



**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/10-46/ADJ/ADC/Sita Ram/2015-16
B	आदेश में मूल सं./ Order-in-Original No.	KDL/ADC/UBR/01/2017-18
C	पारित कर्ता/ Passed by	SH. U.B. RAKHE, ADDITIONAL COMMISSIONER
D	आदेश की दिनांक/Date of order	20/04/2017
E	जारी करने की दिनांक/Date of issue	21/04/2017
F	एस.सी.एन. सं. एवं दिनांक/ SCN No. & Date	VIII/26/36/2013-DRI VIC, Dated 29/09/2014
G	नोटीसी/ पार्टी Noticee/Party	M/s Sita Ram & Company (P) Ltd, 73-9/2 & 10/2, Swarn Park, Main Rohtak Road, Mundka, Nangloi, Delhi-110041 and others.

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 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."**

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।
Appeal shall be filed within sixty days from the date of communication of this order.
4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 2/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-
Appeal should be accompanied by a fee of Rs. 2/- under Court Fee Act it must accompanied by -
 - (i) उक्त अपील की एक प्रति और
A copy of the appeal, and
 - (ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं.-6 में निर्धारित 2/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।
This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 2/- (Rupees Two only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.
5. अपील ज्ञापन के साथ ड्यूटी/ 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 7.5% भुगतान करना होगा।
An appeal against this order shall lie before the Appellate Authority 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

1.0 M/s Sita Ram & Company (P) Ltd, 73-9/2 & 10/2, Swarn Park, Main Rohtak Road, Mundka, Nangloi, Delhi-110041 (hereinafter referred to as "the noticee No.1"), holders of IEC No.596055889, had imported various types of timber at the ports of Kandla, Mundra and ICD Tughlakabad, in log, rough square and sawn forms and classified under Chapter Heading 44 of Customs Tariff Act (CTA), 1975. Timber in logs and rough square forms falling under Chapter Sub-heading 4403 of CTA, 1975 are charged Basic Customs Duty (BCD) at the rate of 5% Adv and the timber in sawn form falling under Chapter Sub-heading 4407 of CTA, 1975 attracts BCD of 10% Adv.

1.2 During the course of investigation of cases against various importers for undervaluation of timber imported from various countries, evidences of undervaluation in timber imports made by the importer were found in the emails of India based middleman/ supplier Shri Avinash Jindal. Based on the said evidences, search was conducted at the office premises of the noticee No.1 as well as the residential premises of its Director, viz., Shri Sita Ram Singhal (hereinafter referred to as noticee No.2) on 19.12.2013, and certain relevant documents including electronic media were recovered under different Panchanamas.

1.3 Shri Avinash Jindal, the supplier of timber, in his statement dated 05.09.2011 *inter-alia*, deposed that the page Nos.365, 367, 369, 371, 377, 379, 381, 383, 391, 393 and 395 of the made up file recovered from his residence contain details of timber sold to various importers through Amitabh and the rates contained therein are the actual rates at which he sold the material to Amitabh; that Page No.387 of made-up file recovered from his residence contains details of amounts at which material was sold to Amitabh and documents raised on parties as indicated by latter; that the invoices for all the above parties have been raised for much lower values by Amitabh in order to pay lesser duties of Customs; that in the copies of mails submitted by him, there are mails sent to various importers with account details of material supplied and dues pending; that there are also mails sent to importers with offers of various materials and mails to importers containing similar details are also available in these mails.

1.4 The name "Amitabh" referred to by supplier Shri Avinash Jindal in his statement as mentioned above is that of overseas supplier Shri Amitabh Saboo who runs a company by name M/s. Vinayak Impex, FZE, Dubai and who is also engaged in the sale of timber of various countries to importers in India.

1.5 Scrutiny of the copies of emails submitted by supplier Shri Avinash Jindal revealed the following facts:

- i. In page nos.26 and 27 of the copies of sent emails, an email from id akinternational12@yahoo.co.in was sent to email id sudhir48383@vsnl.com with the attachment containing 3 containers of **Tanzanian timber** with quantities, rates, values, invoice value and balance amount, etc., mentioned therein. The rates and values shown with the symbol "\$" appeared to be in US dollars with the highest rate shown in the attachment was **\$801**.
- ii. In page nos.53 and 54 of copies of sent emails, another email involving the same ids as seen in point (i.) above, with attachment containing account details of various containers of **Tanzanian timber**. Here, some of the containers were priced as high as **\$841**. The same details with details of few more containers of Tanzanian timber could be seen in the email exchanged between the same email ids at page nos.73 and 74 of the copies of sent emails.
- iii. In page nos.105 and 106 of copies of sent emails, an email between the same ids as discussed above could be seen. Here, the attachment contains a table of 9 containers details of **Sudan timber** with rates, values etc mentioned therein. The rates seen were **between \$481 and \$501**. The details also contain a column with heading "AVG".

1.6 Scrutiny of the made-up file recovered from the residence of supplier Shri Avinash Jindal revealed the following:

- i. At page no.387, there are names of various parties including the name "Sitaram A/C". Against the names there are figures appearing to be amounts due from them.
- ii. At page no.391, under the heading "SITARAM (DELHI)" various details appearing to be containers of timber with quantities and rates and values could be seen.

1.7 Shri Avinash Jindal, in his statement dated 12.12.2013, *inter-alia*, tendered that as regards to the qualities of timber of countries other than Tanzania are concerned, such as Sudan, Ghana etc., the quality is broadly identified by the average cubic feet yield of the timber per log/ piece; that the container wise details of the packing lists received from the suppliers show a separate column with heading - Average cft/ avgcft/ Avg, which is the indicator of the quality of timber and the higher the average cubic feet (cft) the better the quality; that in the absence of the details of the average cft, the same is arrived at on the basis of a formula which is as follows: the total quantity in CBM is multiplied by the number 35.315 and the resultant answer is then divided by

the total number of pieces/ logs of the container; that on an average, there is a difference of \$10 for variation of 0.2 to 0.3 cubic feet in the timber; that an email with attachment of container wise account of Tanzanian timber supplied to importer Sitaram and Company of Delhi could be seen in page nos.73 & 74 of the copies of his sent mails with actual rates/ values which are much higher than the values declared at the time of import mentioned therein; that another email with attachment of container wise account of supply of Sudan timber to the same importer could be seen at page nos.105 and 106 of the sent mails; that the details of container numbers, quantities and actual rates/ values (in USD) could be seen here; that the rates/ values declared at the time of import for the purpose of paying duties are much lower which was done to avoid paying higher duties.

1.8 Scrutiny of the documents submitted by the importer revealed the following facts:

- i. The importer trades in various types of imported timber of countries, such as, New Zealand, Ivory Coast, Benin, Ghana, Sudan, Panama, Costa Rica, etc.
- ii. The unit of measurement is Cubic Meters (CBM) and the currency of purchase is US Dollars (USD).
- iii. The imports are mostly on C&F basis with the average rate per CBM being \$300 to \$400.
- iv. There were a few high sea sales and purchases.

1.9 Shri Sita Ram Singhal, Director, (noticee No.2) in his statement dated 11.09.2014, *inter-alia*, tendered that since 1997, they have been dealing in trading of imported timber; that he looks after the entire business of the company including the purchase and sale; that he and his son do the negotiations with the suppliers for imported timber which are made over phone and sometimes through emails; that presently the email id being used for the business purpose is sudhir.singhal@sitaramco.com and previously the email id was sudhir48383@vsnl.com was used for the business purpose; that the payments to suppliers were made through Letter of Credit (LC) and Documents against Payment (DP); that as regards to qualities of Tanzanian timber, the qualities are many with the best quality timber being that of 8 inch and above width timber with followed by the quality of general silli (majority below 8 inch width), tuckda/ tukda (also shown as 3'-6') recognised by length of below 6 feet, 1.5" & 2" quality identified by its thickness, OT or outgrows (also called as commercial), 1", 0.5", repla, a type of material also sometimes referred to as tukda but similar to the lower quality material of 1" and 0.5"; that the qualities of timber of other countries are identified by the average cubic feet (CFT) yield of the pieces/ logs of a container; that the higher the average cft, the better the

quality; that the average cft is calculated on the basis of a formula which is like this – total quantity of the material in CBM is multiplied by the number 35.315 and the resultant number is divided by the total number of pieces/logs of that container; that as regards to page nos.26 & 27, 73 & 74 and 105 & 106 of the copies of sent emails of Avinash Jindal, page nos.26 and 27 is an email with attachment of 3 containers account of Tanzanian timber bought by them from supplier Shri Amitabh Saboo of M/s Vinayak Impex, Dubai, which was received from Shri Avinash Jindal; that the attachment at page No.26 contains the details of container numbers, quantities, rate per CBM in US dollars and total value; that an email again of Shri Avinash, with attachment of container wise account of Tanzanian timber supplied to them by M/s Vinayak Impex could be seen in page nos.73 & 74 of the mails with actual rates/values and other details mentioned therein; that another email with attachment of container wise account of supply of Sudan timber could be seen at page Nos.105 and 106 of the sent emails; that the details of container numbers, quantities and actual rates/ values (in USD) could be seen here; that the rates/ values declared in the import documents in these cases were lower than the actual rates seen in the above documents shown to him; that he agreed to discharge the differential duties; that their imports of Sudan and Tanzania were very less and done mostly about 5 to 6 years ago and as agreed above, promised to discharge the differential duties.

