OFFICE OF THE COMMISSIONER OF CUSTOMS
CUSTOM HOUSE KANDLA
NEAR BALAJI TEMPLE, NEW KANDLA
Phone : 02836-271468/469 Fax: 02836-271467

| A | File No. | S/10-81/Adj/ Commr./Sanmar/2018-19 |
| B | Order-in-Original No. | KND-CUSTM-000-COM-04-2019-20 |
| C | Passed by | Shri Sanjay Kumar Agarwal, Pr. Commissioner, Custom House, Kandla. |
| D | Date of Order | 14.05.2019 |
| E | Date of Issue | 14.05.2019 |
| F | Show Cause Notice No. & Date | F.No. S/43-05/SIIB/2017-18 dated 26.02.2019 |
| G | Noticee(s)/Co-Noticee(s) | M/s Sanmar Shipping Limited, 9, Cathedral Road, Chennai, Tamil Nadu - 600086 |

1. This Order - in - Original is granted to the concerned free of charge.

2. Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

   Customs Excise & Service Tax Appellate Tribunal,
   West Zonal Bench,
   2nd Floor, Bahumali Bhavan Asarwa,
   Nr. Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad - 380004

3. Appeal shall be filed within three months from the date of communication of this order.

4. Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs. 10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.

5. The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules, 1982 should be adhered to in all respects.
BRIEF FACTS OF THE CASE:

M/s Sanmar Shipping Limited situated at 9, Cathedral Road, Chennai, Tamil Nadu, India (having IEC 0400003562) (hereinafter referred as 'the Importer' for brevity) had filed Bill of Entry No. 2944183 dated 22.08.2017 through M/s. J. M. Baxi and Co., Gandhidham, Customs Broker (hereinafter referred as the 'Custom Broker' for brevity), for Import of Vessel 'MT Sanmar Soprano Ex- Jenny, (IMO9247895)' (hereinafter referred as 'the imported goods' for brevity).

1.2 On the basis of import data analysis by Special Investigation and Intelligence Branch (SIIIB), Custom House, Kandla, one Bill of Entry No. 2944183 dated 22.08.2017, was found to be filed for import of one unit of Tanker : Sanmar Soparno-1 (Ex Jenny), IMO No. 9247895, along with Bunkers and Standard Accessories. It was observed that the said imported goods were cleared for home consumption.

1.3 During the course of scrutiny of import docket by the SIIIB Section, the following facts were noticed as follows,-

   a) The Purchase price of the vessel is USD 9,860,000 (United States Dollars Nine Million Eight Hundred Sixty Thousand Only), as mentioned in clause 1 of the Memorandum of Agreement dated 16th June 2017;

   b) The time and place of delivery of the vessel to the buyer, M/s Sanmar Shipping Limited was at the port of Sohar, country Oman, as per clause 5 of the MOA;

   c) The names and markings of the vessel were changed as per undertaking conditions of clause 12 of the MOA, at port Sohar only. Accordingly, the name of the vessel was changed to Motor Tanker Sanmar Soprana from Jenny. The registry of the flag was changed from Liberian Flag to an Indian Flag. Further, the Provisional Certificate of Indian Registry under section 40(1) of The Indian Shipping Act, 1958 was issued by an Indian Consul at port Sohar, Oman, which suggests that the sale proceeds of the captioned Vessel had completed at the Port of Sohar in Oman;

   d) Value USD 98,60,000/- for the second hand machinery (the vessel) has been certified as reasonable by a Chartered Engineer Mr. Manish T Mistry, who is one of the empanelled Charter Engineer as per Customs House Kandla's Public Notice No.16/2008 dated 03/06/2008 issued from F.No. S/01-02/2008.
1.4 It appeared that the importer has declared the purchase price USD 98,60,000 of the imported goods as the CIF value in the Bill of Entry No. 2944183 dated 22.08.2017. However, it appeared that during the investigation carried out by the SIIB, Kandla that USD 98,60,000 is nothing but FOB price. The declared value did not contain the element of freight and insurance.

1.5 Further, Shri. Capt. K. Rajasekaran, an Authorised Signatory of M/s Sanmar Shipping Limited, Chennai in his statement dated 12.10.2017 recorded under section 108 of the Customs Act, 1962, inter-alia stated that;

- That the notice of readiness for the delivery of the vessel from the seller M/s. Mentar Shipping Inc. was issued during the 1st week of August, 2017 and delivery of the said vessel was made on 7th August, 2017 at Sohar port, Oman;
- That the purchase price of the vessel as mentioned at clause 1 of MOA is USD 9,860,000.00 (United State Dollars Nine Million Eight Hundred Sixty Thousand Only);
- That the value declared at the column of Invoice Value in the said Bill of Entry is USD 9,860,000.00, however, the same is shown as CIF Kandla and the same is certified by the Chartered Engineer;
- That as per sale MOA of vessel, the vessel can be delivered at UAE/ Singapore, the price of the vessel remains same; that the sellers M/s. Menter Shipping Inc vide letter dated 11.10.2017, have also declared that price agreed under the MOA and paid with Vessel's delivery having taken place at the port Sohar Oman (i.e. USD 9,860,000) would remain exactly the same in case the delivery would have taken place in a port of India. Therefore, purchase value of USD 9.8 Million is taken as delivered value of ship at Kandla; that as the Vessel was moved on its own strength, they were of the view that additional cost of transportation not required to be added;
- That the cost of bunkers were incurred, other elements of expenditure were incurred which could not be ascertainable in money value as expenditure that have incurred after the Notice of readiness of the vessel MT Sanmar Soprano for delivery at port Sohar, Oman till its reaching at the place of importation i.e. Kandla, India;
- That the vessel after having delivery at Sohar, Oman, it came on its own, and not carried by any other ship therefore, they declared purchase value as the CIF value at Kandla and the same was confirmed by the Chartered Engineer's valuation certificate at Kandla;
That since the valuation was done at the port of import, the value assessed by the chartered engineer is the declared value at Kandla i.e. inclusive of freight and insurance;

That since they were unable to identify the freight & insurance component, they agree to pay the applicable duty as per Rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007;

That in view of their above submissions, they agree to discharge IGST at the rate of 5% along with the applicable interest, on differential value (the Element of Freight and Insurance), as per Rule 10 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

1.6 In view of the above, it appeared that the Importer has mis-declared the value before the Customs authorities by suppressing the elements of freight and Insurance. Therefore, the mis-declaration made by the Importer, has caused non-payment of IGST at the rate of 5% on the elements of Freight and Insurance.

