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/2523/2025-GR-5 **Date of Order**: 25.02.2026
DIN: 20260277000000000A102 **Date of Issue**: 25.02.2026

Order No: 24/JC/AS/ADJ/2025-26
Order Passed by: Shri Arshdeep Singh,
Joint Commissioner of Customs, Import-I,
New Custom House, Mumbai Customs Zone-I

Name of Party/Noticee: M/s. Alliance Ventures

मुल आदेश
ORDER-IN-ORIGINAL

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

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

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

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

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

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

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

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

BRIEF FACTS OF THE CASE

M/s Alliance Ventures, a Partnership firm (IEC No. ABXFA0419M, GST - 27ABXFA0419M1ZZ), having registered office at 6th Floor, 601, Central Plaza, 166, CST Road, Kalina, Mumbai, Maharashtra, 400098 had filed 02 Bills of Entry during last 5 years, as shown in Table-4, through their Customs Brokers, M/s Damani Shipping Pvt Ltd (CB Lic. No/PAN: AAACD5533A) for import of old and used cranes, which are classifiable under Custom Tariff Head 84264100 as per the Customs Tariff Act, 1975, and the applicable duty structure for assessment is Basic Customs Duty @7.5%, Cess@10%, and IGST@18%.

2.1 There were ongoing investigations in the Special Intelligence and Investigation Branch (Import-I), New Custom House, Ballard Estate, Mumbai, in respect of cases where the importers were mis-declaring the new machine as relatively old, by mis-declaring the actual YOM of the machine before the Customs Department and consequently declaring the lower assessable value. By declaring a lower assessable value for the old and used cranes, the importers were paying less Customs Duty than the amount actually applicable. Accordingly, in the instant case, investigation was initiated by issuing letters and e-mails to the importer and respective Regional Transport Offices, to submit the Registration Certificates and Vehicle Particulars of respective cranes registered with their RTO.

2.2 Impact of mis-declaration of Year of Manufacture on assessable value and evasion of Customs Duty as 32

2.2.1 The Valuation of Second-Hand Machinery and fixation of Scale of depreciation is governed by the CBIC's Circular No. 493/124/86-Cus.VI dated 19.11.1987. As per this circular, maximum depreciation allowed with the age of the old machines is 70%. As shown below Table-1, the depreciation in value increases along with the increase in the age of the machines:

Table-1 Rate of Depreciation

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

2.2.2 Effect of mis-declaration done in YOM and lifting capacity on valuation of the goods (for illustration purposes):

2.2.2.1 In respect of the Bill of Entry No. 5327262 dated 04.01.2023, the Importer has declared the Model as QY80V, YOM as Jan-2019, YOM value as USD 120,000, and Assessable CIF Value as USD 86,454. Though, as per RC, Model of the crane is QY90V and YOM is Jan-2021.

2.2.2.2 The valuation of the goods, in the instant case, considering the actual Model (QY90V) and YOM (Month/Year: 1/2021), in terms of Circular No. 493/124/86-Cus.VI dated 19.11.1987, may be ascertained as per Table-2 & 3 given below:

Table-2

Valuation of New Goods	**Valuation of the goods in Jan, 2023 as per actual YOM: Jan, 2021 (eligible quarters for depreciation: Total 8 Quarters)**
100%	100 - [16% (for first year 4 quarters) + 12% (for second year 4 quarters)]] = 100 - 28% = 72%

Table-3

Description of the goods	**Valuation of New Goods in actual YOM i.e. Jan-2021**	**Valuation of the goods in Jan 2023 as per actual YOM i.e. Jan 2021 (Total 8 quarters)**	**Assessable CIF value of the goods in Jan 2023, as per declared YOM i.e Jan-2019, as per previous CE report**
ZOOMLION QY90V value FOB (in USD)	1,70,000	1,70,000 - 28% (depreciation) = 1,22,400	86,454
Value in INR (1 USD = 83.7 INR)	1,42,29,000/-	1,02,44,880/-	72,36,219/-
Duty Payable	-	28,41,417/-	20,06,965/-

During the course of scrutiny of the Bill of Entry No. 5327262 dated 04.01.2023, the customs duty evasion was found to be Rs. 8.34 Lakh. (For illustration purposes only).

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

3.1 On detection of the above modus operandi adopted by the importer to evade customs duty, past data of imports made by the said importer M/s Alliance Ventures were scrutinized to unearth the complete modus operandi and tax evasion with respect to 2 units of 'old and used cranes of different make and models, such as XCMG and ZOOMLION.

3.2 The importer vide their letter dated 02.07.2025 submitted RC copies/Vehicle Particulars of the 02 cranes imported by them. The RCs received from the importer were cross-checked with the declaration made by the importer in the Bills of Entry filed before the customs department at the time of import. On verification, it was found that the importer had mis-declared YOM in 02 cranes and also mis-declared the Model Number (indicating lifting capacity) in 01 crane. The average mis-declaration in the age of the crane ranged between 1-2 years. The details of bills of entry where mis-declaration in terms of YOM/lifting capacity was noticed are tabulated below in Table-4:

Table-4

(Showing mis-declaration in YOM and Lifting Capacity with respect to declaration made in the Bills of Entry)

Sr. No.	BE No	BE Date (DD-MM-YYYY)	Chassis Number of vehicle	YOM in BE declared by the importer	Model of the crane in BE	Vehicle Registration Number	YOM in RTO (MMM-YY)	Model of crane in RTO
1	5327262	04-01-2023	L5E5H5D46EA034967	Jan-2019	**ZOOMLION QY80V**	GJ06JF5500	Jan-2021	**ZOOMLION QY90V**
2	8019256	26-09-2023	LXGCPA439AA011726	Mar-2019	XCMG QY70K-II	HP38H4576	Mar-2020	XCMG QY70K-II

4. Statement of a Chartered Engineer M/s A. G. Associates

Shri Jitendra Narayan Darunkar, aged 49 years, presented himself to give evidence/statement in respect of imports of 'Old and Used Cranes' made by M/s Alliance Ventures, and Valuation thereof given by Chartered Engineer M/s A. G. Associates. During the statement dated 08.07.2025, he inter alia stated that:

i. He was empaneled Chartered Engineer and some of the cranes imported by M/s Alliance Ventures were inspected by him.

ii. He had got professional training in the field of Mechanical Engineering and was a member of the Institute of Engineers (India). His membership No. was M-141168-8. He had been issued a certificate by the Institute of Engineers (India), 8 Gokhale Road, Kolkata.

iii. He was on the panel of Mumbai Customs, and when Old and used machinery was imported, the departmental officer/ the concerned importer directly or through their Customs Broker contacted him for inspection of the said machinery. After physical inspection of the machine, he submitted valuation report.

iv. During inspection, he verified the physical condition of the machinery present before him, along with its usage, residual life, accessories, etc. He also checked the identity of the goods with the help of documents provided by the importer/Customs Broker.

v. He checked copy of the Bill of Entry, Invoice, Packing List, Bill of Lading, and catalogue of the subject machinery. In some cases, the importer also provided an invoice in the year of manufacturing, but it was very rare.

vi. On the basis of inspection and his findings, he did market search and internet search for a similar kind of machine or cranes. After that, he would compare it with the data available with him as legacy data. He also looked for data available on the internet, depending on make, model, capacity, and year of manufacturing. Depending on that data, he did the valuation. Because, original sale invoice of YOM was not produced by the importer most of the time.

vii. On the basis of the documents and machinery produced before him, he physically inspected the machinery to suggest valuation and residual life of the machinery.

viii. The Year of manufacture affects the value of the machinery because the older the machinery, the less value the buyer is ready to give. But only the year of manufacture is not the sole criterion in deciding valuation, which also depends on other factors like technical depreciation, physical condition, maintenance and upkeep, type of accessories, etc. For the calculation of depreciation in value, the year of manufacturing (YOM) is a factor. If the YOM is relatively new, the depreciation will be minimal. Similarly, model of the crane is also a deciding factor of value.

ix. The chassis number is generally found embossed on the chassis of the crane and year of manufacture is generally found on manufacturer's plate riveted or screwed on the body of the crane. It can be rechecked on any of the accessories or parts, like the hook, engine, etc, if mentioned. Sometimes it is found in the cabin.

x. Except for physical verification, there were no tools available with them to determine the correct year of manufacturing.

xi. He applied depreciation on the basis of the rates provided in CBIC Circular No. 493/124/86-Cus.VI dated 19.11.1987 regarding Valuation of second-machinery and fixation of Scale of depreciation. Based on that, he calculated the depreciated value in the case of the import of old and used cranes/machinery.

xii. He had seen the Chartered Engineer certificate No. AGA/CEC/DAMANI-ALLIANCE VENTURES/0009/2023-24 dated 06.04.2023 and RC copy of vehicle No. GJ06JF5500, and put his dated signature in token of having seen it. The said CE certificate belonged to the BE No. 5327262 dated 01.04.2023. He had issued this certificate on the basis of documents and machinery produced before him at the time of inspection. However, on perusal of the documents, he was of the opinion that the specification plate affixed on the body of the crane produced for examination might be tampered with for the Year of Manufacturing and Model Number, because without tampering, it was not possible. In such a case, the importer was entitled to less depreciation benefit. The value of the concerned imported cranes may be ascertained again, keeping in mind the applicable scale of depreciation in terms of the actual YOM as shown in RTO.

xiii. The Valuation given by him was based on the documents produced before him at the time of inspection. Since, he had seen the RC copies of the same machine which were inspected by him under BE No. 5327262 dated 01.04.2023, he could say that the valuation would be different depending on the year of manufacturing declared in RTO documents. Further, He said that when the goods were imported, they were generally in repainted condition. It was possible that repainting was a modus operandi to show a new machine as an old one. Also, if the plate affixed on the body of the machine was changed/forged with incorrect details, and other documents also mentioned incorrect YOM, it was not possible to ascertain the exact year of manufacturing at the time of inspection.

