



सीमा शुल्क आयुक्त का कार्यालय,
नवीन सीमा शुल्क भवन, नया कांडला ।
OFFICE OF THE COMMISSIONER OF CUSTOMS,
NEW CUSTOM HOUSE, NEW KANDLA-370 210 (GUJARAT)
Phone No: 02836-271468/469, Fax No. : 02836-271467.

A	फाइल संख्या/ File No.	S/10-38/2007-ADJ
B	आदेश में मूल सं./ Order-in-Original No.	KDL/ADC/PMR/ 10 /2018-19
C	पारित कर्ता/ Passed by	SH. PADALA MOHAN RAO, ADDITIONAL COMMISSIONER
D	आदेश की दिनांक/Date of order	26/06/2018
E	जारी करने की दिनांक/Date of issue	26/06/2018
F	एस.सी.एन. सं. एवं दिनांक/ SCN No. & Date	S/43-67/2006-07/SIIB dated 26.09.2007
G	नोटीसी/ पार्टी Noticee/ Party	1.M/s Mazda Global (Through Smt. Bharti J.Gandhi proprietor), A-82, Hariom Apartments, Near Law Garden, Panchvati Road, Ahmedabad-380007 2.Smt. Bharti J. Gandhi, A-82, Hariom Apartments, Near Law Garden, Panchvati Road, Ahmedabad-380007 3.Shri Amish J. Gandhi (Manager of M/s Mazda Global), R.P.302,Rajpari, Rajvansh Apartment, Near Judges Bunglow Police Station, Ahmedabad 4. Shri Shashikant J. Parmar(Production-In-Charge of M/s Mazda Global), 214/2566, Pratiksha Apartment, Sola Road, Naranpura, Ahmedabad

1. यह अपील आदेश संबन्धित को नि शुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली के नियम 19823 के साथ पठित सीमा शुल्क अधिनियम 12की धारा 19628 A - 3के अंतर्गत प्रपत्र सीए (1) में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-
Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A (1) (a) of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

सीमा शुल्क आयुक्त (अपील), कांडला
7वीं मंज़िल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़
अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS), KANDLA
7th Floor, Mridul Tower, Behind Times of India, Ashram Road,
Ahmedabad - 380 009.”

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए ।
Appeal shall be ^{filed} within sixty days from the date of communication of this order.
4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 2/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-
Appeal should be accompanied by a fee of Rs. 2/- under Court Fee Act it must accompanied by -
(i) उक्त अपील की एक प्रति और
A copy of the appeal, and
(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं.-6 में निर्धारित 2/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए
This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 2/- (Rupees Two only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.
5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये ।
Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.
6. अपील प्रस्तुत करते समय, सीमा शुल्क नियम (अपील), और सीमा शुल्क अधिनियम 1982, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए ।
While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.
7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का 10% भुगतान करना होगा।
An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute

BRIEF FACTS OF THE CASE

On the basis of an information that M/s. Mazda Global, Shed No.174, First Floor, Sector-I, Kandla Special Economic Zone (KASEZ), Gandhidham-Kutch was attempting to export goods at an exorbitantly over-valued price, verifications were made with the office of the Deputy Commissioner of Customs, KASEZ, Gandhidham on 31-3-2007. It was thereupon found that the said unit had filed a Shipping Bill No. 006477 dated. 30/3/2007 (hereinafter referred to as the "Shipping Bill"). The goods to be exported were declared in the Shipping Bill as 'Friction Free Die (GRP Mould Die)' 1 CTN (20 Pcs packed in one cartons) and the value thereof was declared as Indian Rs.1,25,09,319.00 (USD 2,83,980/-). The net weight of the cargo was declared as 10.000 kgs and gross weight as 14.500 kgs. The name of the party to whom the goods were to be exported was declared in the Shipping Bill as "PROJECT PRO, SANAIYA 2, AJMAN, U.A.E". From the Noting on the reverse side of the Shipping Bill, it appeared that the Assessing Officer of Customs, KASEZ had raised a query and had asked the said unit to submit a copy of Bond in Form-H. Shri Shashikant J. Parmar (who had signed the Shipping Bill as well as replied to the query and signed as "FOR MAZDA GLOBAL") appeared to have supplied the copy of the Bond with a request to assess the Shipping Bill.

2. The factory premises of M/s. Mazda Global (hereafter also referred to as "Noticee No. 1") situated at Shed No. 174, Sector-I, KASEZ, Gandhidham were searched on 31-3-2007 by the officers of SIIB section of custom House, Kandla. One person who introduced himself as Shri Shashikant J. Parmar, Production-in-charge and Authorized Signatory of the firm was present at the material time. During the search operation Shri Shashikant J. Parmar identified the goods (for which the subject Shipping Bill was filed) which were in the factory. The said goods viz. 20 pcs. of cap shaped items apparently looked like made of some kind of plastic, were found kept in a carton/box on which it was written:

" TO,
PROJECT PRO,
UAE
FROM:
MAZDA GLOBAL
GANDI-IIDHAM-KUTCH (INDIA) "

No electrical, mechanical or electronic device was found attached with the goods. It was also noticed that no machinery, plant were installed in the factory and no tools, furniture, labourers etc. were found installed/fixed/lying in the factory. Electricity connection of the shed was also found disconnected and there was no electricity/inverter/Generator set found in the factory premises. Other goods

found lying in the factory during the search were 35+25 Ltrs. Plastic Resins in two Carboys, Plastic Net 30 Mtrs., Cobalt Chemicals 2 Ltrs., Catalyst 1.5 Ltrs., Iron Mould No.1, Wax Polish 2 KGS etc. In the presence of independent panchas, the photography/videography of the factory premises along with the goods lying therein was conducted. Thereafter, under a reasonable belief that the goods entered for exported under aforesaid shipping bill were liable for confiscation under section 113 of Customs Act, 1962 being grossly overvalued, the same were recovered and placed under seizure under Panchnama dtd. 31-3-2007.

3. Statement of Sh. Shashikant J. Parmar was recorded under Section 108 of the Customs Act on 31-3-2007 wherein he stated inter alia that he was working as Production Manager of M/s. Mazda Global since 12-2-2007; that he was paid salary of Rs. 3,643/- for the period from 12-2-2007 to 28-2-2007 by cheque No. 373309 dt. 5/3/07 drawn on Bank of India signed by Smt. Bharti J. Gandhi, proprietor of M/s. Mazda Global which he had deposited in his account No. 0849010000940 at Ashram Road Branch of Bank of Baroda; that he filed the Shipping Bill No. 006477 dt. 30/3/07 on behalf on M/s. Mazda Global as an authorized signatory of the said firm; that he has filed the shipping bill on the basis of Authority Letter dtd. 30-3-2007(copy produced) sent on fax on Gandhidham Phone No.95-2836-253731 on 30-3-2007 signed by Smt. Bharti J. Gandhi, Proprietor of the firm; that the raw material used for the production of the export cargo covered under Shipping Bill No. 06477 dt.30/3/07 was procured by Sh. Amish Gandhi from Ahmedabad: that Shri Amish Gandhi is acting as the Manager of M/S Mazda Global and is the son of Smt. Bharti J. Gandhi, Proprietor; that Sh. Amish Gandhi is looking after all operation/activities of the firm: that according to him, the value of the goods covered under the Shipping Bill is not more than Rs. 10,000; that value was declared in the Shipping Bill as per the directions of Sh. Amish Gandhi; that the firm has not imported any thing so far; that he produced the documents namely Bond-cum-legal undertaking executed with KASEZ, LOP No.KASEZ/IA/037/2005-06/7036 dt. 25/1/06, fax copy of Authority Letter, Plot allotment letter, copy of driving licence; that he does not know anything about the overseas buyer; that there was no electricity connection in the factory; that there is no machinery in the factory; that was no record pertaining to labour in the factory: that he is only salaried employee in the factory; that the manufacturing process of the GRP Mould Die is to pour the liquid resin and some other chemicals in a steel mould with plastic mat and let it dry for 24 hrs.

4. Therefore, it appeared that the goods were grossly overvalued: that therefore, under a reasonable belief that the same were liable for confiscation under Section 113 of the Customs Act, 1962, the same were recovered and placed under seizure under Panchnama dtd. 31-3-2007

5. Shri Amish Gandhi, in his statement dated 01.04.2007 recorded under section 108 of the Customs Act, 1962 inter alia stated that M/s. Mazda Global was owned by his mother Smt. Bharti J. Gandhi but she did not play any role in running the firm; that he was manager of the firm; that the firm was engaged in manufacturing GRP moulding, patterns and dies and sandwich insulated panels; that machines / tools were bought for production of their product and were provided to Sh. Shashikant J. Parmar; that M/s. Mazda Global did not file the Shipping Bill No. 006477 dtd. 30/3/07; the subject goods covered under the Shipping Bill were manufactured in their factory by hand-lay up process of GRP by involving two skilled and a number of unskilled workers in the manufacturing process; that his firm was paying regular salaries to the two skilled workers through cheques, the details thereof would be submitted later; that he don't intend to reveal the names, address or the contact details of the skilled workers involved in the manufacturing process; that he don't know the number of persons employed by his firm and will submit the details later, that the firm has just started the business so there is no annual turnover; that he can't give the details of the raw material suppliers and will provide the same later; that he did not direct Shri Shashikant to file the shipping bill; **that the value declared in the invoice No.001/die/grp dtd. 30.3.2007 of M/s. Mazda Global, is justifiable and correct value; that the Invoice had been prepared by his firm against the purchase order mentioned therein;** that the firm got the purchase order from M/s. Project Pro, Sanaiya 2, Ajman. UAE; that he has visited the abovementioned address of the overseas buyer; that on being shown the copy of the authority letter given to Sh. Shashikant J Parmar, he denied having any knowledge of the same.

6. On going through the Project Report filed by M/s. Mazda Global with the KASEZ and the Letter of Permission No.KASEZ/IA/037/2005-06/7036 dated 25-1-2006 of the Deputy Development Commissioner, Kandla Special Economic Zone, Gandhidham {File containing various documents resumed during the course of recording statement of Shri Amish J. Gandhi dated 17-4-2007}, it is observed that M/s. Mazda Global made an application dated 15-12-2005 for setting up a unit in the Kandla Special Economic Zone for manufacturing GRP Mouldings, Patterns & Dies and Sandwich Insulated Panels; that Metal Working Machines, Wood Working Machines, Bending, Shearing, Cutting, Shaping, Milling Machines, Spraying Machine and other Tools & dies are required for manufacturing the same; that the raw materials required would be Wood, Aluminium, Steel, Rubber, Expanded Polystyrene/PUF, Polyester Resin, Epoxy, Adhesives. Fiber Glass raw material and Paint, that a target of export turn over of Rs.7.20 crores in 5 years period was fixed under the LOP subject to the following conditions:

(i) The unit shall export its entire goods excluding rejects and sale in the

domestic tariff area as per provisions of SEZ Scheme for a period of 5 years from the date of commencement of the manufacturing activity;

- (ii) The unit shall achieve positive Net Foreign Exchange (NFE) as prescribed in the SEZ Scheme for a period of five years from the commencement of activity, failing which it would be liable for penal action;
- (iii) The Letter of Permission is valid for one year from its date of issue within which the unit should implement the project and commence production;
- (iv) Payment of lump sum know-how fees, design and drawing fee and payment to foreign technicians etc. shall be as per R.B.I. guidelines as applicable from time to time.

7. Shri R. R. Rai, Appraiser of Customs, KASEZ, Gandhidham in his statement dt. 2/4/07 recorded under Section 108 of Customs Act. 1962 stated inter alia that he was the assessing officer of Shipping Bill No. 006477 dt. 30/3/07 filed by M/s. Mazda Global; that Shri Shashikant J. Parmar had presented the said Shipping Bill before him; that he raised the query to submit the copy of Bond cum LUT; that he received call on his personal mobile No. 9825950616 on 31.3.2007 from mobile No. 9825033060 and the caller introduced himself as Mr. Amish Gandhi and informed him that the copy of the said bond had been faxed to Shri Shashikant, the employee of his firm and he would produce the same before him and requested to assess the shipping bill and clear the export consignment.

8. Statement of Shri K. M. Mathew, Appraiser of Customs, KASEZ, Gandhidham was recorded under Section 108 of the Customs Act, 1962 on 4.4.2007 wherein he stated inter alia that he had received calls on his personal mobile No. 9426217080 on 30-3-2007 & 31-3-2007 from Shri Amish Gandhi enquiring about the procedure to be followed for exporting the consignments from KASEZ which was explained to him by Sh. Mathew; that after lapse of five-ten minutes, Sh. Amish Gandhi again called him up and said that his person Shri Shashikant would be filing the shipping bill on behalf of the company and for which he would be issuing an authority in favour of Shri Shashikant and fax it to Shashikant to produce it before the concerned authority and requested to see that his export consignment is cleared: that again, on the following day i.e. 31/3/07, Sh. Amish Gandhi contacted him on his mobile around 16.10 hrs. and enquired why his export consignment covered vide shipping bill no. 006477dt. 30/3/07 was not cleared.

9. On 2.4.2007, the Directorate General of Revenue Intelligence, New Delhi was requested to conduct verification through the Indian Consulate in UAE about the existence of the foreign buyer as mentioned in the Shipping Bill and the Invoice. The Consulate General of India, Dubai, UAE vide its letter No. CE/IV/1-7/2007 dated 09.05.2007 has informed that on approaching Ajman

Chamber of Commerce and Industries, it was learnt that there was no such company registered in the name of "Project Pro. Sanaiya-2, Ajman, UAE " with the Ajman Chamber of Commerce.

10. Taking into account that KASEZ, Gandhidham being a Special Economic Zone and the statement dated 1.4.2007 of Sh. Amish Gandhi where he appeared to have stated that machinery/tools for production of their products were bought and were provided to Sh. Shashikant J Parmar and that the subject goods covered under shipping bills were manufactured in their factory by hand-lay up process of GRP by involving two skilled and number of unskilled workers in the manufacturing process, an inquiry was made with KASEZ authorities about entry-exit of the skilled/unskilled labourers/raw material/final products etc. for work/utilization in the unit of M/s. Mazda Global. The Security Officer, Kandla Special Economic Zone vide his letter No.KSEZ/SO/Misc/07 dated 2-4-2007 informed that their office had not issued any gate pass to skilled or unskilled labours/employees for working in M/s. Mazda Global. Further, the Deputy Commissioner of Customs, KASEZ, Gandhidham vide letter F. No. KASEZ/ DC(CUS)/ GLOBAL MAZDA/06-07/1908 dated 24/25-5-2007 informed that M/s. Mazda Global had so far procured the goods such as Ply Resin, Fibre Glass Mat, Catalyst, Cobalt, Brush. Polish indigenously valued at Rs. 10,712/- and brought the same in the factory at KASEZ under valid gate-pass.