1.7 Determination of Value of Imported Goods:

In view of the foregoing facts and provisions, the value of the imported goods appeared to be re-determined in terms of the provisions of Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and its details are as under,-

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Value</th>
<th>Currency</th>
</tr>
</thead>
<tbody>
<tr>
<td>FOB Value</td>
<td>9860000</td>
<td>USD</td>
</tr>
<tr>
<td>Exchange rate at the time of filing of BoE.</td>
<td>1 USD = INR 65.15</td>
<td></td>
</tr>
<tr>
<td>FOB</td>
<td>642379000</td>
<td>INR</td>
</tr>
<tr>
<td>Freight @ 20% of FOB</td>
<td>128475800</td>
<td>INR</td>
</tr>
<tr>
<td>Insurance @ 1.125% of FOB</td>
<td>7226763.75</td>
<td>INR</td>
</tr>
<tr>
<td>CIF</td>
<td>778081563.8</td>
<td>INR</td>
</tr>
<tr>
<td>Landing charge @1%</td>
<td>7780815.638</td>
<td>INR</td>
</tr>
<tr>
<td>Assessable Value</td>
<td>785862379.4</td>
<td>INR</td>
</tr>
<tr>
<td>BCD (Exmp Notn 50/2017-CUS Sr.No 551)</td>
<td>0</td>
<td>INR</td>
</tr>
<tr>
<td>CVD (not applicable)</td>
<td>0</td>
<td>INR</td>
</tr>
<tr>
<td>Education Cess</td>
<td>0</td>
<td>INR</td>
</tr>
<tr>
<td>Sec.&amp; Higher Sec Cess</td>
<td>0</td>
<td>INR</td>
</tr>
<tr>
<td>IGST (1/2017 Sr. No. 1246) @ 5%</td>
<td>39293118.97</td>
<td>INR</td>
</tr>
<tr>
<td>IGST cess (1/2017 Sr. No.56) @ 0%</td>
<td>0</td>
<td>INR</td>
</tr>
<tr>
<td>Total Customs duty Payable</td>
<td>39293118.97</td>
<td>INR</td>
</tr>
<tr>
<td>---------------------------</td>
<td>-------------</td>
<td>-----</td>
</tr>
<tr>
<td>Total Customs Duty Paid</td>
<td>32440140</td>
<td>INR</td>
</tr>
<tr>
<td><strong>Differential Duty Payable</strong></td>
<td><strong>6852978.969</strong></td>
<td>INR</td>
</tr>
</tbody>
</table>

1.8 In view of the above, it appeared that ‘the Importer’ had declared the value of **Rs.64,23,79,000/-** only at the time of clearance of the said goods in Bill of Entry, by suppressing the value amounting to **Rs. 14,34,83,379/-** from the Customs authorities. Therefore, the amount of **Rs. 68,52,979/-** as differential Customs duty payable on the said goods was short paid by them. It appeared that ‘the Importer’ had deliberately mis-declared the value of goods and also suppressed the actual value of the goods in contravention of various provisions of Customs Act and Rules made there under with an intent to evade payment of Customs duty of **Rs. 68,52,979/-**. Hence, the provisions of the Section 28(4) of the Customs Act, 1962 for invoking extended period for demand of duty is applicable in the instant case. Therefore, the differential Customs duty amounting to **Rs. 68,52,979/-** is liable to be recovered from ‘the importer’ under Section 28 (4) of the Customs Act 1962 along with applicable interest under Section 28 AA of the Customs Act, 1962.

1.9 During the course of investigation, the importer had paid the differential duty along with applicable interest vide GAR 7 Challan No. 2040 dated 05.03.2018. Further, Deputy Commissioner, (SIIB), Custom House, Kandla vide his letter F.No. S/43-05/SIIB/17-18 dated 16.03.2018 had informed the importer that for waiver of SCN, as requested by them, they have to fulfil the requirement of the condition 9.1 of the Board’s Circular No. 1053/02/2017-CX dated 10.03.2017 read with the clarifications provided as per Circular issued vide F.No. 137/46/2015-Service Tax dated 18.08.2015, which requires 15 % of the duty as penalty along with the duty and applicable interest. However, the importer vide letter dated 12.04.2018 submitted that, as per Section 28(2) of the Customs Act, 1962, penalty is not payable as the tax and the applicable interest has already been paid by them.

1.10 It appeared that ‘the Importer’ have contravened the provisions of Section 46(4) of the Customs Act, 1962 and Section 14 of the Customs Act, 1962 in as much as they failed to declare the true value of the goods while filing the declaration in the form of Bill of Entry while seeking clearance at the time of the importation of the goods. The mis-declaration of the goods in terms of value was done with a wilful intent to evade the payment of appropriate customs duty leviable thereon. All these acts on the part of ‘the Importer’ has rendered the goods liable for confiscation under the provisions of the Section 111(m) of the Customs Act, 1962 and therefore, the goods are
to be considered as smuggled goods as per Section 2(39) of the Customs Act, 1962.

1.11 In view of the above facts & circumstances of under valuation, the imported goods i.e. Tanker Sanmar Soparno I (Ex Jenny), IMO No. 9247895, along with Bunkers and Standard Accessories (Built 2002) valued at **Rs. 78,58,62,379/-** (re-determined value) is liable for confiscation under Section 111(m) of the Customs Act, 1962. The above mentioned acts of omission and commission on the part of ‘the Importer’ have rendered them liable for penal action under the provisions of Section 114A/112 of the Customs Act, 1962.