5. Statement of importer M/s Alliance Ventures

Shri Jasmeet Singh Sethi, partner in the firm M/s Alliance Ventures, appeared on 21.07.2025 to give evidence and statement in respect of the enquiry in connection with the import of old and used cranes by the firm M/s Alliance Ventures. During the statement dated 21.07.2025, he inter alia stated that:

i. M/s Alliance Ventures (IEC-ABXFA0419M, GST-27ABXFA0419M1ZZ) was a partnership firm. This firm had bank accounts in Kotak Mahindra Bank, Kalina Branch (A/c No. 7346885735). The names of partners in this firm were as below:

a. Jasmeet Singh Sethi

b. Kunwar Singh Sethi

They have office situated at 6th Floor, 601, Central Plaza, 166, CST Road, Kalina, Mumbai, Maharashtra, 400098. And, they have a yard

situated at: Gatt no 90, 132, 133 & 134, Kolkhe Village, Mumbai Pune Highway, Near Kolkhe D-Mart, Panvel, Dist Raigad.

ii. He was one of the partners in M/s Alliance Ventures. He had been authorised by the company to sign, file, verify, and present relevant documents and instruct, in the name and on behalf of M/s Alliance Ventures. He was there to tender his voluntary statement and to submit evidence with regard to the ongoing investigation in the matter of old & used cranes imported by M/s Alliance Ventures. He further agreed to appear as and when required to cooperate in the investigation; he was not comfortable giving details of properties owned by him.

iii. He supervised and made decisions with regard to import-related work in their firm.

iv. They did not file Bills of Entry themselves. They had hired Customs Broker M/s Damani Shipping Pvt Ltd to file Bills of Entry on their behalf.

v. After import, they sold their cranes to the respective buyers. In a few cases, they sold it after registration. For that purpose, they physically gave CE certificate, bill of lading, bill of entry, commercial invoice to the RTO agent. In other cases, they sold the cranes without RTO registration, and gave CE certificate, bill of lading, bill of entry, commercial invoice to the buyer. The buyer then filled & signed Form-20 to be submitted to the respective Transport Authority, and registered the crane.

vi. He had seen all the RCs submitted by him and put his dated signature in token of having submitted the same. He further understood that all documents submitted by him could be used as evidence u/s 138(c) of the Customs Act, 1962 and u/s 57 & 61 of the BSA, 2023.

vii. He had gone through the BE 5327262 dated 01.04.2023 and seen the CE certificates submitted before the Customs Department & Vehicle Particulars of RTO Vadodara. He had put his dated signature on them as a token of having seen them. He agreed that there were different models as well as different years of manufacturing in the CE Certificates submitted before the Customs Department & Vehicle Particulars of RTO Vadodara. He had not mis declared YOM in any documents in customs at the time of import. The buyer had registered this crane on their own. It seemed to him that the buyer had mis declared the YOM in RTO.

viii. They had not mis declared YOM in any documents at the time of registration of cranes, as well as in customs at the time of import. In a few cases, they sold cranes after registering them with the RTO. In these cases, the specifications, including YOM & Model Number declared before RTO, are exactly those declared before Customs at the time of import. They had sold some cranes to various buyers without RTO registration, and the same reflected in their sale invoices. Those parties/buyers had registered the cranes in their name, and misdeclaration in RTO seemed to be done by buyers.

ix. At the time of sale, they handed over a copy of the Bill of Entry, Bill of Lading, & CE certificate to the buyer. The buyer registered the cranes in their name at the respective RTO. In some cases, they had even mentioned YOM (which they had declared in customs) in their sales invoices. They had already submitted copy of these sale invoices.

x. Of all the cranes imported by them, they had sold some cranes after registration with RTO and some cranes without RTO registration, the

same was reflected in their sale invoices. They had also mentioned YOM in few of the sale invoices, which were duly acknowledged by the respective buyer of the crane. With regards to those cranes which were sold after registration with the RTO, they had declared the same specifications at the time of RTO registration as before the Customs. In other cases, the buyers themselves registered cranes in their name at their location as per their choice, importer had no control over the said process once they sold the machines. Buyer might had mis declared the Year of Manufacture/Capacity at the time of RTO registration.

xi. He had gone through section 28(4) and section 28AA of the Customs Act, 1962, available on the CBIC website taxinformation.cbic.gov.in. It was submitted that they had not mis declared YoM/Capacity before the Customs department. The CEs had provided a certificate only after examining aspects such as YoM/capacity of cranes. They had declared the value in the Bills of Entry after considering their buying price from the overseas seller, and on the basis of CE certificates. In some cases, where they had sold cranes without RTO registration, they had mentioned the same in their sale invoices. Also, in a few cases, they had clearly mentioned YOM on sale invoices as well. He disagreed that they are liable to pay any differential duty under section 28(4) along with applicable interest under section 28AA of the Customs Act, 1962.

xii. He had gone through section 111 of the Customs Act, 1962, available on the CBIC website, taxinformation.cbic.gov.in. As submitted in the earlier question, they had not mis declared any fact; hence, he disagreed that cranes imported by them were liable to confiscation under section 111 of the Customs Act, 1962.

xiii. He had read section 112 of the Customs Act, 1962, available on the CBIC website. As submitted in the above question, they had not mis declared any fact before customs, hence he disagreed that they were liable to any penalty under section 112 of the Customs Act, 1962.

xiv. He had read section 114A of the Customs Act, 1962, available on the CBIC website, taxinformation.cbic.gov.in. As submitted in the above question, they had not mis declared any fact; hence, he disagreed that they were liable for any penalty u/s 114A of the Customs Act, 1962.

xv. He had read section 114AA of the Customs Act, 1962, available on the CBIC website, taxinformation.cbic.gov.in. As submitted in the above question, they had not mis declared any fact; hence, he disagreed that they were liable for any penalty u/s 114AA of the Customs Act, 1962.

6. Summary of the investigation:

The Vehicle Particulars/RC copies of the imported cranes show different YOM and lifting capacity compared to the YOM and lifting capacity declared in the Bills of Entry. The above investigation clearly indicates that the importer deliberately suppressed actual information to evade applicable customs duty.

6.1 It appears that the importer has mis-declared the description of goods inasmuch as they did not declare the true and correct 'YOM' and resorted to undervaluation as the actual value of the said goods after applying applicable depreciation as per CBIC Circular No. 493/124/86-Cus.VI dated 19.11.1987 comes out to be Rs. 1,65,82,250/- (Rupees One Crore Sixty-Five Lakh Eighty-Two Thousand Two Hundred Fifty only). The imported goods were mis-declared with respect to description and value, hence Invoices presented at the time of import do not reflect the correct credentials and value of the goods for the

collection of customs duty. It appears that the declared value of cranes and respective invoices are liable for rejection, and re-determination of value can be done as per the revised value provided by the empaneled CEs.

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

6.3 During the investigation, it is revealed that the importer has not only mis-declared the true and correct YOM of the imported cranes but also mis-declared the lifting capacity of 01 crane. In import documents, they have declared lesser lifting capacity, whereas the crane registered with the State RTOs shows higher lifting capacities. This was done to show less value than the actual value of the goods to evade Customs duty.

6.4 Shri Jasmeet Singh Sethi, the partner of the importer, vide his statement dated 21.07.2025, tried to divert the investigation by shifting the liability by making false allegations that their Sales invoices clearly mentioned that the machines were sold without RTO registration; and that their customers mis-declared the YOM to RTO. However, it appears that the importer had conscious knowledge about the act of misdeclaration, which was done in a calculated manner. The fact of misdeclarations in YOM and lifting capacity of the imported cranes is also corroborated with the vehicle particulars obtained from different State RTOs. Further, the note Sold without RTO registration mentioned in the sale invoice appears to be an afterthought, and it is highly unlikely that the modus operandi worked without the aid and benefit of the importer.

6.5 Investigation indicates that the importer is the ultimate beneficiary in this case, as by declaring older cranes before the customs authority, he has got the benefit of maximum depreciation and paid lesser duty and on the other hand, declaring the same crane newer before RTO authorities qualified for the benefit of longer residual life.

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

All imports of second-hand machinery/ old and used cranes should ordinarily be accompanied by an inspection report issued by an overseas CE prepared on examination of the goods at the place of sale. In the event of the importer failing to procure an overseas report of inspection of the goods, he may have the goods inspected by any one of the CEs empanelled locally by the respective Custom House. The value declared by the importer should be examined with respect to the depreciated value of the goods determined in terms of the circular No. 493/124/86-Cus.VI dated 19.11.1987. The depreciation is calculated on the original value of the machinery (old & used crane) under import. In respect of imports made by M/s Alliance Ventures, empanelled CE has tendered their reports on the basis of documents provided to them by the importer and physical inspection of goods. In their reports, it is categorically mentioned that original invoices relating to the subject machine were not provided by the importer. Vehicle particulars obtained from various State RTOs reflect the true and correct Year of Manufacturing.

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

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

> *(a) All imports of second-hand machinery/used capital goods shall be ordinarily accompanied by an inspection/appraisement report issued by an overseas CE or equivalent, prepared upon examination of the goods at the place of sale.*
>
> *(b) The report of the **overseas CE** or equivalent should be as per the **Form A** annexed to this circular.*
>
> *(c) In the event of the importer failing to procure an overseas report of inspection/appraisement of the goods, he may have the goods inspected by any one of the CEs empanelled locally by the respective Custom Houses.*
>
> *(d) In cases where the report is to be prepared by the **CEs empanelled by Custom Houses**, the same shall be in the **Form B** annexed to this circular.*
>
> *(e) The value declared by the importer shall be examined with respect to the report of the CE. Similarly, the declared value shall be examined with respect to the depreciated value of the goods determined in terms of the circular No. 493/124/86-Cus. VI dated 19-11-1987 and dated 4-1-1988. If such comparison does not create any doubt regarding the declared value of the goods, the same may be appraised under rule 3 of the CVR, 2007. If there are significant differences arising from such comparison, Rule 12 of the CVR, 2007 requires that the proper officer shall seek an explanation from the importer justifying the declared value. The proper officer may then evaluate the evidence put forth by the importer and after giving due consideration to factors such as depreciation, refurbishment or reconditioning (if any), and condition of the goods, determine whether the declared transaction value conforms to Rule 3 of CVR, 2007. Otherwise, the proper officer may proceed to determine the value of the goods, sequentially, in terms of rule 4 to 9. **(emphasis added)***

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

1. Details and condition of the old machinery revealed through examination
2. Technical literature of the goods and search through the internet,
3. Documents/evidence related to the YOM of machines submitted by the importer at the time of examination of the goods,
4. Valuation details in the original invoice of the manufacturer (if available)

5. Their past experience in respect of the valuation of similar old and used goods.
6. Historical data of clearances available with them

The above task of the CEs is arduous. Most of these imported old and used cranes were manufactured in foreign countries, so no specific data about their make and valuation is available in India. So, the most important factor relied upon by the CE is the declaration by the importer himself about the YOM/lifting capacity of the crane in the import documents. In the present case, neither at the time of clearance nor during investigation has the importer supported their declarations of YOM/lifting capacity by the original manufacturer's invoice of the cranes. In the absence of the original invoice (manufacturer's Invoice) of the crane and/or the manipulation of documents by the importer, the CE cannot verify the YOM correctly, and his report becomes erroneous and loses its validation.

6.7.2 On verification from the RTO records, mis-declaration of age has been detected in 2 past crane consignments and mis-declaration of lifting capacity has been detected in 1 past crane consignments. This indicates that the importer is involved in mis-declaring the YOM/lifting capacity of the machines before the customs, consequently resulting in the lesser payment of Customs duty by declaring lesser assessable value of these cranes. Thus, it appears that the initial/first valuation reports at the time of import given by CEs in these past 2 imports of cranes, being based on false declarations by the importer, were not reflecting the correct transaction value under section 14 of the Act. Regional Transport Authority (RTO) is a specialised agency and legal authority for inspection and registration of motor vehicles under the Motor Vehicles Act, 1988. Each imported mis-declared crane was inspected by RTO authorities, and subsequently the RCs were issued. Hence, after getting the correct YOM/lifting capacity of the cranes from the RTO certificates (RCs), there was a need for rectification in the CE's report.

