



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/10-36/ADJ/ADC/SBL Sales/2018-19
B	आदेश में मूल सं./ Order-in-Original No.	KDL/ADC/PMR/07/2018-19
C	पारित कर्ता/ Passed by	SH. PADALA MOHAN RAO, ADDITIONAL COMMISSIONER
D	आदेश की दिनांक/Date of order	03/05/2018
E	जारी करने की दिनांक/Date of issue	03/05/2018
F	एस.सी.एन. सं. एवं दिनांक/ SCN No. & Date	SIIB F.No. S/43-10/SBL/2017-18 dated 01.05.2018
G	नोटीसी/ पार्टी Noticee/Party	M/s. SBL Sales Agency, B-109, 1 st Floor, Gali No. 4, Gokul Pur Village, Shahdara, Delhi - 110094

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 12 की 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 इयूटि/ 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:-

Briefly stated facts of the case are that an Intelligence input was received from the DRI, Ahmedabad Zonal Unit, Ahmedabad regarding gross undervaluation and mis-declaration of the electronic and other goods by M/s. SBL Sales Agency, B-109, 1st Floor, Gali No. 4, Gokul Pur Village, Shahdara, Delhi - 110094. On the basis of intelligence received and developed, the Officers of SIIB Section, Custom House, Kandla, had examined the goods imported vide Bills of Entry No. 4826161 dated 16.01.2018 and 4863893 dated 19.01.2018 filed by M/s. SBL Sales Agency, B-109, 1st Floor, Gali No. 4, Gokul Pur Village, Shahdara, Delhi - 110094 through M/s. Lara Eximp Pvt. Ltd., No. 220, 2nd Floor Gokul Park, Gandhidham, Kutch - 370 201, Customs Broker for import of Electrical/electronic and other goods like motor cycle spares parts/accessories, cycle etc.

2. The examination was conducted under regular panchnama dated 25.01.2018 and 01.02.2018 in respect of Bills of Entry No. 4826161 dated 16.01.2018 and 4863893 dated 19.01.2018 respectively. During the course of examination, it was found that the quantities of goods declared in the Bills of Entry are found in excess. The details of goods declared and goods found during examination is tabulated below :-

Bill of Entry No. 4826161 dated 16.01.2018

Sr. No.	Description of the goods (as per Invoice)	Declared Unit (as per Invoice)	Goods found during examination
01.	USB/DVB Remote Control	58400	59400
02.	Linear Output Transformer (un Branded) Cap 2.4 Parts	14000	14000
03.	Cycle (of different Model)	75	75
04.	Miniature Bulb (Bulk packing)	300000	300000
05.	Small Bulb (Scooter)	50000	50000
06.	Mini Plug (Bike Accessories)	156000	156000
07.	Starter Bendix (Motor Bike Accessories)	10000	10000
08.	Roller Chain for Motor Cycle	697 Kgs.	5040 Kgs.
09.	Remote Covers	Not declared	9400

Bill of Entry No. 4863893 dated 19.01.2018

Sr. No.	Description of the goods (as per Invoice)	Declared Unit (as per Invoice)	Goods found during examination
1	Heat Sink	33000	33,000
2	Ceramic Capacitor	359000	448500
3	Resistors	98.68 GW Kgs./85.57 Kgs. NW/ 1562000 Pieces	1616250
4	Electrolyte Capacitors (100uf to 470uf to 63v)	290000	546600
5	Spare Part (PCB)	92.52 kgs. 11000	11000
6	Remote Control	11000	11000
7	Linear Output Transformer Cap (2.4) parts	11000	11000
8	Mini Switching Transformer TAQ3	33000	11500
9	Mini Tack Switch 0.5amp Audio Part	66000	77000
10	Zenner Diode	217000	286000
11	Integrated Circuit IC (assorted)	49000	55105
12	Transistor (3807,764,1015,5386,2482) TV Part	135000	210000
13	Mini Coil 2" (TV Part)	11000	14500

14	Short Length Mini Wire l-6 cms (audio part)	23000	46900
15	Short Length Mini Wire 10 cms (audio part)	62000	62000
16	Heat Shrink Circular Tubing/sleeves clear 3.0mm(pvc) (2185mtr)	11.25 Kgs	13 Kgs.
17	Unbranded Push Switch 5A china	11000	11000
18	2 pin wire with connector 1.5 m	11000	11000
19	IR receiver 138m2	6000	11000
20	Mini Metal crystal TV part	6000	11000
21	Mini Screw 0.3mm (TV part)	37.45 Kgs.	46.8 Kgs.
22	AV socket (av3-8 (together) (electronic components)	88000	88000
23	Potentiometer 3/6 pin tone	5000	11000
24	Saw filter GDR-SF38.9 h Electronic components	11000	11000
25	CRT socket (unbranded)	122 KGS	11000
26	AV tuner (TV part)	11000	11000
27	Spare Parts(assorted)	34 Kgs.	44.5 kgs.
28	Connector pin	Not declared	55130
29	Fuses(T3-15a)	Not declared	11000

3. The panchnama dated 25.01.2018 and 01.02.2018 in respect of Bills of Entry No. 4826161 dated 16.01.2018 and 4863893 dated 19.01.2018, respectively, transpires that the goods the importer M/s. SBL Agency, Delhi has declared less quantity of the goods vis-à-vis the actual imported goods with an intent to evade payment of duty.