11. It emerged during the course of investigation that calls were made from mobile phone number No. 9825033060 to various persons for export of the offending goods, an inquiry was made with mobile telecom services provider 'Hutch' to supply the details of incoming and outgoing calls for 30th and 31st March 2007 made from Mobile No.9825033060 and name and address of the person to whom the above number was allocated. Hutch authority had supplied the required details vide reply e-mail dtd. 3-4-2007. On going through the details provided by 'Hutch'. it was observed that the holder of the said mobile number was Smt.. Bharti J. Gandhi. The details further revealed that calls were made from the said phone number to Shri R. R. Rai, Appraiser, KASEZ on his mobile phone of on 31-3-2007 as well as to Shri K. M. Mathew, Appraiser KASEZ on his mobile phone on 30-3-2007 & 31-3-2007 and to Sh. Shashikant J. Parmar on his mobile phone on 30-3-2007 & 31-3-2007 (49 times)

12. In his further statement dt. 9/04/07, Sh. Shashikant J. Parmar on being shown the statement dated 1.4.2007 of Shri Amish Gandhi, stated inter alia that the statement dt. 1/4/07 of Sh. Amish Gandhi is not factually correct; that he was not given any machinery for production by sh. Amish Gandhi; that the cargo covered under the Shipping Bill No. 06477 dt. 30/3/07 was manufactured by two persons sent by Sh. Amish Gandhi; that he does not know the name or address of these persons; that he was informed by Sh. Amish Gandhi that

the Authority Letter would be sent by fax and the Shipping Bill is to be prepared on the basis of invoice sent by Sh. Amish Gandhi on e-mail; that the invoice No. 001/die/grp . 30/3/07 was sent to him on e-mail by Sh. Amish Gandhi. that on the directions of Sh. Amish Gandhi, he prepared the shipping bill on the basis of documents supplied to him by Sh. Amish Gandhi and had submitted them to KASEZ Customs; that for assessment of the Shipping Bill, he met Sh. Rai, Appraiser on the directions of Sh. Amish Gandhi; that he submitted the fax copy of the Bond, as supplied by Sh. Amish Gandhi to the Appraiser; that thereafter, Sh. Rai, Appraiser and Sh. Amish Gandhi had a talk on the mobile phone. In his further statement dt. 10/5/07, Sh. Shashikant J. Parmar, has inter alia reiterated the details given in his earlier statements.

13. Sh. Amish Gandhi refused to accept the summons dt. 1/4/07 requiring him and his mother Smt. Bharati J Gandhi to remain present and tender evidence in the ongoing investigation. Summons for appearance on 1/4/07, 3/4/07, 13/4/07 were sent to Sh. Amish Gandhi, but he did not attend/turn up on these dates for tendering the statements and submission of documents. However, he appeared on 17/4/07 and on being shown letter dt. 4/4/07 of Smt. Bharati J Gandhi in which she has stated the business of M/s. Mazda Global is run by Sh. Amish Gandhi' he stated inter alia that the business of the said firm is being looked after by him also, that he has no comments to make on the question that who else looks after the business of the said firm; that he has not filed the said shipping bill; that Sh. Shashikant is not their production in-charge; that he do not recall having spoken to any KASEZ officers for the clearance of the said shipping bill; that however, he stated that he has spoken to different KASEZ officers about business need/procedures/requirements/legal work etc; that on being shown the copy of statement of Sh. K.M. Matthew, Appraiser, KASEZ in which he has stated inter alia, that Sh. Amish Gandhi has contacted him on his personal mobile no. 9426217080 twice on 30/3/07 & 31/3/07 enquiring the procedure to be followed for export and Sh. Shashikant J. Parmar will be filing the shipping bill on their behalf for which an authority is being issued, Shri Amish Gandhi stated that he has not authorized Shri Shashikant to file the shipping bill; that on being shown the statement of Sh. R. R. Rai, Appraiser. KASEZ regarding being contacted on his personal mobile no. 9825950616 on 31/3/07 from mobile no. 9825033060, he stated that he did not authorize Shri Shashikant to file the shipping bill; that he disagreed with the statement dt. 9/4/07 given by Sh. Shashikant J. Parmar , in which, Sh. Parmar has inter alia, stated that he had filed the shipping bill as per the directions of Shri Amish Gandhi; that he did not bring the documents such as purchase invoice of the raw material, purchase order etc. as promised by him in his earlier statement dt. 1/4/07.

14. During the course of recording the above mentioned statement dated 17-4-2007, a file bearing pages 1 to 269 containing several documents/

correspondence/application forms/project report/Bond-cum-LUT etc. made with/submitted to several Departments/Offices like Kandla Special Economic Zone: Bank of India, Paldi Branch, Ahmedabad; Directorate of Industries, Govt. of Gujarat; Directorate General of Foreign Trade etc. was resumed from Sh. Amish Gandhi. On going through the various documents contained in this file, it is observed that the Deputy Development Commissioner, K.S.E.Z. Gandhidham had issued a Letter of Permission dated 25-1-2006 to M/s. Mazda Global for establishing new unit in the KASEZ for carrying activity of "Manufacturing of GRP Mouldings, Patterns & Dies and Sandwich Insulated Panels" and a target of 'Export turnover of Rs. 7.20 Crores in 5 years period' was allotted to the firm; that in its response, M/s. Mazda Global had filed Letter of Undertaking (LUT) dated 8-3-2006 in Form-H with the Development Commissioner, KASEZ; that M/s. Mazda Global was having a Current Account No.201 1201 10000041 with the Bank of India, Paldi Branch, Ahmedabad since 22-4-2006; that vide letter dated 31-3-2007, the said firm had informed the KASEZ that they had so far not imported any material duty free.

15. During the course of investigation Shri G. V. Patel. Chartered Mechanical Engineer and Approved Valuer (Institution of Valuers) was requested to ascertain the value of the seized goods. The sealed box containing the seized goods was opened in presence of two independent Panchas, Shri Shashikant J. Parmar and Shri G. V. Patel and re-sealed after inspection by Shri G. V. Patel vide Panchnama dated 22-5-2007. On the basis of inspection/examination carried out by him, Shri G. V. Patel vide his opinion dated 23.05.2007 reported that a box containing 20 Nos. of parts was opened for examination; that the parts does not contain any "Friction Free Die"; that the same are made of GRP instead of metal with rough surface and poor qualities; that strength of the part is too less; that instead of high skill work, conventional low quality manual methods are used to produce it; that weight of each part is less than ½ kg, which is too low for the said die; that the total cost of the parts containing the box is Rs.6, 000/- only.

16. Summons dated 24/4/07, 14/5/07, 24/5/07, 28/5/07, 5/6/07 were sent to Shri Amish Gandhi but he did not appear. However, he responded to the summons for 14.6.2007 and in his statement, he stated, inter alia. that he do not have a mobile phone, that he refused to offer any comments on the question as to whether he is using any mobile: that the mobile No. 9825033060 is owned by his mother; that many people including him & staff use it for personal and professional purpose; that on being shown the list of calls made/received on mobile number 9825033060 which include the two calls made to the personal mobile phones of Sh. R. R. Rai, Appraiser and one call made to the personal mobile of Sh. K. M. Mathew, Appraiser, he stated that he has already answered to this question earlier; that on being shown the valuation report dt. 23/5/07 given by Shri GV Patel, Chartered Engineer and Approved Valuer, he stated that he does not

agree with the valuation report and that the same appears to be a conspiracy against them by some Custom officers and Shri Shashikant; that he produced invoices of raw materials and machines; that he did not produce the purchase order No. LPO/NDW/FCL/930987 on the ground that it is confidential. Further, during the course of recording his statement, he produced photocopies copies of Invoices of purchase of raw-material;; viz. Poly. Resin, Fiberglass Mat, Catalyst, Cobalt, Polish etc. valued at Rs. 11,172/- (Rs. 10,712/-+ Rs. 460/- VAT) and some machine parts/tools viz. C. Brush, Bearing, Carbon, Armature, Roller Set, Bushing, Screw, Gear, Lifting Rod, Circular Saw etc. valued at Rs. 10.800/-.

17. Both Shri Amish J. Gandhi and Shri Shashikant J. Parmar were arrested by Kandla Customs on 14/6/07 and 15/6/07 respectively for having committed an offence punishable under Section 135 (1)(c) of the Customs Act, read with Instruction No.6/2006 dt.3/8/2006 of the Ministry of Commerce & Industry, Deptt. Of Commerce(SEZ Section) and Notification Nos.15/2002-Cus(N.T.) dt.7/3/2002 They were remanded to judicial custody by the Additional Chief Judicial Magistrate, Gandhidharn and their bail applications were rejected by the Hon'ble A.C.J.M. on 15-6-2007 & 16-6-2007 respectively. Later, on 22.6.2007, Hon'ble Additional Sessions Judge, Gandhidham, granted conditional bail to both of them.

18. With reference to the requests made by the Department, Bank of India, Paldi Branch, Ahmedabad vide its letters Ref. No. PLD/NMP/271 and Ref. No.PDL/NMP/370 dated 4-6-2007 and 25-6-2007 respectively submitted Statement of Account of Current Account No.2011201100000041 of M/s Mazda Global for the period from April-2006 to May-2007. On going through these details, it was observed that no payments of any significant amount towards purchase of Patterns, Technical-Know-How and marketing and other expenses etc. were made. On the perusal of the above bank statement, it also emerged that a payment of Rs. 3643/- was made to Sh. S. J. Parmar vide Instruction No. 373309 dt. 5/3/07.

19. Summons dt. 1/4/07, 3/4/07, 13/4/07, 1/5/07,14/5/07, 28/5/07, 5/6/07,4/7/07. 18/7/07, 9/8/07, 13/8/07, 21/8/07 were issued to Smt. Bharati J Gandhi but she did not appear to give her statement. In response to the various summons, Smt. Bhdrati J. Gandhi addresse.J letters dt.4/4/07, 12/6/07, 12/7/07. 24/7/07 and through letter dated 20.8.2007 of Shri S.V. Raju, Ld. Advocate. In these letters, Snit Bharati J. Gandhi has stated that though she is the proprietor of M/s. Mazda Global but the business is being looked after by her son Sh. Amish Gandhi and she has no knowledge about the matters concerning the firm.

20. On-6.9.2007, Smt. Bharati J. Gandhi appeared before customs authorities and in her statement recorded under section 108 of Customs Act,1962 on the same

date, she stated inter alia that the firm M/s. Mazda Global was run and managed by her son Shri Amish J. Gandhi, that she did not know anything about the business; that she is Proprietor of the firm for the sake of name only; that on showing various documents bearing her signature, she told that her son used to take her signature on various letters/documents from time to time and she used to sign them without seeing their details and sometimes even on blank papers: that she did not recollect whether she signed the documents shown to her or not, therefore, she could not say whether she had signed all these documents or not. Further, during the course of her above statement, she produced one Agreement dated 5-9-2007 made with her son Sh. Amish Gandhi. As per this agreement, Sh. Amish Gandhi and Smt. Bharti J. Gandhi had agreed to transfer the proprietorship of the firm in the name of Sh. Amish Gandhi w. e. f. 5-9-2007 with condition that all the past and current liabilities and benefits of the firm would be of Sh. Amish Gandhi and no amount was to be paid to either parties on account of the transfer of the Proprietorship. The above statement was shown to Sh. Amish Gandhi on 6/9/07 and he agreed to the contents thereof.

21. In the confrontation panchnama dt. 6/9/07 drawn made in the present of two independent panchas, wherein Smt. Bharati J. Gandhi was shown a copy of agreement dt. 5/9/07 in which Smt. Bharati J. Gandhi and Sh. Amish J. Gandhi has agreed to transfer the proprietorship of M/s. Mazda Global to Sh. Amish J. Gandhi w. e. f. 5/9/07 with all liabilities and benefits of the past period. Both Smt. Bharati J. Gandhi and Sh. Amish J. Gandhi admitted having agreed to and signed the said agreement. before the independent panchas.

22. Shri Amish Gandhi vide his letter dated 25-7-2007 submitted a copy of a document stating that it was the Certificate from M/s Project Pro, duly certified by Chamber of Commerce. On going through the Certificate, it appears that M/s Project Pro Aluminium, New Sanaiya, Ajman, U.A.E. P.O. Box 20777, Sharjah had certified that the Purchase Order No.LPO/NDW/FLC/930987 dated - February was placed by them on M/s. Mazda Global, Kandla Special Economic Zone, Kandla, Gujarat, India and confirmed the price of GRP Moulded Die (Friction Free) as US Dollars 14,199/- each, subject to performance and their acceptance. The Certificate appeared to be signed on 9-4-2007 by Authorized Signatory as "For Project Pro Aluminium". The Certificate also bears a Stamp/Certificate signed in the date of 12/4/2007 by the Director General of Ajman Chamber of Commercial & Industry as "We certify that is the true signature and seal of PROJECT PRO ALUMINIUM. Without responsibility as to the contents".

23. On 1.8.2007, further statement of Shri Amish Gandhi was recorded under section 108 of Customs Act, 1962 wherein he stated inter alia that he is unable to produce the copy of authority letter, purchase order, accounts statement, stock register etc.

24. The contention of Shri Amish Gandhi advanced by him in the course of investigation that Shri Shashikant J. Parmar was never authorized to file the Shipping Bill and the authorization letter shown to him was not genuine, does not appear to be true and correct in light of (i) Shri Shashikant J. Parmar, being only a salaried employee of M/s. Mazda Global was not likely to be benefited by filing the Shipping Bill for M/s. Mazda Global considering that benefit from export would have accrued to Smt. Bharti J. Gandhi, Proprietor of the said unit and mother of Shri Amish J. Gandhi and in turn, to Shri Amish J. Gandhi (ii) Shri Amish.J. Gandhi has duly admitted that the Invoice had been prepared by his firm against the purchase order mentioned therein (iii) In an attempt to lend credibility to their attempt to export over-valued goods, Shri Amish Gandhi also presented a certificate supposedly issued by M/s. Project Pro duly certified by the Ajman Chamber of Commerce & Industry stating therein that they had placed an order with the said unit (iv) signatures of Smt. Gandhi appearing on the Authority Letter dated 30-3-2007, Invoice dated 30-3-2007, letter dt. 4.4.2007 written in connection with Summons dated 3-4-2007 and letter dated 31-3-2007 addressed to KASEZ Authority tally with each other and (v) unless the shipping bill was filed pursuant to his directions and he was in due knowledge of the various particulars like description, value etc. declared therein, there was no reason detre for Shri Amish Gandhi to give phone calls to the Customs Appraisers working in KASEZ on their personal mobile phones and request them to pass the shipping bill which was signed by Shri Shashikant J. Parmar.

25. It appears from the facts and evidences enumerated hereinabove that:
- (a) M/s. Mazda Global is a unit set up by Sint. Bharti J. Gandhi, Proprietor in KASEZ with a view to avail benefits under SEZ Act and rules framed thereunder. Her son Shri Amish Gandhi acted as Manager and looked after day to day affairs of the said unit.
 - (b) M/s. Mazda Global filed Shipping Bill No. 006477 dt. 30/3/07 for export of goods declared as 'Friction Free Die (GRP Mould Die) I CTN (20 pcs packed in one carton) by declared its value as Rs. 1, 25, 09. 319.00 (USD 2, 83, 980/-).
 - (c) Shri Amish Gandhi pursued the matter relating to clearance with Custom Appraisers working in KASEZ and requested them to clear the goods entered for export by M/s. Global Mazda by assessing the shipping bill.
 - (d) In the course of investigation, Shri Shashikant J. Parmar, who had signed the shipping bill for the said unit, admitted *infer cilia*, that the goods were grossly overvalued and the approximate value of the goods is around Rs.10,000/-.
 - (e) During the course of search of the factory premises of M/s. Mazda Global

on 31/3/07, where the goods were found lying, no electrical, mechanical or electronic device was found. There was no machinery, plant, tools, furniture, labour etc. in the factory premises. The unit had no electricity connection and there was no electricity/inverter/Generator set in the factory premises.