6.7.3 Chartered Engineers, M/s A. G. Associates, were informed about the mis-declaration of the Year of Manufacture (YOM) in respect of Bills of Entry for which the first CE report/valuation was provided. The mis-declaration was identified upon scrutiny of the Registration Certificates (RCs)/Vehicle Particulars, which indicated the correct YOM. Copies of the RC were also shown to the CEs, who signed them as a token of having seen the same. The CEs, on the basis of the import documents and the RCs, re-evaluated the value of the imported cranes, considering the correct YOM and submitted their re-evaluated values. M/s A. G. Associates submitted revised valuation vide their letter dated 08.07.2025.

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

on the past 2 consignments of old and used cranes based on the revised /second CE reports appears to be legal and proper.

6.8 Finding of RTO (Registration Authority for Cranes):

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

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

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

> *47. Application for registration of motor vehicles. — (1) An application for registration of a motor vehicle shall be made in Form 20 to the registering authority within a period of seven days from the date of taking delivery of such vehicle, excluding the period of journey and shall be accompanied by—*
> *(a) sale certificate in Form 21;*
> *(b) valid insurance certificate;*
> *(c) copy of the proceedings of the State Transport Authority or Transport Commissioner or such other authorities as may be prescribed by the State Government for the purpose of approval of the design in the case of a trailer or a semi-trailer;*
> *(d) original sale certificate from the concerned authorities in Form 21 in the case of ex-army vehicles;*
> *(e) proof of address by way of any one of the documents referred to in rule 4;*
> *(f) temporary registration, if any;*
> *(g) road-worthiness certificate in Form 22 from the manufacturers, Form 22-A from the body builders;*
> ***(h) custom's clearance certificate in the case of imported vehicles along with the license and bond, if any:***
> *Provided that in the case of imported vehicles other than those imported under the Baggage Rules, 1998, the procedure followed by the registering authority shall be same as those procedures followed for registering of vehicles manufactured in India*

6.9 For the purpose of registration of vehicles, Regional Transport Officers in Regional Transport Offices are the Registering and Taxation Authority. The documents submitted at the time of registration of the vehicle need to be personally checked and verified by the Regional Transport Officer. After checking and verifying the documents, engine number/chassis number, the RTO authority issued a certificate certifying that the particulars in the application are true and that the vehicle complies with the requirements of the Motor Vehicles Act, 1988.

6.10 The owner of a vehicle is required to produce their vehicle physically for registration before the Registering Authority for inspection and to verify the particulars contained in the application. Before issuing orders for registration and taxation of the vehicle, the Regional Transport officer inspects the vehicle in person. Considering the functions and powers conferred on the Regional Transport Officer, the certificate issued by him is a legal document as per the Central Motor Vehicles Rules, 1989, authenticating true details of vehicles being registered.

6.11 Also, the Registering and Taxation Authority is a specialised agency for the inspection and registration of motor vehicles. Therefore, the findings recorded by an RTO authority cannot be simply rejected. In the case of M/s Alliance Ventures, the impugned 2 cranes have been inspected in person by RTO authorities, and the vehicle particulars recorded in their database show actual YOM, which were found to be different from that declared before customs.

6.12 Procedure followed for verification of details from the RTO:

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

6.12.2 The importer provided the Registration Certificate/ Vehicle particulars by letter dt 02.07.2025. During the analysis of the RC copies/vehicle particulars received, it was found that YOM (in 2 cranes) and lifting capacity (in 1 crane) shown before these RTO offices is different from the YOM and lifting capacity declared in the CE report uploaded in the Bills of Entry at the time of import.

6.12.3 Further, investigation indicated that the importer has wilfully mis declared the YOM and lifting capacity of these cranes with the target of decreasing the assessable value of these cranes and consequentially paying the less amount of duty. The nature of import duty on these goods is in the form of ad-valorem type, which indicates that the lesser the declared assessable value of these cranes lesser will be the applicable duty on these cranes.

6.12.4 From this appears that the sole intention of the importer behind the above mis-declaration is to evade the applicable duty on these cranes and to increase his profit margin. The details of the crane-wise YOM provided by these State RTOs were shown to the respective Chartered Engineer (CE) who had given the first valuation report during the examination of these goods at the time of their import.

6.12.5 This CE inter-alia stated that proper documents such as the original Invoice of the manufacturer of the machine, etc., were not provided by the importer at the time they examined the goods for valuation, and they provided the valuation report on the basis of the specification plate attached to the crane.

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

6.13 Invocation of extended period of limitation

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

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

6.13.3 It is apparent that goods not corresponding in respect of correct value or in any other particular with the entry made under the Act, 1962, are liable to confiscation in terms of Section 111(m), and the consequent penalty is imposable in terms of Section 112, in the case of dutiable goods. Further, in cases where duty has not been levied on account of wilful mis-statement or suppression of facts, apart from the liability of recovery of duty so evaded under the provisions of Section 28 of the Act, the person liable to pay the duty so demanded and determined is also liable for penalty under Section 114A equal to the duty or interest so determined.

6.13.4 As mentioned in the above paragraphs, it appears that the importer had mis-declared the YOM with an intention to evade the customs duty. Importer is deliberately mis-declaring the YOM by wilful misstatement of the YOM and lifting capacity, and suppressing the facts about the actual YOM of these old and used cranes. This wilful misstatement gets corroborated through mention of the YOM and other details in the application submitted for registration of the vehicle. By wilful misstatement of the actual YOM of old and used Cranes in the Bills of Entry importer had suppressed an important piece of information which is one of the important guiding factors in the determination of valuation of the old and used Cranes. Accordingly, by suppressing the details of the actual YOM, the importer had reduced the assessable value of these old and used cranes and evaded the applicable customs duty.

6.13.5 This wilful misstatement and suppression of facts on the part of the importer makes this case fit for the invocation of the extended period of limitation, and accordingly the demand under section 28(4) of the Act has been raised in respect of the Bills of Entry cleared by the importer in the past 5 years. Further, in this case where duty has not been levied on account of wilful mis-statement or suppression of facts, apart from the liability of recovery of duty so

evaded under the provisions of Section 28 of the Act, the person liable to pay the duty so demanded and determined is also liable for penalty under Section 114A equal to the duty or interest so determined.

7. Rejection of declared Assessable Value (transaction value) and Re-determination of assessable value of the 2 Bills of Entry having 2 old and used cranes:

7.1 Scrutiny of evidences on record revealed that the declared transaction values of the old and used cranes which were imported and cleared in the name of M/s Alliance Ventures (details as per "Annexure-II" to the Show Cause Notice) are liable for rejection in terms of the provisions of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (CVR,2007), read with the provisions of section 14(1) of the Act.

It appears that the Importer has intentionally and deliberately mis-declared the YOM to get the maximum benefit of depreciated value for the relevant year and evaded legitimate applicable duty. The Valuation of Second-Hand Machinery and fixation of Scale of depreciation is governed by the CBIC Circular No. 493/124/86-Cus.VI dated 19.11.1987 amended by letter dated 04.01.1988.

7.2 In para 3 of the above-mentioned Circular dated 19.11.1987, it was stated that the depreciation will be calculated on the original value of the machinery under import and that officers of the custom houses would have determine the original value of machinery on the basis of current CIF value of the machinery shown in the certificate of CE. In this regard, it has been reported to the Board that a CE's certificate generally mentions the price of the new machinery and does not mention clearly as to whether this is the current price or it is the price of the new machine in the year of its manufacture. Accordingly, where a certificate mentions the current price of the new machinery only, the customs officers do not have sufficient evidence to deduce the original value of the machinery as it would be in its year of manufacture.

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

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

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

From the plain reading of Rule 4, it is evident that the said Rule provides for the determination of transaction value of the imported goods by comparing the declared value with the contemporaneous imports of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods. The

transaction value of the identical goods which are having the same YOM and having identical specifications and conditions as those of the old and used machine were not readily available for comparison. Further, since the goods are old and used, it is difficult to find data relating to sales of such goods to India, which could be considered as identical goods. Accordingly, the transaction value of these impugned old and used cranes could not be re-determined under Rule-4 of the CVR, 2007.

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

Proceeding further, Rule 5 of the CVR 2007 provides for determination of transaction value of imported goods by comparing declared transaction value of similar goods imported by other importer(s) at or around the same time and goods which can be considered as similar goods are specified in Rule 2(f) of the CVR, 2007. The transaction value of similar goods which are having the same YOM and having similar specification and conditions as old and used machines were not readily available for comparison. Further since the goods are old and used it is difficult to find data relating to sales of such goods to India, which could be considered similar goods. Accordingly, transaction value of these impugned old and used cranes could not be re-determined under the Rule 5 of the CVR, 2007.

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

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

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

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

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

For application of Rule 8, ibid, the cost of materials and fabrication or processing involved in the manufacturing of the imported goods are required. This too is not available in the instant case. The imported goods were generally manufactured in China and therefore, the authentic data in respect of the value of raw materials used in manufacture of the said goods imported from China are not available. Therefore, the valuation of the impugned goods could not be determined because

the no authentic details or authentic data regarding the cost or value of the material used and fabrication costs plus the amount for profit and general expenses incurred while manufacturing of these cranes were readily available. Accordingly, the value could not be determined under Rule-8 of the CVR, 2007.

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

As per the CBIC Circular No. 07/2020-Customs dated 05-02-2020 where the old and used capital goods cannot be appraised under Rule-3 and where it is not possible to apply Rules 4 to 8 of the CVR, 2007 the proper officer may be required to apply the residual method under Rule 9 for determining the valuation of the old and used goods. Accordingly, the valuation of these impugned goods was re-determined under Rule-9 of the CVR, 2007, on the basis of the details viz. YOM, capacity, Make, Model, etc. mentioned in the RCs, received from the importer/respective RTOs as the case may be, and second valuation report provided by the empaneled CE based on the YOM mentioned in these RCs.

Keeping the above instruction as guidelines, re-assessed CIF have been obtained from the revised values submitted by CEs, which were sent to SIIB(I) vide their letters dated 08.07.2025. The CE's valuation report was based on their study, as well as their analysis of the international trade in such goods, and also based on their past experience.

While arriving at the present market value of the 'old & used crane' imported and cleared by M/s Alliance Ventures, they had also taken into consideration the accrued depreciation and its present prospective serviceability as compared to the new cranes of similar make/model, reconditioning/ repairing/replacement/ function/ utility and reusability. He has also considered the current market supply and demand of cranes, as well as its reasonable economic residual life span. Accordingly, they have arrived at the estimated present market values of these 02 cranes.

