



**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/10-183/ADJ/ADC/PSM/2016-17
B	आदेश में मूल सं./ Order-in-Original No.	KDL/ADC/PMR/09/2017-18
C	पारित कर्ता/ Passed by	SH. PADALA MOHAN RAO, ADDITIONAL COMMISSIONER
D	आदेश की दिनांक/Date of order	14/09/2017
E	जारी करने की दिनांक/Date of issue	14/09/2017
F	एस.सी.एन. सं. एवं दिनांक/ SCN No. & Date	DRI/AZU/GRU-80/2012 Dated 18.02.2013
G	नोटीसी/ पार्टी Noticee/Party	1. M/s. P.S.M. Marketing, Plot No.255, Sector 1/A, Gandhidham (Kutch)-370201 2. M/s. Krishna Clearing Agency, Shop No. 53/54-A, Tanker Association Building, Transport Nagar, National Highway, Gandhidham (Kutch)-370201. 3. Shri Sunil Parshotam Mohatta, S/o Sh. Parshottam M. Mohatta, Plot No.65, Ward 7-C, Near Gurukul, Gandhidham (Kutch)-370201 4. Shri Pankaj Karshanbhai Thakkar, C/o M/s. Krishna Clearing Agency, No.53/54-A, Tanker Association Building, Transport Nagar, National Highway, Gandhidham (Kutch)-370201.

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. कोई भी व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क नियमावली के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 के धारा 128 A(1) के अंतर्गत प्रपत्र सीए में चार प्रतियों में निचे बताये 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 रोड

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/- रुपये का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 2/- under Court Fee Act it must accompanied by -

(i) उक्त अपील की एक प्रति और
A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं-6 में निर्धारित 2/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 2/- (Rupees Two only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

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

6. अपील प्रस्तुत करते समय, सीमा शुल्क नियम (अपील), और सीमा शुल्क अधिनियम 1982, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, न्यायाधिकरण के समक्ष मांग शुल्क का %10 भुगतान करना होगा।

An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute

BRIEF FACTS OF THE CASE:-

An intelligence gathered by the officers of Directorate of Revenue Intelligence (DRI) indicated that M/s. P.S.M. Marketing (IEC No. 3710001544) situated at Plot No. 255, Sector 1/A, Gandhidham (Kutch) was indulged in undervaluation, in the import of cigarettes, to evade payment of appropriate amount of customs duty.

2. It was further gathered that M/s. P.S.M. Marketing had filed Home Consumption Bill of Entry No. 7727157 dated 22/08/2012 with Custom House, Kandla, through licensed Customs House Agent M/s. Krishna Clearing Agency, Gandhidham, for clearance of an import consignment of cigarettes. Following declarations were made in the said Bill of Entry:

Table - I

Bill of Entry No. & Date	Description of goods	Quantity (No. of sticks in thousand)	Tariff item	Total C& F Value (US \$)	Assessable Value (Rs.)	Total Duty (Rs.)
7727157 dated 22/08/2012	Djarum Clove Cigarettes (length 85 MM)	1500	24022060	7500	4,28,589/-	31,59,823/-

3. A team of officers of DRI visited M/s. Container Corporation of India Limited CFS, Khari Rohar, Gandhidham (Kutch) on 24/08/2012 and examined the import consignment covered under Bill of Entry No. 7727157 dated 22/08/2012 and stuffed in container No. PMLU2005829. The examination was conducted in the presence of two independent witnesses, partner of the CHA firm and representative of M/s. P.S.M. Marketing, Gandhidham (Kutch), under panchanama dated 24/08/2012. During examination proceedings, officers of DRI took over the customs file containing Check-list for Bill of Entry No. 7727157 dated 22/08/2012 and import documents like Invoice, Packing List etc. from the partner of CHA firm.

4. The said import consignment was de-stuffed from container No. PMLU2005829 and examined. On examination, brand and quantity of the imported cigarettes were found as declared in the Bill of Entry. On measuring length, it was found that each of the imported cigarettes were 85 mm long, out of which around 24 mm was length of filter. The value of the consignment declared in the said Bill of Entry, *prima facie*, appeared to be grossly undervalued. During that period, cigarettes of the same brand were being imported by other importers at much higher value. Thus, it appeared that the value of the imported cigarettes was grossly mis-declared in Bill of Entry No. 7727157 dated 22/08/2012. Under the reasonable belief that due to gross undervaluation, the said imported consignment consisting of 15,00,000 number of

cigarette sticks was liable for confiscation under the provisions of the Customs Act, 1962, therefore, the above mentioned import consignment of cigarettes was placed under seizure under section 110 (1) of the Customs Act, 1962, vide the above mentioned panchanama. Representative samples of the Cigarettes were also obtained. The seized consignment was handed over to the custodian M/s. Container Corporation of India Limited CFS, Khari Rohar, Gandhidham (Kutch) under Suparatnama dated 24/08/2012.

5. The representative samples of imported cigarettes were sent to Customs Laboratory, Custom House, Kandla for testing, for ascertaining its classification. Vide his test report bearing Nos. DRI 365 dated 6/7 September 2012, the Chemical Examiner Gr-I, CH Laboratory Kandla reported various parameters of the cigarettes. As per the said test report, each the subject cigarettes of Djarum Black brand had total length (including filter) of 85 mm and the length of filter was 20 mm. From the said test report it appeared that the subject imported cigarettes are classifiable under tariff item 24022060.

6. It was leant that prior to the above mentioned import consignment, M/s. P.S.M. Marketing, Gandhidham had imported and cleared six consignments of cigarettes under the cover of below mentioned six Bills of Entry from Kandla Port:

- (i) 2307623 dated 4.11.2010,
- (ii) 2351584 dated 22.11.2010,
- (iii) 4922526 dated 14.10.2011,
- (iv) 5880003 dated 01.02.2012,
- (v) 6312829 dated 21.03.2012,
- (vi) 7051774 dated 08.06.2012

The files pertaining to the above mentioned six Bills of Entry were called for from CH Kandla. The file pertaining to Bill of Entry No. 2351584 dated 22.11.2010 was not traceable with them. They supplied files pertaining to remaining five Bills of Entry. Photocopies of the Bills of Entry No. 2351584 dated 22.11.2010 and relevant import documents were supplied by the CHA. Photocopies of these six Bills of Entry are annexed with this notice. These documents revealed that the same value *i.e.*, US \$ 5 per thousand sticks (C & F) was declared in all these six Bills of Entry also. Details of declarations in these six Bills of Entry were found as detailed below:

Table - II

Bill of Entry No. & Date	Description of goods	Quantity (No. of sticks in thousand)	Tariff item	Total C& F Value (US \$)	Assessable Value (Rs.)	Total Duty (Rs.)