4. A summons was issued on dated 20.02.2018 directing M/s. SBL Sales Agency, New Delhi to appear on 22.02.2018. In response to summons dated 20.02.2018, Shri Sunil Chhajer, authorized person of M/s. SBL Sales Agency, New Delhi had appeared on 22.02.2018 to give his oral evidence/statement. The details of statement recorded on 22.02.2018 is summarised below :-

- That M/s. SBL Sales Agency had filed Bill of Entry No. 4826161 dated 16.01.2018 and 4863893 dated 19.01.2018 for import of Electronic and other goods from imported from China through M/s. Lara Exim Private Limited, 2nd Floor, Gokul Park Building, Office No. 220, Gandhidham.
- That Shri G.S. Vaid owner of M/s. Arham Shipping Services, Delhi had introduced Shri Sabhu George of M/s. Lara Exim Private Limited, Gandhidham, Custom Broker for customs clearances.
- That the import documents of M/s. SBL Sales Agency, Delhi were provided to M/s. Lara Exim Private Limited through Shri G.S. Vaid owner of M/s. Arham Shipping Services, Delhi. M/s. SBL Sales Agency, Delhi had provided import documents viz. Invoice, Packing List, Bill of Lading etc. to Shri G.S. Vaid of M/s. Arham Shipping Services, Delhi through e-mail and also sent through courier. M/s. Arham Shipping Services, Delhi had given the said documents to M/s. Lara Exim Private Limited, Gandhidham.
- That he fully agreed with the content of the panchnama dated 25.01.2018 and 01.02.2018 drawn at M/s. A.V. Joshi & Co., Gandhidham in respect of Bill of Entry No. 4826161 dated 16.01.2018 and 4863893 dated 19.01.2018 for import of Electronic goods and other goods.
- That the import documents in respect of Bill of Entry No. 4826161 dated 16.01.2018 and 4863893 dated 19.01.2018 viz. Invoice, Packing List, Bill of Entry, Bill of Lading etc. He agreed and confirmed that the import documents shown to him while recording statement are provided by our company M/s. SBL Sales Agency, Delhi to M/s. Lara Exim, Custom Broker, Gandhidham and the same is tallies their record. He confirmed that the Bill of Entry has been filed as per their instructions.

- They have purchased the goods imported vide Bill of Entry No. 4826161 dated 16.01.2018 from M/s. Hong Kong Saba Electronics Co. Ltd. vide Invoice No. HSEL 131217 dated 13.12.2107 and 4863893 dated 19.01.2018 M/s. Hongkong Co KE DI Electronics Co. Ltd., Hongkong vide Invoice No. HSEL 221217 dated 22.12.2017.
- They, M/s. SBL Sales Agency, Delhi have no relation with the overseas suppliers i.e. M/s. Hong Kong Saba Electronics Co. Ltd & M/s. Hongkong Coa KE DI Electronics Co. Ltd., Hongkong and they have only trade relations as seller and buyer.
- That no other consideration is paid or payable to the seller in addition to the Invoice value and Invoice value is sole consideration for purchase of imported goods vide 4826161 dated 16.01.2018 and 4863893 dated 19.01.2018.
- That no other Bill/Invoice is available with their company M/s. SBL Sales Agency, Delhi in respect of the goods imported vide Bills of Entry No. 4826161 dated 16.01.2018 and 4863893 dated 19.01.2018.
- He stated that there is no mismatch in total no. of cartons as per the Packing List submitted alongwith the said Bill of Entry No. 4826161 dated 16.01.2018. However, in respect of Remote Control, to set off the defect pieces, the seller provided approximately 2% excess quantity and the same were not mentioned at Invoice. As regards to Roller Chain for Motorcycle, he admitted that there is difference between declaration and goods actually arrived. He stated that on inquiry with the supplier on telephonic conversation, they informed that there is clerical error from their part.
- On being asked about the excess quantity in respect of Bill of Entry No. 4863893 dated 19.01.2018, it was found that there was excess of
 1. 89500 pieces of Capacitors
 2. 54250 pieces-of Resistors
 3. 256600 pieces of Electrolyte Capacitors
 4. 21500 pieces of Mini switching Transformers TAQ3 - short
 5. 11000 Pieces of Mini Tack Switch .5 AMP Audio Part
 6. 69000 pieces of Zinner Diode
 7. 6105 pieces of Integrated Circuits
 8. 75000 Pieces of Transistors
 9. 3500 Pieces Mini Coil 2" TV Part
 10. 23900 Pieces of Short length Mini Wire L-6cms and L-10cms Audio Part
 11. 1.75 Kgs. of Heat Shrink Circular Tubing/Sleeves clear 3 mm (PVC)
 12. 5000 pieces of IR receiver 138M2
 13. 5000 pieces of Mini Metal Crystal TV Part
 14. 9.35 Kgs. of Mini Screw 0.3 mm (TV part)
 15. 14.50 Kgs. Spare Parts (assorted)
 16. 55130 Pieces of Connector Pin (Undeclared)
 17. 11000 Pieces of Fuses (T3-15A) (Undeclared)

as compared to declared quantity at Bill of Entry and Invoice, he informed that the above items of import are purchased in Kgs. at Chinese Market. However, the unit quantities were declared at Numbers (pieces) at Invoice. The unit quantity purchased at Kgs. have been converted into pieces by the supplier while preparing Invoice and Packing List. The imported items stated above are of different sizes and thus, exact unit in pieces could not be ascertained. The same has been declared at approximate pieces, therefore, there is variation in quantity declared and actual quantity received. He admitted the same and shown readiness to pay the differential duty on account of the excess quantity received.

- The credit period is 120 days and we will remit the payment for purchase through our authorised bank.
- the remittance for goods imported vide Bill of Entry No. 4826161 dated 16.01.2018 and 4863893 dated 19.01.2018 has not made yet.
- He stated that the Remote Control for DVB Set Top Boxes are compatible for Tata Sky, Dish TV, GTPL etc. Set Top Boxes. The logo of Tata Sky, Dish TV, GTPL etc. were printed to easily identify the remote controls for respective set top boxes; they have no authorization from any of this DVB service providers; he stated that to avoid

customs clearances complications, the trade marks were hidden with black adhesive tapes.