8. Duty Calculation for 2 Bills of Entry: The duty leviable in respect of the above imports is computed on the basis of the values re-determined as above. The details of the duty leviable, duty paid at the time of clearances of the impugned cranes and the duty short paid on them are shown in Annexure-II to the show cause notice. A total amount of Rs. 45,99,087/- (Rupees Forty-Five lakhs Ninety-Nine thousand Eighty-Seven only) was leviable as duty on the aforesaid used cranes, computed on the basis of the values determined as above. As against this amount, an amount of Rs. 37,61,400/- (Rupees Thirty-Seven lakhs Sixty-One thousand Four hundred only) was paid as customs duty at the time of clearance of the aforesaid cranes. Therefore, the remaining amount of differential duty of Rs. 8,37,687/- (Rupees Eight lakhs Thirty-Seven thousand Six hundred Eighty-Seven only) was short paid in respect of these 02 cranes.

Table-5

Total No. of Bills of Entry	**Declared Assessable Value (In Rs.)**	**Total Duty Paid (in Rs.)**	**Total Re-determined Assessable Value (in Rs.)**	**Duty Payable (in Rs.)**	**Total Differential Duty (in Rs.)**
2	1,35,61,926/-	37,61,400/-	1,65,82,250/-	45,99,087/-	8,37,687/-

9. Role of the Importer: Shri Jasmeet Singh Sethi, Partner of M/s Alliance Ventures, has devised a modus-operandi for evading the Customs Duty on the import of the Old and Used second hand cranes being imported at the Mumbai Sea Port. These Modus operandi works by mis-declaring the actual YOM of the machine before the Customs Department by showing the new machine as relatively old by mis-declaring the YOM compared to the original/actual YOM and consequently declared the lower assessable value of the machine before the customs and accordingly paid the less amount of customs duty instead of the applicable higher amount of duty paid.

9.1 Shri Jasmeet Singh Sethi, the partner of the importer tried to divert the investigation by shifting the liability by making false claims that their Sales invoices clearly mentioned that the machines were sold without RTO registration; and that their customers mis-declared the YOM to RTO.

9.2 To succeed in his target of mis-declaration of the YOM of the cranes, it appears that the importer colluded with the foreign supplier and convinced the foreign supplier not to declare the actual YOM on the Invoice and Bill of Lading.

9.3 The YOM declared before Customs in 02 old & used imported cranes were not matching with those declared in RTOs, hence it is highly unlikely that the modus operandi worked without the aid and benefit of the importer. The importer had conscious knowledge about the act of misdeclaration, which was done in a calculated manner. The fact of misdeclarations in YOM and lifting capacity of the imported cranes is also corroborated with the vehicle particulars obtained from different State RTOs.

10. Relevant provisions of the Customs Act, 1962:

Section 14 - Valuation of the goods.
(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf;

Section 28. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded.
.....
(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,
(a) collusion; or
(b) any wilful mis-statement; or
(c) suppression of facts,

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

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

……

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

Section 111. Confiscation of improperly imported goods, etc.

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

……

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

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

……

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

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

……

shall be liable, -

……

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

……

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

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

……

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

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

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

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

……

Rule-9. Residual method

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

Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer

has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

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

11. Show Cause Notice

Show Cause Notice No. 34/2025-26/Gr-V dated 01.09.2025 [hereinafter referred to as SCN] was issued calling upon the following noticees:

i. **M/s Alliance Ventures (IEC: ABXFA0419M)** to show cause as to why the declared value of Rs. 1,35,61,926/- should not be rejected in terms of Rule 12 of the CVR, 2007, and re-determined as Rs. 1,65,82,250/- in terms of Rule 9 of the CVR, 2007, read with section 14 of the Act, with consequential duty liability; the goods imported vide Bills of Entry, as per Annexure-I to the Show Cause Notice, should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962; differential duty of Rs. 8,37,687/- should not be demanded and recovered as per the provisions of Section 28(4) of the Customs Act, 1962 along with applicable interest under section 28AA of the Act; penalty should not be imposed upon them under Section 112(a) and/or 114 A and 114AA of the Customs Act, 1962.

ii. **Shri Jasmeet Singh Sethi**, the partner of M/s Alliance Ventures, to show cause as to why penalty should not be imposed upon him under Section 112(a) and/or 114A and 114AA of the Customs Act, 1962.

12. Reply to Show Cause Notice by M/s. Alliance Ventures

The importer, M/s Alliance Ventures submitted written reply dated 03.11.2025 to the SCN, key points of which are as below:

A. At the outset, it is submitted that the Impugned SCN is ex-facie untenable, arbitrary, capricious and unsustainable in law and as such is liable to be set aside.

B. The Impugned SCN has been issued with pre-determined mind set and is liable to be set aside:

i. Reliance is placed on the judgments of the Hon'ble Supreme Court in Oryx Fisheries Pvt. Ltd. v. Union of India and the Hon'ble Jharkhand High Court in TRF Ltd. v. Commissioner of C.Ex & Service Tax, Jamshedpur, which hold that an SCN reflecting prejudgment and lack of open-mindedness is invalid in law.

ii. In the present case, the Noticee submits that the Department has solely relied on RTO declarations to determine the Year of Manufacture (YOM) of the cranes without conducting any independent investigation. The Department has also ignored seller invoices and import declarations submitted by the Noticee, despite these being relevant for determining YOM. Further, registration of cranes with the RTO was the responsibility of buyers and not the

Noticee, as clearly stated in the sale terms, which the Department has overlooked.

iii. Additionally, the SCN relies selectively on RTO records while ignoring the conditions of sale that clarify non-involvement of the Noticee in RTO registration. The Department has also failed to attempt valuation of identical or similar goods under Rules 4 and 5 of the CVR, 2007, indicating a lack of fair and objective assessment.

C. Valuation done by the Noticee was correct the impugned demand is without legal basis, and the duty demand raised in the SCN is liable to be dropped:

i. The Noticee submits that the Department has failed to correctly apply the valuation provisions under Section 14 of the Customs Act, 1962 and Rule 3(1) of the Customs Valuation Rules, 2007 (CVR). It is emphasized that when the statutory conditions are satisfied, the declared transaction value must be accepted as the assessable value.

ii. In the present case, the invoice value represents the true transaction value since the buyer and seller are unrelated, the transactions were conducted at arm's length, the price was the sole consideration, and the amount was actually paid to the foreign suppliers. Therefore, the value declared in the Bills of Entry could not have been rejected without valid grounds. Reliance is placed on several judicial pronouncements, including Eicher Tractors Ltd., Jai Bharat Steel Industry, Bureau Veritas, and Bansal Industries, which reaffirm the primacy of transaction value.

iii. Further reliance is placed on Public Notice No. 14/2019-20, which clarifies that for second-hand machinery, where the requirements of CVR, 2007 are met, the price paid or payable shall form the basis of assessable value.

iv. The Noticee also submits that the Department has not produced any documentary evidence such as parallel invoices, private records, or contemporaneous import data to substantiate the allegation of undervaluation. On the contrary, the Department itself has admitted in the impugned SCN that no identical or similar goods with comparable specifications and year of manufacture were available for valuation under Rules 4 and 5 of the CVR, 2007. Hence, the allegation of undervaluation based on misdeclaration of YOM and lifting capacity is unsupported by evidence.

v. It is further argued that the burden of proving undervaluation lies on the Department, and in the absence of evidence of higher contemporaneous import prices, the declared invoice value must be accepted. Reliance is placed on the decision of the Hon'ble Supreme Court in South India Television (P) Ltd.

vi. The Noticee also submits that the valuation adopted is in strict conformity with CBIC Circular No. 493/124/1986-Cus.VI dated 19.11.1987 and Public Notice No. 4/2019-20 dated 27.02.2020. As per these guidelines, depreciation norms for second-hand machinery were duly applied and the imports were supported by Chartered Engineer certificates issued after physical inspection. The declared value matched the depreciated value as prescribed under the Circular.

vii. It is further submitted that the goods were assessed by Customs on the basis of such Chartered Engineer certificates and relevant documents at the time of clearance. Since CBIC circulars are binding on the Department, as held by the Hon'ble Supreme Court in Dhiren Chemical Industries, the Department could not have deviated from the prescribed valuation methodology.

D. Value wrongly re-determined on the basis of YOM mentioned in the RTO is not maintainable and the impugned SCN is liable to be quashed:

i. The Noticee submits that the Department has wrongly re-determined the value of the imported cranes by invoking Rule 9 (Residual Method) of the Customs Valuation Rules, 2007. It is argued that Rule 9 can be applied only when valuation cannot be determined under Rules 3 to 8 and even then, the value must be based on reasonable means consistent with the principles of the Rules and, to the maximum extent possible, on previously determined customs values of identical or similar goods.

ii. As per the interpretative notes to Rule 9, the re-determined value should broadly align with the value of identical or similar goods imported at or about the same time. However, in the present case, the Department has merely relied on the Year of Manufacture (YOM) mentioned in the RTO Registration Certificates and a subsequent Chartered Engineer valuation based on such YOM, without considering the submissions of the Noticee, without verifying supplier prices, and without examining the value of identical or similar goods.

iii. The Noticee further submits that the Department made no effort to ascertain contemporaneous values of identical or similar cranes, nor did it attempt to obtain price information from the overseas suppliers, despite the Noticee having furnished supplier details during the investigation. Hence, the re-determined value lacks a proper factual and legal foundation and is not sustainable.

iv. Reliance is placed on the decision of the Hon'ble CESTAT in Eastern Exports & Imports Co. v. CCE & C, wherein it was held that transaction value cannot be rejected in the absence of cogent and reliable evidence, and that the burden of proving undervaluation lies on the Department. The Tribunal also emphasized that valuation cannot be based on unreliable or unverified data and that meaningful investigation at the manufacturer's end is necessary.

v. It is further submitted that the Department has wrongly re-determined the value solely on the basis of the YOM mentioned in the RTO records, disregarding the Chartered Engineer certificates submitted at the time of import. It is emphasized that imported goods must be valued as per Customs law in the condition in which they are imported, and not on the basis of subsequent RTO records. The transaction value supported by valid CE certificates was correctly declared and accepted at the time of clearance.

vi. Additionally, it is argued that YOM cannot be the sole determinant of value for second-hand machinery. As confirmed by the Chartered Engineer, valuation depends on multiple factors such as technical depreciation, physical condition, maintenance status, usage, and accessories. Therefore, re-determination of value based only on YOM

is arbitrary, legally untenable, and contrary to established valuation principles.

