सीमा शुल्क आयुक्त का कार्यालय, (आयात I) , न्यू कस्टम हाउस, मुंबई- 400001
OFFICE OF THE COMMISSIONER OF CUSTOMS (IMPORT-I)
2nd FLOOR NEW CUSTOM HOUSE, BALLARD ESTATE,
MUMBAI – 400 001
email id: adjn-adc-jc-imp1nch@gov.in

F. No. CUS/APR/SCN/1107/2025-GR-5 **Date of Order: 26.02.2026**

Date of Issue: 26.02.2026

DIN- 20260277000000061186D

Order No. 25/ADC/PVD/ADJ/2025-26

Order Passed by: Phadke Vikram Dnyandeo, Additional Commissioner of Customs, Import-I, New Custom House, Mumbai Customs Zone-I

1. **Name of Parties/Noticees: M/s Hira Movers (IEC – AAIHA3373G)** Hira Tower, 12/463 Shahu Corner, Kolhapur-416115
2. **Shri Arun Pandurang Khot, Karta of M/s Hira Movers (IEC – AAIHA3373G)** Hira Tower, 12/463 Shahu Corner, Kolhapur-416115

****

मूल आदेश

1. यह प्रति उस व्यक्ति के उपयोग के लिए नि: शुल्क दी जाती है जिसे यह जारी की गई है।

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

2. इस आदेश के खिलाफ अपील इस आदेश के संचार की तारीख से साठ दिनों के भीतर और सीमा शुल्क अधिनियम, 1962 की धारा 128(1) के तहत सीमा शुल्क आयुक्त (अपील) न्यू कस्टम हाउस, बलार्ड एस्टेट, मुंबई-400001 के समक्ष होगी। मांग किए गए शुल्क के 7.5% का भुगतान जहां शुल्क या शुल्क और जुर्माना विवाद में है या जुर्माना जहां अकेले दंड विवाद में है।

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

3. अपील सीमा शुल्क (अपील) नियम 1982 में प्रदर्शित फॉर्म सी.ए.–I में दो प्रति में की जानी चाहिए। अपील रुपये 1.50 /- के न्यायालय फीस स्टांप तथा इस आदेश या आदेश की प्रति के साथ संलग्न होनी चाहिए। यदि आदेश की प्रति संलग्न की जाती है तो इसमें भी न्यायालय फीस अधिनियम 1970 की अनुसूची 1 में प्रदर्शित रुपये 1.50/- की न्यायालय फीस स्टांप भी होना चाहिए।

The appeal should be in duplicate and should be filed in Form CA – 1 appeared in Custom (Appeals) Rule, 1982. The appeal should bear a court fee stamp of Rs. 1.50 paise paid only and should be accompanied by this order or a copy thereof. If a copy of this order is enclosed, it should also bear a court fee stamp of Rs. 1.50 paise only as prescribed under Schedule 1, item 6 of the Court Fees Act, 1970.

4. इस निर्णय या आदेश के खिलाफ अपील करने वाला कोई भी व्यक्ति, अपील लंबित होने पर, सीमा शुल्क अधिनियम, 1962 की धारा 129 ई के तहत उपरोक्त पैरा 2 के अनुसार राशि जमा करेगा, अपील के साथ इस तरह के भुगतान का प्रमाण प्रस्तुत करेगा, जिसमें विफल रहने पर अपील की जा सकती है। सीमा शुल्क अधिनियम, 1962 की धारा 128(1) के प्रावधानों का अनुपालन न करने के कारण खारिज कर दिया गया।

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

5. यदि इस आदेश के खिलाफ अपील दायर की जाती है, तो अपील संख्या और तारीख की सूचना निर्णय प्राधिकारी का कार्यालय, अपर/संयुक्त सीमा शुल्क आयुक्त का कार्यालय, आयात-I, प्रथम तल, न्यू कस्टम हाउस, बैलार्ड एस्टेट, फोर्ट, मुंबई - 400 001 को दी जानी चाहिए।

If an appeal is filed against this order, the appeal number and date should be intimated to the Office of the Adjudicating Authority at Office of Addl. Commissioner of Customs, Import-I, 3rd Floor, New Customs House, Ballard Estate, Fort, Mumbai - 400 001.

Brief facts of the Case

It is stated in the Show Cause Notice (SCN) No.25/2025-26/Gr.V dated 07.08.2025 that M/s. Hira Movers (IEC- AAIHA3373G), a Hindu Undivided family firm, Karta name Shri Arun Pandurang Khot having registered office at HIRA TOWER, 12/463 SHAHU CORNER, KOLHAPUR 416115 had filed 01 Bill of Entry Number 5128881 dated 20.08.2021 through their Customs Broker M/s. Akshar 8 Logistics, CHA No. (11/2571), License No: AGVPD6490QCH001, having registered office at C-2, Room No. 17, 2nd floor, Yamuna Building, NB Desai Colony, Asalfa Village, NSS Road, Mumbai - 400084. Old and used cranes are classifiable under Custom Tariff Head 8426 4100 as per the Customs Tariff Act, 1975 and applicable duty structure for assessment is Basic Customs Duty @7.5%, Cess@10% and IGST@18%.

Intelligence:

2.1 An intelligence was received by Special Intelligence and Investigation Branch (Import-I) wherein the importers were mis-declaring the new machine as relatively old, by mis-declaring the actual year of manufacturing of the machine before the Customs Department and consequentially declaring the lower assessable value of the machine before the customs. By declaring a lower assessable value for the old and used cranes, the importers were paying less Customs Duty than the amount actually applicable. These cases revealed substantial duty evasion by the importers.

2.2 Accordingly, the data of cranes imported by M/s Hira Movers (the importer) at Mumbai port (INBOM1) was analyzed, and the importer was summoned by this office to submit documents related to the imports made by them in the last 5 years. Upon analysis, of the past imports of M/s Hira Movers (IEC-AAIHA3373G), it was found that one crane was misdeclared in terms of the year of manufacture. The importer had imported an 'OLD USED LIEBHERR LTM 1250/1 ALL TERRAIN CRANE SR NO070576 CHASSIS NO. W096760003EL05576 WITH ACCESSORIES' vide Bill of Entry Number 5128881 dated 20-08-2021. The importer had declared this crane to customs as a very old model from 2003, which helped them get it cleared at a very low value. However, based on a copy of the RTO Registration Certificate of this crane, it was observed that YOM of the crane is 2019. The details of the misdeclared crane are listed below:

Table1

1	**Chassis Number**	W096760003EL05576
2	**YOM as per Bill of Entry**	2003
3	**YOM as per RC**	Dec-19
4	**Capacity of crane as per Bill of Entry (in Tons)**	250
5	**Capacity of crane as per RC (in Tons)**	250
6	**Vehicle Registration Number**	MH09GA4307
7	**Assessable value in Rs.**	3,07,64,800
8	**Duty Paid in Rs.**	85,32,617

2.3. Further, this office issued letters vide F. No. CUS/SIIB/INT/821/2023-SIIB-(I) dated 14.06.2024 and 20.02.2025, addressed to the Commissioner of Transport, Mumbai – 400001, and to the Registering Authority/ARTO RTO office,

Kolhapur 416003, referring to the chassis number and registration number. The letters called for the Registration Certificates and Vehicle Particulars of the crane registered with RTO. The Regional Transport Office, Kolhapur RTO Office, Mumbai 416003, vide their mail dated 25.02.2024, enclosing letter F. No. O/NO1009/NT SECTION/KOP dated 25.02.2024, submitted vehicle details of the above crane.

2.4 On scrutiny of the import documents and above said vehicle particulars, it was noticed that a specific old and used crane imported vide Bill of Entry No. 5128881 dated 20.08.2021, Chassis No. W096760003EL05576, was registered at the Regional Transport Office, Kolhapur 416003 under Vehicle Registration No. **MH09GA4307**; the Year of Manufacturing declared in the Bill of Entry presented before the customs department was 2003, whereas the same declared before the RTO, Kolhapur was 12/2019.

2.5 The relevant portion of the vehicle particulars provided by Regional Transport Office, Kolhapur, shows relevant details as:

Application No.: MH22032525702002

Registration No.: MH09GA4307

Owner Name: Hira Movers

Month/Year of Manuf.: 12/2019.

Table – 3

Valuation of new Goods	**Valuation of the goods in August, 2021 as per actual YOM: December, 2019 (eligible quarters for depreciation: Total 7 Quarters)**
100%	100- [16% (for first year 4 quarters) + 9% (for second year 3 quarters)] = 100 – 25% = 75%

Table – 4

Description of the goods	**Valuation of New goods in YOM**	**Valuation of the goods in August, 2021 as per actual YOM: December, 2019 Total 7 quarters**	**Valuation of the goods done by CE in August, 2021 as per declared YOM: 2003**
Old and Used XCMG Crane value CIF (in AED)	**26,00,000**	2600000– 25 % (APPROX) (depreciation) = 20,00,000	14,72,000
Value in INR (1 AED = 20.90 INR)	5,43,40,000	4,18,00,000	3,07,64,800

In view of Table – 4 above, differential duty evaded by the importer due to mis-declaration of the YOM is as per Table – 5 below:

Table – 5

Value (in INR)			Duty (in INR) (27.735%)		
Valuation as per Circular	**Declared Value / Value as per CE report**	**Difference**	**Duty Payable**	**Duty Paid**	**Difference**
4,18,00,000	3,07,64,800	1,10,35,200	1,15,93,230	85,32,617	30,60,613

* During the course of scrutiny of the Bill of Entry Number 5128881 dated 20.08.2021, the customs duty evasion was found to be Rs. 30.60 Lakh.

3. Statements recorded under Section 108 of the Customs Act, 1962:

3.1 Statements of Shri Arun Pandurang Khot**,** Karta of M/s. Hira Movers, Kolhapur was recorded on 10.01.2024 under Section 108 of the Act in which he inter-alia stated that:

i. He is the Proprietor of firm M/s. Hira Movers, Kolhapur.
ii. He had imported an Liebherr LTM 1250/1, Chassis No. W096760003EL05576 crane vide Bill of Entry No. 5128881 dated 20.08.2021.
iii. On being asked about misdeclaration of YOM of Liebherr LTM1250/1 crane as 2019 in RTO and declaring it as 2003 model to customs, he said that the crane was of 2003 model only and he mis declared it to RTO authorities to register it in newer date so that it can be used for longer time.

3.2 Statements of Shri Arun Pandurang Khot**,** Karta of M/s. Hira Movers, Kolhapur was recorded on 04.03.2025 under Section 108 of the Act in which he inter-alia stated that-:

i. He is the Proprietor of the firm M/s Hira Movers (IEC – AAIHA3373G). They import old and used cranes and sell it further. They also provide cranes on rental basis. This firm has bank account in HDFC Bank, Ichalkaranji Branch, (A/c No. 07368140000017), 12/215 Bungalow Road, Opp Rani Bagh, Ichalkaranji, Kolhapur, Maharashtra Pin 416115.
ii. He supervises and makes decisions with regards to import related work in this firm.
iii. He had gone through his statement dated 10.01.2024, and he agree with what has been recorded in it. He had signed on that statement as a token of having seen and approving fact that it was his true and voluntary statement.
iv. He had seen the Bill of Entry Number 5128881 dated 20.08.2021 and Chartered Engineer Certificate and Registration Certificate bearing registration number MH09GA4307 and put his dated signature on them as a token of having seen them. He agrees that Year of manufacture declared before Customs in CE certificate for the crane imported vide Bill of Entry Number 5128881 dated 20.08.2021 is different from the Year of Manufacture mentioned in Registration certificate for the said crane. He had misdeclared the year of manufacture to RTO authority by submitting manipulated documents. He had not misdeclared year of manufacture to the Customs.
v. He had seen the affidavit and vehicle particulars and put his dated signature on them as a token of having seen them. He agrees that Year of

manufacture declared before Customs in CE certificate for the crane imported vide Bill of Entry Number 5128881 dated 20.08.2021 is different from the year of Manufacture mentioned in Registration certificate and affidavit submitted by him for the said crane. He had misdeclared the year of manufacture to RTO authority by submitting manipulated documents.

vi. He had misdeclared year of Manufacture of cranes as per the demand of the customers. Customers prefer to buy the crane which is less than 05 years old in age.

vii. He agrees that he had done the manipulation of Year of Manufacture (YOM) of the crane imported vide Bill of Entry Number 5128881 dated 20.08.2021. He had submitted the manipulated documents in RTO for registering the crane at a newer year of manufacturing.

viii. RTO agent was not aware about the manipulation. RTO agent completed the procedure of registration on the basis of documents submitted by him.

ix. Customs broker submitted documents given by him and there is no manipulation and misdeclaration in documents submitted to Customs.

x. He had not misdeclared year of manufacture to Customs. He had mailed the certificate which is provided by Liebherr, as per the Liebherr certificate depicting Chassis No. W096760003EL05576 model LTM1250/1 the year of manufacture is 2003.

From the above statements of the importer, it appears that he willfully misdeclared the year of manufacture of the old and used crane imported via Bill of Entry Number 5128881 dated 20.08.2021, with the intent to evade applicable customs duty by falsely presenting a new crane as a relatively older one. The primary objective of mis-declaring the YOM was to reduce the assessable value of the crane by claiming maximum depreciation, thereby lowering the duty, which is applicable on an ad valorem basis.

4. Submission of the Manufacturer's Certificate by the importer for verification of YOM:

4.1 During the course of investigation, the importer had submitted a manufacturer's certificate vide email for justify the YOM declared by them before Customs. The importer had submitted copy of Manufacturer's Certificates from Liebherr with regards to crane manufactured by Liebherr.

The efforts were made by this office, to verify the certificate, by sending email to one Mr. Subhajit Chandra, Divisional head of Liebherr in India, the person who had provided the certificates, via sending <subhajit.chandra@liebherrcom>. Mr. Subhajit Chandra via email dated 12.08.2024 confirmed the authenticity of certificates provided by M/s Hira movers.

However, the letter/certificate was provided by the Divisional head of Liebherr India, with regards to cranes manufactured by Liebherr companies based in GERMANY, with specific remarks that the data was based on their records. Since, the certificate/letter was without substantial evidence/records from the manufacturer company based in Germany, they could not be construed to defy the records/inspection done by the officers of RTO.

5. Statement of Chartered Engineers recorded under Section 108 of the Act:-

5.1. Statement of Shri Rajendra S. Tambi, empaneled Chartered Engineer and valuer was recorded on 23.07.2024 under Section 108 of the Act wherein he among other things inter-alia stated as under**:**

i. He has been working as a CE and Valuer for about 22 years. He has been empanelled by Mumbai Customs since 2015.

ii. He has done his B.E. (Mechanical) from Government College of Engineering, Amaravati & Post Graduate Diploma in Material Management from Indian Institute of Material Management, Bangalore. He is a member of Institute of Engineers (India).

iii. He is on the panel of Mumbai Customs and when an Old and used machinery is imported, the departmental officer/the concerned Customs Broker contact him for inspection of the said machinery. After physical inspection of the machine, he submitted his report.

iv. On being asked the inspection process adopted by him, he stated that during inspection he verify the physical condition of the machinery presented before him along with its usage, residual life, accessories etc. He also checks the identity of the goods with the help of documents provided by the importer/Custom broker.

v. With regard to inspection of documents he stated that he checks the copy of Bill of Entry, Invoice, Packing List, Bill of Lading and catalogue of the subject machinery.

vi. With respect to method of valuation he stated that on the basis of inspection and his findings, he does market search and internet search for similar kinds of machines or cranes. After that he compares the data available with him as legacy data. He also looked for data available on internet depending upon make, model, capacity and year of manufacturing. Depending on that data, he does the valuation. Because, original sales invoice of YOM is not produced by the importer many times.

vii. **On being asked about the importance of YOM and Model in case of import of old and used Cranes and its impact on valuation he stated that year of manufacture affects the value of the machinery because the older the machinery lesser is the value. For calculation of depreciation in value, the 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.**

viii. On specific query regarding any tool to verify the genuineness of YOM, if there is tempering in specification plate or documents provided by the importer, he stated that except physical verification there are no such tools available with us.

ix. On being asked in how many consignments of M/s. Hira Movers, he has made inspections during the last five years, he replied that he has done approximately 3 consignments of M/s. Hira Movers. They are importers of old and used cranes.

x. On a specific query regarding CE certificate No. CE075 dated 14.09.2021 issued by him in which the YOM is mentioned as 2003 whereas in corresponding RC particulars issued by Regional Transport Office, Kolhapur, Mumbai it is totally different and mentioned as 12/2019, he categorically stated that he perused the CE Certificate No.CE075 dated 14.09.2021 and RC copy of the vehicle No.MH09GA4307. The CE certificate No.CE075 dated 14.09.2021 belongs to the Bill of Entry Number

5128881 dated 20.08.2021. He had issued CE certificate on the basis of documents and machinery produced before him at the time of inspection. However, on perusal of the documents he opined that the specification plate affixed on the body of the crane and produced for examination might be tampered in the term of YOM and model number, because without tempering it is not possible. In such cases the importer is entitled for 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 documents.

6. Summary of the investigation:

6.1. From the investigation, it appears that the importer has mis-declared the description of goods as they did not declare the true and correct 'Year of Manufacturing' 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 is **Rs.4,18,00,000 (Rupees Four crore Eighteen lakh only).** The goods imported were mis-declared with respect to description and Value, hence Invoice presented at the time of import do not reflect the correct credentials and value of the goods for collection of customs duty. It appears that the declared value and respective invoices are liable for rejection and re-determination of value can be done as per revised value provided by the empanelled Chartered Engineers.

6.2. It is apparent that the Importer has intentionally and deliberately mis-declared the year of manufacturing to get undue benefit of depreciated value for the relevant year and evade the legitimate applicable duty. This is established from the copy of Registration Particulars of the imported crane, which indicate that the crane is relatively newer than what was declared in import documents.

6.3 Shri Arun Pandurang Khot had tried to divert the investigation by saying that he did not mis-declare the YOM of crane to Customs. In his statement dated 10.01.2024 & 04.03.2025 recorded under Section 108 of the Act, on being asked about the mis-match in the YOM declared in the bill of entry before customs and that of state RTO, he said that he had mis-declared YOM in RTO at the time of registration of cranes, but in customs he did not mis-declare YOM of second-hand cranes.