- He stated that the goods imported vide Bill of Entry No. 4863893 dated 19.01.2018 are components of main board for 14" CRT TV. The components include inputs for 11000 pieces of main board for 14" CRT TV except in few cases viz. Capacitors, resistors etc. where the possibility that some of goods may be defect and dead. The prominent parts are in 11000 pieces.

5. Searches were conducted at office premises of M/s. SBL Sales Agency (the importer), M/s. Arham Shipping Services (Shipping Agent) and M/s. Lara Exim Pvt. Ltd. (the Customs Broker). During the search operation no incriminating documents was found/recovered with respect of valuation of goods imported vide Bills of Entry No. 4826161 dated 16.01.2018 and 4863893 dated 19.01.2018.

6. During the course of investigation, Market enquiry was conducted to arrive at fair and just value of the imported goods. Market survey has been conducted at Gandhidham and Delhi. Further, the goods have also been inspected/examined by an empanelled Chartered Engineer M/s. Nireekshan Engineers and Surveyors. M/s. Nireekshan Engineers and Surveyors had submitted their certificate vide letter dated 19.03.2018.

7. On the basis of the Market enquiry/Chartered Engineer Certificate the value of the imported goods has been ascertained and the same is as below :-

Bill of Entry No. 4826161 dated 16.01.2018

Sr. No.	Description of the goods (as per Invoice)	Declared Unit (as per Invoice)	Declared Assessable Value (in Rs.)	Goods found during examination	Assessable Value arrived at on the basis of Market Survey/Chartered Engineer's Certificate (in Rs.)
01.	USB/DVB Remote Control	58400	3.2895 /per piece	59400	15/per piece
02.	Linear Output Transformer (un Branded) Cap 2.4 Parts	14000	0.774 /per piece	14000	52/per piece
03.	Cycle (of different Model)	75	393.45 /per piece	75	7000/per piece
04.	Miniature Bulb (Bulk packing)	300000	0.061275 /per piece	300000	4/per piece
05.	Small Bulb (Scooter)	50000	0.09288 /per piece	50000	5/per piece
06.	Mini Plug (Bike Accessories)	156000	0.362814 /per piece	156000	6/per piece
07.	Starter Bendix (Motor Bike Accessories)	10000	12.30875 /per piece	10000	120/per piece
08.	Roller Chain for Motor Cycle	697 Kgs.	82.55961 /per kgs.	5040 Kgs.	120/per Kgs.
09.	Remote Covers	Note Declared		9400	5 /per piece

Bill of Entry No. 4863893 dated 19.01.2018

Sr. No.	Description of the goods (as per Invoice)	Declared Unit (as per Invoice)	Declared Assessable Value (in Rs.)	Goods found during examination	Assessable Value arrived at on the basis of Market Survey/Chartered Engineer's Certificate (in Rs.)
1	Heat Sink	33000	0.05805	33,000	4 / per piece

			/per piece		
2	Ceramic Capacitor	359000	0.021285 /per piece	448500	0.65 / per piece
3	Resistors	98.68 GW Kgs./85.57 Kgs. NW/1562000 Pieces	80.625 / per kgs.	1616250	0.12996 / per piece
4	Electrolyte Capacitors (100uf to 470uf to 63v)	290000	0.0645/ per piece	546600	0.85 / per piece
5	Spare Part (PCB)	92.52 kgs. 11000	61.275 / per kgs.	11000	20./ per piece
6	Remote Control	11000	3.5475 / per pieces	11000	21 /per piece
7	Linear Output Transformer Cap (2.4) parts	11000	0.7776/ per piece	11000	51.984 /per piece
8	Mini Switching Transformer TAQ3	33000	0.3483/ per piece	11500	2.5/ per piece
9	Mini Tack Switch 0.5amp Audio Part	66000	0.1677/ per piece	77000	1.2996 / per piece
10	Zenner Diode	217000	0.02322/ per piece	286000	0.64 / per piece
11	Integrated Circuit IC (assorted)	49000	0.34185/ per piece	55105	15 / per piece
12	Transistor (3807,764,1015,5386,248 2) TV Part	135000	0.18705/ per piece	210000	0.5 / per piece
13	Mini Coil 2" (TV Part)	11000	0.7095/ per piece	14500	6.498 /per piece
14	Short Length Mini Wire l-6 cms (audio part)	23000	0.774/ per piece	46900	1.2996 /per piece
15	Short Length Mini Wire 10 cms (audio part)	62000	0.1548/ per piece	62000	1.2996 /per piece
16	Heat Shrink Circular Tubing/sleeves clear 3.0mm(pvc) (2185mtr)	11.25 Kgs	365.07/ per Kgs	13 Kgs.	779.76 /per kgs.
17	Unbranded Push Switch 5A china	11000	0.3483/ per piece	11000	1.5 /per piece
18	2 pin wire with connector 1.5 m	11000	0.774/ per piece	11000	2.5 /per piece
19	IR receiver 138m2	6000	0.17415/ per piece	11000	3.5 /per piece
20	Mini Metal crystal TV part	6000	0.1161/ per piece	11000	0.1299 Per/piece
21	Mini Screw 0.3mm (TV part)	37.45 Kgs.	70.95/ per kgs.	46.8 Kgs.	120 /per kgs.
22	AV socket (av3-8 (together) (electronic components)	88000	0.0645/ per piece	88000	4.5 /per piece
23	Potentiometer 3/6 pin tone	5000	104.49/ per Thousand piece	11000	6.498 Per piece
24	Saw filter GDR-SF38.9 h Electronic components	11000	0.06966/ per piece	11000	4 /per piece
25	CRT socket (unbranded)	122 KGS	45.15 / per kgs.	11000	7.7976 /per piece
26	AV tuner (TV part)	11000	1.677/ per piece	11000	25 /per piece
27	Spare Parts(assorted)	34 Kgs.	16.125/ per kgs.	44.5 kgs.	32.49 /kgs.
28	Connector pin	Undeclared		55130	0.9747

				/per piece
29	Fuses(T3-15a)	Undeclared	11000	0.7 /per piece

*** The Chartered Engineer in his Certificate informed that the evaluated value of the items viz. Heat Sink, Capacitors, Resistors, Diodes, Integrated Circuits, Transistors etc. are arrived on the basis of average price of different capacity of these items.