2307623 dated 04/11/2010	Djarum Clove Cigarettes (length 85 MM)	1000	24022060	5000	229296	2238188
2351584 dated 22/11/2010	Djarum Clove Cigarettes (length 85 MM)	1000	24022060	5000	229296	2238188
4922526 dated 14/10/2011	Djarum Clove Cigarettes (length 85 MM)	1000	24022060	5000	253298	2246861
5880003 dated 01/02/2012	Djarum Clove Cigarettes (length 85 MM)	1500	24022060	7500	384634	3371985
6312829 dated 21/03/2012	Djarum Clove Cigarettes (length 85 MM)	1500	24022060	7500	378415	3134705
7051774 dated 08/06/2012	Djarum Clove Cigarettes (length 85 MM)	1500	24022060	7500	425559	3158305

7. Certificates of origin available in the files pertaining to Bills of Entry No. 6312829 dated 21/03/2012, 7051774 dated 08/06/2012, 5880003 dated 01/02/2012 and 4922526 dated 14/10/2011 contained FOB value of respective consignments. In all the four certificates of origin, the same was shown as US \$ 18 per thousand sticks on FOB basis. The file pertaining to Bill of Entry No. 2307623 dated 04/11/2010 contained certificate of origin in some other format and value of the consignment was not shown therein. Certificates of origin showing value were not available in the relevant file pertaining to Check-list for Bills of Entry No. 7727157 dated 22/08/2012 and 2351584 dated 22.11.2010. As discussed above, the certificates of origin pertaining to four consignments showed actual value much higher than the declared value. All the seven consignments were of identical goods, produced by the same manufacture and were imported from the same supplier under one and single contract . Therefore, it prima facie appeared that the said value i.e., US \$ 18 per thousand sticks was the correct value for all the consignments covered under above mentioned seven Bills of Entry and M/s. P.S.M. Marketing had undervalued all these consignments of cigarettes by mis-declaring the value in respective Bills of Entry.

8. M/s. Perma Shipping Line India Private Limited, Gandhidham were local representative of the container line. Statement of Shri Piyush Rathore, Branch Manager of M/s. Perma Shipping Line India Private Limited, Gandhidham was recorded. During his statement he provided photocopies of seven Shipping Bills filed by the supplier at load port and on the strength of which Bills of Lading of the subject seven consignments were issued to the supplier at the port of loading by their counterpart. In all these Shipping Bills, value of the subject seven consignments were declared at load port as US \$ 18 per thousand sticks on FOB basis. Thus, it clearly appeared from these Shipping Bills that M/s. P.S.M. Marketing had undervalued these seven import consignments of cigarettes by mis-declaring the value in above mentioned respective Bills of Entry.

9. During the course of subject investigation, statements of following persons were recorded:-

9.1 Statement of Shri Piyush Rathore, Branch Manager of M/s. Perma Shipping Line India Private Limited, Gandhidham was recorded under Section 108 of the Customs Act, 1962, before the Sr. Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 25/09/2012, wherein he stated, inter alia, that:

- The company was engaged in the business of container line operation and their principals were M/s. Perma Shipping Line Pte. Ltd., Singapore.
- The container No. PMLU2005829 pertaining to Bill of Lading No.IDJKTINIXY1201058 dated 10/07/2012 was booked by their counterpart Pt. Infinity Logistindo, Indonesia at Jakarta Indonesia, through freight broker. The goods were originated from Jakarta, Indonesia.
- M/s. Pt. Infinity Logistindo, Indonesia had booked total 7(seven) consignments at Jakarta, Indonesia for M/s. P.S.M. Marketing, Gandhidham.

He submitting photocopies of Shipping Bills wherein the invoice Nos. and dates were reflected as detailed below:

Bill of Lading No.	Shipping Bills filed at Jakarta, Indonesia reflecting Invoice No. and Date
IDJKTINIXY1201058 DTD.10.07.2012	309/PPR/JKT dtd.04.07.2012
IDJKTINIXY1200891 DTD.30.04.2012	339/PPR/JKT dtd.25.04.2012
IDJKTINIXY1200683 DTD.20.02.2012	180/PPR/JKT dtd.16.02.2012
IDJKTINIXY1100544 DTD.26.12.2011	1023/PPR/JKT dtd.21.12.2011
IDJKTINIXY1100282 DTD.12.09.2011	695/PPR/JKT dtd.08.09.2011
IDJKTINIXY1000007 DTD.28.10.2010	21/PPR/JKT dtd.26.10.2010
IDJKTINIXY1000003 DTD.04.10.2010	649/PPR/JKT dtd.27.09.2010

9.2 Statement of Shri Pankil Sunil Mohatta, proprietor of M/s. P.S.M. Marketing, Gandhidham was recorded under Section 108 of the Customs Act, 1962, before the Sr. Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 30/10/2012, wherein he stated, inter alia, that:

- He was proprietor of the firm. The firm was formed in around year 2009 with the help of his father.
- No export had taken place in the name of M/s. P.S.M. Marketing. Except some consignments of cigarettes, no other commodity was imported in the name of that firm. As he was residing at Sharjah and his father was looking after the work pertaining to the firm, he was not able to provide full details of import of cigarettes in the name of that firm. For attending work on his behalf in the firm, he had given authority to his father Shri Sunil P. Mohatta.
- He was not aware as to whom such imported cigarettes were sold because that work was attended by his father.
- Supplier of the subject consignments of cigarettes was Pt. Djarum of Indonesia. The subject cigarettes were also manufactured by them.
- Initially the matter was taken up through e-mails. Prior to finalization of the deal, a team of Pt. Djarum visited Gandhidham. After that it was finalized by his father. As his father was looking after work pertaining to the firm, he (Pankil) was not fully aware of details of negotiations regarding price of subject import of cigarettes.
- He had not started dealing with day to day work of the firm so he was not aware as to how they received import documents pertaining to the subject consignments of cigarettes. His father, the authorized person, could provide details.
- As per his knowledge, the payments were made to the supplier by T-T.
- His father had dealt with the subject imports in the capacity of authorized signatory of the firm. He (Sunil Mohatta) could give correct reply in respect of declared value and actual value of the cigarettes imported in the name of M/s. P.S.M. Marketing.

9.3 Statement of Shri Sunil Parshotam Mohatta, authorized signatory of M/s. P.S.M. Marketing, Gandhidham, was recorded under Section 108 of the Customs Act, 1962, before the Sr. Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 31/10/2012, wherein he stated, inter-alia, that:

- During year 2009-10 he assisted his son in starting a firm in the name of M/s. P.S.M. Marketing. His son Shri Pankil S. Mohatta was proprietor of the firm. Shri Pankil had given him (Sunil) authority to deal in the name of that firm. As Shri Pankil was residing in UAE, he (Sunil) used to attend work pertaining to that firm. Whenever Shri Pankil visited India, he (Sunil) used to obtain Shri Pankil's signatures on necessary documents. Therefore, Shri Pankil was not much aware of the imports of cigarettes in the name of that firm. The same were attended by himself and he (Sunil) was fully aware of the facts of the same.