- (f) Shri Shashikant J. Parmar, authorised signatory of the company in his statement-dated 31.3.2007 stated inter alia that the manufacturing process of the GRP Mould Die involves pouring the liquid resin and some other chemicals in a steel mould with plastic mat and let it dry for 24 hrs.
- (g) Sh. Amish Gandhi, Manager of the firm & son of Smt. Bharti Gandhi, Proprietor of the unit, who looked after all the activities of the firm M/s. Mazda Global, in his statement dated 1.4.2007 stated inter alia that the subject goods covered under the Shipping Bill were manufactured in their factory by hand-lay up process of GRP by involving two skilled and a number of unskilled workers in the manufacturing process. He also stated that his firm was paying regular salaries to the two skilled workers through cheques. However, he could neither furnish details of the skilled workers/cheques supposedly issued to them nor he provided any particulars like actual number of persons employed by his firm, etc.
- (h) Shri G. V. Patel, Chartered Mechanical Engineer (technical expert) opined that the goods are not 'Friction Free Die'. The goods are having rough surface finish and poor qualities with a low strength. Instead of high skill work, conventional low quality manual methods have been employed to produce the goods. The weight of each item is less than ½ kg which is too low for a die. The total value of the goods is Rs. 6000/-.
- (i) Security Officer, Kandla Special Economic Zone vide his letter No. KSEZ/SO/Misc/07 dated 2-4-2007 informed that they had not issued any gate passes to skilled or unskilled labours/employees for working in M/s Mazda Global.
- (j) Deputy Commissioner of Customs, KASEZ, Gandhidham vide letter No. F. No. KASEZ/DC(CUS)/GLOBAL MAZDA/06-07/1908 dated 24/25-5-2007 informed that M/s. Mazda Global had so far procured the goods such as Ply Resin, Fiber Glass Mat. Catalyst, Cobalt, Brush, Polish indigenously valued at Rs.10,712/- and brought the same in the factory

at KASEZ under valid gate-pass. This fact is also corroborated from the statement dt.14/6/07 of Sh. Amish Gandhi. Further, he also produced photocopies of invoices for purchase of raw-materials viz. Poly. Resin, Fiberglass Mat, Catalyst, Cobalt, Polish etc. valued at Rs.11,172/-(Rs.10,712/- + Rs. 460/- VAT) and some machine parts/tools viz. C. Brush, Bearing, Carbon, Armature, Roller Set, Bushing, Screw, Gear, Lifting Rod, Circular Saw etc. valued at Rs.10,800/-.

- (k) No payment of significant amount towards purchase of Patterns, Technical-Know-How and marketing and other expenses etc. was made from Account No.2011201 10000041 of M/s. Mazda Global at Bank of India, Paldi Branch, Ahemdabad for the period from April-2006 to May-2007.
- (l) Overseas inquiry conducted through Consulate General of India, Dubai, UAE with regard to the foreign buyer/consignee declared by M/s. Mazda Global in the shipping bill No. 006477 dated 30.3.2007 viz. PROJECT PRO, SANAIYA 2, AJMAN, U.A.E revealed that no such Company was registered with Ajman Chamber of Commerce and Industries, as informed vide letter No. CE/IV/1-7/2007 dated 09.05.2007.
- (m) Sh. Amish Gandhi vide his letter dated 25-7-2007 submitted a photocopy of a document claiming it to be a Certificate from M/s Project Pro, duly certified by Chamber of Commerce. M/s Project Pro Aluminium, New Sanaiya. Ajman, U.A.E. P.O. Box 20777, Sharjah appeared to have certified that the Purchase OrderNo.LPO/NDW/FLC/930987 dated - February was placed by them on M/s Mazda Global, Kandla Special Economic Zone, Kandla. This Certificate appeared to have been signed on 9-4-2007 by Authorized Signatory as "For Project Pro Aluminium". It also bears a Stamp/Certificate signed on 12/4/2007 by the Director General of Ajman Chamber of Commercial & Industry and is to be effect that "We certify that this is the true signature and seal of PROJECT PRO ALUMINIUM Without responsibility as to the contents ". It is however observed that the name of the overseas buyer as mentioned in the Shipping Bill No. 006477 dt. 30/3/07 and the invoice No. 001/die/grp dt. 30/3/07 is "PROJECT PRO, SANAIYA 2, AJMAN, U.A.E whereas in the above certificate dated 9-4-2007, on a date later than the seizure date, it is shown as "M/s Project Pro Aluminium, New Sanaiya, Ajman, U.A.E. P.O. Box 20777, Sharjah" which makes it evident that the document produced by Shri Amish Gandhi under his letter-dated 25.7.2007 is concocted & spurious and manifest an afterthought to cover up the acts of omission and commission involved in

over-valuation of goods entered for export by M/s. Mazda Global under aforesaid shipping bill.

(n) Despite repeated requests to produce relevant documents, accounts, drawings, etc. to establish credibility of the business carried out by M/s. Mazda Global and to support the value declared by them in the shipping bill as above, Shri Amish Gandhi, notwithstanding the fact that he presented himself on more than one occasions and tendered statements, could not produce any such evidence. In fact, in his statement dated 1.8.2007, he admitted of his inability to produce any of these documents.

(o) None of the machinery/equipment/raw material etc. enlisted by M/s. Mazda Global in the project report filed by them before KASEZ for obtaining the requisite permission to operate in SEZ was found installed/lying in its factory premises, -which is duly recorded in the panchanama-dated 31-3-2007.

(p) The actual value of the goods entered for export in the shipping bill No. 006477 dated 30.3.2007 filed by M/s. Mazda Global is Rs. 6,000/-, as opined by the technical expert and not Rs. 1,25,09,319.00, as declared therein. Thus, the goods were mis-declared in the shipping bill with reference to their value.

26. Whereas section 113 (d) and section 113 (i) of Customs Act, 1962 as under:

Section 113: Confiscation of goods attempted to be improperly exported etc.- The following export goods shall be liable to confiscation:-

(d) any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act, or any other law for the time being in force.

(i) any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made under section 77.

27. Whereas section 114 (iii) of Customs Act, 1962 is as under:

Section 114: penalty for attempt to export goods improperly, etc.-

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 113, or abets the doing or omission of such an act, shall be liable:

- (iii) In the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter' or the value as determined under this Act, whichever is the greater.

28. Whereas section 11 (1) of the Foreign Trade (Development and Regulation) Act, 1992 is as under:

Section 11: contravention of provisions of this Act, rules, orders and export and import policy:-

- (1) No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made there under and the export and import policy for the time being in force.

29. Rule 11 of the Foreign Trade (Regulation) Rules, 1993 is as under: -

Rule 11: Declaration as to value and quality of imported goods:-

On the importation into, or exportation out of, any customs ports of any goods, whether liable to duty or not, the owner of such goods, shall in the Bill of Entry or the Shipping Bill or any other documents prescribed under the Customs Act, 1962 (52 of 1962), state the value, quality and description of such goods to the best of his knowledge and belief and in case of exportation of goods, certify that the quality and specification of the goods as stated in those documents, are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods are being exported and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry or Shipping Bill or any other documents.

30. Rule 14 of Foreign Trade (Regulation) Rules, 1993 reads as under: -

Rule 14: Prohibition regarding making, signing of any declaration, statement or documents:-

- (1) No person shall make, sign or use or cause to be made, signed or used any declaration, statement or document for the purposes of obtaining a licence or importing any goods knowing or having reason to believe that such declaration, statement or document is false in any material particular.
- (2) No person shall employ any corrupt or fraudulent practice for the purposes of obtaining any license or importing or exporting any goods.

31. M/s. Mazda Global is working under the SEZ Act, 2005 and SEZ Rules, 2005. The provisions of Section 20, 21 and 22 of the Act relating to single agency, single enforcement officer and inspection, search and seizure have not yet been brought into operation. The Ministry of

Commerce and Industry, Department of Commerce (SEZ Section) vide Instruction No.6/2006 dated 3-8-2006 has clarified that so long as these Sections are not operationalized, different agencies and officers, as empowered under the relevant Acts before the enactment of the SEZ Act, 2005 will continue to operate till such time the provisions of the SEZ Act take effect. In view of the above said Instruction of the Ministry of Commerce and Industry, the provisions relating to offence, search and seizures as provided in the Customs Act, 1962 shall be operative and are consequently applicable to the instant case.

32. From the above, it appears that the unit M/s Mazda Global have mis-declared the value of goods i. e. 20 Nos. of Friction Free Die (GRP Mould Die) entered for clearance under shipping bill No. 006477 dated 30.30.2007 filed with KASEZ Customs, in as much as the technical expert found the value of the said goods to be Rs. 6,000/- as against the declared value of Rs. 1,25,09,319/- (USD 2, 83, 980/-) and have consequently rendered the said goods liable for confiscation under section 113 (d) and 113 (i) of Customs Act, 1962 read with the provisions of Foreign Trade (Development and Regulation) Act, 1992 and Rule 14 of Foreign Trade (Regulation) Rules, 1993 and have in turn, rendered themselves liable for penalty under section 114 (iii) of Customs Act, 1962.

33. It further appears that Smt. Bharti J. Gandhi, Proprietor of M/s Mazda Global had set up the unit in Kandla Special Economic Zone and was running the business with the help of her son Shri Amish Gandhi with mutual understanding that she will not take active part in day-to-day routine work, however, all the important documents/letters are to be signed by her; that they filed the Shipping Bill through Shri Shashikant J. Parmar on the strength of the Authority Letter & the Invoice dated 30-3-2007 signed by her and mis-declared the goods with reference to its value thereby rendering them liable to confiscation under section 113 (d) and 113 (i) of the Customs Act, Therefore, it appears that Smt. Bharti J. Gandhi is liable to penalty under Section 114 (iii) of the Customs Act, 1962.

34. It further appears that Shri Amish Gandhi, Manager of M/s Mazda Global and son of Smt. Bharti J. Gandhi is the mastermind of the present case; that he planned to set up a unit in the KASEZ & obtained the LOP: that he purchased the raw materials, some machinery parts & tools, engaged Shri Shashikant J. Parmar as their employee and directed the said employee to file shipping bill for export of goods referred to hereinabove by mis-declaring its value on the strength of letter of authority dated 30-3-2007 signed by the Proprietor of the unit and his mother Smt. Bharti J. Gandhi) & invoice prepared by him and transmitted through e-mail; that he with mutual understanding & consent of Smt.

Bharti J. Gandhi, Proprietor obtained her signatures wherever required and sometimes even on blank papers: that he also mis-declared the name & address of the foreign buyer; that it is evident that the aforesaid various acts of omission and commission on the part of Shri Amish Gandhi, Manager of the said unit and son of the Proprietor of the said unit rendered the goods liable to confiscation under section 113(d) and section 113(i) of the Customs Act, 1962 and consequently, Shri Amish J. Gandhi is liable to penalty under Section 114(iii) of the Customs Act, 1962.

35. It further appears that Shri Shashikant J. Parmar had prepared the Shipping Bill on the basis of Invoice received on e-mail from Shri Amish J. Gandhi by mis-declaring the value of the goods as Rs.1,25,09,319/- despite knowing that its value was not more than Rs.10,000/-; that he signed the Shipping Bill as Authorized Signatory of M/s Mazda Global and filed the same with Customs, KASEZ for passing the same; that he complied the query raised by the Appraising Officer, Customs, KASEZ and requested to assess the Shipping Bill; that therefore, that it is evident that the aforesaid various acts of omission and commission on the part of Shri Shashikant J. Parmar rendered the goods liable to confiscation under section 113 (d) and section 113 (i) of the Customs Act, 1962 and consequently, Shri Shashikant J. Parmar is liable to penalty under Section 114 (iii) of the Customs Act,

36. Accordingly, in view of the foregoing paragraphs, a SCN F.No. S/43-67/2006-07/SIIB dated 26.09.2007 was issued to M/s. Mazda Global, Shed No. 174, First floor, Section 1, KASEZ, Gandhidham (K) vide which they were called upon to show cause to Commissioner of Customs, Kachchh-Kandla having his office at Custom House, Near Balaji Temple, Kandla (Kachchh) within 30 days of receipt of this Notice as to why:

- (i) after rejecting the value declared by the said unit in the shipping bill as Rs.1,25,09,319.00 (USD 2, 83, 980/-), the seized goods should not be assessed by taking its value as Rs. 6, 000/-,
- (ii) the seized goods, whose value was declared in the shipping bill No. 006477 dated 30.3.2007 as Rs.1,25,09,319.00 but found to be Rs. 6, 000/-, should not be confiscated under section.113 (d) and section 113 (i) of Customs Act, 1962 read with the Instruction No.6/2006 dated 3-8-2006 of the Ministry of Commerce and Industry, Department of Commerce (SEZ Section).
- (iii) penalty should not be imposed against them under section 114 (iii) of Customs Act, 1962 read with the Instruction No.6/2006 dated 3-8-2006 of the Ministry of Commerce and Industry, Department of Commerce (SEZ Section).

36.1 Smt. Bharti J. Gandhi, Shri Amish J. Gandhi and Shri Shashikant J. Parmar were also thereby called upon to show cause to Commissioner of Customs,

Kachchh- Kandla having his office at Custom House, Near Balaji Temple, Kandla (Kachchh) within 30 days of receipt of this Notice as to why penalty should not be imposed against each of them under section 114 (iii) of Customs Act, 1962 read with the Instruction No.6/2006 dated 3-8-2006 of the Ministry of Commerce and Industry, Department of Commerce (SEZ Section).

DEFENCE SUBMISSION:-

37. Defence reply dated nil received by this office on 05.11.2007 from M/s. Mazda Global, Shed No. 174, First floor, Section 1, KASEZ, Gandhidham (Kutch), Shri Amish J. Gandhi, Manager of M/s Mazda Global & Smt. Bharti J.Gandhi, Proprietor. They, interalia, in their defence reply have submitted, common reply as under-

37.1 M/s. Mazda Global, is a unit of Kandla Special Economic Zone, Situated at Shed No: 174, Sector-1, KASEZ, Gandhidham. The Unit is formed under the SEZ Act, 2005 & SEZ Rules 2006. The unit is Licensed under the LOP No: KASEZ/IA/037/2005/06

Applicability of the Customs Act & Jurisdiction .

Let us examine the Provisions of SEZ Act 2005 & SEZ Rules 2006.

M/s. Mazda Global is an SEZ Unit.

Section 53 of SEZ Act, 2005 page 35 states as under

“53. A Special Economic Zone Shall, on and from the appointed day, be deemed to be a territory outside the customs Territory of India for the purposes of undertaking the authorized operations.”

This is made even more clear but the fact that when the goods are supplied from DTA into and SEZ Unit, it is termed as Export (Ref: Rule 23 & 22, Page 16&17) by the DTA Supplier, so much so that a bill of export has to be filled by the DTA Supplier and Besides that all the benefits of export are available to that DTA Supplier, as it would be available to them whenever they export to any other country.

Similarly when an SEZ Unit sales in the DTA, It is considered as Import by the DTA, just like it imports from any other country. And Bill of entry has to be filled by the DTA and the relevant duties of customs and other duties has to be paid by the DTA, Just as they import from any other country (Ref Rule 47 & 48, Page 41,42)

The Rule 30 of the SEZ Rules 2006, (Page 26) States....“goods have been admitted in full in the Special Economic Zone, shall be treated as proof of export.”

Customs Act is only Applicable when the goods are removed from the SEZ Unit into the DTA for sale in the DTA.