The market enquiry and CE Certificate are corresponds to each other and the value as evaluated by the Chartered Engineer in his CE Certificate dated 19.03.2018.

Classification

8. During the course of investigation, it further appears that the importer while filing Bill of Entry No. 4816161 dated 16.01.2018, has classified Roller Chain (for motor Cycle) at 73151100 with effective rate of duty BCD 10% and IGST 18% and miniature bulb and small bulb are classified at 85392930, however, it appears that both the items being motorcycle parts/accessories are rightly classifiable at CTH 87141090 with effective Customs duty of BCD 10% and IGST 28%. Further in respect of Bill of Entry No. 4863893 dated 19.01.2018, the item of import i.e. Remote control for TV appears to be rightly classifiable under CTH 85299090 with 10% BCD and 18% IGST and PCB (Printed Circuit Board) has been wrongly classified at 94059900 and it is appropriately classifiable at 85340000 with effective rate of duty BCD 0% and IGST 18%.

9. In view of the above discussion, it appears that the importer M/s. SBL Sales Agency, Delhi has mis-declared the quantum of goods imported, has grossly under-valued the value of the goods while filing the Bills of Entry and has not correctly classified the imported goods and thereby they intent to evade the payment of duty. Accordingly, the goods imported vide Bills of Entry No. 4816161 dated 16.01.2018 and 4863893 dated 19.01.2018 have been placed under seizure vide Seizure Memo dated 02.04.2018 and the goods were handed over to the Custodian viz. M/s. Arvind Joshi & Co., Mithi Rohar, Gandhidham for keeping the goods in safe custody vide Supartnama dated 02.04.2018.

10. During the course of investigation, it appears that the importer M/s. SBL Sales Agency, Delhi has mis-declared the goods with respect to its value and the quantity of import with intention to evade payment of duty. M/s. SBL Sales Agency, Delhi vide their letter dated 20.03.2018 has agreed that the value which is taken by the department is acceptable to them and they will pay the duty. Accordingly, the value declared by M/s. SBL Sales Agency appears to be liable for rejection under Rule 12 of Customs Valuation (Determination of Imported Goods) Rules, 2007 and the value appears to be re-determined on the basis of market survey/Chartered Engineers Certificate and acceptance of the importer under Rule 7 of Customs Valuation (Determination of Imported Goods) Rules, 2007.

Differential duty Calculation

11. In view of the above discussion, it appears that the goods i.e. re-determination of value of the goods, excess quantity found, re-classification of CTH etc. the differential duty calculation is as under :-

Bill of Entry No. 4826161 dated 16.01.2018

Sr. No.	Description of the goods (as per Invoice)	Appropriate Classification	Effective Rate of Duty	Declared AV	Re-determined value	Difference in AV	Difference in Duty
01.	USB/DVB Remote Control	85299090	10% 18%	192106.80	891000	698893.20	210744.26
02.	Linear Output Transformer (un Branded) Cap 2.4 Parts	85049010	10% 18%	10836.00	728000	717164.00	216253.63
03.	Cycle (of different Model)	87120010	30% 12%	29508.75	525000	495491.25	230938.56
04.	Miniature Bulb (Bulk packing) (motor cycle)	87141090	10% 28%	18382.50	1200000	1181617.50	488664.94
05.	Small Bulb (Scooter)	87141090	10% 28%	4644.00	250000	245356.00	101559.65
06.	Mini Plug (Bike Accessories)	85111000	7.5% 18%	56598.98	936000	879401.02	238453.98
07.	Starter Bendix (Motor Bike Accessories)	87141090	10% 28%	123087.50	1200000	1076912.50	447572.61
08.	Roller Chain for Motor Cycle	87141090	10% 28%	57544.05	604800	547255.95	231729.00
09.	PVC Remote Cover (undeclared)	39239090	10% 18%	0.00	47000	47000.00	14172.38
	Total			492708.58	6334800	5842091.42	2180089.01

Bill of Entry No. 4863893 dated 19.01.2018

Sr. No.	Description of the goods (as per Invoice)	Appropriate Classification	Effective Rate of Duty	Re-determined value	Difference in AV	Difference in Duty
1	Heat Sink	85299090	10% 18%	132000.00	130075.44	39222.95
2	Ceramic Capacitor	85299090	10% 18%	291525.00	283848.14	85591.57
3	Resistors	85332119	0% 18%	210047.85	202054.77	36369.86
4	Electrolyte Capacitors (100uf to 470uf to 63v)	85299090	10% 18%	464610.00	445818.00	134431.96
5	Spare Part (PCB)	85340000	0% 18%	220000.00	214304.47	90667.93
6	Remote Control	85299090	10% 18%	231000.00	191796.00	59025.38
7	Linear Output Transformer Cap (2.4) parts	85414090	0% 18%	571824.00	563270.40	101388.67
8	Mini Switching Transformer TAQ3	85299090	10% 18%	28750.00	17202.64	5187.28
9	Mini Tack Switch 0.5amp Audio Part	85299090	10% 18%	100069.20	88949.52	26821.84
10	Zinner Diode	85411000	0% 18%	183040.00	177977.82	32036.01
11	Integrated Circuit IC (assorted)	85423100	0% 18%	826575.00	809746.44	145754.36
12	Transistor (3807,764,1015,5386,2482) TV Part	85412900	0% 18%	105000.00	79630.80	14333.54
13	Mini Coil 2" (TV Part)	85299090	10% 18%	94221.00	86380.20	26047.09
14	Short Length Mini Wire l-6 cms (audio part)	85299090	10% 18%	60951.24	43066.44	12986.25
15	Short Length Mini Wire 10 cms (audio part)	85299090	10% 18%	80575.20	58880.16	17754.72
16	Heat Shrink Circular Tubing/sleeves clear 3.0mm(pvc) (2185mtr)	39172390	10% 18%	10136.88	6010.74	1812.48
17	Unbranded Push Switch 5A china	85369090	10% 18%	16500.00	12650.88	3814.75
18	2 pin wire with connector 1.5 m	85359090	7.5%	27500.00	18946.40	5137.41