10) From the analysis of the documents recovered/ submitted, and the depositions of the importer and the supplier, the following was revealed:

- i. The importer had been importing timber from various countries of Africa, Latin America and Europe etc. with the rates per CBM mostly declared at around \$300 to \$400 US dollars.
- ii. On the basis of the quality in the form of the average cubic feet yield of timber imported in logs and rough square forms, it was observed that the importer has imported timber of different qualities for which the declared rates per CBM have been more or less same with no significant variations in rates between low and high qualities. As deposed by the importer as well as the supplier, the higher the average cubic feet of the timber, the better the quality. Declaring uniform rates for all qualities appears to indicate that the declared rates were not true rates/values which were purportedly done to evade payment of appropriate duties. The evidences in respect of a few consignments discussed in the succeeding paragraphs appear to amply demonstrate this fact of rate suppression in the imports made by the importer.
- iii. In the copies of sent emails of supplier Shri Avinash Jindal, various containers of timber were imported by the notice No.1 at the rates (as

high as \$841 in a few cases) and values indicated therein. The email id to which these emails were sent by Shri Avinash Jindal belongs to the noticee(s) as the same email id was used by them during the period, as per the deposition of Shri Sita Ram Singhal, Director of the importing company. On the basis of the container numbers and other details, the containers of Sudanese timber, as seen in page nos.105 and 106 of copies of sent emails of Shri Avinash Jindal was imported vide Bill of Entry No.142058 dated 1.10.2009, at Mundra port. The rates declared in the import documents were found to be much lesser than the actual rates seen in the above email at page nos.105 and 106. In their depositions, the noticee No.2 and supplier Shri Avinash Jindal had also admitted to declaring values lesser than the actual in the import documents.

- iv. In the documents of the made-up file recovered from the residence of supplier Shri Avinash Jindal at page Nos.387, the name of the importer could also be seen. Page No.391 of the same made-up file also shows the heading "SITARAM (DELHI)" with details of containers of material with quantity and rate and values seen therein. These are the same details as seen in page nos.53 and 54 & 73 and 74 of the copies of sent emails of Shri Avinash Jindal discussed above. As deposed by Shri Avinash Jindal, these details are the material sold to the noticee No.1 through another supplier Shri Amitabh Saboo, who is running the company Vinayak Impex from Dubai.
- v. The qualities of timber of countries other than Tanzania, which come in logs or rough square forms, are broadly identified on the basis of the average cubic feet (CFT) yield from a log. In the documents as seen in the files recovered/ submitted, apart from the details of container numbers, quantity and no. of pieces, there is a column showing the average CFT. In the absence of the details of average CFT, as stated by the supplier Shri Avinash Jindal and the noticee No.2, the same can be ascertained on the basis of a formula, if the details of quantity in CBM and the number of pieces/ logs are given. The formula for arriving at the average cubic feet of a log is: - Total quantity in CBM multiplied by 35.315 and the resultant product is then divided by the total number of pieces/logs. The higher the average in CFT, the better the quality and hence, higher the price. This could be seen in the evidences found and some of which have been discussed above in respect of the imports made by the importer. This formula is used for the timber imported from countries such as Sudan, Ghana, Ivory Coast, Benin, Panama and Costa Rica. For ascertaining the quality of timber imported (in cases where the same were not mentioned in the packing lists) by the importer from these

countries for the purpose of determining the rates, this formula has been adopted. It was also observed in the evidences that the variation in the average CFT by about 0.2 cft to 0.3 cft results in the rate change by \$10.

1.11 From the above, it appears that the noticee No.1 has imported timber from various countries at grossly undervalued rates in order to escape from paying higher duties of Customs. Various evidences in the form of documents recovered from the residential premises of supplier Shri Avinash Jindal and hard copies of sent emails submitted by him, clearly establish the fact that the timber imported by the noticee No.1 was not on true transaction value basis. The fact of undervaluation was also admitted by the noticee No.2 in his statement. Taking advantage of the fact that it is difficult for a non-technical person to identify the different qualities of timber since it is a natural product coming in various sizes and forms, it appeared that the importer has resorted to gross undervaluation in order to evade payment of appropriate duties of Customs.

1.12 As per section 14(1) of the Customs Act, 1962 read with rule 3(1) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the value of the imported goods shall be the transaction value of such goods, that is the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation. In the instant case, the value declared at the time of import was not the true transaction value as the documents and the depositions referred to in the foregoing paragraphs indicated that the actual transaction value of the timber imported was much higher than that declared. Hence, the value declared in the import documents was liable for rejection as per rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 as that value does not constitute the correct transaction value of the goods. The values as found in the documents recovered during search operations and those submitted at the time of the depositions by the persons concerned, are true values and constitute the correct transaction value of the timber and the same is to be adopted for the purpose of payment of Customs duties.

1.13 In the cases where direct evidence of the actual value is available (as per Annexure-C.1 in respect of imports at the port of Mundra) the same can be considered as true transaction value as required under section 14(1) read with rule 3(1) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The evidences were linked to the respective Bills of Entry on the basis of the container numbers, quantities and sometimes also with the number of pieces in a container.

1.14 In other cases, in respect of those Bills of Entry, other than those, where the direct evidences are available, the values are required to be arrived at by resorting to the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Rule 3 cannot be considered in the absence of true transaction value as in the present case, the values that were declared by the importer were suppressed values. Hence, as required under rule 3(ii) of the above mentioned Rules the valuation of the imported goods is being determined proceeding sequentially through rules 4 to 9.

1.15 In respect of the Bills of Entry as shown in the worksheets of Annexures-C.2, D.1 and E.1 for differential duty calculations in respect of imports at the ports of Mundra, Kandla and ICD Tughlakabad respectively, recourse to rule 9 of Valuation Rules, 2007, may be taken in view of the non-applicability of the other rules for the reasons discussed for each rule. Since the comparison of the price data for determination of value could not be made due to the variations in aspects, like, quantity, grade, etc, of the timber imported, determination of value of the subject imported goods cannot be done under rule 4 & 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Similarly, in absence of details relating to the prices at which the goods were sold in the highest aggregate quantity and details of cost structure, the value of the goods cannot be determined under rule 7 & 8 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. By adopting rule 9 of the aforesaid Rules, the value as available in the documents recovered/ submitted and corroborated by the concerned persons as well as others, can be taken as the price determined using the reasonable means consistent with the principles of general provisions of these rules and based on the data available in India read with sub section (1) of section 14 of Customs Act, 1962. Further, this determination is not based on any of the provisions mentioned in rule 9(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The quality of timber other than the Tanzanian sawn timber is measured in terms of the average cubic feet (cft) of a log/piece of the entire consignment or container calculated on the basis of the formula - quantity in CBM multiplied by the number 35.315 and then divided by the number of logs/pieces. Therefore, the average cubic feet is the basis for arriving at the transaction values of the imports of timber as detailed in the Annexures-C.2, D.1 and E.1 to the notice. A separate column showing the average cft of the import under each Bill of Entry can be seen in the above Annexures. The values of substantially the same average cft of the evidences found in contemporaneous imports of the importer as well as others in respect of imports from Sudan, Ghana, Ivory Coast, Benin, Panama and Costa Rica were adopted for determining the transaction values under rule 9. In case the

same average cft was not found, the rate was arrived at on the basis of the finding as discussed in the foregoing paras that the rate varies by \$10 for variation of 0.2 to 0.3 in the average cft.

