9	Baby Knee Cap	Pcs	25008	25000	8
5	10	Navrang Ball	Pcs	77502	77500	2
6	11	Mini Hair Dryer	Pcs	2004	2000	4
7	13	Waterproof Crack siliconetube	Pcs	2502	2500	2

3. During the course of investigation, the statement of authorized representative of the importer Mr. Tabrez Shaikh was recorded under Section 108 of the Customs Act, 1962 on 09.09.2022 wherein he *inter-alia* stated that he worked as manager of the firm and looked after the purchase and sale; that his wife was importer; that they started the import in August 2021; that they imported different types of goods like household goods, beach balls, etc from China and sold them in Indian market; that he had not imported similar goods earlier but imported around 15 containers from Nhava Sheva of Toy parts; that the suppliers of his previous imports were different; that they placed order on telephone, overseas supplier quoted the prices and if the prices were okay, they agreed and asked for commercial invoice which they got via courier; that they would send the remittances in 90 days DA as per payment terms; that they came in contact with CB M/s S. S. International Logistics through their friend Ajit Ghone; that they provided packing list and invoice and B/L by hand to CHA office; that they did not have any knowledge of the Customs regulations, procedures and other relevant provisions related to import of the goods as CB looked after the custom related work; that they accepted mistake of mis-declaring electric cleaning mop as cleaning mop; on being asked why they had misclassified Item No. 10 - Navrang Ball under Ball instead of proper classification of Toy, which was used by children for playing, he informed that Navrang Ball was inflatable beach ball having valve, it was used by all age groups and not just for children and as per his knowledge it was rightly classified under Ball; he further stated that they had clearly instructed overseas exporter that goods should be sent with proper labeling but due to miscommunication, overseas exporter had labeled on the cartons and not on pre-packages; that they had LMPC certificate and they sold the goods after labeling. He accepted his mistake of not labeling and stated that he was ready to pay fine and penalty.

3.1. Statement of Shri Mainuddin A Sattar, having G card with CHA Firm M/s. S S International Logistics (11/2447) was recorded under Section 108 of the Customs Act 1962 on 09.09.2022, wherein he *inter*-alia stated that he was present on 17.08.2022 when the container no. TEMU7820012 was examined 100% by the officers of the CIU. On being question with regard to the violation regarding LMPC, RE-44 compliance, mis-declaration in terms of description, statutory compliance of BIS not being fulfilled, he stated that he filed the Bill of Entry on the basis of the documents like invoice and other import related documents provided by the importer.

4. From the above findings it appeared that the goods were mis-declared in terms of description and classification in addition to violation of allied acts, i.e., DGFT Notification No. 44(RE-2000)/1997-2002 dated 24.11.2000 and the corresponding provisions of the Legal

Metrology Act, 2009 and the Legal Metrology (Packaged Commodities) Rules, 2011 by the importer. Further, the goods also appeared to be undervalued. Therefore, the goods appeared to be liable for confiscation under Section 111(d) and 111(m) of the Customs Act 1962 and subsequently the goods were seized under Section 110 (1) of the Customs Act 1962 vide Seizure Memo dated 15.09.2022.

5. The importer had submitted invoice w.r.t. the goods imported and filed the B/E based upon the value declared in the above said invoice. During the examination of the goods, mis-declaration in description where the proper description of the goods was not declared, misclassification of goods was found. Thus, it could be inferred that the importer had submitted an incorrect invoice while filing the B/E and that he filed incorrect details regarding the valuation of goods in the B/E.

5.1. Rule 12 (2) (iii) (d) states that the proper officer shall have the power to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include the mis-declaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production. Further, Rule 12 (2) (iii) (e) states that proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include the non-declaration of parameters such as brand, grade, specifications that have relevance to value.

5.2. Based on the above facts, the invoice value of the goods was liable to be rejected under Rule 12 (2) (iii) (d) and Rule 12 (2) (iii) (e) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

5.3. Once the value of the goods was rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 then the valuation of the goods would be done by applying the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 from Rule 3 onwards.

5.4. In the instant case, goods found during the examination did not correspond to various parameters provided in this rule for arriving at the valuation such as Brand, Model No., manufacturer details etc. Hence Rule 4 and Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 could not be taken into consideration for arriving at the valuation of the goods.

5.5. As per Rule 6 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, if the value of the imported goods cannot be determined under provisions of rule 3, 4 and 5, the value shall be determined under the provisions of rule 7 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

5.6. Also, in the instant case, in absence of the various kind of data stated in the Rule 7, Rule 7 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 could not be taken into consideration for arriving at the valuation of the goods.

5.7. Also, in the instant case, the various costs mentioned in Rule 8 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 could not be calculated in absence of availability of production process involved, proper catalogues etc.

5.8. Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 talks about residual method in which it is stated that subject to Rule 3, where the value of the imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India with further condition.

5.9. For the purpose of valuation of the goods, market survey of goods was conducted on 15.09.2022 in presence of authorized representative of the importer, Mr. Tabrez Shaikh, wherein the prices of similar goods were ascertained during market inquiry. The prices taken from the 3 shops for the valuation of the goods are as below:

Sr. No.	Description of Goods	Unit	Rate quoted in 1st invoice (Excl. GST)	Rate quoted at 1st shop (Incl. GST)	Rate quoted in 2nd invoice (Excl. GST)	Rate quoted in 2nd shop (Incl. GST)	Rate quoted in 3rd invoice (Excl. GST)	Rate quoted in 3rd shop (Incl. GST)	Av. market Price Incl. GST (in Rs.)
1	Electric Cleaning Mop	Pcs	440.68	520.00	406.78	480.00	423.73	500.00	500.00
2	Electric Lunch Box	Pcs	345.34	407.50	338.98	400.00	332.63	392.50	400.00
3	Self-Stirring Coffee Mug	Pcs	67.80	80.00	65.68	77.50	69.91	82.49	80.00
4	Egg Poacher	Pcs	145.76	172.00	135.59	160.00	140.00	165.20	165.73
5	Inflatable Pillow	Pcs	22.95	27.08	21.19	25.00	19.42	22.92	25.00
6	Mini Pocket Shaver	Pcs	120.76	142.50	127.12	150.00	133.47	157.49	150.00
7	Derma Roller Massager	Pcs	22.32	25.00	20.83	23.33	23.81	26.67	25.00
8	Electric Kettle 2L	Pcs	245.76	290.00	251.41	296.66	240.11	283.33	290.00
9	Baby Kneecap	Pcs	7.42	8.76	6.36	7.50	5.30	6.25	7.50
10	Navrang Ball	Pcs	13.76	15.41	13.39	15.00	13.02	14.58	15.00
11	Mini Hair Dryer	Pcs	88.63	104.58	80.86	95.41	84.75	100.01	100.00
12	Hair Trimmer	Pcs	125.71	148.34	122.88	145.00	120.06	141.67	145.00
13	Waterproof Crack SiliconeTube	Pcs	72.74	85.83	76.27	90.00	79.80	94.16	90.00
14	Hot Air Brush	Pcs	286.02	337.50	296.61	350.00	307.20	362.50	350.00
15	Razor (6 Pcs/Card)	Pcs	23.66	27.92	21.19	25.00	18.71	22.08	25.00
16	Mini UFO Lamp	Pcs	16.95	20.00	15.18	17.91	18.71	22.08	20.00
17	Mini Hair Straightener	Pcs	75.92	89.59	93.57	110.4	84.75	100.0	100.00
18	Silicone Heel Anti-Crack Sets	Pcs	24.36	28.74	21.19	25.00	18.01	21.25	25.00
19	Star Projection Lamp	Pcs	134.18	158.33	135.59	160.00	130.65	154.17	157.50
20	Mini USB Lamp	Pcs	6.36	7.50	6.71	7.92	6.00	7.08	7.50
21	Wax Heater	Pcs	79.10	93.34	90.40	106.67	84.75	100.01	100.01

5.10. For arrival at the assessable value, various components like importer's profit, wholesaler's profit, miscellaneous charges, customs duty etc. were to be deducted from the average prices, as detailed below:

ARRIVAL ON ASSESSABLE VALUE BASED ON MARKET SURVEY WHERE IGST IS 18%			
	Percentage deductions (in %)	**Amount deducted**	**Value %**
Market Price (including GST)			100.00
IGST	18	15.25	
			84.75
Retailer's Profit	15	11.06	
Retailer's Cost Price			73.69
Wholesaler's Profit	15	9.62	
Wholesaler's Cost Price			64.07
Importer's Profit	15	8.36	
Importer's Cost Price			55.71
Misc. expenses (transportation, warehousing, clearance charges etc.)	10	5.07	
Importer's Landing Price			50.64
Assessable value arrived where Customs Duty (BCD+SWS) is	11	5.02	
			45.62
	16.5	7.18	
			43.46
	22	9.14	
			41.50
	27.5	10.92	
			39.72
IGST was not included in Customs duty since it has already been deducted at the market price level.			

ARRIVAL ON ASSESSABLE VALUE BASED ON MARKET SURVEY WHERE IGST IS 12%			
	Percentage deductions (in %)	**Amount deducted**	**Value %**
Market survey price (including GST)			100.00
IGST	12	10.72	
			89.28
Retailers' profit	15	11.65	
Retailers' Cost Price			77.63
Wholesaler's profit	15	10.13	
Wholesaler's Cost price			67.50
Importer's profit	10	6.14	
Importer's Cost Price			61.36
Misc. expenses (transportation, warehousing,clearance charges etc.)	10	5.58	
Importer's landing price			55.79
Assessable value arrivedwhere customs Duty (BCD+SWS) is	16.5	7.9	
			47.89
	66	14.29	
			33.60
IGST was not included in Customs duty since it has already been deducted at price level.			

5.11. Based on the above facts, the assessable value of the imported goods was calculated as below:

Sr. No.	Description of the goods	Market value (In INR) (per unit)	Assessable value arrived (In INR) (per unit)
1	Cleaning Mop	500.00	207.5
2	Electric Lunch Box	400.00	166
3	Self-Stirring Coffee Mug	80.00	33.2
4	Egg Poacher	165.73	68.77795
5	Inflatable Pillow	25	9.93
6	Mini Pocket Shaver	150	62.25
7	Derma Roller Massager	25	11.9725
8	Electric Kettle 2L	290	120.35
9	Baby Kneecap	7.50	3.1125
10	Navrang Ball	15	5.04
11	Mini Hair Dryer	100	41.5
12	Hair Trimmer	145	60.175
13	Waterproof Crack Silicone Tube	90	41.058
14	Hot Air Brush	350	145.25
15	Razor (6 Pcs/Card)	25	11.405
16	Mini UFO Lamp	20	7.944
17	Mini Hair Straightener	100	41.5
18	Silicone Heel Anti-Crack Sets	25	10.865
19	Star Projection Lamp	157.5	62.559
20	Mini USB Lamp	7.50	2.979
21	Wax Heater	100	41.5

