



**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/10-208/ADJ/ADC/Shreyas/2016-17
B	आदेश में मूल सं./ Order-in-Original No.	KDL/ADC/AK/34/2018-19
C	पारित कर्ता/ Passed by	SH. AJAY KUMAR, ADDITIONAL COMMISSIONER
D	आदेश की दिनांक/Date of order	15.01.2019
E	जारी करने की दिनांक/Date of issue	16.01.2019
F	एस.सी.एन. सं. एवं दिनांक/ SCN No. & Date	S/10-EXP/SCN-02/Addl. Commr/2017 Dated 18/01/2017
G	नोटीसी/ पार्टी Noticee/Party	1. M/s Shreyas Shipping & Logistics Ltd, 4th Floor, Geetmala Building, Shah Industrial Estate, Govandi (East), Chembur, Mumbai-400088. 2. Shri Rakesh Prasad, Manager Commercial and Operations, M/s Shreyas Shipping & Logistics Ltd, 4 th Floor, Geetmala Building, Shah Industrial Estate, Govandi (East), Chembur, Mumbai-400088.

- यह अपील आदेश संबन्धित को नि शुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
- यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A (1) के अंतर्गत प्रपत्र सीए- 3 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
वीं मंजिल 7, 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."**

- 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.
- 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.
- 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.
- 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.
- 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 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE

Intelligence gathered by Directorate of Revenue Intelligence ("DRI" for short) indicated that some vessel owners were evading customs duty on the foreign going vessels required to be paid in terms of Sr. No. 462 of Notification No. 12/2012-Cus dated 17.03.2012 read with condition No. 82 attached thereto, at the time of coastal conversion thereof.

1.1 Based on the above intelligence, details of such imports were gathered. It was noticed, *inter-alia*, that M/s Shreyas Shipping & Logistics Limited (hereinafter referred to as "Importer") has imported vessel MV Unity at Kandla Port and got the said vessel converted to coastal run on 13.04.2012 for engaging in coastal trade as per provisions of Chapter XII of Customs Act, 1962. The importer filed Bill of Entry No. 14 dated 20.04.2012 before Customs Kandla, through their agents M/s Relay Shipping Agency Limited, for discharging duty liability arising out of above said coastal conversion of vessel MV Unity. The importer did not pay duty on vessel MV Unity under the said Bill of Entry. They paid duty only on the Bunkers/consumables. The said vessel MV Unity remained in coastal run for 06 (Six) days and was reverted to foreign run from coastal run on 18.04.2012. Later on, the said vessel MV Unity was again imported at Visakhapatnam Port and got converted to coastal run on 18.06.2012. The Importer filed manual Bill of Entry No. 406 dated 16.06.2012 before Vishakhapatnam Customs, for discharging duty liability arising out of above said coastal conversion of vessel MV Unity. The value of the vessel MV Unity was declared as Rs.14,08,75,000/- (USD 25,00,000) in the Bill of Entry No. 406 dated 16.06.2012 filed at Custom House, Visakhapatnam. Later, after the case had been booked by DRI, M/s Shreyas Shipping & Logistics Limited filed Bill of Entry No. 175 dated 28.03.2013 at Custom House, Kandla in respect of vessel MV Unity which had converted to coastal run on 13.04.2012. In the said Bill of Entry filed at Custom House, Kandla, the value of the vessel was declared as USD 25,00,000/-. "Vessel for transport of goods" falling under Custom Tariff Item 89019000 of First Schedule to Customs Tariff attracted Tariff rate of BCD @ 10% and CVD @ 6% at the material time. However, as per Notification No. 21/2012-Cus dated 17.03.2012 (Sr. No. 462) both BCD and CVD leviable on such vessels were exempted subject to condition No. 82 attached thereto. The said condition No. 82 to Notification No. 12/2012-Cus dated 17.03.2012, reads as under:

"if,-

the importer files a bill of entry under section 46 of the Customs Act, 1962 [No. 52 of 1962] at the time of conversion of vessel for coastal run subsequent to import and pays the applicable duty of customs on:-

(a) Full lease or contract value, if the import is under a lease agreement or contract;

(b) 1/120th of the applicable duty, for each month or part thereof, of stay in India as coastal vessel.

Explanation.- For the purposes of this entry,

- (1) "foreign going vessel" shall have the same meaning as assigned to it under clause (21) of Section 2 of the Customs Act 1962 [No. 52 of 1962];*
- (2) "Conversion to coastal Vessel" shall include the vessel granted a license for coastal trade under Section 407 of the Merchant Shipping Act, 1958 by the Directory General Shipping and the vessel granted permission for carrying coastal goods, under the provisions specified in Chapter XII, of the Customs Act, 1962, by the proper officer of the customs;*
- (3) "applicable duty" means the Additional duty of Customs under sub-section (1) of section 3 of the Customs tariff Act, 1975 (51 of 1975)".*

Therefore, in terms of Sr. No. 462 of Notification No. 12/2012-Cus dated 17.03.2012, the exemption for BCD and CVD was admissible, inter alia, subject to, either (1) payment of CVD on full lease or contract value of vessel, if the import is under a lease agreement or contract or (2) payment of 1/120th part of the CVD leviable, for each month or partly thereof, of stay of vessel in India as coastal vessel.

1.2 The scrutiny of relevant documents revealed that M/s Shreyas Shipping & Logistics Limited had been regularly importing (Converting to coastal run) vessels and utilizing such converted vessels in coastal trade but, it appeared, they were not paying full duty on vessels in terms of Notification No. 12/2012-Cus dated 17.03.2012 (Sr. No. 462). Therefore, investigation was carried out by DRI, wherein, statements of the following persons were recorded under Section 108 of Customs Act, 1962.

1.3 Statement of Shri Joy Philip, General Manager in M/s Relay Shipping Agency Ltd., Gandhidham was recorded under Section 108 of the Customs Act, 1962 ON 22.01.2013, wherein, he, inter-alia, deposed that M/s. Relay Shipping Agency Ltd was engaged in work of handling vessels/ ships for M/s. Shreyas Shipping & Logistics Ltd., and M/s. Orient Express Lines Ltd., Dubai; that both these companies and M/s. Relay Shipping Agency Ltd were group companies of Transworld group of companies; that the vessel MV Unity was converted to coastal run for one voyage from Kandla to Cochin and did not file Bill of Entry and did not pay the Duty in terms of Condition No. 82 of Notification No. 12/2012-Cus dated 17.03.2012. MV Unity was re-converted as foreign going vessel at Cochin on 18.04.2012 and after that it was converted to Coastal Vessel at Visakhapatnam on 18.04.2012. MV OEL vessel trust was purchased around 10 years back and valuation done by Chartered Engineer Manish T Mistry (Membership No. F 017102-2) and value arrived at was USD 27,00,000/-. MV Unity vessel was also purchased 10 years back and value of said vessel was USD 25,00,000/- as per the valuation done by Chartered Engineer Manish T Mistry.

1.4 Statement of Shri Rakesh Prasad, General Manager (Commercial & Operations) in M/s Shreyas Shipping & Logistics Ltd was recorded under Section 108 of the Customs Act, 1962 on 07.03.2013 wherein he, inter alia, deposed that M/s Shreyas Shipping & Logistics Ltd was listed company and M/s Relay Shipping Agency Ltd was the subsidiary company of M/s Shreyas Shipping & Logistics acting as agents at Indian Ports that the Bill of Entry No. 14 dated 20.04.2012 was filed by M/s Relay Shipping Agency Ltd on behalf of M/s Shreyas Shipping & Logistics Ltd that they were aware that foreign going vessel at the time of Import, attracted duty; that they had not rented/leased the vessel MV Unity, it was plying on their ownership and they were collecting freight charges from respective customers; that the vessel was re-converted to foreign run at Cochin on 18.04.2012 and again converted to coastal run on 18.06.2012 at Visakhapatnam Port and remained in coastal run till 06.10.2012; that they had filed Bill of Entry No. 406/12 dated 16.06.2012 at CH Visakhapatnam. On being asked he stated that in addition to MV Unity, they have done coastal conversion of OEL, Kochi, OEL Kutch, OEL Shreyas, OEL Victory and OEL Trust.

1.5 Statement of Shri Ramesh Iyer, Authorised Representative of M/s Shreyas Shipping & Logistics Ltd; recorded under Section 108 of the Customs Act, 1962 on 21.06.2013. During the statement he submitted the photocopies of (i) Balance Sheet of M/s Shreyas Shipping & Logistics Ltd as at 31.03.2012 (ii) statement of fixed assets reflected at Sr. No. 10 of Balance Sheet, (3) statement of Depreciation and WDV of Fixed assets including vessels and (iv) Marine Hull and Machinery policy of MV OEL Kochi (f) MV OEL Kutch of M/s Shreyas Shipping & Logistics Ltd showing amount insured and premium. On being asked he stated that the Written Down Value i.e. depreciated value of vessels as at 31.03.2012 were MV OEL Victory (Rs. 18,74,14,277/-), MV OEL Trust (Rs. 50,73,87,964), MV OEL Shreyas (Rs.49,95,30,224), MV Unity (Rs. 41,68,71,624). Further, he stated that rate of depreciation for one year was 5% on value of vessel shown as at the time of start of that year, after taking into account any additions or losses to the vessel and thus is reasonable which is followed all across the industry; that in his view, the Bill of Entry should have been filed at WDV of vessels shown in Books of Accounts and he believed that the insured value was arrived at in consultation with the Insurance Company. He admitted that the insured value (Rs. 33,55,00,000) of MV OEL Kochi, which have been purchased by M/s Shreyas Shipping & Logistics Ltd in the last year was almost equal to its value declared in Bill of Entry (Rs.34,12,95,000 i.e. USD 61,00,000 @ USD 55.95/USD) which is based on purchase cost as reflected in purchase invoice (USD 61,00,000).