Section 30 of the SEZ Act, reads like this....

30. Subject to the Conditions specified in the rules made by the Central Government in this behalf:-

(a) any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975, where applicable, as Leviable on such goods when imported: and

The Definition of the DTA (Domestic Tariff Area) as per the SEZ Act is

(i) "Deomestic Tariff Area" means the Whole of India (including the territorial waters and continental shelf) but does not include the areas of the Special Economic Zones:

So a sale from an SEZ Unit into a territory of India is an Import for the buyer and a sale from the Indian Territory to an SEZ Unit is an Export by the seller.

Which means Special Economic Zone is a foreign territory & a territory outside the customs Territory of India.

There are no taxes or duties applicable to an SEZ Unit, under Customs Act or Central Excise Act, Refer Section 26 (1), a, b, c.

Furthermore the chapter relating to the SEZ & Customs Procedures Regulations was removed all together from the Customs Act, 1962, in order to remove completely the applicability of the Customs Act to the SEZ. Further more the SEZ Act was given an overriding effect over any other Act of India.

So as per the SEZ Act, 2005 & SEZ Rules 2006, Territorially, Legally, statutorily, From the Duties and Taxes point of View & According to the Rules and Regulations, and SEZ Unit is a Territory outside the Customs Territory of Customs. Hence the unit is Governed by SEZ Act and not Customs Act. Customs Act Does not have jurisdiction over the SEZ Unit.

Besides, any provisions of the Customs Act only applies, when there is a transaction between SEZ Unit and the DTA, Since DTA is a Territory of India (Ref Definition of DTA Above).

The Rule 25. The Rule 47 states....

"Valuation of the goods and /or services cleared into (2) Domestic Tariff Aria shall be determined in accordance with provisions of Customs Act and rule made there under as applicable goods when **Imported into India**".

The SEZ is a foreign territory and be a territory outside the customs Territory of India, so much so that it prevents the Customs Officer from entering the SEZ Unit for the purpose of conducting any searches / seizures.

Such searches and seizures can only be done at the gate of the SEZ, Where the customs Territory of India ends and the DTA (Domestic Tariff Area) also ends. And the territory of SEZ Begins

The gate of the SEZ works as a sort of boundary between Indian Territory (DTA) SEZ Territory.

It is another matter that such searches and seizures are only permissible in the case of any suspicion about any import or export to the DTA (Indian Territory). I shall revisit this

subject later.

The Rule 27, Page 20 of the SEZ Rules, 2006 reads like this....

If examination of any import or export or export of goods or goods (11) procured from the Domestic Tariff Area is required, the same shall be carried out at the Specified Officer for this purpose, and no examination shall be carried out in the premises of the unit unless requested by the unit and specifically permitted in writing by the Specified Officer Economic.

The Act further states under Section 51, as under:

51.(1) The provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

All these should have put the matter to rest, having made absolutely clear in the Act and Rules and its interpretation through the Instruction No: 6/2006. Further more the Customs Act was made totally inapplicable to the SEZ Unit by removing the provisions relating to SEZ from the Customs Act, 1962, in order to completely disengage from the Customs Act & so much so under section 51 of the SEZ Act, 2005, it was given and 'overriding effect over the provisions in any other act, further emphasizing that the AEZ Unit is a foreign territory and not a territory of India, outside the Customs Territory of India.

However despite such absolute clear Act & Rules of the SEZ, The units continued to face harassment from Custom and Excise Department & Presentations were made to the Ministry of Commerce & Industry, Department of Commerce, SEZ Section. And the Ministry issued an Instruction 6/2006 to all Chief Commissioner of Customs & Excise (Attached herewith), which said....

"However, this department has been receiving representations that certain provisions of the SEZ Rules are not being implemented by Customs/ Central Excise authorities in the field"... Unquote. It Further Quoted.....

"The SEZ Act has been enacted by the Parliament and has received the assent of the President on 23rd June 2005. The SEZ Rules have already been notified. The SEZ Act along with SEZ Rules have become operative w.e.f. 10th February, 2006".....Unquote.

It further Quoted, highlighted and underlined it.....

"Now all the activities relating to the SEZ shall be guided by the provisions contained in the SEZ Act, 2005 and the SEZ Rules, 2006"...

It further Quoted, highlighted and underlined it.....

Hence, by virtue of Section 51 of the SEZ Act, the provisions of the SEZ Act and the Rules will have overriding effect over the provisions contained in any other ACT.

(iii) Ministry of Commerce & Industry vide a notification issued on 10th of February, 2006 has made operative Section 51 as well as section 52 of the SEZ Act. Accordingly, Chapter X-A of the Customs Act, 1962, the Special Economic Zones Rules, 2003, and the Special

Economic Zones (Customs Procedures) Regulations, 2003 have become in operative w.e.f. 10 February 2006.

(iv) In view of the above stated facts it is clarified that w.e.f 10 February, 2006 the activities relating to SEZs are guided by the provisions contained in the SEZ Act, 2005 and the SEZ Rules, 2006. Chapter X-A of the Customs Act, the Special Economic Zones Rules, 2003, and the Special Economic Zones (Customs Procedures) Regulation's, 2003 are not in operation.”.... Unquote.

This Clarifications by Ministry of Commerce & Industry, and as made clear by the SEZ Act, 2005 & SEZ Rules, 2006, made it absolutely, unambiguously clear that the Customs Act, 1962 is not applicable to the SEZ Unit and the Customs Act, 1962 only comes into play when there is a DTA Sale (Which is an Indian Territory of Customs),by an SEZ Unit (Which is a non Indian Territory of India), and such sale will be considered as Import and all the regulations of Import & Customs Shall apply.

Further Clarification would emerge on examining the Section 52, Sub Section (2)of the SEZ Act, 2005, which states....

“(2) Notwithstanding anything contained in sub-section (1), all offences committed, before the commencement of this Act, under any provisions of Customs Act, 1962 and the Special Economic Zones Rules, 2003 and the Special Economic Zones (Customs Procedure) Regulations, 2003 made there under, shall continue to be governed by the said Act or rules, as the case may be”.....

“The SEZ Act has been enacted by the Parliament and has received the assent of the President on 23rd June 2005. The SEZ Rules have already been notified. The SEZ Act along with SEZ Rules have become operative w.e.f. 10th February,2006 “.....&

“Now all the activities relating to the SEZ shall be guided by the provisions contained in the SEZ Act, 2005 and the SEZ Rules, 2006”...

Which mean in the light of the Section 52, Sub Section 2, read with above Sections and Instructions, all notified offences if any committed after the commencement of the SEZ Act, 2005, i.e. after 10th February, 06 will be governed by the SEZ Act, 2005 & SEZ Rules, 2006.

Despite such absolute clarity on the subject and repeated clarifications by the Ministry, Additional Commissioner, Customs House, Kandla, chose to twist the facts, ignore the scheme of the SEZ Act, 2005 & SEZ Rules, 2006, enacted by Parliament and Assended by the President on 23rd June, 2005 and Notified and Made operative w.e.f. 10th February, 2006. He in his show cause notice has claimed the jurisdiction ignoring the SEZ Act 2005 & SEZ Rules 2006, citing Point 4 of the Instruction no: 6/2006, while ignoring every other instructions in the same Instructions explained and quoted above.

However Let us examine the Instruction 4, of the said Instruction no; 6/2006, which states...

“4 (i) The provisions of Sections 20,21 and 22 of the SEZ Act relating to Single

Agency, Single Enforcement Officer and inspection, search and seizure have not yet been operationalised. Hence, so long as these Sections are not operationalised, different agencies and officers, as empowered under the relevant Acts before enactment of the SEZ Act, will continue to operate till such time these provisions of the SEZ Act take effect.”

Let us read the Full Instruction no: 6/2006 as quoted above, the copy of which is attached herewith, and also read with SEZ Act, 2005 & SEZ Rules, 2006 & the Instructions that the SEZ Act is implemented and made operative, and now all activities relating to the SEZ shall be guided by the provisions of the SEZ Act, 2005 & SEZ Rules, 2006.

The instruction is about the single window clearance of the concept of the SEZ, the Section 20, 21 & 22 are a part of the Chapter 5 of the SEZ Act, 2005, concerning the ‘Single Window’, please refer to the Chapter 5 of the Chapter of 5 of the SEZ Act, 2005, & is about the single agency single enforcement is not yet established, Hence it may be done by several other agencies (and not the single agency) as they were operating before the enactment of the SEZ Act. But such agencies and officers have to carry out their operation within the frame work of the SEZ Act 2005 & SEZ Rules 2006 only. Even if the twisted facts about this instruction 06/2006 is to be accepted in the whole it empowers them only for inspection, searches and seizures, only under the SEZ Act, 2005 & SEZ Rules 2006, besides Section 20, 21 & 22 covers inspections, searches and seizures, not Adjudication & that too within the provisions of the SEZ Act, 2005 and SEZ Rules, 2006, this has been clarified with Ministry of Commerce and Industry, Department of Commerce, SEZ Section & they have conformed this as correct interpretation of the Instruction 6/2006, if you so desire you may contact the Ministry of Commerce and Industry, Department of Commerce, SEZ Section. **The Adjudication and Adjudication Authority is covered under the Section 23 & 24 of the SEZ Act, 2005**, which is not covered under the instruction 6/2006. However we contest the interpretation of this Instruction 6/2006 by the Customs department and re and examine the issues as under:

The instruction No: 6/2006 from Ministry of Commerce & Industry, shall be read in full to fully realize its contents and meanings, even further we sought the clarification from the Director, Government Of India, SEZ Section, Ministry Of Commerce, Department of Commerce, which is also provided below and I am also attaching the copy of the said Instruction 6/2006 for your reference. The instructions read.. “The SEZ Act has been enacted by the Parliament and has received the assent of the President on 23rd June 2005. The SEZ Rules have already been notified. The SEZ Act along with SEZ Rules have become operative i.e. 10th February, 2006.”... &

“Now all the activities relating to the SEZ shall be guided by the provisions contained in the SEZ Act, 2005 the SEZ Rules, 2006.... &

By virtue of Section 51 of the SEZ Act, the provisions of the SEZ Act and the Rules will have overriding effect over the provisions contained in any other Act”...

Read this with Section 53.

A Special Economic Zone shall, on and from the appointed day, be deemed to be a

territory outside the customs Territory of India for the purposes of undertaking the authorized Operations....

Further more the Section 20, 21 & 22 are about the notified Offences, as per the definition of the Notified Offences under the SEZ Act, 2005. Carrying out Authorize Operation, under the SEZ Act, 2005 does not constitute a Notified Offence under the SEZ Act.

Beside SEZ Act, 2005 & SEZ Rules, 2006, which has been enacted by the Parliament and has received the assent of the President on 23rd June 2005, The SEZ Rules have already been notified. The SEZ Act along with SEZ Rules have become operative w.e.f. 10th February, 2006,

However the content of this instruction no: 6/2006 by Ministry of Commerce & Industry, is mis represented.

In order to clarify this matter further we sought clarification from, Ministry Of Commerce, Department of Commerce, SEZ Section.

With regards to this Instructions no: 6/2006, interpretation of the SEZ, Act, 2005 & SEZ Rules, 2006 and sought clarification of the issues discussed above:

It was learnt from the Honorable Ministry,

- 1). That "SEZ Act does not provide for Assessment of the Export Value.,"
- 2). That "SEZ Rules clearly provides that there will be no valuation by Customs for Import & Export & only when there is a sale to the DTA, issue of Valuation by the Customs Act will come into force.
- 3). That "There is absolutely no applicability of the Customs Act, so long as the SEZ Unit is doing Import & Export in compliance with the SEZ Act, 2005 & SEZ Rules, 2006. And the Customs Act is Applicable when there is DTA Sale.

Further Director, Government Of India, SEZ Section Ministry Of Commerce, Department of Commerce, confirmed through the e-mail dated 23/10/07 as under, read with SEZ Act, 2005 & SEZ Rules, 2006, discussed above,

It was confirmed that:

- 1) SEZs are deemed to be a territory outside the Customs territory for the purpose of authorised operations only
- 2) Section 53 of the SEZ Act are relevant.
- 3) Provisions of SEZ Rules are also relevant which provide assessment of value in case of DTA sales.

Copy of the E-mail Received from Director, Government of India, SEZ Section, Ministry Of Commerce, Department of Commerce, is attached herewith.

Hence considering the above facts, I submit that Customs Commissioner, Customs House Kandla does not have jurisdiction over M/s Mazda Global, SEZ Unit, situated in Kandla Special Economic Zone, Kandla

Besides SEZ Act, 2005 & SEZ Rules, 2006, which has been enacted by the Parliament

and has received the assent of the President on 23rd June 2005. The SEZ Rules have already been notified. The SEZ Act along with SEZ Rules have become operative w.e.f. 10th February, 2006, An ACT, Passed by the Parliament, Approved by the President, Notified in the Gazette, can not be brushed aside on the basis of any misinterpretation of an Instruction through a letter,

Furthermore, the Rule 27, Page 20 of the SEZ Rules, 2006 reads like this....

If examination of any import or export of the goods or goods (11) procured from the Domestic Tariff Area is required, the same shall be carried out at the Special Economic Zone gate or if the same is not possible, in an area so notified by the Specified officer for this purpose, and no examination shall be carried out in the premises of the Unit unless requested by the unit and specifically permitted in writing by the specified Officer.

The officers of the Customs(SIIB) has violated this rule and entered in our premises inside our unit Kandla Special Economic Zone, in violation of the above rule and seized goods under production. I further submit that this action was illegal and the seizure is illegal.

Whereas, a reference is drawn to the contravention of Foreign Trade (Development & Regulation), 1992 in the point no: 28, 29 & 30. We deny the allegation of any contravention under any act, as discussed and detailed in the paragraphs above. However we would like to bring to your notice following section of the Foreign Trade. (Development & Regulation), 1992.

Foreign Trade policy 2004-2009, Chapter 2 states as under:-

Free movement of export goods	2.42	Consignments of items meant for exports shall not be withheld/delayed for any reason by any agency of the Central/State Government. In case of any doubt, the authorities concerned may ask for an undertaking from the exporter,
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No seizure of Stock	2.42.1.	No seizure of stock shall be made by any agency so as to disrupt the manufacturing activity and delivery schedule of export goods. In exceptional cases, the concerned agency may seize the stock on the basis of prima facie evidence. However, such seizure should be lifted within 7 days
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Furthermore, Section 13 of the foreign Trade (Development & Regulation) Act, 1992, states as under:

Any penalty may be imposed or any confiscation may be adjudged under this Act by the Director General or, subject to such limits as may be specified, by such other officer as the Central Government may, by notification in the Official Gazette, authorize in this behalf.

Hence I submit that Customs Commissioner is not the competent authority to adjudicate on the matters involving violation of the Foreign Trade (Development & Regulation) Act, 1992, if any, (Which are none here and the act is not applicable to the

units of the SEZ and the SEZ Act, 2005 & SEZ Rules 2006 are applicable), shall be adjudicated by Director General of Foreign Trade.

Powers and Functions of the Approval Committed are defined in the section 14 of the SEZ Act, 2005, as under:

Section 14, Subsection (f) states as under:

144(f) monitor and supervise compliance of conditions subject to which the letter of approval or permission if any, has been granted to the Developer or entrepreneur”... unquote.

Hence it is the Approval Committee and the Development Commissioner of the Special Economic Zone, which is empowered to carry out compliance of the conditions and adherence to the SEZ Act, 2005 & SEZ Rules 2006.