1.12 Therefore, vide Show Cause Notice F.No. S/43-05/SIIB/2017-18 dated 26.02.2019, M/s Sanmar Shipping Limited, Chennai were called upon to show cause to the Principal Commissioner of Customs, Kandla as to why:-

(i) The assessable value of **Rs. 64,23,79,000/-** (declared value) in respect of the imported goods i.e. Tanker Sanmar Soparno I (Ex Jenny), IMO No. 9247895, along with Bunkers and Standard Accessories (Built 2002), should not be rejected and re-determined as **Rs. 78,58,62,379/-** under Section 14 of the Customs Act, 1962 read with Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007;

(ii) The imported goods i.e. Tanker Sanmar Soparno I (Ex Jenny), IMO No. 9247895, along with Bunkers and Standard Accessories (Built 2002) valued at **Rs. 78,58,62,379/-** (re-determined value), should not be held liable for confiscation under Section 111(m) of Customs Act, 1962;

(iii) The differential Customs duty amounting to **Rs. 68,52,979/-** (Rupees Sixty Eight Lac Fifty Two Thousand Nine Hundred and Seventy Nine only), short paid by them on the said goods, should not be demanded and recovered from them under proviso to Section 28 (4) of the Customs Act, 1962;

(iv) The differential Customs Duty amounting to **Rs. 68,52,979/-** (Rupees Sixty Eight Lac Fifty Two Thousand Nine Hundred and Seventy Nine only) paid by them vide GAR 7 Challan No. 2040 dated 05.03.2018 should not be appropriated towards differential duty liability as shown at Serial No. (iii) above;

(v) Interest should not be recovered from them on the said differential Customs duty under Section 28 AA of the Customs Act, 1962;

(vi) Interest of **Rs. 5,46,361/-** (Five Lakhs Forty Six thousand Three Hundred and Sixty One) paid by them vide GAR 7 Challan No. 2040
dated 05.03.2018 should not be appropriated toward Interest payable under Section 28 AA of the Customs Act, 1962;

(vii) Penalty should not be imposed upon them separately under Section 112 and 114 A of the Customs Act, 1962.

DEFENCE REPLY:

2. M/s Sanmar Shipping Limited, Chennai vide their letter dated 08.04.2019 filed their written submissions to the SCN. They object the proposal to levy differential Customs duty to the extent of **Rs.68,52,979/-** together with interest under Section 28AA of the Customs Act, 1962 and penalty under Section 112 and 114A of the Customs Act, 1962 on account of re-determination of value of a vessel imported by them. They inter-alia submitted the following points:

2.1 They stated that they have imported a vessel by name ‘Tanker Sanmar Soprano l-(Ex Jenny)’ along with Bunkers and Standard Accessories vide Bill of Entry No. 2944183 dated 22.08.2017 for home consumption and for that purpose they have filed bill of entry and paid IGST based on value assessed by Customs Approved Chartered Engineer at Kandla.

2.2 They stated that the main allegation in the Show Cause Notice is that they have mis-declared the CIF (cost, insurance and freight) value of the vessel without including the element of insurance and freight. Further, they submitted that the Show Cause Notice alleged that their assessment and payment of duty on the transaction value cannot be accepted. The Show Cause Notice proceeds to re-determine the value of import invoking Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 rejecting the transaction value declared by them. The main allegation in the Show Cause Notice is that they have not discharged the duty as per Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

2.3 They submitted that the show cause notice has completely ignored the Section 28(1) & (2) of the Customs Act, 1962 which reads as under:

(1) Where any duty has not been levied or not paid or short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts,-

(a) the proper officer shall, within two years from the
relevant date, service notice on the person chargeable with the duty or interest which has not been so levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice;

(b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of-

(i) his own ascertainment of such duty; or

(ii) the duty ascertained by the proper officer, the amount of duty along with the interest payable thereof under section 28AA or the amount of interest which has not been so paid or part-paid.

Provided that the proper officer shall not serve such show cause notice, where the amount involved is less than rupees one hundred.

(2) The person who has paid the duty along with interest or amount of interest under clause (b) of sub-section (1) shall inform the proper officer of such payment in writing, who, on receipt of such information, shall not serve any notice under clause (a) of that sub-section in respect of the duty or interest so paid or any penalty leviable under the provisions of this Act or the rules made thereunder in respect of such duty or interest:

Provided that where notice under clause (a) of sub-section (1) has been served and the proper officer is of the opinion that the amount of duty along with interest payable thereon under section 28AA or the amount of interest, as the case may be, as specified in the notice, has been paid in full within thirty days from the date of receipt of the notice, no penalty shall be levied and the proceedings against such person or other persons to whom the said notice is served under clause (a) of sub-section (1) shall be deemed to be concluded.

2.3.1 They stated that a reading of Section 28(1) and (2) indicates the following:

(i) Duty not levied or not paid or short-levied or short-paid or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for reasons other than collusion
or any wilful mis-statement or suppression of facts can be recovered within two years from the relevant date on service of notice;

(ii) The person chargeable with duty or interest may before issuance of notice on his own ascertainment or ascertained by the proper officer, can discharge duty along with interest;

(iii) If the person on his own ascertainment or ascertained by a proper officer pays duty along with interest and informs the proper officer of such payment in writing no notice shall be served under Section 28(1)(a) in respect of duty or interest so paid or any penalty leviable under the provisions of the Act.

2.3.2 They submitted that vide letter dated 04.11.2017 addressed to the Deputy Commissioner of Customs, Kandla, they had referred to the personal hearing that took place on 12.10.2017 wherein the officials of SIIB Wing of Kandla Customs had informed them that they need to include the value of insurance and freight over and above the chartered engineer assessed value. Further, they submitted that the Deputy Commissioner of Customs vide letter dated 07.02.2018 had specifically stated as under:

"While recording of your Statement U/s 108 of the Customs Act 1962 on 12/10/2017, you have stated and agreed to discharge IGST at the rate of 5% along with the applicable interest, on the differential value (the elements of Freight and Insurance) as per Rule 10 of the Customs Valuation (determination of value of imported goods) Rules 2007 and requested this office not to issue any Show cause notice in the matter.