1.6 Statement of Shri Manish T. Mistry, Chartered Engineer, recorded under Section 108 of the Customs Act, 1962, on 02.07.2013 wherein he stated he is a Fellow Member of Institution of Valuers, New Delhi and also fellow member of Indian Institute of Insurance Surveyors and loss Assessors. On being asked he stated that he had done valuation of vessels on the basis of letter issued by Commissioner of Income Tax, Rajkot. Further, he

stated that he had not done any course/training in respect of valuation of ships/vessels of any category. MV Unity was inspected by him on 02.10.2012 at Adani Jetty of Dahej Port and after surfed at website he found the said vessel was 1993 China Built, its GRT was around 10000 and it was sold for 2.30 million USD in the month of Sep, 2012 where he further added 0.20 million USD and arrived at Fair Market value of MV Unit; that he had inspected OEL Trust at Pipavav Port on 01.11.2012, a bulk cargo vessel. Condition of OEL Trust was better and so he added 0.15 Million USD to the value of MV Unity (i.e. 2.5 Million USD). The value of MV OEL Trust was arrived at USD 2.7 Million USD. He stated that the value of the vessel depends upon year of built, condition of vessel and capacity of the vessel and make of country. He stated that he did not have the idea of importance of hull in arriving at fair value of the vessel and also did not have the idea of hull located in vessel and not checked the trends of valuation in vessel industry considered all the factors into consideration while arriving at the Fair Market Value of two vessel MV Unity and MV OEL Trust. He further stated that the owners of the vessel had informed him that there was NIL Customs duty on vessels and only a formal inspection and valuation report was needed by them which will not be used for assessing and duty liability.

1.7 From the statements of the relevant persons of M/s Shreyas Shipping & Logistics Limited and M/s Relay Shipping Agency Ltd recorded as per provisions of Section 108 of Customs Act, 1962 and scrutiny of relevant documents, it has emerged that M/s Shreyas Shipping and Logistics Ltd imported vessels MV Unity, MV OEL Trust, MV OEL Kochi. MV OEL Shreyas, MV OEL Kutch and MV OEL Victory and got the said vessels converted to coastal run on many occasions during the period from 17.03.2012 to 28.02.2013. The said vessels were imported at different ports of India. Out of these six, vessels, four vessels MV Unity, MV OEL Trust, MV OEL Shreyas and MV OEL Victory were purchased many years ago, while MV OEL Kochi and MV Kutch were fresh purchases and consequently imported to India. Bill of Entry and documents pertaining to coastal conversion of these vessels of M/s Shreyas Shipping & Logistics Ltd were also obtained from concerned Customs formations. The details of the coastal conversion of the vessels M/s Shreyas Shipping & Logistics Ltd emerging from the above stated documents and statement of concerned persons are tabulated as under:

TABLE-I

Vessel Name	Port of Coastal Conversion	Date of Coastal Conversion	Date of reversion to Foreign run	No. of days in Coastal Run	Bills of Entry No.	Date	Bill of Entry assessed Provisionally or Finally
MV Unity	Kandla	13-Apr-12	18-Apr-12	6	175	28-Mar-13	Provisional
	Visakhapatnam	18-Jun-12	06-Oct-12	111	406	16-Jun-12	Final
	Visakhapatnam	01-Apr-12	26-Apr-13	147	720	28-Dec-12	Provisional
MV OEL Trust	Cochin	09-May-12	20-May-12	12	275	14-Jun-12	Provisional
	Tuticorin	20-Jun-12	2-Jul-12	13	80	12-Mar-13	Final
	Cochin	02-Aug-12	10-Aug-12	9	356	07-Sep-12	Provisional
	Kandla	22-Nov-12	24-May-13	184	155	27-Nov-12	Provisional
	Kandla			60	169	27-Feb-13	Provisional
MV OEL Shreyas	Tuticorin	27-May-12	29-Sep-12	126	44	25-Feb-13	Final

MV OEL Kochi	Kandla	29-Aug-12	04-May-13	259	145	03-Sep-12	Provisional
	Kandla				150	14-Sep-12	Provisional
	Kandla				166	05-Dec-13	Provisional
MV OEL Kutch	Mundra	14-Sep-12	30-Mar-13	198	423	20-Nov-12	Provisional
MV OEL Victory	Kolkata	29-Jan-13	05-Jul-13	158	19	21-Mar-13	Provisional

1.8 The assessments in Bill of Entry ("B/E" for short) 406 dated 16.06.2012 in respect of coastal conversion of vessel MV Unity on 18.06.2012 filed at CH Vishakhapatnam, Bill of Entry No. 44 dated 25.02.2013, in respect of coastal conversion of vessel MV OEL Shreyas on 27.05.2012 and Bill of Entry No. 80 dated 12.03.2013, in respect of coastal conversion of vessel MV OEL Trust on 20.06.2012, both filed at CH Tuticorin, have been finalized. The assessments in remaining Bills of Entry are still provisional. Show Cause Notice F. No. DRI/AZU/GRU/INV-17/2012-13 dated 22.06.2016 covering Bill of Entry No. 406 dated 16.06.2012 filed at CH Visakhapatnam, Bill of Entry No. 44 dated 25.02.2013 and Bill of Entry No. 80 dated 12.03.2013 filed at CH Tuticorin has already been issued. The present SCN covers assessments in Bills of Entry Nos. 175 dated 28.03.2013 (MV Unity), 155 dated 27.11.2012 (MV OEL Trust), 169 dated 27.02.2013 (MV OEL Trust), 145 dated 03.09.2012 (MV OEL Kochi), 150 dated 14.09.2012 (MV OEL Kochi) and 166 dated 05.12.2012 (MV OEL Kochi) all filed at CH Kandla. Rests of the Bills of Entry are not covered under this notice and are being dealt with separately. The references to the said remaining Bills of Entry in this Notice are for clarifying the subject matter and/or for relying upon as evidences.

1.9 Importer has stated in Statement that MV Unity and MV OEL Trust were purchased by them many years ago. However, MV Kochi (previous name MV Bunga Tera Tai Dua-IMO 9157674) was purchased in August 2012 under invoice No. KUL120717-T0009 dated 01.08.2012 and brought to India for the first time which converted to coastal run on 19.08.2012. Duty amounting to Rs. 1,75,767/- in respect of the said coastal conversion of the MV OEL Kochi was paid by M/s Shreyas Shipping & Logistics Ltd vide Bill of Entry No. 145 dtd. 03.09.2012. The said duty was equivalent to only one month's duration of coastal run in terms of Sr. No. 462 of Notification No. 12/2012 dated 17.03.2012. The said vessel, M/s Shreyas Shipping & Logistics Ltd informed vide letter dated 24.02.2016 was re-converted to foreign run on 04.05.2013 after plying in coastal run for nine months. It appears from the letter dated 24.02.2016 of Importer and letter dated 09.03.2013 of Customs Kandla that Rs. 8,20,250/- and Rs. 5,27,305/- have also been paid by the importer in respect of subject coastal run of MV OEL Kochi (from 19.08.2012 to 04.05.2013) by filling additional Bills of Entry No. 150 dated 14.09.2012 (MV OEL Kochi) and 166 dated 05.12.2012 (MV OEL Kochi). Similarly, initial duty payment amounting to Rs. 2,41,056/- in respect of coastal conversion dated 22.11.2012 of vessel MV OEL Trust was done by M/s Shreyas Shipping & Logistics Ltd under Bill of Entry No. 155 dated 27.11.2012. However, they have informed vide letter dated 24.02.2016 that duty amounting to Rs. 1,54,346/- had been paid by them vide Bill of

Entry No. 169 dated 27.02.2013 in respect of same coastal run of vessel MV OEL Trust from 22.11.2012 to 24.05.2013.

1.10 M/s Shreyas Shipping & Logistics Ltd, in respect of import and coastal conversion of their vessel MV Unity at Kandla Port on 13.04.2012, filed Bill of Entry No. 175 dated 28.03.2013, wherein the value of the said vessel was declared as Rs. 12,87,50,000/- (USD 25,00,000). Similarly the value of MV OEL Trust in Bill of Entry No. 155 dated. 27.11.2012 filed at CH, Kandla in respect of said vessel converted to coastal run on 22.11.2012 at Kandla, was declared as Rs. 14,98,50,000/- (USD 27,00,000). Shri Rakesh Prasad, General Manager (Commercial & Operations) in M/s Shreyas Shipping & Logistics Ltd, in his statement, deposed that the values of the said vessels were declared in the Bills of Entry on the basis of Valuation done by Chartered Engineers. However, Shri Manish T. Mistry, the Chartered Engineer who inspected and issued concerned valuation certificates in respect of two of these three vessels namely MV Unity and MV OEL Trust, categorically admitted the following points in his statement recorded under Section 108 of Customs Act, 1962 that;

(a) he had not considered all the factors into consideration while arriving at the Fair Market Value of the said two vessels as he had not have much experience in valuation of vessels;

(b) the owners of the vessels had informed him that there was "NIL" Customs duty on vessels;

(c) only a formal inspection and valuation report was needed by them which was not to be used assessing and duty liability;

(d) he did not know the importance of Hull in valuation of vessel and even as to where Hull is located in a vessel.

1.11 Moreover, it has clearly emerged from the books of accounts & Insurance Papers pertaining to these two vessels that assessable value of these vessels namely MV Unity and MV OEL Trust declared in the respective Bills of Entry was much less than their value reflected either in Books of Accounts or in Insurance Papers. A quick comparison of valuation of subject vessels as reflected in Books of Accounts, that in Insurance (Marine Hull & Machinery Policy) on one hand and that declared in the respective Bills of Entry, as summarized in table below, makes it amply clear that value of these vessels reflected in Books of Accounts closely approximates with the value mentioned in Insurance Papers of respective vessels but the value of the same vessels declared in Bills of Entry is a fraction of their value in Books of Accounts and Insurance papers;

TABLE-2

Vessel Name	Written Down Value of vessel as on 31.03.2012 as per Books of Account (Rs.)	Value reflected in Insurance Papers (Rs.)	Assessable value declared in the Bill of Entry (Rs.)
MV Unity	41,68,71,624/-	50,40,00,000/-	14,08,75,000/-
MV OEL Trust	50,73,87,964/-	56,00,00,000/-	14,99,85,000/-

Even Shri Ramesh Iyer, Authorised Representative of M/s Shreyas Shipping & Logistics Ltd, agree in his statement that written down value of vessels shown in Books of Accounts of M/s Shreyas Shipping & Logistics Ltd should have been declared in the Bills of Entry.