6.4. From the investigation it is clear that he had conscious knowledge about the act of misdeclaration which was done by him in a calculated manner. The findings also indicate that the importer is the ultimate beneficiary in this case, as he declared an older crane before the customs authority to claim maximum depreciation and pay lower duty, while simultaneously declaring the same crane as newer before the RTO authorities to qualify for a longer residual life. The misdeclaration of the year of manufacture (YOM) of the imported crane is further corroborated by vehicle particulars obtained from State RTO.

6.5. CE certificate on the basis of records produced by importer as guidance in valuation

All imports of second hand machinery/ old and used cranes should be ordinarily accompanied by an inspection report issued by an overseas Chartered Engineer 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 Chartered Engineers 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 Hira Movers, empanelled Chartered Engineer has tendered its report on the basis of documents provided to them by the importer and physical inspection of goods**. In their report, it is categorically mentioned that original invoice relating to the subject machine was not provided by the importer.** During investigation, it is found that the importer is knowingly mis-declared year of manufacturing of crane. Further, vehicle particular furnished from Registration Certificate issued by State RTO reflect the true and correct year of manufacturing declared by the importer himself and certified by the Regional Transport Officers.

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

6.6.1 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 YOM of the machinery and the estimated sale price of the machinery when it was new (in its year of manufacture). For this purpose, the CE inspect the old machinery, checks the specification plates fixed on the chassis and documents submitted by the importer and accordingly mentions the YOM 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 internet,
3. Documents/evidence related to 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 the 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/capacity of the crane in import documents. In the present case, neither at the time of clearance nor during investigation, has the importer supported their declarations of YOM/capacity by the original manufacturer's invoice of the crane. In absence of the original invoice (manufacturer's Invoice) of the crane, the CE cannot verify the YOM correctly and his report becomes erroneous and loses its validation

6.6.2 On verification from the RTO records, mis-declaration of age has been detected in 1 past crane consignment. This indicates that the importer mis-declared the YOM of the machine before the customs, consequently resulting in the lesser payment of Custom duty by declaring lesser assessable value of this crane. Thus, it appears that the initial/first valuation reports at the time of import given by CE in Bill of Entry Number 5128881 dated 20.08.2021 being based on false declarations by the importer and manipulated specification plate was not reflecting the correct transaction value under section 14 of the Act. Regional Transport Authority (RTO) is a specialized agency and legal authority for inspection and registration of motor vehicles under the Motor Vehicles Act, 1988. The imported mis-declared crane was inspected by RTO authorities and subsequently the RC was issued. Hence, after getting the correct YOM of the cranes from the RTO certificates (RCs), there was a need for rectification in the CE's report.

6.6.3 CE, Shri Rajendra S. Tambi in his statement dated 23.07.2024 acknowledged the fact that the in view of manipulation done by the importer, the valuation of this imported crane under investigation may be ascertained again keeping in mind the applicable scale of depreciation in terms of the Actual YOM as shown in RTO documents.

6.6.4 CE, Shri Rajendra S. Tambi, was informed about the mis-declaration of the Year of Manufacture (YOM) in respect crane imported vide Bill of Entry Number 5128881 dated 20.08.2021 for which the first CE report/valuation was provided,

vide email dated 31.01.2025. The CE on the basis of the import documents and the correct YOM as per RC, re-evaluated the value of the imported crane and submitted the revised value. The Copy of the RC was also shown to the CE, who signed it as a token of having seen the same. The second revised report of the CE is based on the correct YOM 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 consignment imported vide Bill of Entry Number 5128881 dated 20.08.2021 based on the revised /second CE report appears to be legal and proper.

6.7. 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 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.

6.7.1 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 needs 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 Motor Vehicles Act, 1988. The owner of a vehicle is required to produce his 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 inspect the vehicle in person. Considering the functions and powers conferred on Regional Transport officer, the certificate issued by him is a legal document authenticating true details of vehicles being registered.

6.7.2 Also, the Registering and Taxation Authority is a specialized agency for inspection and registration of motor vehicles. Therefore, the findings recorded by the RTO Authority cannot be simply rejected. In the case of M/s. Hira Movers the crane was inspected in person by RTO Authorities and vehicle particulars recorded in their database shows actual YOM which was found to be different than that declared before customs.

6.8. Procedure followed for verification of details from the RTO:

6.8.1 Bill of Entry filed by the importer was analyzed to obtain the chassis number of the crane. The importer also submitted the Registration Certificate issued by the State RTO. Based on the registration number, a letter was sent to the concerned RTO office, which then provided the details of the crane or vehicle registered with them.

6.8.2. Concerned RTO office provided the vehicle particular of the crane registered in its office through email. During the analysis of the vehicle particulars received from the state RTO office it was found that YOM of the crane imported vide Bill of Entry Number 5128881 dated 20.08.2021 shown before these RTO office is different from the YOM declared in the CE report uploaded in the Bill of Entry at the time of import.

6.8.3 Further, investigation indicated that importer wilfully mis-declared the year of manufacturing of the crane with the target of decreasing the assessable value of the crane 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 lesser the declared assessable value of the crane lesser will be the applicable duty on the crane.

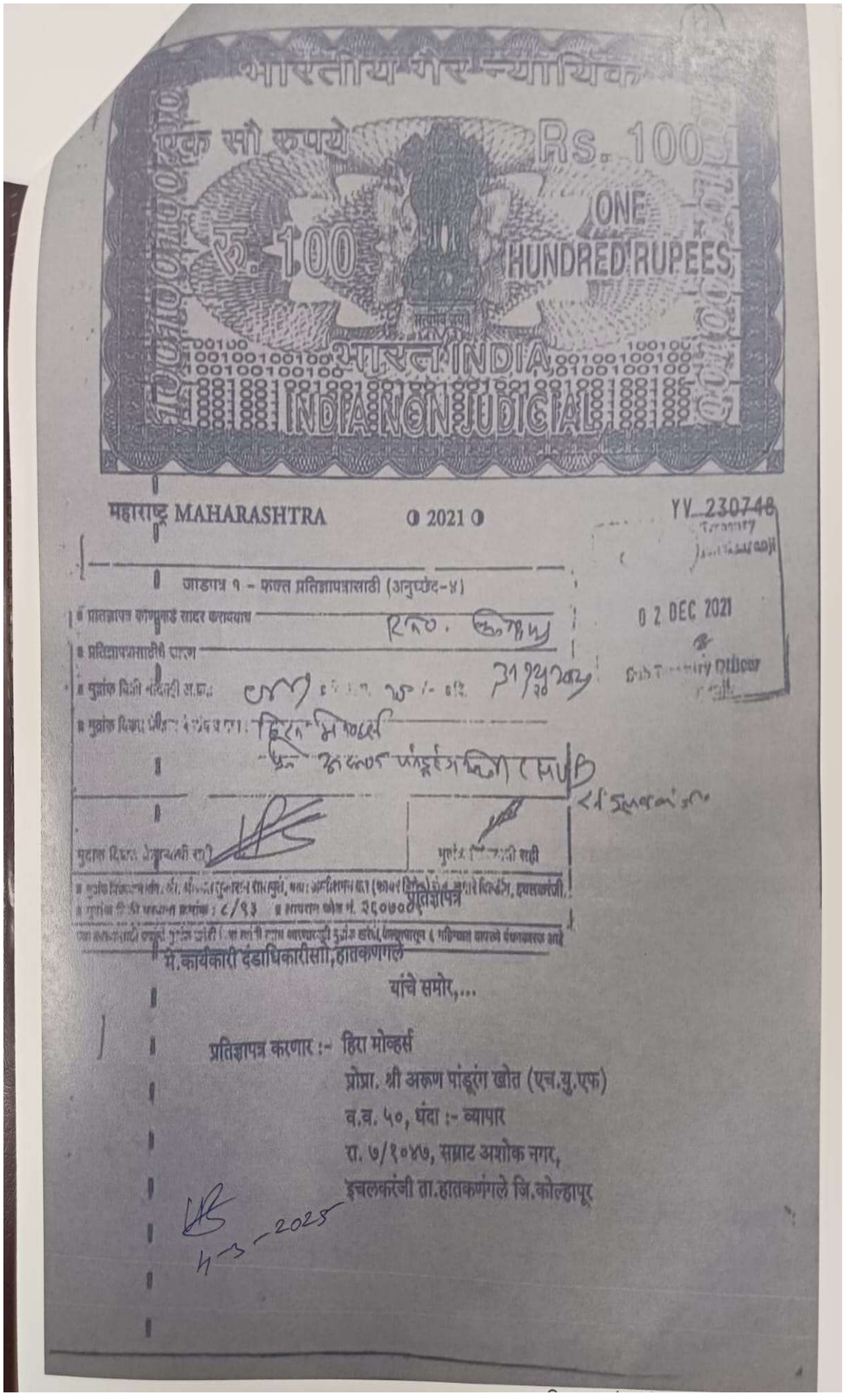
6.8.4 From this appears that sole intention of the importer behind the above mis-declaration is to evade the applicable duty on the crane and to increase his profit margin. The detail of the crane year of manufacturing provided by the State RTO was shown to the Concern Chartered Engineer (CE) who has given the valuation report at the examination of the goods at the time of their import.

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

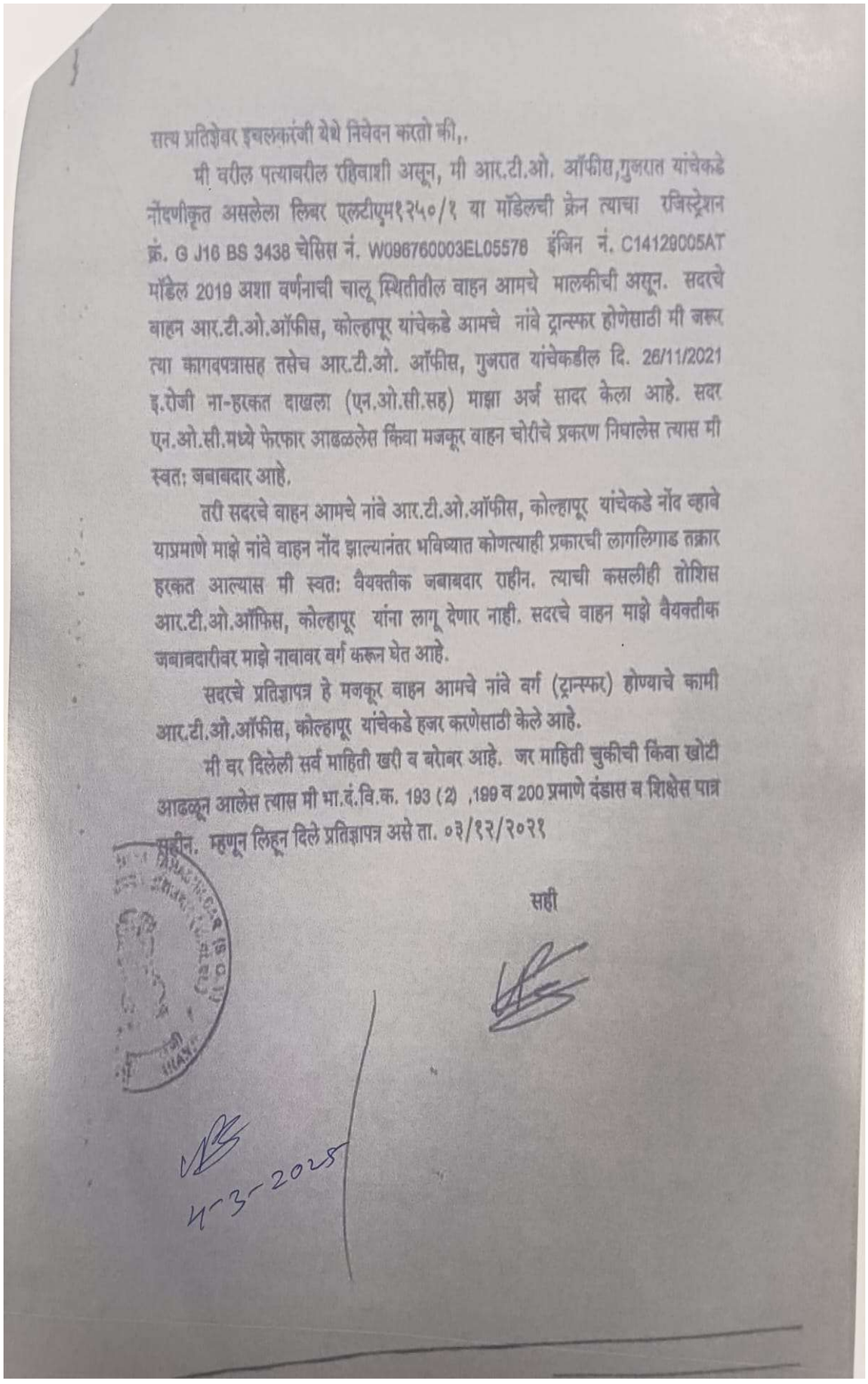
6.8.6 Based on the newer (Actual) year of manufacturing, the Chartered Engineers (CE) revised his earlier valuation and provided his re-valuation which is higher than the value declared by the importer at the time of clearance of the goods from the Mumbai Customs. A substantial increase in the value of the old and used crane resulted in the demand of the substantial amount of differential duty from the importer.

6.8.7 To point out the modus operandi of mis-declaration of YOM in customs, the images of the affidavit submitted by importer before the RTO, Kolhapur for registration of the old and used imported crane has been attached below. As per the chassis number W096760003EL05576 in the affidavit this crane has been imported vide the Bill of Entry Number 5128881 dated 20.08.2021. On perusal of the CE Certificate for Bill of Entry Number 5128881 dated 20.08.2021 from ICES system, it was observed that the YOM declared before the customs is 2003 whereas in affidavit submitted to RTO by importer it was mentioned as 12/2019.

Picture No. 3 (First page of the Affidavit submitted by the importer for registration of the crane imported vide the Bill of Entry No. 5128881 dated 20.08.2021.).


भारतीय गैर-न्यायिक
एक सौ रुपये
Rs. 100
₹. 100
ONE HUNDRED RUPEES
भारत INDIA
INDIA NON JUDICIAL
महाराष्ट्र MAHARASHTRA
0 2021 0
YV 230748
02 DEC 2021
जोडपत्र १ - फक्त प्रतिज्ञापत्रासाठी (अनुच्छेद-४)
प्रतिज्ञापत्र
मे.कार्यकारी दंडाधिकारीसो,हातकणगले
यांचे समोर,...
प्रतिज्ञापत्र करणार :- हिरा मोव्हर्स
प्रोप्रा. श्री अरुण पांडूरंग खोत (एच.यु.एफ)
व.व. ५०, धंदा :- व्यापार
रा. ७/१०४७, सम्राट अशोक नगर,
इचलकरंजी ता.हातकणंगले जि.कोल्हापूर
4-3-2025

Picture No. 4 (Second page of the Affidavit submitted by the importer for registration of the crane imported vide the Bill of Entry No. 5128881 dated 20.08.2021. The below picture mentions YOM as 2019. Before registering the crane in RTO Kolhapur, the crane was registered in RTO Gujarat under vehicle Registration Number GJ16BS3438 by importer).



सत्य प्रतिज्ञेवर इचलकरंजी येथे निवेदन करतो की,.

मी वरील पत्याबरील रहिवाशी असून, मी आर.टी.ओ. ऑफीस,गुजरात यांचेकडे नोंदणीकृत असलेला लिबर एलटीएम१२५०/१ या मॉडेलची क्रेन त्याचा रजिस्ट्रेशन क्रं. G J16 BS 3438 चेसिस नं. W096760003EL05576 इंजिन नं. C14129005AT मॉडेल 2019 अशा वर्णनाची चालू स्थितीतील वाहन आमचे मालकीची असून. सदरचे वाहन आर.टी.ओ.ऑफीस, कोल्हापूर यांचेकडे आमचे नांवे ट्रान्स्फर होणेसाठी मी जरूर त्या कागदपत्रासह तसेच आर.टी.ओ. ऑफीस, गुजरात यांचेकडील दि. 26/11/2021 इ.रोजी ना-हरकत दाखला (एन.ओ.सी.सह) माझा अर्ज सादर केला आहे. सदर एन.ओ.सी.मध्ये फेरफार आढळलेस किंवा मजकूर वाहन चोरीचे प्रकरण निघालेस त्यास मी स्वत: जबाबदार आहे.

तरी सदरचे वाहन आमचे नांवे आर.टी.ओ.ऑफीस, कोल्हापूर यांचेकडे नोंद व्हावे याप्रमाणे माझे नांवे वाहन नोंद झाल्यानंतर भविष्यात कोणत्याही प्रकारची लागलिगाढ तक्रार हरकत आल्यास मी स्वत: वैयक्तीक जबाबदार राहीन. त्याची कसलीही तोशिस आर.टी.ओ.ऑफिस, कोल्हापूर यांना लागू देणार नाही. सदरचे वाहन माझे वैयक्तीक जबाबदारीवर माझे नावावर वर्ग करून घेत आहे.