Without prejudice to the Jurisdiction, Allegations raised in the said Show Cause Notice are totally denied and relevant replies, will substantiated evidences and documentary evidences are being sent to the Proper Authority as mentioned below.,

The relevant information and evidences are being forwarded to Mr. Devendra Dutt, Member, CBEC, North Block, New Delhi, India, as advised by him for necessary action.

I/We and the firm M/s. Mazda Global, are submitting to the Jurisdiction of Development Commissioner, Kandla Special Economic Zone & Director, Government of India, SEZ Section, Department of Commerce, Ministry of Commerce & Industry, Hence I am putting on record reply and evidences to The Development Commissioner as The Development Commissioner has Authority over units of the SEZ with a Copy to Director, Government of India, SEZ Section, Department of Commerce, Ministry of Commerce & Industry, Udhog Bhavan, New Delhi.

Kindly allow us to submit ourselves to the Competent Authority of Jurisdiction under the SEZ Act, 2005 and SEZ Rules, 2006.

Without prejudice to the Jurisdiction and without submitting to Jurisdiction, we wish to be heard in person.

38. Defence Reply dated 05.01.2008 filed by Shri Shashikant J. Parmar, Production -in-charge of M/s Mazda Global (Noticee No.3) through Advocate of M/s Swamy Associates

38.1 Please refer to the subject show cause notice dated 26.09.2007 issued from File No S/43-67/2006-07/SIIB to Shri Shashikant J. Parmar (noticee no.03), alongwith others, issued by the Additional commissioner of customs, Kandla. In this regard, we wish to inform that we have been authorized by Shri Shashikant J. Parmar, noticee No. 3 in the show cause notice, (hereinafter referred to as ‘the noticee’) to represent him in the subject proceedings before your good selves. It is requested to kindly condone the delay in filing the reply to the SCN.

38.2 The brief facts of the case is that the noticee had joined M/s. Mazda Global, Shed No. 174, 1st Floor, Kandla SEZ, Gandhidham, on 12.02.2007 (hereinafter referred to as ‘the

company') as a small time employee for a meager salary of about Rs.3000/- per month. On joining, he had not been given any specific duties to be performed but to do whatever instruction he received from his employer/ proprietor who performed but to do whatever instruction he received from his employer/proprietor who stay at Ahmedabad. He used to do his miscellaneous work like delivery/ collection of documents to/from various authorities, looking after the factory premises, and any other instruction passed on to him through his employer/proprietor. On 30.03.2007(S. No. 1 of the relied upon documents to the show cause notice) from Smt. Bharati Gandhi, Proprietor of M/s. Mazda Global, Gandhidham authorising him to sign export documents covering one invoice, i.e. Invoice no. 001/dle/grp dated 30-03-2007 issued by the company, Accordingly, the noticee signed the shipping bill no. 6477/30-3-2007 and submitted the same to Kandla SEZ Customs. The shipping bill pertained to export 20 PCS of Friction Free Die (GRP mould Die) valued at US \$2,83,980/- (Rs. 1,25,09,319/-). On 31-03-2007, the officers of Customs Kandla visited the factory premises of the company, and examined the goods described in the shipping bill and found the same to be grossly over-valued. Hence, this impugned SCN was issued not only to the company and its proprietor, but also to the noticee who is a mere employee.

38.3 The SCN has only one allegation against the noticee that the noticee had prepared the shipping bill on the basis of invoice received from his proprietor by mis-declaring the value of the goods as Rs. 1,25,09,319/- despite knowing that the value was not more than Rs. 10,000/-. The notice further alleged that for this act of the noticee, the goods were rendered liable for confiscation and proposed penalty under Section 114(III) of the Customs Act, 1962.

38.4 They further wish to submit the following in their reply to the impugned SCN issued to the noticee.

38.4.1 At this juncture, they wish to submit that the entire allegation made in the notice against the noticee in the impugned notice is without any basis and have been made merely based on assumptions and presumptions, ignoring the basic fact that the noticee was a poor employee who has no locus stand in the company and was just a mere follower of his employer's/proprietor's instructions.

38.4.2 The noticee has studied only 9th std in Gujarati medium. He has no knowledge of whatsoever of Customs Law, SEZ Rules and regulations. In fact, his role in the above company was only limited to not more than a peon or a watchman, though he called himself as authorised signatory or production in charge before the Customs Officers.

38.4.3 The penalty is proposed against the noticee under Section 114(III) of the Customs Act, 1962, Section 114 (iii) of the Customs Act, 1962 reads as

SECTION 114, penalty for attempt to export goods improperly, etc.

-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 113, or abets the doing or omission of such an act, shall be liable.

(iii) in the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.”

The noticee further submits that he has not dealt with the said goods covered under the shipping bill/ invoice goods liable for confiscation. Therefore, penalty under section 114(iii) of the customs Act, 1944 is not imposable on him.

38.4.4 The noticee further submits that had it not been for the specific authorisation letter dated 31.03.2007, issued by Smt. Bharti J. Gandhi, Proprietor of the company, the noticee would have never signed the said shipping bill. The noticee has signed the shipping bill on the specific directions of his employer Shri Amish Gandhi and only after getting specific authorisation from **the proprietor of the company** for filling the shipping bill. The noticee was also asked by the proprietor through her son, Shri Amish Gandhi, to prepare the shipping bill on the basis of the invoice only. Other than signing of the shipping bill and delivering the documents to the Kandla SEZ Customs, the noticee has not played any other role in the entire case. Though the goods were found liable for confiscation by the customs, the noticee has not played any role in rendering the said goods liable for confiscation. Therefore, notice submits that he may be spared from the allegations of dealing with the confiscable goods.

38.4.5 The noticee submits that at no point of time he has no knowledge of the value of the goods being exported. The noticee also submits that he has no means or expertise. The noticee also submits that he has no means or expertise to evaluate such goods. The noticee was only asked by his employer to sign on the shipping bill on the basis of the invoice sent by them and submit it to the Kandla SEZ Customs. The noticee was also not aware of the gross over-valuation of the goods and the intention of the company behind it. The noticee had honestly deposed before the Customs authorities whatever facts he knew. The noticee has also fully cooperated with the investigation of the department, Since there was no mala fide intention on the part of the noticee, and also that the noticee had not dealt with the goods liable for confiscation. Since the noticee being a small employee, had no knowledge of the rules and provisions of customs law and also has no means or expertise to evaluate any goods or the goods in question i.e. GRP Mould Die, the provisions of Section 114(iii) of the Customs Act, 1962 are not attracted against the noticee.

38.4.6 It is also brought on record (page no. 11/para no. 24 of the show cause notice) that the noticee had no role to play in the manufacture and attempt to export the said goods. The Customs investigation also reveals in the said para which is reproduced as below:

(i) Shashikant J. Parmar, being only a salaried employee of M/s. Mazda Global was not likely to be benefitted by filling shipping bill for M/s. Mazda Global considering that the benefit from export would have accrued to Smt. Bharti J. Gandhi, Proprietor,

(iv) signatures of Smt. Gandhi appearing on the authority letter dated 30-03-2007, invoice dated 30-03-2007, letter dated 4.4.2007 written.in connection with summons dated

3-4-2007 and letter dated 31-03-2007 addressed to KASEZ authority tally with each other and

(v) Unless the shipping bill was filed pursuant to his (Amish Gandhi's) directions and he was in due knowledge of the various particulars like description, value etc, declared therein, there was no reason detre for Shri Amish Gandhi to give phone calls to the Customs Appraisers working in KASEZ on their personal phones and request them to pass the shipping bill which was signed by Shri Shashikant J. Parmar (the noticee)".

Therefore, the noticee submits that he had no knowledge of the value, quality, utility, declared in the shipping bill but had acted only at the behest of his employer.

38.4.7 The noticee further submits that he does not know anything about manufacturing of GRP mould dies. Whatever manufacture has taken place, it was carried out by two skilled and two un-skilled persons sent by the proprietor and Shri Amish Gandhi, The fact that the seized goods were manufactured by two persons sent by Shri Amish Gandhi, was also confirmed by Shri Amish Gandhi in his statement dated 9-4-2007.

38.4.8 The noticee further submits that he is a poor man who came all over from Ahmedabad to Gandhidham in search of employment and got a job with the company for a meager salary of about Rs. 3000/- per month. In fact, the notice used to perform duties of almost a watchman or a peon, and not educated to know what duties a production manager has to perform. The present financial condition of noticee is also not so good and is able to earn only only two square-meals a day for himself and his family, The notice pleads that he is innocent and be spared from imposition of penalty.

38.5 From the above submissions, the noticee pleads that under the circumstances, the levy of penalty on the noticee is not at all warranted. In this connection, the appellat also wishes to rely on the following decisions.

38.5.1. The Hon'ble CESTAT, New Delhi, in the case of Z.U. Alvi Vs CCE, Bhopal cited in 2000 (117) ELT 69 (Tri.) has held that

"... Appellant was only an employee of BHEL. He was not the person In-charge or was responsible for the conduct of the business of BHEL. Rightly the Commissioner has not proceeded against the appellant as a person who was In-charge and responsible for the conduct of the business at the time when BHEL committed default in paying the duties as adjudicated upon by the earlier orders. Commissioner proceeded against the appellant under Rule 209A, which can apply only to a person who dealt with the contraband article, not as manufacturer. Appellant had no dealings with the contraband article otherwise than in his official capacity as an employee of BHEL, the manufacturer. So, by no stretch of imagination can appellant fall within the purview of Rule 209A of the Central Excise Rules. Therefore, the Commissioner was clearly in error in thinking that penalty contemplated by Rule 209A could be imposed on the appellant who was only an employee of the manufacturer, namely BHEL."

Respectfully following the decision of the Division Bench I do not find any reason to

sustain the penalties imposed on the employee, and the same is set aside.”

38.5.2 The Hon'ble CESTAT, WZB, Ahmedabad, in the case of M/s. Associated plastics & Rayons Vs CCE, Vapi cited in 2007 (215) ELT 309 (Tri-Ahd) has held that since the provisions of law was not known to the employees, penalties imposed were set aside against the employee. The Hon'ble CESTAT, Ahmedabad has also referred the Hon'ble CESTAT, New Delhi's decision in Z.U. Alvi's case. The para 9 & 10 of the said order reads as

“9. As regards penalties imposed on the employees of the firm (in appeal Nos. C/1544/05 and C/1548/05). I find from the record that they were not aware of the provisions of the law, and hence, provisions of Section 112(b) may not get attracted in these cases.

10. As regards the penalty imposed on individual in appeal No. C/1547/05, it is seen from the records that the penalty has been imposed on this person just for directing the transporter to load the vehicle from the factory premises. It is accepted fact that the appellants in this appeal had no knowledge that the goods are liable for confiscation. Nothing contrary is on record. In the facts and circumstances of the case penalty is not imposable. Hence, the impugned order is liable to be set aside, and I do so.”

38.5.3 The Hon'ble CESTAT, WZB, Mumbai, in the case of M/s. Grandsiam Express P. Ltd, Vs Commissioner of Customs, Airport, Mumbai cited in 2007(216) ELT 272 (Tri-Mum) has set aside the penalty imposed on the employee of courier agent not having knowledge that goods were liable for confiscation and specially as he would not have benefited from mis-declaration. Para 8 of the said order reads as

“8. As regards imposition of personal penalty on employee of the company, I find that the employee of the company could not fall category of person who was having knowledge that the goods which were imported are liable for confiscation as he went on the basis of the manifest of the goods imported and declared by the original forwarding company, the penalty imposed on the employee seems to be harsh and unwarranted. It is also on record that the employee would not benefited by making any mis-declaration in this case and hence the imposition of penalty on employee is liable to be set aside and I do so.”

38.5.4 The Hon'ble CESTAT, WZB, Ahmedabad, in the case of M/s. Associated plastics & Rayons Vs CCE, Vapi cited in 2007 (215) ELT 309 (Tri-Ad) has held that since the appellants were clerk in employment of EOU, 100% EOU and carrying out Instruction of employer, and no part played in own violation in evasion of duty, therefore, penalty is not justified under Section 112 of Customs Act, 1962 and allowed the appeals by setting aside the penalties imposed on them. The para 7 of the order reads as

“7. Now, I come to the appeals filed by Shri Amin Chandrakant Bhailalbai and Shri Gautam Upadhyay. These two persons are employees of M/s. Associated plastics and Rayons. They were clerks in the employment of the EOU and they were carrying out the instruction of their employer. They are not autonomous

individuals who have played any part on their own volition in the evasion of duty. No penalty was justified on them. Accordingly, their appeals are allowed.”

38.5.5 The Hon'ble CESTAT, WZB, Mumbai, in the case of M/s Shrikrishana not know about the concealment of the seized foreign currency. In other words, if the person, who misused the rubber stamp of the CHA himself did not know that foreign currency was concealed within export consignment. There was no way the appellant could have known that any foreign currency which was liable to confiscation was concealed in such consignment. Therefore, no link between the appellant allowing Shri Girish parab to use the CHA's rubber stamp and the transportation of the concealed foreign currency which has been confiscated, is established so as to visit the appellant with a penalty under Section 114 of the Customs Act.”

38.5.6 The noticee further wish to rely on the similar decisions mentioned below:

1. Vinod kumar Vs CCE, Delhi- I cited in 2006(199) ELT 705 (Tri-Del)
2. Sterlite Optical Technologies Ltd, Vs CCE, Aurangabad cited in 2005 (188) ELT 210 (Tri-Mum)

38.6. The noticee further submits that in view of the foregoing submissions, the proposal for imposition of penalty on the noticee is not sustainable. We humbly request the learned Adjudicating Authority to drop further proceedings initiated against the noticee (notice no. 3) in the show cause notice.

38.7. We may also be heard in person before a decision is taken on the impugned notice.

39. Defence reply dated nil received by this office on 09.08.2010 from M/s. Mazda Global, Shed No. 174, First floor, Section 1, KASEZ, Gandhidham (Kutch), Shri Amish J. Gandhi, Manager of M/s Mazda Global & Smt. Bharti J. Gandhi, Proprietor. They, inter alia, in their defence reply have submitted as under-

39.1 They are in receipt of the subject show cause notice and have noted the contents of the same.

39.2 The interim reply, at this stage, is being filed by them without prejudice to their main contention that the officers of the Customs Department do not have any jurisdiction in confiscating goods from the units situated in Special Economic Zones, under taking the authorized operations. As far as the judgment of the Hon'ble Gujarat High Court delivered in writ petition being SCA No. 504/2008 filed by them is concerned, the same is being challenged by them in Hon'ble Supreme Court of India.

39.3 At the outset, they deny the allegations made against them in the subject show cause notice as if the same has been specifically and individually dealt with by them and traversed except what has been expressly admitted by them herein below.

39.4 The subject show cause notice alleges that they had misdeclared the value

of goods, i.e. 20 numbers of 'Friction Free Die (GRP Mould Die)' inasmuch as the Technical Expert found the value of the said goods to be Rs. 6,000/- as against the declared value of Rs. 1,25,09,319/- and have consequently rendered the said goods liable to confiscation under section 113(d) and 113 (i) of the Customs Act, 1962 ('the Act' for short) read with the provisions of Foreign Trade (Development and Regulation) Act, 1992 and Rule 14 of Foreign Trade (Regulation) Rules, 1993 and have, in turn, rendered themselves liable to penalty under section 114(iii) of the Act.