5.12. Based on the above, the re-determined assessable value of the goods is tabulated as below:

Sr. No.	Description of the goods	Quantity found (unit)	Declared A.V. in the B/E (Per Pcs) (In INR)	Re-determined Unit Assessable value (In INR)	Re- determined Total Assessable value (In INR)	Re-determined Total Duty (In INR)
1	Cleaning Mop	400	81.86	207.5	83000	36487
2	Electric Lunch Box	640	81.86	166	106240	46703
3	Self-Stirring Coffee Mug	1200	20.47	33.2	39840	17514
4	Egg Poacher	1500	24.56	68.77795	103166.9	45353
5	Inflatable Pillow	1800	4.09	9.93	17874	9017
6	Mini Pocket Shaver	1000	20.47	62.25	62250	27365
7	Derma Roller Massager	3600	2.46	11.9725	43101	13137
8	Electric Kettle 2L	1600	40.93	120.35	192560	84649
9	Baby Kneecap	25000	0.82	3.1125	77812.5	34206
10	Navrang Ball	77500	4.09	5.04	390600	335604
11	Mini Hair Dryer	2000	40.93	41.5	83000	36487
12	Hair Trimmer	1500	40.93	60.175	90262.5	39679
13	Waterproof Crack Silicone Tube	2500	8.19	41.058	102645	31799
14	Hot Air Brush	600	40.93	145.25	87150	38311
15	Razor (6Pcs/Card)	2520	3.27	11.405	28740.6	8904
16	Mini UFO Lamp	15000	3.27	7.944	119160	60116
17	Mini Hair Straightener	2400	40.93	41.5	99600	43784
18	Silicone Heel Anti-Crack Sets	7500	2.46	10.865	81487.5	30533

19	Star Projection Lamp	2040	16.37	62.559	127620.4	64384
20	Mini USB Lamp	45000	0.82	2.979	134055	67631
21	Wax Heater	480	40.93	41.5	19920	8757
TOTAL					**2090085**	**1080421**
DUTY DECLARED (IN INR)						**435646**
DIFFERENTIAL DUTY (IN INR)						**644775**

6. In the subject matter, the Customs Broker M/s S. S. International Logistics Ltd (11/2447) had failed to properly advise their client M/s Madiha Trading Company regarding the rules and regulations of Customs and allied acts, and failed to inform them about the declarations to be made for pre-packaged goods falling under the purview of General Note 5 "packaged products" of ITC (HS) read with DGFT Notification No. 44 (RE-2000)/1997-2002 dated 24.11.2000 and the corresponding provisions of the Legal Metrology Act, 2009 and the Legal Metrology (packaged Commodities) Rules, 2011.

6.1. The rules and regulations of the Customs were handled by the Customs Broker. Also, in the statement given by the CB, he admitted that their firm checked the applicability of BIS, LMPC certificates after consulting with the importer. It was the responsibility of the Customs Broker to inquire about the condition (i.e., pre-packaged or bulk), specifications of the goods,etc. with the importer and advise the importer to comply with the extant rules which was not done in the instant case.

7. From the above, the following findings were made:

- The imported goods were found in violation of provisions of General Note 5 "Packaged products" of ITC (HS) read with DGFT notification no. 44 (RE-2000)/1997-2002 dated 24.11.2000 and corresponding provisions of Legal Metrology Act, 2009 and the Legal Metrology (Packaged Commodity), Rules, 2011.
- The imported goods were found in violations of provisions of BIS.
- The imported goods were found mis-declared in terms of description and classification during the investigation.
- The imported goods were found undervalued during the investigation.
- The imported goods were liable for confiscation under section 111 of the Customs Act 1962.
- The Importer and Custom Broker were liable for penal action under section 112(a) of the Customs Act, 1962.

8. In view of the above, the above findings are summarized as under:

- The declared value of the goods was liable to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determined at Rs. 20,90,085/-.
- The goods with total re-determined value of Rs. 20,90,085/- were liable for confiscation under Section 111(d), 111(l) and 111(m) of the Customs Act, 1962.
- Differential duty of Rs. 6,44,775/- was payable in respect of goods.
- Importer M/s Madiha Trading Company was liable for penal action under Section

112(a) of the Act, 1962.

➢ Customs Broker, i.e., M/s S. S. International Logistics Ltd. was liable for penal action under Section 112(a) of the Act, 1962.

9. In view of above, a Show Cause Notice No.12/2022-23 dated 09.11.2022 was issued to M/s Madiha Trading Company (IEC No. EWBPS2362N) as to why:

(i) The total declared assessable value of Rs. 10,39,031/- of the goods covered by Bill of Entry No. 9853531 dated 03.08.2022 should not be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determined at Rs. 20,90,085/- (Rupees Twenty Lakh Ninety thousand and Eighty-Five only) under section 14(1) of Customs Act 1962 read with Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

(ii) The goods with total re-determined assessable value of Rs. 20,90,085/- should not be confiscated under Section 111(d), 111(l) and 111(m) of the Customs Act 1962.

(iii) Differential duty of Rs. 6,44,775/- (Rupees Six Lakh Forty-Four Thousand Seven hundred and Seventy-Five only) along with applicable interest should not be demanded from them under Section 28(4) of the Customs Act 1962 read with Section 28AA of the Customs Act 1962, which has been short levied and sought to be evaded.

(iv) Penalty under Section 112(a)/ 114A of the Customs Act 1962 should not be imposed on them.

9.1 Further, the Customs Broker M/s S. S. International Logistics, was also called upon to Show Cause as to why Penalty under Section 112(a) of the Customs Act 1962 should not be imposed on them.

10. The above referred Show Cause Notice No. 12/2022-23 dated 09.11.2022 was adjudicated by the Additional Commissioner of Customs, Adjudication, Import-I, New Customs House, Ballard Estate, Mumbai, vide Order-in-Original No. 07/ADC/MKJ/ADJN/2024-25 dated 08.04.2024. Vide the said Order-in-Original, the Adjudicating Authority was passed the following order:-

(i) I reject total declared assessable value of Rs. 10,39,031/- (Rupees Ten lakh Thirty-nine thousand and Thirty-one only) of the goods covered by Bill of Entry No. 9853531 dated 03.08.2022 Rule 12 of the Customs Valuation (Determination of Value of imported Goods) Rules, 2007 and order re-determination of the same at Rs. 20,90,085/- (Rupees Twenty Lakh Ninety thousand and Eighty-Five only) under section 14(1) of Customs Act 1962 read with Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

(ii) I order confiscation of the goods with total re-determined assessable value of Rs. 20,90,085/- (Rupees Twenty Lakh Ninety thousand and Eighty-Five only) under Section 111(d), 111(l) and 111(m) of the Customs Act 1962. However, I give an option of redemption of the said goods to the importer M/s Madiha Trading Company (IEC No. EWBPS2362N) on payment of redemption fine of Rs. 2,10,000/- (Rupees Two lacs and ten thousand only) in lieu of confiscation thereof in terms of provisions of Section 125 (1) of the Customs Act, 1962.

(iii) I demand differential duty of Rs. 6,44,775/- (Rupees Six Lakh Forty-Four Thousand Seven hundred and Seventy-Five only) along with applicable interest from them under Section 28(4) of the Customs Act 1962 read with Section 28AA of the Customs Act 1962, which has been short levied and sought to be evaded.

(iv) I impose penalty of Rs.6,44,775/- (Rupees Six Lakh Forty-Four Thousand Seven hundred and Seventy-Five only) on the importer M/s Madiha Trading Company (IEC No. EWBPS2362N) along with interest under Section 114 A of the Customs Act 1962.

(v) I impose penalty of Rs. 35,000/- (Rupees Thirty-five thousand only) on the Customs Broker M/s S. S. International Logistics under Section 112(a) of the Customs Act 1962.

10.1 Further, the Corrigendum dated 23.04.2024 to Order-in-Original No. 07/ADC/MKJ/ADJN/2024-25 dated 08.04.2024 issued by the Additional Commissioner of Customs, Adjudication, Import-I, New Customs House, Ballard Estate, Mumbai is as follows:-

"In the Order-s-Original No.07/ADC/MCJ/ADJN/2024-25 dated 08.04.2024, after para 38, following para is inserted:

38A. On careful examinations of the contentions made on both sides, correspondence made with the Department of Promotion of Industry & Internal trade and discussions held in the 28.12.2022 meeting of the co-conveners of national assessment center FAG-6 with the members of the NAC-FAG-6 Group, I am of the considered opinion that goods bearing description "Navrang Ball' are correctly classifiable under CTH 95066290 and not under CTH 95030090 as mentioned in the SCN. Furthermore, once it has been decided that goods hearing description "Navrang Ball' are classifiable under CTH 95066290, and hence the said goods are not liable to confiscation under Section 111(d) of the Customs Act, 1962. Consequently, corresponding duty structure of CTH 95066290 will apply automatically on the goods bearing description 'Navrang Ball'. The re-determined assessable value of the goods bearing description 'Navrang Ball' will be subjected to duty structure of CTH 95066290 and therefore duty liability will be as per following table:-

Description of the goods	*Declared A.V. in the B/E (Per Pcs) (In INR)*	*Re-determined Unit Assessable Value (In INR)*	*Re-determined Total Assessable Value (In INR)*	*Re-determined Total Duty (In INR)*
Navrang Ball	*4.09*	*5.04*	*3,90,600*	*1,43,116/-*

As is evident from above table, the Re-determined duty of the goods bearing description 'Navrang Ball comes out to be Rs. 1,43,116/- (Rupees One Lakh Forty-three *thousand one hundred and sixteen only) instead of Rs. 3,35,604/- (Rupees Three Lakh Thirty-five thousand six hundred and four only) as proposed in the Show Cause Notice. Consequently, the differential duty amount will become Rs. 4,52,286/- (Rupees Four Lakh Fifty-two thousand two hundred and Eighty-six only) instead of Rs. 6,44,775/- (Rupees Six Lakh Forty-Four Thousand Seven hundred and Seventy-Five only).*

Furthermore, paras 46 (ii), (iii) and (iv) are replaced by the following:-

46(ii) I order confiscation of the goods with total re-determined assessable value of Rs. 20,90,085/- (Rupees Twenty Lakh, Ninety thousand and Eighty-five only) under Section 111(l) and 111(m) of the Customs Act 1962. However, I give an option of redemption of the said goods to the importer M/s Madiha Trading Company (IEC No. EWBPS2362N) on payment of redemption fine of Rs. 2,10,000/- (Rupees Two lakh and Ten thousand only) in lieu of confiscation thereof in terms of provisions of Section 125 (1) of the Customs Act, 1962.

46(iii) I demand differential duty of Rs. 4,52,286/- (Rupees Four Lakh Fifty-two thousand two hundred Eighty-six only) along with applicable interest from the importer M/s Madiha Trading Company (IEC No. EWBPS2362N) under Section 28(4) of the Customs Act 1962 read with Section 28AA of the Customs Act 1962 which has been short levied and sought to be evaded. However duty paid at the time of provisional release of goods of subject Bill of Entry needs to be adjusted against the total differential duty of Rs. 4,52,286/- (Rupees Four Lakh Fifty-two thousand two hundred Eighty-six only) demanded under Section 28(4) CA 1962.

46(iv) I impose penalty of Rs. 4,52,286/- (Rupees Four Lakh Fifty-two thousand two hundred Eighty-six only) along with applicable interest on the importer M/s Madiha Trading Company (IEC No. EWBPS2362N) under Section 114A of the Customs Act, 1962. However, if the duty and interest demanded is paid within 30 days of communication of this order, the amount of penalty liable to be paid by the importer shall be 25% of duty and interest so determined.