1.12 The subject vessels were not specifically imported and thus, were not supported by sale invoices. The foreign run vessels sought permission to operate as coastal run vessels and in turn were bound to declare true values of these vessels. It is found from the above TABLE that value mentioned in the books of accounts and insurance papers were much higher than the assessable value declared in the Bills of Entry. Further, authorized representatives of M/s Relay Shipping Agency Ltd have stated in their statement that the value of vessels was declared on the basis of charter engineer's certificate. However, it emerges from the above discussed statement of the charter engineer that he did not have much experience in valuation of vessels. He admitted that he was not having knowledge of hull and he has not considered all the relevant facts in respect of MV Unity and MV OEL Trust. Looking to all these facts, there exist reasonable doubts on the truthfulness of the assessable value declared in Bills of Entry No. 175 dated 28.03.2012 and 155 dated 27.11.2012 and the declared values are liable to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

1.13 For the purpose of calculation of ad valorem duties, it is necessary to have true values of the goods in question. As per Section 14 of the Customs Act, 1962 the value of the imported goods shall be the transaction value of such goods, i.e. the price actually paid or payable for the goods. However, the declared values are liable to be rejected and transaction values are not available. Therefore, the values of impugned vessels cannot be determined under Rule 3(1) of the Customs (Determination of Value of Imported Goods) Rules, 2007. The Rule 3(4) ibid states that if the values cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through Rule 4 to 9. The Rules 4 and 5 provides method of determining values by comparing values of identical and similar goods, respectively. However, it is a fact that different vessels are made of different qualities of materials and have varying number and quality of components, equipments, parts, technologies etc. Therefore, it appears that there cannot be uniformity in respect of values of different vessels. Thus, the values of impugned vessels cannot be determined under Rules 4 and 5 ibid. The Rule 6 ibid stated that if the value of imported goods cannot be determined under the provisions of Rules 3, 4 and 5, the value shall be determined under the provisions of Rule 7 or, when the value cannot be determined under that Rule, under Rule 8. The Rule 7 provides method of valuation by considering the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity. However, in the instant case, in the absence of such data, the values of impugned vessels cannot be determined under this rule.

Further, proceedings sequentially, applicability of Rule 8 ibid is considered. It provides method of valuation by computation of the cost or value of materials and fabrication or other processing employed in producing the imported goods. However, a vessel is such a kind of goods which includes huge number of articles, equipments, parts etc and values of which are not readily available. Thus, this rule is also not found suitable for determining values of subject vessels.

1.14 The Rule 9 of the Customs (Determination of Value of Imported Goods) Rules, 2007 provides that if value of imported goods cannot be determined under the provisions of any of the preceding rules the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India. In the instant case data relating to values of the subject three vessels are available in the form of books of accounts which statutory documents and are generally reliable. The books of accounts cover addition of value due to installing any equipment/articles etc. It also covers depreciation and other losses. Thus, the data available in the form of books of accounts are considered as updated. In the instant case, the book of account shows values of the three vessels on the dates nearest to the Bills of Entry as details below:

Vessel Name	Written Down Value of vessel as on 31.03.2012 as per Books of Account (Rs.)
MV Unity	41,68,71,624/-
MV OEL Trust	50,73,87,964/-

As mentioned above, the values of these vessels mentioned in the insurance papers are close to the values mentioned in books of account. Therefore, it appears that rule 9 ibid is squarely applicable in the instant case and the values of subject vessels mentioned in the books of accounts as on 31.03.2012 can be considered as fair values of respective vessels. Also this price is showing actual value of the ship hence insurance value is closer to this value. Had it not that value insurer also insured it for lower value. Hence, it is reasonable informed that Book Value is the actual transaction value.

1.15 M/s Shreyas Shipping & Logistics Ltd in respect of import and coastal conversion of their vessel MV Unity at Kandla Port on 13.04.2012, filed Bill of Entry No. 175 dated 28.03.2013, wherein the value of the said vessel was declared as Rs. 12,87,50,000/- (USD 25,00,000). Similarly the value of MV OEL Trust in Bill of Entry No. 155 dated 27.11.2012 was declared as Rs. 14,98,00,000/- (USD 27,00,000). Shri Rakesh Prasad has stated in his statement that the vessels were not imported on lease basis. As such, in these three cases, the importer was to pay applicable duty in terms of part (b) read with explanation 3 of Condition No. 82 to Notification No. 12/2012-Cus dated 17.03.2012. Since, the applicable Duty i.e. Additional Duty of Customs/CVD is calculated on the basis of actual assessable value of goods (Vessels in the case), they were required to declare actual value of the

vessels in the Bills of Entry filed for discharging duty liability arising on vessel on account of coastal conversion. The importer was aware of the actual value of the vessels that was available in Books of Accounts of Company and also in Marine Hull and Machinery Policy of each of these three vessels. Both the insurance value and Written Down Value in Books of accounts are approximately similar. The insurance value of the vessel was based on true assessment of market price of the vessels can concluded from the fact that M/s Shreyas Shipping & Logistics Ltd during the same period i.e. in August purchased vessel OEL Kochi (Previously known as "MV Bunga Tera Tai Dua") for USD 61,00,000 equivalent to Rs.33,55,00,000/- (@Rs 55/USD) approximately. The said vessels was insured by M/s Shreyas Shipping & Logistics Ltd for Rs. 33,55,00,000/- (RUD No. 24).

1.16 Despite knowing actual value of vessels importer M/s Shreyas Shipping & Logistics Ltd did not declare actual value of vessels in the Bills of Entry No 175 dated 28.03.2013 and 155 dated 22.11.2012 both filed at CH Kandla for discharging duty liability arising on account of coastal conversion of respective vessels. Rather, it is revealed from statement of Chartered Engineer Shri Manish T. Mistry, importer has informed him that there was "NIL" Customs duty on vessels and that only a formal inspection and valuation report was needed by them which was not be used for assessing any duty liability. It, therefore, appears that valuation of the vessels by Chartered Engineer was resorted to mis-declare their value in the Bills of Entry filed before Customs Department. The acts of mis-declaration of value of the subject goods i.e. vessels MV Untiy and MV OEL Trust on part of M/s Shreyas Shipping & Logistics Ltd, in the respective Bills of Entry, have rendered the said vessels MV Unity (having Written Down Value Rs. 41,68,71,624/- as on 31.03.2012) and MV OEL Trust (having Written Down Value Rs. 50,73,87,964/- as on 31.03.2012) liable for confiscation as per the provisions of Section 111(m) of Customs Act, 1962.

1.17 As per 2(23) of Customs Act, 1962, "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India. Further, as per its definition given in Section 2(22) of Customs Act, 1962, "goods", inter alia includes vessels. Further "foreign-going vessel or aircraft" defined in Section 2(21) of Customs Act, 1962 as any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes-

- (i) any naval vessel of a foreign Government taking part in any naval exercises;
- (ii) any vessel engaged in fishing or any other operations outside the territorial waters of India;
- (iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever;

In view of the above legal position, a vessel is goods and that any vessel coming to an Indian Port from outside India is an import excluding Foreign going vessels defined under Section 2(21) of Customs Act, 1962. Since the vessel MV Unity was converted to Coastal Run on 13.04.2012, MV OEL Trust on 22.11.2012 and MV OEL Kochi on 19.08.2012, these vessels ceased to be "foreign going vessel". As such, the above coastal conversion of vessels MV Unity, MV OEL Trust and MV OEL Kochi amounted to import and all proceedings applicable in case of imported goods were required to be carried out as in case of import of any other goods. Exemption from Basic Customs Duty and CVD (Additional Duty of Customs), at the material time, was admissible subject to payment of applicable duty in terms of Sr. No. 462 of Notification No. 12/2012-Cus dated 17.03.2012 read with condition no. 82 attached thereto.

1.18 As discussed in above para, these vessels were not imported on lease basis and that the Importer was to pay applicable duty in terms of part (b) read with explanation 3 of Condition No. 82 to Notification No. 12/2012-Cus dated 17.03.2012. M/s Relay Shipping Agency Ltd filed Bill of Entry No. 175 dated. 13.04.2012 on behalf of M/s Shreyas Shipping & Logistics Ltd for discharging duty liability in respect of coastal conversion of vessel MV Unity. Despite being fully aware of the actual valuation of vessel (written down value as Rs.41,68,71,624/- and insured value Rs. 50,40,00,000/-). M/s Shreyas Shipping & Logistics Ltd mis-stated the value of the said vessel as Rs. 12,87,50,000/- in the Bill of Entry. Moreover, the said Bill of Entry No. 175 dated. 28.03.2013 has been filed by Importer after a gap of almost one year from the date of coastal run and consequent upon recording of statement of Mr. Joy Philip of M/s Relay Shipping Agency Ltd on 22.01.2013 and that of Mr. Rakesh Prasad of M/s Shreyas Shipping & Logistics Ltd on 07.03.2013. Similarly, value of the vessel MV Trust was mis-stated as Rs. 14,98,50,000/- in the Bill of Entry No. 155 dated 27.11.2012 instead of its actual value Rs. 50,73,87,964/- (Written Down Value in books of accounts.)

1.19 Facts and evidences, discussed in above have revealed the actual value of the vessels MV Unity as Rs. 41,68,71,624/- that of MV OEL Trust as Rs. 50,73,87,964/-. However, despite being aware of the actual value of these vessels, which was readily available in their books of Accounts, the importer, M/s Shreyas Shipping & Logistics Ltd did not disclose it to Customs department and mis-declared the value of these vessels in the respective Bills of Entry filed for discharging duty liability on account of coastal conversion of these vessels. As a result importer has short levied and short paid Duties of Customs in respect of the subject import goods (i.e. vessels).