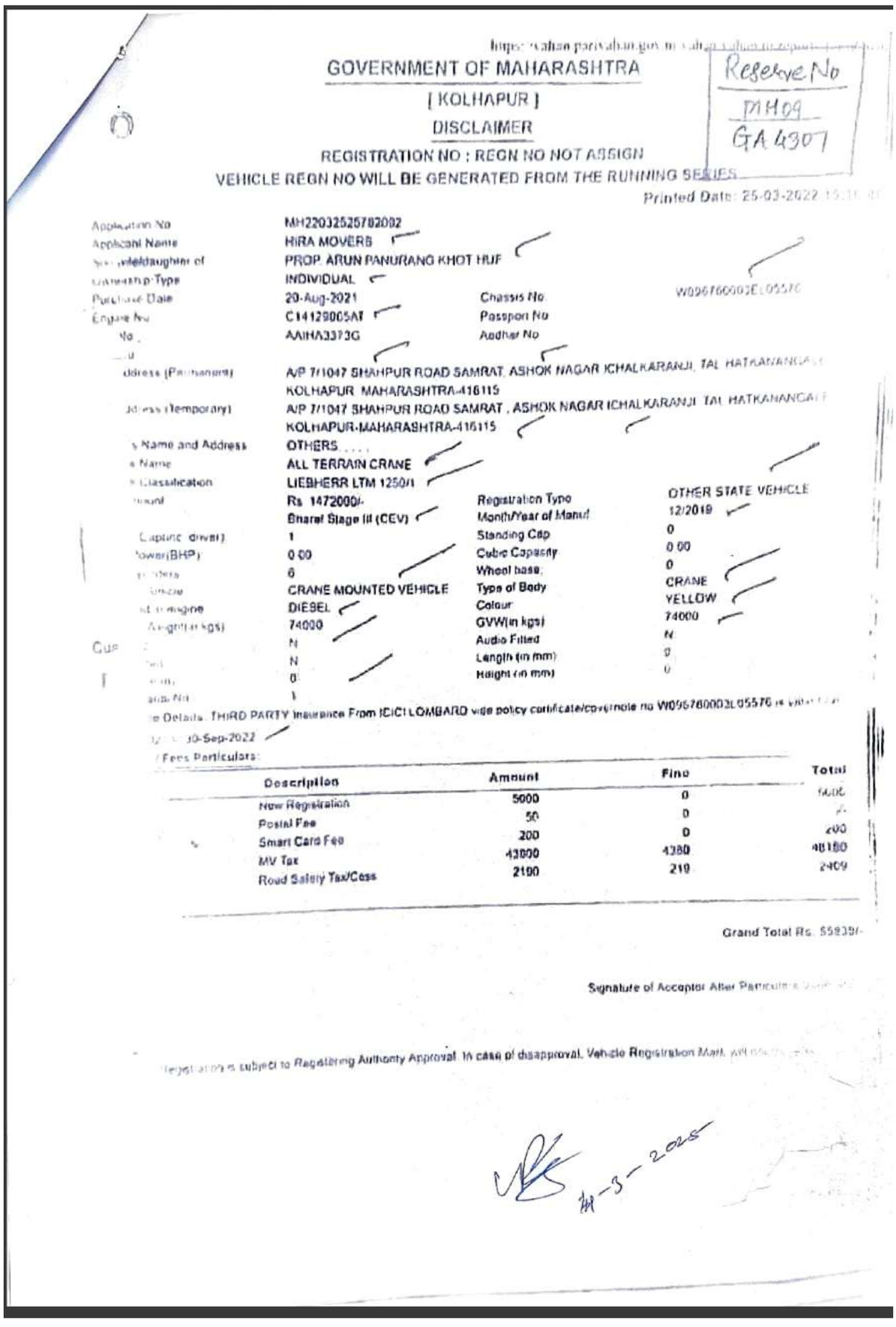
सदरचे प्रतिज्ञापत्र हे मजकूर वाहन आमचे नांवे वर्ग (ट्रान्स्फर) होण्याचे कामी आर.टी.ओ.ऑफीस, कोल्हापूर यांचेकडे हजर करणेसाठी केले आहे.

मी वर दिलेली सर्व माहिती खरी व बरोबर आहे. जर माहिती चुकीची किंवा खोटी आढळून आलेस त्यास मी भा.दं.वि.क. 193 (2) ,199 व 200 प्रमाणे दंडास व शिक्षेस पात्र राहीन. म्हणून लिहून दिले प्रतिज्ञापत्र असे ता. ०३/१२/२०२१

सही

4-3-2025

Picture No. 5 (Vehicle registration details provided by the RTO Kolhapur for the crane imported vide the Bill of Entry No. 5128881 dated 20.08.2021)



GOVERNMENT OF MAHARASHTRA

[KOLHAPUR]

DISCLAIMER

REGISTRATION NO : REGN NO NOT ASSIGN

VEHICLE REGN NO WILL BE GENERATED FROM THE RUNNING SERIES

Reserve No MH09 GA 4307

Printed Date: 25-03-2022

Application No	MH22032525782002		
Applicant Name	HIRA MOVERS		
Son/wife/daughter of	PROP. ARUN PANURANG KHOT HUF		
Ownership Type	INDIVIDUAL		
Purchase Date	20-Aug-2021	Chassis No	W0957600003E05576
Engine No	C14129005AT	Passport No	
No.	AAIHA3373G	Aadhar No	
Address (Permanent)	A/P 7/1047 SHAHPUR ROAD SAMRAT ASHOK NAGAR ICHALKARANJI TAL HATKANANGALE KOLHAPUR MAHARASHTRA-416115		
Address (Temporary)	A/P 7/1047 SHAHPUR ROAD SAMRAT , ASHOK NAGAR ICHALKARANJI TAL HATKANANGALE KOLHAPUR-MAHARASHTRA-416115		
Owner Name and Address	OTHERS		
Maker Name	ALL TERRAIN CRANE		
Model Classification	LIEBHERR LTM 1250/1		
Colour	Rs. 1472000/-	Registration Type	OTHER STATE VEHICLE
Fuel	Bharat Stage III (CEV)	Month/Year of Manuf	12/2019
Seating Capacity (Incl. driver)	1	Standing Cap	0
Power(BHP)	0.00	Cubic Capacity	0.00
No. of Cylinders	6	Wheel base	0
Horse Power	CRANE MOUNTED VEHICLE	Type of Body	CRANE
Type of Engine	DIESEL	Colour	YELLOW
Unladen Weight(kgs)	74000	GVW(in kgs)	74000
Cubic Capacity	N	Audio Fitted	N
Wheel Base	N	Length (in mm)	0
Seating Capacity	0	Height (in mm)	0
Body Type	1		

Insurance Details: THIRD PARTY Insurance From ICICI LOMBARD vide policy certificate/cover note no W0957600003E05576 is valid upto 30-Sep-2022

Fees Particulars:

Description	Amount	Fine	Total
New Registration	5000	0	5000
Postal Fee	50	0	50
Smart Card Fee	200	0	200
MV Tax	43000	4300	48100
Road Safety Tax/Cess	2190	219	2409

Grand Total Rs. 55839/-

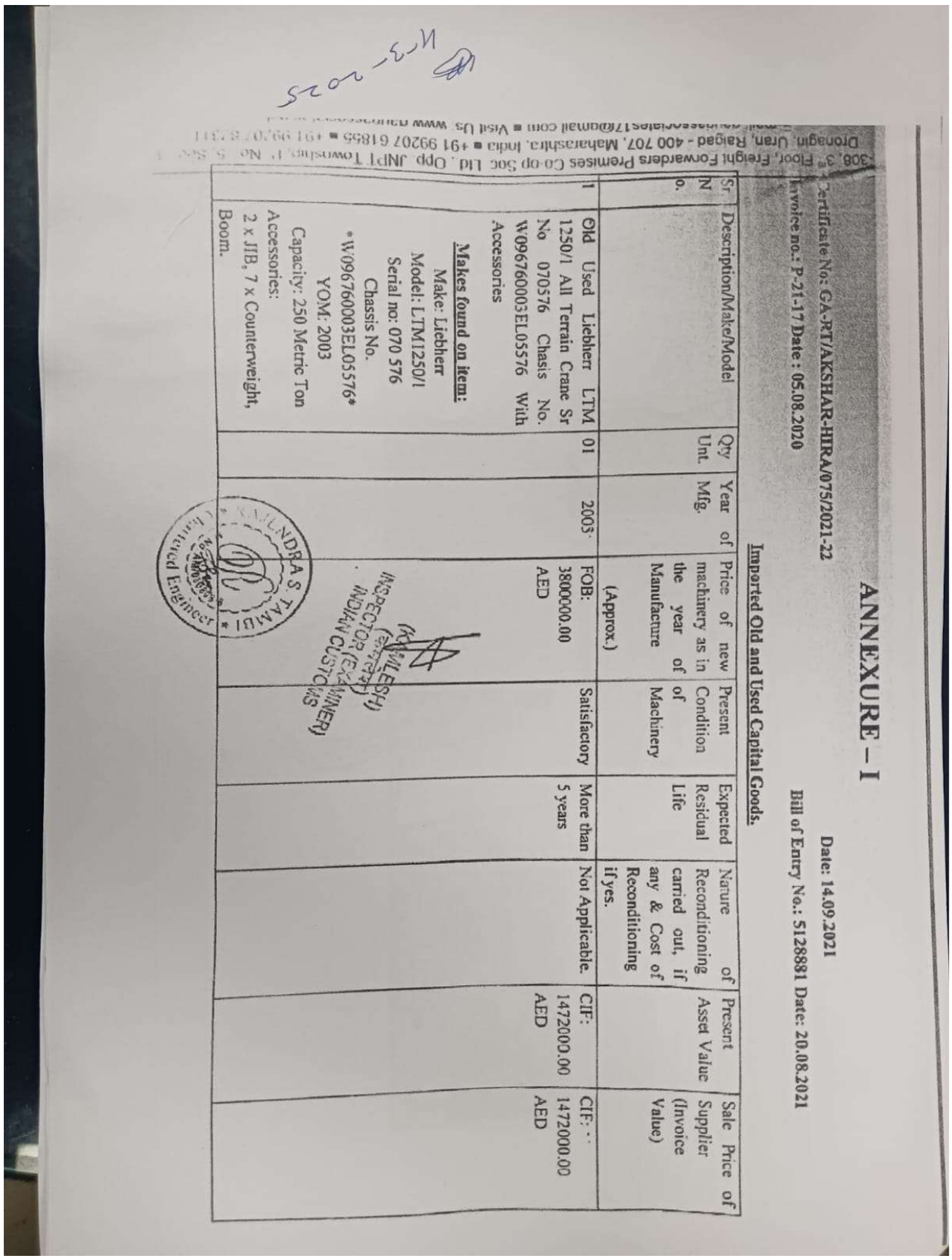
Signature of Acceptor After Particulars Verified

Registration is subject to Registering Authority Approval. In case of disapproval, Vehicle Registration Mark will be cancelled.

24-3-2022

However, upon verifying the details of the CE certificate/report uploaded in Bill of Entry Number 5128881 dated 20.08.2021 in the Indian Customs EDI system, it was observed that the copy of the CE certificate uploaded in the e-Sanchit of Bill of Entry No. 5128881 dated 20.08.2021 mentions the year of manufacture (YOM) as 2003. A photo of this CE certificate uploaded in ICES is attached below.

Picture No. 6 (Annexure-I of the CE Report, uploaded on the ICES system before customs, issued in respect of the Bill of Entry Number 5128881 dated 20.08.2021).



ANNEXURE – I

Certificate No: GA-RT/AKSHAR-HIRA/075/2021-22 Date: 14.09.2021

Invoice no.: P-21-17 Date : 05.08.2020 Bill of Entry No.: 5128881 Date: 20.08.2021

Imported Old and Used Capital Goods.

Sr No.	Description/Make/Model	Qty Unt.	Year of Mfg.	Price of new machinery as in the year of Manufacture (Approx.)	Present Condition of Machinery	Expected Residual Life	Nature of Reconditioning carried out, if any & Cost of Reconditioning if yes.	Present Asset Value	Sale Price of Supplier (Invoice Value)
1	Old Used Liebherr LTM 1250/1 All Terrain Crane Sr No 070576 Chasis No. W0967600003EL05576 With Accessories **Makes found on item:** Make: Liebherr Model: LTM1250/1 Serial no: 070 576 Chassis No. *W0967600003EL05576* YOM: 2003 Capacity: 250 Metric Ton Accessories: 2 x JIB, 7 x Counterweight, Boom.	01	2003	FOB: 3800000.00 AED	Satisfactory	More than 5 years	Not Applicable.	CIF: 1472000.00 AED	CIF: 1472000.00 AED

RAJENDRA S TAMBI
Authorised Engineer

(RAJ KUMAR)
INSPECTOR (EXAMINER)
INDIAN CUSTOMS

From the above, it appears that the year of manufacture (YOM) declared before the Customs Department was 2003 instead of the actual YOM, i.e., 2019, which was declared before the RTO. The sole purpose of the importer's misdeclaration before the Customs Department was to decrease the net assessable value (on which duty is calculated on an ad valorem basis) of this imported crane. By declaring the YOM as 2003, the importer is claiming higher depreciation on the net assessable value of the imported goods and consequently paying a lower amount of customs duty.

6.9. Invocation of extended period of limitation:

As per Section 46(4) of the Customs Act, 1962, it is mandatory for the importer to make a truthful declaration regarding the contents of the Bill of Entry filed by an importer under Section 46(1) of the Customs Act, 1962. Also, as per Section 46(4A) of the Customs Act, 1962, 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 Customs Act, 1962 or under any other law for the time being in force.

6.9.1 Further, in terms of section 17 of the Customs Act, 1962, 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 an incorrect self-assessment results in re-assessment of the duty and renders the importer liable to action in terms of the provisions of the Customs Act, 1962.

6.9.2 It is apparent that goods not corresponding in respect of 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 Customs Act, 1962, 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.

6.9.3 As mentioned in the above paras the importer is mis-declaring the year of manufacturing with intention to evade the customs duty. Importer is deliberately mis-declaring the year of manufacturing and suppressing the facts about the actual year of manufacturing of this old and used crane. By hiding the actual year of manufacturing in the Bill of Entry he is suppressing an important piece of information which is one of the guiding factor in determining valuation of the old and used Crane and consequentially evading the customs duty.

6.9.4 This wilful mis-statement and suppression of facts on the part of the importer makes this case fit for invocation of extended period of limitation and accordingly the demand under section 28(4) of the Customs Act,1962 was raised in respect of the Bills of Entry cleared by the importer. 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 old and used crane imported vide Bill of Entry 5128881 dated 20.08.2021:

7.1. Scrutiny of evidence on record revealed that the declared transaction value of the old and used crane imported and cleared in the name of M/s. Hira Movers vide **Bill of Entry Number 5128881 dated 20.08.2021** is liable for rejection in terms of the provisions of rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, read with the provisions of section 14(1)

of the Act. It appears that the Importer has intentionally and deliberately mis-declared the Year of Manufacturing to get 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's 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 chartered engineer. In this regard, it has been reported to the Board that a Chartered engineer'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 in its year of manufacture.

7.3 In para 3 of the Circular dated 04.01.1988 issued vide F.No.493/124/86-Cus.VI, it has been stated that, "It has accordingly been decided that where the chartered engineer'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 chartered engineer's certificate without going into the question as to whether this price pertains to the current CIF price in the year of its manufacture". Therefore the price of the new machinery given in the chartered engineer's certificate can be taken as final CIF price in the year of its manufacture.

7.4 In the instant case, the values at which this crane was imported could not be accepted as the correct transaction value in terms of Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, ibid and the provisions of Section 14 of the Customs Act, 1962. Accordingly, the declared value is liable to be rejected under the Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 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 same YOM and having identical specification and identical conditions as that 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 the 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 the 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, the 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 to be determined by sequentially following the 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 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 specification 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 purpose. 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 RCs, received

from the importer/respective RTOs, and second valuation report provided by the empanelled CEs based on the YOM mentioned in these RCs.

Keeping the above instruction as guidelines, re-assessed CIF has been obtained from the Chartered Engineers and the same was sent to SIIB (Import) vide his letter dated 13.02.2025. The Chartered Engineer's valuation report was based on his study as well as his analysis of the international trade in such goods and also based on his past experience.

While arriving at the present market value of the 'old & used crane' imported and cleared by M/s. Hira Movers in question, they have given due consideration to the prevailing price quoted in the market for such cranes. 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 the cranes.

8. Duty Calculation for 1 crane imported vide Bill of Entry 5128881 dated 20.08.2021:

The duty leviable in respect of the old and used crane imported vide Bill of Entry 5128881 dated 20.08.2021 is computed on the basis of the re-assessed CIF value provided by Chartered Engineer's valuation report dated 13.02.2025. The details of the duty leviable, duty paid at the time of clearances of the impugned crane and the duty short paid on them is shown in Annexure-I to the show cause notice.

Bill 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.)
5128881 Dtd. 20.08.2021	**3,07,64,800/-**	**85,32,617/-**	**4,18,00,000/-**	**1,15,93,230 /-**	**30,60,613/-**

A total amount of Rs.1,15,93,230/- (Rupees One Crore Fifteen Lakh Ninety-Three Thousand Two Hundred Thirty only) was leviable as duty on the aforesaid used crane, computed on the basis of the values determined as above. As against this amount, an amount of Rs. 85,32,617/- (Rupees Eight-Five Lakh Thirty-Two Thousand Six Hundred Seventeen only) was paid as customs duty at the time of clearance of the aforesaid crane. Therefore, an amount of Rs.30,60,613/- (Rupees Thirty Lakh Sixty Thousand Six Hundred Thirteen only) was short paid in respect of the crane imported under Bill of Entry Number 5128881 dated 20.08.2021.

9. Role of the Importer:

9.1 Shri Arun Pandurang Khot, Karta of M/s. Hira Mover, has devised a modus-operandi for evading the Customs Duty on the import of the Old and Used second hand crane being imported at the Mumbai Sea Port. This Modus operandi works by mis-declaring the actual year of manufacturing of the machine before the Customs Department and showing the new machine as relatively old by mis-declaring the year of manufacturing and consequentially declaring the lower

assessable value of the machine before the customs and accordingly paying the less amount of customs duty instead of the actually applicable higher amount of duty.

9.2 To succeed in his target of mis-declaration of the year of manufacturing of the crane, importer colluded with the foreign supplier and convinced the foreign supplier not to declare actual year of manufacturing on the Invoice and Bill of Lading. Based on this modus operandi, Importer filled Bill of Entry without mentioning the actual year of manufacturing in the description column of the Bill of Entry and declaring relatively less assessable value for these old and used crane before the Customs Department. By declaring the less assessable value of the old and used crane before the customs, importer is paying the less amount of Customs Duty instead of actually applicable Duty.

9.3 The above act of omission and commission on the part of Shri Arun Pandurang Khot, proves his wilful mis-statement and suppression of the facts while declaring the details of the goods in the impugned Bill of Entry under section 46 of the Customs Act,1962. Accordingly, Shri Arun Pandurang Khot, being Karta of the M/s. Hira Mover, is liable to penalty under section 112(a), 114A and 114AA of the Act, in relation to the fraudulent import of the aforesaid 1 used crane imported vide the Bill of Entry Number 5128881 dated 20.08.2021.

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.—

(1) Where any [duty has not been levied or not paid or short-levied or short-paid] or erroneously refunded, ……any wilful mis-statement or suppression of facts, —

(a) the proper officer shall, within two years from the relevant date, …… the amount specified in the notice:

Provided that ……..