E. Cross examination of M/s. A. G. Associates, Chartered Engineer

i. The Noticee submits that the Department has wrongly relied upon the statements and revised valuation provided by M/s A.G. Associates to re-determine the value of the imported cranes. It is contended that the revised valuation was prepared solely on the basis of the Year of Manufacture (YOM) mentioned in the RTO Registration Certificates, without any independent verification or supporting evidence, and therefore cannot form a valid basis for re-determination of value.

ii. It is further argued that the statements of the Chartered Engineer are unreliable as they contradict the contemporaneous documentary evidence on record, including supplier invoices, original Chartered Engineer certificates, and manufacturer declarations submitted at the time of import and during investigation. The revised valuation is also inconsistent with the Chartered Engineer's own admission that YOM is not the sole criterion for valuation of second-hand cranes, thereby rendering the revised opinion internally contradictory.

iii. The Noticee also submits that the Department has not produced any corroborative documentary evidence or supplier-side confirmation to support the revised valuation. In the absence of such corroboration, reliance on statements alone is legally unsustainable.

iv. In this regard, reliance is placed on the decision of the Hon'ble CESTAT in Karim Jaria and Brown Lifters Pvt. Ltd. v. Commissioner of Customs, wherein it was held that statements by themselves constitute a weak foundation for alleging undervaluation and must be supported by independent corroborative evidence. The Tribunal further held that where statements are relied upon, the right of cross-examination under Section 138B of the Customs Act, 1962 becomes essential.

v. Further reliance is placed on the judgment of the Hon'ble Supreme Court in Andaman Timbers Industries v. Commissioner of Central Excise, wherein it was held that denial of cross-examination of witnesses, whose statements form the basis of the demand, amounts to a serious violation of principles of natural justice and vitiates the adjudication proceedings.

F. Demand of Duty cannot be confirmed in absence of corroborative evidence:

i. The Noticee submits that the allegation of undervaluation in the impugned SCN is based solely on the RTO Registration Certificates, the statements of M/s A.G. Associates, and the revised valuation letters dated 08.07.2025. It is contended that the Department has failed to produce any independent or corroborative documentary evidence to substantiate these allegations.

ii. It is further argued that statements recorded during investigation, by themselves, do not constitute sufficient legal basis to confirm a demand of duty. In the absence of supporting evidence such as contemporaneous import data, parallel invoices, supplier

confirmations, or any other reliable material, the allegation of undervaluation cannot be sustained.

iii. Reliance is placed on the judgment of the Hon'ble Supreme Court in Century Metal Recycling Pvt. Ltd. v. Union of India, wherein it was held that transaction value declared in the Bill of Entry cannot be rejected unless there is credible material such as contemporaneous import data or other corroborative evidence justifying enhancement of the declared value.

iv. Further reliance is placed on the decision of the Hon'ble Tribunal in New Copier Syndicate v. Commissioner of Customs, affirmed by the Hon'ble Supreme Court, wherein it was held that in the absence of corroborative evidence, the declared transaction value of second-hand machinery cannot be rejected and enhanced.

v. Additional judicial precedents including U.I. International, Gloversons, VadilaL Dairy International Ltd., and Trichy Distillers & Chemicals Ltd. are also relied upon to reiterate the settled legal position that undervaluation allegations must be supported by cogent and reliable evidence.

G. For misdeclaration under RTO by the buyer, separate punishment is provided under Motor Vehicles Act, 1988.

i. The Noticee submits that all declarations made at the time of import were correct and duly supported by supplier invoices, Chartered Engineer certificates, and other relevant documents. It is further contended that an examination of the domestic sale invoices clearly establishes that the responsibility for obtaining registration of cranes from RTO rested solely with the buyers and not with the Noticee.

ii. It is argued that if any misdeclaration regarding the Year of Manufacture (YOM) has occurred in the Registration Certificates, the same was made by the buyers at the time of applying for registration in order to portray a longer operational life of the cranes. Under the Motor Vehicles Act, 1988, the person seeking registration is statutorily required to furnish true and correct particulars to the registering authority.

iii. The Noticee further submits that any such incorrect declaration before the RTO would amount to a contravention of Section 44 of the Motor Vehicles Act, 1988 and would attract penal consequences only under Section 177 of the said Act. Therefore, any alleged wrongdoing relating to RTO registration falls within the jurisdiction of the Motor Vehicles authorities and not Customs.

iv. On this basis, it is contended that the Customs Department has wrongly sought to rely on alleged misdeclarations made before the RTO to initiate proceedings under Section 28(4) of the Customs Act, 1962. Accordingly, the present proceedings are stated to be without legal basis and liable to be set aside.

H. No subsequent demand of duty can be made in respect of such cranes on which duty was loaded at the time of first check by the Appraising Officer:

i. The Noticee submits that, in respect of imports of second-hand cranes, it consistently requested first check examination to ensure proper and lawful clearance of goods. In the present case, the

declared value of the impugned goods was examined by Customs officers and, wherever considered necessary, the value was enhanced by the Department itself. Therefore, the Noticee had no reason to believe that any material facts were suppressed or misdeclared.

ii. It is further submitted that every consignment was cleared only after physical inspection by Customs authorities, and the Bills of Entry were duly assessed, signed by the Appraiser, and countersigned by the Deputy Commissioner. In cases where the declared value was found acceptable, it was recorded accordingly, and where it was found low, the value was loaded and finalized by the Department. In view of this detailed scrutiny and assessment process, no mala fide intent can be attributed to the Noticee.

iii. With regard to 28 Bills of Entry that were finally assessed after enhancement of value, the Noticee submits that the demand raised in the SCN is legally unsustainable. Once a Bill of Entry is finally assessed and an order of "out of charge" is passed, the assessment order attains finality unless it is specifically challenged and set aside through appropriate legal proceedings. Since assessment orders are appealable orders under law, any subsequent demand without first challenging the validity or correctness of such assessments is impermissible.

iv. The Noticee further contends that the impugned SCN merely seeks to invoke Section 28(4) of the Customs Act, 1962 for recovery of duty without disputing the correctness of the original assessment orders in respect of the 28 Bills of Entry. It is argued that a demand cannot be sustained on the basis of a mere change of opinion or reappreciation of the same facts, particularly by invoking the extended period of limitation, unless the original assessment orders are first set aside.

v. Since the Department has not questioned or challenged the validity of the finalized assessment orders in the present case, the alleged duty demand in respect of the 28 Bills of Entry is not maintainable. Reliance is placed on judicial precedents such as Lord Shiva Overseas and Vitesse Import Pvt. Ltd. to support this position.

I. Documentary evidence shall prevail over oral evidence:

i. The Noticee submits that at the time of import of the second-hand cranes, valid Chartered Engineer certificates, manufacturer certificates and other supporting documents certifying the valuation of the imported goods were duly furnished and have not been challenged by the Department till date. Therefore, reliance on statements recorded during investigation is misplaced, particularly when such statements are contrary to the contemporaneous documentary evidence on record. It is a settled principle of law that in case of any conflict between documentary and oral evidence, documentary evidence prevails. Reliance in this regard is placed on the decisions in Sanskar Textile Lifting Ltd., Philip Fernandes, R.P. Industries and Laxer Chemicals.

ii. In view of the above, it is submitted that the documentary evidence on record clearly establishes that the value declared by the Noticee is the correct assessable value and that no duty has been evaded.

Accordingly, the impugned Show Cause Notice is bad in law on this ground as well and is liable to be set aside.

J. Without prejudice to the above, YOM mentioned in the RC cannot be the basis for re-determination of value of imported goods:

i. Without prejudice to the earlier submissions, the Noticee contends that the Year of Manufacture (YOM) is not a determining factor for levy of RTO tax under the relevant State regulations. With specific reference to the State of Gujarat, it is submitted that the road tax calculation, as per the official transport department portal, is based on parameters such as vehicle category, ownership status, import status, tax period and weight of the machine, and not on YOM. In the case of second-hand cranes, which fall under the category of "construction and special type vehicles," the tax liability is computed on the basis of these inputs. The Noticee has demonstrated that for a crane imported under a specific Bill of Entry, the RTO tax amount declared in the Registration Certificate exactly matches the amount generated on the official portal when the relevant parameters are entered, thereby establishing that YOM does not influence the tax computation.

ii. In view of the above, it is submitted that YOM has no bearing on RTO tax determination and, therefore, cannot be used as a basis to allege misdeclaration at the time of import. The Noticee reiterates that the YOM declared in the Bills of Entry was correct and that any discrepancy, if at all, has arisen at the stage of registration by the buyers. Accordingly, it is submitted that there is no misdeclaration in the Bills of Entry and the impugned Show Cause Notice is liable to be set aside.

K. Extended period is not invocable in the present case:

i. The Noticee submits that the Department has wrongly invoked the extended period of limitation under Section 28(4) of the Customs Act on the allegation of willful undervaluation with intent to evade duty. As per the statutory provision, the extended period can be invoked only in cases involving collusion, willful misstatement or suppression of facts. In the present case, none of these mandatory conditions have been satisfied and, therefore, invocation of the extended period is legally unsustainable.

ii. It is a settled position of law that "suppression of facts" requires a deliberate and positive act with intent to evade duty. The Hon'ble Supreme Court in Chemphar Drugs and Padmini Products has held that mere omission or inaction does not amount to suppression and that there must be cogent evidence of deliberate concealment. Similarly, in Aban Lloyd Chiles Offshore Ltd., the Hon'ble Supreme Court held that intent to evade duty is a sine qua non for invoking the extended limitation period. In the present case, the Department has failed to establish any such intent on the part of the Noticee.

iii. The Noticee further submits that it acted under a bona fide belief that the declared value was correct, which is supported by Chartered Engineer certificates submitted at the time of import. The Department has not produced any corroborative evidence to prove mala fide intent and has relied primarily on statements recorded during investigation. It is a settled principle, as held in Uniworth

Textiles Ltd., that the burden to prove mala fide intent lies on the Revenue, and such burden has not been discharged in the present case.

iv. It is also submitted that the entire case of the Department is based on the YOM declared in the Registration Certificates issued by the RTO. Even assuming, without admitting, that RTO data can be relied upon, the Noticee cannot be held responsible for any incorrect declaration made by the buyers at the time of registration. All 40 cranes were registered by the buyers and the Noticee had no knowledge or control over such declarations. Moreover, no misdeclaration has been alleged in cases where cranes were registered by the Noticee itself, which clearly negates any allegation of deliberate suppression.

v. Without prejudice, it is submitted that in respect of the 28 Bills of Entry where value was enhanced by the Department at the time of import and duty was paid accordingly, all material facts were within the knowledge of the Customs authorities. It is a settled legal position, as held in Nizam Sugar Factory and other decisions, that when facts are already within the knowledge of the Department, the extended period of limitation cannot be invoked.

vi. In view of the above, it is submitted that there is no evidence of collusion, willful misstatement or suppression of facts with intent to evade duty. Accordingly, the extended period of limitation has been wrongly invoked and the demand raised in the impugned Show Cause Notice is liable to be dropped.

L. Goods are not liable to confiscation under Section 111(m) of the Customs Act:

i. The Noticee has correctly declared the value of the imported secondhand cranes based on supplier invoices and Chartered Engineer certificates. The Department has not produced any corroborative documentary evidence, such as contemporaneous import data or parallel invoices, to substantiate its claim of undervaluation. Therefore, the proposal for confiscation in the Show Cause Notice under Section 111(m) is legally unsustainable.

ii. The Hon'ble CESTAT and various judicial decisions, including Galaxy Funworld Pvt. Ltd., Ganesh International, Nishiland Park Ltd., and Tapan Trading Co., have consistently held that confiscation cannot be ordered in the absence of evidence establishing undervaluation or misdeclaration. Furthermore, it is settled law that confiscation cannot be directed if the goods are no longer physically available, as affirmed in Munjal Showa Ltd. and Raja Impex (P) Ltd.

iii. In view of the above, it is submitted that the imported cranes cannot be confiscated under Section 111(m) of the Customs Act, and the allegation of undervaluation or misdeclaration lacks any legal basis.