1.20 Shri Rakesh Prasad, General Manager (Commercial & Operations) in M/s Shreyas Shipping & Logistics has stated in his statement that the value of subject vessels was declared in the Bills of Entry on the basis of Valuation done by Chartered Engineers. It was

revealed by Chartered Engineer in his statement dated 02.07.2013 as discussed above that despite knowing actual value of the subject vessels the importer obtained false valuation certificate from a Chartered Engineer who did not have any experience in the field of valuation of vessels. The importer even misguided Chartered Engineer, Manish T Mistry into believing that he was to carry out a formal inspection of the vessels for valuation and that the said valuation was not going to be used for assessing duty liability. These acts clearly show willful mis-declaration on the part of importer M/s Shreyas Shipping & Logistics Ltd. Hence, provisions of Section 28(4) of Customs Act, 1962 are liable to be invoked against M/s Shreyas Shipping & Logistics Ltd for demand and recovery of differential duty on account of mis-statement and suppression of value of vessels MV Unity and MV OEL Trust in Bills of Entry No. 175 dated 28.03.2013 and 155 dated 27.11.2012. Therefore, differential duty amounting to Rs. 17,36,460/- arising in respect of coastal conversion of MV Unity and MV OEL Trust covered under Bill of Entry No. 175 dated 28.03.2013 and 155 dated 27.11.2012 is liable to be demanded and recovered from M/s Shreyas Shipping & Logistics Ltd as per Section 18(2) of Customs Act, 1962 read with provisions of Section 28(4) of Customs Act, 1962 along with applicable interest as per Section 18(3) of Customs Act, 1962.

1.21 In addition to above, MV OEL Kochi was converted to coastal run on 19.08.2012 and Bill of Entry No. 145 dated 03.09.2012 was filed in respect thereof by M/s Shreyas Shipping & Logistics Ltd. Vide the said Bills of Entry duty amounting to Rs. 1,75,767/- equivalent for one month of coastal run, was paid by Importer. However, the said vessel remained in coastal run till 04.05.2013 when it was converted to foreign run. On the basis of duration of 8.6 months (rounded of to 9 months) of said vessel being in coastal run, differential duty amounting to Rs. 14,06,135/- is liable to be recovered from M/s Shreyas Shipping & Logistics Ltd as per provisions of Section 18(2) of Customs Act, 1962. The details of Duties of the Customs levied/paid, on account of coastal conversion of vessels MV Unity, MV OEL Trust and MV OEL Kochi, by M/s Shreyas Shipping & Logistics Ltd and that of Customs Duty leviable and payable are appended in **Annexure-I of the Show Cause Notice.**

1.22 As discussed above, it has come out that the importer M/s Shreyas Shipping & Logistics Ltd mis-declared value of the vessels MV Unity, and MV OEL Trust in the respective Bills of Entry filed before Customs Department. They were aware of the actual value of the goods, i.e. vessels, which was available in the Books of Accounts as well as in Marine Hull and Machinery Insurance Papers. Shri Rakesh Prasad who used to look after commercial department of M/s Shreyas Shipping & Logistics Ltd stated in his statement that the said vessels were not purchased on lease basis. As such Importer was required to pay duty in terms of Notification No. 12/2012-Cus dated. 17.03.2013 (Sr. No. 462 read with condition No. 82) on the basis of actual value of goods (i.e. vessels). However, the importer instead of declaring actual value of the vessels in the Bills of Entry mis-guided Chartered Engineer to issue a formal valuation report which, they informed the Chartered Engineer, was not be

used for valuation or assessment of Customs Duty. Shri Rakesh Prasad being manager, Commercial & Operations, was aware of the actual value of the vessels in Books of Accounts. Even then, he engaged in obtaining false valuation Certificate in respect of the subject vessels. The printout of the exchange of mail correspondence between Shri Manish T Mistry and Shri Rakesh Prasad clearly reveals that the proceedings of obtaining valuation certificate in respect of vessels were handled by him on behalf of M/s Shreyas Shipping & Logistics Ltd. These acts of commission and omission, in respect of Bill of Entry filed in respect of coastal run of MV Unity and MV OEL Trust as mentioned in **Annexure-I**, on part of M/s Shreyas Shipping & Logistics Ltd and Shri Rakesh Prasad, have rendered the goods (i.e. vessels MV Unity and MV OEL Trust) liable to confiscation under Section 111(m) of the Customs Act, 1962 and M/s Shreyas Shipping & Logistics Ltd and Shri Rakesh Prasad liable to penalty under Section 112(a) of the Customs Act, 1962. The above mentioned act of mis-declaration were done with intention to evade payment of appropriate customs duty on the above mentioned goods. For the above act of willful mis-declaration of goods with intention of evading duty, M/s Shreyas Shipping & Logistics Ltd have also rendered themselves liable to penalty under Section 114A of the Customs Act, 1962.

2. Thus, M/s Shreyas Shipping & Logistics Ltd, 4th Floor, Geetmala Building, Shah Industrial Estate, Govandi (East), Chembur, Mumbai-400088 were called upon to show cause to the Additional Commissioner of Customs, Kandla (Kutch), as to why:-

- (a) The value of vessel MV Unity declared as Rs. 12,87,50,000/- in Bill of Entry No. 175 dated 28.03.2013 and that of MV OEL Trust declared as Rs. 14,98,50,000/- in Bill of Entry No. 145 dated 03.09.2012 should not be rejected and re-determined as Rs. 41,68,71,624/- and Rs. 50,73,87,964/- respectively in terms of Rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of Customs Act, 1962 and the Bills of Entry be assessed finally under Section 18(2) of Customs Act, 1962, accordingly.
- (b) Vessels MV Unity and MV OEL Trust should not be confiscated as per provisions of Section 111(m) of Customs Act, 1962.
- (c) The differential amount of Customs duty aggregating to Rs. 17,36,460/- arising out of final assessment of Bill of Entry No. 175 dated 28.03.2013 and 155 dated 27.11.2012, should not be demanded and recovered from them under Section 18(2) of Customs Act, 1962 read with the provisions of Section 28(4) of Customs Act, 1962 along with applicable interest under Section 18(3) of the Customs Act, 1962.
- (d) The differential amount of Customs duty amounting to Rs. 14,06,135/- (as detailed Annexure-I) arising out of final assessment of Bill of Entry No. 145 dated 03.09.2012, should not be demanded and recovered from them under Section 18(2) read with the provisions of Section 28(4) of Customs Act, 1962 along with applicable interest under Section 18(3) of the Customs Act, 1962.

- (e) Penalty should not be imposed on them under Section 112(a) and Section 114A of the Customs Act, 1962, for the reasons discussed above.
- (f) Amounts, as detailed in below table, paid by them by filling Bills of Entry listed in column No. 3 of should not appropriated against differential duty arising in respective Bills of Entry mentioned against them in column No. 5.

Sr. No.	Amount (Rs.)	Paid by filing B/E	Vessel	To be appropriated against diff duty arising out of B/E
1	1,54,346/-	169 dated 27.02.13	MV OEL Trust (coastal run from 22.11.12 to 24.05.13)	155 dated 27.11.12
2	8,20,250/-	150 dated 14.09.12	MV OEL Kochi (coastal run from 19.08.12 to 04.05.13)	145 dated 03.09.12
3	5,27,305/-	166 dated 05.02.13	MV OEL Kochi (coastal run from 19.08.12 to 04.05.13)	145 dated 03.09.12

2.1 Shri Rakesh Prasad, Manager Commercial and Operations, M/s Shreyas Shipping & Logistics Ltd, 4th Floor, Geetmala Building, Shah Industrial Estate, Govandi (East), Chembur, Mumbai-400088 was also called upon to show cause to the Additional Commissioner of Customs, Kandla (Kutch) as to why penalty should not be imposed on him under Section 112(a) of the Customs Act, 1962.

PERSONAL HEARING AND DEFENCE REPLY

3. Personal hearing in the matter was given on 13.11.2018, however vide their email dated 13.11.2018, they requested to grant an extension of time on any other date. The next hearing was given on 04.12.2018. Shri Xavier Thomas, Authorized representative of M/s Shreyas Shipping & Logistics Ltd and Shri Shri Rakesh Prasad, Manager Commercial and Operations, M/s Shreyas Shipping & Logistics Ltd, appeared for Personal Hearing on 04.12.2018 and reiterated the arguments made in their defense reply dated 16.02.2017. They further added two submissions during personal hearing:

- (i) The department has rejected the valuation report of Chartered Engineer however the department has already accepted the value of the same Chartered Engineer in other case of Indian Flag Vessel. This means that expertise of the said Chartered Engineer has already been accepted by the department.
- (ii) True value of the goods should be based on Transaction Value and in this case the transaction value is which offered for sale at the time and place of importation in the course of international trade. Since the same is not available, they availed the service of Chartered Engineer to obtain the current value of the vessel at the time and place of importation.

They further requested 7 days time to submit some other documents and written submission.

3.1 The importer vide letter dated 16.02.2017 had denied all allegations and demands made in SCN and denied that they have committed or omitted to any act which will make them liable to any penalty or that would render any goods liable to confiscation under the provisions of the Customs Act, 1962. The value of the vessels were declared in the Bill of Entry on the basis of valuation done by Chartered Engineer Mr. Manish T Mistry who is the notified Chartered Engineer for valuation of second hand machinery under Public Notice No. 16/2008 dated 03.06.2008 (issued by Custom House, Kandla). The department has already accepted the valuation done by said Chartered Engineer of Indian Flag Vessel.

3.2 They further submitted that for the purpose of calculation of ad valorem duties it is necessary to have true value of the goods in question. As per Section 14 of the Customs Act, 1962 the value of the imported goods shall be transactional value of such goods i.e. the price actually paid or payable for the goods. The written down value of the vessel adopted by the department do not represent the transactional value or true value of the vessel because the WDV is a historical price and transactional value is based on the perceived supply and demand for an assets which can vary constantly. Market value of ship can be influenced due to various factors such as profitability, performance, life, specifications, liquidity or steel price. Hence, written down value of the vessel will be irrelevant as such for the purpose of assessment of import duty on the subject for the purpose of assessment of import duty on the subject vessel contrary to the provision to said Rule 9.