They deny that they have 'mis-declared' any value in any shipping bill. In fact they have not declared any value as they have not filed any Shipping Bill. Nor have they authorized any person to file any shipping bill on their behalf. As claimed in the said show cause notice. They hereby request Your Honor to grant them a personal hearing during which they wish to present undeniable evidences to expose the truth behind the filling of an Un-Authorized Shipping Bill on the basis of Forged Documents. They wish also to file a detailed and final Reply subsequent to Personal Hearing in the matter, as and when called for by Your Honor.

They further state that the Government of India has enacted several Rules and Regulations under the Customs Act, 1962 and under the EXIM Policy, namely CHA Licensing Regulation, Shipping Bill and Bill of Export Regulations and Hand Book of Procedures (Export Procedures), to prevent and unlawful and unauthorized filing of Shipping Bill. Under these Rules & regulations the said shipping bill, bearing No: 6477 dated 30.03.2007 would be termed totally illegal and in-admissible. The question arise here is why an officer of Custom, (Who is obliged to uphold the law and prevent illegal and unauthorized filing and fraudulent practice in admitting shipping bills) would admit a shipping bill which does not meet the statutory requirements under the Customs Act, 1962. The said Shipping Bill is not signed by the Person, Authorized under the definition of Authorized Person provided under the Customs Act, 1962. The said Shipping accompanied by the necessary original documents as provided under the Customs Act, 1962, and Therefore no action may be taken against them merely on the basis of Shipping Bill, which is proven to be 'In-admissible, illegal and without necessary supporting documents as per the mandatory requirement under the Customs Act, 1962. Further more the documents in question are proven forged now. At this stage they carve leave here to present more evidences, site judgments and debate various related to this matter during the course of personal hearing , as and when granted my Your Honor.

39.5 They have therefore, been called upon to show cause to Your Honour as to why-

- (i) after rejecting the declared value, the seized goods should not be assessed taking its value as Rs. 6,000/-
- (ii) the seized goods can not be confiscated under section 113(d) and section

113(i) of the Act read with instruction No. 6/2006 dated 3.8.2006 issued by Ministry of Commerce and Industry, Department of Commerce (SEZ Section); and

(iii) penalty should not be imposed against us under Section 114(iii) of the Act read with instruction No. 6/2006 dated 3.8.2006 issued by Ministry of Commerce and Industry, Department of Commerce (SEZ Section).

39.6 They, in terms, deny that they have contravened any provisions of various Acts and/or Rule as alleged in the subject show cause notice and state that the said goods are not liable to confiscation as well as that no penalty is imposable on them.

39.7 They submit that as aforesaid, the subject show cause notice calls upon them to show cause as to why the value of the goods should not be rejected and the goods should not be confiscated under section 113(d) and section 113(i) of the Act.

Section 113(d) provides for goods being liable to confiscation which are attempted to be exported or brought within the limits of any-customs area for the purpose of being exported, contrary to any prohibition imposed by or under the Act or any other law for the time being in force. Thus, for the purpose of holding the goods as liable to the confiscation in the aforesaid provisions, it is necessary that the same should be attempted to be exported AND it is also clear from the provision of the Section 113(d) that it is also necessary that the goods shall be prohibited for export under Customs Act or any other law for the time being in force.

The expression 'attempt' is wide enough to take in its fold any one or series of acts committed beyond the stage of preparation in moving the goods deliberately to a place of embarkation, the acts being reasonably proximate to the completion of unlawful export but there is a distinction between preparation and an attempt. If the goods have not been physically moved to the customs area for exportation, the same cannot be termed as an attempt to export the goods.

Moreover it is also clear that there is no prohibition on the goods in subject (Friction Free Die) matter in the Customs Act, or any other Law in force. In fact the said goods in question are rather licensed goods for manufacture and export under the SEZ Act, 2005, under the obligation of which the said Unit is constituted.

39.8 In the present case, as is apparent from the record, the goods in question were seized from the premises of their unit and thereby in any case had not reached customs area for the purpose of export. Under the circumstances, the same cannot be held liable to confiscation under section 113(d) of the Act in as much as there was no attempt on their part to export the same. So much so that there is no prohibition on the said goods under Customs Act, or any other Law.

Section 113(i) of the Act provides for confiscation of goods which are entered for exportation and do not correspond in respect of value or any

material particular with the entry made under the Act or in the case of baggage with the declaration made under section 77. As is clear from what has been stated by us hereinabove the goods in question were not entered for exportation, in any case, whereby the provisions of section 113(i) of the act do not stand attracted.

The goods in question are, therefore, not liable to confiscation under any of the provisions mentioned in the subject show cause notice or even otherwise.

39.9 They submit that there also arises no question of imposition of any penalty under provisions of section 114(iii) of the Act. The said section provides for imposition of penalty on any person who, in relation to any goods, does or omits to do any act which would render the goods liable to confiscation under section 113 or abets the doing or omission of such an act, not exceeding the value of goods as declared by the exporter or the value as determined under the Act, whichever is greater, In the present case, as demonstrated hereinabove, the goods in question not being liable to confiscation under section 113 of the Act, there arises no question of imposition of any penalty on them.

This apart, the said provision provides for imposition of penalty on any person who in relation to any goods does or omits to do any act which would render the goods liable to confiscation, u/s 113 of that or abets the doing or omission of such an act. In the present case, they have not done or omitted to do any act which would render the goods liable to confiscation or abetted the doing or omission of such an act. Under the circumstances there arises no question of imposing any penalty on them.

39.10 At this stage they would also like to bring to our notice that they have not been supplied with a copy of seizure panchanama dated 31.03.2007 photographs and CD mentioned in serial no: 2 of the list of documents relied upon in the subject show cause notice. They request that the same may kindly be made available to them for the purpose of preparing their reply in detail. They would also like to have an inspection of the originals of Shipping Bill No: 6477 dated 30.03.2007, invoice no: 001/DIE/GRP dated 30.03.2007 mentioned in serial no: 1 of list of documents relied upon in the subject show cause notice.

39.11 Apart from the aforesaid, for the purpose of bringing the real facts on record and for the purpose of defending their case they request Your Honor to permit them cross examination

- a). Mr. R. R. RAI- Appraiser of Customs, KASEZ, GANDHIDHAM.
- b). Mr. K. M. MATHEW- Appraiser of Customs, KASEZ, GANDHIDHAM

They reiterate this request in view of the fact that it will not be possible to bring the correct facts on record without cross examination of the said persons.

39.12 They crave leave to add to, alter, amend or delete any of the submissions made hereinabove and request for an opportunity of personal hearing before deciding the subject show cause notice.

RECORDS OF PERSONAL HEARING:-

40. Personal hearing in the instant case was fixed on 08.01.2008. In this regard, vide letter dated 01.01.2008, Shri AmishJ.Gandhi on behalf of himself, Mrs Bharti J. Gandhi (his mother) & M/s Mazda Global requested for adjournment of the said hearing. On behalf of Noticee No.3 i.e. Shri Shashikant J. Parmar, Production-in-Charge of M/s Mazda Global, authorized Advocate/consultant namely R. Subramanya of M/s Swamy Associates attended the hearing on 08.01.2008. Thereafter, Personal Hearing was fixed on 11.02.2008. This time Shri AmishJ.Gandhi on behalf of himself, Mrs Bharti J. Gandhi (his mother) & M/s Mazda Global vide their letter dated 11.02.2008 intimated that in the case matter they vide SCA No. 504 of 2008 have approached the Hon'ble High Court of Gujarat who vide their order dated 18.01.2008 has issued a stay against confiscation of the goods until further hearing. Thereafter, the Personal Hearing as fixed on 28.02.2008. They again requested for adjournment of the hearing on the ground that the case matter shall come up for further hearing in the Hon'ble Gujarat High Court on 13.03.2008. The Hon'ble Gujarat High Court vide their order dated 16.07.2008 continued the interim relief granted on dated 18.01.2008 till further orders. Thereafter, Personal hearing was fixed on 24.08.2010. In this regard, the aforementioned Noticees vide their letter dated 21.08.2010 requested to provide the documents and inspection sought for by them vide their letter dated 05.08.2010 stating the reason that without getting the concerned documents as well as inspection, it is not possible for them to prepare the reply to the subject show cause notice.

Change in Adjudicating authority and consequently grant of personal hearing before the new Adjudicating authority:

40.1 In terms of Board's Circular No.23/2009-Customs dated 01.09.2009 issued from F. No. 450/117/2009-Cus. IV, the instant case was allocated to the Additional Commissioner, Custom House, Kandla for adjudication. After change in Adjudicating Authority, Personal hearing in the instant case was granted to the Noticees on 28.03.2011, 26.03.2015, 03.02.2016, 09.11.2016. The Personal hearing on 09.11.2016 was attended by Shri Shashikant J. Parmar, Production-In-Charge of M/s Mazda Global and Shri Amish J.Gandhi, Manager of M/s Mazda Global remained present on 09/11/2016 on behalf of M/s Mazda Global, Gandhidham, Smt. Bharti J. Gandhi (Proprietor of M/s Mazda Global) and for himself. However, Shri Amish J. Gandhi requested for inspection of original relied upon as well as non- relied upon documents related to the subject SCN. The records/documents seized and available with this office were inspected, shown and acknowledged by Shri Amish J. Gandhi. Further, Shri Shashikant J. Parmar, Production-In-Charge of M/s Mazda Global, during the course of Personal Hearing, reiterated the detailed submissions in their defence reply vide their letter dated 05.01.2008. He submitted that since he had prepared the documents as per the directions of his owner,

he should not be penalised and the proceedings should be dropped as initiated in the SCN. He has nothing to further add on the issue. Further, Personal Hearing was fixed on 19.12.2016, 19.01.2017, 15.03.2017, 19.04.2017 & 22.05.2017. Shri Shashikant J. Parmar, Production-In-Charge of M/s Mazda Global attended the personal hearing on 22.05.2017. However, the personal hearing intimation letters issued under registered post AD to M/s Mazda Global and rest Noticees are returned by the postal authorities with remarks 'Refused'.

40.2 Further, due to change in adjudicating authority, fresh personal hearing was fixed on 10.10.2017, 12.12.2017, 26.12.2017, 22.02.2018. The Personal hearing Intimation letters issued under registered post AD to M/s Mazda Global, Shri Amish J. Gandhi and Smt. Bharti J. Gandhi (Proprietor of M/s Mazda Global) are returned by the postal authorities with remarks 'unclaimed'. Shri Shashikant J. Parmar, Production-In-Charge of M/s Mazda Global attended the personal hearing on 22.02.2018. He requested to decide the case on the basis of his defence reply dated 26.09.2007. However, Intimation letters issued under registered post AD to the remaining Noticees are returned by the postal authorities with remarks 'unclaimed'. Thereafter, personal hearing was fixed on 01.06.2018. The letter of personal hearing granted on 01.06.2018 to M/s Mazda Global, Shri Amish J. Gandhi and Smt. Bharti J. Gandhi (Proprietor of M/s Mazda Global) was served in the manner prescribed under Section 153(b) of the Customs Act, 1962 i.e. by pasting it on the Notice Board of Custom House, Kandla under regular Panchnama dated 24.05.2018. There is due and sufficient compliance of principle of natural justice to all the noticees covered by the present Show Cause Notice.

DISCUSSION AND FINDINGS:-

41. I have carefully gone through the entire records of the case, including the Show Cause Notice dated 26.09.2007, the written defence submissions of the Noticees and the relevant provisions of law. I take up the case on its merit for a decision.

42. I find that the following main issues are involved in the subject Show Cause Notice, which are required to be decided-

- (i) Whether the value declared by M/s Mazda Global in the shipping bill no.006477 dated 30.03.2007 as Rs.1,25,09,319.00 (USD 2,83,980/-) should be rejected and the seized goods should be assessed by taking its value as Rs. 6,000/-,
- (ii) Whether the seized goods, whose value was declared in the shipping bill No. 006477 dated 30.3.2007 as Rs.1,25,09,319.00 (USD 2,83,980/-) but found to be Rs. 6,000/-, should be confiscated under section 113 (d) and section 113 (i) of Customs Act, 1962 read with the Instruction No.6/2006 dated 03-8-2006 of the Ministry of Commerce and Industry, Department of Commerce (SEZ Section).
- (iii) Whether penalty should be imposed on M/s Mazda Global under Section

- 114 (iii) of Customs Act, 1962 read with the Instruction No.6/2006 dated 03-8-2006 of the Ministry of Commerce and Industry, Department of Commerce (SEZ Section).
- (iv) Whether Penalty should be imposed on Smt. Bharti J. Gandhi, Proprietor of M/s Mazda Global under section 114 (iii) of Customs Act, 1962 read with the Instruction No.6/2006 dated 03-8-2006 of the Ministry of Commerce and Industry, Department of Commerce (SEZ Section).
- (v) Whether Penalty should be imposed on Shri Amish J. Gandhi, Manager of M/s Mazda Global under section 114 (iii) of Customs Act, 1962 read with the Instruction No.6/2006 dated 03-8-2006 of the Ministry of Commerce and Industry, Department of Commerce (SEZ Section).
- (vi) Whether Penalty should be imposed on Shri Shashikant J. Parmar, Production-in-charge of M/s Mazda Global under section 114 (iii) of Customs Act, 1962 read with the Instruction No.6/2006 dated 03-8-2006 of the Ministry of Commerce and Industry, Department of Commerce (SEZ Section).

43. The facts of the case indicate that M/s. Mazda Global is a unit set up by Smt. Bharti J. Gandhi, Proprietor in KASEZ with a view to avail benefits under SEZ Act and rules framed thereunder. Her son Shri Amish Gandhi acted as Manager and looked after day to day affairs of the said unit. M/s. Mazda Global filed Shipping Bill No. 006477 dt. 30/3/07 for export of goods declared as 'Friction Free Die (GRP Mould Die) 1 CTN (20 pcs packed in one carton) & declared its value as Rs. 1,25,09,319.00 (USD 2,83,980/-). Shri Amish Gandhi pursued the matter relating to clearance with Custom Appraisers working in KASEZ and requested them to clear the goods entered for export by M/s. Global Mazda by assessing the shipping bill. In the course of investigation, Shri Shashikant J. Parmar, who had signed the shipping bill for the said unit, admitted *inter alia*, that the goods were grossly overvalued and the approximate value of the goods is around Rs.10,000/-. During the course of search of the factory premises of M/s. Mazda Global on 31/3/07, where the goods were found lying, no electrical, mechanical or electronic device was found. There was no machinery, plant, tools, furniture, labour etc. in the factory premises. The unit had no electricity connection and there was no electricity/inverter/Generator set in the factory premises. Shri Shashikant J. Parmar, authorised signatory of the company in his statement dated 31.3.2007 stated *inter alia* that the manufacturing process of the GRP Mould Die involves pouring the liquid resin and some other chemicals in a steel mould with plastic mat and let it dry for 24 hrs. Shri Amish Gandhi, Manager of the firm & son of Smt. Bharti Gandhi, Proprietor of the unit, who looked after all the activities of the firm M/s. Mazda Global, in his statement dated 1.4.2007 stated *inter alia* that the subject goods covered under the Shipping Bill were manufactured in their factory by hand-lay up

process of GRP by involving two skilled and a number of unskilled workers in the manufacturing process. He also stated that his firm was paying regular salaries to the two skilled workers through cheques. However, he could neither furnish details of the skilled workers/cheques supposedly issued to them nor he provided any particulars like actual number of persons employed by his firm, etc. Shri G. V. Patel, Chartered Mechanical Engineer (technical expert) opined that the goods are not 'Friction Free Die'. The goods are having rough surface finish and poor qualities with a low strength. Instead of high skill work, conventional low quality manual methods have been employed to produce the goods. The weight of each item is less than ½ kg. which is too low for a die. The total value of the goods is Rs. 6000/-.