(2) The person who has paid the duty along with interest ……r in respect of such duty or interest:

Provided that where ……..

(3) Where the proper officer is of the opinion that the amount paid under clause (b) of sub-section (1) falls short of the amount actually payable, ……..

(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 willful 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, ……

(5) Where any duty has not …… or suppression……
of the notice and inform the proper officer of such payment in writing.

(6) Where the importer or the exporter or the agent or the employee of the importer or the exporter, as the case may be, has paid duty with …… under sub-section (5).

(7) In computing the period of two years referred to in clause (a) of sub-section (1) or five years referred to in sub-section (4), the period during which there was any stay by an order of a court or tribunal in respect of payment of such duty or interest shall be excluded.

(7A) Save as otherwise provided ……supplementary notice as if it was issued under the said sub-section (1) or sub-section (4).

(8) The proper officer shall, after allowing the concerned person an opportunity of being heard and after considering the representation, if any, made by such person, determine the amount of duty or interest due from such person not being in excess of the amount specified in the notice.

(9) The proper officer shall determine the amount of duty or interest under sub-section (8),—

(a) within six months from the date of notice, in respect of cases falling under clause (a) of sub- section (1);

(b) within one year from the date of notice, in respect of cases falling under sub-section (4).

Provided that where the ……if no notice had been issued;

(9A) Notwithstanding anything contained in sub-section (9), …… when such reason ceases to exist.

(10) Where an order determining the duty is passed …… interest thereon shall be computed accordingly.

(11) Notwithstanding anything to the contrary contained in any judgment, decree or order of any court of law, tribunal or other authority, all persons appointed as officers of Customs under sub-section (1) of section 4 before the 6th day of July, 2011 shall be deemed to have and always had the power of assessment under

section 17 .....shall continue to be governed by the provisions of section 28 as it stood immediately before such date

SECTION 46. Entry of goods on importation. *- (1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry..... bill of entry for warehousing or vice versa.*

Section 111. Confiscation of improperly imported goods, etc.

Section 111(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 3 [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.—

Any person,—

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

(b) who acquires possession ..... under section 111, shall be liable,—

(i) in the case of goods ..... the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, ... person under this section shall be twenty-five per cent. of the penalty so determined;

(iii) in the case of goods..... the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling b..... whichever is the highest;

(v) in the case of goods falling ....., whichever is the highest.

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

Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid ..... of the order by which such increase in the duty or interest takes effect:

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

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

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (8) of section 28 relates to notices issued prior to the date on which the Finance Act, 2000 (10 of 2000) receives the assent of the President;

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.

***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.

11. Relevant provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007:

Rule-3. Determination of the method of valuation. -

(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

(2) Value of imported goods under sub-rule (1) shall be accepted:

Provided that -

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -

(i) are imposed or required by law or by the public authorities in India; or

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels,

adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

(4) if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9.

Rule 4. Transaction value of identical goods. *-*

(1)(a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued;

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value 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.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

Rule 5. Transaction value of similar goods: *-*

(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

Rule 6. Determination of value where value cannot be determined under rules 3, 4 and 5.*-*

If the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8.

Provided that at the request of the importer, and with the approval of the proper officer, the order of application of rules 7 and 8 shall be reversed.

Rule 7. Deductive value. *-*

(1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions : -

(i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind;

(ii) the usual costs of transport and insurance and associated costs incurred within India;

(iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

(2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation.

(3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

(b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

Rule 8. Computed value. *-*

Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:-

(a) the cost or value of materials and fabrication or other processing employed in producing the imported goods;

(b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;

(c) the cost or value of all other expenses under sub-rule (2) of rule 10.

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.

Rule 10. Cost and services. –

(1) In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods, -

(a) the following to the extent they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods, namely:-

(i) commissions and brokerage, except buying commissions;

(ii) the cost of containers which are treated as being one for customs purposes with the goods in question;

(iii) the cost of packing whether for labour or materials;

(b) The value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of imported goods, to the extent that such value has not been included in the price actually paid or payable, namely: -

(i) materials, components, parts and similar items incorporated in the imported goods;

(ii) tools, dies, moulds and similar items used in the production of the Imported goods;

(iii) materials consumed in the production of the imported goods;

(iv) engineering, development, art work, design work, and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods;

(c) royalties and licence fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

(d) The value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;

(e) all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.

Explanation.- Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includible referred to in clauses (c) and (e), such charges shall be added to the price actually paid or payable for the imported goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods.

(2) For the purposes of sub-section (1) of section 14 of the Customs Act, 1962 (52 of 1962) and these rules, the value of the imported goods shall be the value of such goods, and shall include –

(a) the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation;

(b) the cost of insurance to the place of importation:

Provided that where the cost referred to in clause (a) is not ascertainable, such cost shall be twenty per cent of the free onboard value of the goods:

Provided further that where the free onboard value of the goods is not ascertainable but the sum of free onboard value of the goods and the cost referred to in clause (b) is ascertainable, the cost referred to in clause (a) shall be twenty per cent of such sum:

Provided also that where the cost referred to in clause (b) is not ascertainable, such cost shall be 1.125% of free on board value of the goods:

Provided also that where the free on board value of the goods is not ascertainable but the sum of free on board value of the goods and the cost referred to in clause (a) is ascertainable, the cost referred to in clause (b) shall be 1.125% of such sum:

Provided also that in the case of goods imported by air, where the cost referred to in clause (a) is ascertainable, such cost shall not exceed twenty per cent of free on board value of the goods:

Provided also that in the case of goods imported by sea or air and transhipped to another customs station in India, the cost of insurance, transport, loading, unloading, handling charges associated with such transshipment shall be excluded.

Explanation-

The cost of transport of the imported goods referred to in clause (a) includes the ship demurrage charges on charted vessels, lighterage or barge charges.

(3) Additions to the price actually paid or payable shall be made under this rule on the basis of objective and quantifiable data.

(4) No addition shall be made to the price actually paid or payable in determining the value of the imported goods except as provided for in this rule.

Rule 11. Declaration by the importer. -

(1) The importer or his agent shall furnish -

(a) a declaration disclosing full and accurate details relating to the value of imported goods; and

(b) any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer, as considered necessary by the proper officer for determination of the value of imported goods under these rules.

(2) Nothing contained in these rules shall be construed as restricting or calling into question the right of the proper officer of customs to satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes.

(3) The provisions of the Customs Act, 1962 (52 of 1962) relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished under these rules.

Rule 12. Rejection of declared value. *-*

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation.- (1) For the removal of doubts, it is hereby declared that:-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) the non-declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents.

12. Contraventions:

In view of the above, it appears that the importer has contravened the provisions of

i. Section 28(4) of the Customs Act, 1962 as the appropriate customs duty payable on the aforesaid crane cleared from Mumbai port was not paid at that time of its import into India, by reason of wilful misstatement and suppression of facts regarding the actual year of manufacturing of the said goods.

ii. Section 46 of the Customs Act, 1962 by not submitting accurate and complete information at the time of filing of bill of entry to defraud the government revenue.

iii. The crane imported vide Bill of Entry Number 5128881dated 20.08.2021 having re-determined assessable value of **Rs.4,18,00,000/- (Rupees Four crore Eighteen lakh only)** was imported and cleared by resorting to mis-declaration of its YOM. The various acts of commission and omission on the part M/s. Hira Movers, Shri Arun Pandurang Khot, Karta, of M/s. Hira Movers as discussed above in relation to import of the crane, as aforesaid, have rendered the said crane liable for confiscation under Section 111(m) of the Act. Thus, M/s. Hira Movers, Shri Arun Pandurang Khot, Karta of M/s. Hira Movers, have rendered themselves liable to penalty under Section 112 (a)/114A of the Act.

iv. The total differential duty amount **Rs. 30,60,613/- (Rupees Thirty Lakh Sixty Thousand Six Hundred Thirteen only**) was not levied or short levied in respect of imported old and used crane, imported and cleared in the name of M/s Hira Movers, from Mumbai Port by reason of collusion, wilful mis-statement and suppression of facts regarding its actual value.

v. In relation to the aforesaid used crane, imported and cleared in the name of M/s Hira Movers, Shri Arun Pandurang Khot has knowingly and intentionally made, signed or caused to be made or signed and used, the declarations for the purpose of seeking Customs clearance of the aforesaid 1 crane, which he knew or had reason to believe were false or incorrect. Accordingly, M/s. Hira Movers and Shri Arun Pandurang Khot, Karta of M/s. Hira Movers have rendered themselves liable to penalty under section 114AA of the Customs Act, 1962, in relation to the aforesaid 1 used crane.

13. Accordingly, Show Cause Notice (SCN) No.25/2025-26/Gr.V dated 07.08.2025 was issued to the importer **M/s Hira Movers (IEC No. AAIHA3373G)**, calling upon to show cause to the Joint Commissioner of Customs (Import-I), New Customs House, Mumbai, as to why:

a. The declared value of the goods imported vide Bill of Entry Number 5128881 dated 20.08.2021 should not be rejected in terms of the Rules 12 of the CVR, 2007 and re-determined as **Rs.4,18,00,000/- (Rupees Four crore Eighteen lakh only)** under Rule 9 of the Customs Valuation Rules, 2007 read with section 14 of the Customs Act, 1962 with consequential duty liability.

b. Differential duty of **Rs. 30,60,613/- (Rupees Thirty Lakh Sixty Thousand Six Hundred Thirteen only)** should not be demanded as per the provisions of Section 28(4) of the Customs Act, 1962 alongwith applicable interest under section 28AA.

c. The goods imported vide Bill of Entry Number 5128881 dated 20.08.2021 should not be held liable for confiscation under Section 111(m) of the Customs Act, 1962.

d. Penalty should not be imposed upon M/s. Hira Movers under Section 112(a) and/or 114 A and 114AA of the Customs Act, 1962.

e. Penalty should not be imposed upon Sh. Arun Pandurang Khot, Karta of M/s. Hira Movers under Section 112(a) and/or 114A and 114AA of the Customs Act, 1962.

WRITTEN SUBMISSION OF THE IMPORTER (Reply to SCN):

14.1 The Noticee, **M/s Hira Movers (IEC No. AAIHA3373G)** vide letters dated 27.01.2026 submitted written reply to the subject SCN. Vide above reply, they denied all the allegations made in the SCN and made following submissions:

A. The Impugned SCN has been issued with pre-determined mind set

A.1 It is submitted that the Impugned SCN has been issued with a pre-determined mind and the same is liable to be set aside.

A.2 It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power, must act fairly and must act with an open mind while initiating a show cause proceeding. A show cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice. Any show cause notice proceeding with a pre-determined mind which indicates that the entire proceeding would be mere formality and an empty ceremony is against the principles of natural of natural justice.

A.3 Reliance is this regard is placed on the decision of the Hon'ble Supreme Court in the case of **Oryx Fisheris Private Limited v. Union of India [2011 (266) E.L.T. 422 (S.C.)]** wherein the Hon'ble Supreme Court has held as under:

31. It is of course true that the show cause notice cannot be read hyper-technically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show cause notice and prove his innocence. If on a reasonable reading of a show cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence.

32. Therefore, while issuing a show cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show cause notice.

…

44. For the reasons aforesaid, this Court quashes the show cause notice as also the order dated 19-3-2008 passed by the third respondent. In view of that, the appellate order has no legs to stand and accordingly is quashed.

A.4 Further reliance is placed on the decision of the Hon'ble High Court of Jharkhand in the case of **TRF Ltd. Versus Commr. Of C. Ex. & Service Tax, Jamshedpur [2017 (48) S.T.R. 379 (Jhar.)]** wherein it was held as under:

27. In such a situation, the judgments relied upon by the learned counsel for the petitioner delivered in the cases of Siemens Ltd. and Oryx Fisheries Private Limited fully apply on the facts of the case. Hon'ble Supreme Court in the case of Oryx Fisheries Private Limited has made it clear that if on a reasonable reading of a show cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of

prejudged opinion, such a show cause notice does not commence a fair procedure especially when it is issued in a quasi judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence. In this case, the authority failed to keep an open mind and has shown his closed mind to the petitioner and it is a clear case where the "principle of natural justice must not only be done but it must eminently appear to be done" has been violated. It was violated by the language used in the impugned show cause notice and thereafter the situation further aggravated by the averments made in the counter-affidavit. We are conscious of the fact that the authority while exercising quasi judicial jurisdiction is not bound by even the reply filed by the officer-in-charge of the Department on the question of law and otherwise also, there cannot be estoppel against law but once an impression is created by the executing authority itself by its own communication that it is not only formed prima facie opinion but it has finally formed opinion, in that situation, if the notice is accepted to be only show cause notice, then that will be absolutely unfair to the person drawing the inference that the decision has already been taken. If this assumption of the assessee is there and thereafter, the issues are decided by the same authority, that will make only the assessee understand that it was nothing but a predetermined decision being taken by the authority.

A.5 Thus, it is clear that any show cause notice which proceeds with a pre-determined mind wherein the entire proceedings is merely a formality is bad in law.

A.6 In the present case, the Noticee submits that the Impugned SCN has clearly been issued with a pre-determined mind set for the following reasons:

(i) the Customs Department has solely relied upon the declarations regarding YOM in RTO for determining the YOM of the cranes without conducting any independent investigations for determining the YOM of the cranes imported by the Noticee despite the Noticee submitting the original manufacturer's certificate.

(ii) Further, despite the specifically recording in paragraph 4 of the Impugned SCN that the manufacture's certificate was provided and subsequently confirmed, the Impugned SCN in paragraph 6.5, 6.6.1 and 6.8.5 proceeds on the premise that the manufacturer's certificate was never furnished by the Noticee.

(iii) The Customs Department has unlawfully disregarded the Manufacturer's Certificate submitted by the Noticee, which unequivocally establishes the YOM of the second-hand crane. This certificate has been duly authenticated and confirmed by Mr. Subhajit Chandra, Divisional Head of Liebherr India. Notwithstanding this, the Department has arbitrarily rejected the certificate on the untenable premise that it was issued in Germany and merely confirmed by an officer in India, without producing any contrary material, without pointing out a single infirmity in the document, and without demonstrating any inconsistency in the underlying records. Such rejection, in the absence of cogent reasons or adverse evidence, is ex facie perverse and contrary to settled principles of evidence and valuation, particularly when the document emanates from the manufacturer itself and stands corroborated by its authorized Indian representative.

A.7 It is submitted that it is not even the case of the Department that the Manufacturer's Certificate, which now stands duly confirmed, suffers from any defect or cannot be relied upon for any legally sustainable reason. The Impugned SCN repeatedly proceeds on the erroneous premise that no Manufacturer's Certificate was furnished by the Noticee. This assumption is factually incorrect and contrary to the Department's own record.

A.8 In fact, the Noticee had submitted the said certificate, pursuant whereto the Department itself addressed a communication to the manufacturer seeking confirmation of its authenticity. Upon receiving a clear and unequivocal confirmation of the genuineness and correctness of the certificate, the Department has, without any justification, conveniently chosen to ignore this vital piece of evidence. Such conduct renders the conclusions in the Impugned SCN arbitrary, perverse, and vitiated by non-consideration of material evidence.

A.9 In view of the foregoing submissions, it is evident that the Impugned SCN has been issued with a pre-determined mindset, disregarding material evidence and settled legal principles. The allegations are based on mere assumptions and presumptions, rendering the Impugned SCN arbitrary. Accordingly, the Impugned SCN is liable to be set aside.

B. Valuation done by the Noticee was correct

B.1 It is submitted that the Department failed to appreciate that when all the conditions of Rule 3(1) of the CVR 2007 are satisfied, the declared value shall be the transaction value. The relevant extracts are reproduced as below:

Rule 3(1) of CVR 2007:

3. Determination of the method of valuation.- (1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

B.2 It is submitted that Section 14 of the Act which provides for the valuation of goods reads as under:

Section 14. Valuation of 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*:

B.3 Thus, as per Section 14 of the Act, the value of the imported goods shall be the transaction value. For determining the transaction value of the imported goods, the following conditions need to be followed:

i. The price is the sole consideration for the sale of goods;
ii. The buyer and the seller of the goods are not related;
iii. The price is actually payable or paid for the sale of goods.

B.4 It is submitted that in the present case, the invoice value was the transaction value for the Impugned goods as per Section 14 of the Act, as the Noticee and suppliers are not related, and the transaction happened at arm's length. Further the price is the sole consideration for the purchase of second-hand cranes and the same was actually paid by the Noticee to the foreign suppliers. Hence, it is submitted that the Department has failed to appreciate the fact that the value declared by the Noticee in the bills of

entry is actually the transaction value in terms of Section 14 of the Act and the same cannot be disputed upon fulfilment of all the conditions.

B.5 Reliance is placed on the judgment of the Hon'ble Supreme Court in case of **Eicher Tractors Limited V/s Commissioner [2000 (122) ELT 321]** (*para 6,9,11, and 12*)

B.6 Similar view has been taken in the following decisions :

- **Commissioner of C. Ex., Rajkot V/s Jai Bharat Steel Industry [2005 (192) ELT 792]** *(para 11, 12)*
- **Commissioner of Customs V/s Bureau Veritas [2005 (181) ELT 3 (SC)]** *(para 18, 19)*
- **Bansal Industries V/s Commissioner of Customs, Chennai - [2002 (147) ELT 967]** *(para 9)*

B.7 The aforesaid is further substantiated by Public Notice No. 14/2019-20 dated 27.02.2020 wherein at para 4.1, it is specifically stated as under:

4.1 Where used second hand machinery is sold for export to India and the sale meets all of the requirements set out in Customs Valuation (Determination of Value of Imported Goods) Rules 2007, the price paid or payable for the goods is to be used as the basis for determining the assessable value.

B.8 It is submitted that in the present case, as stated above, all the conditions for determination of transaction value under Section 14 of the Act read with Rule 3 of CVR have been satisfied. Accordingly, the declared value is the transaction value and the same ought to have been accepted by the Department in absence of any documents to the contrary. Thus, it is stated that the present demand raised in the Impugned SCN is not sustainable and ought to be set aside.

B.9 In any event it is submitted that there is no documentary evidence for instance parallel invoice or any private record produced by the Department to prove that there was undervaluation of the cranes imported by the Noticee. Hence, in absence of any contrary evidence whatsoever, the Department has wrongly alleged undervaluation for raising the present demand.