3.3 Further as requested by the importer during personal hearing, they have submitted additional written submission vide letter dated 11.12.2018 (received on 18.12.2018) and stated the same facts as submitted in their earlier defense reply. Further, they submitted that as per Generally Accepted Accounting Principles, the asset should be recorded at their historical cost less accumulated depreciation, therefore it is admitted fact that book value/Written Down Value will never represent true transactional value of the asset. Hence, adopting book value without considering the international market rates or 'actually sold rate' shall be in contravention to the customs provisions. Hence, Written Down Value of the vessel will be irrelevant as such for the purpose of assessment of import duty on the subject vessel contrary to the proviso to said Rule 9.

DISCUSSION AND FINDINGS

4. I have carefully gone through the records of the case, Show Cause Notice, relied upon documents, written as well as oral submission made by the importer/ noticee in writing as well as during personal hearing.

4.1 I find that the main issue needs to be decided in the present Show Cause Notice is the valuation factor with respect to vessels "MV Unity" and "MV OEL Trust". The importer, M/s Shreyas Shipping & Logistics Limited has contested the residual method of valuation adopted by the department in terms of Rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of Customs Act, 1962. Thus, before discussing and commenting on the allegations made under present show cause notice, it is pertinent to discuss valuation method as prescribed under Section 14 of Customs Act, 1962 read with Rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Section 14 of Customs Act, 1962 is reproduced as under :-

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

Further, Rule 9 as defined under Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, is reproduced for ready reference :-

"Rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007:

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

Provided that the value so determined shall not exceed the price at which such or like goods are ordinary sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has not interest in the business of other and price is the sole consideration for the sale or offer for sale.

(2) No value shall be determined under the provisions of this rule on the basis of:-

- (i) the selling price in India of the goods produced in India;
- (ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values;
- (iii) the price of the goods on the domestic market of the country of exportation;

- (iv) *the cost of production other than computed values which have determined for identical or similar goods in accordance with the provisions of rule 8;*
- (v) *the price of the goods for the export to a country other than India;*
- (vi) *minimum customs values; or*
- (vii) *arbitrary or fictitious values.”*

4.2 I find that for the purpose of calculation of ad valorem duties, it is necessary to have true values of the goods in question. As per Section 14 of the Customs Act, 1962, the value of the imported goods shall be the transaction value of such goods, i.e. the price actually paid or payable for the goods. If the values cannot be determined under Rule 3(1) of the Customs (Determination of Value of Imported Goods) Rules, 2007, the Rule 3(4) ibid states that if the values cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through Rule 4 to 9. The Rules 4 and 5 provides method of determining values by comparing values of identical and similar goods, respectively. The Rule 6 ibid stated that if the value of imported goods cannot be determined under the provisions of Rules 3, 4 and 5, the value shall be determined under the provisions of Rule 7 or, when the value cannot be determined under that Rule, under Rule 8. The Rule 7 provides method of valuation by considering the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity. Further, proceedings sequentially, applicability of Rule 8 ibid is considered. It provides method of valuation by computation of the cost or value of materials and fabrication or other processing employed in producing the imported goods.

4.3 Further, Rule 9 of the Customs (Determination of Value of Imported Goods) Rules, 2007 provides that if value of imported goods cannot be determined under the provisions of any of the preceding rules the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India.

4.4 In the case on hand, M/s Shreyas Shipping & Logistics Ltd, filed two B's/E No. 175 dated 28.03.2013 and No. 155 dated. 27.11.2012 in respect of import and coastal conversion of vessel MV Unity converted on 13.04.2012 and MV OEL Trust converted on 22.11.2012, declaring value as Rs. 12,87,50,000/- (USD 25,00,000) and Rs. 14,98,50,000/- (USD 27,00,000) respectively. The importer has filed B's/E declaring value on the basis of Valuation done by Chartered Engineers Manish T Mistry as there was no transaction value available. Once the transactional value under Rule 14 of the Customs Act, 1962 is not available than the value is to be determined in terms of Customs Valuation Rules 2007 (As amended time to time).

4.5 **Admitted Facts by Shri Manish T Mistry, Chartered Engineer :-** I find that Shri Manish T. Mistry, Chartered Engineer who inspected and issued concerned valuation certificates in respect of two out of these three vessels namely MV Unity and MV OEL Trust, without restraint admitted in his statement recorded on 02.07.2013 under Section 108 of Customs Act, 1962 that;

(1) He had not considered all the factors into consideration while arriving at the Fair Market Value of the said two vessels as he had not have much experience in valuation of vessels;

(2) The owners of the vessels had informed him that there was NIL customs duty on vessels;

(3) Only a formal inspection and valuation report was needed by them which was not to be used in assessing and duty liability.

(4) He did not know the importance of Hull in valuation of vessel and even as to where Hull is located in a vessel.

4.6 Further, I find that, in the present case, importer has submitted the following copies of the documents;

(i) Balance Sheet of M/s Shreyas Shipping & Logistics Ltd as at 31.03.2012;

(ii) statement of fixed assets reflected at Sr. No. 10 of Balance Sheet;

(iii) statement of Depreciation and WDV of Fixed assets including vessels;

(iv) Marine Hull and Machinery policy of MV OEL Kochi;

(v) MV OEL Kutch of M/s Shreyas Shipping & Logistics Ltd showing amount insured and premium.

I find that Shri Ramesh Iyer in his statement admitted that the Written Down Value i.e. depreciated value of vessels as on 31.03.2012 were Rs. 50,73,87,964 of MV OEL Trust and Rs. 41,68,71,624 of MV Unity. I find that value shown in books of accounts covers both addition and losses i.e. due to installing any equipment, articles etc. or any losses or depreciation. The Written Down Value shown in the books of account shows values of the vessels nearest to the dates of Bills of Entry. Whereas, the values declared by the importer in the B's/E No. 175 dated 28.03.2013 and No. 155 dated 27.11.2012 is Rs. 12,87,50,000/- (USD 25,00,000) and Rs. 14,98,50,000/- (USD 27,00,000) respectively.

4.7 From the above, I find that assessable value of these two vessels namely MV Unity and MV OEL Trust declared by the importer in Bills of Entry was considerably less than their value reflected either in Books of Accounts or in Insurance Papers. I also find that even Shri Ramesh Iyer, Authorised Representative of M/s Shreyas Shipping & Logistics Ltd has categorically admitted in his statement that written down value of vessels shown in Books of Accounts of M/s Shreyas Shipping & Logistics Ltd should have been declared in the Bills of Entry.

4.8 I find that subject vessels were not specifically imported and thus, were not supported by any sale invoices. However, during coastal conversion, the importer is bound to declare true value of the vessel. Thus, in absence of transaction value, they have declared the value on the basis of valuation done by the Chartered Engineer. However, as discussed above, I find that the declared values in the said B's/E are considerably lower than the value mentioned in the books of accounts and insurance papers. Also as admitted by the Chartered Engineer Manish T. Mistry, I find that he did not have much experience in valuation of vessels and merely by searching online has done valuation of the said vessels. Looking to all the facts on records, I find that there exist reasonable doubts on the truthfulness of the assessable value declared in Bills of Entry No. 175 dated 28.03.2012 and 155 dated 27.11.2012 and thus I opined that values declared by the importer is liable to be rejected in terms of Rule 12 of Custom Valuation (Determination of Value of Imported Goods) Rules, 2007. I rely upon the case law reported under 2009 (248) E.L.T. 579 (Tri-Chennai) in the case of M/s. Refex Refrigerants Ltd. Vs. CC (Seaport-Import), Chennai.

4.9 Now, as per Section 14 of the Customs Act, 1962, the value of the imported goods shall be the transaction value of such goods, i.e. the price actually paid or payable for the goods. However, in the present case, the declared values are liable to be rejected and transaction values are not available. Therefore, the values of impugned vessels cannot be determined under Rule 3(1) of the Customs (Determination of Value of Imported Goods) Rules, 2007. The Rule 3(4) ibid states that if the values cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through Rule 4 to 9. The Rules 4 and 5 provides method of determining values by comparing values of identical and similar goods, respectively. However, it is a fact that different vessels are made of different qualities of materials and have varying number and quality of components, equipments, parts, technologies etc. Therefore, I find that there cannot be uniformity in respect of values of different vessels. Thus, the values of impugned vessels cannot be determined under Rules 4 and 5 ibid also. The Rule 6 ibid stated that if the value of imported goods cannot be determined under the provisions of Rules 3, 4 and 5, the value shall be determined under the provisions of Rule 7 or, when the value cannot be determined under that Rule, under Rule 8. The Rule 7 provides method of valuation by considering the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity. However, in the instant case, in the absence of such data, the values of impugned vessels cannot be determined under this rule. Further, proceedings sequentially, applicability of Rule 8 ibid is considered. It provides method of valuation by computation of the cost or value of materials and fabrication or other processing employed in producing the imported goods. However, a vessel is such a kind of goods which includes huge number of articles, equipments, parts etc and values of which are not readily available. Thus, I find that this rule is also not suitable for determining values of subject vessels.