1.16 In view of the above, it appeared that the noticee is liable to pay the duties of Customs, short paid on the import of timber from various countries. As per the evidences found in various documents, the differential duty calculations in respect of those Bills of Entry in respect of which the evidences are relatable have been made as per worksheet in **Annexure-C.1** (for imports at the port of Mundra). For other imports, the rates were determined on the basis of contemporaneous imports of the noticee No.1 (*imports for which the evidences were found and related to Bills of Entry as discussed in Annexures-C.1 referred above*) as well as other importers similarly charged with undervaluation in timber imports (*on the basis of evidences found in the copies of received and sent emails of supplier Avinash Jindal, hard disk recovered from the premises of supplier Rajendra Agarwal, copies of received emails of Shri Shiuprasad Attal, employee of M/s Shree Radhe Impex and hard disks of importer M/s Shree Laxmi Impex which were also corroborated by the persons concerned*) by taking recourse to the provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. An example of how rates are arrived at under rule 9 of the Valuation Rules could be seen in the import of timber from Sudan made vide Bill of Entry No.142059 dated 1.10.2009, at Mundra Port. The quality in the form of average cubic feet of this consignment was 3.73 cft. During the same period, in the noticee's own case, there is an import of another lot of Sudanese timber at the same port vide Bill of Entry No.142058 dated 1.10.2009 (discussed in duty calculation worksheet of Annexure-C.1 to the notice). In this import for which evidence of actual rates were found, there is one container whose average cubic feet is 3.76 which is almost identical to the average cubic feet of the above import. Therefore, the rate/value of this particular container which is of identical quality, from the same country and contemporaneous to the import made at same port is adopted for arriving at the rate/ value as per rule 9 of the Valuation Rules, 2007. Likewise, the rates/ values for other imports were arrived at under rule 9 of the valuation rules on the basis of the contemporaneous imports of the importer as well as others (discussed in the duty calculation worksheets of Annexures-C.2, D.1& E.1 to the notice).

1.17 In view of the above, the duties short paid are calculated, Bill of Entry wise, as per Annexure-C.1 for bills of entry, where the true transaction values are re-determined as per evidences available and Annexures-C.2, D.1 and E.1 for duty payable for the values re-determined as per rule 3(1) and rule

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

1.18 The contemporaneous values adopted for determining the values as per rule 9 of the Valuation Rules have been taken on the basis of the evidences found in respect of the consignments of similar quality of timber imported by the importer as well as others. In these evidences, it was found that the actual values were either given for each container in the packing list/summary chart separately or were consolidated with one value/ rate for the entire list consisting of a group of containers. Therefore, for the sake of uniformity, the quality in the form of average CFT for each import, where the transaction values are determined as per the valuation Rules, was averaged and the evidences of contemporary values/ rates either of one container or of a group of containers, are adopted accordingly. Only those evidences where the average CFT is nearest and contemporary to the average CFT of the import is adopted for determining the value. In case no such nearest average is found, the value is arrived at by considering \$10 addition or deduction for each 0.2 to 0.3 cft variation in average CFT of the contemporary evidence.

1.19 The contemporary values/ rates adopted from the evidences found in respect of imports of the importer as well as others, for determining the transaction values as per rule 9 of the Valuation Rules, 2007, (as detailed in the worksheets of duty calculations referred above), have been found to be consistent throughout the period of demand with no abnormal fluctuations, tending to reinforce the authenticity of the evidences. In contrast, the values/ rates declared at the time of import have been found to be standardized values/ rates irrespective of the type/ quality of timber. This indicates that the rates/values declared are not the true transaction values as it appears that it was done solely for the purpose of escaping from payment of higher Customs duties.

1.20 From the above, it appeared that:-

- a. The noticee No.1 had deliberately undervalued the timber imported from various countries in order to evade payment of Customs Duties to the tune of **Rs.8,23,112/-**, **Rs.26,67,980/-** and **Rs.38,012/-** in respect of imports made at the ports of Mundra, Kandla and ICD Tughlakabad respectively (as detailed in Annexures- C.1, C.2, D.1 & E.1 to the notice). The Noticee No.1 had wilfully and fraudulently suppressed the values of the timber imported by them in order to evade the payment of duties. The fact of values of the timber imported having been suppressed had come to notice only upon search, seizure and investigation by the department.

Hence, this appeared to be a fit case for invoking the provisions under section 28(4) [erstwhile proviso to section 28(1)] of the Customs Act, 1962, for demanding the differential duties amounting to **Rs.35,29,104/-** for the extended period. Further, they also appeared to be liable to pay interest under section 28AA [erstwhile section 28AB] of the Customs Act, 1962.

- b. The timber imported was also liable for confiscation under section 111(m) of the Customs Act, 1962, inasmuch as the value declared in the import documents was not true and correct (as detailed in Annexures- C.1, C.2, D.1 & E.1 to the notice).
- c. For their acts of omissions and commissions in the matter of suppression of values for evading customs duties, the noticee is also liable for penalties under section 112(a) and under section 114A of the Customs Act, 1962.
- d. The noticee No.2 was the main person in this whole episode of undervaluation as he was the one who had negotiated the price with the suppliers over phone and by email with the help of his son and who was involved in the making of the invoices at suppressed rates in order to escape from paying higher duties. Therefore, the noticee No.2 is liable for penalty under section 112(a)/114AA of Customs Act, 1962.

1.21 In view of the above, the noticee(s) had been called upon to show cause, vide Show Cause Notice F. No.VIII/26/36/2013-DRI VIC dated 29.09.2014:

A. For the imports at the port of Mundra

- 1) to show cause to the Joint/Additional Commissioner of Customs, Mundra, as to why:
 - a. The assessable values declared in the Bills of Entry at the time of import of timber at the port of Mundra (as detailed in the Annexures-C.1 & C.2 to the notice) should not be rejected under rule 12 read with rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, and section 14(1) of the Customs Act, 1962, for the imports that were made during the period from October 2009 to July 2011;
 - b. The assessable values should not be re-determined as per the values found in the various documents/ records and depositions and as arrived at, as detailed in the Annexures-C.1 and C.2 to the notice, as per section 14(1) of the Customs Act, 1962, read with rule 3(1) and rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, as the case may be, for the imports that were made during the period from October 2009 onwards;

- c. The differential duty of **Rs.8,23,112/-** as detailed in Annexures-C.1 and C.2 to the notice should not be demanded from them under section 28(4) [erstwhile proviso to section 28(1)] of the Customs Act, 1962;
- d. Interest on the differential duties should not be demanded from them under section 28AA [erstwhile section 28AB] of the Customs Act, 1962;
- e. The goods of a value of **Rs.3,13,22,258/-** imported against the various Bills of Entry as detailed in Annexures-C.1 and C.2 to the notice should not be held liable for confiscation under section 111(m) of the Customs Act, 1962;
- f. Penalties should not be imposed on them under section 112(a)/114A of the Customs Act, 1962; and

II) Shri Sita Ram Singhal was also required to show cause to the Joint/Additional Commissioner of Customs, Mundra as to why penalties under section 112(a) and section 114AA of the Customs Act, 1962, should not be imposed on him for his omissions and commissions, as discussed above.

B. For the imports at the port of Kandla

- I) to show cause to the Joint/Additional Commissioner of Customs, Kandla, as to why:
 - a. The assessable values declared in the Bills of Entry at the time of import of timber at the port of Kandla (as detailed in the Annexures-D.1 to the notice) should not be rejected under rule 12 read with rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, and section 14(1) of the Customs Act, 1962, for the imports that were made during the period from October 2009 to July 2011;
 - b. The assessable values should not be re-determined as per the values found in the various documents/records and depositions and as arrived at, as detailed in the Annexures-D.1 to the notice, as per section 14(1) of the Customs Act, 1962 read with rule 3(1) and rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, as the case maybe, for the imports that were made during the period from October 2009 onwards;
 - c. The differential duties of **Rs.26,67,980/-** as detailed in Annexures-D.1 to the notice should not be demanded from them under section 28(4) [erstwhile proviso to section 28(1)] of the Customs Act, 1962;
 - d. Interest on the differential duties should not be demanded from them under section 28AA [erstwhile section 28AB] of the Customs Act, 1962;
 - e. The goods of a value of **Rs.12,37,32,853/-** imported against the various Bills of Entry as detailed in Annexure- D.1 to the notice should not be

held liable for confiscation under section 111(m) of the Customs Act, 1962 ;

- f. Penalties should not be imposed on them under section 112(a)/114A of the Customs Act, 1962; and

II) Shri Sita Ram Singhal was also required to show cause to the Joint/Additional Commissioner of Customs, Kandla as to why penalties under section 112(a) and section 114AA of the Customs Act, 1962 should not be imposed on him for his omissions and commissions, as discussed above.