No evidence of contemporaneous import at higher value

B.10 It is submitted that the Department has wrongly alleged that there is undervaluation on account of misdeclaration in the YOM when there is no evidence of contemporary import at higher value. The relevant extract of the same is reproduced as below:

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, the transaction value of these impugned old and used cranes could not be re-determined under the Rule 5 of the CVR, 2007.*

B.11 Thus, it is submitted that there is no data for contemporaneous import available in the present case to support the allegation of undervaluation. Thus, for this reason as well it is submitted that the present demand raised in the Impugned SCN is not sustainable.

B.12 In any event, it is settled law that onus to prove undervaluation is on the Department by evidence or information about comparable imports and if the charge is not supported by such evidence/information, the benefit of doubt was to go to the importer.

B.13 Reliance is placed on the decision of Hon'ble Supreme Court in the case of **Commissioner of Customs, Calcutta V/s South India Television (P) Ltd. reported in 2007 (214) ELT 3 (SC)** *(para 6)* wherein it was held that when there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted.

B.14 Hence, for this reason as well the demand under captioned show cause notice is not sustainable and ought to be set aside.

Valuation adopted by the Noticee is as per Board Circular No. 493/124/1986-Cus.VI dated 19.11.1987 and CBIC Circular No. 07/2020-Customs dated 05.02.2020 read with Public Notice no. 4/2019-20 dated 27.02.2020

B.15 It is submitted that the CBIC had issued Circular No. 493/124/1986-Cus.VI dated 19.11.1987 as well as Circular No. 07/2020-Customs dated 05.02.2020 clarifying the valuation practice of second-hand machinery to be adopted by all Custom Houses/ Customs Commissionerate. The said Circular, *inter alia,* provides that for the purpose of valuation of second-hand machinery/capital goods, the following depreciation is to be taken:

2. It has been decided that depreciation may be allowed for arriving at the assessable value of second-hand machinery on the following scale :-

(i)	*For every quarter during first year.....4%*	*16*
(ii)	*For every quarter during 2nd year.....3%*	*12*
(iii)	*For every quarter during 3rd year.....2.50%*	*10*

(iv)	*For every quarter during 4th year……..2%*	*8*
	Subject to an overall limit of 70%	*46*

B.16 Subsequently, Public Notice No. 4/2019-20 dated 27.02.2020 was issued which requires that the imported second hand shall be accompanied by an empanelled CE or an overseas CE or equivalent. Further, the Public Notice only mandates that more information can be sought from the importer where the value declared in the bill of entry does not match with the depreciated value in terms of circular no. 493/124/86-cus.VI dated 19.11.1987. The relevant extract of the public notice is reproduced as below:

6. To sum up, the following guidelines shall be followed:

(a) All imports of second-hand machinery/used capital goods shall be ordinarily accompanied by an inspection/appraisement report issued by an overseas Chartered Engineer or equivalent, prepared upon examination of the goods at the place of sale.

(b) The report of the overseas chartered engineer 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 Chartered Engineers empanelled locally by the respective Custom Houses.

(d) In cases where the report is to be prepared by the Chartered Engineers 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 Chartered Engineer. 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.

B.17 It is submitted that the Noticee, at the time of clearance of the cranes, has submitted bill of entry, supplier invoice and the Chartered Engineer Certificate issued by empanelled CE certifying the valuation adopted by the Noticee in respect of the second-hand cranes. Further, the value declared by the Noticee in the bill of entry match with the depreciated value as per Circular No. 493/124/86-Cus VI dated 19/11/1987. Thus, in the present case, the basis of issuance of the Impugned SCN is flawed and without any jurisdiction.

B.18 It is further submitted that the goods were assessed on the basis of the said Charter engineer certificate which was issued after physical inspection of goods, basis the document and other literature. Thus, it is submitted that the valuation declared by the Noticee is as per the Board Circular No. 493/124/1986-Cus.VI dated 19.11.1987 and CBIC Circular No. 07/2020 dated 05.02.2020 read with Public Notice no. 4/2019-20 dated 27.02.2020.

B.19 It is a well settled principle that CBIC circulars are binding on the department. In this regard, reference is made to the decision of the Hon'ble Supreme Court in the case of **Collector of C. Ex., Vadodara v Dhiren Chemical Industries 2002 (139) E.L.T. 3 (S.C.)** *(para 9)*.

B.20 Thus, it is submitted that the valuation adopted by Noticee in respect of the cranes imported by them is correct. Accordingly, it is submitted that the duty demanded in the captioned show cause notice should be dropped.

C. No chartered engineer certificate is required where no refurbishing, reconditioning etc. was undertaken.

C.1 It is submitted that Section 14 of the Act provides that the value of the imported 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 where the buyer and seller of the goods are not related and price is the sole consideration for the sale.

C.2 The said fact is also substantiated by Public Notice no. 4/2019-20 dated 27.02.2020. The said public notice at para 4.1 categorically states that where used second hand machinery exported to India and the sale meets all of the requirements set out in CVR, 2007, the price paid or payable for the goods is to be used as the basis for determining the assessable value. The aforesaid para 4.1. of the Public Notice no. 4/2019-20 dated 27.02.2020 essentially recognizes the fact that the value of second-hand goods shall be the transaction value where all the conditions of Rule 3 of CVR are met.

C.3 The Circular thereafter from 4.2 onwards provides the mechanism for determining the transaction value of the used second-hand goods where second hand machineries are reconditioned, refurbished, modernized, or otherwise improved prior to their importation into India. The relevant extract of the Public Notice no. 4/2019-20 dated 27.02.2020 is reproduced as below:

4. After due consideration of clarification from DGFT and representations made by trade. Board has decided that henceforth for inspection/appraisement of second-hand machinery, the following procedure shall be followed:

4.1 Where used second hand machinery is sold for export to India and the sale meets all of the requirements set out in Customs Valuation (Determination of Value of Imported Goods) Rules 2007, the price paid or payable for the goods is to be used as the basis for determining the assessable value.

4.2 However, it is frequently the case that as part of an arrangement, separate from the contract of sale, the second hand machineries are reconditioned, refurbished, modernized, or otherwise improved prior to their importation into India. In such situations, there is a change in the condition of the goods brought about prior to their importation. Similarly, other costs such pre-shipment inspection, dismantling and crating charges may be incurred by the buyer after the sale of the goods. Costs of all such elements need to be determined for the purpose of arriving at the value under section 14 of the Customs Act. Thus, there may be instances where the requirements of Rule 3 of the Valuation Rules are not met, in which case, the value for imposition of duty must be determined under one of the subsequent methods of valuation applied in sequential order.

C.4 On a co-joint reading of para 4.1 and 4.2 of the aforesaid public notice, it is clear that chartered engineer certificate would be required in case only where the second hand machineries are reconditioned, refurbished, modernized, or otherwise improved prior to their importation into India. Had the intention of the legislation to seek chartered engineer certificate in all cases, the purpose and meaning of para 4.1 would have become redundant. Had that been the intention, para 4 would simply have started with saying that all the second hand and used machinery shall be imported along with the chartered engineer certificate.

C.5 It is submitted that the above proposition is supported by the fact that para 4.2 of the public notice starts with the term "however" which denotes that there is distinction between the used and second-hand machineries as described in para 4.1 from that of the used and second hand machineries as referred to in para 4.2.

C.6 Thus, it is submitted that where second-hand machineries are not reconditioned, refurbished, modernized, or otherwise improved prior to their importation into India, no chartered engineer certificate is required.

C.7 It is submitted that in the present case, second-hand crane imported *vide* the Impugned Bill of Entry was accompanied by a chartered engineer certificate. It is clear from the chartered engineer certificate no repairing, refurbishing or repainting had been done prior to importation.

C.8 Thus, it is submitted that any declaration in the chartered engineer certificate as regard the YOM is not essential in terms of the Public Notice no. 4/2019-20 dated 27.02.2020 and the same cannot be relied upon to allege misdeclaration for evading customs duty.

C.9 Accordingly, the alleged demand is bad in law and ought to be set aside.

D. Value wrongly re-determined basis the YOM mentioned in the RTO

D.1 It is submitted that in the Impugned SCN, the Department has wrongly redetermined the value of the crane as per Rule 9 of CVR 2007. The relevant extract of the rules is reproduced as below:

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.

D.2 Interpretative Note to Rule 9 of the Custom Valuation Rules 2007 reads as under:

Note to rule 9

1. Value of imported goods determined under the provisions of rule 9 should to the greatest extent possible, be based on previously determined customs values.

2. The methods of valuation to be employed under rule 9 may be those laid down in rules 3 to 8, inclusive, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of rule 9.

3. Some examples of reasonable flexibility are as follows:

*(a) Identical goods. - The requirement that the **identical goods should be imported at or about the same time as the goods being valued could be flexibly interpreted**; identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of identical imported goods already determined under the provisions of rules 7 and 8 could be used.*

*(b) Similar goods. - **The requirement that the similar goods should be imported at or about the same time as the goods being valued could be flexibly interpreted**; similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; customs values of similar imported goods already determined under the provisions of rules 7 and 8 could be used.*

(c) Deductive method. - The requirement that the goods shall have been sold in the "condition as imported" in rule 7(1) could be flexibly interpreted; the ninety days requirement could be administered flexibly.

D.3 Thus, as per the interpretative notes to Rule 9 of the CVR, the value of the Impugned goods so determined cannot be more than the identical or similar goods imported at or about the same time. However, it is submitted that in the Impugned SCN, the Department has merely adopted the YOM mentioned in the RC, received from the respective RTO, and second valuation report provided by the empanelled CEs based on the YOM mentioned in these RC without considering the submissions made by the Noticee during the investigation stage and without any consideration of value of similar or like goods. Thus, it is submitted that the value re-determined in the present case is in teeth of Rule 9 of the CVR, 2007.

D.4 It is submitted that the Customs Department made no efforts to find the value of identical or similar goods imported at or about the same time as the imported cranes and hence the value adopted by the Customs Department is not in terms of spirit of Rule 9 above as per the aforesaid interpretative note. Furthermore, it is submitted that the Department made no efforts for finding out the actual price of the cranes from the supplier, especially when the Noticee had already provided the details of the suppliers from whom it had purchased the crane. Thus, it is submitted that redetermined value of the cranes as per Rule 9 of CVR 2007 is not maintainable.

D.5 Reference is made to the decision of the Hon'ble CESTAT in the case of **Eastern Exports & Imports Co. Versus C.C.E. & C., (Admn/AIU-Prev), Kolkata [2007 (209) E.L.T. 459 (Tri. - Kolkata)]** wherein the Hon'ble Tribunal has held as under:

2.5 On valuation it is found that there is no cogent, reliable material to arrive at comparable goods valuation or under Rule 8 as arrived by the ld. Commissioner. The Apex court is Eicher Traders have stipulated conditions in which Transaction Value can only be rejected. The notice issued is devoid of any grounds and or material, based on, which the Transaction Value could be departed in this case. The invoice produced is not challenged. Following Puja Poly Plastics [2001 (131) E.L.T. 200], as relied by the Noticee, it has to be held that the Transaction value cannot be discarded in this case based on unsigned, unreliable quotations. Imports of different models cannot be compared. The onus on the department to prove undervaluation cannot be said to be discharged by them by basing based on solicited quotations which are unsigned and unreliable. The Department could have, in course of enquiries made abroad, obtain the manufacturers price list/invoices for same models. The investigation failure or abssuce (sic) of such high prices at manufacturers end cannot call for upholding the valuation as arrived by the Commissioner. Misdeclaration of value cannot be upheld.

D.6 In any event, it is submitted that the Customs Department wrongly re-determined the value solely basis the YOM mentioned in the RC before the RTO. It is submitted that CE certificates provided before the customs are genuine and the YOM mentioned in the RC of the Impugned goods before the RTO cannot be the basis for re-determination of value of the said goods. It is settled law that imported goods needs to be valued in terms of Customs law and in the form it is imported. In the present case, as stated above, the Impugned goods were valued correctly in terms of transaction value as per Section 14 of the act as well as CE certificate. Thus, it is submitted that the Impugned goods were valued correctly by the Appellant. Hence, it is submitted that re-determination of value by the Customs authorities basis the YOM mentioned in the RC of the Impugned goods is not sustainable.

D.7 Furthermore, it is submitted that the valuation of second-hand cranes is also based on other factors like technical depreciation, physical condition, maintenance and upkeep, type of accessories etc. Thus, it is submitted that for calculation of depreciation in value, the YOM is a factor but not the sole factor. Hence, it is submitted that the re-determination of value of Impugned cranes solely basis the YOM mentioned in the RC before the RTO by the Customs authorities is bad in law.

D.8 Accordingly, it is submitted that the redetermined value of Impugned goods is not maintainable and the Impugned SCN is liable to be quashed.

E. Cross examination of Shri Rajendra S. Tambi

E.1 It is submitted that the Customs Department has wrongly relied upon the statements of Shri Rajendra S. Tambi wherein he *inter-alia* accepted that the valuation of the Imported cranes under investigation may be ascertained again keeping in mind the applicable scale of depreciation in terms of YOM as shown in RTO documents. Furthermore, it is submitted that the Customs Department wrongly re-determined the value of the Impugned goods basis the revised value provided by Mr Rajendra S. Tambi solely basis the YOM of the second-hand cranes mentioned in the RC before the RTO.

E.2 It submitted that the statement of Charter engineer and the subsequent change in value provided by them cannot be relied upon for the following reasons:

A) That statement is contradictory to documentary evidence i.e., the invoice, chartered engineer certificates by them and manufacturer declaration submitted during investigation.

B) Further, upon being asked about its validity, the manufacturer confirmed the authenticity and validity of the manufacturer's invoice submitted by the noticee.

C) Furthermore, the revised value provided by the Charter engineer cannot be relied upon since the same has been issued solely on the basis of YOM mentioned in the RC without any corroborative evidence of the same. Further, the revised value contradicts the statement of Shri Rajendra S. Tambi himself since he has stated that YOM is not the sole criterion for determining the value of second-hand cranes.

D) Furthermore, it is submitted that the statements and revised value cannot be relied upon in absence of any corroborative documentary evidence as well as evidence from the suppliers.

E.3 In view thereof, it is submitted that it is necessary to cross-examine Shri Rajendra S. Tambi in order to ascertain the true facts of the case.

E.4 It is submitted that the Hon'ble CESTAT in **Karim Jaria and Crown Lifters Pvt Ltd Versus Commissioner of Customs (Import-I), Mumbai [2022 (4) TMI 948 - CESTAT MUMBAI]** has held that reliance on statements alone is too fragile a foundation to build a case of undervaluation; such depositions are reliable only with corroborative support. In the absence of corroboration, test of cross-examination is of essence, as mandated by Section 138B of Customs Act, 1962.

E.5 Further, it is settled law that denial of cross examination without any valid reason amounts to violation of natural justice in terms of decision of Hon'ble Supreme Court of India in the case of **Andaman Timbers Industries v/s Commissioner of C. Ex Kolkata II [2015 (324) E.L.T 641 (SC)].** The relevant extract of the judgment is reproduced as below:

"6. According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the Appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the Appellant wanted to cross-examine those dealers and what extraction the Appellant wanted from them.

7. As mentioned above, the Appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dated 17-3-2005 [2005 (187) E.L.T. A33 (S.C.)] was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.
…"

E.6 Thus, in light of the above, it is submitted that the Noticee should be afforded an opportunity to cross-examine the persons whose statement and letters the Department has relied upon to allege under valuation of goods.

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

F.1 It is submitted that the Customs Department has alleged undervaluation of the imported crane in the Impugned SCN on the basis of RC, the statement of Shri Rajendra S Tambi and the revised report dated 13.02.2025 provided by him.

F.2 It is submitted that there is no dispute that the Department has not produced any corroborative documentary evidence to support the statements relied upon for alleging undervaluation in the captioned show cause notice. Thus, it is submitted that the statements, recorded during investigation, in itself, cannot be relied upon for the reasons stated above. Hence, it is submitted that demand cannot be confirmed without any corroborative evidence solely on the basis of the statements.

F.3 It is a settled principle of law that demand of duty cannot be confirmed without corroborative evidence. Reference is made to the decision of the Hon'ble Supreme Court of India **Century Metal Recycling Pvt. Ltd. Versus Union Of India [2019 (367) E.L.T. 3 (S.C.)]** *(para 24, 25)* wherein it was held that the transaction value mentioned in the bill of entry should not be discarded unless there are contrary details of contemporaneous imports or other material indicating and serving as corroborative evidence of import at or near the time of import which would justify rejection of the declared value and enhancement of the price declared in the bill of entry.

F.4 Reference is also made to the decision of the Hon'ble Tribunal, Bangalore in the case of **New Copier Syndicate Versus Commr. Of Cus., C. Ex. & S.T. (A), Hyderabad [2009 (245) E.L.T. 434 (Tri. - Bang.)]** *(para 6)* has held that in absence of corroborative evidence, value of the second-hand photocopier machines imported by the Noticee cannot be enhanced. Transaction value cannot be rejected in the absence of better evidence placed by Revenue. The said decision has been affirmed by the Hon'ble Supreme Court in **[2010 (254) E.L.T. A43 (S.C.)].**

F.5 Similar reference is made in the following cases:

- **H.K. International Versus Commr. Of Cus., (Tughlakabad) New Delhi [2011 (274) E.L.T. 449 (Tri. - Del.)]** *(para 8,9)*
- **Groversons Versus Commissioner Of Customs, New Delhi [2016 (332) E.L.T. 378 (Tri. - Del.)]** *(para 4)*
- **Vadilal Dairy International Ltd. v. CC, Bombay [2005 (180) E.L.T. 436 (S.C.)]** *(para 2)*
- **Trichy Distillers & Chemicals Ltd. Versus Commr. Of Customs, Cochin [2018 (363) E.L.T. 164 (Tri. - Bang.)]** *(para 4)*

F.6 Thus, the Impugned SCN is bad in law and ought to be set aside.