For the ease of payment a revised assessable value by applying the first Proviso to sub Rule 2 of Rule 10 of The Customs Valuation (determination of value of imported goods) Rules 2007 and duty calculation therein is shown under please;"

2.3.3 They submitted that the letter dated 07/02/2018 pursuant to the recording of the statement in October 2017 is clearly in the nature of ascertainment of differential duty by the Department and hence in terms of Section 28(1)(b)(ii) and 28(2), therefore, there cannot be a show cause notice.

2.3.4 They submitted that in the instant case, the differential duty was identified by the authorized officer; differential duty was calculated by the Authorized Officer and directed to be paid vide letter dated 07/02/2018 and based on that they had written letter dated 10.02.2018 to arrange the facilitation of reprocessing of the subject bill of entry to upload the differential IGST in the ICEGATE portal to make payment. However, to this surprisingly, a letter dated 14.02.2018 was issued stating that the request is not
acceptable and the duty was demanded to be paid through demand draft. Accordingly, they had paid the differential duty vide demand draft and also communicated the same vide letter dated 05.03.2018. A further letter dated 16.03.2018 was issued by the Deputy Commissioner of Customs in which a reference was made to CBEC Circular dated 10.03.2017 to the effect that waiver of show cause notice is possible only when 15% of the duty is paid as penalty along with duty and interest. They stated that vide their letter dated 12.04.2018, they had brought the entire set of facts; the request for non-issue of show cause notice, the proof of payment, the non-applicability of Circular since the period is within the normal period; applicability of Section 28(2) and the decision of the Tribunal in the case of Biotavia Labs.

2.3.5 They submitted that the Show Cause Notice is not at all maintainable since their case pertains to duty ascertained by the Officer and they have discharged the duty along with interest and hence there is no question of payment of penalty and the show cause notice itself ought not to have been issued in terms of Section 28(2).

2.3.6 They submitted that the Tribunal in the case of Biotavia Labs Vs. CC (Preventive) (2016) 336 ELT 688 has held that sub-section (2) of Section 28 of the Customs Act, 1962 provides that when duty along with interest is paid no show cause notice shall be served and no penalty shall be imposed. After hearing the submissions and going through the records we do not find it possible to agree with the finding of the Commissioner that the failure to pay ADD was due to any deliberate act to evade payment of duty. As evidenced by the checklist, the bill of entry was finally assessed by the appraiser without levy of anti-dumping duty. The appellant paid such duty as per this assessment and had no reason to doubt that any further duty was payable. On intimating that anti-dumping duty was also payable, the appellant has immediately made the payment of ADD, of not only of this consignment but also of the earlier consignment imported in January, 2015. He also paid the applicable interest. This immediate response of paying entire duty demand along with interest along with the fact that the bill of entry assessed by the appraising officer did not contain element of anti-dumping duty persuades us to hold that the failure on the part of the appellant was only a bona fide omission. Further, sub-Section (2) of Section 28 provides that if a person is chargeable to duty or interest and the duty along with interest as ascertained by the proper officer is paid, then no show cause notice shall be served and no penalties to be imposed. In such circumstances the confiscation of goods and imposition of redemption fine and penalty is totally unjustified. The impugned order is therefore not sustainable.
2.3.7 Further, they submitted that the Show Cause Notice alleged that the declared transaction value is low as compared to the actual price including the freight and insurance value. With this allegation, the Show Cause Notice proposed to reject the transaction value invoking Rule 10A of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The Rule 10A of the Valuation Rules provides for rejection of declared value when a proper officer has reason to doubt the truth or accuracy of value declared in relation to any imported goods. The Rule provides that the proper officer may ask further information including documents or evidence and after receipt of such information or in the absence of response, if the proper officer still has a reasonable doubt about the truth or accuracy, it shall be deemed that the transaction value determined under Rule 4(1) cannot be determined. Therefore, the entire proposal in the Show Cause Notice with reference to re-determination of value is without legal backing, hence, there is no differential duty payable by them. In the absence of any short payment of duty, there is no question of interest under Section 28AA of the Customs Act, 1962.

2.4 They stated that the guidelines for Chartered Engineer Certificate as a basis for valuation have been laid down in Circular No.25/2015 - Cus. dated 15.10.2015 and the same have been followed. They relied the Tribunal in the case of Komal Offset Vs. CC (1996) 87 ELT 501, has held that the value confirmed as very reasonable by the Chartered Engineer is acceptable and should not have been rejected by the authorities. Further, they relied the Mumbai Tribunal in the case of Prince Marine Transport Services Vs. CC (2015) 327 ELT 283 held that addition of 21.125% towards freight and insurance may not be correct when the Appellant had given details of the expenditure incurred by them for the transport of vessel from Dubai to India.

2.5 They submitted that Section 114A of the Customs Act, 1962 provides for the penalty for short levy or non-levy of duty only in the cases of collusion, suppression of facts or willful misstatement. In the instant case, none of these ingredients are present. The vessel was duly valued by the Chartered Engineer. The Department was of the view that even for the vessel that is imported as a vessel an element of freight and insurance has to be included and communicated the differential duty based on such inclusion. The same was duly paid and directions are given as to how to make the payments and when show cause notice itself is not permissible under Section 28, there cannot be a proposal to levy penalty under Section 114A.

2.5.1 In their case, since none of the ingredients exists, the provisions of Section 114A of the Customs Act are not applicable. The Supreme Court in the case of Pahwa Chemicals Vs. CCE (2005) 189 ELT 257 has held that if
extended period of limitation is not available, penalty under Section 114A is not imposable. Further, they relied in the decision of the Supreme Court in the case of Devans Modern Breweries Vs. CCE (2006) 202 ELT 744, has held that penalty under Section 114A is only for suppression of facts or willful mis-statement and the Show Cause Notice must indicate which of the acts of commissions or omissions have been committed for penalty and mere general show Cause notice is not sufficient. They submitted that Section 114A provides for penalty for short levy or non levy of duty. In the instant case, there is no short levy as alleged in the Show Cause Notice to attract penalty under Section 114A.