			18%			
19	IR receiver 138m2	85299090	10% 18%	38500.00	37450.24	11292.75
20	Mini Metal crystal TV part	85299090	10% 18%	1428.90	729.06	219.84
21	Mini Screw 0.3mm (TV part)	73181190	10% 18%	5616.00	2946.56	888.51
22	AV socket (av3-8 (together) (electronic components)	85361090	10% 18%	396000.00	390297.60	117690.34
23	Potentiometer 3/6 pin tone	85334010	0% 18%	71478.00	70953.12	12771.56
24	Saw filter GDR-SF38.9 h Electronic components	85437099	7.5% 18%	44000.00	43230.18	11722.08
25	CRT socket (unbranded)	85366990	10% 18%	85773.60	80239.68	24195.47
26	AV tuner (TV part)	85169000	10% 18%	275000.00	256467.20	77335.12
27	Spare Parts(assorted)	85169000	10% 18%	1445.81	895.01	269.88
28	Connector pin	85366990	10% 18%	53735.21	53735.21	16203.32
29	Fuses(T3-15a)	85361090	10% 18%	7700.00	7700.00	2321.86
				4635002.89	4375253.12	1113294.77

12. It appears that the importer M/s. SBL Sales Agency, Delhi had mis-declared the value and quantity of the goods with intent to short payment of duty. The difference in assessable value of the goods arrived at Rs. 58,42,091.42 and Rs. 43,75,253.12 and resultant differential duty on account of such mis-declaration arrived at Rs. 21,80,089.01 and 11,13,294.77, respectively in respect of Bill of Entry No. 4826161 dated 16.01.2018 and 4862893 dated 19.01.2018.

13. It appears that the importer had under-valued and mis-declared the quantity of imported goods. Accordingly, the imported goods vide Bills of Entry No. 4826161 dated 16.01.2018 and 4862893 dated 19.01.2018, appear to be liable for confiscation under Section 111(m) of Customs Act, 1962 as it appears that the goods do not correspond with the entry made under this Act. The relevant provisions of Customs Act, 1962 are reproduced below :-

SECTION 111. Confiscation of improperly imported goods, etc. - The following goods brought from a place outside India shall be liable to confiscation: -

(m) ¹[any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 ²[in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54];

14. The act of omission and commission by M/s. SBL Sales Agency, Delhi rendering the goods liable for confiscation under section 111 (m) of Customs Act, 1962 and liable for penalty under section 112(a) of Customs Act, 1962. The relevant provisions of Section 112 of the Customs Act, 1962 is reproduced below :-

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

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

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty ⁴[not exceeding the value of the goods or five thousand rupees], whichever is the greater;

⁵[(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher :

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;]

⁶[(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty ⁷[not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;]

⁸[(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty ⁹[not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;]

⁸[(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty ¹⁰[not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest.]

15. Accordingly, it appears that the value of the imported goods vide Bill of Entry No. 4826161 dated 16.01.2018 and 4862893 dated 19.01.2018 is liable for rejection under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the same appears for re-determination as per the provisions of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

The relevant provisions of the Rule 12 reproduced below :-

12. Rejection of declared value. -

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

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

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

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

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

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

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

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

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

- (d) *the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;*
- (e) *the non declaration of parameters such as brand, grade, specifications that have relevance to value;*
- (f) *the fraudulent or manipulated documents.*

16. M/s. SBL Sales Agency, B-109, 1st Floor, Gali No. 4, Gokul Pur Village, Shahdara, Delhi - 110094 vide their letter dated 11.04.2018, has requested that they do not want any show cause notice and personal hearing and also they will not file any appeal against the order and requested to adjudicate the case on merit.

17. As regards to the infringement of Intellectual Property Right in respect of imported goods viz. remotes with logo, it is to submit that as per the provisions of Intellectual Property Right (Imported Goods) Enforcement Rules, 2007 letters were issued to them under Rule 7 of the IPR, 2007. M/s. Tata Sky Ltd., Mumbai vide their letter confirmed that the TV remotes with their logo are spurious/counterfeit and remotes are not authorized by or imported by them and such imports are counterfeit and amounts to falsification of trademark under section 102 and 104 of the Trade Marks Act, 1999. Accordingly, they are in the process of registering under the "Intellectual Property Rights (imported Goods) Enforcement Rules, 2007.

18. However, even after lapse of considerable time M/s. Tata Sky Ltd., Mumbai has not produced/submitted any document showing the proof of their registration with the department as required under the provisions of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007. The IPR Rules specifically provides the requirement for registration with the department to protect their IPR with such period as prescribed in the said rule. M/s. Tata Sky Ltd. has neither produced any document showing their registration with the department nor they sought request for extension for such registration before the Commissioner, as required under rule 7(4) of Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, accordingly, the goods may be released.