G. Misplaced and selective reliance by the Department on the statement of Shri Arun Pandurang, Karta of the Noticee.

G.1 It is submitted that the statement of Shri Arun Pandurang, Karta of the Noticee, has been wrongly relied upon by the Department, to the limited extent that it is sought to be used to allege misdeclaration at the time of registration with the RTO. The Department has conveniently ignored the categorical portion of the same statement wherein the Noticee clearly affirmed that he had not mis-declared the YOM before the customs authorities and had, in fact, furnished the Manufacturer's Certificate

evidencing the correct YOM. Selective reliance on an isolated portion of the statement, while completely disregarding the exculpatory part that directly supports the Noticee's case and is corroborated by documentary evidence, is arbitrary, unfair, and legally untenable.

G.2 It is submitted that the statements of Mr. Arun to the extent it mentions mis-declaration at the time of RTO registration appears to have been recorded under coercion and duress. It is settled law that any statement recorded under coercion or threat has no evidentiary value. Voluntariness is a mandatory requirement for reliance under the Act. The Hon'ble Supreme Court has repeatedly held that a statement obtained under duress cannot be the basis for adverse findings. The Noticee relies upon the following decisions:

- **Vinod Solanki vs. Union of India 2009 (233) ELT 157**.
- **Andaman Timber Industries [2015 (324) E.L.T 641 (S.C)**.

G.3 It is submitted that it is a settled law that in absence of corroboration, a statement cannot be the sole basis for alleging undervaluation. In the case of **ST, Patna vs. Gopal Prasad 2020 (371) E.L.T 243 (Pat.)** the Hon'ble Court observed that where department has never doubted the genuineness of documents produced by the appellant, the documentary evidence which proves otherwise prevails over the oral evidence. In the instant case as well, the department has not challenged veracity of manufacture's invoice which is the basis to determine the transaction value and hence merely on the basis of statement undervaluation cannot be alleged.

G.4 Therefore, the reliance placed by the department on the coerced portion of the statement is misplaced and impermissible in law.

G.5 It is submitted that the allegation that the Noticee mentioned an incorrect YOM for RTO registration has no nexus with the value declared before Customs. The Act recognizes specific methods of valuation under Section 14 read with CCR, 2007, RTO procedures or declarations are not a criterion for customs valuation

G.6 It is submitted that the purpose of RTO registration is domestic regulation of motor vehicles, not determination of customs value. The parameters used by RTO such as fitness, age, roadworthiness, classification for transport permits have no bearing on transaction value under Rule 3 of the CCR, 2007.

G.7 It is submitted that the department cannot substitute its valuation merely because of an alleged discrepancy in a different authority's regulatory framework, especially when the import documents, overseas supplier confirmation corroborates the declared value. Thus, the RTO entry cannot form the basis of any presumption of undervaluation.

G.8 Without prejudice to the aforesaid, it is submitted that in the statements of Mr. Arun Pandurang Khot relied upon by the department, has not admitted undervaluation anywhere in the statement.

G.9 The only point acknowledged by the Noticee was that for commercial convenience at RTO, an incorrect YOM was mentioned. This acknowledgment is limited strictly to the RTO procedure and is not connected to the customs declaration. On the contrary,

Mr. Arun specifically stated that he has not mis-declared the YOM before the Customs Authorities and furnished the manufacture's certificate to evidence the same as well.

G.10 At no point has the Noticee stated that the invoice value was incorrect or additional payment was made to the seller, or the goods were purchased at any value other than the declared transaction value, or the customs value was manipulated. Hence, no adverse inference can be drawn against on the basis of the certain statements of Mr. Arun.

G.11 Accordingly, it is submitted that the department's attempt to interpret a statement about RTO procedures as an "admission of undervaluation" is factually incorrect and legally unsustainable. Valuation under Customs must be based on objective evidence, not assumptions or extrapolation from unrelated declaration.

H. For misdeclaration under RTO, separate punishment is provided under Motor Vehicles Act, 1988

H.1 It is submitted that in the present case the Noticee has made all the correct declarations at the time of the import in view of the invoice issued by the supplier, the chartered engineer certificate, etc.

H.2 It is submitted that since the YOM in the RC has been misdeclared, the same amounts to a contravention of the provisions of Section 44 of the Motor Vehicles Act, 1988. Further, it is submitted that Section 177 of the Motor Vehicles Act, 1988 provides that whoever contravenes any provision of this Act or of any rule, regulation or notification made thereunder shall, if no penalty is provided for the offence be punishable for the first offence with fine which may extend to one hundred rupees, and for any second or subsequent offence with fine which may extend to three hundred rupees. The relevant extract of Section 44 and 177 of the Motor Vehicle Act, 1998 is reproduced as below:

44. Production of vehicle at the time of registration.—The registering authority shall before proceeding to register a motor vehicle or renew the certificate of registration in respect of a motor vehicle, other than a transport vehicle, require the person applying for registration of the vehicle or, as the case may be, for renewing the certificate of registration to produce the vehicle either before itself or such authority as the State Government may by order appoint in order that the registering authority may satisfy itself that the particulars contained in the application are true and that the vehicle complies with the requirements of this Act and of the rules made thereunder.

177. General provision for punishment of offences.—Whoever contravenes any provision of this Act or of any rule, regulation or notification made thereunder shall, if no penalty is provided for the offence be punishable for the first offence with fine which may extend to one hundred rupees, and for any second or subsequent offence with fine which may extend to three hundred rupees

H.3 Thus, in the present case, if there is a contravention of the provisions of the Motor Vehicles Act, 1988, accordingly any punishment for the same ought to be under the Motor Vehicle Act, 1988 itself.

H.4 Accordingly, it is submitted that the present proceedings initiated under Section 28(4) of the Act is bad in law and ought to be set aside.

I. Documentary evidence shall prevail over oral evidence

I.1 It is submitted that the Noticee, at the time of import of second-hand crane, provided Chartered Engineers certificate, and at the time of investigation provided the manufacture's invoice, certifying valuation of the imported cranes which till date has not been challenged by the Department. Hence, it is submitted that reliance cannot be placed on the statements recorded by the Department because the same is contradictory to chartered engineers certificates.

I.2 It is settled law that documentary evidence will prevail over oral evidence in case of conflict between the two evidence. Reliance is placed on the following decisions to support the aforesaid contention:

- **Santogen Textile Mills Ltd. v. Commissioner of C. Ex., Navi Mumbai, [2017 (347) E.L.T. 581 (Bom.)]** *(para 30),*
- **Philip Fernandes v/s Commissioner [2002 (146) E.L.T 180]** *(para 12)*
- **R.P Industries v/s Collector [1996 (82) E.L.T 129]** *(para 11)*
- **Commissioner v/s Latex Chemicals [2005 (181) E.L.T. 138 (Tri. - Del.)]** *(para 4)*

I.3 Hence, it is submitted that based on documentary evidence it is patently clear that the value declared by the Noticee is the correct value and no duty has been evaded by the Noticee.

I.4 In view thereof, it is submitted that captioned show cause notice is bad in law and should be set aside for this reason as well.

J. Extended period is not invocable in the present case

J.1 It is submitted that the Department has demanded duty against the Noticee by invoking extended period of limitation as envisaged under Section 28(4) of the Act. It is submitted that the alleged basis of such invocation is that the Noticee has wilfully undervalued the cranes imported by them to evade payment of customs duty and therefore provisions of Section 28(4) of the Act are squarely applicable for demanding additional duty not paid/short paid for the extended period.

J.2 As per section 28(4) of the Act where duty has not been levied or has been short-levied or erroneously refunded by reason of (a) collusion; or (b) any willful mis-statement; or (c) suppression of facts, by the importer, the proper officer can issue such notice within five years from the relevant date. It is submitted that the provision of extended time limit of 5 years as provided in Section 28(4) of the Act cannot be invoked in the present case as the pre-requisite conditions for invoking this sub-section (4) have not been fulfilled.

J.3 The term 'suppression' is not defined in the Act. The meaning of the said term was elaborated in the case of **CCE vs. Chemphar Drugs and Liniments [1989 (40) ELT 276 (SC)]** *(para 8)* and also in the case of **Padmini Products vs. CCE [1989 (43) ELT 195 (SC)]** *(para 8)* where it was held that "mere inaction or failure to do something does not constitute suppression. There must be something positive to prove suppression."

J.4 From the above decisions, the well-established principle of law which emerges is that mere non-submission of any information does not constitute 'suppression'. For alleging suppression with the intention to evade payment of duty, there has to be some positive act on the part of the Noticee duly supported by some corroborative documents.

J.5 Reliance in this regard is placed on the decision of Hon'ble Supreme Court in **Aban Lyod Chiles Offshores Ltd. v. Commissioner of Customs, Maharashtra [2006 (200) ELT 370 (SC)]** *(para 20)* wherein it was held that to invoke this clause, there has to be an intention on the part of the assessee to evade the duty.

J.6 The Department in the captioned show cause notice has alleged that in the present case the Noticee has wilfully mis-declared the value of the crane with the intention of evading duty. The Department has, without making any reference to the documents submitted by the Notice at the time of clearance, alleged that the Noticee has suppressed the facts with an intent to evade payment of duty.

J.7 Further, the Noticee was under the *bonafide* belief that the value adopted by them is the correct value. This is supported by the Chartered Engineers certificate submitted with the Customs Authority for clearance of the cranes.

J.8 It is further submitted that nothing has been brought on record by the Department to show that the Noticee has acted with a *mala fide* intent to escape the payment of Customs duty except for the statements recorded during investigation without any corroborative evidence. It is also submitted that in respect of the second hand crane registered by the Noticee, there is no allegation of misdeclaration of YOM in the BOE with the intent to evade customs duty.

J.9 Furthermore, it is submitted that the entire case of the Customs Department is based on the YOM declared in the RC before the RTO. As stated above, YOM of the cranes before RTO cannot be the basis to allege undervaluation. Assuming without admitting that the YOM of cranes before the RTO can be the basis for alleging undervaluation even then the Noticee cannot be held liable for suppression of fact. Thus, it is submitted that the Noticee had not suppressed any information from the Customs Department to justify the invocation of extended period of limitation.

J.10 It is a settled legal principle that the onus to prove any *mala fide* is on the Revenue, and the same must be discharged before the extended period of limitation is invoked. Reliance is placed *inter-alia* on the Hon'ble Supreme Court's judgment in the case of **Uniworth Textiles Ltd. vs. CCE Raipur [2013 (288) ELT 161 (SC)]**. Relevant portion is reproduced hereunder for ease of reference:

"24. Further, we are not convinced with the finding of the Tribunal which placed the onus of providing evidence in support of bona fide conduct, by observing that "the Petitioner had not brought anything on record" to prove their claim of bona fide conduct on their part. It is a cardinal postulate of law that the burden of proving any form of mala fide lies on the shoulders of the one alleging it. This Court observed in Union of India v. Ashok Kumar & Ors. - (2005) 8 SCC 760 that "it cannot be overlooked that burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility."

J.11 Accordingly, it is submitted that the extended period of limitation under Section 28(4) of the Act is not invokable in respect of the said 28 cranes on which duty was loaded by the customs authorities at the time of import.

J.12 It is settled in a catena of cases that extended period of limitation cannot be invoked when the facts and issues were in knowledge of the Department. Reliance is placed on the Hon'ble Supreme Court's judgment in **Nizam Sugar Factory Vs. Collector [2006 (197) ELT 465 (SC)],** relevant portion of which is reproduced below.

"9. Allegation of suppression of facts against the Noticee cannot be sustained. When the first Show Cause Notice was issued all the relevant facts were in the knowledge of the authorities. Later on, while issuing the second and third show cause notices the same/similar facts could not be taken as suppression of facts on the part of the assessee as these facts were already in the knowledge of the authorities. We agree with the view taken in the aforesaid judgments and respectfully following the same, hold that there was no suppression of facts on the part of the assessee/Noticee"

J.13 Further reliance is also placed on the below decisions –

- **Indian Acrylics Ltd. v. Commissioner of Customs, Kandla [(2015) 325 ELT 753 (Tri.-Ahmd**)] *(para 10,11)*, affirmed by **Commissioner of Customs, Kandla v. Indian Acrylics Ltd. [(2016) 336 ELT 474 (Guj)]** *(para 6, 7)*,**;**
- **Commissioner of Customs, Amrtisar v. Vallabh Design Products, [(2007) 219 ELT 73 (P&H)]** *(para 9)*,affirmed by **Commissioner v. Vallabh Design Products [(2016) 341 ELT A 222 (SC)];**
- **Balarpur Industries Ltd. v. Commissioner of Central Excise (Adj.), New Delhi [(2012) 275 ELT 88 (Tri.-Del)]** *(para 6, 7)***;**
- **CC, Kandla v. Mantora Agro Industries [2018 (7) TMI 926 CESTAT-AHMEDABAD]** *(para 4, 5, 6)*

J.14 In the absence of *mala fide* intent on part of the Noticee, extended period of limitation was wrongly invoked in the facts of the present case. Accordingly, the allegation of undervaluation in the captioned show cause notice issued to the Noticee should be dropped.

K. The goods are not liable for confiscation under Section 111(m) of the Customs Act

K.1 Section 111 (m) of the Customs Act, 1962, reads as under –

SECTION 111. ***Confiscation of goods attempted to be improperly exported, etc.*** *- The following import goods shall be liable to confiscation :-*

....

(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 transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;

K.2 Thus, confiscation under Section 111(m) can be, *inter alia,* ordered only in cases where the goods do not correspond to the value declared under the Customs Act.

K.3 From the above paras, it is clear that the Noticee has correctly declared the value of the crane at the time of import basis the supplier invoice, chartered engineer certificate. Further, the Department has not produced any documentary evidence such as parallel invoice, value of contemporaneous import, etc., to support its claim of

undervaluation. Hence, it is submitted that the Show Cause Notice under reply has wrongly proposed that the used cranes imported by the Noticee are liable for confiscation in terms of Section 111 (m) of the Act.

K.4 The Hon'ble CESTAT in the case of **Galaxy Funworld Pvt. Ltd. Versus Commr. Of Cus. (Preventive), Mumbai [2006 (206) E.L.T. 890 (Tri. - Mumbai)]** *(para 6)* held that in cases where charge of undervaluation is not established by way of contemporaneous imports, order of confiscation of goods under Section 111(m) of the Customs Act is not sustainable.

K.5 Reliance is also made upon the following decisions:

- **Ganesh International Versus Commissioner Of Customs, Nagpur 2004 (169) E.L.T. 284 (Tri. - Mumbai)** *(para 24, 25)*
- **Nishiland Park Ltd. Versus Commissioner Of C. Ex. & Cus., Mumbai [2004 (168) E.L.T. 389 (Tri. - Mumbai)]** *(para 2(b))*
- **Commissioner Of Cus., Madras Versus Tapan Trading Co. [2001 (128) E.L.T. 456 (Tri. - Chennai)]** *(para 5(a) and (b))*

K.6 Further, it is settled law that no confiscation of goods can be ordered if the same is not physically available for the same. Reliance is made on the following decisions:

- **Munjal Showa Ltd. v. CCE [2008 (227) E.L.T. 330 (Tri.),** *(para 7)* affirmed by Hon'ble Supreme Court in **[2022 (382) E.L.T. 145 (S.C.)]**
- **CCU v. Raja Impex (P) Ltd. [2008 (229) E.L.T. 185 (P&H)]** *(para 12, 13)*

K.7 Thus, it is submitted that the cranes cannot be confiscated under Section 111(m) of the Customs Act.

L. Penalty is not imposable under Section 112 (a) of the Customs Act

L.1 Section 112 (a) of the Act states as under –

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

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

L.2 As stated above, the goods are not liable for confiscation under Section 111 of the Act and further, no such act has been committed by the Noticee which will render the goods liable for confiscation, consequently, the question of imposition of penalty under Section 112 (a) of the Act does not arise. It is submitted that penalty under Section 112 (a) of the Act can only be imposed if the goods are liable for confiscation, since in the present case the goods are not liable for confiscation, hence the Department erred in proposing penalty under Section 112 (a) of the Act.

L.3 In any event it is submitted that in order to impose penalty under Section 112 of the Act *mens rea* is necessary to be established. The aforesaid issue pertains to valuation of used cranes imported by the Noticee, the Noticee had bona-fide belief that the value adopted by them is correct. In this backdrop, the Department proposal to impose penalty under Section 112(a) of the Act on the Noticee is incorrect. Reliance is placed on the below mentioned judgements to support the aforesaid contention:

- **M/s. Kuwait Airways Corporation V/s. CC [Mumbai 2005-TIOL- 264-CESTAT-MUM]** *(para 3)*
- **Akbar Badruddib Jiwani V/s Collector of Customs [1990(47) ELT 161(SC)]** *(para 58, 59)*
- **Extrusion V/s Collector of Customs, CAL, [1994(70) ELT 52, CAL]** *(para 27 to 36)*
- **Luxor Pen Company V/s Collector of Customs [1992 (57) ELT 323]** *(para 7)*
- **Peejay Woollens P. Ltd V/s Collector of Customs, Bombay [1997 (95) ELT 364 (Tri-Mumbai)]** *(para 3)*
- **Killick Air Courier & Forwarders Ltd. V/s Collector of Customs [1998 (97) ELT 182]** *(para 5, 6)*
- **H. K. Shipping Services Pvt. Ltd. [2000 (121) ELT 828 (Tribunal)]** *(para 5)*
- **G. L. Gupta V/s D. N. Mehta [AIR 1971 SC 2162]** *(para 13, 14)*

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

M.1 The Department has wrongly imposed penalty under Section 114A of the Act.

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

M.2 It is submitted that on a plain reading of the above provision, it is evident that Section 114A of the Act has three limbs. The first limb talks of non-levy/ non-payment, short levy/ short payment, or erroneous refund of duty of customs. The second limb relates to the reason for such non-levy/ non-payment etc. on account of various ingredients such as fraud, collusion etc. with intention to evade payment of duty. The third and last limb refers to the liability of the person to pay the duty as determined under Section 28 of the Customs Act, 1962.

M.3 From a bare reading of Section 114A of the Act it is evident that the said provision contemplates imposition of penalty when the ingredients such as suppression, fraud, misstatement etc. are established on the part of the Noticee. Therefore, for invoking the provisions of Section 114A, the ingredients contained in the proviso to Section 28 (4) of the Act (pertaining to the extended period of limitation) need to be satisfied.