2.5.2 They submitted that in the following decisions it has been held that mens rea is a requirement for Section 114A:

(i) CCE Vs. Indian Aluminium (2010) 259 ELT 2
(ii) CCE Vs. Pepsi Foods Ltd. (2011) 260 ELT 481
(iii) CST Vs. Sanjuv Fabrics (2010) 258 ELT 465

2.6 Further, they submitted that penalty under Section 112(a) & 112(b) has no application for the following reasons:

(i) Section 112(a) has no application since they have not done any act or omitted to do any act which would render the goods liable to confiscation under Section 111. Further, when there is no confiscation or confiscation itself is not permissible for the reasons stated earlier, Section 112(a) cannot be applied.

(ii) Section 112(b) has no application since it is again connected to confiscation and in any event, they have not done anything that is set out in Section 112(b).

2.6.1 They submitted that Section 112 provides for penalty for improper importation. Section 112(a) provides for penalty on any person 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.

2.7 In view of the above, they have requested to drop the Show Cause Notice and requested for an opportunity of being heard in person before any orders are passed in this regard.

PERSONAL HEARING:

3. Personal hearing in the case was fixed on 30.04.2019, accordingly Shri V. S. Manoj, advocate, T. Nagar, Chennai appeared on behalf of the noticee and
he reiterated the submissions already made in the written reply. Further, he submitted that there is no mis-declaration by them which can invite fine / penalty. The freight and insurance was added by the Department on the value ascertained by Chartered Engineer and they have paid the differential duty along with interest.

DISCUSSION AND FINDINGS:

4.1 I have carefully gone through the Show Cause Notice dated 26.02.2019, defence reply filed by the noticee, oral submissions made during the course of personal hearing and the available records.

4.2 The issue involved in this case is relating to allegations of undervaluation by way of non-inclusion of freight & insurance charges in the assessable value of the imported goods by suppressing / mis-stating the materials facts before the Customs authorities in the Bill of Entry filed and consequent proposals of demand of differential duty along with interest, confiscation and penalties on the noticee. However, the noticee has challenged the allegations on factual as well as legal counts.

4.3 Before proceeding into the issues in details, I find that Capt. K. Rajasekaran, Executive Vice President – Operations (Commercial), Authorised Signatory of M/s Sanmar Shipping Limited, Chennai in his statement dated 12.10.2017, admitted that place of delivery of the imported goods as per the MOA was Port Sohar, Oman. He admitted that in the Bill of Entry No. 2944183 dated 22.08.2017, the value declared at the column of Invoice Value is USD 9,860,000, however, the same is shown as CIF Kandla. The invoice value is nothing but FOB price or purchase price at the place of delivery i.e. Port Sohar, Oman. He stated that they could not ascertain the cost of bunkers and other elements of expenditure in money value incurred during the course of transportation of the imported goods from Port Sohar, Oman to Kandla Port. He admitted that the value declared in the Bill of Entry was the purchase price of the goods which did not include the elements of Insurance and Freight. They are unable to identify the freight and insurance components; therefore, they agreed to pay the applicable Customs duty in terms of Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. These facts are admitted in the statement tendered before the Customs authority under Section 108 of the Customs Act, 1962. In this regard, I rely in the case of Surjeet Singh Chhabra Vs. Union of India, 1997 (89) E.L.T. 646 (S.C.), the Supreme Court has held that confessional statement made before Customs officer is an admission and binding since Customs officers are not police officers. The Madras High Court
in the case of Assistant Collector of Customs v. Govindasamy Ragupathy, 1998 (98) E.L.T. 50 (Mad.), held that confessional statement made under Section 108 of Customs Act, 1962 before Customs officers are to be regarded as voluntary. It is settled legal proposition that statement recorded under section 108 of the Act is admissible unlike a statement recorded by a Police Officer. Therefore, their admitted facts need not required to be proved.

4.4 The noticee contended that the vessel after having delivery at Sohar, Oman, it came on its own and not carried by any other ship, therefore, they declared purchase value as the CIF value at Kandla and the same was confirmed by the Chartered Engineer’s valuation certificate. Accordingly, they paid IGST based on value assessed by Customs Approved Chartered Engineer at Kandla. Hence, they argued that there is no any mis-declaration on their part. In this regard, they relied upon in the case of Komal Offset Vs. CC (1996) 87 ELT 501 and in the case of Prince Marine Transport Services Vs. CC (2015) 327 ELT 283 (Tri.-Del).

4.4.1 The authorized signatory in his statement dated 12.10.2017 had admitted that they have incurred bunkers and other expenditures during the course of transportation of the imported goods from Port Sohar, Oman to Kandla, India. Therefore, it is evident that certain costs had been incurred during the transportation of the imported goods to Kandla Port. Imports have been effected at Kandla Port as per the noticee’s desire and cleared for Home Consumption. Therefore, the facts contended by the noticee that the imported goods purchase value is CIF is not acceptable.

4.4.2 The noticee contended that their purchase price declared as CIF in the Bill of Entry have been concurred by Chartered Engineer, therefore, there is no any mis-declaration of value. Customs Officers assessed the goods on the basis of Chartered Engineer’s certificate. The noticee banked upon in the Chartered Engineer’s valuation to show that their declared CIF value is in conformity with the Guidelines issued in terms of Circular No. 25/2015-Cus., dated 15.10.2015. I find that the Circular refers 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. Therefore, the Circular mandates the inclusion of Freight & Insurance charges in the assessable value in terms of Rule 10 of Valuation Rules. In the instant case, I find that noticee has furnished the wrong fact of declared value of the vessel at Kandla Port (Place of Inspection /Valuation) as USD 9,860,000 (CIF Value) to the Chartered Engineer. On the basis of wrong information supplied in the
form of Bill of Entry, the Chartered Engineer had wrongly opined that the declared CIF value is fair & reasonable as per his opinion. Further, in terms of the Circular the value declared by the importer shall be examined with respect to the report of the chartered engineer. 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. However, in the instant case, the noticee has mis-declared the value & suppressed the facts of Freight & Insurance. Therefore, I find there is reason to doubt the truth / accuracy of the value declared in relation to the imported goods. Accordingly, the value declared by the noticee and opinion of the Charter Engineer are liable to be rejected in terms of the Rule 12 of the CVR, 2007.