4.10 In the circumstances, I am of the view that rule 9 ibid is squarely applicable in the instant case and the values of subject vessels shown in the books of accounts as on 31.03.2012 is the true and fair values of respective vessels. The data's declared in the books of account are also to be filed before another Government Department i. e Central Board of Direct tax (Income Tax) for getting the benefits of expenditures in the books of account for the purpose of Direct Tax liabilities. Hence these values cannot be ruled out merely on the grounds of showing in the books of accounts and before the insurance company. Insurance companies are also verifying the true value of the goods before issuing any Insurance policy. Insurance companies cannot do insurance for Rs. 50 Crores for the goods valued at nearly Rs.15 crores. Rather I find the value of books of account and Insurance policy more authentic than any other value. Thus, I conclude that the declared value in the B's/E No. 175 dated 28.03.2012 and 155 dated 27.11.2012 should be rejected in terms of Rule 12 of the Customs (Determination of Value of Imported Goods) Rules, 2007 and Bills of Entry should be assessed finally under Section 18(2) of Customs Act, 1962, accordingly. **I rely upon case law 2016 (340) E.L.T. 443 (AAR) First Concept Production Services Pvt Ltd.**

5. Now, I would like to discuss and decide the following other points as mentioned in the Show Cause Notice No.S/10-EXP/SCN-02/Addl. Commr/2017 dated 18.01.2017 which are also required to be decided :-

- (a) Vessels MV Unity and MV OEL Trust should not be confiscated as per provisions of Section 111 (m) of Customs Act, 1962.
- (b) The differential amount of Customs duty aggregating to Rs. 17,36,460/- arising out of final assessment of Bill of Entry No. 175 dated 28.03.2013 and 155 dated 27.11.2012, should not be demanded and recovered from them under Section 18(2) of Customs Act, 1962 read with the provisions of Section 28(4) of Customs Act, 1962 along with applicable interest under Section 18(3) of the Customs Act, 1962.
- (c) The differential amount of Customs duty amounting to Rs. 14,06,135/- (as detailed Annexure-I) arising out of final assessment of Bill of Entry No. 145 dated 03.09.2012, should not be demanded and recovered from them under Section 18(2) read with the provisions of Section 28(4) of Customs Act, 1962 along with applicable interest under Section 18(3) of the Customs Act, 1962.
- (d) Penalty should not be imposed on them under Section 112(a) and Section 114A of the Customs Act, 1962, for the reasons discussed above.

(e) Amounts, as detailed in below table, paid by them by filling Bills of Entry listed in column No. 3 of should not appropriated against differential duty arising in respective Bills of Entry mentioned against them in column No. 5.

Sr. No.	Amount (Rs.)	Paid by filing B/E	Vessel	To be appropriated against diff duty arising out of B/E
1	2	3	4	5
1	1,54,346/-	169 dated 27.02.13	MV OEL Trust (coastal run from 22.11.12 to 24.05.13)	155 dated 27.11.12
2	8,20,250/-	150 dated 14.09.12	MV OEL Kochi (coastal run from 19.08.12 to .04.05.13)	145 dated 03.09.12
3	5,27,305/-	166 dated 05.02.13	MV OEL Kochi (coastal run from 19.08.12 to 04.05.13)	145 dated 03.09.12

(f) Also why penalty should not be imposed on Shri Rakesh Prasad, Manager Commercial and Operations, M/s Shreyas Shipping & Logistics Ltd, under Section 112(a) of the Customs Act, 1962.

5.1 I find that intelligence was gathered by the DRI that some vessel owners were evading Customs duty on the foreign going vessels which is required to be paid in terms of Sr. No. 462 of Notification No. 12/2012-Cus dated 17.03.2012 read with condition No. 82 attached thereto, at the time of coastal conversion thereof. It was found that M/s Shreyas Shipping & Logistics Limited, the importer has imported vessel MV Unity at Kandla Port and got the said vessel converted to coastal run on 13.04.2012 for engaging in coastal trade as per provisions of Chapter XII of Customs Act, 1962. The importer filed Bill of Entry No. 14 dated 20.04.2012 before Customs Kandla, through their agents M/s Relay Shipping Agency Limited, for discharging duty liability arising out of above said coastal conversion of vessel MV Unity. The importer paid Customs duty only on the Bunkers/consumables and did not paid duty on vessel MV Unity under the said Bill of Entry. The said vessel MV Unity remained in coastal run for 6 (six) days and was reverted to foreign run from coastal run on 18.04.2012. Later on, the said vessel MV Unity was again imported at Visakhapatnam Port and got converted to coastal run on 18.06.2012. The Importer filed manual Bill of Entry No. 406 dated 16.06.2012, wherein value of the vessel MV Unity was declared as Rs.14,08,75,000/- (USD 25,00,000) for the purpose of duty calculation. I find that when case was booked by the DRI, M/s Shreyas Shipping & Logistics Limited filed Bill of Entry No. 175 dated 28.03.2013 at Custom House, Kandla in respect of vessel MV Unity which had been converted to coastal run on 13.04.2012 for 6 days, wherein value of the vessel was declared as USD 25,00,000/-. "Vessel for transport of goods" falling under Custom Tariff Item 89019000 of First Schedule to Customs Tariff attracted Tariff rate of BCD @ 10% and CVD @ 6% at the material time. However, as per Notification No. 21/2012-Cus dated 17.03.2012 (Sr. No. 462) both BCD and CVD leviable on such vessels were exempted subject to condition No. 82 attached thereto. The said condition No. 82 to Notification No. 12/2012-Cus dated 17.03.2012, reads as under:

“if,-

the importer files a bill of entry under section 46 of the Customs Act, 1962 [No. 52 of 1962] at the time of conversion of vessel for coastal run subsequent to import and pays the applicable duty of customs on:-

- (a) Full lease or contract value, if the import is under a lease agreement or contract;*
- (b) 1/120th of the applicable duty, for each month or part thereof, of stay in India as coastal vessel.*

Explanation.- For the purposes of this entry,

- (1) “foreign going vessel” shall have the same meaning as assigned to it under clause (21) of Section 2 of the Customs Act 1962 [No. 52 of 1962];*
- (2) “Conversion to coastal Vessel” shall include the vessel granted a license for coastal trade under Section 407 of the Merchant Shipping Act, 1958 by the Directory General Shipping and the vessel granted permission for carrying coastal goods, under the provisions specified in Chapter XII, of the Customs Act, 1962, by the proper officer of the customs;*
- (3) “applicable duty” means the Additional duty of Customs under sub-section (1) of section 3 of the Customs tariff Act, 1975 (51 of 1975)”.*

Therefore, in terms of Sr. No. 462 of Notification No. 12/2012-Cus dated 17.03.2012, the exemption for BCD and CVD was admissible, inter alia, subject to, either (1) payment of CVD on full lease or contract value of vessel, if the import is under a lease agreement or contract or (2) payment of 1/120th part of the CVD leviable, for each month or part thereof, of stay of vessel in India as coastal vessel.

5.2 I find that M/s Shreyas Shipping & Logistics Limited was a regular importer of vessels and converting vessels to coastal run for utilizing in coastal trade. However, they were not paying full duty on vessels in terms of Notification No. 12/2012-Cus dated 17.03.2012 (Sr.No. 462). Therefore, investigation was carried out by DRI, wherein, statements of the following persons were recorded under Section 108 of Customs Act, 1962.

- (i) Shri Joy Philip, General Manager in M/s Relay Shipping Agency Ltd., Gandhidham recorded on 22.01.2013,*
- (ii) Shri Rakesh Prasad, General Manager (Commercial & Operations) in M/s Shreyas Shipping & Logistics Ltd recorded on 07/03/2013 and*
- (iii) Shri Ramesh Iyer, Authorised Representative of M/s Shreyas Shipping & Logistics Ltd; recorded on 21.06.2013.*

5.3 For the sake of repetition, I do not reproduce the statements. However, from the statements of above persons, I find that all of them have, inter-alia, admitted that M/s.

Relay Shipping Agency Ltd was engaged in work of handling vessels/ ships for M/s. Shreyas Shipping & Logistics Ltd., and M/s. Orient Express Lines Ltd., Dubai; that both those companies and M/s. Relay Shipping Agency Ltd were group companies of Transworld group of companies. Further Shri Joy Philip admitted that they were required to file Bill of Entry during coastal conversion of vessels for payment of customs duty in terms of Condition No. 82 of Notification No. 12/2012-Cus dated 17.03.2012 but they did not file any Bill of Entry. The valuation has been done by the Chartered Engineer Manish T Mistry (Membership No. F 017102-2) at USD 27,00,000/- of vessel "MV OEL Trust" and of vessel "MV Unity" at USD 25,00,000/-. Further, Shri Rakesh Prasad stated that they had not rented/leased the vessel "MV Unity". It was plying on their ownership and they were collecting freight charges from respective customers; that in addition to MV Unity, they have done coastal conversion of OEL Kochi, OEL Kutch, OEL Shreyas, OEL Victory and OEL Trust; that submitted the photocopies of (i) Balance Sheet of M/s Shreyas Shipping & Logistics Ltd as at 31.03.2012 (ii) statement of fixed assets reflected at Sr. No. 10 of Balance Sheet, (3) statement of Depreciation and WDV of Fixed assets including vessels and (iv) Marine Hull and Machinery policy of MV OEL Kochi (f) MV OEL Kutch of M/s Shreyas Shipping & Logistics Ltd showing amount insured and premium; that the Written Down Value i.e. depreciated value of vessels as on 31.03.2012 were for MV OEL Victory (Rs. 18,74,14,277/-), MV OEL Trust (Rs. 50,73,87,964), MV OEL Shreyas (Rs.49,95,30,224), MV Unity (Rs. 41,68,71,624). Shri Ramesh Iyer submitted that in his view, the Bill of Entry should have been filed at WDV of vessels shown in Books of Accounts and he believed that the insured value was arrived at in consultation with the Insurance Company. He admitted that the insured value (Rs. 33,55,00,000) of MV OEL Kochi, which have been purchased by M/s Shreyas Shipping & Logistics Ltd in the last year was almost equal to its value declared in Bill of Entry (Rs.34,12,95,000 i.e. USD 61,00,000 @ USD 55.95/USD) which is based on purchase cost as reflected in purchase invoice (USD 61,00,000).