M.4 The Noticee submits that there was no fraud, suppression or wilful mis-statement by them and the same is evident from the foregoing paragraphs and hence the demand under Section 28 of the Act is not sustainable. Therefore, the ingredients for imposition of penalty under Section 114 A of the Act are not satisfied. As the ingredients for imposition of penalty under Section 114A are not satisfied, hence the penalty under the said section is not sustainable and liable to be dropped.

M.5 Reliance is placed on the decision in the case of **CC v. MMK Jewellers [2008 (225) E.L.T. 3 (S.C.)]** affirmed by the Hon'ble Supreme Court in **Commissioner v. M.M.K. Jewellers - 2009 (2431 E.L.T. A90 (S.C.)** wherein it was held that that in view of clear findings of Commissioner that assessees are not guilty of suppression of facts,

collusion or mis-statement of facts, therefore duty cannot be imposed by invoking extended period of limitation under proviso to Section 28(1) of Customs Act, 1962 and when the duty itself cannot be imposed, no order of imposing penalty under Section 114A can be sustained. The Hon'ble Supreme Court further held that since duty could not be imposed, order imposing penalty under Section 114A of Customs Act, 1962 was not sustainable. Relevant paragraphs of **[(2008 (225) E.L.T. 3 (S.C.)]** are reproduced as hereunder:

"41. The Noticee in this appeal and connected appeals cannot invoice the extended period of limitation in view of the Commissioner's categoric findings that no case of collusion, wilful misstatement or suppression of facts has been brought out in the show cause notice so as to invoice the provisions of Section 114A of the Customs Act, 1962.

42. Penalty under Section 114A is imposable only when the demand is confirmed under the proviso to Section 28(1) of the Act. In view of the clear findings of the Commissioner that the Department-assessees are not guilty of suppression of facts or are guilty of collusion or misstatement and, therefore, duty cannot be imposed by invoking the extended period of limitation. When the duty itself cannot be imposed, no order of imposing the penalty under Section 114A of the Customs Act can be sustained.

43. Reliance has been placed P & B Pharmaceuticals (P) Ltd. v. Collector of Central Excise (2003) 3 S.C.C. 599. In this case, the question was whether the extended period of limitation could be invoked where the Department has earlier issued show-cause notices in respect of the same subject-matter. It has been held that in such circumstances, it could not be said that there was any wilful suppression or misstatement and that, therefore, the extended period under Section 11-A could not be invoked.

44.This case was followed in the subsequent judgment of this court in ECE Industries Ltd. v. Commissioner of Central Excise, New Delhi - (2004) 13 S.C.C. 719. In this case, this court again held that as there is no suppression, penalty cannot be imposed.

45.This court relied on these judgments in the case of Nizam Sugar Factory v. Collector of Central Excise, A.P. - (2006) 11 S.C.C. 573. In this case, this court again reiterated the legal position and held that when there is no suppression of facts, the Department would not be justified in invoking the extended period of limitation.

46. In view of the clear legal position crystallized by a series of judgments that in case where the assessees are not guilty of suppression of facts, collusion or wilful misstatement of facts, therefore, the extended period of limitation cannot be invoked under proviso to Section 28(1) of the Customs Act, 1962 in the instant appeal and the other connected appeals. Consequently, this appeal and other connected appeals filed by the Noticee have to be dismissed being time barred."

M.6 The above submission is also supported by the Apex Court ruling in the case of **UOI vs. Rajasthan Spinning and Weaving Mills Ltd. [2009 (238) ELT 3 (SC)]** wherein the Hon'ble Supreme Court, in relation to the pari materia section 11AC of the Central Excise Act, 1944 has held as under:-

"17. The main body of Section 11 AC lays down the conditions and circumstances that would attract penalty and the various provisos enumerate the conditions, subject to which and the extent to which the penalty may be reduced.

18. One cannot fail to notice that both the proviso to sub-section 1 of Section 11 A and Section 11 AC use the same expressions : "by reasons of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty,..." In other words the conditions that would extend the normal period of one year to five years would also attract the imposition of penalty. It, therefore, follows that if the notice under Section 11 A (1) states that the escaped duty was the result of any conscious and deliberate wrong

doing and in the order passed under Section 11 A(2) there is a legally tenable finding to that effect then the provision of Section 11 AC would also get attracted. The converse of this, equally true, is that in the absence of such an allegation in the notice the period for which the escaped duty may be reclaimed would be confined to one year and in the absence of such a finding in the order passed under Section 11 A (2) there would be no application of the penalty provision in Section 11 AC of the Act. On behalf of the assessees it was also submitted that Sections 11 A and 11 AC not only operate in different fields but the two provisions are also separated by time. The penalty provision of Section 11 AC would come into play only after an order is passed under Section 11 A (2) with the finding that the escaped duty was the result of deception by the assessee by adopting a means as indicated in Section 11 AC.

19. From the aforesaid discussion it is clear that penalty under Section 11 AC, as the word suggests, is punishment for an act of deliberate deception by the assessee with the intent to evade duty by adopting any of the means mentioned in the section."

M.7 Without prejudice to the above, it is submitted that from the foregoing paras it is clear that the demand alleged by the Department is not sustainable in law. Once the duty is not payable, the question of levy of penalty does not arise. Reliance is placed on the decision of **CCE vs. H.M.M. Limited [1995 (76) ELT 497 (SC)]** *(para 2)*, wherein the Hon'ble Supreme Court held that the question of penalty would arise only if the department is able to sustain the demand. Similarly, in the case of **CCE, Aurangabad vs. Balakrishna Industries [2006 (201) ELT 325 (SC)]** *(para 13)***,** the Hon'ble Supreme Court held that penalty is not imposable when differential duty is not payable. Therefore, the penalty is to be set aside as the demand itself is not sustainable in law.

M.8 The above judgment of the Hon'ble Supreme Court has been followed in several cases by the Hon'ble High Courts and the Hon'ble Tribunal, including in the judgment of the Hon'ble Tribunal Bangalore in the case of **Hyva India P. Ltd. vs. CCE, Bangalore-III, 2008 (226) ELT 264 (Tri- Bang.)** *(para 2, 4)***.**

M.9 Without prejudice to above, it is submitted that Section 114A of the Act and Section 112 of the Act are mutually exclusive and as per proviso to Section 114A, if penalty is imposed under this section, then in that event penalty under Section 112 of the Act cannot be imposed at the same time and vice versa. Hence, for this reason as well penalty under Section 114A of the Act is not sustainable.

M.10 In view thereof, it is submitted that penalty under Section 114A of the Act is not imposable on the Noticee.

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

N.1 The Department has wrongly proposed to impose penalty under Section 114AA of the Act on the Noticee. The Noticee submits that it has not filed or submitted any declaration, statement or document which was false or incorrect thus making them liable to penalty under Section 114AA of the Act. The Noticee has not made, signed or used or caused to be made, signed or used, declaration, statement or document, which they had reason to believe that they were false or incorrect in material particulars in the aforesaid import consignment of the cranes.

N.2 Section 114AA of the Act reads as under:

"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."

N.3 On plain reading of Section 114AA of the Act, it is clear that there are two essential ingredients that needs to be fulfilled for imposition of penalty under the aforesaid section, a) knowledge and b) that the material should be false. In the present case, the Noticee had no knowledge that the valuation declared by them in respect of the cranes was wrong and the Department has failed to produce any evidence to establish *mens rea*/knowledge on part of the Noticee. Furthermore, the Noticee had not produced any material which was false or incorrect.

N.4 In view thereof, it is submitted that in absence of ingredients for imposition of penalty under Section 114 AA of the Act, the imposition of penalty under the said section is bad in law.

N.5 Without prejudice to above, it is submitted that penalty under Section 114AA of the Act can be imposed only on natural person and it cannot be imposed on the artificial person or company because the goods are handled by natural living person and not by an artificial entity and declaration can only be made or caused to be made by a natural person. Hence, it is submitted that penalty under Section 114AA of the Act cannot be imposed on Noticee for this reason as well.

N.6 Reliance in this regard is placed on the decision of Hon'ble Tribunal in the case of **Apple Sponge and Power Ltd. v. Commissioner of Service Tax [2018 (362) E.L.T 894 (Tri-Mum)]** *(para 4, 5)* wherein the Hon'ble Tribunal in the context of Rule 26 of the Central Excise Rules (*pari materia* with Section 114AA of the Act) held as under:

"I also find that penalty under Rule 26 can be imposed only on the natural individual person and not on the artificial person or company because the goods is handled by natural living person and not by an artificial entity."

N.7 Similarly, reliance is also placed on the decision of Hon'ble Tribunal in the case of **T.R. Venkatadari and Ors. v. Commissioner of Service Taxi, Mumbai [2018 (10) G.S.T.L 483 (Tri)]** wherein the Hon'ble Tribunal held as under:

"9 . It is also observed from the text of the rule 26 of the CER, 2002, section 112/ 114AA of the Customs Act, 1962 that the acts prescribed therein which liable for penalty are such which can be acted only by an individual person and not by artificial person like a company. Therefore for penalizing an individual person an independent provision is must, which is absent in the Finance Act, 1994. For this reason, general penal provision for contravention of the provision of Act/ Rules provided under section 77(2) of the Finance Act, 1994 cannot be invoked to penalize an individual person."

N.8 In view of the above, the penalty under Section 114AA of the Act is not sustainable and should be set aside.

O. INTEREST IS NOT PAYABLE

O.1 In view of the submissions made supra, the duty liability itself is not sustainable, and therefore, the imposition of interest is ruled out.

O.2 The Hon'ble Supreme Court of India in **Prathibha Processors vs. Union of India reported at 1996 (88) E.L.T. 12 (S.C.)** *(para 14, 15, 16)***,** has held that when the principal amount (duty) is not payable, there is no occasion or basis to levy any interest, either.

O.3 In view thereof, it is submitted that interest proposed to be imposed under the captioned show cause notice is not sustainable and hence should be set aside.

14.2 The Noticee, **Shri Arun Pandurang Khot, Karta of M/s Hira Movers (IEC No. AAIHA3373G)** vide letters dated 27.01.2026 submitted written reply to the subject SCN. Vide above reply, they denied all the allegations made in the SCN and made following submissions:

A. Penalty is not imposable under Section 112 (a) of the Customs Act

A.1 It is submitted that penalty under Section 112 (a) of the Act can only be imposed if the goods are liable for confiscation under Section 111 of the Act.

A.2 It is submitted that in the Impugned SCN, confiscation under Section 111(m) of the Act has been proposed. It is submitted that confiscation under Section 111(m) can be, *inter alia,* ordered only in cases where the goods do not correspond to the value declared under the Act.

A.3 It is submitted that in the present case, the Noticee and the Firm have rightly declared the value of the cranes at the time of imports basis the supplier invoice, chartered engineer certificate. Further, the Department has not produced any documentary evidence such as parallel invoice, value of contemporaneous import, etc., to support its claim of undervaluation. Hence, it is submitted that the Show Cause Notice under reply has wrongly proposed that the used cranes imported by the Noticee are liable for confiscation in terms of Section 111 (m) of the Act.

A.4 It is submitted that since the goods are not liable for confiscation in the present case under Section 111(m) of the Act, the Department erred in imposing penalty under Section 112 (a) of the Act.

A.5 In any event it is submitted that in order to impose penalty under Section 112 of the Act *mens rea* is necessary to be established. The aforesaid issue pertains to valuation of used crane imported by the Noticee, the Noticee had bona-fide belief that the value adopted by them is correct. In this backdrop, the Department proposal to impose penalty under Section 112(a) of the Act on the Noticee is incorrect.

A.6 Reliance is also placed on the decision of Hon'ble Supreme Court in the case of **Akbhar Badhruddin Jiwani v/s CC**, Mumbai **1990 (47) E.L.T 161 (SC),** wherein the Hon'ble Supreme Court held that burden lies upon the Customs Department to prove that the importers had acted dishonestly or contemptuously or with deliberate object of committing a breach of law. The Hon'ble Supreme Court noted that the importers had acted under bona fide belief and hence set aside the penalty. The relevant extract of the decision is reproduced for ease of reference:

> " *Before we conclude it is relevant to mention in this connection that even if it is taken for arguments sake that the imported article is marble falling within Entry 62 of Appendix 2, the burden lies on the Customs Department to show that the appellant has acted dishonestly or contumaciously or with the deliberate or distinct object of breaching the law.*
>
> *58. In the present case, the Tribunal has itself specifically stated that the appellant has acted on the basis of bona fide belief that the goods were*

importable under OGL and that, therefore, the Appellant deserves lenient treatment. It is, therefore, to be considered whether in the light of this specific finding of the Customs, Excise & Gold (Control) Appellate Tribunal, the penalty and fine in lieu of confiscation required to be set aside and quashed. Moreover, the quantum of penalty and fine in lieu of confiscation are extremely harsh, excessive and unreasonable bearing in mind the bona fides of the Appellant, as specifically found by the Appellate Tribunal.

59. We refer in this connection the decision in Merck Spares v. Collector of Central Excise & Customs, New Delhi - 1983 E.L.T. 1261, Shama Engine Valves Ltd. Bombay v. Collector of Customs, Bombay - 1984 (18) E.L.T. 533 and Madhusudan Gordhandas & Co. v. Collector of Customs, Bombay - 1987 (29) E.L.T. 904 wherein it has been held that in imposing penalty the requisite mens rea has to be established. It has also been observed in Hindustan Steel Ltd. v. State of Orissa - 1978 (2) E.L.T. (J 159) (S.C.) = 1970 (1) SCR 753 - by this Court that :-

"The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct, or acts in conscious disregard of its obligation; but not, in cases where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."

A.7 In the present case, there is no evidence that the Noticee had any intention of mis-declaring the goods, hence the aforesaid dictum is squarely applicable to the present case.

A.8 Reliance is also placed on the decision of Hon'ble Tribunal in the case **Suresh Rajaram Newagi v/s Commissioner of Cus 2008 (228) E.L.T 211**, wherein the Hon'ble Tribunal had set aside the penalty imposed under Section 112 of the Act by holding that in absence of mens rea or knowledge about smuggling activity penalty for abetting the smuggling is not maintainable. The relevant extract of the decision is reproduced for ease of reference.

"*In the absence of any concrete evidence about the active role of the appellant and since no evidence has been produced by the department to show that he is part of any group of smugglers etc. or that he was aware about the excess goods lying in his shed, penalty cannot be imposed on him as his lapse, if any, could also be considered only as supervisory lapse. I also find that an inquiry has been conducted by Mumbai Port Trust on the very same charges against the appellant and the inquiry report has categorically found that no charge against the appellant is proved. As no direct/circumstantial evidence to show his role as abetting to the smuggling activity exists, therefore, the appellant is not liable to any penalty in absence of mens rea or knowledge of the actual smuggling activity. In this regard, I place reliance on the following case laws :*

(i) Akbar Badruddin Jiwani v. Collector of Customs reported in 1990 (47) E.L.T. 161 (S.C.);
(ii) Mangalore Chemicals & Fertilizers Ltd v. Deputy Commissioner reported in 1991 (55) E.L.T. 437 (S.C.);
(iii) V. Krishna Raj v. Collector of Customs, Madras reported in 1995 (80) E.L.T. 628 (Tri.);
(iv) P.K. Abraham v. Commissioner of Customs, Mumbai reported in 1999 (114) E.L.T. 480 (Tri.).

3. In the light of the above discussions, I set aside the penalty of Rs. 50,000/- imposed on the appellant and allow the appeal"

A.9 Reliance is also placed on the decision of Hon'ble Tribunal in the case of **Meirs Pharma (India) Pvt Ltd v/s Commissioner** 2004 (164) E.L.T (53), wherein the Hon'ble Tribunal held that mens rea is necessary requirement for imposition of penalty under Section 112 of the Act. As stated above, the Noticee had no intention of mis-declaration. Hence, the ratio of aforesaid case laws is squarely applicable to the present case. In view thereof, it is submitted that the Respondent erred in imposing penalty on the Noticee.

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

B.1 It is submitted that Section 114A of the Act contemplates imposition of penalty when the ingredients such as suppression, fraud, misstatement etc. are established on the part of the Noticee. Therefore, for invoking the provisions of Section 114A, the ingredients contained in the proviso to Section 28 (4) of the Act (pertaining to the extended period of limitation) need to be satisfied.

B.2 On plain reading of Section 114A of the Act, it is clear that there are *inter alia* two essential ingredients that needs to be fulfilled for imposition of penalty under the aforesaid section, a) wilful misstatement and b) suppression of facts. In the present case, the Noticee had no knowledge for any misdeclaration and the Department has failed to produce any evidence to establish mens rea/knowledge on part of the Noticee.

B.3 The Noticee submits that there was no fraud, suppression or wilful mis-statement by them and the same is evident from the foregoing paragraphs and hence the demand under Section 28 of the Act is not sustainable. Therefore, the ingredients for imposition of penalty under Section 114 A of the Act are not satisfied. As the ingredients for imposition of penalty under Section 114A are not satisfied, hence the penalty under the said section is not sustainable and liable to be dropped.

B.4 Without prejudice to above, it is submitted that Section 114A of the Act and Section 112 of the Act are mutually exclusive and as per proviso to Section 114A, if penalty is imposed under this section, then in that event penalty under Section 112 of the Act cannot be imposed at the same time and vice versa. Hence, for this reason as well penalty under Section 114A of the Act is not sustainable.

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

C.1 The Department has wrongly imposed penalty under Section 114AA of the Act on the Noticee. The Noticee submits that it has not filed or submitted any declaration, statement or document which was false or incorrect thus making them liable to penalty under Section 114AA of the Act.

C.2 It is submitted that no penalty can be imposed on the Noticee under Section 114AA of the Act. Section 114AA of the Act is reproduced below for ease of reference:

> *"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."

C.3 A bare perusal of Section 114AA of the Act shows that it can be invoked only in cases where the individual intentionally makes any false particulars, which he/ she knows to be incorrect. Hence, an element of mala-fide intention is necessary for imposition of penalty under Section 114AA. However, the Noticee has not made, signed or used or caused to be made, signed or used, declaration, statement or document, which they had reason to believe that they were false or incorrect in material particulars in the aforesaid import consignment of the crane.