19. Further, M/s. Dish TV India Limited, Noida, vide their letter dated 19.03.2018 has informed that the mark Dish TV enjoys immense credibility and is renowned in the country. Accordingly, they expressed their willingness to join the proceedings in view of Notification No. 47/2017-Customs (N.T) dated 08.05.2017. They requested for certain information under Rule 9 of IPR and also requested to inform the bond amount. Accordingly, letter to M/s. Dish TV India Limited, Noida has been sent on 10.04.2018 and reply is awaited. No others have turned up for inspection.

20. M/s. Dish TV India Limited, Mumbai vide their letter dated 19.04.2018 had submitted document/bond/DD required for registration under IPR. The letter dated 19.04.2018, received through e-mail is forwarded to the AG Section of Customs, Kandla for further processes and registration.

It appears that the importer M/s. SBL Sales Agency, Delhi had imported 15000 pieces of DVB remotes with logo of DISH TV which found to be contain false trade Mark and trade description within the meaning of section 102 of Trade Marks Act, 1999 and clause (i) of Sub-section (1) of Section 2 of the Trade Marks Act, 1999, respectively. Therefore, it appears that M/s. SBL Sales Agency, Delhi has violated the said section. As per rule 6 of Intellectual Property Right (Imported Goods) Enforcement Rule, 2007, the said 15000 pieces of DVB

remote controls containing false trade mark/description are deemed to be prohibited within the meaning of Section 11 of Customs Act, 1962. Accordingly, 15000 pieces of DVB remotes with logo DISH TV are liable for confiscation under section 111(d) of Customs Act, 1962. As the goods are prohibited in nature, it appears that the said 15000 DVB remotes with DISH TV logo are required to be absolutely confiscated under section 111(d) of Customs Act, 1962. Accordingly, the differential duty liability under Section 17 is reduced to Rs.32,18,518/- on account of absolute confiscation of 15000 DVB remotes.

21. Accordingly, In view of the above stated facts, it appears that -

(i) the value of the imported goods vide Bills of Entry No. 4826161 dated 16.01.2018 and 4862893 dated 19.01.2018 is liable for rejection under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and the same appears for re-determination as per the provisions of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

(ii) the imported goods vide Bills of Entry No. 4826161 dated 16.01.2018 and 4862893 dated 19.01.2018, are liable for confiscation under Section 111(m) of Customs Act, 1962 as it appears that the goods do not correspond with the entry made under this Act.

(iii) the act of omission and commission by M/s. SBL Sales Agency, Delhi rendering the goods liable for confiscation under section 111 (m) of Customs Act, 1962, M/s. SBL Sales Agency, Delhi is liable for penalty under section 112(a) of Customs Act, 1962.

(iv) the 15000 pieces of DVB remotes with logo DISH TV are liable for absolute confiscation under section 111(d) of Customs Act, 1962 as the goods are prohibited in nature.

22. M/s. SBL Sales Agency, B-109, 1st Floor, Gali No.4, Gokul Pur Village, Shahdara, Delhi - 110094 vide their letter dated 11.04.2018, has requested that they do not want any show cause notice and personal hearing and also they will not file any appeal against the order and requested to adjudicate the case on merit.

23. As the importer M/s. SBL Sales Agency, B-109, 1st Floor, Gali No. 4, Gokul Pur Village, Shahdara, Delhi - 110094 have requested for waiver of Show Cause Notice and Personal hearing and accepted to pay the duty and have requested to adjudicate the case on merit, this instant case falling under the competency of Additional Commissioner has been transferred for adjudication purpose of the subject case matter.

DISCUSSION & FINDINGS:-

24. I have carefully gone through the entire records of the case. The importer vide letter dated 11.04.2018 has requested for waiver of Show Cause Notice and also Personal Hearing. Hence, I proceed to decide the matter on the basis of documentary evidences available on record.

25. I find that the following main issues are involved in the subject case matter , which are required to be decided-

(i) Whether the value of the imported goods vide Bills of Entry No. 4826161 dated 16.01.2018 and 4862893 dated 19.01.2018 is liable for rejection under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and requires to be re-determined as

per the provisions of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

(ii) Whether the imported goods vide Bills of Entry No. 4826161 dated 16.01.2018 and 4862893 dated 19.01.2018 are liable for confiscation under Section 111(m) of Customs Act, 1962 as it appears that the goods do not correspond with the entry made under this Act.

(iii) Whether for the act of omission and commission rendering the goods liable for confiscation under section 111 (m) of Customs Act, 1962, M/s. SBL Sales Agency, Delhi is liable for penalty under section 112(a) of Customs Act, 1962.

(iv) Whether the 15000 pieces of DVB remotes with logo DISH TV are liable for absolute confiscation under section 111(d) of Customs Act, 1962 as the goods are prohibited in nature.

26. I find from the available records that in the instant case the SIIB, Custom House, Kandla has proposed that the value of the imported goods vide Bill of Entry No. 4826161 dated 16.01.2018 and 4862893 dated 19.01.2018 is liable for rejection under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and requires to be re-determined as per the provisions of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

26.1 In regard to rejection of the declared value of the subject imported goods vide Bill of Entry No. 4826161 dated 16.01.2018 and 4862893 dated 19.01.2018, I refer to the provisions of Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

The relevant provisions of the Rule 12 are reproduced below :-

12. Rejection of declared value. -

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

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

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

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

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

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

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

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

- (c) *the sale involves special discounts limited to exclusive agents;*
- (d) *the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;*
- (e) *the non declaration of parameters such as brand, grade, specifications that have relevance to value;*
- (f) *the fraudulent or manipulated documents.*

26.2 On going through the records, I find that on investigation it has been observed that the importer i.e. M/s SBL Sales Agency while filing Bill of Entry No. 4816161 dated 16.01.2018, has classified Roller Chain (for motor Cycle) at 73151100 with effective rate of duty BCD 10% and IGST 18% and miniature bulb and small bulb are classified at 85392930, however, it is observed that both the items being motorcycle parts/accessories are rightly classifiable at CTH 87141090 with effective Customs duty of BCD 10% and IGST 28%. Further in respect of Bill of Entry No. 4863893 dated 19.01.2018, the item of import i.e. Remote control for TV is rightly classifiable under CTH 85299090 with 10% BCD and 18% IGST and PCB (Printed Circuit Board) has been wrongly classified at 94059900 whereas it is appropriately classifiable at 85340000 with effective rate of duty BCD 0% and IGST 18%.