M. Penalty is not imposable under Section 112(a) of the Customs Act, 1962:

i. Section 112(a) of the Act provides for imposition of penalty only where a person commits or abets an act or omission which renders the goods liable to confiscation under Section 111 of the Act. Thus,

confiscability of goods is a mandatory pre-condition for invoking the said provision.

ii. In the present case, the imported goods are not liable to confiscation under Section 111, nor has the Noticee committed any act or omission which would attract confiscation. Therefore, the essential requirement for imposition of penalty under Section 112(a) is not satisfied, and the proposal to impose such penalty is legally untenable.

iii. Without prejudice to the above, it is submitted that imposition of penalty under Section 112 also requires establishment of mens rea. The issue involved relates to valuation of used cranes, and the Noticee had a bona fide belief that the value declared was correct. There is no material on record to suggest any deliberate misstatement or intention to evade duty.

iv. Further, reliance is placed on various judicial pronouncements, including decisions of the Hon'ble Supreme Court and Tribunal, which have consistently held that penalty cannot be sustained in the absence of confiscability of goods and proof of mens rea. Accordingly, the proposed penalty under Section 112(a) of the Act is liable to be set aside.

N. Penalty is not imposable under Section 114A of the Customs Act, 1962:

i. The Noticee submits that the penalty imposed under Section 114A of the Act is unsustainable, as the provision applies only where duty short-levy or non-levy arises due to fraud, collusion, wilful misstatement or suppression of facts with intent to evade duty. Section 114A operates in conjunction with Section 28, and its invocation requires satisfaction of the conditions prescribed for the extended period of limitation under the proviso to Section 28(4).

ii. In the present case, there is no fraud, suppression or wilful misstatement on the part of the Noticee. Consequently, the demand itself under Section 28 is not sustainable and, therefore, the essential pre-conditions for imposition of penalty under Section 114A are not fulfilled. In absence of these statutory ingredients, the penalty proposed under Section 114A is liable to be dropped.

iii. Reliance is placed on the judgments of the Hon'ble Supreme Court, including CC v. M.M.K. Jewellers and UOI v. Rajasthan Spinning & Weaving Mills Ltd., which categorically hold that penalty under Section 114A (and pari materia provisions) can be imposed only when extended period is validly invoked and there is a clear finding of deliberate deception or suppression with intent to evade duty. Where such elements are absent, neither extended limitation nor penalty can be sustained.

iv. Further, it is well settled that when the duty demand itself is not maintainable, the question of imposition of penalty does not arise. Judicial precedents have consistently held that penalty is consequential to a valid demand and cannot survive independently. Hence, on this ground also, the penalty under Section 114A is not sustainable.

v. Without prejudice to the above, it is submitted that Sections 114A and 112 are mutually exclusive, and as per the proviso to Section 114A, penalty under both provisions cannot be imposed

simultaneously. Accordingly, for all the above reasons, the penalty imposed under Section 114A of the Act is liable to be set aside.

O. Penalty cannot be imposed under Section 114AA of the Act:

i. The Noticee submits that the proposal to impose penalty under Section 114AA of the Act is erroneous, as no false or incorrect declaration, statement or document was made, signed, used or caused to be used by the Noticee in respect of the import of cranes. There was also no material on record to show that the Noticee had reason to believe that any document or declaration was false or incorrect in any material particular.

ii. A plain reading of Section 114AA shows that two essential ingredients are required for imposition of penalty, namely, (i) knowledge or intention, and (ii) use of false or incorrect material particulars. In the present case, the Noticee had no knowledge that the declared valuation was incorrect and the Department has failed to produce any evidence to establish mens rea or conscious wrongdoing. Further, no false or incorrect material has been brought on record.

iii. In the absence of these mandatory statutory ingredients, the proposed penalty under Section 114AA is legally unsustainable and liable to be set aside. The burden to establish knowledge and falsity has not been discharged by the Department.

iv. Without prejudice, it is further submitted that penalty under Section 114AA can be imposed only on a natural person and not on an artificial entity such as a company. Reliance is placed on judicial precedents, including Apple Sponge and Power Ltd. and T.R. Venkatadari cases, wherein it has been held that such penal provisions apply only to natural persons. Hence, on this ground also, the penalty under Section 114AA is not sustainable.

P. Interest is not payable:

i. Since the duty demand itself is not sustainable in law, the consequential levy of interest does not arise. Interest being ancillary to the principal demand cannot survive independently in the absence of a valid duty liability.

ii. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in Prathibha Processors v. Union of India [1996 (88) E.L.T. 12 (S.C.)], wherein it was held that when the principal amount of duty is not payable, there is no basis or occasion to levy interest.

iii. Accordingly, the proposal to impose interest in the captioned Show Cause Notice is not sustainable and is liable to be set aside.

13. Reply to Show Cause Notice by Shri Jasmeet Singh Sethi

Shri Jasmeet Singh Sethi submitted written reply dated 03.11.2025 to the SCN, key points of which are as below:

A. The Noticee places reliance on the detailed submissions already made by M/s. Alliance Ventures in its reply to the captioned show cause notice. The contents of aforesaid reply filed by the firm should be treated as part of this reply.

B. Penalty is not imposable under Section 112 (a) and/or 111(b) of the Customs Act:

i. In the present case, the Noticee correctly declared the value of the cranes based on supplier invoices and the Chartered Engineer's certificate, and the Department has failed to produce any supporting evidence such as parallel invoices or contemporaneous import data to prove undervaluation. Hence, the proposal for confiscation under Section 111(m) is unsustainable, and consequently, the basis for penalty under Section 112 also fails.

ii. It is further submitted that mens rea is a mandatory requirement of penalty under Section 112. The issue involved relates to valuation of used cranes, and the Noticee acted under a bona fide belief that the declared value was correct. There is no evidence to establish any deliberate mis-declaration or intention to evade duty.

iii. Reliance is placed on the judgment of the Hon'ble Supreme Court in Akbar Badruddin Jiwani v/s CC, which held that the burden lies on the Department to prove dishonest or contumacious conduct, and that penalty should not be imposed where the importer has acted in good faith. The Court further observed that penalty is not warranted in cases of technical or venial breaches arising from bona fide belief.

iv. Further support is drawn from Tribunal decisions such as Suresh Rajaram Newagi vs Commissioner of Cus 2008 and Meirs Pharma (India) Pvt. Ltd. v/s Commissioner, which reiterate that in the absence of mens rea or knowledge, penalty under Section 112 is not sustainable.

C. Penalty is not imposable under Section 114A of the Customs Act, 1962:

i. It is submitted that penalty under Section 114A of the Act can be imposed only when the essential ingredients such as fraud, suppression, wilful misstatement or intent to evade duty, as contemplated under the proviso to Section 28(4), are established. In the present case, there is no evidence of any such conduct on the part of the Noticee.

ii. Further, on a plain reading of Section 114AA, it is clear that penalty can be imposed only when the declaration or document is false in material particulars and is made knowingly or intentionally. The Noticee had no knowledge of any alleged mis-declaration and the Department has failed to produce any evidence to establish mens rea or deliberate intent.

iii. It is reiterated that there was no fraud, suppression or wilful misstatement by the Noticee, and consequently, the demand under Section 28 itself is unsustainable. As the preconditions for invoking Section 114A are not satisfied, the penalty proposed under this section is liable to be dropped.

iv. Without prejudice, it is further submitted that Sections 114A and 112 are mutually exclusive. In terms of the proviso to Section 114A, once penalty is imposed under this section, penalty under Section 112 cannot be simultaneously imposed and vice versa.

D. Penalty cannot be imposed under Section 114AA of the Act:

i. The Noticee submits that the penalty imposed under Section 114AA of the Act is erroneous and unsustainable, as no false or incorrect declaration, statement or document was filed or used by the Noticee.

The Noticee neither made nor caused to be made, signed or used any document which they knew or had reason to believe to be false or incorrect in any material particular in relation to the import of the cranes.

14. Record of Personal Hearing

Personal Hearing (PH) opportunity was granted to the noticees on 01.12.2025, in which, the authorised representatives Shri Chirag Shetty, Advocate and Ms. Ayushi Agrawal, Advocate appeared and presented their arguments on behalf of the noticees. On request, another hearing was granted on 12.01.2026, in which, Shri Chirag Shetty appeared for the noticees, and stated that replies dated 03.11.2025 to the SCN have been filed containing their detailed submissions. He argued that the Department's case of undervaluation is entirely based on a subsequent revaluation report which contradicts the certificate issued at the time of import under the Board Circular. He submitted that while the Bills of Entry declared the Year of Manufacture (YOM) as 2019, the Department relied on RTO records showing YOM as 2021 and 2020 after the cranes were sold and registered by buyers, and that such conflicting opinions make cross-examination of the Chartered Engineer essential. He requested that a reasoned order be passed in case of rejection of cross-examination request.

On merits, he further contended that valuation was done in a premeditated manner and contrary to Section 14 of the Customs Act, as there was no allegation of relationship or influence on price, no verification with the supplier, and no contemporaneous import data or evidence of identical or similar goods to support undervaluation. He further argued that any incorrect particulars furnished to the RTO fall outside the jurisdiction of Customs and cannot be attributed to the importer. He also submitted that since the value had already been enhanced at the time of import, issuance of a Show Cause Notice under Section 28 is not sustainable and that the extended period of limitation is not invocable in the absence of fraud, wilful misstatement, or suppression.

A final opportunity of personal hearing was granted on 16.02.2026, in which, Ms. Ayushi Agrawal appeared for the noticees, and reiterated the submissions made during the earlier hearings. She further submitted that the goods were subjected to First Check examination at the time of import, the value was enhanced by the Department itself during assessment, and duty was paid on such enhanced value, thereby negating any allegation of short-payment or clearance without examination. She pointed out that the Show Cause Notice itself acknowledges the absence of contemporaneous import data of identical or similar goods and that no parallel invoices have been relied upon. She contended that the revised Chartered Engineer Certificate dated 08.07.2025 is based solely on the Year of Manufacture reflected in the RTO records, despite the Chartered Engineer having stated that YOM alone is not determinative of valuation and that factors such as technology, depreciation, refurbishment, and additions are also relevant. She further submitted that no verification was undertaken with the overseas supplier regarding the YOM and that the burden of proving undervaluation, which lies with the department, has not been discharged. She also submitted that the sale invoices issued to domestic buyers specifically recorded that RTO registration was not within the scope of the noticee, and therefore any discrepancy in the RTO records would fall outside the domain of the Customs Act.