4.4.3 I find that in the case of Komal Offset Vs. CC (1996) 87 ELT 501, the appellant imported a second hand Solna 425 offset printing machine from U.K. and presented the invoice of the suppliers which showed the price as £25,000. This was not accepted by the Custom House. Hence, the value was re-determined with reference to another invoice relating to a different import of the same make and model of printing machine, also imported from the same country, U.K. Aggrieved against the Assistant Collector's order, the appellant filed an appeal before the Collector of Customs (Appeals) who confirmed the impugned order. However, the Hon'ble Tribunal at Delhi held that Invoice value of a second hand machine duly supported by a Chartered Engineer's certificate not rejectable by comparing the value with another second hand machine for which higher value has been certified by the Chartered Engineer since conditions of second hand machines may not be the same. Such a comparison is not possible in second hand machines unlike in the case of new machines. The condition of the machines may not be similar to justify rejection of the declared value in favour of another value relating to an allegedly similar import. I find that in the instant case, issue is regarding inclusion of Freight & Insurance charges to arrive the assessable value which was not a dispute in the case of Komal Offset. Further, I find that in terms of Section 14 of the Customs Act, 1962 read with Rule 10 of the Valuation Rules, 2007, the addition of Freight & Insurance charges are mandatory to arrive at the assessable value. Even the Chartered Engineer's opinion cannot override the statutory provisions of including Freight & Insurance charges to arrive the assessable value. Therefore, the case cited by the noticee is distinguishable and not relevant to the issue in hand.

4.4.4 I find that in the case of Prince Marine Transport Services Vs. CC (2015) 327 ELT 283, Hon'ble Tribunal, Mumbai observed that,-
"5.3 As regards the re-determination of value, we find that the Commissioner has adopted a rate of 21.125% of the cost towards freight and insurance. The appellant had given details of the expenditure incurred by them for the transport of the vessel from Dubai to India. In such a situation, the Commissioner could not have added freight and insurance @ 21.125%. Since the vessel had come on its own motion, only the actual cost of transportation incurred should have been added for determination of assessable value".

4.4.4.1 However, in the instant case, I find that Capt. K. Rajasekaran, authorized signatory of M/s Sanmar Shipping Limited, Chennai in his statement dated 12.10.2017 admitted that they could not ascertain the cost of bunkers and other elements of expenditure in money value incurred during the course of transportation of the imported goods from Port Sohar, Oman to Kandla Port. Further, the noticee has not furnished any details of the expenditure incurred by them for the transport of the vessel from Port Sohar, Oman to Kandla Port, India during course of investigation & adjudicating proceedings; therefore, they agreed to pay the applicable Customs duty in terms of Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Accordingly, the noticee has voluntarily paid the duty along with interest thereon without any protest. Therefore, the case of Prince Marine Transport Services cited by them is distinguishable to the present case.

4.5 The noticee had contended that the Show Cause Notice proposed to reject the transaction value by invoking Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, therefore, the only possible action that can be taken by the department is recovery of differential duty. They argued that the entire proposal in the Show Cause Notice with reference to re-determination of value is without legal backing, hence, there is no differential duty payable by them. In the absence of any short payment of duty, there is no question of interest under Section 28AA of the Customs Act, 1962.

4.5.1 In terms of Rule 11 of the Valuation Rules, the importer or his agent shall furnish a declaration disclosing full and accurate details relating to the value of imported goods. However, the noticee had mis-declared the true facts in the Bill of Entry filed before the Customs. The noticee has suppressed the facts of transportation & insurance costs. Therefore, in terms of Rule 12 of the Valuation Rules, declared value in the Bill of Entry can be doubted and liable for rejection by the proper officer.
4.5.2 In terms of first proviso to Section 14 of the Customs Act, 1962 states that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf. Rule 10(2) of the Valuation Rules states that 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 on board value of the goods:

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:

4.5.3 In view of the statutory provisions, transaction value should include the costs of transportation and insurance. In the instant case, the noticee could not ascertain the transportation & insurance costs on its own, therefore, in terms of proviso the transportation cost shall be twenty per cent of the free on board value of the goods & insurance cost shall be 1.125% of free on board value of the goods.

4.5.4 Further, in terms of sub-rule 3 of Rule 11 of the Valuation Rules, there is no bar under the provisions of the Customs Act, 1962 relating to confiscation, penalty and prosecution where wrong declaration, information, statement or documents are furnished under these rules.

4.5.5 In view of the above, the contentions raised by the noticee are not on sound footing and not sustainable in the instant case.

4.6 The noticee contended that when they have paid duty along with interest as ascertained by the Customs Officer in terms of Section 28(1) & (2) of the Customs Act, 1962, there is no requirement of issuance of Show Cause Notice in the instant case. In this regard, the noticee has cited the decision in the case of Biotavia Labs Vs. CC (Preventive) (2016) 336 ELT 688.

4.6.1 I find that sub-sections (1) and (2) of Section 28 deals with the cases other than the reasons of collusion or any wilful mis-statement or
suppression of facts. The noticee while filing the Bill of Entry, they have misstated / mis-declared the value as CIF instead of purchase price (FOB). I find that the invoice value did not include the elements of Freight & Insurance. I find that they have suppressed the facts of elements of freight & Insurance values before the Customs authorities in order to evade the payment of Customs duty. The suppression of facts and mis-declaration has been unearthed by the SIIB, Kandia otherwise gone un-noticed. Therefore, the Section 28(1) & (2) of the Customs Act, 1962 is not applicable in the instant case. Therefore, there is no merit in their arguments.