C. For the imports at ICD, Tughlakabad

I) to show cause to the Joint/Additional Commissioner of Customs, ICD Tughlakabad, as to why:

- a. The assessable values declared in the Bills of Entry at the time of import of timber (as detailed in the Annexure-E.1 to the notice) should not be rejected under rule 12 read with rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and section 14(1) of the Customs Act, 1962, for the imports that were made during the period from 5th October 2009 to 3rd November 2009;
- b. The assessable values should not be re-determined as per the values found in the various documents/records and depositions and as arrived at, as detailed in the Annexure-E.1 to the notice, as per section 14(1) of the Customs Act, 1962, read with rule 3(1) and rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, as the case maybe, for the imports that were made during the period from 5th October 2009 onwards;
- c. The differential duties of **Rs.38,012/-** as detailed in Annexure-E.1 to the notice should not be demanded from them under section 28(4) [erstwhile proviso to section 28(1)] of the Customs Act, 1962;
- d. Interest on the differential duties should not be demanded from them under section 28AA [erstwhile section 28AB] of the Customs Act, 1962;
- e. The goods of a value of **Rs.35,65,527/-** imported against the various Bills of Entry as detailed in Annexure-E.1 to the notice should not be held liable for confiscation under section 111(m) of the Customs Act, 1962;
- f. Penalties should not be imposed on them under section 112(a)/114A of the Customs Act, 1962; and

II) Shri Sita Ram Singhal was also required to show cause to the Joint/Additional Commissioner of Customs, ICD Tughlakabad, as to why penalties under section 112(a) and section 114AA of the Customs Act, 1962 should not be imposed on him for his omissions and commissions, as discussed above.

Further, CBEC, vide Notification No. 129/2015-Cus. (N.T.) dated 24/11/2015 has appointed the undersigned as Common Adjudicating Authority to decide the case. Therefore, I take up the matter to decide the instant case.

WRITTEN SUBMISSION AND PERSONAL HEARING

2.0 The noticee(s), vide letter dated 09.12.2016, submitted written submission, wherein they have, *inter alia*, submitted as under. The noticee(s) have also filed written submission before the Additional Commissioner, ICD Tughlakabad, New Delhi vide letter dated 02/03.12.2015, and requested to consider as part and parcel of this reply and the contents:

2.1 The Show Cause Notice which relates to 17 consignments imported through Mundra port, 36 consignments imported through the Kandla port and 2 consignments imported through the Inland Container Depot, Tughlakabad, proposing demand of differential duty amounting of Rs.35,29,104/- by resorting to mis-declaration of value and consequential imposition of penalty under section 112(a) /114A/114AA of the Customs Act,1962.

2.2 The Show Cause Notice issued by Additional Director, DRI Hyderabad is without jurisdiction and hence not maintainable in law in so far as the same relates to imports made through the port of Inland Container Depot, Tughlakabad, New Delhi, Mundra and Kandla, Gujarat and the bills of entry filed prior to April 2011 {except for 9 Bs/E (7 Bs/E filed through Mundra port and 2Bs/E filed through Kandla port)} having been issued by an officer not competent to issue the same in terms of law propounded by the Hon'ble Supreme Court in the matter of Commissioner of Customs Vs Syed Ali as reported in 2011 (265) ELT 17 (SC). Though the Government has amended section 28 of the Customs Act, 1962 vide the Customs (Amendment and verification) Act, 2011 with effect from September 16, 2011 by inserting a new sub-section (11), enacting a deeming provision whereby all the officers appointed under section 4(1) shall be deemed to have always been the proper officer for the purpose of this section, but the Customs (Amendment and the Validation) Act. 2011 nowhere states that the provision of sub-section (11) will be inserted retrospectively in section 28 of the Customs Act, 1962.

2.2.1 In the judgment of the Hon'ble Delhi High Court, in the matter of Mangali Impex and Others Vs. Union of India, 2016 (335) ELT 605 (Del.), it has been held that the officers of DRI, Preventive and SIIB have no jurisdiction to issue demand under section 28/ 124 of the Customs Act, 1962, in the cases of non-levy or short levy in respect of the imports effected prior to 08.04.2011.

2.3 Though in the hard discs, phones and the documents resumed from the noticee, no incriminating material was recovered yet on the basis of

the material recovered from the said Shri Avinash Jindal and mis-interpreting the statement extracted in the close confines of the DRI office, the DRI has issued the Show Cause Notice proposing demand of duty and imposition of penalty.

2.3.1 Both the statements being extracted ones under duress and uncorroborated are in admissible in evidence in view of the law propounded by the Hon'ble Courts and Tribunal in following judgments:

- (i) Narayan Das Vs. CC, Patna, 2004 (178) ELT 554 (Tri Kol)
- (ii) Birendra Kumar Singh Vs. CC, Lucknow, 2006 (198) ELT 460 (Tri Del)
- (iii) P U Regi Vs. Superintendent, C. Ex, Madurai, 2001 (129) ELT 593 (Mad)
- (iv) Mahabir Prasad Vs. CC (Prev), 2000(126) ELT 803 (Tri)

2.4 The noticee(s) sought cross examination of the Shri Avinash Jindal on the basis of whose statements, the Show Cause Notice has been issued. The noticee(s) relied upon judgment of Hon'ble Supreme Court in the matter of Laxman Exports Vs. CCE – 2002(143) ELT 21 (SC) and the Hon'ble Tribunal in the matters of M/s Rakhihsapat Ltd. Vs. CCE – 2001(129) ELT 701 (Tri.), Kedia Overseas Vs. CC – 2005 (179) ELT 156 and M/s Daisu Auto Parts Vs. CC.

2.5 The goods were cleared after scrutiny of import documents, verification of value from NIDB/ DoV Database and due physical examination of the goods. It is not the case that at the time of import, the noticee company had mis-declared any of the material particulars of the consignments in question. Thus, questioning assessments at this point of time and proposing re-determination of value under rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 on the basis of fictitious calculation is impermissible in law.

2.6 As per Annexures C.1, C-2, D.1 and E-1 containing details of imports made through the ports Mundra, Kandla and Inland Container Depot, Tughlakabad, the actual price mentioned in column 9 has been determined under rule 9 of the CVR, 2007 and the demand has been quantified on the basis of Bills of Entry mentioned in Column 15 Bs/E cleared through the same port and some emails sent by the said Shri Avinash Jindal. Re-determination of assessable value and reliance on that Bs/E are wrong, misconceived and contrary to the stipulations of CVR, 2007. The absence of the copies of the relied Bs/E which have not supplied despite requests, no reliance can be placed on the same as no comparison of the quantity, quality and nature of

transaction can be made for determination of value as stipulated in the CVR, 2007 and its Explanatory Notes.

2.6.1 The noticee referred to rule 3(4) of the CVR and submitted that it is obligatory on the Proper Officer to assess the value going sequentially from rule 3 to 9 whereas in the instant case the DRI has proposed the re-determination straight under rule 9 without exploring the assessment under rule 4 and 5.

2.6.2 The DRI, in the instant case, has not proposed rejection of transaction value on the basis of evidence suggesting payment of any amount directly or indirectly to the overseas supplier over and above the invoice value but on the basis of some imaginary calculations based on the hypothetical average cubic feet per log which is impermissible in the provisions of Customs Valuation Rules, 2007.

2.7 The mechanism and authority of determination of value of imported goods is enshrined in section 14 of the Customs Act, 1962, read with Customs Valuation (DPIG) Rules, 2007 which mandate that the transaction value shall be the assessable value for assessment of duty on imported goods. The instant imports are the transaction between parties in ordinary course of international trade under fully competitive conditions and do not fall in any of the exceptions enumerated under rule 3(2) of the Customs Valuation (DPIG) Rules, 2007. The values declared in the invoices were the true and correct transaction values at which the goods were imported into India, there is no evidence of any payment made over and above the declared transaction value mentioned in the invoices. The declared transaction value therefore merits acceptance under the provisions of section 14(1) of the Customs Act, 1962 read with rule 3 of the Customs Valuation (DPIG) Rules, 2007.

2.8 When prices of identical/ similar goods imported in the contemporaneous period are available, determination of value under rule 9 ignoring rule 4 and 5 is illegal. The noticee relied on the judgment of the Hon'ble Tribunal in the matter of TECH TRONIX INDIA, 2006 (203) E.L.T. 301 (Tri. - Kolkata).