RECORD OF PERSONAL HEARING

15. Personal Hearing (PH) opportunities were granted to the noticees on 29.01.2026, 12.02.2026 and 23.02.2026. The personal hearing scheduled on 29.01.2026 was not attended by the noticees. In adherence to the principles of natural justice, another personal hearing was scheduled on 12.02.2026, which was attended by Shri Chirag Shetty and Ms. Ayushi Agrawal, Advocates, on behalf of the noticees, namely M/s. Hira Movers and Shri Arun Pandurang Khot, Karta of M/s. Hira Movers. They reiterated the contentions raised in their written submissions dated 27.01.2026.

During the hearing, Advocate Ayushi Agrawal and Advocate Chirag Shetty submitted that the Show Cause Notice had been issued on the basis of the Chartered Engineer's (CE) report and the alleged misdeclaration before the RTO authorities. They emphasized that there was no violation under the Customs Act, 1962. With regard to the CE report and the Year of Manufacture (YOM), they requested cross-examination of the Chartered Engineer. It was informed that decision regarding the request for cross-examination would be conveyed to them after examining the CE Report.

The adjudicating authority, after examination of case records, did not find any merit in granting cross examination in the instant case. Thereafter, a further opportunity of personal hearing was granted on 23.02.2026, and was held in virtual mode, in which Advocate Chirag Shetty reiterated the contents of earlier submissions and requested to take lenient view in the matter.

DISCUSSION AND FINDINGS

16. I have gone through the facts of the case, material evidence on record, the Show Cause Notice dated 07.08.2025, oral & written submissions of the noticees. I now proceed to decide upon the issues involved in the case.

16.1 Cross-Examination of Chartered Engineer

16.1.1 Before examining the merits of the case, I find that the noticee has made a request for cross examination of the Chartered Engineer during the personal hearing as well as in the written submission. The Noticee has contended that the Department has wrongly relied upon Chartered Engineer's statement and revised value provided by him solely on the basis of YOM mentioned in the RC, without any corroborative evidence. The statement is contradictory to the invoice and manufacturer's declaration submitted during investigation, as well as to his own earlier position that YOM is not the sole criterion for valuation. The Noticee submits that in the absence of independent documentary corroboration, reliance on such statement is legally unsustainable and cross-examination is necessary to test their veracity, particularly in view of judicial precedents, namely Andaman Timber Industries v. CCE [2015 (324) E.L.T. 641 (S.C.)].

16.1.2 On careful examination of the records, I find that the contention of allegation being solely based on the valuation opinion of the Chartered Engineer is not acceptable. I find that the foundation of the case rests on independent documentary evidence obtained from statutory authorities, specifically the Registration Certificates (RCs) issued by the concerned State RTOs. I find that the RTO functions as a statutory authority under the Motor Vehicles Act, 1988, and that the Registration Certificates issued by it, pursuant to physical inspection of the vehicles, are statutory documents carrying independent evidentiary value. In the instant case, there is a clear discrepancy between the Year of Manufacture (YOM) declared in the Bill of Entry and the YOM recorded in the RC. This primary documentary evidence stands independently of the statement of the Chartered Engineer, and materially affects the depreciation and assessable value in terms of CBIC Circular No. 493/124/86-Cus.VI dated 19.11.1987.

16.1.3 I find that the statement of the Chartered Engineer in the present case helps in analysing the effect of the Year of Manufacture on valuation, examining the possibility of plate tampering, and re-determining the value of the goods on the basis of the correct Year of Manufacture. Thus the role of Chartered Engineer is supplementary and does not constitute the sole basis of the demand. Accordingly, the reliance placed on Andaman Timber Industries v. Commissioner [2015 (324) E.L.T. 641 (S.C.)] does not appear to be directly applicable to the facts of the present case, as the said decision lays down that denial of cross-examination would vitiate proceedings only where the statement sought to be tested forms the sole basis of the demand.

16.1.4 It is observed that in the present matter, copies of all relied-upon documents, including the Registration Certificate, the revised Chartered Engineer valuation report, and the recorded statements, were duly furnished to

the noticee. Adequate opportunity was also extended for filing written submissions and for availing personal hearings.

16.1.5 Accordingly, I find that the noticees have not demonstrated any specific prejudice that would be caused by denial of cross-examination. The request appears to be a general and mechanical plea, intended to delay adjudication rather than to rebut any specific documentary evidence.

16.1.6 Accordingly, I find that the request for cross-examination of the Chartered Engineer is devoid of merit and does not warrant acceptance.

16.2 I now proceed and find that in the instant case, the following points arise for consideration and determination:

i. Whether the Year of Manufacture (YOM) of the old and used crane was 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?

16.3 Whether the Year of Manufacture (YOM) of the old and used crane was mis-declared at the time of import, resulting in undervaluation and consequent short-payment of customs duty?

16.3.1 The Show Cause Notice alleges that the importer mis-declared the Year of Manufacture (YOM) of the imported old and used crane. In the Bill of Entry filed by M/s Hira Movers, the YOM declared before Customs was 2003, whereas the Registration Certificate issued by the State Transport Authority reflects YOM as 2019. It is alleged that such mis-declaration led to excess depreciation, undervaluation, and short-payment of duty.

16.3.2 The Noticee contends that the Impugned Show Cause Notice has been issued with a pre-determined mindset and is vitiated by non-consideration of material evidence. It is argued that the Department has relied solely upon the Year of Manufacture (YOM) reflected in the RTO records without undertaking any independent inquiry, despite the Noticee having furnished the original Manufacturer's Certificate during investigation. The notice has also contended

that at the time of investigation, the manufacture's invoice was provided, certifying valuation of the imported cranes which has not been challenged by the Department. On these grounds, the Noticee asserts that there is no evidence of mis-declaration, the allegations are based on assumptions and that the SCN is arbitrary, perverse, and liable to be set aside.

16.3.3 I find that the Registration Certificates issued by the RTOs are statutory documents prepared after physical inspection and verification of the cranes by competent authorities under the Motor Vehicles Act, 1988, and therefore carry inherent evidentiary value. Accordingly, the case of the department is not without evidence as contended by the noticee. Further, I find that the records of the case do not reveal any manufacturer's invoice provided by the noticee during investigation, as contended. Instead, email correspondence purportedly from the manufacturer, certifying the year of manufacture has been received. However, in the absence of any supporting material substantiating the same, and considering that the RTO records are official statutory documents, the latter cannot be overridden by the former.

16.3.4 Since the Year of Manufacture is a crucial parameter for valuation of second-hand machinery under CBIC Circular No. 493/124/86-Cus.VI dated 19.11.1987, mis-declaration thereof has directly affected the admissible depreciation, assessable value, and consequently the customs duty liability.

16.3.5 Accordingly, I hold that the Year of Manufacture of the imported old and used crane was mis-declared at the time of import, which resulted in incorrect depreciation, undervaluation, and consequent short-payment of customs duty.

16.4 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?

16.4.1 The SCN contends that the transaction value declared by the importer is not acceptable as the Year of Manufacture (YOM) was 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 report prepared by the Chartered Engineer using the correct YOM as evidenced by RTO records, in terms of Section 14 of the Customs Act, 1962.

16.4.2 The Noticee contends that the declared value ought to have been accepted as the transaction value under Section 14 of the Customs Act, 1962 read with Rule 3 of the Customs Valuation Rules, 2007, since all statutory conditions are satisfied—namely, that the buyer and seller are unrelated, the price is the sole consideration, and the amount declared was actually paid. It is argued that the Department has not produced any contrary evidence such as parallel invoices, private records, or proof of contemporaneous imports at higher values to substantiate the allegation of undervaluation. It is contended that a Chartered Engineer's certificate was furnished at the time of import, the goods were physically inspected, and the declared value corresponded with the depreciated value computed as per CBIC Circular No. 493/124/86-Cus.VI dated 19.11.1987 and Public Notice No. 4/2019-20 dated 27.02.2020.

16.4.3 I find that the mis-declaration of the Year of Manufacture (YOM) was detected upon verification with statutory RTO records, and since YOM is a material factor directly affecting depreciation and valuation of second-hand machinery, such mis-declaration gives rise to reasonable doubt regarding the truth and accuracy of the declared transaction value. In terms of Rule 12 of the Customs Valuation Rules, 2007, where such doubt is not satisfactorily dispelled, the declared value is liable to be rejected. The non-availability of contemporaneous import data of identical or similar goods merely renders the methods under Rules 4 to 8 inapplicable for valuation purposes and does not, by itself, lend acceptance to the declared transaction value, as contended by the noticee. Accordingly, the value was rightly re-determined under Rule 9 on the basis of revised Chartered Engineer reports adopting the correct YOM as reflected in the RTO records, in consonance with Section 14 of the Customs Act, 1962.

16.4.4 In light of the foregoing analysis, I find that the approach adopted in the Show Cause Notice for re-determination of the assessable value is in conformity with the statutory valuation framework as well as the relevant Board Circulars. The revised assessable value of Rs. 4,18,00,000/-, in place of the declared value of Rs. 3,07,64,800/-, is therefore found to be legally tenable.

16.4.5 It is accordingly held that the declared transaction value was correctly rejected under Rule 12 of the Customs Valuation Rules, 2007, and that the re-determination of value under Rule 9 of the said Rules read with Section 14 of the Customs Act, 1962, as proposed in the Show Cause Notice, is valid and sustainable in law.

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

16.5.1 The SCN contends that the imported old and used crane 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 has resulted in incorrect valuation and duty evasion, thereby rendering the goods liable to confiscation.

16.5.2 The Noticee has contended that the particulars declared at the time of import were on the basis of supplier invoice and chartered engineer certificate. Further, the Department has not produced any documentary evidence such as parallel invoice, value of contemporaneous import, etc., to support its claim of undervaluation. It is submitted that Section 111(m) can be invoked only where there is material discrepancy in value or particulars declared, which must be supported by evidence. The Noticee, relying upon judicial precedents in 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)], has further contended that confiscation under Section 111(m) is not legally sustainable as the imported goods are not physically available.

16.5.3 In light of the preceding discussion, it has already been established that the mis-declaration of the Year of Manufacture, a material parameter having a direct impact on valuation and duty assessment, has been duly proved. The argument that the proposal for confiscation lacks evidentiary support is untenable, as the Registration Certificate issued by the concerned RTO authority constitutes credible and substantive evidence of the mis-declaration. Section 111(m) of the Customs Act, 1962 clearly contemplates confiscation where there is mis-declaration of value or any material particular. The earlier assessment and clearance of the goods do not negate or cure the consequences arising from declarations subsequently found to be incorrect. Therefore, it is held that the goods in question are liable to confiscation under Section 111(m) of the Customs Act, 1962.

16.5.4 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."

16.5.5 In light of the foregoing findings, I hold that the goods in question attract liability to confiscation under Section 111(m) of the Customs Act, 1962. Consequently, the circumstances of the case warrant imposition of redemption fine under Section 125(1) of the Act.

16.6 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?

16.6.1 The Show Cause Notice contends that the importer has wilfully mis-declared Year of Manufacture of the imported crane 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.

16.6.2 The Noticee has contested the invocation of the extended period under Section 28(4) by submitting that there was no fraud, collusion, wilful misstatement, or suppression of facts with intent to evade duty. It is argued that all material documents were disclosed at the time of import and assessed by the proper officer, and therefore the allegation of suppression is untenable. 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 certificate, and the Department has produced no corroborative evidence beyond investigation statements. Consequently, it is submitted that the demand of differential duty and interest based on Section 28(4) is legally unsustainable.

16.6.3 I find that upon consideration of the material on record, it stands established that the importer mis-declared the Year of Manufacture in the import documents. I also find that the present case is not founded merely on statements;

rather, it is primarily based on statutory records, namely the Registration Certificate issued by RTO. The Registration Certificates issued by the RTOs are statutory documents generated pursuant to physical inspection and due verification by competent officials under the Motor Vehicles Act, 1988; hence, they possess intrinsic evidentiary value. The incorrect declaration of the Year of Manufacture in the import documents, which surfaced only upon investigation, clearly points to suppression of material particulars. Moreover, the undue benefit of higher depreciation and consequential reduction in assessable value accrued to the importer, thereby evidencing a conscious intent to evade payment of 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.

16.6.4 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.

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

16.7.1 The SCN contends that M/s. Hira Movers deliberately mis-declared material particulars related to year of manufacture 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 Arun Pandurang Khot, as Karta, 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.

16.7.2 The noticee, M/s. Hira Movers, contends that 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 mens rea, fraud or misstatement, or intention to evade duty, 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.

16.7.3 I find that in view of the foregoing discussion, mis-declaration of Year of Manufacture has already been established, resulting in short-payment of duty. The duty demand has already been confirmed against M/s. Hira Movers under Section 28(4) of the Customs Act, 1962, invoking the extended period on account of suppression with intent to evade duty. Accordingly, the noticee, M/s. Hira Movers, 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.

16.7.4 I further find that mis-declaration regarding the Year of Manufacture of the imported crane, which is already established, clearly indicates that incorrect particulars were declared in the impugned Bill of Entry. The consequence of such mis-declaration, i.e. availment of higher depreciation leading to a reduced assessable value, accrued directly to the importer, thereby evidencing conscious knowledge and intent. In view of these findings, the importer is liable to penalty under Section 114A of the Customs Act, 1962.

16.7.5 The contention of the noticee that penalty under Section 114AA of the Customs Act, 1962 can be imposed only upon natural persons and not upon artificial juridical entities has been examined. It is observed that Section 114AA uses the expression “person” without confining its scope to natural individuals, and the statutory language does not warrant such a restrictive interpretation. The decisions relied upon by the noticee relate to Rule 26 of the Central Excise Rules or other analogous provisions and do not lay down a binding principle specifically in the context of Section 114AA of the Customs Act 1962. In these circumstances, the argument advanced by the noticee cannot be accepted, and it is held that penalty under Section 114AA is legally imposable in the present case.

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

16.7.7 Shri Arun Pandurang Khot, Karta, M/s. Hira Movers has reiterated the contentions made by the importer that the value of the imported crane was correctly declared on the basis of supplier invoice and Chartered Engineer certificate, and that the Department has failed to produce any corroborative evidence such as parallel invoices or contemporaneous import data to establish undervaluation; that the Noticee acted under a bona fide belief regarding valuation, without any intention to misdeclare. Since there is no mis-declaration of value in the instant case, the 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.

16.7.8 I find that the mis-declaration of the Year of Manufacture of the imported old and used goods stands duly established, and the demand of duty has already been confirmed against M/s. Hira Movers under Section 28(4) of the Customs Act, 1962. Shri Arun Pandurang Khot has himself acknowledged that he was supervising and taking decisions in respect of the firm's import activities. In view of his admitted role, the incorrect declaration could not have been made without his knowledge or concurrence. His active involvement in overseeing the import process and facilitating submission of inaccurate particulars amounts to abetment of improper importation, thereby rendering the goods liable to confiscation under Section 111(m). Consequently, he attracts penal liability under Section 112(a) of the Customs Act, 1962.

16.7.9 On a careful consideration of the statutory scheme, it emerges that penalty under Section 114A is intrinsically linked to the determination of duty and is recoverable from the person upon whom such duty liability is fastened. In the present case, since the duty demand has been confirmed against the firm, imposition of an additional penalty under the same provision upon the individual managing its affairs would not be legally justified in the given circumstances. Nevertheless, in view of the established findings that the goods were rendered liable to confiscation on account of acts attributable to Shri Arun Pandurang Khot, he is liable to penalty under Section 112(a) of the Customs Act, 1962.

16.7.10 I find that it stands admitted by Shri Arun Pandurang Khot that he was overseeing and taking decisions in relation to the firm's import operations. In view of such admitted decision-making role, accountability for the incorrect declarations regarding the year of manufacture in the impugned Bills of Entry necessarily attaches to him. The circumstances of the case do not suggest any inadvertent or clerical lapse; rather, the mis-declaration appears to have been made consciously, as it resulted in reduction of duty liability at the time of import while leaving scope for subsequent registration of the crane before the RTO on the basis of the actual year of manufacture, thereby preserving their commercial utility and residual life. In these circumstances, it is evident that he knowingly caused the use of incorrect material particulars in documents filed under the Customs law, thereby attracting penal liability under Section 114AA of the Customs Act, 1962.

16.7.11 Accordingly, I hold that Shri Arun Pandurang Khot is liable to penalty under Section 112(a) and Section 114AA of the Customs Act, 1962.

ORDER

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

i. I reject the declared assessable value of Rs. 3,07,64,800/- of old and used crane imported vide Bill of Entry No.5128881 dated 20.08.2021 under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determine the same as Rs. 4,18,00,000/- 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.30,60,613/- (Rupees Thirty Lakhs, Sixty Thousand, Six Hundred Thirteen only)** against M/s. Hira Movers, 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 crane imported vide Bill of Entry No.5128881 dated 20.08.2021, having redetermined assessable value of Rs. 4,18,00,000/-, 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. 41,00,000/- (Rupees Forty One Lakhs only)** on M/s. Hira Movers, in lieu of confiscation under Section 125(1) of the Customs Act, 1962.

iv. I impose a penalty equal to the differential duty & interest thereupon as determined under sub-para 17(ii) above **Rs. 30,60,613/- (Rupees Thirty Lakhs, Sixty Thousand, Six Hundred Thirteen only)** on M/s. Hira Movers under Section 114A of the Customs Act, 1962.

v. I impose a penalty of **Rs. 30,00,000/- (Rupees Thirty Lakhs only)** on M/s. Hira Movers under Section 114AA of the Customs Act, 1962.

vi. I impose a penalty of **Rs. 3,00,000/- (Rupees Three Lakhs only)** on Shri Arun Pandurang Khot, Karta of M/s. Hira Movers, under Section 112(a) of the Customs Act, 1962.

vii. I impose a penalty of **Rs. 30,00,000/- (Rupees Thirty Lakhs only)** on Shri Arun Pandurang Khot, Karta of M/s. Hira Movers, under Section 114AA of the Customs Act, 1962.

18. 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.

Vikram 26/2/26

(Vikram D. Phadke)
Addl. Commissioner of Customs,
Adjudication Cell, Import-I,
New Custom House, Mumbai

66

To,

1. M/s. Hira Movers,
12/463, Hira Tower, Near Janata Bank,
Shahu Corner,
Ichalkaranji 416115

2. Shri Arun Pandurang Khot, Karta of M/s. Hira Movers,
12/463, Hira Tower, Near Janata Bank,
Shahu Corner,
Ichalkaranji 416115

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 Asstt. 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.