Security Officer, Kandla Special Economic Zone vide his letter No. KSEZ/SO/Misc/07 dated 2-4-2007 informed that they had not issued any gate passes to skilled or unskilled labours/employees for working in M/s Mazda Global. Deputy Commissioner of Customs, KASEZ, Gandhidham vide letter F.No. KASEZ/DC(CUS)/GLOBAL MAZDA/06-07/1908 dated 24/25-5-2007 informed that M/s. Mazda Global had so far procured the goods such as Ply Resin, Fiber Glass Mat. Catalyst, Cobalt, Brush, Polish indigenously valued at Rs.10,712/- and brought the same in the factory at KASEZ under valid gate-pass. This fact is also corroborated from the statement dt.14/6/07 of Sh. Amish Gandhi. Further, he also produced photocopies of invoices for purchase of raw-materials viz. Poly. Resin, Fiberglass Mat, Catalyst, Cobalt, Polish etc. valued at Rs.11,172/-(Rs.10,712/- + Rs. 460/- VAT) and some machine parts/tools viz. C. Brush, Bearing, Carbon, Armature, Roller Set, Bushing, Screw, Gear, Lifting Rod, Circular Saw etc. valued at Rs.10,800/-. No payment of significant amount towards purchase of Patterns, Technical-Know-How and marketing and other expenses etc. was made from Account No.201120110000041 of M/s. Mazda Global at Bank of India, Paldi Branch, Ahemdabad for the period from April-2006 to May-2007. Overseas inquiry conducted through Consulate General of India, Dubai, UAE with regard to the foreign buyer/consignee declared by M/s. Mazda Global in the shipping bill No. 006477 dated 30.3.2007 viz. PROJECT PRO, SANAIYA 2, AJMAN, U.A.E revealed that no such Company was registered with Ajman Chamber of Commerce and Industries, as informed vide letter No. CE/IV/1-7/2007 dated 09.05.2007. Sh. Amish Gandhi vide his letter dated 25-7-2007 submitted a photocopy of a document claiming it to be a Certificate from M/s Project Pro, duly certified by Chamber of Commerce. M/s Project Pro Aluminium, New Sanaiya, Ajman, U.A.E. P.O. Box 20777, Sharjah appeared to have certified that the Purchase Order No.LPO/NDW/FLC/930987 dated - February was placed by them on M/s Mazda Global, Kandla Special Economic Zone, Kandla. This Certificate appeared to have been signed on 9-4-2007 by Authorized Signatory as "For Project Pro Aluminium". It also bears a Stamp/Certificate signed on 12/4/2007 by the Director General of Ajman

Chamber of Commercial & Industry and is to be effect that "We certify that this is the true signature and seal of PROJECT PRO ALUMINIUM Without responsibility as to the contents ". It is however observed that the name of the overseas buyer as mentioned in the Shipping Bill No. 006477 dt. 30/3/07 and the invoice No. 001/die/grp dt. 30/3/07 is "PROJECT PRO, SANAIYA 2, AJMAN, U.A.E whereas in the above certificate dated 9-4-2007, on a date later than the seizure date, it is shown as "M/s Project Pro Aluminium, New Sanaiya, Ajman, U.A.E. P.O. Box 20777, Sharjah" which makes it evident that the document produced by Shri Amish Gandhi under his letter-dated 25.7.2007 is concocted & spurious and manifest an afterthought to cover up the acts of omission and commission involved in over-valuation of goods entered for export by M/s. Mazda Global under aforesaid shipping bill. Despite repeated requests to produce relevant documents, accounts, drawings, etc. to establish credibility of the business carried out by M/s. Mazda Global and to support the value declared by them in the shipping bill as above, Shri Amish Gandhi, notwithstanding the fact that he presented himself on more than one occasions and tendered statements, could not produce any such evidence. In fact, in his statement dated 1.8.2007, he admitted of his inability to produce any of these documents. None of the machinery/equipment/raw material etc. enlisted by M/s. Mazda Global in the project report filed by them before KASEZ for obtaining the requisite permission to operate in SEZ was found installed/lying in its factory premises, which is duly recorded in the panchanama dated 31-3-2007. The actual value of the goods entered for export in the shipping bill No.006477 dated 30.3.2007 filed by M/s. Mazda Global is Rs. 6,000/-, as opined by the technical expert and not Rs. 1,25,09,319.00, as declared therein. Thus, the goods were mis-declared in the shipping bill with reference to their value.

44. I find that in interim reply to the above subject show cause notice M/s Mazda Global, its Proprietor and Manager vide a combined letter dated 05.08.2010 and 21.08.2010 have submitted that they have not been supplied with a copy of seizure panchanama dated 31.03.2007, photographs and CD mentioned in Serial No. 2 of the list of documents relied upon in the subject show cause notice. They would also like to have an inspection of the originals of Shipping Bill No. 6477 dated 30.03.2007, Invoice No. 001/DIE/GRP dated 30.03.2007 and the said authority letter dated 30.03.2007 mentioned in serial No. 1 of the list of documents relied upon in the subject show cause notice. Further more copy of GR No. BB745284 dated 30.03.2007 as mentioned in the said Shipping Bill is not provided to them so far. They also requested for examination/cross examination of Mr. R.R. Rai, Appraiser of Customs, KASEZ, Gandhidham, Mr. K.M. Mathew, Appraiser of Customs, KASEZ, Gandhidham, Mr. Shashikant J. Parmar, Mr. Jugal Kishore and Mr. Jagdish M.

Further vide a mail dated 3rd February 2016 they sought for the following

documents from Sr. No. 1 to 18:-

1. original Invoice (full set with all its annexure and copies), including GR Forms set in original, and Declarations set in original and Checklist in original as is required under the law as was relied upon by the department
2. Original full set Packing list.
3. Forensic examination of the signature of my mother on what is wrongfully claimed as an authority letter by the then investigating team.
4. Original Video CD, In full without any editing.
5. Original Photographs without any touch ups or editing.
6. Entry record diary copy of the Customs House Kandla of the period of March 2007 to May, 2007 particularly covering the dates 30/03/2007, 31/03/2007 & 22/5/2007. This is a critically relevant document in order to prove certain facts.
7. List of ID Cards issued by the KASEZ Authority to the employees of the SEZ under section of 46 of the SEZ Act.
8. Call records of the phone number +912836253731 for the period of March, 2007. Important evidentiary value for us.
9. NBC, Kasez, worksheet for the period of November 2006, to end of March, 2007 and statement to be recorded by NBCC Incharge for the said period.
10. Records of the Estate office of KASEZ & Statement to be recorded of the Estate officer, KASEZ for the period of November 2006 to End of March, 2007 on the questions put forward by them.
11. Copy of the Application filed by the department against the accused Mr. shashikant Parmar in the Gandhidham Trial Court.
12. Copy of the Application filed by the department against the petitioner Mrs. Bhartiben J. Gandhi in the Gujarat High Court.
13. Full call records of the phone number 9825033060 for a period of at least 6 months ending on 31.03.2007.
14. Shipping bill with all its annexures like GR Form, AR-4, various declarations. Checklist and copies (full set) as is provided under the Annexure III, Shipping bill and bill of Export (FORM) Regulation's, 1991 Customs series form No.95
15. Acknowledgment and Received stamped copy of the so called & claimed "Authority Letter" of B.J. Gandhi, Acknowledged, endorsed and Received by the Customs station in Kandla Special Economic Zone.
16. The subject show cause notice relies upon and refers to a claim of email transmission containing invoice, between Mr. Amish Gandhi and Mr. Shashikant J Parmar. They would like to inspect and verify this Original Email showing the names of the receivers and senders email addresses and also showing the server details of the recipient server and sender's

server with respective IP Addresses.

17. The subject show cause notice extensively relies upon the so called faxed copy of the so called authority letter, we would like to inspect and verify this original fax transmission with the original credentials and on fax paper.
18. Letter dated 21.05.2007 addressed by the office of commissioner of customs and written to Patel Engineers and Consultants.

In this context, it is observed that apart from the documents as mentioned at sr. No. 1 above, no other documents were either made the relied upon documents in Show cause Notice or they were seized/ obtained during any panchanama as non- relied upon documents.

Further, they also liked to examine to the following witnesses/persons 1 to 10 in person:-

1. Mr. Navraj Goyal, Then AC, SIIB, Kandla.
2. Mr. R.R. Rai, Then Appraiser.
3. Mr. Shashikant Parmar, mentioned in the notice.
4. Witnesses, Mr. Jugal Kishore & Mr. Jagdish M.
5. Mr. R.K. Sing (Signatory on the panchnama) & witness.
6. Mr. G.U. Vaghela (Signatory on the panchanama) & witness
7. Videographer.
8. Photographr.
9. Valuer of deparment Mr. G.V. Patel.
10. Mr. Mathew
11. Witnesses, Mr. Anurag Pillai & Mr. Rajan Rajesh
12. Witness Mr. Dodia.

In this context, it is observed that except the statement of the person mentioned at Sr. 3, statement of no other person was tendered and made relied upon documents and not-relied upon documents in the Show Cause Notice. Also I refuse their request of cross examination as I find that in the instant case the facts are well recorded in the documents, relied upon in the Show Cause Notice and by cross examination, the facts of the case will not be altered as the Show Cause Notice has not been prepared on assumptions and presumptions.

Further, in context of above, it is worth to mention here that vide Email dated 10.03.2015 they only sought for Original documents like Invoice, packing list and delivery challan for inspection but now for inspection they sought more documents as mentioned above. In this regard, it is observed from the case file/records that they have seen the Original Invoice as their dated signature are available on the same in token of having seen the same. The delivery challan and packing list were not included in the relied upon documents of the show cause notice. From the above it is clearly observed that they are trying to mislead the department as well as they did not co-operate to attend the personal hearing during adjudication process. However, I find that this office has issued

letter to the noticee on dated 10.04.2015 and 30.04.2015 for inspection of documents as requested by the noticee. The letters sent to the noticee in respect of inspection of documents were returned back with remarks "Left India". Further, a letter dated 06.05.2015 was received through e-mail from from Shri Ashish Gandhi, son of Smt. Bhartiben J.Gandhi. In response to said e-mail dated 06.05.2015, the copy of earlier correspondences i.e. scan copy of letters dated 10.04.2015 & 30.04.2015 alongwith scan copy envelope showing the remarks "LEFT INDIA" by the postal authority had been mailed on 21.05.2015 to ID:ajgandhi909@outlook.com of Shri Ashish Gandhi, son of Smt. B.J.Gandhi, Proprietor of Mazda Global, KASEZ, Gandhidham. However, this office did not receive any reply from the noticee in respect of the e-mail dated 21.05.2015 sent to them. From the foregoing paras, it is evident that efforts have been made time and again by the department, requesting the noticee to inspect the desired documents, however the noticee has failed in doing so. Hence, it is the noticee who is not co-operating in the adjudication proceedings.

45. The first issue for determination before me is whether the value declared by M/s Mazda Global in the shipping bill no.006477 dated 30.03.2007 as Rs.1,25,09,319.00 (USD 2,83,980/-) should be rejected and the seized goods should be assessed by taking its value as Rs. 6,000/-. In this connection, I find that M/s Mazda Global had filed a Shipping Bill No. 006477 dated. 30/3/2007. The goods to be exported were declared in the Shipping Bill as 'Friction Free Die (GRP Mould Die)' 1 CTN (20 Pcs packed in one cartons) and the value thereof was declared as Indian Rs.1,25,09,319.00 (USD 2,83,980/-). The net weight of the cargo was declared as 10.000 kgs. and gross weight as 14.500 kgs. The name of the party to whom the goods were to be exported was declared in the Shipping Bill as "PROJECT PRO, SANAIYA 2, AJMAN, U.A.E". From the Noting on the reverse side of the Shipping Bill, it is observed that the Assessing Officer of Customs, KASEZ had raised a query and had asked M/s Mazda Global to submit a copy of Bond in Form-H. Shri Shashikant J. Parmar (who had signed the Shipping Bill as well as replied to the query and signed as "FOR MAZDA GLOBAL") have supplied the copy of the Bond with a request to assess the Shipping Bill. I find that Shri Shashikant J. Parmar, Production Manager of M/s Mazda Global in his statement dated 31.03.2007 recorded under Section 108 of the Customs Act, 1962 has stated that he had filed the shipping bill on the basis of Authority Letter dated 30-3-2007(copy produced) sent on fax on Gandhidham Phone No.95-2836-253731 on 30-3-2007 signed by Smt. Bharti J. Gandhi, Proprietor of the firm; that the raw material used for the production of the export cargo covered under Shipping Bill No. 06477 dt.30/3/07 was procured by Sh. Amish Gandhi, acting as the Manager of M/S Mazda Global and is the son of Smt. Bharti J. Gandhi, Proprietor; that Sh. Amish Gandhi is looking after all operation/activities of the firm: that according to him, the value of the goods covered under the

Shipping Bill is not more than Rs. 10,000; that value was declared in the Shipping Bill as per the directions of Sh. Amish Gandhi; that the firm has not imported any thing so far; that he produced the documents namely Bond-cum-legal undertaking executed with KASEZ, LOP No. KASEZ/IA/037/2005-06/7036 dt. 25/1/06, fax copy of Authority Letter. I further find that during the course of investigation Shri G. V. Patel, Chartered Mechanical Engineer and Approved Valuer (Institution of Valuers) was requested to ascertain the value of the seized goods. The sealed box containing the seized goods was opened in presence of two independent Panchas, Shri Shashikant J. Parmar and Shri G. V. Patel and re-sealed after inspection by Shri G. V. Patel vide Panchnama dated 22-5-2007. On the basis of inspection/examination carried out by him, Shri G. V. Patel vide his opinion dated 23.05.2007 reported that a box containing 20 Nos. of parts was opened for examination; that the parts does not contain any "Friction Free Die"; that the same are made of GRP instead of metal with rough surface and poor qualities; that strength of the part is too less; that instead of high skill work, conventional low quality manual methods are used to produce it; that weight of each part is less than ½ kg, which is too low for the said die; that the total cost of the parts containing the box is Rs.6,000/- only. In view of the above facts available on record, the value declared by M/s Mazda Global in the shipping bill No. 006477 dated 30.3.2007 as Rs. 1,25,09,319.00 (USD 2,83,980/-) is liable to be rejected and the seized goods shall be assessed by taking its value as Rs. 6,000/-.

46. The next issue for determination before me is confiscation of the seized goods, whose value was declared in the shipping bill No. 006477 dated 30.3.2007 as Rs.1,25,09,315/- but found to be Rs. 6,000/-, under section 113 (d) and section 113 (i) of Customs Act, 1962 read with the Instruction No.6/2006 dated 3-8-2006 of the Ministry of Commerce and Industry, Department of Commerce (SEZ Section).

In this regard, firstly I refer to provisions of the section 113 (d) and section 113 (i) of the Customs Act, 1962.