- M/s. P.S.M. Marketing, Gandhidham had not exported any items. Only seven consignments of cigarettes were imported in the name of that firm. Following Bills of Entry were filed for clearance of the subject seven consignments: (1) 2307623 dated 4.11.2010, (2) 2351584 dated 22.11.2010, (3) 4922526 dated 14.10.2011, (4) 5880003 dated 01.02.2012, (5) 6312829 dated 21.03.2012, (6) 7051774 dated 08.06.2012 and (7) 7727157 dated 22.08.2012.
- Such imported cigarettes were sold in piecemeal / small parcels to various parties on cash payment, locally.
- M/s. Prime Tobacco Trading Limited of Singapore was the supplier of the subject consignments. Pt. Djarum of Indonesia was manufacturer of the subject cigarettes. Pt. Djarum did not sell directly to any party. It was sold by them to M/s. Prime Tobacco Trading Limited of Singapore. He had contracted M/s. Prime Tobacco Trading Limited of Singapore. (In support of that, he submitted a print of a e-mail received by him from Pt. Djarum on 30/10/2012 at 4.05 pm.) As Shri Pankil had not attended that work he was not aware of the same.
- From the website of Pt. Djarum, he obtained their contact number and contacted them telephonically for import of their manufactured cigarettes. They asked to contact M/s. Prime Tobacco Trading Limited. Accordingly, he contacted M/s. Prime Tobacco Trading Limited. After a few talks with them a representative of M/s. Prime Tobacco Trading Limited visited Gandhidham. Mr. Hadi Suryo of Pt. Djarum, who had sent the above stated e-mail also visited with him. M/s. Pt. Djarum was manufacturing cigarettes and M/s. Prime Tobacco Trading Limited was attending trading of their manufactured cigarettes. After their visit, the deal of 1000 cases (A case = 50 Ctn x 200 sticks) was finalized.
- During their visit the deal was negotiated and finalized at the rate of US \$ 50 per case (i.e., 10,000 sticks).
- The import documents of all the above mentioned consignments were received directly by courier.
- Payments in respect of 2 or 3 consignments were pending. In respect of remaining consignments, he made payments through the Corporation Bank, Gandhidham Branch by way of T-T as per the amount mentioned in respective invoices.
- M/s. P.S.M. Marketing was having account in Corporation bank only. The account number was CBCA/01/335.
- The value mentioned in invoice and declared in Bills of Entry was actual value of the subject consignments of cigarettes.

He was shown a copy of certificate of origin having reference No. 0016967/JKB/2012 issued at Jakarta on 08/05/2012. In that certificate of origin, FOB value of the subject consignment was shown as US \$ 27,000. However, in respective Bill of Entry, bearing No. 7051774 dated 08/06/2012, value was declared as US \$ 7500.

- Their contract was with M/s. Prime Tobacco Trading Limited of Singapore, who were authorized distributor for international trading of the products manufactured by Pt. Djarum. In the said Certificate of Origin, the name of supplier was mentioned as Pt. Djarum since the goods were loaded by them from Indonesia. However, as per the contract with M/s. Prime Tobacco Trading Limited of Singapore, they received invoice and other import documents from M/s. Prime Tobacco Trading Limited. For that reason the price mentioned in certificate of origin might be different from that mentioned in invoice.
- The amount mentioned in invoice and declared in Bill of Entry was actually paid by them.
- Similarly in the certificates of origin of other consignments of cigarettes, the value mentioned was more than invoice value. Their declaration was as per the contract value and invoice value. He was not aware of the reasons of higher value mentioned in the certificates of origin. It might be known to Pt. Djarum and M/s. Prime Tobacco Trading Limited of Singapore.
- He had not observed it and hence did not ask the supplier as to why higher value was being mentioned in the certificates of origin of the subject consignments.
- No other value was quoted by them. During talks it was stated by the supplier that for introducing their brand they would provide 1000 cases at the rate of US \$ 50 per case and after that they would charge higher price.
- He was not aware that cigarettes of the same brand were being imported by other importers at various ports at much higher prices. He was not aware of contracts of other importers.

Website of Pt. Djarum was opened on the computer system installed in the office of DRI and the same was shown to Shri Sunil Parshotam Mohatta.

- There appeared no reference of M/s. Prime Tobacco Trading Limited of Singapore on the website of Pt. Djarum.
- In the certificates of origin shown to him there was no reference of M/s. Prime Tobacco Trading Limited. There appeared reference of Pt. Djarum as exporter and M/s. P.S.M. Marketing as consignee.

He was shown photocopies of Shipping Bills filed by Pt. Djarum at the load port. In these Shipping Bills name of buyer was mentioned as M/s. P.S.M. Marketing. He agreed that the subject Shipping Bills pertained to the consignments imported in the name of M/s. P.S.M. Marketing.

- The invoice numbers mentioned in the subject Shipping Bills tally with respective certificates of origin shown to him and discussed above. The Shipping Bills and Certificates of Origin shown to him tally with each other.
- The invoices produced by him before the customs authorities were having different numbers and dates than the same mentioned in the Shipping Bills. The invoices received by him were issued by M/s. Prime Tobacco Trading Limited of Singapore and were having numbers and dates different from the

invoice numbers mentioned in the load port Shipping Bills and certificates or origins.

- The value mentioned in the invoices produced by them and value declared accordingly before customs in Bills of Entry at Kandla were different from the value mentioned in respective certificates of origin and load port Shipping Bills.
- He was willing to pay differential duty, accepting the value mentioned in the shown certificates of origin and load port Shipping Bills.

At this stage he was specifically asked about actual value of the subject goods and customs duty leviable thereon, after seeing the above mentioned load port Shipping Bills and certificates of origin. In reply to which he again stated that he was willing to pay differential duty, accepting the value mentioned in the shown certificates of origin and load port Shipping Bills.

9.4 Statement of Shri Pankaj Karsanbhai Thakker, partner in CHA firm M/s. Krishna Clearing Agency, Gandhidham, was recorded under Section 108 of the Customs Act, 1962, before the Sr. Intelligence Officer, Directorate of Revenue Intelligence, Gandhidham on 01/11/2012, wherein he stated, inter alia, that:

- He was also holding customs I-card. He was attending day to day work pertaining to M/s. Krishna Clearing Agency. CHA license No. of the firm was AACFK5195QCH001.
- As partner in M/s. Krishna Clearing Agency, he had attended customs clearance work pertaining to the consignments of cigarettes imported by M/s. P.S.M. Marketing, Gandhidham.
- He had attended customs clearance work pertaining to seven import consignments of cigarettes for M/s. P.S.M. Marketing, Gandhidham.
- Following Bills of Entry were filed for clearance of the subject seven consignments: (1) 2307623 dated 4.11.2010, (2) 2351584 dated 22.11.2010, (3) 4922526 dated 14.10.2011, (4) 5880003 dated 01.02.2012, (5) 6312829 dated 21.03.2012, (6) 7051774 dated 08.06.2012 and (7) 7727157 dated 22.08.2012
- Mr. Pankil Sunil Mohatta was proprietor of that firm. Shri Pankil was son of his friend Mr. Sunil Mohatta, so he knew him since many years. Mr. Sunil Mohatta used to contact him for clearance of their import consignments. He had obtained authority letter from the proprietor. He would produce a copy of the same within 1-2 days.
- All the subject consignments of cigarettes were imported by them from Indonesia.
- As per documents supplied by the importer to him, M/s. Prime Tobacco Trading Limited of Singapore was the supplier.
- As per the certificates of origin and Bills of Lading of the subject consignments, name of the shipper was Pt. Djarum of Indonesia. Name of M/s. Prime Tobacco Trading Limited of Singapore was not appearing in the documents. As informed by the importer, Pt. Djarum was manufacturer of the subject cigarettes. The

contract was made between the importer and M/s. Prime Tobacco Trading Limited of Singapore. The certificates of origin and Bills of Lading were issued by Pt. Djarum, though the contract was signed by M/s. Prime Tobacco Trading Limited. It appeared to be an agreement between Pt. Djarum and M/s. Prime Tobacco Trading Limited. All other import documents were issued to the importer by M/s. Prime Tobacco Trading Limited. Further, as informed by the importer, M/s. Prime Tobacco Trading Limited was attending trading work for Pt. Djarum.