4.6.2 Looking into the facts and circumstances of the case, sub-sections (4), (5) & (6) of Section 28 are applicable in their case which is reproduced as under,

"(4) Where any duty has not been [levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of;

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

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

(5) Where any [duty has not been levied or not paid or has been short-levied or short-paid] or the interest has not been charged 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 by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub-section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to [fifteen per cent.] of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt 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 interest and penalty under sub-section (5), the proper officer shall determine the amount of duty or interest and on determination, if the proper officer is of the opinion —

(i) that the duty with interest and penalty has been paid in full, then, the proceedings in respect of such person or other persons to whom the notice is served under sub-section (1) or sub-section (4), shall, without prejudice to the provisions of sections 135, 135A and 140 be deemed to be conclusive as to the matters stated therein; or"

4.6.3 In view of the above statutory provisions, I find that this is a case of mis-declaration of value as CIF instead of FOB in the Bill of Entry which led to short payment of customs duty. However, the noticee has requested to conclude the Show Cause Notice during the course of investigation as they
have paid duty along with interest as ascertained by the Customs Officer. I find that in terms of Section 28(5) of the Customs Act, 1962 there is a requirement of payment of 15% of duty amount as penalty in the instant case within stipulated period to be conclusive of the Show Cause Notice.

4.6.4 In the case of Biotavia Labs, it is observed by the Hon'ble Tribunal that non levy of Anti-Dumping duty is due to the fact that check list of Bill of Entry generated by the system is also not shown any levy of Anti-Dumping duty. The importer had paid the ADD along with interest. It is held that the failure on the part of the importer was only a bona fide omission. Therefore, sub-Section (2) of Section 28 provides that if a person is chargeable to duty or interest and the duty along with interest as ascertained by the proper officer is paid, then no show cause notice shall be served and no penalties to be imposed. However, I find that in the instant case in my hand, fact of mis-declaration of value is evidenced in the Bill of Entry filed before the Customs Authorities and the fact of mis-declaration of value have also been corroborated in the statement tendered by the noticee. Therefore, the mis-declaration of value led to evasion of payment of Customs duty. Hence, the Section 28(2) of the Customs Act, 1962 is not applicable. The cited case law is not relevant to the case in hand.

4.7 The noticee argued that the penalty under Section 114A of the Customs Act, 1962 is not applicable due to the fact that none of the ingredients i.e. collusion, suppression of facts or willful misstatement were present in their case. In this regard, they have relied upon in the case of Pahwa Chemicals Vs. CCE (2005) 189 ELT 257 and in the case of Devans Modern Breweries Vs. CCE (2006) 202 ELT 744.

4.7.1 I find that the self-assessment scheme of import/export clearance is meant to simplify the import/export procedures and expedite import/export clearance of the goods. The Self-Assessment scheme mandates the importers to correctly declare value, classification, description of goods etc. and self-assess the duty thereon, if any. Thus, under self-assessment, it is the responsibility of the importer to ensure correct declaration while presenting the Bill of Entry. I find from the records available before me that as per MOA agreement, Invoice Value is USD 9,860,000 which is FOB value. The invoice value did not include the elements of Freight & Insurance. However, the noticee while filing Bill of Entry, they have mis-stated / mis-declared the value as CIF. Therefore, they have violated the provisions of Section 46(4) of the Customs Act, 1962 in as much they mis-stated the facts & truth in the Bill of Entry. In this way, they mis-stated / mis-declared the facts in the Bill of Entry to suppress the elements of Freight & Insurance in order to evade
the payment of Customs duty leviable thereon. The noticee did not bring the facts of elements of Freight & Insurance charges to the department on its own. However, the said facts have been unearthed during the course of investigation by the SIIB, Custom House, Kandla.

4.7.2 In view of the above, the mis-declaration made by the Importer, has caused suppression of value amounting to Rs. 14,34,83,379/- from the Customs authorities which led to non-payment of IGST at the rate of 5% on the said amount. All these acts on the part of ‘the Importer’ had rendered the goods liable to confiscation under the provisions of the Section 111(m) of the Customs Act, 1962.

4.7.3 I find that the noticee has mis-stated the value in the Bill of Entry filed before the Customs authorities; therefore, I find that their modus of undervaluation amounts to willful mis-statement and suppression of facts in order to evade the payment of Customs duty. Thus, I find that Section 28(4) of the Customs Act, 1962 is rightly invokable in this case. Therefore, the penalty under Section 114A of the Customs Act, 1962 is applicable for their acts of willful suppression of facts and deliberate mis-declaration of value in the imported goods.

4.7.4 I find that in the case of Pahwa Chemicals Private Limited Vs Commissioner of C. Ex., Delhi, 2005 (189) E.L.T. 257 (S.C.), the Apex Court held that mere failure to declare does not amount to wilful mis-declaration or wilful suppression. There must be some positive act on the part of the party to establish either wilful mis-declaration or wilful suppression. However, I find that the noticee has willfully mis-declared the value in the Bill of Entry filed and the same act of mis-declaration has been corroborated from the statement tendered by the authorized signatory of the noticee to the effect that they mis-declared the purchase price of the imported goods (FOB Value) as CIF Value in the Bill of Entry. By their wilful act of mis-declaration of value led to non levy of Customs duty on elements of Freight and Insurance. Therefore, the case law cited by them is not relevant to the instant case.

4.7.5 I find that in the case of Devans Modern Breweries Vs. CCE 2006 (202) E.L.T. 744 (S.C.), the Hon’ble Supreme Court held that Penalty imposable only if excise duty not levied or paid or short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of provision with intent to evade. Show Cause Notice should specifically mention commissions or omissions committed by the noticee in terms of proviso to Section 11A to impose penalty under Section 11AC but mere general show cause notice will not be sufficient
to impose the penalty. However, I find in the present case in my hand; the
Show Cause Notice clearly mentioned their act of mis-declaration of the value
in the Bill of Entry by way of suppressing the facts of elements of
transportation & Insurance values which clearly invites the reason of wilful
misstatement. Further, the noticee has mis-stated the fact in the statutory
document filed before the department as CIF Value instead of purchase price
as FOB Value. Therefore, their cited case law is distinguishable in the present
case and not applicable.