15. Discussion and Findings

I have gone through the facts of the case, material evidence on record, the Show Cause Notice dated 01.09.2025, oral & written submissions of the noticees. I find that reasonable opportunity of making representation against the Show Cause Notice has been given to the noticees, by way of personal hearings and written submissions. I now proceed to decide upon the issues involved in the case.

15.1 Request for Cross-Examination of Chartered Engineer

15.1.1 Before examining the merits of the case, I consider the request for cross-examination of the Chartered Engineer made during the hearings and in the submissions. The noticee has contended that the allegation of under-valuation is based on the statement of Chartered Engineer and therefore his cross-examination is essential. In this respect, the noticee has taken support from judicial pronouncements in Andaman Timber Industries v. Commissioner [2015 (324) E.L.T. 641 (S.C.)] and Karim Jaria and Crown Lifters Pvt Ltd v. Commissioner [2022 (4) TMI 948 – CESTAT MUMBAI]. The noticee submits that the statements and revised value given by the Chartered Engineer cannot be relied upon in absence of any corroborative documentary evidence.

15.1.2 On careful examination of the records, I find that the case laws cited by the noticee are not squarely applicable in the instant case. The allegation in the present case is not based solely on the valuation opinion of the Chartered Engineer. The case is based on independent evidence obtained from statutory authorities, namely Registration Certificates (RCs) issued by State RTOs and the clear mismatch between YOM/capacity declared in the Bills of Entry and those recorded in the RCs. Even without reliance on the CE's statement, the following undisputed facts remain:

(i) the YOM declared to Customs materially differs from the YOM appearing in the RTO documents; and

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

15.1.3 I find that the RTO is a statutory authority under the Motor Vehicles Act, 1988, and the RCs issued after physical inspection constitute independent, statutory documents.

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

15.1.5 I find that the ratio laid down in Andaman Timber Industries v. Commissioner [2015 (324) E.L.T. 641 (S.C.)], as cited by the noticee, is clear to the effect that denial of cross-examination would vitiate the proceedings only in cases where the statement sought to be cross-examined constitutes the sole basis of the demand. I also rely on the judgment of the Hon'ble Madras High Court in Jet Unipex v. Commissioner of Customs, Chennai [2020 (373) E.L.T. 649 (Mad.)], which held that cross-examination is not an absolute right and need

not be allowed if the relevant statements are merely intended for corroboration of independent evidence.

15.1.6 In the present case, all relied-upon documents including RCs, revised CE valuation reports, and statements were supplied to the noticee, and opportunity of written submissions and personal hearings was granted. No prejudice has been demonstrated as to how cross-examination of the CE would dislodge the RTO records.

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

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

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

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

15.3.1 The Show Cause Notice alleges that the importer mis-declared the Year of Manufacture (YOM) and lifting capacity of the imported old and used cranes. In two Bills of Entry filed by M/s Alliance Ventures, the YOM declared before Customs was January-2019 and March-2019, whereas the Registration Certificates issued by the State Transport Authorities reflect January-2021 and March-2020 respectively. In one instance, the declared model number indicating lifting capacity also differed from the RTO records. It is alleged that such mis-declaration led to excess depreciation, undervaluation, and short-payment of duty.

15.3.2 The noticee contends that the declarations made before Customs were correct and that any discrepancy in the RTO records is attributable to the buyers who undertook registration and mis-declared the particulars before the RTO authorities. The noticee has also argued that the Department has solely relied upon RTO records without conducting any independent investigation to determine the Year of Manufacture on the basis of invoices and declarations made before the department. The documentary evidence i.e. Chartered Engineer Certificate provided at the time of import should prevail over oral evidence recorded during investigation. The impugned Show Cause Notice has been issued with a predetermined mind and is therefore liable to be set aside.

15.3.3 I find that the Registration Certificates issued by the respective RTOs are statutory documents prepared after physical inspection and verification of the cranes by competent authorities in terms of the Motor Vehicles Act, 1988. These records are maintained by a statutory authority in the discharge of official functions and, therefore, carry inherent evidentiary value. Accordingly, they constitute reliable evidence for determining mis-declaration in the Bills of Entry, irrespective of who got the cranes registered before the RTO authorities. Further, the contention against reliance on RTO documents, in preference to other declarations, is misplaced, as it was during the course of investigation that the said RTO records were obtained and examined to verify the correctness of the declarations made before Customs. The declarations made before Customs, are the subject of verification, and cannot be treated as proof of their own correctness.

15.3.4 In view of their statutory and evidentiary value, I am inclined to place reliance on the Registration Certificates and Vehicle Particulars issued by the RTO authorities for determining the correct Year of Manufacture and lifting capacity of the imported cranes. The discrepancies establish that the declarations made at the time of import were incorrect.

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

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

15.4.1 The SCN contends that the transaction value declared by the importer is not acceptable as the Year of Manufacture (YOM) and lifting capacity were mis-declared at the time of import. Such mis-declaration rendered the declared value unreliable, justifying its rejection under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Since contemporaneous import data of identical or similar old and used cranes with comparable specifications was not available, the value was re-determined under Rule 9 of the CVR, 2007 on the basis of revised valuation reports prepared by the Chartered Engineer using the correct YOM and lifting capacity as evidenced by RTO records, in terms of Section 14 of the Customs Act, 1962.

15.4.2 The noticee contends that the Bills of Entry were finally assessed at the time of import and that the accepted value cannot be reopened in adjudication. It is argued that the Department ought to have filed an appeal instead of rejecting the declared value subsequently. The noticee further submits that the value has been wrongly determined in the SCN on the basis of YOM mentioned in the RTO and the transaction value ought to have been accepted by the department. In the instant case, the Noticee and supplier are not related, price is the sole consideration for the transaction and was actually paid to the suppliers. Further, there is no evidence of contemporaneous import at higher value as is also accepted by the SCN. Further, as per Public Notice No. 4/2019-20 dated 27.02.2020, declared value is to be examined with respect to the

depreciated value of the goods as per the CBIC Circular, and the same is to be accepted under Rule 3 in absence of any doubt emerging from such comparison.

15.4.3 I find that the proceedings initiated under Section 28 of the Customs Act, 1962 are distinct from appellate proceedings and are specifically meant to recover duties short-paid or not paid on account of suppression of facts or wilful mis-statement. In the present case, the mis-declaration of Year of Manufacture and lifting capacity came to light subsequently on verification with statutory RTO records. Therefore, the acceptance of declared value at the time of import does not bar initiation of proceedings for recovery of duty short-paid due to mis-declaration.

15.4.4 I further find that year of manufacture and lifting capacity are material particulars directly affecting depreciation and valuation of second-hand machinery. Once mis-declaration of such material particulars is established, the declared transaction value loses its reliability and cannot be accepted in terms of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. In terms of Rule 12 of the CVR, 2007, where reasonable doubt exists as to the truth or accuracy of the declared value and the importer fails to satisfactorily dispel such doubt by producing reliable documentary evidence, the declared transaction value is liable to be rejected. Since contemporaneous import data of identical or similar old and used cranes with comparable specifications was not available, the value was re-determined under Rule 9 of the CVR, 2007 on the basis of revised valuation reports prepared by the Chartered Engineer using the correct YOM and lifting capacity as evidenced by RTO records, in terms of Section 14 of the Customs Act, 1962 and the CBIC guidelines governing valuation of second-hand machinery.

15.4.5 I further find that the mere non-availability of contemporaneous imports of identical or similar used cranes of comparable age, condition, and specifications does not, by itself, justify acceptance of the declared transaction value, as contended by the noticee. It only means that the methods prescribed under Rules 4 to 8 of the CVR, 2007 cannot be applied for valuation purposes. Further, the present case is not a mere dispute of valuation of goods. It is a case primarily of mis-declaration of parameters, namely year of manufacture and lifting capacity, which are material factors in determining the original and depreciated value of old and used goods. Therefore, I find that the contentions advanced by the noticee and the case laws relied upon in this respect, are not squarely applicable to the facts of the present case.

15.4.6 In view of the aforesaid discussion, I find that the methodology adopted in the Show Cause Notice for re-determination of assessable value is objective and in conformity with the valuation provisions and Board's instructions. The re-determined assessable value of Rs. 1,65,82,250/- as against the declared assessable value of Rs. 1,35,61,926/- is therefore legally sustainable.

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

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

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

15.5.2 The noticee contends that the value of the second-hand cranes was correctly declared on the basis of supplier invoices and Chartered Engineer certificates, and that the Department has not produced corroborative evidence such as contemporaneous import data or parallel invoices to establish undervaluation. Relying upon decisions in Galaxy Funworld Pvt. Ltd. Versus Commr. Of Cus. (Preventive), Mumbai [2006 (206) E.L.T. 890 (Tri. - Mumbai)], Ganesh International Versus Commissioner Of Customs, Nagpur 2004 [(169) E.L.T. 284 (Tri. - Mumbai)], Nishiland Park Ltd. Versus Commissioner Of C. Ex. & Cus., Mumbai [2004 (168) E.L.T. 389 (Tri. - Mumbai)] and Commissioner Of Cus., Madras Versus Tapan Trading Co. [2001 (128) E.L.T. 456 (Tri. - Chennai)], it is argued that confiscation under Section 111(m) cannot be sustained in cases where mis-declaration is not established. Further, reliance is placed on Munjal Showa Ltd. v. CCE [2008 (227) E.L.T. 330 (Tri.)] and CCU v. Raja Impex (P) Ltd. [2008 (229) E.L.T. 185 (P&H)] to contend that confiscation is not permissible when the goods are no longer physically available. Therefore, the proposal for confiscation under Section 111(m) is legally untenable.

15.5.3 I find that in view of the foregoing discussion, the mis-declaration of YOM and lifting capacity in respect of the two imported old and used cranes stands established. The contention that the proposal for confiscation is unsupported by evidence is not tenable, as the Registration Certificates issued by the respective RTOs constitute reliable and cogent evidence of such mis-declaration. Section 111(m) of the Customs Act, 1962 provides for confiscation where the value or any material particular is mis-declared. The mere fact that the goods were earlier assessed and cleared does not extinguish liability to confiscation when such assessment was based on incorrect declarations. Accordingly, I hold that the impugned goods are liable to confiscation under Section 111(m) of the Customs Act, 1962.

15.5.4 Insofar as the noticee's contention regarding the physical non-availability of the goods is concerned, I place reliance on the judgment of the Hon'ble Madras High Court in M/s Visteon Automotive Systems India Limited [2018 (9) G.S.T.L. 142 (Mad.)], as reaffirmed by the Hon'ble Gujarat High Court in M/s Synergy Fertichem Pvt. Ltd. v. Union of India [2020 (33) G.S.T.L. 513 (Guj.)], wherein the Hon'ble Court observed as under:

> "*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 regularised, whereas,*

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

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

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

15.6.1 The Show Cause Notice contends that the importer has wilfully mis-declared material particulars such as Year of Manufacture and lifting capacity of the imported cranes with intent to avail higher depreciation benefit and thereby undervalue the goods, resulting in short payment of customs duty. It has therefore been proposed to invoke the extended period of limitation under Section 28(4) of the Customs Act, 1962 for recovery of the differential duty along with applicable interest.