- In the certificates of origin shown to him there was no reference of M/s. Prime Tobacco Trading Limited. There appeared reference of Pt. Djarum as exporter and M/s. P.S.M. Marketing as consignee.
- He was not aware that there was no reference of M/s. Prime Tobacco Trading Limited of Singapore on the website of Pt. Djarum. He had not checked the same. (However, he agreed to it).
- The import documents of all the above mentioned consignments were supplied by Shri Sunil Mohatta to him.
- He enquired about actual price from the importer. The importer provided him copy of contract between M/s. Prime Tobacco Trading Limited and themselves. As per that contract the value of subject cigarettes was US \$ 50 per case *i.e.*, US \$ 5 per thousand sticks.
- The importer provided him copy of contract and also informed that as the supplier wanted to introduce their brand in India, they were supplying cigarettes at promotional rate. Further, once during clearance, customs authorities had browsed NIDB data, which showed slightly higher value of cigarettes of the same brand. The same might be high due to small quantum of their import so he did not doubt value.

He was shown a copy of certificate of origin having reference No. 0016967/JKB/2012 issued at Jakarta on 08/05/2012. In this certificate of origin FOB value of the subject consignment was shown as US \$ 27,000. However, in respective Bill of Entry bearing No. 7051774 dated 08/06/2012, value was declared as US \$ 7500.

- At the relevant time he had not noticed declaration of value in certificates of origin because in normal course value was mentioned in invoice. However, after initiation of investigation by DRI, he came to know about the same. He had talked to the importer and the importer had shown willingness to pay duty calculated at the value mentioned in certificates of origin in all his import consignments of cigarettes.
- Similarly, in the certificates of origin of other consignments of cigarettes also, the value mentioned was more than invoice value. As stated above, it was not noticed by him in any certificate of origin since he used to check these certificates for ascertaining actual origin only. However, as stated above, the importer had shown willingness to accept the value mentioned in certificates of origin in all their import consignments of cigarettes and to pay duty accordingly.

He was shown photocopies of seven Shipping Bills filed by Pt. Djarum at the load port. In all those Shipping Bills name of the buyer was mentioned as M/s. P.S.M. Marketing.

- The subject Shipping Bills pertained to the consignments imported in the name of M/s. P.S.M. Marketing.
 - The invoice numbers mentioned in the Shipping Bills and certificates of origin tallied with each other.
 - The invoices produced by him before the customs authorities were having different numbers and dates than the same mentioned in those Shipping Bills. The invoices received by him were issued by M/s. Prime Tobacco Trading Limited of Singapore and were having numbers and dates different from the invoice numbers mentioned in the load port Shipping Bills and Certificates of origins.
 - The value mentioned in the invoices produced by them and value declared accordingly before customs in Bills of Entry at Kandla were different from the values mentioned in respective certificates of origin and load port Shipping Bills. Accepting the value mentioned in the Shipping Bills which was equal to the value mentioned in certificates of origin, the importer was willing to pay the duty. He would pursue him for early payment in respect of all above mentioned seven consignments.
 - He accepted the value mentioned in the Shipping Bills shown to him, which was equal to the value shown in certificates of origin. As stated above, the importer had also accepted the value mentioned in the Shipping Bills which was equal to the value mentioned in certificates of origin and the importer was willing to pay the duty. He would pursue the importer for early payment in respect of all above mentioned seven consignments.
10. During investigation, M/s. P.S.M. Marketing requested the Commissioner of Customs, Custom House, Kandla for provisional release of the subject goods. This Directorate informed the customs authorities to consider provisional release on conditions safeguarding revenue. The matter is under progress with the customs authorities.

Summary

11. The consignment of Cigarettes imported in container No. MLCU2441101, covered under Bill of Entry No. 7727157 dated 22/08/2012 was grossly undervalued. Similarly the previously imported six consignments covered under six Bills of Entry mentioned in table - II above, were also grossly undervalued. The import documents of four consignments, out of the total seven consignments, contained certificates of origin showing actual value. The load port Shipping Bills in respect of the subject seven consignments were obtained through the local representative of container line. These Shipping Bills also revealed the same higher FOB value of US \$ 18 per thousand sticks, as mentioned in the certificates of origins. The proprietor of the importer firm stated in his statement that he had authorized his father (Shri Sunil Mohatta) for importation of the subject consignments. He had shown his ignorance in respect of

value and other details of the subject consignments and stated that his father Shri Sunil Mohatta (the authorized person) was aware of the same. During his statement, Shri Sunil Mohatta was confronted with the FOB value mentioned in the four certificates of origin and seven load port Shipping Bills. He could not give any reasonable reply for the same and stated that he would pay differential duty calculated on the value mentioned in the said Shipping Bills and Certificates of Origin.

12. Following legal provisions are attracted in the instant case:

Provisions of the Customs Act, 1962:

SECTION 2: Definitions - *In this Act, unless the context otherwise requires.*

(39) *“smuggling”, in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;*

SECTION 28. Recovery of duties not levied or short-levied or erroneously refunded. –

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

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

.....

(4) *Where any duty has not been levied or has been short-levied or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,—*

(a) *collusion; or*

(b) *any willful mis-statement; or*

(c) *suppression of facts,*

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

SECTION 28AA: Interest on delayed payment of duty (1) *Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made there under, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the*

rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

SECTION 46: Entry of goods on importation. - (1) The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically to the proper officer a bill of entry for home consumption or warehousing in the prescribed form :

.....

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.

SECTION 110 (1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

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

.....

(m) 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 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;

.....

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 not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater;

(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 not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty 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;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty 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.

SECTION 114A: Penalty for short-levy or non-levy of duty in certain cases. - Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined :

the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal:

SECTION 114AA. Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

CUSTOMS VALUATION (DETERMINATION OF VALUE OF IMPORTED GOODS) RULES, 2007

Rule 3. Determination of the method of valuation. —

(1) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10;

(2) Value of imported goods under sub-rule (1) shall be accepted: Provided that -

(a) there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -

(i) are imposed or required by law or by the public authorities in India;

or

(ii) limit the geographical area in which the goods may be resold; or

(iii) do not substantially affect the value of the goods;

(b) the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;

(c) no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and

(d) the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.

(3) (a) Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.

(b) In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

(i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(ii) the deductive value for identical goods or similar goods;

(iii) the computed value for identical goods or similar goods:

Provided that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of rule 10 and cost incurred by the seller in sales in which he and the buyer are not related;

(c) substitute values shall not be established under the provisions of clause (b) of this sub-rule.