After para 46, following paras are inserted: -

47. I find that all the goods imported under the Bill of Entry No. 9853531 dated 03.08.2022 except for Item No. 10 Navrang Ball have been provisionally released after RE-44 and LMPC rules compliance vide Provisional Release Order dated 27.02.2023 on execution of Bond of Rs. 16,99,485/- (Rupees Sixteen lakh Ninety-Nine thousand Four hundred and Eighty-Five only) and payment of differential duty of goods to be released i.e. all other goods except for item No. 10 Navrang Ball and, submission of Bank Guarantee/ Revenue Deposit of Rs. 6,00,000/- (Rupees Six lakh only) towards fine and penalty. I order that the goods covered under item No. 10 Navrang Ball can also be released now on payment of its differential duty i.e. Rs. 1,43,116/- (Rupees One Lakh Forty-three thousand one hundred and sixteen only) and all other government dues as *above, subject to compliance of RE-44 and LMPC rules. I order enforcement of Bond of Rs. 16,99,485/- (Rupees Sixteen lakh Ninety-Nine thousand Four hundred and Eighty-Five only) and appropriation of the said Bank Guarantee/Revenue Deposit of Rs. 6,00,000/- (Rupees Six lakh only) against the duty liability/ penalty/ fine accruing out of this order. The executed Bond may be cancelled on payment of all government liabilities by the importer.*

48. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or the persons/ firms concerned, covered or not covered by order, under the provisions of Customs Act, 1962, and/or any other law for the time being in force in the Republic of India."

11. However, the Reviewing Authority was reviewed the said Order vide Review Order No.03/2024-25 dated 23.07.2024 by the Commissioner of Customs (Import-I), Mumbai Zone I, in exercise of the powers under section 129D (2) of the Customs Act, 1962 has called for and examined the legality and propriety of the Order-in-Original No.07/ADC:/MKJ/ADJ/2024-25 dated 08.04.2024 as amended vide Corrigendum dated 23.04.2024. Upon examination of the impugned Order-in Original, the Reviewing Authority was of the view that the said Order is not legal and proper therefore, the same needs to be appealed against before the Commissioner of Customs (Appeals) under Section 129D of the Customs Act, 1962.

11.1 Accordingly, as per the direction of the Reviewing authority, the Asstt. Commissioner/Gr.5A, NCH, Mumbai, filed an appeal before the Commissioner of Customs (Appeals) under Section 129D of the Customs Act, 1962 on the following grounds:-

A. The dispute pertains to an item contained in the bill of entry no. 9853531 dated 03.08.2022 declared by the importer as 'Navrang Ball' under CTH 95066290. The CTH 95066290 relates to balls under the main heading "articles and equipment for general physical exercise, gymnastics, athletics and other sports (including table tennis) or outdoor games not specified or included elsewhere in this chapter; swimming pools and paddling pools". As per the BIS standard IS 9873 (Part I):2019 for Safety of Toys and Toys (Quality Control) order, 2020 dated 25.02.2020, BIS is not applicable to balls falling under CTH 9506 6290. The CIU on investigation issued an IR dated 18.10.2022 which apart from redetermining the values of the goods also held that Navrang ball was not a sports ball but a toy ball and therefore classifiable under CTH 95030090. The CTH 95030090 relates to others under the main heading – "Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls; other toys; reduced-size "scale" recreational models, working or not; puzzles of all kinds". As per BIS standard IS 9873 (Part I):2019 for Safety of Toys and Toys (Quality Control) order, 2020 dated 25.02.2020, the CTH9503 covering toy ball attracts BIS. Thus, the dispute essentially is whether the classification of the items described as Navarang ball is under CTH 9506 or CTH 9503 and whether it attracts BIS or not.

B. The part of the OIO dated 08.04.2024 passed by ADC, Import-I, NCH that relates to upholding the re-determining valuation and upholding confiscation on grounds of valuation and imposing penalty has been accepted. But this appeal is on the part of the order, where the classification of the item Navrang Ball has been put under CTH 9506, instead of CTH 9503, which in the absence of BIS license with the importer makes the goods prohibited and liable for absolute confiscation. The grounds of appeal are as discussed below:

B(1) A meeting of NAC was held on 28.12.2022 with the members of the NAC FAG-6 Group. Para 7 of the Minutes of meeting dated 03.01.2023 of the said meeting states that after due discussion, all NAC 6 members were of the opinion that 'Beach Ball' is inflatable ball as per the report stated by ADC, Import, INBOM1 and is correctly classified as other inflatable ball under CTH 95066290. The same does not appear to be classifiable under CTH 9503 as it is specifically covered by CTH 95066290.

B(2) Further, this department had vide email dated 18.01.2023 requested Bureau of Indian Standards to ascertain the applicability of BIS standards on Beach balls. Vide their reply email dated 30.01.2023, BIS official Shri Aditya Das, Scientist D, CMD-2, BIS informed that "Matters regarding the applicability of Quality control Orders on any specific products are not in the purview of BIS but of the concerned regulator. Therefore, any queries regarding whether the Toys (Quality control) Order, 2020 is applicable to any specific product like beach balls may be addressed to DPIIT which has issued the Toys QCO".

B(3) Accordingly, this department had vide letter F.No. CUS/APR/INV/38/2023-Gr.6 dated 17.11.2023 sought advice from DPIIT as to whether BIS license for toys is applicable on the import of "Beach Ball" or otherwise. In reply to the aforementioned letter, vide letter dated 08.01.2024 F. No. P-14031/74/2023, CI-E 186723 issued by Under Secretary, Department of Promotion of Industry & Internal trade, it was informed that: *"following comments are provided by this Department after consultation of BIS vide their letter no. CMD-2/16:9873 dated 04.12.2023 on the basis of information provided:- Indian Standard IS 9873 (Part 1):2019 for Safety of Toys Safety Aspects Related to Mechanical and Physical Properties does cover "Aquatic Toys". However, the standard also states that "Bathroom toys and beach balls are not considered aquatic toys" and the Toys QCO may not be applicable since beach balls are not considered aquatic toys as per the standard"*.

B(4) By putting reliance on the NAC Minutes dated 03.01.23 and DPIIT letter dated 08.01.24, the adjudicating authority vide subject Order-in-Original dated 08.04.2024 on the issue of classification of Navrang Ball held that "the impugned goods (i.e. item no. 10 (Navrang Ball)) are not classifiable as toys under CTH 95030090. Consequently, as it has been decided that the impugned goods are not toys, the requirement of BIS compliance become infructuous automatically".

B(5) During review of the subject Order-in-Original, Import-I Commissionerate vide letter dated 03.05.2024 issued vide F.No. GEN/REV/OIO/7796/2024-O/O COMMR-CUS IMP-I-ZONE-I-MUMBAI sought comments from the investigating agency i.e. CIU on the above mentioned findings of the adjudicating authority.

B(6) In reply to the above, CIU vide letter dated 28.05.2024 submitted the following:

i. All the facts about the investigation conducted by this office were communicated vide IR dated 18.10.2022 wherein it was informed that the goods declared as "Navrang balls" at sr. no. 10 were found to be "Inflatable Toy Balls" during examination by CIU. The prime use of which seemed to be for children's play and recreation purpose only and not for sports or outdoor games. The goods "Inflatable Toy Balls" were found to be misdeclared as "Navrang balls" to avoid BIS compliance. It should have been classified as a toy under CTH 95030090 which falls under the purview of safety of toys as per IS 9873 for self-declaration of conformity. In both shape and appearance, it was inflatable ball. However, relying on the criteria of use, built-quality or structure and marketability, it was evident that "Navrang balls" should have been classified under CTH 95030090.

ii. The information by DPIIT vide letter dated 08.01.2024 that "Bathroom toys and Beach balls are not considered aquatic toys" and the toys QCO may not be applicable since beach balls are not considered aquatic toys as per standard appears to be for beach ball and probably based on the images/documents and details of the product/description provided/shared with them and not on physical verification/testing of the product, whereas, the impugned goods declared as "Navrang Ball" was found an inflatable ball and should have been declared as "Inflatable Toy Ball".

iii. The point 38 of the OIO revolves around the classification and applicability of BIS on import of goods declared "Navrang Balls" whereas the goods misdeclared as "Navrang Balls" at sr. no. 10 were found to be inflatable toy balls during examination by CIU. Hence, the entire discussion about the Navrang ball or Beach Ball has no relevance with the actual goods found in the B/E.

B(7) The earlier letter dated 08.01.2024 from Department of Promotion of Industry & Internal Trade (DPIIT) was based on the image and details of product/description provided by this office. Therefore, in view of CIU's emphasis on physical verification and to decide the matter once for all, this office vide letter F.No. CUS/APR/INV/38/2023-Gr.6 dated 06.06.2024 forwarded a sealed sample of imported goods (Navrang ball or Beach Ball) to DPIIT alongwith sample drawn panchanama for their comment/report regarding applicability of BIS on the basis of physical verification of the product.

B(8) In response to the above mentioned letter dated 06.06.2024, this department has received letter dated 03.07.2024 issued vide F.No. P-14031/74/2023-C1, E-186723 from Department of Promotion of Industry & Internal Trade. The relevant part of the said letter is reiterated below:

"BIS vide letter dated 26.06.2024 stated that the product appears to more closely resemble a basketball although much smaller in size and of a different colour and material than the regular basketball. In this regard, it is informed that as per IS 9873 (Part 1):2019.

Sporting goods and equipment, are excluded from the scope of the Indian Standard for Safety of Toys, however, toys which are their counterparts are included. Therefore, based on visual examination, the product declared as Beach Ball, appears to be a toy counterpart of a basket ball on which the Indian standard for safety of toys may apply. Therefore, the Toys QCO may be applicable on the product declared as Beach Ball, appears to be a toy counterpart of a basketball".

B(9) The above reply/report dated 03.07.2024 from DPIIT (that the product declared as beachball is actually toy counterpart of basketball) is based on examination of actual sample and therefore more reliable. The letter dated 03.07.2024 from DPIIT has also been forwarded to the Pr. Chief Commissioner of Customs, MCZ-I (The Convenor, NAC-FAG 6) vide letter dated 18.07.2024 issued vide F.No. GEN/REV/OIO/7796/2024-REV O/o COMMR-CUS-IMP-1-ZONE-1-Mumbai to examine the matter and if deemed fit, revise its earlier findings/minutes dated 03.01.2023 and also alert the FAGs that toy counterparts of basketballs (or inflatable toy balls) may be getting mis-declared as beach balls to avoid BIS.

C. In view of the above, I find that Indian standards for toys is applicable on products declared as Beach Ball and appear to be a toy counterpart of a basketball. Therefore, I find that item no. 10 i.e. Navrang ball is a toy, appropriately classifiable under CTH 95030090, and falls under the purview of Safety of Toys as per IS 9873 for Self-Declaration of conformity (i.e. Scheme-I of Bureau of Indian Standards) as provided under Toys (Quality Control) order, 2020 dated 25.02.2020 and requires BIS compliance for clearance from Customs. The impugned OIO is therefore not legal and proper.

D. In view of the facts and legal position stated above, the Order-in-Original No. 07/ADC/MKJ/ADJ/2024-25 dated 08.04.2024 as amended vide corrigendum dated 23.04.2024 issued vide F.No. CUS/APR/MISC/4404/2022-GR-5(AB)- O/O COMMR CUS-IMP-I-ZONE-I-MUMBAI requires modification in respect of its Para 46(ii, iii & iv) and Para 47. The item No. 10 Navrang ball imported in violation of the BIS standards and Toys (Quality Control) Order, 2020 dated 25.02.2020 is liable for absolute confiscation under section 111(d) of the Customs Act, 1962 and can be redeemed only for re-export. Further, for this act of omission and commission the importer M/s Madiha Trading Company is liable for penalty under section 112(a) of the Customs Act, 1962.