26.3 It is observed that the importer M/s. SBL Sales Agency, Delhi has mis-declared the quantum of goods imported, has grossly under-valued the value of the goods while filing the Bills of Entry and has not correctly classified the imported goods and thereby they intent to evade the payment of duty. Accordingly, the goods imported vide Bills of Entry No. 4816161 dated 16.01.2018 and 4863893 dated 19.01.2018 have been placed under seizure vide Seizure Memo dated 02.04.2018 and the goods have been handed over to the Custodian viz. M/s. Arvind Joshi & Co., Mithi Rohar. Gandhidham for keeping the goods in safe custody vide Supartnama dated 02.04.2018.

26.4 I find that on investigation it is observed that the importer M/s. SBL Sales Agency, Delhi has mis-declared the goods with respect to its value and the quantity of import with intention to evade payment of duty. M/s. SBL Sales Agency, Delhi vide their letter dated 20.03.2018 has agreed that the value which is taken by the department is acceptable to them and they will pay the duty.

26.5 I find that the importer M/s. SBL Sales Agency, Delhi had mis-declared the value and quantity of the goods with intent to short payment of duty. The difference in assessable value of the goods arrived at Rs. 58,42,091.42 and Rs. 43,75,253.12 and resultant differential duty on account of such mis-declaration arrived at Rs. 21,80,089.01 and 11,13,294.77, respectively in respect of Bill of Entry No. 4826161 dated 16.01.2018 and 4862893 dated 19.01.2018. Accordingly, the value declared by M/s. SBL Sales Agency is liable for rejection under Rule 12 of Customs Valuation (Determination of Imported Goods) Rules, 2007 and the value is to be re-determined on the basis of market survey/Chartered Engineers Certificate and acceptance of the importer under Rule 7 of Customs Valuation (Determination of Imported Goods) Rules, 2007.

27. Coming to the proposal in the instant case for confiscation of imported goods vide Bills of Entry No. 4826161 dated 16.01.2018 and 4862893 dated 19.01.2018 under Section 111(m)

of Customs Act, 1962, firstly I refer to the provisions of Section 111(m) of the Customs Act, 1962.

SECTION 111. Confiscation of improperly imported goods, etc. - *The following goods brought from a place outside India shall be liable to confiscation: -*

(m) ¹[any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 ²[in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54];

27.1 I find that Section 111(m) of the Customs Act, 1962 provides that any goods which do not correspond in respect of value with the entry made under this Act shall be liable to confiscation. In this case M/s SBL Sales Agency, Delhi has imported the subject goods by wilfully resorting to mis-declaration and undervaluation, therefore, the goods imported vide Bills of Entry No. 4826161 dated 16.01.2018 and 4862893 dated 19.01.2018 are liable for confiscation under section 111(m) of the Customs Act, 1962, in as much as, the value declared in the Bill of Entry was not true and correct with an intention to evade duty of Customs. I 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. Mis-declaration of the value of the goods is one of the modality of claiming less payment of duty. In cases where value of goods is not correctly declared for some purpose, then it would amount to violation of the conditions for import of the goods and it would certainly amount to illegal/ unauthorized and against the statute.

27.2 There is violation of provisions of section 111(m) of Customs Act, 1962 since there was a mis-declaration and undervaluation of the subject goods, therefore, SBL Sales Agency had acted deliberately cannot be ruled out for the reason that they have mis-declared and undervalued the subject goods accordingly, confiscation of the goods under the section 111(m) of the Act is justified, therefore, imposition of redemption fine is also warranted under law and therefore M/s. SBL Sales Agency, B-109, 1st Floor, Gali No. 4, Gokul Pur Village, Shahdara, Delhi - 110094 is liable for redemption fine under section 125 in lieu of confiscation.

27.3 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. SBL Sales Agency, B-109, 1st Floor, Gali No. 4, Gokul Pur Village, Shahdara, Delhi - 110094 is liable for redemption fine under Section 125 of the Customs Act, 1962 in lieu of confiscation.

28. There is a proposal of SIIB, Custom House, Kandla for imposition of penalty under Section 112(a) of the Customs Act, 1962 on M/s. SBL Sales Agency, B-109, 1st Floor, Gali No. 4, Gokul Pur Village, Shahdara, Delhi - 110094.

In this connection, I find that Section 112(a) of the Customs Act, 1962, stipulates that any person, who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act is liable to penalty as prescribed under the said Section.

I find that for imposition of penalty under Section 112(a), it is necessary to bring on records the reason that there is omission of the Act and such omission renders the goods liable for confiscation or abets the doing or omission of such an act or any provision of the Act or Rule are sufficient cause to impose the penalty on person.