4.8 Further, the noticee contended that mens rea is a requirement for
imposition of penalty under Section 114A of the Customs Act, 1962. In this
regard, they have cited various case laws.

4.8.1 I find that when the noticee has mis-declared the value as CIF instead
of FOB in the Bill of Entry to evade the payment of Customs duty. It is clearly
established the ingredient of mens rea in their attempt to evade the Customs
duty. Even though, I find that it is well settled law that in case of taxing
statute, various penal provisions are in the nature of civil obligations and do
not require any mens rea or wilful intention until and unless the relevant
 provision provides for the same. Hon'ble Supreme Court in the case of UOI vs
Dharmendra Textile Processors – 2008 (231) ELT3 (SC) observed that mens
rea is not essential ingredient in a civil liability. Further, the Apex Court in
the case of Chairman, SEBI v. Shriram Mutual Fund [(2006) 5 S.C.C. 361]
held as under:-

"Mens rea is not an essential ingredient for contravention of the
provisions of a civil Act. Unless the language of the statute indicates the
need to establish the element of mens rea, it is generally sufficient to
prove that a default in complying with the statute has occurred and it is
wholly unnecessary to ascertain whether such a violation was
intentional or not. The breach of a civil obligation which attracts a
penalty under the provisions of an Act would immediately attract the
levy of penalty irrespective of the fact whether the contravention was
made by the defaulter with any guilty intention or not."

4.9 The noticee contended that penalty under Section 112(a) / 112(b) is not
applicable since their acts have not rendered the goods liable for confiscation
under Section 111.

4.9.1 Confiscation of goods in terms of Section 111(m) is invited when any
goods which do not correspond in respect of value or in any other particular
with the entry made under this Act. I find that the importer has mis-declared
the purchase price of the imported goods as CIF value instead of FOB value in
the Bill of Entry in order to evade the payment of Customs duty. Therefore,
their omission or commission has rendered the impugned goods liable for confiscation. Penalty under Section 112 is corollary to confiscation under Section 111. Their argument of non imposition of penalty under Section 112 is not sustainable. However, I find that when penalty under Section 114A ibid is imposable upon the noticee, simultaneously penalty under Section 112 cannot be imposed in terms of the fifth proviso to Section 114A.

4.10 I find that redemption fine can be imposed only in those cases where goods are either available or the goods have been released provisionally under Section 110A of the Customs Act, 1962 against appropriate bond binding concerned party in respect of recovery of amount of redemption fine as may be determined in adjudication proceedings. In this case, neither the goods are available nor bond for provisional release under Section 110A ibid covering recovery of redemption fine is available. Therefore, I find that redemption fine cannot be imposed in this case as clearly held in the case of Shiv Kripa Ispat Pvt. Ltd. Vs. Commissioner of C. EX. & CUS., NASIK - 2009 (235) E.L.T. 623 (Tri. - LB).

5. In view of the above, I pass the following order:

ORDER

(i) The declared assessable value of Rs. 64,23,79,000/- in respect of the imported goods i.e. Tanker Sanmar Soparno I (Ex Jenny), IMO No. 9247895, along with Bunkers and Standard Accessories (Built 2002) is rejected and re-determined as Rs. 78,58,62,379/- under Section 14 of the Customs Act, 1962 read with Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007;

(ii) The imported goods i.e. Tanker Sanmar Soparno I (Ex Jenny), IMO No. 9247895, along with Bunkers and Standard Accessories (Built 2002) valued at Rs. 78,58,62,379/- (re-determined value) is held liable for confiscation under Section 111(m) of Customs Act, 1962;

(iii) I confirm the demand of the differential Customs duty amounting to Rs. 68,52,979/- (Rupees Sixty Eight Lac Fifty Two Thousand Nine Hundred and Seventy Nine only), short paid by them on the said goods under proviso to Section 28 (4) of the Customs Act, 1962;

(iv) The differential Customs Duty amounting to Rs. 68,52,979/- (Rupees Sixty Eight Lac Fifty Two Thousand Nine Hundred and Seventy Nine only) already paid by them vide GAR 7 Challan
No. 2040 dated 05.03.2018 is appropriated towards the differential duty liability as shown at Serial No. (iii) above;

(v) I confirm the demand of Interest on the said differential Customs duty under Section 28AA of the Customs Act, 1962;

(vi) Interest of **Rs. 5,46,361/-** (Five Lakhs Forty Six Thousand Three Hundred and Sixty One) already paid by them vide GAR 7 Challan No. 2040 dated 05.03.2018 is appropriated towards the Interest payable under Section 28AA of the Customs Act, 1962;

(vii) I impose penalty of **Rs. 68,52,979/-** plus an amount of interest paid of **Rs. 5,46,361/-** on confirmed duty upon M/s Sanmar Shipping Limited under Section 114A of the Customs Act, 1962.

[Signature]

**[SANJAY KUMAR AGARWAL]**

**PRINCIPAL COMMISSIONER**

F.No. S/10-81/Adj/Commr./Sanmar/2018-19 Dated 14.05.2019

BY RPAD/ SPEED POST:

To,

M/s Sanmar Shipping Limited,
9, Cathedral Road, Chennai,
Tamil Nadu - 600086

Copy to:

1. The Chief Commissioner of Customs, Gujarat Zone, Ahmedabad.
2. The Deputy/Assistant Commissioner (SIIB), Custom House, Kandla.
3. The Deputy/Assistant Commissioner (Recovery), Custom House, Kandla.
4. The Deputy/Assistant Commissioner (GR-V), Custom House, Kandla.
5. The Deputy/Assistant Commissioner (EDI Section), Custom House, Kandla for uploading in the Kandla Commissionerate’s website.