12. The Commissioner of Customs (Appeal) vide Order-in-Appeal No.MUM-CUS-TK-IMP-232/2024-25/NCH dated 26.03.2025, the subject Order-in-Original Nos. 07/ADC/MKJ/ADJ/2024-25 dated 08.04.2024 as amended vide Corrigendum dated 23.04.2024 has been set aside and the matter is remanded back to the Original Authority for fresh decision/adjudication in accordance with law. While deciding the case afresh, the Original Authority shall examine all relevant facts.

RECORD OF PERSONAL HEARING

13. Personal Hearings in the matter were granted to M/s. Madiha Trading Company, Importer, and M/s. S. S. International, Customs Broker, on 08.10.2025 and 16.10.2025. Shri C. K. Chaturvedi, Authorised Representative of both M/s. Madiha Trading Company and M/s. S. S. International, appeared for the hearing on 16.10.2025. During the hearing, he reiterated the submissions made in the written defence and contended that there was no misclassification of the goods and that the imposition of double penalty on the Customs Broker was not justified. He further submitted that the goods in question, described as *balls*, are rightly classifiable as inflatable balls, as detailed in the defence submission dated 16.10.2025.

WRITTEN SUBMISSION

14. Shri C. K. Chaturvedi, Authorised Representative of M/s. Madiha Trading Company vide their letter dated 16.10.2025 has submitted written submission which is reproduced as follows:-

(2) A Show *Cause Notice (SCN) No. 12/2022-23 dated 09.11.2022 was issued to us in respect of import against the above referred Bill of Entry No. 9853531 dated 03.08.2022 and in the said SCN we had been called upon to Show Cause as to why -*

(i) The total declared assessable value of Rs.10,39,031/- of the goods covered by Bill of Entry No. 9853531 dated 03.08.2022 should not be rejected under Rule 12 of the CVR, 2007 and re-determined at Rs.20,90,085/- (Rupees Twenty Lakh Ninety thousand and eighty-five only) under section 14(1) of Customs Act, 1962 read with Rule 9 of the CVR, 2007.
(ii) The goods with total assessable value of Rs.20,90,085/- should not be confiscated under section 111(d), 111(l) and 111(m) of the Customs Act, 1962.
(iii) Differential duty of Rs.6,44,775/- (Rupees Six Lakh Forty-Four thousand Seven hundred and Seventy-Five only) along with applicable interest should not be demanded from us under Section 28(4) of the Customs Act, 1962 read with Section 28AA of the Customs Act, 1962 which has been short levied and sought to be evaded.
(iv) Penalty under Section 112(a)/ 114A of the Customs Act, 1962 should not be imposed on us.

(3) In the SCN it was stated that 678 cartons declared in BE and same were found on examination and that the following violations were noticed on examination of the goods viz.

(a) RE 44- goods declared as mop, Electric Lunch Box, Self Stirring Coffee mug. Egg Poacher, Mini Pocket Shaver, Derma Roller Massager, Electric Kettle 2L, Mini Hair Dryer, Hair Trimmer, Hot Air Brush, Razor (6Pcs/Card), Mini Hair Straightener, Star Projection Lamp, Wax heater, were found in Prepackaged condition and thus falling under the purview of General Note 5 of ITC/HS read with DGFT Notification No. 44 (RE-2000)/1997-2002 dated 24.11.2000 and the corresponding provisions of the Legal Metrology Act, 2009 and the Legal Metrology Rules, 2011.
(b) Misdeclaration was found in respect of Cleaning Mop which was electric cleaning mop.
(c) Misclassification in respect of Navrang Ball, description was found matching, as in both shape and appearance it was an inflatable ball. However, relying on judgment of various forums and looking at three criteria of classification, i.e., use of ball, build quality and marketability, it was evident that Navrang ball was appropriately classifiable as a toy

under CTH 95030090. That as per market survey and inquiry these balls were sold in toy shop.
(d) BIS compliance.
(e) Short quantity Electric Lunch Box, Mini Pocket Shaver, Electric Kettle, Navrang Ball, Waterproof crack silicone tube were all found to be 2 pcs short in quantity, Mini Hair dryer short 4 pcs and Baby knee cap 8 pcs short.

(4) It is submitted that the DGFT Notification 44 (RE-2000) / 1997-2002 dated 24.11.2000 was in reference to the packaged commodities which were covered under Standards of Weights and Measures (Packaged Commodities) Rules, 1977. The relevant para of the notification is reproduced herein below for reference -

"2. The following shall be added after paragraph 4 of Chapter 1A: General notes regarding import policy, of ITC(HS) Classifications of Export and Import Items, 1997-2002: "4. All such packaged products, which are subject to provisions of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 when produced/packed/ sold in domestic market, shall be subject to compliance of all the provisions of the said rules, when imported into India. The compliance of these shall be ensured before the import consignment of such commodities is cleared by Customs for home consumption.
All prepackaged commodities, imported into India, shall in particular carry the following declarations:
(a) Name and address of the importer;
(b) Generic or common name of the commodity packed;
(c) Net quantity in terms of standard unit of weights and measures. If the net quantity in the imported package is given in any other unit, its equivalent in terms of standard units shall be declared by the importer,
(d) Month and year of packing in which the commodity is manufactured or packed or imported;
(e) Maximum retail sale price at which the commodity in packaged form may be sold to the ultimate consumer. This price shall include all taxes local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertising, delivery, packing, forwarding and the like, as the case may be.

(4.1) It is submitted that the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 has since been repealed and replaced with Legal Metrology Act, 2009 and Legal Metrology (Packaged Commodities) Rules, 2011. All the directions for labelling contained in the DGFT Notification have been incorporated in The Legal Metrology Act and Rules. In addition, a mandatory registration is required for importers and traders dealing in Packaged commodities. It would, therefore, appear that the DGFT Notification 44 (RE-2000)/1997-2002 dated 24.11.2000 would no longer be relevant for the purpose of labelling of the pre-packaged commodities. The only clause that would appear to remain relevant is the direction in the notification that 'The compliance of these shall be ensured before the import consignment of such commodities is cleared by Customs for home consumption.'
(4.2) The Customs Broker obtained the permission from the customs authorities for the labelling of the goods on our behalf and the goods were duly labelled before taking the delivery.

(5) In respect of Mop, it is submitted that this item has been mentioned as Cleaning Mop in the invoice provided by the supplier in respect of import goods. It is submitted that

this error has happened because the description has been incorrectly mentioned in the import invoice.

However, the said item has been classified by us under the CTH 96032900 wherein the BCD is @ 20%. As per the HSN Explanatory notes the electric motorized mops merit classification under CTH 8479 where the BCD is @ 7.5%.

Thus, it can be easily seen that the declaration of the item as cleaning mop was an inadvertent error and was not intended to defraud and evade any revenue.

(6) The allegation regarding about 20 pcs of the various commodities found short during the examination cannot be held against us as misdeclaration. In the first place we do not stand to gain in any way if these goods have been short supplied by the overseas supplier. Secondly, we have paid the duty for the goods as per the declarations made in the import invoice and the same cannot be held as evasion of duty.

(7) As regards the alleged misclassification of Navrang Ball it had been stated in the SCN itself that description of this item was found matching, as in both shape and appearance it was an inflatable ball.

The SCN alleged that the classification is found wrong as per judgment of various forums. However, no such judgment had been cited in the SCN to support this contention.

It had been further stated that the classification should be Toys looking at three criteria of classification, i.e., use of ball, build quality and marketability. In this regards it is submitted that the ball is intended for informal games activities like Beach Volley Ball which is an informal game activity and accordingly the Ball under import is not meant for use in standard tournaments. The balls under import may not correspond to the standard balls used in the Olympics but are definitely usable in informal Beach games, on the beach and also in the water. Here it may not be out of place to mention that often people are found playing games like Cricket on the beaches. They never use standard cricket gear but the equipment in use by these persons will always be termed as cricket bat and ball whether being played by children or adults.

As regards the marketability factor, the officials had come to the conclusion that the item Navrang Ball is a Toy because it is also being sold in Toy shop. It is submitted that not all goods sold in Toy Shop are necessarily Toys.

The officials overlooked the fact that the sale bills obtained by them for the sale of these goods specifies the CTH of these goods as 950662. Thus, it is evident that the trade also regards these goods as inflatable Balls and sells them under the CTH 950662. Copies of the sale bills relied upon in the SCN are enclosed herewith for reference. It can be seen from these bills that the goods have been classified under CTH 950662. No cogent reason was made available which would establish that the item Navrang Ball is classifiable as Toys.

For the classification of these goods under the CTH 950662 sufficient data is available viz. the item is an inflatable ball and the CTH 950662 is specifically for inflatable Balls and the CTH 95066220 is specifically for Volley Ball and as the goods under import are stated to be Beach Volley Balls, they merit classification under the CTH 95066220. No distinction has been made under the Chapter heading regarding the build of the balls.

The acceptance by the trade, as can be seen from the sale bills relied upon in SCN, for the classification to be under the CTH 950662 is yet another deciding factor.

Thus, there should be no reason for the item Navrang Ball to be classified under CTH 9503 as had been proposed in the SCN.

(8) As the item Navrang Ball is not classifiable as Toys no BIS compliance is required for the same.

(9) The goods under import are freely importable and are not prohibited or restricted goods. Therefore, the provisions of section 111(d) would not apply for confiscation of the goods.

(10) In the consignment under consideration there are no goods which have not been included or are in excess of those included in the Bill of Entry filed under the provisions of Customs Act, 1962 and hence the provisions of section 111(1) would not apply for the confiscation of the goods.

(11) There were no goods in the consignment which did not correspond in respect of value or in any other particular with the goods declared in the Bill of Entry. As per the various court judgments the invoice values have to be accepted as the transaction values as no evidence exists which would show that these are not the prices payable in respect of these goods. Further it has been held that the proposal for enhancement of values does not amount to misdeclaration. The item which is Electric cleaning mop is a cleaning mop and cannot be said to be described incorrectly. However, on account of the same being an electric cleaning mop, the BCD payable on the same would be @7.5% instead of actually paid BCD @20%, and this cannot be really treated as misdeclaration. The higher amount of duty has been paid on account of the description provided in the invoice by the supplier and this cannot be treated as misdeclaration. Hence it may be seen that the goods cannot be held to be liable for confiscation under section 111(m) of the Customs Act, 1962.

(12) The Order in Original was passed without taking into consideration the facts of the matter and the submissions made by us in the proper perspective and fines and penalties were imposed. We paid the amounts ordered in the OIO even though we were aggrieved by the said order. The order was not contested by us as we did not wish to prolong our sufferings.

(13) The department, however, sought to file an appeal against the OIO primarily in relation to the Beach Balls under import.

(14) The issue in appeal primarily pertained to the classification of Beach Volley Ball described as Navrang Ball and has been classified under the sub tariff heading 950662 which is for Inflatable Balls and covers various different kind of balls like, Football. Volleyball, Basketball and other inflatable balls.

(15) There is no dispute regarding the fact that the goods under dispute are inflatable balls and has accordingly been assessed by the appraising Group and after verification and confirmation the goods were permitted clearance and 'Out of Customs Charge' was granted by the proper officer but the consignment was held up by the CIU and it is the

contention of CIU which is being attempted to be imposed on the adjudication proceedings.