In the instant case, on the basis of evidence available on the record, it is already concluded that M/s SBL Sales Agency have wilfully and fraudulently suppressed the value of the subject goods imported with sole intention to evade payment of duty of customs and rendered the goods liable for confiscation under Section 111(m) of the Customs Act, 1962. The fact of undervaluation of the impugned goods has come to light only after physical examination of the goods and after investigation of the case which was unearthed by the officers of the department. Had it been unnoticed by the officers, then the same would not have come to light. Accordingly, the goods imported vide Bills of Entry No. 4816161 dated 16.01.2018 and 4863893 dated 19.01.2018 have been placed under seizure vide Seizure Memo dated 02.04.2018 and the goods were handed over to the Custodian viz. M/s. Arvind Joshi & Co., Mithi Rohar. Gandhidham for keeping the goods in safe custody vide Supartnama dated 02.04.2018.

I find that in such cases, *mens rea* is not required for imposition of penalty. I find that it is a settled law that penalty is imposable under Section 112 of the Customs Act, 1962 merely for filing incorrect declaration. In other words, there is no requirement of proving *mens rea* in such case. Hon'ble Supreme Court has in the case of UOI Vs Dharmendra Textile Processors-2008(231) ELT 3(SC) observed that *mens rea* is not an essential ingredient in a civil liability. Also Hon'ble Apex Court in case of Chairman SEBI Vs Shriram Mutual Fund 2006(5) SCC 361 has held that :

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

As I have already held that the act of omission and commission by M/s. P.K. International has made the goods liable for confiscation under section 111 (m) of Customs Act, 1962 consequently, I hold that penalty under Section 112(a) of the Customs Act, 1962 is attracted on M/s. SBL Sales Agency, B-109, 1st Floor, Gali No. 4, Gokul Pur Village, Shahdara, Delhi - 110094.

29. Now I proceed further to determine the issue of absolute confiscation of 15000 pieces of DVB remotes with logo DISH TV under section 111(d) of Customs Act, 1962 as the goods are prohibited in nature.

In this regard, I find that the Section 111(d) of the Customs Act, 1962 stipulates that any goods which are imported or are attempted to be imported or are brought within the Indian Customs waters for the purpose of being imported contrary to any prohibition imposed by or under this Act or any other law for the time being in force shall be liable for confiscation. In the instant case, the importer M/s. SBL Sales Agency, Delhi had imported 15000 pieces of DVB remotes with logo of DISH TV which found to contain false trade Mark and trade description within the meaning of section 102 of Trade Marks Act, 1999 and clause (i) of Sub-section (1) of Section 2 of the Trade Marks Act, 1999, respectively. Therefore, it is observed that M/s. SBL Sales Agency, Delhi has violated the said section. As per rule 6 of Intellectual Property Right (Imported Goods) Enforcement Rule, 2007, the said 15000 pieces of DVB remote controls containing false trade mark/description are deemed to be prohibited within the meaning of Section 11 of Customs Act, 1962. Accordingly, 15000 pieces of DVB remotes with logo DISH TV are liable for confiscation under section 111(d) of Customs Act, 1962. As the goods are prohibited in nature, it is observed that the said 15000 DVB remotes with DISH TV logo amounting to Rs.2,25,000/-are required to be absolutely confiscated under section 111(d) of Customs Act, 1962. Accordingly, the differential duty liability under Section 17 is reduced to Rs.32,18,518/-on account of absolute confiscation of 15000 DVB remotes. Thus I held that said 15000 DVB remotes with DISH TV logo are absolutely confiscated under section 111(d) of Customs Act, 1962.

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

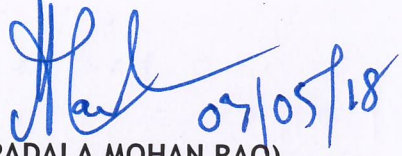
ORDER

(i) I reject the value of the imported goods vide Bill of Entry No. 4826161 dated 16.01.2018 and 4862893 dated 19.01.2018 under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and order that same shall be re-determined as per the provisions of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 on

the basis of market survey/Chartered Engineers Certificate and acceptance of the importer under Rule 7 of Customs Valuation (Determination of Imported Goods) Rules, 2007.

(ii) I order that the goods imported vide Bills of Entry No. 4826161 dated 16.01.2018 and 4862893 dated 19.01.2018 are liable for confiscation under Section 111(m) of Customs Act, 1962 as the goods do not correspond with the entry made under the Customs Act, 1962. I further order that the 15000 pieces of DVB remotes with logo DISH TV are absolutely confiscated under section 111(d) of Customs Act, 1962 as the goods are prohibited in nature. However, I give an option to the importer M/s. SBL Sales Agency, B-109, 1st Floor, Gali No. 4, Gokul Pur Village, Shahdara, Delhi - 110094 to redeem the rest of the goods on payment of redemption fine of Rs.20,00,000/- (Rupees Twenty Lakhs only) under Section 125 of the Customs Act, 1962.

(iii) I impose penalty of Rs.3,00,000/- (Rupees Three Lakhs only) on M/s. SBL Sales Agency, B-109, 1st Floor, Gali No. 4, Gokul Pur Village, Shahdara, Delhi - 110094 under section 112(a) of Customs Act, 1962.


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

F. No. S/10-36/ADJ/ADC/SBL Sales/2018-19

Dated 03.05.2018

BY REGISTERED POST/HAND DELIVERY

To,

M/s. SBL Sales Agency,
B-109, 1st Floor, Gali No. 4,
Gokul Pur Village, Shahdara,
Delhi - 110094

Copy to:

1. The Deputy Commissioner (SIIB), Custom House, Kandla w.r.t his letter F.No. S/43-10/SIIB/SBL/2017-18 dated 01.05.2018 for information and necessary action, if any, in the matter at his end please.
2. The Deputy/Assistant Commissioner (RRA), Custom House, Kandla.
3. The Deputy/Assistant Commissioner (Recovery), Custom House, Kandla.
4. The Deputy/ Assistant Commissioner (Gr.V), Custom House, Kandla
5. Guard File.