Section 113: Confiscation of goods attempted to be improperly exported etc.- The following export goods shall be liable to confiscation:-

- (d) *any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act, or any other law for the time being in force.*
- (i) *any goods entered for exportation which do not correspond in respect of value or in any material particulars with the entry made under this Act or in the case of baggage with the declaration made under section 77.*

The facts of the case and the available records indicate that the unit M/s Mazda Global have mis-declared the value of goods i. e. 20 Nos. of Friction Free Die (GRP Mould Die) entered for clearance under shipping bill No. 006477 dated 30.30.2007 filed with KASEZ Customs, in as much as the technical expert found the value of the said goods to be Rs. 6,000/- as against the declared value of Rs. 1,25,09,319.00 (USD 2,83, 980/-). This contravention and/or violation falls within the purview of the nature of offence prescribed under Section 113(d) and 113(i) of the Customs Act,1962. Consequently, such acts of omission and commission by M/s Mazda Global have rendered the said goods liable for confiscation under section 113 (d) and 113 (i) of Customs Act, 1962 read with the provisions of Foreign Trade (Development and Regulation) Act, 1992 and Rule 14 of Foreign Trade (Regulation) Rules, 1993. Further, I find that the Tribunal, Mumbai in the case of CC Mumbai Vs Multimetal Ltd.-2002(144) ELT 574 (Tri-Mumbai) has held that when mis-declaration is established, goods are liable to confiscation irrespective of whether there was malafide or not. This case has upheld by the Apex court in 2003(151) ELT A309(SC).

46.1 I further find that there is a difference between “confiscation” and “liable to confiscation”. It is settled law that the goods which are liable to confiscation can be ordered for to be confiscated, and fine in lieu of confiscation can be imposed. In cases, where proper declaration of the goods are not made for some purpose, then it would amount to violation of the conditions for import/export of the goods and it would certainly amount to illegal/ unauthorized and against the statute.

There is violation of provisions of section 113(d) and 113(i) of the Customs Act, 1962 since there was a mis-declaration of the value of the subject goods, therefore, M/s Mazda Global have acted deliberately cannot be ruled out for the reason that they have mis-declared the value of the subject goods accordingly, confiscation of the goods under the Section 113 (d) and 113 (i) of the Customs Act, 1962 is justified, therefore, imposition of redemption fine is also warranted under law. Therefore, M/s. Mazda Global(Through Smt. Bharati J.Gandhi, Proprietor), A-82, Hariom Apartments, Near Law Garden, Panchvati Road, Ahmedabad is liable for redemption fine under Section 125 of the Customs Act,1962 in lieu of confiscation.

46.2 The Section 125 of the Customs Act,1962 -Option to pay fine in lieu of confiscation stipulates as under-

(1) Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods 1[or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provide that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon. 2(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1) the owner of such goods or the person referred to in sub-section (1) shall, in addition, be liable to any duty and charges payable in respect of such goods]

Further, Hon'ble Supreme Court in case of Commissioner of Customs, Ahmedabad Vs. M/s Jayant Ointments Pvt. Ltd. [(100) ELT 10] and Jain Exports Pvt. Ltd. Vs. UOI [1996(66) ELT 537] has held that quantum of redemption fine depends on facts and circumstances of each case and no hard and fast rules may be laid down. Fine could be imposed even in cases of bonafide imports. However, Section 125 of the Customs Act, 1962 provides that such fine shall not exceed the market price of the goods less the duty chargeable thereon and working rule could be to levy redemption fine so as to neutralize any benefit that may accrue to the importer from such illegal act of importation of impugned goods.

In view of the above narrated facts, I hold that M/s. Mazda Global (Through Smt. Bharati J. Gandhi, Proprietor), A-82, Hariom Apartments, Near Law Garden, Panchvati Road, Ahmedabad is liable for redemption fine under Section 125 of the Customs Act, 1962 in lieu of confiscation.

47. Besides confiscation, the Show Cause Notice has also proposed imposition of penalty under Section 114(iii) of the Customs Act, 1962 on M/s. Mazda Global (Through Smt. Bharati J. Gandhi, Proprietor), A-82, Hariom Apartments, Near Law Garden, Panchvati Road, Ahmedabad.

In this regard, firstly I refer to the provisions of the section 114 (iii) of the Customs Act, 1962.

The section 114 (iii) of Customs Act, 1962 is as under:

Section 114: penalty for attempt to export goods improperly, etc.-

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 113, or abets the doing or omission of such an act, shall be liable:

(iii) *In the case of any other goods, to a penalty not exceeding the value of the goods, as declared by the exporter or the value as determined under this Act, whichever is the greater.*

From the documentary evidences available on records, it is observed that M/s. Mazda Global have mis-declared the value of goods i.e. 20 Nos. of 'Friction Free Die' (GRP Mould Die) entered for clearance under shipping bill No. 006477 dated 30.30.2007 filed with KASEZ Customs, in as much as the technical expert found the value of the said goods to be Rs. 6,000/- as against

the declared value of Rs. 1,25,09,319/- (USD 2,83,980/-) and have consequently rendered the said goods liable for confiscation under section 113 (d) and 113 (i) of Customs Act, 1962 read with the provisions of Foreign Trade (Development and Regulation) Act, 1992 and Rule 14 of Foreign Trade (Regulation) Rules, 1993. In view of the above stated reasons, I find that M/s Mazda Global have rendered themselves liable for penalty under Section 114(iii) of the Customs Act,1962. Therefore, I hold that M/s Mazda Global is liable for penalty under Section 114(iii) of the Customs Act,1962.

48. Now I proceed towards the proposal in SCN for imposition of penalty under Section 114(iii) of the Customs Act, 1962 separately on Smt. Bharti J. Gandhi, Proprietor, Shri Amish J. Gandhi, Manager and Shri Shashikant J. Parmar, Production-in-charge of M/s Mazda Global.

In this regard, Smt. Bharti J. Gandhi, Shri Amish J. Gandhi and Shri Shashikant J. Parmar have contended in their written defence reply that they are not liable to penalty under Section 114(iii) of the Customs Act,1962.

As regards imposition of penalty on Smt. Bharti J. Gandhi, I find that in present case Smt. Bharti J. Gandhi, Proprietor of M/s Mazda Global had set up the unit in Kandla Special Economic Zone and was running the business with the help of her son Shri Amish Gandhi with mutual understanding that she will not take active part in day-to-day routine work. However, all the important documents/letters are to be signed by her. They filed the Shipping Bill through Shri Shashikant J. Parmar on the strength of the Authority Letter & the Invoice dated 30-3-2007 signed by her and mis-declared the goods with reference to its value thereby rendering them liable to confiscation under section 113 (d) and 113 (i) of the Customs Act.

The above mentioned role on her part has rendered herself liable to penalty under Section 114(iii) of the Customs Act, 1962. Therefore, I hold that Smt. Bharti J. Gandhi, Proprietor of M/s Mazda Global, A-82, Hariom Apartments, Near Law Garden, Panchvati Road, Ahmedabad, is liable to penalty under Section 114 (iii) of the Customs Act, 1962.

49. In regard to proposal of penalty under Section 114(iii) of the Customs Act, 1962 on Shri Amish Gandhi, Manager of M/s Mazda Global, I find that Shri Amish Gandhi, Manager of M/s Mazda Global and son of Smt. Bharti J. Gandhi is the mastermind of the present case. He planned to set up a unit in the KASEZ & obtained the Letter of Permission (LOP). He purchased the raw materials, some machinery parts & tools, engaged Shri Shashikant J. Parmar as their employee and directed the said employee to file shipping bill for export of goods referred to hereinabove by mis-declaring its value on the strength of

letter of authority dated 30-3-2007 signed by the Proprietor of the unit and his mother Smt. Bharti J. Gandhi) & invoice prepared by him and transmitted through e-mail. He with mutual understanding & consent of Smt. Bharti J. Gandhi, Proprietor obtained her signatures wherever required and sometimes even on blank papers: that he also mis-declared the name & address of the foreign buyer. It is therefore clearly evident that the aforesaid various acts of omission and commission on the part of Shri Amish Gandhi, Manager of the said unit and son of the Proprietor of the said unit rendered the goods liable to confiscation under section 113(d) and section 113(i) of the Customs Act, 1962. Consequently, Shri Amish J. Gandhi has rendered himself liable to penalty under Section 114(iii) of the Customs Act, 1962. Thus, I hold that Shri Amish J. Gandhi, Manager of M/s Mazda Global is liable to penalty under Section 114(iii) of the Customs Act, 1962.

50. Now I proceed towards proposal of penalty under Section 114(iii) of the Customs Act, 1962 on Shri Shashikant J. Parmar, Production-in-charge, of M/s Mazda Global. In this regard, I find that Shri Shashikant J. Parmar has acted as Production-in-charge, of M/s Mazda Global. He had prepared the Shipping Bill on the basis of Invoice received on e-mail from Shri Amish J. Gandhi by mis-declaring the value of the goods as Rs.1,25,09,319/- despite knowing that its value was not more than Rs.10,000/-. He signed the Shipping Bill as Authorized Signatory of M/s Mazda Global and filed the same with Customs, KASEZ for passing the same; that he complied the query raised by the Appraising Officer, Customs, KASEZ and requested to assess the Shipping Bill. Therefore, it is clearly evident that the above stated various acts of omission and commission by Shri Shashikant J. Parmar rendered the goods liable to confiscation under section 113(d) and section 113 (i) of the Customs Act, 1962. Consequently, Shri Shashikant J. Parmar has rendered himself liable to penalty under Section 114 (iii) of the Customs Act, 1962. Shri Shashikant J. Parmar in his defence reply has contended that he is not liable for penalty under Section 114 (iii) of the Customs Act, 1962. It is noteworthy that he has acted under the direction with full knowledge that he is doing an act which is not permitted by law and no law permit anybody, even under the direction of his employer, to do any illegal act and therefore, his argument do not have any substance at all. Therefore, I hold that Shri Shashikant J. Parmar Production-in-charge, of M/s Mazda Global is liable to penalty under Section 114 (iii) of the Customs Act, 1962.

51. The contention of the noticee in their letter dated 01/01/2008 that they have represented before CBEC/Ministry and have sought clarification with regards to SEZ Act, 2005 and SEZ Rules and expecting a favourable response is not relevant to this case in view of clear applicability of the stated provisions of the Customs Act, 1962 and SEZ Act, 2005 and SEZ Rules.

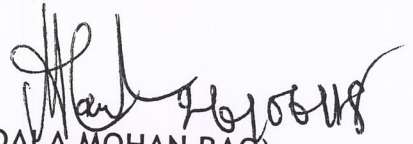
I have considered the reliance placed upon by the noticees in their written defence reply on case laws/judgements on the issues raised in the SCN. In this regard, I am of the view that the conclusions arrived may be true in those cases, but the same cannot be extended to other case(s) without looking to the hard realities and specific facts of each case. Those decisions/judgements were delivered in different context and under different facts and circumstances, which can not be made applicable in the facts and circumstances of this case. However, while applying the ratio of one case to that of the other, the decisions of the Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of CCE, Calcutta Vs Alnoori Tobacco Products [2004(170)ELT 135(SC) has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of Escorts Ltd. Vs CCE, Delhi [2004(173) ELT 113(SC)] wherein it has been observed that one additional or different fact may make difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again in the case of CC (Port), Chennai Vs Toyota Kirloskar[2007(2013)ELT4(SC)], it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to be understood in factual matrix involved therein and that the ratio of a decision has to culled from facts of given case, further, the decision is an authority for what it decides and not what can be logically deduced there from.

52. In view of the foregoing discussions and findings, I pass the following order-

ORDER

- (i) I reject the value declared by M/s Mazda Global in the shipping bill No. 006477 dated 30.3.2007 as Rs.1,25,09,319.00 (USD 2,83,980/-) and order that the seized goods shall be assessed by taking its value as Rs.6,000/-
- (ii) I order that the seized goods, whose value was declared in the shipping bill No. 006477 dated 30.3.2007 as Rs.1,25,09,319.00 (USD 2,83,980/-) but found to be Rs. 6000/-, are liable for confiscation under Section section 113 (d) and section 113 (i) of Customs Act, 1962 read with the Instruction No.6/2006 dated 3-8-2006 of the Ministry of Commerce and Industry, Department of Commerce (SEZ Section). However, I impose redemption fine of Rs.25,00,000/-(Rupees Twenty Five Lakhs Only) under Section 125 of the Customs Act, 1962 in lieu of confiscation.
- (iii) I impose penalty of Rs.1,25,00,000/- (Rupees One Crore Twenty Five Lakhs Only) on M/s Mazda Global (Through Smt. Bharti J. Gandhi, Proprietor), A-82, Hariom Apartments, Near Law Garden, Panchvati Road, Ahmedabad under Section 114(iii) of the Customs Act, 1962 read with the Instruction No.6/2006 dated 3-8-2006 of the Ministry of Commerce & Industry, Department of Commerce (SEZ Section).

- (iv) I impose penalty of Rs.1,25,00,000/- (Rupees One Crore Twenty Five Lakhs Only) on Shri Amish J. Gandhi, Manager of M/s Mazda Global, R.P.302, Rajpari, Rajvansh Apartment, Near Judges Bungalow Police Station, Ahmedabad under Section 114(iii) of the Customs Act, 1962 read with the Instruction No.6/2006 dated 3-8-2006 of the Ministry of Commerce & Industry, Department of Commerce (SEZ Section).
- (v) I impose penalty of Rs.1,00,00,000/- (Rupees One Crore Only) on Shri Shashikant J. Parmar, Production-in-charge of M/s Mazda Global, 214/2566, Pratiksha Apartment, Sola Road, Naranpura, Ahmedabad under Section 114(iii) of the Customs Act, 1962 read with the Instruction No.6/2006 dated 3-8-2006 of the Ministry of Commerce & Industry, Department of Commerce (SEZ Section).
- (vi) I impose penalty of Rs.1,25,00,000/- (Rupees One Crore Twenty Five Lakhs Only) on Smt. Bharti J. Gandhi, Proprietor of M/s Mazda Global, A-82, Hariom Apartments, Near Law Garden, Panchvati Road, Ahmedabad under Section 114(iii) of the Customs Act, 1962 read with the Instruction No.6/2006 dated 3-8-2006 of the Ministry of Commerce & Industry, Department of Commerce (SEZ Section).


(PADALA MOHAN RAO)
Additional Commissioner (Adj.)
Custom House, Kandla.

F. No. S/10-38/ADJ/2007-Adj.

Dated 26.06.2018

BY SPEED POST/AD:

To,

1. M/s Mazda Global (Through Smt. Bharti J. Gandhi, Proprietor),
A-82, Hariom Apartments,
Near Law Garden, Panchvati Road,
Ahmedabad,
2. Shri Amish J. Gandhi, Manager of M/s Mazda Global,
R.P.302, Rajpari,
Rajvansh Apartment,
Near Judges Bungalow Police Station,
Ahmedabad,
3. Shri Shashikant J. Parmar, Production-in-charge of M/s Mazda Global,
214/2566, Pratiksha Apartment,
Sola Road, Naranpura, Ahmedabad.
4. Smt. Bharti J. Gandhi, Proprietor of M/s Mazda Global,
A-82, Hariom Apartments,
Near Law Garden, Panchvati Road,
Ahmedabad,

Copy to:

1. The Deputy Commissioner of Customs, KASEZ, Kandla.
2. The Deputy/Assistant Commissioner (SIIB), Custom House, Kandla.
3. The Deputy/Assistant Commissioner (RRA), Custom House, Kandla.

4. The Deputy/Assistant Commissioner (Recovery), Custom House, Kandla.
5. The Deputy/ Assistant Commissioner (Gr.II), Custom House, Kandla
6. Guard File