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.*

13. Mis-declaration of Value

In all the above mentioned seven Bills of Entry, M/s. P.S.M. Marketing declared C & F value of the cigarettes as US \$ 5 per thousand sticks. It was observed that at the contemporary period some other parties have imported identical goods at significantly higher value. Thus, it prima facie appears that M/s. P.S.M. Marketing have resorted to undervaluation in the import of subject seven consignments of cigarettes. From the import documents and the seven Bills of Entry filed by M/s. P.S.M. Marketing, it appears that all the seven consignments were of identical goods and produced by the same manufacturer. All the seven consignments were covered under single contract bearing No. PSM/01-2009 dated 25/09/2010. A copy of the same produced by M/s. P.S.M. Marketing show that the contract was for total 1000 Cases (A case = 50 CTN X 200 sticks) i.e., for 1,00,00,000 sticks. During recording of his statement, the local representative of the container line produced photocopies of all load port Shipping Bills pertaining to subject seven consignments. As a trade practice and in accordance with the customs law, export goods can be loaded on any vessel only on the basis of Shipping Bills duly passed by concerned customs authorities. Further, container lines used to issue Bills of Lading on the basis of such authentic documents. Thus, it was obvious that the load port Shipping Bills were available with the counterpart of the container line at load port. In all these Shipping Bills name of the exporter has been shown as Pt. Djarum and name of buyer has been shown as P.S.M. Marketing, Gandhidham; freight has been shown as "00" and FOB value has been shown as US \$ 18,000 (where total number of sticks is 10,00,000) or US \$ 27,000 (where total number of sticks is 15,00,000) i.e., US \$ 18 per thousand sticks. The certificates of origin available in files pertaining to Bills of Entry No. 6312829 dated 21/03/2012, 7051774 dated 08/06/2012, 5880003 dated 01/02/2012 and 4922526 dated 14/10/2011 also show FOB value of respective consignments as US \$ 18 per thousand sticks.

The above facts clearly show that M/s. P.S.M. Marketing have grossly undervalued the subject seven import consignments of cigarettes and evaded payment of appropriate amount of customs duty.

14. Valuation

14.1 Rejection of Declared Value:

The proprietor of M/s. P.S.M. Marketing has stated in his statements that the impugned consignment was dealt by his father Shri Sunil Parshotam Mohatta on the strength of authorization given by him. The proprietor has shown his ignorance in respect of value and other vital details pertaining to import of subject seven

consignments. Therefore, statement of Shri Sunil Parshotam Mohatta was recorded. In respect of remittance against the said import, he has stated that it was to be done through Telegraphic Transfer and that part payment was still to be made. During his statement Shri Sunil Parshotam Mohatta was asked about the value being declared by other importers in respect of identical goods. He stated that he was not aware that cigarettes of the same brand were being imported by other importers at various ports at much higher prices and that he was not aware of contracts of such importers.

When asked about actual value of the subject seven consignments, Shri Sunil Parshotam Mohatta stated that during talks with the supplier it was stated by the supplier that for introducing their brand they would provide 1000 cases at the rate of US \$ 50 per case (*i.e., US \$ 5 per thousand sticks*) and that after that they would charge higher price. However, the certificates of origin and load port Shipping Bills show FOB value of impugned consignments, as US \$ 18 per thousand sticks, which is much higher than the declared value. Though Shri Sunil Parshotam Mohatta had attempted to show that for introducing their brand the supplier agreed to provide 1000 cases at the promotional rate of US \$ 50 per case (*i.e., US \$ 5 per thousand sticks*), but the discount/ reduction of around 72% (*US \$ 13 out of US \$ 18*) is evidently abnormal.

As per Rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, value of any imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10. Rule 12 *ibid* provides mechanism of rejection of declared value on the basis of reason to doubt the truth or accuracy of the declared value. The explanation (iii) to this Rule provides reasons on the basis of which the proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value. Such reasons include significantly higher value of contemporaneous import of identical goods and abnormal discount/ reduction or special discount limited to exclusive agents. From the above discussed facts, it is evident that contemporaneous import of identical goods was affected at much higher value and subject imports of M/s. P.S.M. Marketing was affected at discount of around 72% from the value mentioned in certificates of origin and load port Shipping Bills. During recording of statements of the importer and his authorized person, sufficient opportunity was granted to them to provide actual value. However, they could not produce any cogent evidence in support of their declaration and when confronted with the certificates of origin and load port Shipping Bills, the authorized person stated that they wanted to pay differential duty on such value. Looking to the evidences in the form of load port Shipping Bills and certificates of origin (showing higher value) and admission of Shri Sunil Mohatta, it is amply clear that the declared value cannot be considered as actual transaction value under Rule 3 *ibid* read with Section 14 of the Customs Act, 1962. Further, the above discussed facts straight away satisfy the conditions enumerated in Rule 12 *ibid* and explanation (iii) to that Rule, under which doubts in respect of truth and accuracy of the declared value can be raised by proper officer. Thus, the value declared in all the above mentioned seven Bills of Entry is liable to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

14.2 Ascertaining correct value:

Section 2 (41) of the Customs Act, 1962 states that “value” in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of Section 14 the Customs Act, 1962. It has been categorically stated under sub-section (1) of Section 14 *ibid* that the value of the imported goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale, subject to such other conditions as may be specified in the rules made in this behalf. As per Rule 11 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the responsibility to declare true, correct and actual value of the imported goods has been assigned on the importer of such goods. The said rule specifically provides that the importer or his agent shall furnish - (a) a declaration disclosing full and accurate details relating to the value of imported goods; and (b) any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer, as considered necessary by the proper officer for determination of the value of imported goods under these rules.

In view of the facts discussed in the foregoing paras and material evidences available on records, it appears that M/s. P.S.M. Marketing, Gandhidham have contravened the provisions of Section 14, Section 46(4) of the Customs Act, 1962, Rules 3 and 11 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 read with Rules 11 & 14 of the Foreign Trade (Regulation) Rules, 1993, in as much as they have intentionally mis-declared value.

The import of above consignment of Cigarettes appear to have been made by employing fraudulent means under pre-determined agreement/ understanding between themselves and the suppliers to derive illegal benefit out of such deal by evasion of Customs duty. As per the pre-conceived plan, the overseas supplier had deliberately issued manipulated invoices, which enabled the importer to evade the duty due on the above goods. Therefore, the declared value of the impugned goods is not in conformity with Section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of Value of the imported goods) Rules, 2007.

Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, provides the method of valuation. Rule 3(1) of the Customs Valuation Rules, 2007 provides that “subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10”. Rule 3(4) *ibid* states that “if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9 of Custom Valuation Rules, 2007”. In the instant case, the available evidences clearly indicate that the invoices raised by overseas supplier on M/s. P.S.M. Marketing, Gandhidham, which were submitted before Customs authorities in respect of the subject seven consignments, do not indicate true and correct transaction value of the said goods. Further as per the evidences true, correct and actual FOB value of

the cigarettes imported by M/s. P.S.M. Marketing is US \$ 18 per thousand sticks. Shri Sunil Mohatta, authorized person of M/s. P.S.M. Marketing also agreed with the same in his statement. The FOB value of US \$ 18 per thousand sticks, appear to be fair and correct rate of FOB value of the impugned seven consignments. Thus, the said agreed value appears to be acceptable in accordance with Rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.

It therefore appears that in respect of the said seven consignments of imported cigarettes, which were admittedly undervalued, the value declared by M/s. P.S.M. Marketing, Gandhidham before the designated authority of Customs cannot be treated as true transaction value as per Section 14 of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation Rules 2007. It further appears that the actual transaction value of such imported goods is available from the evidences mentioned above. As there is a reasonable doubt regarding the truth & accuracy of the values declared by M/s. P.S.M. Marketing, Gandhidham, the same are liable to be rejected in terms of Rule 12 of the Customs Valuation Rules, 2007. Since evidences and admission of actual transaction value is available in this case, recourse is to be taken to the provisions of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation Rules, 2007 for re-determining the value of the said seven consignments (six cleared vide Bills of Entry mentioned in table - II and one attempted to be cleared under Check-list for Bill of Entry No. 7727157 dated 22/08/2012 filed in the name of M/s. P.S.M. Marketing, Gandhidham).