2.9 Hon'ble Supreme Court in the matter of Eicher Tractors India has pronounced that *if the transaction value is determinable in terms of Rule 4(1) of the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 read with Section 14(1) of the Customs Act, 1962 and the transaction does not fall in any of the exceptions stipulated in Rule 4(2) of the Rules ibid, the transaction value shall constitute the assessable value and only in the*

exceptional circumstances envisaged in Rule 4(2), the value will be determined in accordance with the successive rules. The noticee also relied upon following judgments:

- i) *South India Television (P) Ltd., 2007 (214) E.L.T. 3 (S.C.)*
- ii) *Crystal Dot Scan Pvt Ltd., 2011(263)ELT 401 (Tri Bom)*
- iii) *Coats Viyella India Ltd., 2001(133) ELT 373*
- iv) *PSM Spinning Mills 2002 (146) E.L.T. 559 (Tri. - Chennai)*

2.10 There is no mis-declaration and there is no contumacious act and hence there being no violation of section 111(m) invocation of the aforesaid provisions is patently illegal.

2.10.1 As the noticee company is not liable to any duty under section 28(4) of the Act, invocation of provisions of section 114A and those of 28(AB) are *ex-facie* illegal especially in the absence of any allegation of collusion, willful statement or suppression of fact on the part of the noticee(s).

2.10.2 There is no collusion, willful mis-statement or suppression of facts on the part of the noticee(s) and hence provisions of invocation of section 114A of the Customs Act, 1962 is unsustainable.

2.10.3 Invocation of provisions of section 112 and 114A of the Customs Act, 1962, simultaneously is contrary to the proviso to section 114A which provides that where any penalty has been levied under section 114A, no penalty shall be levied under section 112.

2.10.4 The section 114AA provides penalty on a person who knowingly or intentionally makes, signs or uses any declaration, statement or documents which is false or incorrect in any material particular in the transaction of any purpose under the Customs Act whereas in the present case, the goods were declared as per import documents and invoice values were true and correct transaction values and hence, there is no case of any mis-declaration.

Personal hearing in the case was held on 09.12.2016. Shri Jitendra Singh, Advocate remained present for hearing on behalf of both the notices and narrated the above submissions.

DISCUSSION AND FINDING:

3.1 I have carefully gone through the records of the case, Show Cause Notice, submissions made by the noticee No.1 and noticee No.2, as well as submissions made at the time of personal hearing.

3.2 The issue in the present proceeding to decide as to whether:

- a. the value declared by the noticee No.1, in respect of import of timber made during the period from October 2009 to July 2011, is liable to be rejected in terms of the provision of section 14(1) of the Customs Act, 1962, read with rule 12 read with rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, and required to be re-determined in terms of section 14(1) of the Customs Act, 1962, read with rule 3(1) and rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007;
- b. consequent to re-determination of value of imported timber, the differential duties of Rs.8,23,122/- (Mundra port); Rs.26,67,980/- (Kandla port) and Rs.38,012/- (ICD Tughlakabad) is liable to be confirmed and demanded under section 28(4) [erstwhile proviso to section 28(1)] of the Customs Act, 1962, along with interest under section 28AA [erstwhile section 28AB] of the Customs Act, 1962, and with consequential penal action on the noticee No.1 under section 112(a)/ 114A of the Customs Act, 1962;
- c. the goods imported by resorting undervaluation are liable to be held liable for confiscation under section 111 (m) of the Customs Act, 1962;
- d. Shri Sita Ram Singhal (noticee No. 2) is liable for penalty under 112(a) and section 114AA of the Customs Act, 1962.
- e. the DRI Chennai have jurisdiction to investigate the cases for the import made at Kandla, Mundra and ICD Tughlakabad.

3.3 The noticee No.1 had imported timber in log, rough square and sawn form from various countries, viz., Tanzania, Sudan, Ghana, Benin, Coasta Rica and Ivory Coast. The noticee No.1 sought clearances of said timber by filing Bills of entry at Kandla, Mundra port and ICD Tughlakabad, wherein unit of measurement of imported timber was mentioned as Cubic Meter (CBM) and declared value of imported goods between 250 and 456 USD per CBM.

3.4 The intelligence suggests that the noticee No.1 had evaded duty of Customs by resorting gross undervaluation of timber imported in form log, roughly squared and sawn form from various countries with the help of Shri Avinash Jindal (supplier), officers of Directorate of Revenue Intelligence, initiated investigation in the case. During investigation, searches at premises of the noticee No.1 and Shri Avinash Jindal were conducted and recovered incriminating documents. Some documents and sent emails were also produced by Shri Avinash Jindal. Shri Avinash Jindal had also submitted various documents during investigation including copics of c-mail communication with the noticee No.1 along with attachments, such as, account statement of suppliers and the details of importer showing details of

quantity, rate, value of imported timber as well as payment particulars. Statements of Shri Avinash Jindal and the noticee No.2 were recorded wherein the noticee No.2 and Shri Avinash Jindal has explained the modus operandi of import of timber by resorting undervaluation by the noticee No.1.

3.5.1 From the evidences collected in respect of import of timbers by the the noticee No.1, such as, the recovered/retrieved documents and submitted emails communications, when cross-checked on the basis of the container numbers, quantities, the details of import of timber mentioned therein, with the import documents of the noticee No.1 mentioned under various Bills of Entry filed at ports of Mundra, Kandla and ICD Tuglakabad revealed that value and quantity of imported timber, which was declared by the noticee No.1 in the B/Es were found less than the value and quantity, as mentioned in the private records.

3.5.2 I have gone through all the evidences which were gathered by way of recovery of documents submitted by Shri Avinash Jindal and oral evidences recorded during the investigations, examination and analysis of these evidences, these documents mainly demonstrate as under:

- (i) A made-up file recovered from Shri Avinash Jindal and emails communication are correlating details of the import documents filed by the noticee No.1 which shows that the value of imported timber declared by the noticee No.1 were less than the value mentioned in these evidences. Also, fact of undervaluation was confirmed by the noticee No.2 in his statement dated 11.09.2014. To substantiate the same, I would like to refer an instance that regarding import of 9 containers of timber from Sudan as found mentioned in the e-mail communications, produced by Shri Avinash Jindal in his statements, are matched with timber imported vide Bill of Entry No. 142058 dated 01.01.2009, at Mundra port (Anneure C-1) to the SCN. The rates declared in the said Bill of Entry was \$422, but the e-mail communication reflect the average price of these imported timber as \$457 per CBM.
- (ii) The noticee No.2 was shown page No.26 & 27, 73 & 74 and 105 & 106 of the made-up file recovered from Shri Avinash Jindal which shows particulars of import made in the name of noticee No.1. The noticee No.2 tendered that at page No. 26 & 27, an email with attachment, they had imported 03 containers of Tanzania timber from Shri Amitabh Saboo of M/s. Vinayak Impex, Dubai and which was received from Shri Avinash Jindal. At page No. 73 & 74, the said email pertains to container wise import account of Tanzanian timber supplied to by M/s Vinayak Impex with actual rates/ values. At page nos.105 and 106 of the sent emails, the details of container numbers, quantities and actual rates/values (in

USD) has been declared. The noticee No.2 admitted that they had declared lower rates than the actual rates in the import documents. The noticee No.2 also tendered that the payments to suppliers were made through Letter of Credit (LC) and Documents against Payment (DP). The noticee No.2 also admitted and agreed to discharge the differential duties.

(iii) As per the evidence on record, in respect of Tanzanian timber in sawn form, the qualities are determined on the basis of width, thickness and length of the timber. The best quality timber is 8 inch and above with thickness of 3 inch to 4 inch and length of 6 feet and above. The next quality known as silli/general silli is mostly of below 8 inch width pieces with thickness of 3 inch and 4 inch and length of 6 and above feet. The timber with length of 3 to 6 feet but with the thickness of 3 and 4 inches and width below 8 inch is known as Tukda which is sometimes shown as 3'-6' or 3'-5'.9" material in the packing lists. Other grades are known by their thickness such as 1.5" and 2", 1" and 0.5" and the lengths of these grades consists both below and above 6 feet with no reference to width. A 20 feet container load of 8" and above width material contains about 400 to 500 pieces in a container, the next quality of silli/general silli contains about 700 to 1200 pieces in a container, Tukda quality contains about 1500 to 2000 pieces in a container, 1.5" & 2" thickness quality material contains about 2000 to 3500 pieces in a container and timber known by their thickness of 1" and 0.5" contains in excess of 3000 pieces in a container. This lower quality timber known as repla. Where there is no mention of quality in the packing lists, this type of material can be identified by the number of pieces of the container. As per the sent emails of Shri Avinash Jindal, the general silli is also identified sometimes by the quality shown as 3" & 4".