(16) The contention of the CIU is baseless as has also been held by the Original Authority. The Original Authority has given detailed reasoning before upholding the classification originally accepted by the assessing Group. The arguments made by the Original Authority for accepting the classification of the beach Volley Navrang balls under the Customs Tariff Sub Heading (CTSH) 950662 are reproduced in brief herein below:

i) The Original Authority in his discussions and Findings has held that barring a few professionals who play sports as profession, most of the people engage in sports and outdoor games for amusement and entertainment only, majority of times they don't follow the standard dimensions as specified in that particular sports discipline. For instance, a large number of people from all age groups in India play cricket for amusement and entertainment purpose. Therefore, sports and outdoor games and amusement and entertainment are not mutually exclusive events as has been contended by the investigating agency.

ii) It has been further held by the Original Authority that "In India, the majority of games like cricket, volleyball etc played do not adhere to the standards set by the sports authority. Consequently, the quality and standards of sports equipment are not the primary factors determining the sports played by the majority of people in the country. I find that the example of cricket game, volleyball like games are relevant here. They do so for convenience, safety and financial reasons. Therefore, in India the quality and standard is not the only sole consideration to play games necessary for a sport or outdoor game. Likewise, the impugned goods in question may not be of a standard for playing the Olympic game but they are certainly used by people for playing sports and games in beaches and in playgrounds."

iii) It has been held by the Original Authority that the contention of CIU that 'the Navrang balls are sold in Toy shops and hence are toys' is devoid of logic. Further he has illustrated the point by saying 'For instance, many a times it happens that in pharmacy shops certain grocery items are also sold. That does not mean that those grocery items are medicines. What items are sold at a particular shop is a decision taken by the owner of the shop based on various factors and financial can be one of them. A shopkeeper may also choose to sell whole different lot of stuff from shop if he finds it profitable.'

iv) He has duly considered the fact that the sale bills obtained by the investigating agency (CIU) for the sale of these goods specifies the CTH of these goods as 950662 which proves that the trade also regards these goods as inflatable Balls and sells them under the CTH 950662.

v) Accordingly, the Original Authority has concluded that all the reasons given by the CIU for considering the Navrang beach balls to be devoid of merit.

vi) His decision was also based on the letter dated 08.01.2024 F. No. P-14031/74/2023, CI-E 186723 issued by Under Secretary, Department of Promotion of Industry & Internal trade and 38 CUS/APR/MISC/4404/2022-GR-5(AB)-O/O COMMR-CUS-IMP-I-ZONE-I-MUMBAI 1/1889843/2024 addressed in which it was informed that:

"following comments are provided by this Department after consultation of BIS vide their letter no. CMD-2/16:9873 dated 04.12.2023 on the basis of information provided: Indian Standard IS 9873 (Part 1):2019 for Safety of Toys Safety Aspects Related to Mechanical und Physical Properties does cover "Aquatic Toys". However, the standard also states that "Bathroom toys and beach balls are not considered aquatic toys" and the Toys QCO may not be applicable since beach balls are not considered aquatic toys as per the standard".

(17) In the Appeal it had been mentioned that the department vide email dated 18.01.2023 requested Bureau of Indian standards (BIS) to ascertain the applicability of BIS standards on Beach balls. As stated in the Appeal the BIS replied that "any queries regarding whether the Toys (Quality Control) Order, 2020 is applicable to any specific product like Beach Balls may be addressed to DPIIT". It is pertinent to note that DPIIT had already given their opinion as has been noted by the Original Authority in the Order-in-Original

(18) The persistence by the department to get a reply from the DPIIT in their favour is inexplicable. In the appeal they have relied upon letter dated 03.07.2024 from DPIIT wherein purportedly the relevant portion states that "BIS vide letter dated 26.06.2024 stated that the product appears to more closely a basketball although much smaller in size and of a different colour and material than the regular basketball. In this regard, it is informed that as per IS 9873(part I): 2019, Sporting goods and equipment, are excluded from the scope of Indian Standard for Safety of Toys, however, toys which are their counterparts are included. Therefore, based on visual examination, the product declared as Beach Ball, appears to be a toy counterpart of a basketball on which the Indian standard for safety of toys may apply. Therefore, the Toys QCO may be applicable on the product declared as Beach Ball, appears to be a toy counterpart of a basketball." In view of this observation by DPIIT the reviewing authority has apparently formed the opinion that the item Navrang Ball under import is appropriately classifiable under CTH 95030090.

(19) The letter dated 03.07.2024 from DPIIT which is being relied upon by the department has not been made available to the importer M/s. Madiha Trading Company and the submissions made in that respect was solely on the basis of content produced in the appeal.

(20) It can be seen that the cited portion of the letter from DPIIT dated 07.03.2024 is full of inaccuracies, errors and glaring contradictions. By no stretch of imagination, the Navrang ball under import can be termed to be a basketball or a toy counterpart thereof. In the first place it is unclear what is meant by counterpart or toy counterpart of basketball. In this regard the following submissions are being made which merit careful consideration viz.

(a) The dictionary meaning of counterpart is - i. a person or thing that has a similar position or function in a different country or organization; ii. A person or thing holding a similar position in another country or organization, iii. A replica, iv. a substitute.

(b) Evidently the definition and meaning given at i. and ii. is not intended and need not be considered.

c) The definition and meaning of the term Replica as per dictionary is an exact copy of something or replication. Thus, if the DPIIT by using the term 'counterpart intends to mean that the ball under import is replica of a Basketball then as per the definition and meaning it has to be exact copy of a basketball and would be intended for playing the game of basketball.

d) The definition and meaning of substitute as per dictionary is - a person or thing that takes the place of somebody/something else. Thus, if the DPIIT by using the term 'counterpart' intends to mean that ball under import is a substitute of basketball then the imported ball could take the place of a basketball.

e) It is evident from the above that by stating the ball under import to be a counterpart of basketball the DPIIT can only mean that the ball under import is a replica or substitute of basketball and can only be meant for outdoor games and sports.

f) The term "toy counterpart" used in the cited paragraph is entirely unclear and lacks meaningful context. The DPIIT should have clearly specified whether the ball in question is a toy basketball or simply a counterpart to a basketball. If the intention was to indicate that the imported ball is related to the game of basketball, this should have been explicitly stated. As it stands, the phrase "toy counterpart" can only be interpreted to mean that the ball is intended for use in the game of basketball, as implied by the DPIIT official in the letter. Clarity and precision in such descriptions are essential.

g) On closer scrutiny it would be clear that the imported ball bears the markings 'BEACH VOLLEY' and is specifically designed for informal and casual games of beach volleyball. It bears no resemblance whatsoever to a basketball or a miniature basketball. This clearly indicates that the individual responsible for drafting the letter dated 03.07.2024 lacks familiarity with both the game of beach volleyball and basketball, and is therefore not competent in this matter. Relying on such a letter can, at best, be described as questionable and unreliable.

h) All along the importer has maintained that the Navrang Ball is an inflatable ball meant for playing beach volleyball.

(21) In the department's appeal the CIU letter dated 28.05.2024 has been referenced and reliance has been placed upon the findings of the CIU. It is noteworthy that all the observations made by the CIU in the appeal letter are identical to those outlined in their earlier investigation report. However, the Original Authority has meticulously examined and effectively addressed each and every argument raised by the CIU concerning the Navrang Ball. Upon thorough analysis, the Original Authority found that the CIU's contentions were lacking in logical foundation and were unsupported by substantive evidence. This demonstrates that the CIU's claims were not only repetitive but also fundamentally flawed, further underscoring the robustness of the Original Authority's decision in this matter.

(22) Copies of three local sales bills for the Navrang Ball/Beach Ball, obtained by the CIU during their market survey, are provided herewith for ready reference. It is evident that the HSN code mentioned for the Navrang Ball and Beach Ball in all three bills is

950662. These bills originate from shops in the Musafirkhana area, and the balls sold under these bills are undoubtedly imported from the same source country as the respondent's balls. This logically implies that the HSN codes align with those specified in the respective Bills of Entry under which these goods were imported. Consequently, it is reasonable to conclude that the department has consistently classified these goods under the CTSH 950662. Given this consistency, it is illogical and inexplicable why an exception is being sought in the present case. Such an inconsistency raises questions about the rationale behind deviating from the established classification practice.

(23) There is no dispute that the Navrang Ball under import is an inflatable ball bearing the markings "Beach Volley," clearly indicating its intended use for the game of beach volleyball. This can be easily verified from the representative samples that would be available with the department/CIU. The arguments presented in the appeal seek to reclassify the imported beach volleyball as a toy under CTH 9503, disregarding the established statutory guidelines for the classification of goods. In this context, the General Rules for the Interpretation of Import Tariff are of utmost relevance and must be adhered to for the proper classification of the Navrang Ball. It is essential to rely on these rules rather than the assumptions and presumptions made by the CIU and other parties involved in filing the appeal. Specifically, Rule 1 and Rule 3(a) of the General Rules are particularly pertinent to the classification of the Navrang Ball, which is indisputably an inflatable ball designed for beach volleyball.

a) Rule 1 of the General Rules of Interpretation states -

1. The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions

The heading 9506 and sub heading 950662 are as follows - 10

9506 ARTICLES AND EQUIPMENT FOR GENERAL PHYSICAL EXERCISE, GYMNASTICS, ATHLETICS, OTHER SPORTS (INCLUDING TABLE-TENNIS) OR OUT-DOOR GAMES, NOT SPECIFIED OR INCLUDED ELSEWHERE IN THIS CHAPTER; SWIMMING POOLS AND PADDLING POOLS

Balls, other than golf balls and table-tennis balls:
9506 62-Inflatable:
9506 62 10- Football
9506 62 20 Volley ball
9506 62 30 Basket ball
9506 62 90 Other

The Navrang ball is an article intended for outdoor games and hence would be covered by CTH 9506 and being an inflatable ball would be covered by CTSH 950662 and is intended for the game of beach volleyball and since beach volleyball is not specifically mentioned in the tariff items listed it would be covered by the tariff item 95066290 meant for others.

b) Rule 3(a) of the General Rules of Interpretation is as below -

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

> *(a) The heading which provides the most specific description shall be preferred vs to headings providing a more general description.*

It can be seen that the heading 9506 and sub heading 950662 provide the specific description for the Navrang balls under import which is an inflatable ball.

Thus, as per the General Rules of Interpretation the goods Navrang balls have been correctly classified under the tariff item 95066290.

(24) For an informal game of beach volleyball, a soft, lightweight, and durable ball is typically used. These balls are designed to withstand the sandy environment and provide a fun, casual playing experience. For informal games, the focus is on fun and accessibility, so the ball doesn't need to meet professional standards. The balls under import, Navrang Balls, are scaled down version of the standard professional Beach Volleyballs and is intended for informal game of beach volleyball. These balls do not come under the purview of Toys (Quality Control) Order, 2020 dated 25.02.2020, the application of which as per the notification states as -

> *2. Application. -In this order, unless the context otherwise requires*
>
> *(a) This Quality Control Order shall apply to (Toys) Product or material designed or clearly intended, whether or not exclusively, for use in play by children under 14 years of age or any other product as notified by the Central Government from time to time:*
>
> *(b) This order shall apply to Toys as they are initially received by the children and, in addition, this shall apply after a toy is subjected to reasonably foreseeable conditions of normal use and abuse unless specifically noted otherwise.*

From the defined 'Application' it would be evident that the Navrang balls under import are not covered by the Toys (Quality Control) Order, 2020 dated 25.02.2020 as these are not 'clearly designed or intended for children under 14 years of age' and would not be initially received by children.