The value of the cigarettes imported by M/s. P.S.M. Marketing, under the seven Bills of Entry, accordingly re-determined in accordance with the aforesaid evidences and admission of transaction value by Shri Sunil Mohatta in his statement dated 31/10/2012. In the light of the fact that actual value is available in four certificates of origin and seven load port Shipping Bills, this appears to be the most reasonable method for valuation, using reasonable means consistent with the principles and general provisions of the Valuation Rules to arrive at the transaction value for the purpose of Rule 3 ibid.

In view of the above facts, the assessable value, in respect of the impugned seven import consignment of cigarettes of M/s. P.S.M. Marketing, have accordingly been re-determined and computed by taking re-course to Section 14(1) of the Customs Act, 1962 read with Rules 3 and 12 (1) of the Customs Valuation Rules, 2007, after considering the actual total transaction value of the seven consignments, which works out to Rs. 1,00,42,460/- (As detailed in Annexure-II) against total declared value of Rs. 23,29,087/-, for the impugned goods covered under the seven Bills of Entry.

15. Correct duty calculation:

As discussed above, it is evident that the value of the impugned consignments of cigarettes were mis-declared in respective Bills of Entry and accordingly the customs duty was wrongly calculated. Appropriate duty is required to be calculated on the re-determined FOB value at the rate of US \$ 18 per thousand sticks. In addition to

this, it also appears that the specific CVD has been calculated in the Bills of Entry No. 6312829 dated 21.03.2012, 7051774 dated 08.06.2012 and Check-list for Bill of Entry No. 7727157 dated 22/08/2012 at the pre-revised rate of 10% ad valorem + Rs. 1,624/- per thousand sticks, in stead of the actual rate of Rs. 1,974/- per thousand sticks, as enumerated vide the Finance Act, 2012. By virtue of Provisional Collection of Taxes Act, 1931, the revised rate came in existence from 16/03/2012 i.e., on the day the Finance Bill, 2012 was introduced in parliament with declaration under Section 3 of that Act. Further, as per clause 85 of the Finance Act, 2005, Health Cess as additional duty of excise @ Rs. 145 per thousand sticks was also leviable but in Bills of Entry No. 6312829 dated 21.03.2012, 7051774 dated 08.06.2012 and 7727157 dated 22/08/2012 the same has not been levied. Considering all these facts, correct calculation of the total customs duty and differential duty has been mentioned in the Annexure - II of this notice.

16. Confiscation

16.1 It is evident from the discussion in Para above that all the seven import consignments were grossly undervalued by M/s. P.S.M. Marketing. C& F value of the subject consignments were declared in respective Bills of Entry as US \$ 5 per thousand sticks against actual FOB value of US \$ 18 per thousand sticks. During the course of investigation, evidences in the form of load port Shipping Bills of all the seven consignments were collected. Further, certificates of origins in respect of four, out of the total seven consignments, also contain actual value. The load port Shipping Bills and the certificates of origins show actual value as US \$ 18 per thousand sticks FOB basis. Accordingly Bills of Entry wise correct assessable value has been arrived and mentioned in Annexure - II of this notice. The proprietor of M/s. P.S.M. Marketing and Shri Sunil Mohatta who attended the imports could not provide any proper explanation in respect of these evidences. Instead Shri Sunil Mohatta admitted his liability and stated that he would pay differential duty calculated on the value mentioned in these evidences. Thus, it is evident that the subject consignment was grossly undervalued and that actual FOB value of the subject goods was US \$ 18 per thousand sticks. Accordingly, total assessable value comes to Rs. 1,00,42,460/- (Bills of Entry wise assessable value mentioned in Annexure-II to this notice). From the above facts it is evident that by adopting such modus operandi, M/s. P.S.M. Marketing attempted to evade customs duty in the subject imports. They cleared six consignments and attempted to clear one consignment by mis-declaring value in respective seven Bills of Entry. From the evidences it is evident that in all the seven Bills of Entry they deliberately suppressed actual value from the Customs Authorities. Thus, by the above act, M/s. P.S.M. Marketing have contravened the provisions of Section 46 of the Customs Act, 1962 read with Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and Rules 11 & 14 of the Foreign Trade (Regulation) Rules 1993, in as much as they did not disclose the actual value of the goods while filing the subject seven Bills of Entry at the time of the importation of the goods. The same was done with ulterior motive of evading payment of appropriate customs duty leviable thereon. This act of mis-declaration on the part of M/s. P.S.M. Marketing has rendered the import consignment of 15,00,000 sticks of cigarettes covered under Bill of Entry No. 7727157 dated 22/08/2012, having total assessable value of Rs. 18,48,073/-,

liable to confiscation under the provisions of the Sections 111(m) of the Customs Act, 1962 and rendered the same liable to be treated as smuggled goods within the meaning of Section 2(39) of the Customs Act, 1962.

Apart from the said seized quantity, the deliberate act of undervaluation in remaining six Bills of Entry has also held 75,00,000 sticks of cigarettes, covered therein and having total re-determined assessable value of Rs. 81,94,387/-, liable to confiscation under Section 111(m) of the Customs Act, 1962, though the same are not available for confiscation and imposition of redemption fine.

Demand of differential duty

17. From the above discussed facts, it is amply clear that the importer and Shri Sunil Mohatta have resorted to willful mis-declaration of value in the subject seven Bills of Entry, with an ulterior motive of evading payment of the applicable duty on imported Cigarettes. The four certificates of origin, seven load port Shipping Bills and statements of various persons clearly establish that in the place of actual FOB value of US \$ 18 per thousand sticks, it was willfully mis-declared as US \$ 5 (C&F) per thousand sticks. Accordingly, they declared total duty in the seven Bills of Entry as 1,95,48,055/- against the actual amount of Rs. 2,44,76,547/- (Bills of Entry wise bifurcation shown in Annexure - II). Thus they evaded/ attempted to evade payment of duty to the tune of Rs. 49,28,492/- in the subject seven Bills of Entry. The said amount is therefore, liable to be demanded and recovered from M/s. P.S.M. Marketing, Gandhidham. The value was mis-declared in the subject seven Bills of Entry by suppressing the actual value. For the said act of suppression and willful mis-declaration in the subject seven Bills of Entry, Section 28(4) of Customs Act, 1962, invoking extended period for demand of duty is squarely applicable in the instant case. Therefore, the differential Customs duty on the said consignment of Cigarettes, totally amounting to Rs. Rs. 49,28,492/- (as detailed in Annexure -II) is liable to be demanded and recovered from M/s. P.S.M. Marketing under Section 28 (4) of the Customs Act 1962 along with applicable interest under Section 28 AA ibid (Section 28 AB prior to 08/04/2011).

18. Roles of various persons and penalties on them

18.1 Shri Pankil Sunil Mohatta is proprietor of M/s. P.S.M. Marketing, Gandhidham. He had authorized Shri Sunil Parshotam Mohatta for attending import of subject seven consignments of cigarettes. Shri Pankil Sunil Mohatta is son of Shri Sunil Parshotam Mohatta. As provided under Section 46 of the Customs Act, 1962 it was duty of the importer to ensure true and correct declaration in the Bill of Entry. However, Shri Pankil Sunil Mohatta himself has admitted in his statements that he had not attended subject imports and was not aware of value and other vital details of the subject seven consignments. Under due authorization of the proprietor, Shri Sunil Parshotam Mohatta had attended all the work pertaining to indenting, import and clearance of subject seven consignments of cigarettes. Therefore, M/s. P.S.M. Marketing, Gandhidham is responsible for all the acts done by Shri Sunil Parshotam Mohatta in respect of the subject seven imports.