(iv) The noticee No.2 has also admitted that they have always imported best quality of Tanzanian timber. From the Bills of Entry filed for import of Tanzanian timber, it is observed that the description of the product in respect of the two grades 8" and above width material and silli/general silli material, are mostly given as teak sawn timber with tukda (3' to 6'). The qualities of timber of other countries are identified by the average cubic feet (CFT) yield of the pieces/ logs of the container. The higher the average CFT, the better the quality. The average cubic feet of a log as per the noticee No.2 is as under:

Average Cubic Feet (CFT) = Total quantity in CBM multiplied by 35.315 and the resultant answer is then divided by the total number of pieces/logs.

3.6.1 From the above, it is crystal clear that the noticee No.1 has imported timber from various countries of Africa and others such as Tanzania, Sudan, Ghana, Ivory Coast and Benin, by resorting gross undervaluation with intention to evade payment of duties of Customs.

3.6.2 The evidences on record are in the form of documents, which were submitted by the noticee No.2 and Shri Avinash Jindal, clearly reveal the fact that value of imported timber declared by the noticee No.1 in Bs/E were not true and correct transaction value. The undervaluation of the imported goods has been admitted by the supplier of the goods as well as by the noticee No.2.

3.6.3 As per section 14(1) of the Customs Act, 1962 read with rule 3(1) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the value of the imported goods should be the transaction value of such goods, that the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation. However, in the instant case, the value declared at the time of importation is not true & correct transaction value as against the actual transaction value of the imported timber. Therefore, the value declared, by the noticee No.1, in the import documents (Bills of Entry) are liable for rejection as per rule 12 of the Customs valuation (Determination of Value of Imported Goods) Rules, 2007. The values as reflected in the documents/records and those submitted at the time of the depositions are required to be considered as true values and liable to be constitute the correct transaction value of the imported timber for the purpose of payment of customs duties.

3.6.4.1 The first situation arise in some cases, where direct evidence of the actual transaction value is available as against the declared value and the actual transaction value is to be considered as true transactional value as per section 14(1) read with rule 3(1) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

3.6.4.2 A made-up file submitted by Shri Avinash Jindal and documents contained therein as well as e-mail communication submitted by him, the details mentioned in these evidences, such as container numbers, quantity, number of pieces, quality, packing list, of imported timber were correlated with the import documents filed by the noticee No.1 before the customs authority, which resulted into variation in value and quantity of imported timbers as well as it is also shown particulars of cash payment toward the differential amount of imported timber. Shri Avinash Jindal and the noticee No.2, both have categorically admitted and explained that the details mentioned in private

records are correct as against the import documents, which is as per Annexure- C1 to the notice.

3.6.5.1 Second types of cases include those imports of timber by the importer, where neither direct evidences are available regarding value nor comparison of the price data for determination of value are available due to the variations in quality, quantity, grade, origin etc. Under these circumstances of timber import, determination of value cannot be resorted under rule 4 & 5 of the CVR, 2007 as well as in absence of details relating to prices at which the goods were sold in the highest aggregate quantity and details of cost structure, the value of the goods cannot be determined under rule 7 & 8 of the Customs Valuation Rules, 2007. Therefore, valuation of timber covered under these imports are to be made under rule 9 of Valuation Rules, 2007.

3.6.5.2 For other imports, the rates have been determined on the basis of contemporaneous imports of the importer (*imports for which the evidences were found and related to Bills of Entry as discussed in Annexures-C.1 referred above*) as well as other importers similarly charged with undervaluation in timber imports (*on the basis of evidences found in the copies of received and sent emails of supplier Avinash Jindal, hard disk recovered from the premises of supplier Rajendra Agarwal, copies of received emails of Shri Shivprasad Attal, employee of importer, M/s Shree Radhe Impex and hard disks of importer M/s Shree Laxmi Impex which were also corroborated by the persons concerned*) by taking recourse to the provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

For better understanding how rates are arrived at under rule 9 of the Valuation Rules could be seen as under:

Bill of Entry No.	Date	Qty (AVG cft)	Declared rate (C&F) (in USD)	Rate (C&F) Actual as per documents provided by Shri Avinash Jindal (in USD)
142058	01.10.2009	3.76	422	501

3.6.6.1 In the import of timber from Sudan made vide Bill of Entry No.142059 dated 01.10.2009 at Mundra Port. The quality in the form of average cubic feet of this consignment was 3.73 cft. During the same period, in the importer's own case, there is an import of another lot of Sudanese timber at the same port vide Bill of Entry No.142058 dated 01.10.2009 (as discussed in duty calculation worksheet of Annexure-C.1 to the notice). In this import for which evidence of actual rates were found, there is one container whose average cubic feet is 3.76 which is almost identical to the average cubic feet of the above import. Therefore, the rate/value of this particular container which is

of identical quality, from the same country and contemporaneous to the import made at same port is adopted for arriving at the rate/value as per rule 9 of the Valuation Rules, 2007. Likewise, the rates/values for other imports were arrived at under rule 9 of the valuation rules on the basis of the contemporaneous imports of the noticee No.1.

3.6.6.2 Accordingly, for the purpose of value to be determined under rule 9 of the CVR, 2007, the value available in the documents corroborated by the averments of the importers and the suppliers, can be taken as the price, by using the reasonable means consistent with the principles of general provisions of rules and based on the data available in India read with sub section (1) of 14 of Customs Act, 1962.

3.6.6.3 Similarly, the details of import with the required evidential details for valuation under rule 9 of the Customs Valuation Rules, are incorporated in Annexure C.2 (Mundra), D.1 (Kandla) and E.1 (ICD TKD) differential duty is worked out on account of undervaluation.

3.7 The noticee(s) has contended that they have obtained details of certain consignments of identical goods cleared during the contemporaneous period through various ports in India which are placed in the enclosed Chart showing that the accepted transaction value was in the vicinity of declared transaction value of the impugned goods. In this regard, I find that in the present proceeding evidences are available on record showing actual price of imported goods as against the declared price in Bills of Entry, therefore such argument of the importer does not substantiate. I find that when it is found that the actual value was deliberate by suppressed and actual value is brought on record by investigation process, the actual value which is now available on record is liable to be adopted as transaction value.

3.7.1 The noticee(s) have contended that the statements of the noticee(s) have been extracted under duress. In this regard I find that Statement of Shri Sita Ram (noticee No.2) was recorded on 11.09.2014, wherein has, *inter alia*, admitted that he has tendered his statement without fear, force or inducement. The noticee No.2 was on his liberty to exercise the legal recourse by filing affidavit before competent authority against his recorded statement. In the case law COMMISSIONER OF CENTRAL EXCISE, RAIPUR Versus HI TECH ABRASIVES LTD. reported in 2017 (346) E.L.T. 606 (Tri. - Del.), Hon'ble Tribunal has held as under:

"14. On careful consideration of the facts and circumstances as outlined above, I find that the statement of Director is the basis for the demand. The

statement is inculpatory and is specific. The Director clearly admitted that the documents/private records recovered by the officers contained details of procurement of raw materials as well as clearance of finished goods with and without payment of duty. This fact is further strengthened by the observation that many entries in the private documents are covered by the invoices issued by the assessee on which duty stands paid. The Director has clearly admitted the truth of the charts as well as clandestine clearance of goods covered by the entries in the private notebooks which are not covered by the invoices. Such statement is admissible as evidence as has been held by the Apex Court in the case of *Systems & Components Pvt. Ltd.* (supra). The activities of clandestine nature is required to be proved by sufficient positive evidence.”

3.8.1 Based on various case laws, the noticee(s) have placed further argument that the charges framed in the Show Cause Notice are based on investigation initiated by the DRI, Hyderabad against some other importers of Teak Wood, wherein the officers had searched the premises and interrogated some middleman/ supplier Shri Avinash Jindal and on the basis of some material recovered from him, the DRI officers had searched the noticee’s office and residential premises wherein nothing incriminating was recovered. Though in the hard discs, phones and the documents resumed from the noticee, no incriminating material was recovered yet on the basis of the material recovered from the said Shri Avinash Jindal and mis-interpreting the statement extracted the DRI has issued the impugned Show Cause Notice proposing demand of duty and imposition of penalty.