(25) In view of the foregoing submissions, it would be evident that the grounds sought to be made out in the appeal were misconceived. As brought out in the submissions hereinabove there is no misdeclaration in any respect and there is no reason given for not accepting the transaction values. Even if the goods are assessed as per the enhanced values proposed by CIU there should be no reason to impose any fine or penalty.

15. Shri **C. K. Chaturvedi**, Authorised Representative of M/s. S. S. International, CHA vide their letter dated 16.10.2025 has submitted written submission which is reproduced as follows:-

(2) A penalty amount of Rs.35,000/- has been unjustly levied on us vide the subject Order-in-Original No.07/ADC/MKJ/ADJN/2024-25 dated 08.04.2024 even though we have no role in classification of the goods as well as the description and nature of goods for which the sole responsibility lies with the importer. We have only acted in the capacity of Customs Broker for the clearance of the goods. We have nothing to say about the

importer's decision to classify the various goods in the consignment and we have only acted as per their say.

(3) Notwithstanding the fact that we have only acted as customs broker for the clearance of the import consignment, simultaneous proceedings have been carried out in the same matter and for the same allegations under Customs Broker Licensing Regulations, 2018 and vide order CAO No. 55/CAC/PCC(G)/SJ/CBS-Adj dated 18.12.2023 a penalty amount of Rs. 50,000/- has been imposed. We have paid this penalty vide Challan cash no. 1024 dated 20.12.2023. Copies of the order dated 18.12.2023 and the challan dated 20.12.2023 are enclosed herewith for reference.

(4) Thus, it would be evident that imposing any penalty in these proceedings would be a clear case of double jeopardy since a penalty of Rs. 50,000/- under Order CAO No. 55/CAC/PCC(G)/SJ/CBS-Adj dated 18.12.2023 has already been imposed and paid by us.

(5) We respectfully request Your Honour to address and correct this injustice by setting aside the penalty of Rs.35,000/- levied under Order-in-Original No. 07/ADC/MKJ/ADJN/2024-25 dated 08.04.2024.

DISCUSSION AND FINDINGS

16. I have gone through the records of the case and the oral as well as written submissions made by the importer and CHA and find that a Show Cause Notice No. 12/2022-23 dated 09.11.2022 was issued to the Noticees by the Additional Commissioner of Customs, Import-I, Group 5 (AB), New Custom House, Mumbai, under Section 124 read with Section 28(4) of the Customs Act, 1962, in respect of Bill of Entry No. 9853531 dated 03.08.2022.

17. I find that the Order-in-Original No. 07/ADC/MKJ/ADJ/2024-25 dated 08.04.2024 was passed by the Additional Commissioner of Customs, Adjudication Cell, Import-I, New Custom House, Mumbai-I, after providing adequate opportunities for personal hearings to both the Importer and the CHA. The said order confirmed the demand of differential duty amounting to Rs.6,44,775/- along with applicable interest. Further, a penalty of Rs.6,44,775/- was imposed on M/s. Madiha Trading Company under Section 114A of the Customs Act, 1962, and a penalty of Rs.35,000/- was imposed on M/s. S. S. International Logistics (CHA) under Section 112(a) of the said Act. The goods, having a re-determined assessable value of Rs.20,90,085/-, were ordered to be confiscated under Sections 111(d), 111(l), and 111(m) of the Customs Act, 1962. However, the importer was given an option to redeem the confiscated goods on payment of a fine of Rs.2,10,000/- in lieu of confiscation in terms of Section 125(1) of the Customs Act, 1962.

18. I find that a Corrigendum dated 23.04.2024 to Order-in-Original No. 07/ADC/MKJ/ADJN/2024-25 dated 08.04.2024 was issued by the Additional Commissioner of Customs, Adjudication, Import-I, New Customs House, Mumbai. The corrigendum inserted para 38A, holding that the goods described as *"Navrang Ball"* are correctly classifiable under CTH 95066290 instead of CTH 95030090 as mentioned in the SCN. Consequently, the goods were held not liable to confiscation under Section 111(d), and the applicable duty structure was revised. The re-determined assessable value of *"Navrang Ball"* was Rs.3,90,600/- with a total duty of Rs.1,43,116/-, reducing the overall differential duty to Rs.4,52,286/- instead of Rs.6,44,775/-. Paras 46(ii)–(iv) of the original order were replaced to reflect these revisions—confirming confiscation under Sections 111(l) and 111(m) with an option for redemption on payment of fine of Rs.2,10,000/- under Section 125(1), and imposing a penalty of Rs.4,52,286/- under Section 114A with the option of 25% reduction if paid within 30 days. Further, it was ordered that all goods except *"Navrang Ball"* had already been provisionally released, and that *"Navrang Ball"* could now also be released upon payment of its re-determined duty and compliance with RE-44 and LMPC rules. The executed bond of Rs.16,99,485/- and bank guarantee/revenue deposit of Rs.6,00,000/- were ordered to be enforced and appropriated against the liabilities arising under the corrigendum.

19. I find that, the Reviewing Authority, Commissioner of Customs (Import-I), Mumbai Zone I, vide Review Order No.03/2024-25 dated 23.07.2024, in exercise of the powers under section 129D (2) of the Customs Act, 1962, called for and examined the legality and propriety of the Order-in-Original No.07/ADC:/MKJ/ADJ/2024-25 dated 08.04.2024 as amended vide Corrigendum dated 23.04.2024. Upon examination of the impugned Order-in Original, the Commissioner opined that the said Order is not legal and proper therefore, the same needs to be appealed against before the Commissioner of Customs (Appeals) under Section 129D of the Customs Act, 1962.

20. Thereafter, the Department preferred an appeal before the Commissioner of Customs (Appeals), who, vide Order-in-Appeal No. MUM-CUS-TK-IMP-232/2024-25/NCH dated 26.03.2025, set aside Order-in-Original No. 07/ADC/MKJ/ADJ/2024-25 dated 08.04.2024, as amended by Corrigendum dated 23.04.2024, on the following grounds:

- The Original Authority (OA) has made significant and substantial changes in the Order-in-Original by way of change of demand of duty, change of penalty, alteration of sections as well as insertion of new paras, under the guise of Corrigendum, which are not permissible in accordance with the instructions given in the Board Circular No. 502/68/1999-CX dated 16.12.1999 vide F.No.389/44/99 JC(BME) and hence, is not sustainable in the eyes of Law.
- The present appeal is filed on the basis of reply/report dated 03.07.2024 in respect of Navrang Ball (Item No.10 of the said BE) received from DPIIT, which has been called for by the department during the course of review of the impugned Order. As the said letter dated 03.07.2024 is received subsequent to the issuance of Order-in-Original dated 08.04.2024 and the Corrigendum dated 23.04.2024, it is evident that the aforesaid letter has not been examined by the Original Authority

(OA). Thus, new facts have emerged at the appellate stage, which have not been examined by the OA.

Accordingly, the Commissioner of Customs (Appeals) remanded the matter to the Original Adjudicating Authority for de novo adjudication, and directed that, while deciding the case afresh, the Original Authority shall examine all relevant facts and pass a reasoned order in accordance with law and the principles of natural justice.

21. Accordingly, personal hearings in the matter were granted to the importer and the CHA on 08.10.2025 and 16.10.2025. Shri C. K. Chaturvedi, Authorised Representative of both M/s. Madiha Trading Company and M/s. S. S. International, appeared for the hearing on 16.10.2025. During the hearing, he reiterated the contentions made in the written submission and contended that there was no misclassification of the goods and that the imposition of double penalty on the Customs Broker was not justified. He further submitted that the goods in question, described as balls, are rightly classifiable as inflatable balls, as detailed in the defense submission dated 16.10.2025.

22. I find that it is an undisputed fact that the following goods were found in pre-packaged condition at the time of examination:

<table>
<tr><th>Sr. No.</th><th>Invoice Sr. No.</th><th>Description of Goods (Declared)</th><th>Remarks/Observation</th></tr>
<tr><td>1</td><td>1</td><td>Cleaning Mop</td><td rowspan="14">Found in pre-packaged condition. No labelling found mentioning name of importer, Address of importer, MRP, manufacturer’s name, year of manufacturing etc. found on individual piece. Labelling sticker is pasted on each carton.</td></tr>
<tr><td>2</td><td>2</td><td>Electric Lunch Box</td></tr>
<tr><td>3</td><td>3</td><td>Self-Stirring Coffee Mug</td></tr>
<tr><td>4</td><td>4</td><td>Egg Poacher</td></tr>
<tr><td>5</td><td>6</td><td>Mini Pocket Shaver</td></tr>
<tr><td>6</td><td>7</td><td>Derma Roller Massager</td></tr>
<tr><td>7</td><td>8</td><td>Electric Kettle 2L</td></tr>
<tr><td>8</td><td>11</td><td>Mini Hair Dryer</td></tr>
<tr><td>9</td><td>12</td><td>Hair Trimmer</td></tr>
<tr><td>10</td><td>14</td><td>Hot Air Brush</td></tr>
<tr><td>11</td><td>15</td><td>Razor (6 Pcs/Card)</td></tr>
<tr><td>12</td><td>17</td><td>Mini Hair Straightener</td></tr>
<tr><td>13</td><td>19</td><td>Star Projection Lamp</td></tr>
<tr><td>14</td><td>21</td><td>Wax Heater</td></tr>
</table>

The investigation agency has stated that these goods fall within the ambit of General Note 5 – “Packaged Products” of ITC (HS) read with DGFT Notification No. 44 (RE-2000)/1997-2002 dated 24.11.2000, and the corresponding provisions of the Legal Metrology Act, 2009 and Legal Metrology (Packaged Commodities) Rules, 2011, which mandate the declaration of:

- Name and address of the importer
- Generic/common name of the commodity
- Net quantity in standard units of weight or measure
- Month and year of packing/manufacture/import
- Maximum retail price (MRP) inclusive of all taxes and charges

However, examination revealed that these mandatory declarations were absent. The importer has raised various contentions, such as disputing the applicability of DGFT

Notification No. 44 (RE-2000)/1997-2002, possession of an LMPC certificate, miscommunication with the foreign supplier regarding labelling, and having sought permission from Customs for labelling. However, these arguments do not alter the fundamental fact that the goods in question were found unlabelled, in contravention of the Legal Metrology Act and Rules. Accordingly, I hold that violation of the Legal Metrology Act, 2009 and the Legal Metrology (Packaged Commodities) Rules, 2011, read with DGFT Notification No. 44 (RE-2000)/1997-2002, has occurred, rendering the goods liable to confiscation under Section 111 of the Customs Act, 1962.

23. Regarding the issue of mis-declaration, I find that the goods declared as *“Cleaning Mop”* were found to be *“Electric Cleaning Mop”*. The importer has attributed this to an inadvertent error in the supplier’s invoice. He further submitted that the declared classification under CTH 96032900 (BCD @20%) would, if corrected, attract classification under CTH 8479 (BCD @7.5%), demonstrating no intent to evade duty.

23.1 I find that while the importer has accepted the mis-declaration, his explanation attributing the same to the foreign supplier cannot be accepted. The importer is statutorily responsible under Section 46 of the Customs Act, 1962 to make a true and correct declaration. Pleading ignorance or reliance on the supplier’s invoice cannot absolve the importer from his statutory obligations. The argument that the correct declaration would have resulted in a lower rate of duty is also untenable, as correct classification may have led to higher assessable value and, consequently, higher duty. Thus, the importer’s submissions are devoid of merit. Accordingly, I hold that by making a false and inaccurate declaration, the importer has rendered the goods liable to confiscation under Section 111 of the Customs Act, 1962.