In his statement Shri Sunil Parshotam Mohatta attempted to show that the value mentioned in invoices and declared in the seven Bills of Entry were actual values of the subject seven consignments of cigarettes. However, when confronted with certificates of origin showing higher FOB values of the subject consignment, he could not give convincing reply and stated that he was not aware of the reasons of higher value mentioned in the certificates of origin. He was also shown photocopies of seven Shipping Bills filed by Pt. Djarum at the load port. He agreed that the subject Shipping Bills pertained to the seven consignments imported in the name of M/s. P.S.M. Marketing. The invoice numbers mentioned in the subject Shipping Bills tally with respective certificates of origin, shown to him. The invoices produced by him before the customs authorities were having different numbers and dates than the same mentioned in the Shipping Bills. The invoices received by him were issued by M/s. Prime Tobacco Trading Limited of Singapore and were having numbers and dates different from the invoice numbers mentioned in the load port Shipping Bills and certificates of origin. Looking to the evidences in the form of load port Shipping Bills and certificates of origin showing actual value, he stated that he was willing to pay differential duty, accepting the value mentioned in the shown certificates of origin and load port Shipping Bills. He was specifically asked about actual value of the subject goods but avoiding clear reply he again stated that he was willing to pay differential duty, accepting the value mentioned in the shown certificates of origin and load port Shipping Bills.

It is evident from his statement that Shri Sunil Parshotam Mohatta initially pretended that the declared value was actual transaction value of the subject seven consignments. However, when he could not give proper replies of certain queries he preferred to accept of liability of differential duty. Thus, it is amply clear that the value declared in the subject seven Bills of Entry were not correct and the same were deliberately undervalued substantially on the basis of the concocted invoices, with intention to evade payment of appropriate amount of customs duty. The deliberate act of undervaluation in the Bill of Entry No. 7727157 dated 22/08/2012 has rendered the 15,00,000 sticks of cigarettes covered therein, having re-determined assessable value of Rs. 18,48,073/-, liable to confiscation under Section 111(m) of the Customs Act, 1962 and also rendered M/s. P.S.M. Marketing, Gandhidham liable to penalty under Section 112(a) of the Customs Act, 1962.

Apart from the said seized quantity, in the same manner his deliberate act of undervaluation in remaining six Bills of Entry has also held 75,00,000 sticks of cigarettes covered therein and having total re-determined assessable value of Rs. 81,94,387/- liable to confiscation under Section 111(m) of the Customs Act, 1962 (though the same are not available for confiscation) and also rendered themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

The above mentioned act of suppression and mis-declaration of value was done with intention to evade payment of appropriate customs duty on the above mentioned seven consignments. Total duty amount of Rs. 49,28,492/- was attempted to be evaded by M/s. P.S.M. Marketing. For the above act of suppression and willful mis-declaration in the above mentioned seven Bills of Entry, M/s. P.S.M. Marketing,

Gandhidham have also rendered themselves liable to penalty under Section 114A of the Customs Act, 1962.

18.2 Shri Sunil Parshotam Mohatta is authorized person in M/s. P.S.M. Marketing. All the subject seven import consignments of cigarettes were attended by him. The proprietor had shown his ignorance in respect of value and other vital details of subject imports. He has also stated that all the consignments were attended by Shri Sunil Parshotam Mohatta. Statement of Shri Sunil Parshotam Mohatta was recorded wherein he stated that M/s. Pt. Djarum was manufacturing cigarettes and M/s. Prime Tobacco Trading Limited was attending trading of their manufactured cigarettes. He finalized deal with them for 1000 cases (A case = 50 Ctn x 200 sticks) at the rate of US \$ 50 per case (i.e., 10,000 sticks). He also attempted to show that the value mentioned in invoice and declared in Bills of Entry was actual value of the subject consignments of cigarettes. However, when confronted with certificate of origin dated 08/05/2012 showing FOB value of the subject consignment as US \$ 27,000, he could not give convincing reply and stated that he was not aware of the reasons of higher value mentioned in the certificate of origin. He was also shown photocopies of Shipping Bills filed by Pt. Djarum at the load port. He agreed that the subject Shipping Bills pertained to the consignments imported in the name of M/s. P.S.M. Marketing. The invoice numbers mentioned in the subject Shipping Bills tally with respective certificates of origin shown to him. The invoices produced by him before the customs authorities were having different numbers and dates than the same mentioned in the Shipping Bills. The invoices received by him were issued by M/s. Prime Tobacco Trading Limited of Singapore and were having numbers and dates different from the invoice numbers mentioned in the load port Shipping Bills and Certificates of origins. Looking to the evidences in the form of load port Shipping Bills and Certificates of origin showing actual value, he stated that he was willing to pay differential duty, accepting the value mentioned in the shown certificates of origin and load port Shipping Bills. He was specifically asked about actual value of the subject goods but avoiding clear reply he again stated that he was willing to pay differential duty, accepting the value mentioned in the shown certificates of origin and load port Shipping Bills.

Though Shri Sunil Parshotam Mohatta avoided giving direct replies of crucial question but the above facts clearly show that he was fully involved in undervaluing all the seven consignments of cigarettes. He had negotiated with the supplier and attended all the work pertaining to subject imports. The sequence of questions and replies in the statement clearly show that initially he pretended the declared value to be actual transaction value of the subject consignments. However, when he could not give proper replies of certain queries he preferred to accept of liability of differential duty. It clearly shows his culpable mental state. Thus, it is evident that he was fully aware of the actual value of the subject import consignments but deliberately managed invoices showing substantially lower value with intention to evade payment of appropriate amount of customs duty. On the strength of the invoices showing false value he managed to file the seven Bills of Entry with gross undervaluation. His deliberate act of undervaluation in Bill of Entry No. 7727157 dated 22/08/2012 has rendered the 15,00,000 sticks of Cigarettes covered therein and having re-determined

assessable value of assessable value of Rs. 18,48,073/- liable to confiscation under Section 111(m) of the Customs Act, 1962 and also rendered himself liable to penalty under Section 112(a) of the Customs Act, 1962. In the same manner his deliberate act of undervaluation in remaining six Bills of Entry has held 75,00,000 sticks of Cigarettes covered therein and having total re-determined assessable value of Rs. 81,94,387/- liable to confiscation under Section 111(m) of the Customs Act, 1962 and also rendered himself liable to penalty under Section 112(a) of the Customs Act, 1962.

From the above discussion it is also evident that all the seven invoices of cigarettes presented before the customs were showing false value and Shri Sunil Parshotam Mohatta had knowingly utilized such false invoices for undervaluation. This act on his part has rendered himself liable to penalty under Section 114AA of the Customs Act, 1962 also.