3.8.2 In this regard I find that the notice to the noticee(s) have been issued on the basis of evidentiary documents, such as, container account of the noticee, retrieved from the noticee as well as submitted by Shri Avinash Jindal during investigation. From the facts on record it is clear that number of documentary evidences indicating under-valuation of goods imported by the importer were recovered and the same were testified as well as corroborated through depositions of the noticee and the supplier. These evidences are also corroborated by other evidences of contemporaneous import. From the evidences, it transpires that undervaluation was resorted by the noticee knowingly in connivance with Shri Avinash Jindal and appropriate evidence are available on record. Therefore argument and citation quoted by the Advocate are not applicable in the present case.

3.9 The contention of the noticee that DRI, Chennai have no jurisdiction to issue Show Cause Notice, I find that the Board vide Notification No.17/2002-Cus(N.T.) dated 7.3.2002 have appointed various officers of the Directorate of Revenue Intelligence having all India jurisdiction. Further the Board vide Notification No. 44/2011-Cus(N.T.) dated 06.07.2011 as amended, have designated various officers as proper officers including ADG, DRI. The reliance placed by the noticee(s) on the case law was delivered on 18.02.2011

and therefore, the same is not applicable in this case in view of the Notification dated 06.07.2011. I find that CESTAT, South Zonal Bench, Bangalore in case of MRPL. Vs CC. Magalore [2014(313) ELT. 353(Tri. Bang.)] had dealt with this issue, in detail, in its final order Nos.536-537/2012 dated 8.8.2012 in Appeal Nos. C/525 and 496/2007, and decided the issue in favour of the Department. Therefore, the argument of the Noticee on this count is without any merit.

3.9.1 In light of the facts and circumstances mentioned herein above, I find that the noticee No.1 has imported timber and sought clearances by resorting gross undervaluation in the Bills of Entry which resulted into short payment of Duty of Customs. The evidences available on record in the form of documents submitted by Shri Avinash Jindal as well as submitted by the noticee No.2 during investigation, account statements and other documents retrieved from hard disk recovered from noticee No. 2, establish that the value declared by the importer were not correct transaction value. I conclude that the investigating agency has proved their case with precision leaving no doubt about the undervaluation of the subject goods.

3.9.2 In view of the facts and circumstances of the case, the value declared by the noticee No.1 in the Bills of Entry are not true and correct and the same are liable to be rejected in terms of rule 12 read with rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and section 14(1) of the Customs Act, 1962 and based on available evidence on record the value of imported timber is required to be re-determined, and consequential amount of duty short paid by the noticee No.1 are required to be ascertained, as under:

(i). The noticee imported 09 timbers containers of Sudan origin and got clearances under 01 Bill of Entry. There are clear evidences available on records, showing the actual transaction value of the imported timber as against the value declared by the importer. This evidence also reflects the actual quantity imported as against the declared quantity in the Bill of Entry. Each container, covered under these Bills of Entry, is examined in light of the evidence(s) and actual value and actual quantity as available in the evidence(s) is considered and arrived at correct value section 14(1) of the Customs Act, 1962 read with rule 3(1) of CVR, 2007 and also correct quantity of imported timber is considered as (as detailed in Annexure C1 to the SCN), consequent to application of correct value and quantity, short payment of customs duty, in respect of 01 Bill of Entry filed at Mundra Port is workout to Rs.35,139/-.

(ii) Also, in respect of 16 Bills of Entry filed at Mundra Port, 36 Bills of Entry at Kandla Port and 02 Bills of Entry filed at ICD Tuglakhabad neither direct

evidence is available regarding value and quantity nor comparison of the price data for determination of value are available due to the variations in quality, grade, origin etc. Accordingly, determination of correct value cannot be resorted to under rule 4 & 5 of the Customs Valuation Rules, 2007 as well as in absence of details relating to prices at which the goods were sold in the highest aggregate quantity and details of cost structure, the value of the goods cannot be determined under rule 7 & 8 of the Customs Valuation Rules, 2007. Therefore, valuation of timber covered under these Bills of Entry is to be made are rule 9 of Valuation Rules, 2007, and the value available in the documents corroborated by the averments of the importers and the suppliers, can be taken as the price, by using the reasonable means consistent with the principles of general provisions of rules and based on the data available in India read with sub section (1) of 14 of Customs Act, 1962. Accordingly, valuation of each container covered under these Bills of Entry were examined with the required evidential details for valuation under rule 9 of the Customs Valuation Rules, and detailed in Annexure C.2, D.1 and E.1 to the SCN. Consequent to application of correct value and quantity, short payment of customs duty, in respect of 16 Bills of Entry file at Mundra Port, 36 Bills of Entry filed at Kandla Port and 02 Bills of Entry file at ICD Tughlakabad, is workout to Rs.7,87,973/-, Rs.26,67,980/- and Rs.38,012/- respectively.

3.10. In the light of facts and circumstances as discussed herein above, I find that the noticee(s) have deliberately undervalued the timber. The noticee No.1 has wilfully and fraudulently suppressed the value of the timber imported with sole intention to evade payment of duty of Customs. The fact of undervaluation of the timber imported have come to light only upon search, seizure and investigation. Therefore, present case is a fit case to invoke section 28(4) [erstwhile proviso to section 28(1)] of the Customs Act, 1962, for recovery of the duties of Customs for the extended period of limitation.

3.10.1 The importer by resorting to the above mentioned wilful misstatement has rendered themselves liable to pay total differential duty to the tune of Rs.35,139/-, Rs.7,87,973/-, Rs.26,67,980/- and Rs.38,012/- (as detailed in Annexures- C.1, C.2, D.1 & E.1 to the notice) which is recoverable under section 28(4) [erstwhile proviso to section 28(1)] of the Customs Act, 1962. Apart from paying the differential duty under section 28(4) [erstwhile proviso to section 28(1)] of the Customs Act, 1962, the importer is also liable to pay interest under section 28AA [erstwhile section 28AB] of the Customs Act, 1962.

3.10.2 For the acts of omissions and commissions on the part of noticee(s), as discussed hereinabove, in the matter of suppression of values and quantities for evading customs duties, the noticee No.1 is liable for penalties under section 114A of the Customs Act, 1962.

3.11 As regards penalty on the noticee No.2, I find that he has categorically admitted in his statement that he has deliberately undervalued the imported timber in the invoices/ customs documents. as per the investigation, the Director (noticee No.2) himself involved in abetment of document documents produced before the customs and in the evasion of the customs duty for import of timber. Therefore, the noticee No.2 is also liable to penalty under section 112(a) and section 114AA of the Customs Act, 1962. In this regard, I rely upon the case law AJIT KUMAR AGARWALA Versus COMMR. OF CUS. (EXPORTS), JNCH, NHAVA SHEVA reported in 2017 (346) E.L.T. 288 (Tri. - Mumbai).

3.12 The noticee has imported timber by wilfull resorting undervaluation, therefore the imported timbers are liable for confiscation under section 111(m) of the Customs Act, 1962, inasmuch as, the value declared in the Bills of Entry were not true and correct (as detailed in Annexures-C.1 & C.2, D.1, and E.1) with an intention to evade duty of customs. Since these imported goods were not placed under seizure and also not physically available for confiscation, I refrain from imposition of redemption fine as the goods are not physically available for confiscation nor released under any bond and in view of the settled legal position in the case of Shiv Kripa Ispat Pvt. Ltd. vs CCE Nasik reported at 2009 (235) ELT 623 (Tri.-LB) wherein it held that redemption fine could not be imposed in the absence of the goods which had already been released by the Customs authorities to the importer without execution of any bond/undertaking by the latter. Conversely, where the goods are released under bond/undertaking, they could be confiscated as if the goods were available and consequently redemption fine in lieu of confiscation could also be imposed. The issue has been settled in the case of Commissioner of Customs, Amritsar Vs. Raja Impex (P) Ltd. (2008 TIOL 280 HC-P&H-CUS) wherein the High Court, after considering the Apex Court's judgment in Weston Components case (2002 TIOL 176-SC-CUS) held as above. A similar view taken by the Tribunal in the case of Chinku Exports also stands upheld by the Supreme Court 2005 (184) ELT A36 (SC) as Revenue appeal was dismissed. Further since the omission and commission on the part of the noticee made the imported goods liable for confiscation under section, 111(m) of the Customs Act, 1962, the importer rendered himself liable for penalty under section 112(a) of the Customs Act, 1962.