15.6.2 The Noticee contends that the invocation of the extended period of limitation under Section 28(4) of the Customs Act is legally unsustainable, as the mandatory conditions of collusion, willful misstatement or suppression of facts with intent to evade duty are not satisfied. Relying on judicial precedents, it is submitted that suppression requires a deliberate and positive act coupled with intent to evade duty, and that the burden to establish such mala fide intent squarely lies on the Revenue, which has not been discharged in the present case. The Noticee asserts that the declared value was based on a bona fide belief supported by Chartered Engineer certificates, and the Department has produced no corroborative evidence beyond investigation statements. It is further submitted that the Department's reliance on YOM mentioned in RTO Registration Certificates is misplaced, as the cranes were registered by the buyers without the Noticee's knowledge or control. Without prejudice, in respect of Bills of Entry where value was enhanced and duty paid at the time of import, all material facts were within the knowledge of Customs, thereby barring invocation of the extended period.

15.6.3 I find that the mis-declaration of YOM and lifting capacity has been established on the basis of statutory RTO records. I find that the Registration Certificates issued by the respective RTOs are statutory documents prepared after physical inspection and verification of the cranes by competent authorities under the Motor Vehicles Act, 1988. Such records are maintained by the

statutory authority in the discharge of official functions and, therefore, carry inherent evidentiary value. Accordingly, the particulars recorded therein constitute reliable evidence of mis-declaration in the Bill of Entry, irrespective of whether the importer or the buyer was involved in the process of registration. The act of declaring incorrect year of manufacture and lifting capacity in the Bills of Entry and the fact that the same came to light only during investigation clearly establishes suppression of material facts. Further, the benefit of said mis-declaration and resulting lower assessable value accrued directly to the importer, demonstrating intent to evade duty. In view of the above, I find that the ingredients required for invocation of the extended period under Section 28(4) of the Customs Act, 1962 are clearly satisfied in the present case.

15.6.4 The noticee has further contended that the demand of duty cannot be confirmed in the absence of corroborative evidence and that reliance placed solely on statements is legally unsustainable, placing reliance on various judicial pronouncements in support of the said contention. I find that the said contention does not merit acceptance. The present case is not founded merely on statements; rather, it is primarily based on statutory records, namely the Registration Certificates issued by the RTO authorities, which are public documents maintained in the ordinary course of official duties. The statements recorded during investigation further support such documentary evidence. Therefore, the judicial precedents relied upon in this respect, are not applicable to the facts of the case.

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

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

15.7.1 The SCN contends that M/s Alliance Ventures deliberately mis-declared material particulars related to year of manufacture and lifting capacity with intent to evade customs duty, thereby rendering the goods liable to confiscation under Section 111(m) of the Customs Act, 1962. The differential duty so determined was not levied or short levied by way of collusion, wilful mis-declaration and suppression of facts. Further, Shri Jasmeet Singh Sethi, as Partner, knowingly and intentionally facilitated false and incorrect declaration, thereby rendering himself liable to penalty. It is alleged that such acts render the noticees liable to penalty under Sections 112(a), 114A and 114AA of the Customs Act, 1962.

15.7.2 The noticee, M/s. Alliance Ventures, contends that the noticee had bona-fide belief that the value adopted by them is correct and there was no manipulation or suppression of records before Customs, negating any intent to evade duty. Therefore, the goods are not liable for confiscation under Section 111 of the Customs Act, 1962, and therefore penalty is not imposable under Section 112(a) of the Customs Act, 1962. Further, there is no evidence of fraud or misstatement and the demand under Section 28 itself is not sustainable. Accordingly, no penalty is imposable under Section 114A of the Customs Act, 1962. Lastly, the noticee has not filed or submitted any declaration, statement

or document which was false or incorrect. The two ingredients of Section 114AA, i.e. knowledge and false material, have not been satisfied. Additionally, penalty under Section 114AA can be imposed only on natural person, and not on an artificial person like a company. Accordingly, no penalty is imposable under Section 114AA of the Customs Act, 1962.

15.7.3 I find that in view of the foregoing discussion, the mis-declaration of YOM and lifting capacity in respect of the two imported old and used cranes stands established, resulting in short-payment of duty. Further, the duty demand has already been confirmed against M/s Alliance Ventures under Section 28(4) of the Customs Act, 1962 on account of suppression and intent to evade duty. Accordingly, the noticee, M/s Alliance Ventures, is liable for penalty under Section 114A of the Customs Act, 1962, Further, in view of the proviso to Section 114A, separate penalty under Section 112(a) on the importer is not warranted.

15.7.4 Further, in view of proven mis-declaration in respect of the year of manufacture and lifting capacity of the imported cranes, it is amply clear that the importer resorted to use of false declarations in the impugned Bills of Entry. I also find that the benefit of the aforesaid mis-declaration, i.e., higher depreciation and lower assessable value accrued directly to the importer, thereby demonstrating both knowledge and intent. Accordingly, the importer is liable to penalty under Section 114AA of the Customs Act, 1962.

15.7.5 I have considered the noticee's contention that penalty under Section 114AA of the Customs Act, 1962 is imposable only on natural persons and not on artificial persons or companies. I find that Section 114AA employs the term "person" without restricting it to natural persons. The case laws relied upon by the noticee pertain to Rule 26 of the Central Excise Rules or other pari materia provisions and do not lay down a binding ratio in the context of Section 114AA. Accordingly, the contention of the noticee is not acceptable, and I hold that penalty under Section 114AA is imposable in the present case.

15.7.6 In view of the above, I hold that M/s Alliance Ventures is liable to penalty under Sections 114A and 114AA of the Customs Act, 1962.

15.7.7 Shri Jasmeet Singh Sethi, Partner, M/s. Alliance Ventures has reiterated the contentions made by the importer that there is no mis-declaration of value in the instant case, that goods are not liable to confiscation under Section 111(m) of the Customs Act, 1962, no mens rea, fraud or misstatement have been established, demand under Section 28 itself is not sustainable, no declaration, statement or document which was false or incorrect has been filed by him, and therefore, no penalty is imposable under Sections 112(a), 114A and 114AA of the Customs Act, 1962.

15.7.8 I find that mis-declaration of the Year of Manufacture and lifting capacity, along with suppression of material facts, stands established, and the duty demand has been confirmed against M/s Alliance Ventures under Section 28(4) of the Customs Act, 1962. Shri Jasmeet Singh Sethi has admitted that he supervised and took decisions regarding import-related work of the firm. In such circumstances, the mis-declaration could not have occurred without his knowledge and involvement. By facilitating submission of incorrect declarations, he abetted the improper importation of goods, rendering them liable to

confiscation under Section 111(m). Accordingly, he is liable to penalty under Section 112(a) of the Customs Act, 1962.

15.7.9 I find that Section 114A envisages a duty-linked penalty against the person who is liable to pay such duty, and therefore the same is not warranted to be imposed simultaneously on a partnership firm and its partner, in the facts and circumstances of the present case. Accordingly, the conduct of Shri Jasmeet Singh Sethi attracts liability only under Section 112(a) of the Customs Act, 1962, for acts which rendered the goods liable to confiscation, as already discussed and established above.

15.7.10 I find that Shri Jasmeet Singh Sethi has admitted to have supervised and made decisions with regard to import-related work in their firm. Therefore, he must bear responsibility for the false and incorrect declaration in respect of year of manufacture and lifting capacity made in the impugned Bills of Entry. I find that the false declaration was not inadvertent. It was made with full knowledge and intent, as it conferred an immediate benefit by lowering the duty liability at the time of import, without compromising post-import saleability, since the cranes could be subsequently registered before the RTO on the basis of their correct year of manufacture, thereby enabling the claim of longer residual life. Therefore, I hold that the said partner, by knowingly causing the use of false and incorrect material in the transaction of business relating to Customs, is liable to penalty under Section 114AA of the Customs Act, 1962.

15.7.11 Accordingly, I hold that Shri Jasmeet Singh Sethi is liable to penalty under Section 112(a) and Section 114AA of the Customs Act, 1962.

ORDER

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

i. I reject the declared assessable value of Rs. 1,35,61,926/- of old and used cranes imported by 02 Bills of Entry listed in Annexure-II to the Show Cause Notice, under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determine the same as Rs. 1,65,82,250/- in terms of the Rule 9 of the said Rules read with section 14 of the Customs Act, 1962.

ii. I determine and confirm the demand of differential customs duty amounting to **Rs. 8,37,687/- (Rupees Eight Lakhs, Thirty Seven Thousand, Six Hundred Eighty Seven only)** against M/s. Alliance Ventures, under Section 28(8) of the Customs Act, 1962, along with applicable interest under Section 28AA of the Customs Act, 1962.

iii. I hold the cranes imported by 02 Bills of Entry listed in Annexure-II to the Show Cause Notice, having redetermined assessable value of Rs. 1,65,82,250/-, liable to confiscation under Section 111(m) of the Customs Act, 1962. However, as the goods are not physically available for confiscation, I impose redemption fine of **Rs. 16,00,000/- (Rupees Sixteen Lakhs only)** on M/s. Alliance Ventures, in lieu of confiscation, under Section 125(1) of the Customs Act, 1962.

iv. I impose a penalty equal to the differential duty **Rs. 8,37,687/- (Rupees Eight Lakhs, Thirty Seven Thousand, Six Hundred Eighty Seven only)** and applicable interest thereupon under Section 28AA, on M/s. Alliance Ventures under Section 114A of the Customs Act, 1962.

v. I impose a penalty of **Rs. 15,00,000/- (Rupees Fifteen Lakhs only)** on M/s. Alliance Ventures under Section 114AA of the Customs Act, 1962

vi. I impose a penalty of **Rs. 80,000/- (Rupees Eighty Thousand only)** on Shri Jasmeet Singh Sethi, Partner of M/s. Alliance Ventures, under Section 112(a) of the Customs Act, 1962.

vii. I impose a penalty of **Rs. 15,00,000/- (Rupees Fifteen Lakhs only)** on Shri Jasmeet Singh Sethi, Partner of M/s. Alliance Ventures, under Section 114AA of the Customs Act, 1962.

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

25-02-26

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

To,

1. M/s Alliance Ventures (IEC No. ABXFA0419M) having registered office at 6th Floor, 601, Central Plaza, 166, CST Road, Kalina, Mumbai, Maharashtra, 400098
   Email id: imports@allianceventures.co.in
2. Shri Jasmeet Singh Sethi, the partner of M/s Alliance Ventures, resident of 24, Chowdhary Villa, 17th Road, Santacruz West, Mumbai, Near Gurudwara Dhan Potho har, Mumbai, Maharashtra – 400054
   Email id: imports@allianceventures.co.in.

Copy to:

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