24. Now I proceed to examine the issue pertaining to classification of goods bearing the description Navrang Ball. The investigation agency contends that the said item is classifiable as toys under CTH 95030090 for the following three reasons: -

- The prime use of Navrang ball was amusement and entertainment and not sports or outdoor games.
- The build quality of Navrang Ball was not up to the standard of outdoor and sports ball.
- As per market survey and inquiry, these balls were sold in toys shop. Hence it should be classifiable as toys.

Furthermore, the investigation agency also felt that the said goods bearing description as Navrang Ball fall under Safety of Toys as per IS 9873 for Self-Declaration of conformity (i.e. Scheme-I of Bureau of Indian Standards), thereby leading to non-compliance of BIS.

24.1 In this connection, I find that the department had sought advice from DPIT vide F. No. CUS/APR/INV/38/2023-Gr. 6 dated 17.11.2023 as to whether BIS license for toys is applicable on the import of “Beach Ball” or otherwise. DPIT vide letter dated 08.01.2024

F. No. P-14031/74/2023, CI-E 186723 issued by Under Secretary, Department of Promotion of Industry & Internal trade informed that: -

"*following comments are provided by this Department after consultation of BIS vide their letter no. CMD-2/16:9873 dated 04.12.2023 on the basis of information provided: -*

Indian Standard IS 9873 (Part 1):2019 for Safety of Toys Safety Aspects Related to Mechanical und Physical Properties does cover "Aquatic Toys". However, the standard also states that "Bathroom toys and beach balls are not considered aquatic toys" and the Toys QCO may not be applicable since beach balls are not considered aquatic toys as per the standard".

24.2 I find that during review of the Order-in-Original No. 07/ADC/MKJ/ADJN/2024-25 dated 08.04.2024 and Corrigendum dated 23.04.2024, Import-I Commissionerate vide letter dated 03.05.2024 issued vide F.No. GEN/REV/OIO/7796/2024-O/O COMMR-CUS IMP-I-ZONE-I-MUMBAI sought comments from the investigating agency i.e. CIU, which vide letter dated 28.05.2024 submitted the following:

(i) All the facts about the investigation conducted by this office were communicated vide IR dated 18.10.2022 wherein it was informed that the goods declared as "Navrang balls" at sr. no. 10 were found to be "Inflatable Toy Balls" during examination by CIU. The prime use of which seemed to be for children's play and recreation purpose only and not for sports or outdoor games. The goods "Inflatable Toy Balls" were found to be misdeclared as "Navrang balls" to avoid BIS compliance. It should have been classified as a toy under CTH 95030090 which falls under the purview of safety of toys as per IS 9873 for self-declaration of conformity. In both shape and appearance, it was inflatable ball. However, relying on the criteria of use, built-quality or structure and marketability, it was evident that "Navrang balls" should have been classified under CTH 95030090.

(ii) The information by DPIIT vide letter dated 08.01.2024 that "Bathroom toys and Beach balls are not considered aquatic toys" and the toys QCO may not be applicable since beach balls are not considered aquatic toys as per standard appears to be for beach ball and probably based on the images/documents and details of the product/description provided/shared with them and not on physical verification/testing of the product, whereas, the impugned goods declared as "Navrang Ball" was found an inflatable ball and should have been declared as "Inflatable Toy Ball".

(iii) The classification and applicability of BIS on import of goods declared "Navrang Balls" whereas the goods misdeclared as "Navrang Balls" at sr. no. 10 were found to be inflatable toy balls during examination by CIU. Hence, the entire discussion about the Navrang ball or Beach Ball has no relevance with the actual goods found in the B/E.

24.3 The earlier letter dated 08.01.2024 from Department of Promotion of Industry & Inernal Trade (DPIIT) was based on the image and details of product/description provided by this office. Therefore, in view of CIU's emphasis on physical verification and to decide the matter once for all, a sealed sample of imported goods (Navrang ball or Beach Ball) was forwarded vide letter F.No. CUS/APR/INV/38/2023-Gr.6 dated 06.06.2024 to DPIIT along with sample drawn panchanama for their comment/report regarding applicability of BIS on the basis of physical verification of the product.

24.4 In response to the above mentioned letter dated 06.06.2024, the department received letter dated 03.07.2024 issued vide F.No. P-14031/74/2023-C.I, E-186723 from Department of Promotion of Industry & Internal Trade. The relevant part of the said letter is reiterated below:

"BIS vide letter dated 26.06.2024 stated that the product appears to more closely resemble a basketball although much smaller in size and of a different colour and material than the regular basketball. In this regard, it is informed that as per IS 9873 (Part I):2019, Sporting goods and equipment, are excluded from the scope of the Indian Standard for Safety of Toys, however, toys which are their counterparts are included. Therefore, based on visual examination, the product declared as Beach Ball, appears to be a toy counterpart of a basket ball on which the Indian standard for safety of toys may apply.

Therefore, the Toys QCO may be applicable on the product declared as Beach Ball, appears to be a toy counterpart of a basketball".

24.5 I find that the above reply/report dated 03.07.2024 from DPIIT (that the product declared as beachball is actually toy counterpart of basketball) is based on examination of actual sample and therefore more reliable than their earlier letter dated 08.01.2024 based on the image and details of product/description provided. The letter dated 03.07.2024 from DPIIT has also been forwarded to the Pr. Chief Commissioner of Customs, MCZ-I (The Convenor, NAC-FAG 6) vide letter dated 18.07.2024 issued vide F.No. GEN/REV/OIO/7796/2024-REV O/o COMMR-CUS-IMP-1-ZONE-1-Mumbai to examine the matter and if deemed fit, revise its earlier findings/minutes dated 03.01.2023 and also alert the FAGs that toy counterparts of basketballs (or inflatable toy balls) may be getting misdeclared as beachballs to avoid BIS.

24.6 In view of the above, I find that Indian standards for toys is applicable on products declared as Beach Ball which appear to be toy counterpart of a basketball. Therefore, I find that item no. 10 i.e. Navrang ball is a toy, appropriately classifiable under CTH 95030090, and falls under the purview of Safety of Toys as per IS 9873 for Self-Declaration of conformity (i.e. Scheme-I of Bureau of Indian Standards) as provided under Toys (Quality Control) order, 2020 dated 25.02.2020 and requires BIS compliance for clearance from Customs.

24.7 In the instant case, the non-compliance of BIS in the import of items declared as "Navrang Ball" led to the said goods becoming prohibited for import and rendered them liable to confiscation under section 111(d) of the Customs Act, 1962.

25. With regarding to the issue of short quantity, I find that minor shortages were observed, but the difference was negligible and had no adverse impact on revenue since duty was paid on a higher declared quantity. The importer has accepted this finding. Therefore, no further action is warranted on this count.

26. The next issue pertains to undervaluation of goods declared under Bill of Entry No. 9853531 dated 03.08.2022. The investigation established discrepancies in description and classification, leading to rejection of the declared assessable value of Rs. 10,39,031/- under Rule 12(2)(iii)(d) and 12(2)(iii)(e) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. As data required under Rules 4 to 8 were unavailable, valuation was determined under Rule 9 (Residual Method), based on a market survey conducted on 15.09.2022 in the presence of the importer's authorized representative. The survey relied on comparable market prices, adjusting for profit margins, duties, and other charges, to arrive at a fair value. I find that the process adopted was consistent with valuation principles and in conformity with the Customs Valuation Rules, 2007. Accordingly, the re-determined assessable value of Rs. 20,90,085/- and differential duty of Rs. 6,44,775/-, as contended in the Show Cause Notice is held to be correct.

Sr. No.	Description of the goods	Quantity found (unit)	Declared A.V. in the B/E (Per Pcs) (In INR)	Re-determined Unit Assessable value (In INR)	Re- determined Total Assessable value (In INR)	Re-determined Total Duty (In INR)
1	Cleaning Mop	400	81.86	207.5	83000	36487
2	Electric Lunch Box	640	81.86	166	106240	46703
3	Self-Stirring Coffee Mug	1200	20.47	33.2	39840	17514
4	Egg Poacher	1500	24.56	68.77795	103166.9	45353
5	Inflatable Pillow	1800	4.09	9.93	17874	9017
6	Mini Pocket Shaver	1000	20.47	62.25	62250	27365
7	Derma Roller Massager	3600	2.46	11.9725	43101	13137
8	Electric Kettle 2L	1600	40.93	120.35	192560	84649
9	Baby Kneecap	25000	0.82	3.1125	77812.5	34206
10	Navrang Ball	77500	4.09	5.04	390600	335604
11	Mini Hair Dryer	2000	40.93	41.5	83000	36487
12	Hair Trimmer	1500	40.93	60.175	90262.5	39679
13	Waterproof Crack Silicone Tube	2500	8.19	41.058	102645	31799
14	Hot Air Brush	600	40.93	145.25	87150	38311
15	Razor (6Pcs/Card)	2520	3.27	11.405	28740.6	8904
16	Mini UFO Lamp	15000	3.27	7.944	119160	60116
17	Mini Hair Straightener	2400	40.93	41.5	99600	43784
18	Silicone Heel Anti- Crack Sets	7500	2.46	10.865	81487.5	30533
19	Star Projection Lamp	2040	16.37	62.559	127620.4	64384
20	Mini USB Lamp	45000	0.82	2.979	134055	67631
21	Wax Heater	480	40.93	41.5	19920	8757
TOTAL					**2090085**	**1080421**
DUTY DECLARED (IN INR)						**435646**
DIFFERENTIAL DUTY (IN INR)						**644775**

27. After considering the entire evidence and submissions, I find that the goods are liable for confiscation under Sections 111 of the Customs Act, 1962 on account of:

- Mis-declaration,
- Violation of Legal Metrology provisions read with DGFT Notification No. 44 (RE-2000)/1997-2002, and
- Under-valuation.
- Violation of BIS compliance in respect of goods declared as Navrang Ball.

The importer's actions amount to wilful mis-declaration and undervaluation, attracting penal provisions under Section 114A of the Customs Act, 1962 for short-levy of duty in respect of goods covered by Bill of Entry No. 9853531 dated 03.08.2022. In addition, for the item at sr. no. 10 declared as Navrang Ball, non-compliance of BIS has led to the goods becoming prohibited for import and rendered them liable to confiscation under section 111(d) of the Customs Act, 1962. Further, I have gone through the departmental comments dated 09.05.2024 of Bill of Entry No. 9853531 dated 03.08.2022 mentioned in ICES system that, *"the BE has been finally assessed the consignment i.e. item sl. No. 10 may be released after RE-44/LMPC compliance if otherwise in order (as all other items have already been released as per provisional release order dated 27.2.2023)".* Hence, it is evident that goods declared as Navrang Ball are already been given clearance for home consumption, however the goods were liable for absolute confiscation. Considering it *fait accompli,* I an left with no other option but order to release the goods after payment of appropriate Redemption Fine. I have also gone through section 125(1) which says, *Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit;……………..."* Hence, law is lucid wherein word *'may'* empowers adjudicating authority to release even prohibited goods. Since, Navrang Balls have already been given out of charge for home clearance and are not in custody of the department, hence the said goods are allowed to be released on payment of appropriate Redemption Fine along with duty and interest.