5.4 Further, I find that Shri Manish T. Mistry, Chartered Engineer, in his statement recorded on 02.07.2013 stated that he is a Fellow Member of Institution of Valuers, New Delhi and also fellow member of Indian Institute of Insurance Surveyors and loss Assessors. On being asked he stated that he had done valuation of vessels on the basis of letter issued by Commissioner of Income Tax, Rajkot. Further, he stated that he had not done any course/training in respect of valuation of ships/vessels of any category. MV unity was inspected by him on 02.10.2012 at Adani Jetty of Dahej Port and after surfed at website he found the said vessel was 1993 China Built, its GRT was around 10000 and it was sold for 2.30 million USD in the month of Sep, 2012 where he further added 0.20 million USD and arrived at Fair Market value of MV Unit; that he had inspected OEL Trust at Pipavav Port on 01.11.2012, a bulk cargo vessel. Condition of OEL Trust was better and so he added 0.15 Million USD to the value of MV Unity (i.e. 2.5 Million USD). The value of MV OEL Trust was arrived at USD 2.7 Million USD. He stated that the value of the vessel depends upon year of

built, condition of vessel and capacity of the vessel and make of country. He stated that he did not have the idea of importance of hull in arriving at fair value of the vessel and also did not have the idea of hull located in vessel and not checked the trends of valuation in vessel industry considered all the factors into consideration while arriving at the Fair Market Value of two vessel MV Unity and MV OEL Trust. He further stated that the owners of the vessel had informed him that there was NIL Customs duty on vessels and only a formal inspection and valuation report was needed by them which will not be used for assessing and duty liability.

5.5 I rely in the case of *Surjeet Singh Chhabra v. Union of India, 1997 (89) E.L.T. 646 (S.C.)*, the Supreme Court has held that confessional statement made before Customs officer is an admission and binding since Customs officers are not police officers in terms of Section 25, Evidence Act, 1973. The Madras High Court in the case of *Assistant Collector of Customs v. Govindasamy Ragupathy, 1998 (98) E.L.T. 50 (Mad.)* held that confessional statement made under Sec. 108 of Customs Act, 1962 before Customs officers are to be regarded as voluntary. **It is settled legal proposition that statement recorded under Section 108 of the Act is admissible unlike a statement recorded by a Police Officer.** Even noticees have not retracted/rebutted from their confessional statements. Hence, their admitted facts need not be required to be proved.

5.6 I find that from the statements of the relevant persons of M/s Shreyas Shipping & Logistics Limited and M/s Relay Shipping Agency Ltd recorded as per provisions of Section 108 of Customs Act, 1962 and scrutiny of relevant documents, that M/s Shreyas Shipping and Logistics Ltd had imported vessels MV Unity, MV OEL Trust, MV OEL Kochi, MV OEL Shreyas, MV OEL Kutch and MV OEL Victory. They converted the said vessels to coastal run on many occasions during period from 17.03.2012 to 28.02.2013. 37 and filed Bills of Entry Nos. 175 dated 28.03.2013 (MV Unity), 155 dated. 27.11.2012 (MV OEL Trust), 169 dated 27.02.2013 (MV OEL Trust), 145 dated 03.09.2012 (MV OEL Kochi), 150 dated 14.09.2012 (MV OEL Kochi) and 166 dated 05.12.2012 (MV OEL Kochi) at Custom House, Kandla.

5.7 I find that MV Unity and MV OEL Trust were purchased by them many years ago. However, MV Kochi (previous name MV Bunga Tera Tai Dua-IMO 9157674) was purchased in August 2012 under invoice No. KUL120717-T0009 dated 01.08.2012 and brought to India for the first time which converted to coastal run on 19.08.2012. Duty amounting to Rs. 1,75,767/- in respect of the said coastal conversion of the MV OEL Kochi was paid by M/s Shreyas Shipping & Logistics Ltd vide Bill of Entry No. 145 dtd. 03.09.2012. The said duty was equivalent to only one month's duration of coastal run in terms of Sr. No. 462 of Notification No. 12/2012 dated 17.03.2012. The said vessel, M/s Shreyas Shipping & Logistics Ltd informed vide letter dated 24.02.2016 was re-converted to foreign run on 04.05.2013 after plying in coastal run for nine months. It found from the letter dated

24.02.2016 of Importer and letter dated 09.03.2013 of Customs Kandla that Rs. 8,20,250/- and Rs. 5,27,305/- have been paid by the importer in respect of subject coastal run of MV OEL Kochi (from 19.08.2012 to 04.05.2013) by filing additional Bills of Entry No. 150 dated 14.09.2012 (MV OEL Kochi) and B/E No. 166 dated 05.12.2012 (MV OEL Kochi). Similarly, initial duty payment of Rs. 2,41,056/- vide Bill of Entry No. 155 dated 27.11.2012 in respect of coastal conversion dated 22.11.2012 of vessel MV OEL Trust was done by M/s Shreyas Shipping & Logistics Ltd. However, vide letter dated 24.02.2016 the importer informed that they have filed Bill of Entry No. 169 dated 27.02.2013 and paid further duty amounting to Rs. 1,54,346/- in respect of same coastal run of vessel MV OEL Trust from 22.11.2012 to 24.05.2013.

5.8 In respect of coastal conversion of vessel MV Unity and MV OEL Trust, I find that M/s Shreyas Shipping & Logistics Ltd had filed Bill of Entry No. 175 dtd. 28.03.2013, wherein the value of MV Unity was declared as Rs. 12,87,50,000/- (USD 25,00,000) and in Bill of Entry No. 155 dated 27.11.2012 value of MV OEL Trust was declared as Rs. 14,98,00,000/- (USD 27,00,000). Shri Rakesh Prasad has stated in his statement that the vessels were not imported on lease basis. As such, in these three cases, the importer was required to pay applicable duty in terms of part (b) read with explanation 3 of Condition No. 82 to Notification No. 12/2012-Cus dated 17.03.2012. Since, the applicable Duty i.e. Additional Duty of Customs/CVD is calculated on the basis of actual assessable value of goods (Vessels in the case), they were required to declare actual value of the vessels in the Bills of Entry filed for discharging duty liability arising on vessel on account of coastal conversion. The importer was aware of the actual value of the vessels that was available in Books of Accounts of Company and also in Marine Hull and Machinery Policy of each of these three vessels. Both the insurance value and Written Down Value in Books of accounts are approximately similar. The insurance value of the vessel was based on true assessment of market price of the vessels can concluded from the fact that M/s Shreyas Shipping & Logistics Ltd during the same period i.e. in August purchased vessel **OEL Kochi** (Previously known as "MV Bunga Tera Tai Dua") for USD 61,00,000 equivalent to Rs.33,55,00,000/- (@Rs 55/USD) approximately. The said vessels was insured by M/s Shreyas Shipping & Logistics Ltd for Rs. 33,55,00,000/-.

5.9 I find that despite knowing actual value of vessels importer M/s Shreyas Shipping & Logistics Ltd did not declare actual value of vessels in the Bills of Entry No 175 dtd. 28.03.2013 and 155 dtd. 22.11.2012 both filed at Custom House, Kandla for discharging duty liability arising on account of coastal conversion of respective vessels. Rather, it is revealed from statement of Chartered Engineer Shri Manish T. Mistry, importer has informed him that there was NIL Customs duty on vessels and that only a formal inspection and valuation report was needed by them which was not be used for assessing any duty liability. Thus, it is established that valuation of the vessels by Chartered Engineer was

resorted to mis-declare their value in the Bills of Entry to evade customs duty. The acts of mis-declaration of value of the subject goods i.e. vessels MV Untiy and MV OEL Trust on part of M/s Shreyas Shipping & Logistics Ltd, in the respective Bills of Entry, have rendered the said vessels MV Unity (having Written Down Value Rs. 41,68,71,624/- as on 31.03.2012) and MV OEL Trust (having Written Down Value Rs. 50,73,87,964/- as on 31.03.2012) liable for confiscation as per the provisions of Section 111(m) of Customs Act, 1962.

5.10 As per 2(23) of Customs Act, 1962, "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India. Further, as per its definition given in Section 2(22) of Customs Act, 1962, "goods", inter alia includes vessels. Further "foreign-going vessel or aircraft" defined in Section 2(21) of Customs Act, 1962 as any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes-

- (i) any naval vessel of a foreign Government taking part in any naval exercises;
- (ii) any vessel engaged in fishing or any other operations outside the territorial waters of India;
- (iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever;

In view of the above legal position, a vessel is goods and that any vessel coming to an Indian Port from outside India is an import excluding Foreign going vessels defined under Section 2(21) of Customs Act, 1962. Since the vessel MV Unity was converted to Coastal Run on 13.04.2012, MV OEL Trust on 22.11.2012 and MV OEL Kochi on 19.08.2012, these vessels ceased to be "foreign going vessel". As such, the above coastal conversion of vessels MV Unity, MV OEL Trust and MV OEL Kochi amounted to import and all proceedings applicable in case of imported goods were required to be carried out as in case of import of any other goods. Exemption from Basic Customs Duty and CVD (Additional Duty of Customs), at the material time, was admissible subject to payment of applicable duty in terms of Sr. No. 462 of Notification No. 12/2012-Cus dated 17.03.2012 read with condition no. 82 attached thereto.

5.11 As discussed in above para, I find that these vessels were not imported on lease basis and that the Importer was required to pay applicable duty in terms of part (b) read with explanation 3 of Condition No. 82 to Notification No. 12/2012-Cus dated 17.03.2012. M/s Relay Shipping Agency Ltd filed Bill of Entry No. 175 dated. 13.04.2012 on behalf of M/s Shreyas Shipping & Logistics Ltd for discharging duty liability in respect of coastal conversion of vessel MV Unity. Despite being fully aware of the actual valuation of vessel (written down value as Rs.41,68,71,624/- and insured value Rs. 50,40,00,000/-). M/s Shreyas Shipping & Logistics Ltd mis-stated the value of the said vessel as Rs. 12,87,50,000/- in the Bill of Entry.