3.13.1 The noticee No. 2 is the persons who in connivance of the noticee No.1 resorted undervaluation of imported timber as well as mis-declaration of quantity with an intention to evade payment of Duty of Customs.

3.14 I find that in the present case, DRI investigated the case and based on evidence proved undervaluation of timber imported by the importer. The method adopted to establish undervaluation in the present case is reasonable and appropriate to the available law in force. I find that what is revealing from the evidences are sufficient to prove undervaluation as there is no requirement to prove the case with mathematical precision. Here, I would like to refer the case of Collector of Customs, Madras and Others Vs D. Bhoormull reported at 1983 (13) ELT 1546 (S.C.), wherein the Apex Court has held that this is a fundamental rule relating to proof in all criminal or quasi-criminal proceedings, where there is no statutory provision to the contrary. But in appreciating its scope and the nature of the onus cast by it, we must pay due regard to other kindred principles, no less fundamental, or universal application. One of them is that the prosecution or the Department is not required to prove its case with mathematical precision to a demonstrable degree; for, in all human affairs absolute certainty is a myth, and as Prof. Brett felicitously puts it-"all exactness is a fake". El Dorado of absolute Proof being unattainable, the law, accepts for it, probability as a working substitute in this work-a-day world. The law does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that a prudent man may, on its basis, believe in the existence of the fact in issue. Thus legal proof is not necessarily perfect proof often it is nothing more than a prudent man's estimate as to the probabilities of the case.

3.15 In view of the above, I pass the following order:-

ORDER

3.15.1 PART-I MUNDRA PORT

(a) I hereby reject the assessable values declared in the Bills of Entry at the time of import of timber, as detailed in the Annexures C.1 & C2 under rule 12 read with rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and section 14(1) of the Customs Act, 1962;

(b) I order to re-determine the assessable value as detailed in the Annexures C.1 & C2 to the SCN, in terms of section 14(1) of the Customs Act, 1962 read with rule 3(1) and rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

(c) I confirm and order to recover differential duties of Rs.8,23,122/- (Rupees eight lakhs twenty three thousand one hundred and twenty two only) From M/s Sita Ram and Company Pvt. Ltd., Delhi under section 28(4) [erstwhile proviso to section 28(1)] of the Customs Act, 1962.

(d) I order to charge and recover interest from M/s Sita Ram and Company Pvt. Ltd., Delhi under section 28AA [erstwhile section 28AB] of the Customs Act, 1962.

(e) I impose a penalty of Rs.8,23,122/- plus an amount equivalent to interest payable on confirmed duty upon M/s Sita Ram and Company Pvt. Ltd., Delhi under section 114A of the Customs Act, 1962.

(f) I order to confiscate the goods imported against the Bills of Entry as detailed in Annexures - C-1 & C-2 to the SCN under section 111(m) of the Customs Act, 1962. However, I refrain from imposing redemption fine in lieu of confiscation, as the goods are physically not available for confiscation nor released under any bond or legal instruments.

(g) I impose a penalty of Rs.2,00,000/- (rupees two lakhs only) on M/s Sita Ram and Company Pvt. Ltd., Delhi under section 112(a) of the Customs Act, 1962.

(h) I impose a penalty of Rs.50,000/- (rupees fifty thousand only) on Shri Sita Ram Singhal under section 112(a) of the Customs Act, 1962.

(i) I impose penalty of Rs.50,000/- (rupees fifty thousand only) on Shri Sita Ram Singhal under section 114AA of the Customs Act, 1962.

3.15.2 PART-II KANDLA PORT

(a) I hereby reject the assessable values declared in the Bills of Entry at the time of import of timber, as detailed in the Annexure D.1 under rule 12 read with rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and section 14(1) of the Customs Act, 1962;

(b) I order to re-determine the assessable value as detailed in the Annexure D.1 to the SCN, in terms of section 14(1) of the Customs Act, 1962 read with rule 3(1) and rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

(c) I confirm and order to recover differential duties of Rs.26,67,980/- (rupees twenty six lakhs sixty seven thousand nine hundred and eight only)

From M/s Sita Ram and Company Pvt. Ltd., Delhi under section 28(4) [erstwhile proviso to section 28(1)] of the Customs Act, 1962.

(d) I order to charge and recover interest from M/s Sita Ram and Company Pvt. Ltd., Delhi under section 28AA [erstwhile section 28AB] of the Customs Act, 1962.

(e) I impose a penalty of Rs.26,67,980/- plus an amount equivalent to interest payable on confirmed duty upon M/s Sita Ram and Company Pvt. Ltd., Delhi under section 114A of the Customs Act, 1962.

(f) I order to confiscate the goods imported against the Bills of Entry as detailed in Annexure - D.1 to the SCN under section 111(m) of the Customs Act, 1962. However, I refrain from imposing redemption fine in lieu of confiscation, as the goods are physically not available for confiscation nor released under any bond or legal instruments.

(g) I impose a penalty of Rs.6,00,000/- (rupees six lakhs only) on M/s Sita Ram and Company Pvt. Ltd., Delhi under section 112(a) of the Customs Act, 1962.

(h) I impose a penalty of Rs.1,00,000/- (rupees one lakh only) on Shri Sita Ram Singhal under section 112(a) of the Customs Act, 1962.

(i) I impose penalty of Rs.1,00,000/- (rupees one lakh only) on Shri Sita Ram Singhal under section 114AA of the Customs Act, 1962.

3.15.2 PART-III ICD TUGHLAKABAD

(a) I hereby reject the assessable values declared in the Bills of Entry at the time of import of timber, as detailed in the Annexure E.1 under rule 12 read with rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and section 14(1) of the Customs Act, 1962;

(b) I order to re-determine the assessable value as detailed in the Annexure E.1 to the SCN, in terms of section 14(1) of the Customs Act, 1962 read with rule 3(1) and rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

(c) I confirm and order to recover differential duties of Rs.38,012/-(rupees thirty eight thousand and twelve only) From M/s Sita Ram and Company Pvt. Ltd., Delhi under section 28(4) [erstwhile proviso to section 28(1)] of the Customs Act, 1962.

(d) I order to charge and recover interest from M/s Sita Ram and Company Pvt. Ltd., Delhi under section 28AA [erstwhile section 28AB] of the Customs Act, 1962.

(e) I impose a penalty of Rs.38,012/- plus an amount equivalent to interest payable on confirmed duty upon M/s Sita Ram and Company Pvt. Ltd., Delhi under section 114A of the Customs Act, 1962.

(f) I order to confiscate the goods imported against the Bills of Entry as detailed in Annexure E.1 to the SCN under section 111(m) of the Customs Act, 1962. However, I refrain from imposing redemption fine in lieu of confiscation, as the goods are physically not available for confiscation nor released under any bond or legal instruments.

(g) I impose a penalty of Rs.10,000/- (rupees ten thousand only) on M/s. Sita Ram and Company Pvt. Ltd., Delhi under section 112(a) of the Customs Act, 1962.

(h) I impose a penalty of Rs.10,000/- (rupees ten thousand only) on Shri Sita Ram Singhal under section 112(a) of the Customs Act, 1962.

(i) I impose penalty of Rs.10,000/- (rupees ten thousand only) on Shri Sita Ram Singhal under section 114AA of the Customs Act, 1962.


(U.B Rakhe)
Additional Commissioner

To
M/s Sita Ram and Company (P) Ltd,
73-9/2 & 10/2, Swarn Park, Main Rohtak Road,
Mundka, Nangloi,
Delhi-110041

To
Shri Sita Ram Singhal,
Director of M/s Sita Ram and Company (P) Ltd,
73-9/2 & 10/2, Swarn Park, Main Rohtak Road,
Mundka, Nangloi,
Delhi-110041

Copy to:

1. Joint/Additional Commissioner of Customs, Custom House, Mundra with a request to account for the duty, penalty etc. pertaining to CH., Mundra.
2. Joint/Additional Commissioner of Customs, ICD Tughlakabad with a request to account for the duty, penalty etc. pertaining to ICD Tughlakabad.
3. Additional Director, DRI Hyderabad Regional Unit, H. No.10-2-289/57/1 & 2, Suryavanshi Residency, IInd Cross Road, Shanti Nagar, Masab Tank, Hyderabad.
4. The Dy./ Asstt. Commissioner of Customs (Recovery), CH., Kandla.
5. The Dy./ Asstt. Commissioner of Customs (RRA), CH., Kandla.
6. The Dy./ Asstt. Commissioner of Customs (Gr.II), CH., Kandla.
7. Guard file/ Spare copy.