I further observe that the impugned goods are not physically available for confiscation. In this regard, I find that once goods are held liable to confiscation under Section 111, their physical availability does not have significance on imposition of redemption fine under Section 125 of the Act. Therefore, redemption fine in lieu of confiscation needs to be imposed even if the imported goods are not available. In this regard, I rely on the judgment of M/s Visteon Automotive Systems India Limited reported as 2018 (9) G.S.T.L A2 (Mad.) wherein the Hon'ble High Court of Madras has held that:

"*23. The penalty directed against the importer under Section 112 and the fine payable under Section 125 operate in two different fields. The fine under Section 125 is in lieu of confiscation of the goods. The payment of fine followed up by payment of duty and other charges leviable, as per sub-section (2) of Section 125, fetches relief for the goods from getting confiscated. By subjecting the goods to payment of duty and other charges, the improper and irregular importation is sought to be regularized, whereas, by subjecting the goods to payment of fine under sub-section (1) of Section 125, the goods are saved from getting confiscated. Hence, the availability of the goods is not necessary for imposing the redemption fine. The operating words of Section 125, "Whenever confiscation of any goods is authorized by this Act....", brings out the point clearly. The power to impose* *redemption fine springs from the authorization of confiscation of goods provided for under Section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said Section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequences flowing from Section 111 only. Hence, the payment of redemption fine saves the goods from getting confiscated. Hence, their physical availability does not have any significance for imposition of redemption fine under Section 125 of the Act........*"

28. Coming to the role of the Customs Broker, I find that the Broker has been charged under Section 112(a) for failure to properly advise the importer regarding labelling and compliance under Legal Metrology provisions and DGFT Notification No. 44 (RE-2000)/1997-2002.

28.1 I find that in the impugned Show Cause Notice, the Customs Broker has been made liable for penal action under section 112 (a) of the Customs Act, 1962 for his failure to properly advise his client M/s. Madiha Trading Company regarding the rules and regulations of Customs and allied acts, and his failure to inform importer about the declarations to be made for pre-packaged goods falling under the purview of General Note 5 "packaged products" of ITC (HS) read with DGFT Notification No. 44 (RE-2000)/1997-2002 dated 24.11.2000 and the corresponding provisions of the Legal Metrology Act, 2009 and the Legal Metrology (packaged Commodities) Rules, 2011. It has also been alleged that in the statement given by the Customs Broker, he admitted that their firm checked the applicability of BIS, LMPC certificates after consulting with the importer. The Customs Broker on the other hand, vide his submissions made through letter dated 30.12.2022, has stated that they are acting as a Customs Broker for the importer and their job is limited to the clearance of the goods imported on the basis of documents provided by the importer. In the instant case the Bill of Entry No. 9853531 dated 03.08.2022 has been filed by them on the basis of documents viz. Bill of Lading Invoice and Packing List provided by the importer. The description of goods in the BE filed by them is as per the invoice and packing list provided by the supplier. The Customs Broker has also submitted that the importer was well aware of the requirement of labelling for pre-packaged goods as envisaged in Legal Metrology Act and Rules. Furthermore, the Customs Broker has placed reliance on the case law of Bajaj Enterprises Vs Commissioner of Customs (General) 2017 (347) ELT. 675 (Tri Mumbai). I find that the Customs Broker has a very important position and he is duty bound to safeguard the interest of the revenue. The Regulations ensure that the Customs Broker discharges his duties in such a way that he safeguards the interest of customs by not abetting in the import of goods which is undervalued or is mis declared or is in violation of framed policy. The goods in the impugned bill of entry have been found to be mis-declared, under-valued and in violation of the Legal Metrology Act, 2009 and the Legal Metrology (packaged Commodities) Rules, 2011 read with DGFT Notification No. 44 (RE-2000)/1997-2002. It is unbelievable to assume that the Customs Broker had no knowledge of the same. Moreover, the Customs Broker has feigned ignorance about whether the importer was a whole seller or a retailer. This is not expected from the Customs Broker. He ought to have verified all these before filing the Bill of Entry. Though there are duties stated in the CBLR, the said Regulation has to be read along with the provisions of Customs Act, 1962. The Regulation is intended to make the clearance of export and import in a hassle-free manner for both importer/exporter and the customs. The trust embedded in the Customs Broker who has been issued a licence cannot be used in a negligent manner so as to permit mis-declared, under-valued and policy violating goods. In the present case, the Customs Broker chose to turn a blind eye instead of performing his duties properly. Therefore, I find that through his actions has aided the importer in his unlawful import. Therefore, it becomes apparent that the Customs Broker colluded with the importer in his act of mis-declaration, under-valuation and policy violation. Therefore, I find that is of the view the Customs Broker is liable for penal action under Section 112(a) of the Customs Act, 1962. As far as reliance on caselaw of Bajaj Enterprises Vs Commissioner of Customs (General) 2017 (347) ELT. 675 (Tri Mumbai) is concerned, I find that in that case it was observed by the Hon'ble Tribunal that "the need to advice a client would arise only if the agent was aware of any intent to mis-declare." In the instant case all the items imported are ready to sale household items. The Customs Broker must be fully aware that if such goods are imported in pre-packed condition than they will be governed by of the Legal Metrology Act, 2009 and the Legal Metrology (packaged Commodities) Rules, 2011 read with DGFT Notification No. 44 (RE-2000)/1997-2002. Having said that it was also incumbent on the Customs Broker to find out if the importer is a retailer or a whole-seller as per KYC norms which in this case becomes even more important keeping in view the nature of the items being imported. The failure to do so can only be construed as complicity. The adjudicating authority is of the firm opinion that the Customs Broker was fully aware of the modus-operandi of the importer.

28.2 On the contention of double jeopardy raised by the Customs Broker

I find that the Customs Broker has contended that they have merely acted as an intermediary for clearance of the import consignments and that simultaneous proceedings have already been initiated against them under the Customs Broker Licensing Regulations, 2018 (CBLR, 2018). It has been submitted that vide Order CAO No. 55/CAC/PCC(G)/SJ/CBS-Adj dated 18.12.2023, a penalty of Rs.50,000/- was imposed on them, which has since been paid vide Challan No. 1024 dated 20.12.2023. The Customs Broker has, therefore, argued that the imposition of any further penalty in the present proceedings would amount to *double jeopardy*, as they have already been penalized for the same allegations. Copies of the said order and challan have been submitted on record.

I find that this contention is misplaced. The proceedings under the CBLR, 2018 are *administrative in nature* and are conducted to examine the professional conduct of a Customs Broker, i.e., whether they have violated any obligations under Regulation 10 and to determine whether any action under Regulation 14 or 18 is warranted. These proceedings are distinct and independent from those initiated under the Customs Act, 1962, which are quasi-judicial in nature and deal with violations of statutory provisions relating to import/export and evasion of duty.

The doctrine of *double jeopardy*, enshrined under Article 20(2) of the Constitution of India and Section 26 of the General Clauses Act, applies only where a person is prosecuted and punished *twice for the same offence* under the same law. In the instant case, the penalty imposed under the CBLR, 2018 is in respect of professional misconduct under licensing regulations, whereas the present proceedings are under the Customs Act, 1962 for abetment in improper importation and violation of customs provisions. Hence, both proceedings operate in different fields and are not mutually exclusive.

Accordingly, I hold that the Customs Broker's contention regarding *double jeopardy* is devoid of merit. The penalty imposed under CBLR, 2018 cannot preclude the imposition of a penalty under the Customs Act, 1962, where independent violations of statutory provisions are established.

28.3 Therefore, I hold that the Customs Broker, by his inaction and complicity, aided the importer in the acts of mis-declaration, undervaluation, and policy violation, rendering himself liable for penal action under Section 112(a) of the Customs Act, 1962.

ORDER

29. In view of the above, I pass the following order.

(i) I reject total declared assessable value of Rs.10,39,031/- (Rupees Ten Lakh Thirty-Nine Thousand and Thirty-one only) of the goods covered by Bill of Entry No. 9853531 dated 03.08.2022 under Rule 12 of the Customs Valuation (Determination of Value of imported Goods) Rules, 2007 and order re-determination of the same at **Rs. 20,90,085/- (Rupees Twenty Lakh Ninety thousand and Eighty-Five only)** under section 14(1) of Customs Act 1962 read with Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

(ii) I order confiscation of the goods covered by Bill of Entry No. 9853531 dated 03.08.2022, excluding item at sr. no. 10 declared as "Navrang Ball", with total re-determined assessable value of **Rs. 16,99,485/- (Rupees Sixteen Lakh, Ninety Nine Thousand and Four Hundred Eighty-Five only)** under Section 111(l) and 111(m) of the Customs Act 1962. Further, I order confiscation of the goods at sr. no. 10 declared as "Navrang Ball" of the Bill of Entry No. 9853531 dated 03.08.2022, with total re-determined assessable value of **Rs. 3,90,600/- (Rupees Three Lakh, Ninety Thousand and Six Hundred only)** under Section 111(d), 111(l) and 111(m) of the Customs Act 1962. I further observe that, the impugned goods are not physically available for confiscation. In this regard, as discussed supra, I find that once goods are held liable to confiscation under Section 111, their physical availability does not have significance on imposition of redemption fine under Section 125 of the Act. Therefore, I impose redemption fine of **Rs. 2,10,000/- (Rupees Two lacs and ten thousand**

only) in lieu of confiscation thereof in terms of provisions of Section 125 of the Customs Act, 1962.

(iii) I confirm and redetermine differential duty of **Rs.6,44,775/- (Rupees Six Lakh Forty Four Thousand Seven hundred and Seventy Five only)** along with applicable interest from them under Section 28(8) of the Customs Act 1962 read with Section 28AA of the Customs Act 1962 (inclusive of duty for item at sr. no. 10 declared as "Navrang Ball", since the same has already been released to the importer).

(iv) I impose penalty of **Rs.6,44,775/- (Rupees Six Lakh Forty Four Thousand Seven hundred and Seventy Five only)** on the importer M/s Madiha Trading Company (IEC No. EWBPS2362N) under Section 114 A of the Customs Act 1962, in respect of goods covered by Bill of Entry No. 9853531 dated 03.08.2022.

(v) I impose penalty of **Rs.10,000/- (Rupees Ten thousand only)** on the Customs Broker M/s S. S. International Logistics under Section 112(a) of the Customs Act 1962.

This order is issued without prejudice to any other action that may be taken against the noticee(s) or against any other person(s) mentioned in the notice, under the provisions of the Customs Act, 1962 and/or any other law for the time being in force, in India.

Deepika

(**Deepika Kartik Tangadkar**)
Joint Commissioner of Customs,
Adjudication Cell, Import-I,
New Custom House

To

1. M/s Madiha Trading Company,
   25A, 3rd Floor, Plot No.288,
   Dawood Jaiwala Building, Nagdevi Street,
   Crawford Market, Mumbai 400 003.

2. M/s S. S. International Logistics,
   1st Floor, 2, Goa Mansion, Goa Street,
   Dr. Sunderlal Bahl Marg,
   Fort, Mumbai 400 0001

Copy to:

1. The Commissioner of Customs, Import-I, New Custom House, Mumbai.

2. The Joint Commissioner of Customs, SIIB(I), Import-I, New Custom House, Mumbai.
3. The Deputy Commissioner of Customs, Review Cell, Import-I, New Custom House, Mumbai.
4. The Asstt./Dy. Commissioner of Customs, Gr.V, NCH, Mumbai
5. The Asstt./Dy. Commissioner of Customs, CBS Section, NCH, Mumbai
6. The Supdt. Of Customs (CHS), NCH, Mumbai-I for display on notice board.
7. CRU Section (Import-I), NCH, Mumbai
8. EDI Section for upload in Zone-I website
9. Office Copy.