Moreover, the said Bill of Entry No. 175 dated. 28.03.2013 has been filed by Importer after a gap of almost one year from the date of coastal run and consequent upon recording of statement of Mr. Joy Philip of M/s Relay Shipping Agency Ltd on 22.01.2013 and that of Mr. Rakesh Prasad of M/s Shreyas Shipping & Logistics Ltd on 07.03.2013. Similarly, value of the vessel MV Trust was mis-stated as Rs. 14,98,50,000/- in the Bill of Entry No. 155 dated 27.11.2012 instead of its actual value Rs. 50,73,87,964/- (Written Down Value in books of accounts.)

5.12 Facts and evidences, discussed in above have revealed the correct value of the vessels MV Unity is Rs. 41,68,71,624/- and that of MV OEL Trust is Rs. 50,73,87,964/-. However, despite being aware of the actual value of these vessels, which was readily available in their books of Accounts, the importer, M/s Shreyas Shipping & Logistics Ltd did not disclose it to Customs department and mis-declared the value of these vessels in the respective Bills of Entry filed for discharging duty liability on account of coastal conversion of these vessels. As a result importer has short levied and short paid Duties of Customs in respect of the subject import goods (i.e. vessels).

5.13 I find that Shri Rakesh Prasad, General Manager (Commercial & Operations) in M/s Shreyas Shipping & Logistics has admitted in his statement that the value of subject vessels was declared in the Bills of Entry on the basis of Valuation done by Chartered Engineers. It was revealed by Chartered Engineer in his statement dated 02.07.2013 as discussed above that despite knowing actual value of the subject vessels the importer obtained false valuation certificate from a Chartered Engineer who did not have any experience in the field of valuation of vessels. The importer even misguided Chartered Engineer, Manish T Mistry into believing that he was to carry out a formal inspection of the vessels for valuation and that the said valuation was not going to be used for assessing duty liability. These acts clearly show willful mis-declaration on the part of importer M/s Shreyas Shipping & Logistics Ltd. Hence, I hold that provisions of Section 28(4) of Customs Act, 1962 are correctly invoked against M/s Shreyas Shipping & Logistics Ltd for demand and recovery of differential duty on account of mis-statement and suppression of value of vessels MV Unity and MV OEL Trust in Bills of Entry No. 175 dated 28.03.2013 and 155 dated 27.11.2012. Thus, I find that differential duty amounting to Rs. 17,36,460/- arising in respect of coastal conversion of MV Unity and MV OEL Trust covered under Bill of Entry No. 175 dated 28.03.2013 and 155 dated 27.11.2012 is liable to be demanded and recovered from M/s Shreyas Shipping & Logistics Ltd under Section 28(4) of Customs Act, 1962 read with provisions of Section 18(2) of Customs Act, 1962 along with applicable interest as per Section 18(3) of Customs Act, 1962.

5.14 Further, I find that in addition to above, MV OEL Kochi was converted to coastal run on 19.08.2012 and duty amounting to Rs. 1,75,767/- equivalent for one month of coastal

run was paid by M/s Shreyas Shipping & Logistics Ltd. vide B/E No. 145 dated 03.09.2012. However, I find that the said vessel remained in coastal run till 04.05.2013 when it was again converted to foreign run. Thus, I find that for the period up to 8.6 months (rounded off to 9 months), said vessel was being in coastal run, therefore, differential duty amounting to Rs. 14,06,135/- is liable to be recovered from M/s Shreyas Shipping & Logistics Ltd as per provisions of Section 18(2) of Customs Act, 1962 as appended in **Annexure-I of the Show Cause Notice.**

5.15 Further, as discussed in *para supra*, it has come out that the importer M/s Shreyas Shipping & Logistics Ltd mis-declared value of the vessels MV Unity, and MV OEL Trust in the respective Bills of Entry filed before Customs Department. They were aware of the actual value of the goods, i.e. vessels, which was available in the Books of Accounts as well as in Marine Hull and Machinery Insurance Papers. Shri Rakesh Prasad who used to look after commercial department of M/s Shreyas Shipping & Logistics Ltd stated in his statement that the said vessels were not purchased on lease basis. As such Importer was required to pay duty in terms of Notification No. 12/2012-Cus dated. 17.03.2013 (Sr. No. 462 read with condition No. 82) on the basis of actual value of goods (i.e. vessels). However, the importer instead of declaring actual value of the vessels in the Bills of Entry mis-guided Chartered Engineer to issue a formal valuation report which, they informed the Chartered Engineer, was not be used for valuation or assessment of Customs Duty. I find that Shri Rakesh Prasad being manager, Commercial & Operations, was aware of the actual value of the vessels in Books of Accounts. Even then, he engaged in obtaining false valuation Certificate in respect of the subject vessels. The printout of the exchange of mail correspondence between Shri Manish T Mistry and Shri Rakesh Prasad clearly reveals that the proceedings of obtaining valuation certificate in respect of vessels were handled by him on behalf of M/s Shreyas Shipping & Logistics Ltd.

5.16 I find that these acts of commission and omission, on part of M/s Shreyas Shipping & Logistics Ltd and Shri Rakesh Prasad, have rendered the goods (i.e. vessels MV Unity and MV OEL Trust) liable to confiscation under Section 111(m) of the Customs Act, 1962 and M/s Shreyas Shipping & Logistics Ltd and Shri Rakesh Prasad liable for penal action under Section 112(a) of the Customs Act, 1962. The above mentioned acts of mis-declaration were done with intention to evade payment of appropriate customs duty. I also find that for the above act of willful mis-declaration of goods with intention of evading customs duty, M/s Shreyas Shipping & Logistics Ltd have also rendered themselves liable to penalty under Section 114A of the Customs Act, 1962.

6. In view of the foregoing discussion and findings, I pass the following order :-


ORDER

- (a) I hereby reject the assessable value of vessel MV Unity declared as Rs. 12,87,50,000/- in Bill of Entry No. 175 dated 28.03.2013 and that of MV OEL Trust declared as Rs.14,98,50,000/- in Bill of Entry No. 145 dated 03.09.2012 and order to re-determine the same as Rs. 41,68,71,624/- and Rs. 50,73,87,964/- respectively in terms of Rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of Customs Act, 1962 and order to finalized the Bs/E under Section 18(2) of Customs Act, 1962, accordingly.
- (b) I order to confiscate Vessels MV Unity and MV OEL Trust as per provisions of Section 111(m) of Customs Act, 1962. However, I order to redeem the goods on payment of redemption fine of Rs.25,00,000.00/- (Rupees Twenty Five Lakhs Only) under Section 125 of the Customs Act, 1962 in lieu of confiscation.
- (c) I order to recover differential Customs duty aggregating to Rs. 17,36,460/- (Rupees Seventeen Lakhs Thirty Six Thousand Four Hundred Sixty only) arising out of final assessment of Bill of Entry No. 175 dated 28.03.2013 and 155 dated 27.11.2012, from M/s Shreyas Shipping & Logistics Ltd under Section 18(2) of Customs Act, 1962 read with the provisions of Section 28(4) of Customs Act, 1962 along with applicable interest under Section 18(3) of the Customs Act, 1962. I order to appropriate an amount of Rs.1,54,346/- paid towards customs duty vide B/E No. 169 dated 27.02.2013.
- (d) I order to recover differential Customs duty amounting to Rs. 14,06,135/- (Rupees Fourteen Lakhs Six Thousand One Hundred Thirty Five only) arising out of final assessment of Bill of Entry No. 145 dated 03.09.2012 from M/s Shreyas Shipping & Logistics Ltd. under Section 18(2) of Customs Act, 1962 read with the provisions of Section 28(4) of Customs Act, 1962 along with applicable interest under Section 18(3) of the Customs Act, 1962. I order to appropriate an amount of Rs.8,20,250/- paid towards Customs duty vide B/E No. 150 dated 14.09.2012 and Rs. 5,27,305/- vide B/E No. 166 dated 05.02.2013.
- (e) I impose a penalty of Rs. 31,42,595/- (Rupees Thirty One Lakhs Forty Two Thousand Five Hundred Ninety Five only) on M/s Shreyas Shipping & Logistics Ltd under Section 114A of the Customs Act, 1962. I do not impose penalty under section 112 of the Customs Act, 1962 as provided U/s 114A "that where any penalty has been levied under this Section, no penalty shall be levied under Section 112 or Section 114. However, I give an option, under proviso to Section 114A, to the Noticee, to pay 25% of the amount of total penalty imposed at (e) above, subject to payment of total amount of duty and interest confirmed at

(c) and (d) above, and the amount of 25% of penalty imposed at (e) above within 30 days of receipt of this order.

(f) I impose a penalty of Rs. 5,00,000.00 (Rupees Five Lakhs only) on Shri Rakesh Prasad, Manager Commercial and Operations, M/s Shreyas Shipping & Logistics Ltd, 4th Floor, Geetmala Building, Shah Industrial Estate, Govandi (East), Chembur, Mumbai-400088 under Section 112(a)(v) of the Customs Act, 1962.

7. This order is passed without prejudice to any other action which may be contemplated against the importer or any other person in terms of any provision of the Customs Act, 1962 and/or any other law for the time being in force.


(AJAY KUMAR)
ADDITIONAL COMMISSIONER
KANDLA

F. No. S/10-208/ADJ/ADC/Shreyas/2016-17

Dated: 15.01.2019

To,

1. M/s Shreyas Shipping & Logistics Ltd, 4th Floor, Geetmala Building, Shah Industrial Estate, Govandi (East), Chembur, Mumbai-400088.
2. Shri Rakesh Prasad, Manager Commercial and Operations, M/s Shreyas Shipping & Logistics Ltd, 4th Floor, Geetmala Building, Shah Industrial Estate, Govandi (East), Chembur, Mumbai-400088.

Copy to:

1. The Pr. Commissioner of Customs, Kandla
2. The Additional Director, Directorate of Revenue Intelligence, Zonal Unit, Ahmedabad.
3. The Dy. Director, DRI , Regional Unit, Plot No. 193, Sector-4, Gandhidham.
4. The Deputy/Assistant Commissioner (RRA), Customs House, Kandla.
5. The Deputy/Assistant Commissioner (Recovery), Customs House, Kandla.
6. Guard file.