18.3 Shri Pankaj Karsanbhai Thakker is partner in CHA firm *M/s. Krishna Clearing Agency*, Gandhidham. He has attended customs clearance work pertaining to subject seven import consignments of cigarettes for *M/s. P.S.M. Marketing*, Gandhidham. In his statement he has stated that the importer provided him copy of contract between *M/s. Prime Tobacco Trading Limited* and themselves. As per that contract the value of subject cigarettes was US \$ 50 per case i.e., US \$ 5 per thousand sticks. The importer informed that as the supplier wanted to introduce their brand in India, they were supplying cigarettes at promotion rate. From his statement it also emerges that he was aware that other importer had also imported cigarettes of the same brand declaring much higher value. However, it is evident that he has not taken any initiative to declare actual value in the Bills of Entry. He was also confronted with certificate of origin 0016967/JKB/2012 dated 08/05/2012 in which FOB value of the subject consignment was shown as US \$ 27,000 against US \$ 7500 declared in Bill of Entry No. 7051774 dated 08/06/2012. He stated that he had not noticed it. The subject four certificates of origin were provided to him by the importer, thus, his reply of not noticing the same is not acceptable. He was also shown photocopies of Shipping Bills filed by Pt. Djarum at the load port in which name of buyer was mentioned as *M/s. P.S.M. Marketing*. He admitted that the subject Shipping Bills pertained to the consignments imported in the name of *M/s. P.S.M. Marketing*. The value mentioned in the invoices produced by them and value declared accordingly before customs in Bills of Entry at Kandla were different from the values mentioned in respective load port Shipping Bills. He could not give any proper explanation of the same and stated that accepting the value mentioned in the Shipping Bills which was equal to the value mentioned in certificates of origin, the importer was willing to pay the duty.

A CHA is duty bound to exercise due diligence to ascertain the correctness of any information with reference to the work related to clearance of cargo. He has admitted that he was informed that the subject consignments were supplied on promotional rate. Thus, he was aware that the invoices of the subject consignments were not showing normal value. Therefore, in the instant case it was their duty to ask for correct value of the imported goods and to declare the same before the Customs Authority. However, it appears that instead of doing so, Shri Pankaj Karsanbhai

Thakker, partner of the CHA firm deliberately did not enquire about actual value before filing Bills of Entry and became part of the consortium and abetted in undervaluing the impugned goods. These facts clearly show that M/s. Krishna Clearing Agency, Gandhidham consciously mis-declared value of the imported cigarettes in all the above mentioned seven Bills of Entry. The above discussed act on the part of Shri Pankaj Karsanbhai Thakker and M/s. Krishna Clearing Agency have rendered the impugned consignment of Cigarettes liable to confiscation under Section 111(m) of the Customs Act, 1962 and has also rendered themselves liable to penalty under Section 112(a) of the Customs Act, 1962. For the above acts of omissions and commissions resulting in grave loss to the exchequer, M/s. Krishna Clearing Agency have also rendered themselves liable for action under Customs House Agents Licensing Regulations, 2004.

From these facts it is clearly evident that Shri Pankaj Karsanbhai Thakker was aware of the fact that the value mentioned in invoices were not correct. Despite it he used such false invoices in filing the subject seven Bills of Entry. For the above act Shri Pankaj Karsanbhai Thakker has rendered himself liable to penalty under Section 114AA of the Customs Act, 1962 also.

19. Accordingly, a Show Cause Notice bearing F.No.DRI/AZU/GRU-80/2012 dated 18.02.2013 was issued whereby

19.1 M/s. P.S.M. Marketing, situated at Plot No. 255, Sector 1/A, Gandhidham (Kutch) was called upon to show cause in writing to the Joint Commissioner of Customs having his office situated at Custom House, Kandla, within thirty days from the receipt of this notice as to why:-

- (i) The assessable value declared in the Bills of Entry No. (i) 2307623 dated 4.11.2010, (ii) 2351584 dated 22.11.2010, (iii) 4922526 dated 14.10.2011, (iv) 5880003 dated 01.02.2012, (v) 6312829 dated 21.03.2012, (vi) 7051774 dated 08.06.2012 and (vii) 7727157 dated 22/08/2012 should not be rejected and re-determined as detailed in annexure-II of this notice, under Rules 3(1) and 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962 and these Bills of Entry be assessed accordingly;
- (ii) The imported 15,00,000 sticks of cigarettes having re-determined assessable value of Rs. 18,48,073/- attempted to be cleared under the Bill of Entry No. 7727157 dated 22/08/2012 at Kandla should not be confiscated under Section and 111 (m) of the Customs Act, 1962;
- (iii) The imported 75,00,000 sticks of cigarettes, having total assessable value of Rs. 81,94,387/-, cleared vide Bills of Entry No. (i) 2307623 dated 4.11.2010, (ii) 2351584 dated 22.11.2010, (iii) 4922526 dated 14.10.2011, (iv) 5880003 dated 01.02.2012, (v) 6312829 dated 21.03.2012 and (vi) 7051774 dated 08.06.2012 should not be held liable to confiscation under Sections 111 (m) of the Customs Act, 1962.

- (iv) The total differential customs duty amounting to Rs. 49,28,492/- on total imported 90,00,000 sticks of Cigarettes cleared/ attempted to be cleared under Bills of Entry No. (i) 2307623 dated 4.11.2010, (ii) 2351584 dated 22.11.2010, (iii) 4922526 dated 14.10.2011, (iv) 5880003 dated 01.02.2012, (v) 6312829 dated 21.03.2012, (vi) 7051774 dated 08.06.2012 and (vii) 7727157 dated 22/08/2012 (As per Annexure-II of this notice), should not be demanded and recovered from them under Section 28 (4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962 (Section 28 AB prior to 08/04/2011);
- (v) Penalty should not be imposed on him under Section 112(a) Customs Act, 1962;
- (vi) Penalty should not be imposed on him under Section 114A Customs Act, 1962;

19.2 Shri Sunil Parshotam Mohatta was thereby called upon to show cause in writing to the Joint Commissioner of Customs having his office situated at Custom House, Kandla within thirty days from the receipt of this notice as to why penalty should not be imposed on him under Sections 112(a) and 114AA of the Customs Act, 1962.

19.3 M/s. Krishna Clearing Agency was thereby called upon to show cause in writing to the Joint Commissioner of Customs having his office situated at Custom House, Kandla within thirty days from the receipt of this notice as to why penalty should not be imposed on them under Sections 112(a) and 114AA of the Customs Act, 1962.

19.4 Shri Pankaj Karsanbhai Thakker was thereby called upon to show cause in writing to the Joint Commissioner of Customs having his office situated at Custom House, Kandla within thirty days from the receipt of this notice as to why penalty should not be imposed on him under Sections 112(a) and 114AA of the Customs Act, 1962.

PERSONAL HEARING:-

20. Personal hearing in the matter was held on 16.05.2017 which was attended on behalf of the Noticee(s) by Shri Vikas Mehta, Consultant cum authorized representative and Shri Pankaj K. Thakker, Partner of M/s Krishna Clearing Agency . However, due to change in Adjudicating Authority, further Personal hearing was granted on 28.08.2017. The Personal Hearing was attended on 28.08.2017 on behalf of the Noticeee(s) by Shri Vikas Mehta, Consultant cum Authorised representative and Pankaj Karsanbhai Thakker, Partner of M/s Krishna Clearing Agency. They submitted a written defence reply dated 24.08.2017 of M/s P.S.M. Marketing and Shri Sunil Parshotam Mohatta and another written defence reply dated 25.08.2017 of M/s Krishna Clearing Agency and their partner Shri Pankaj Karsanbhai Thakker. They reiterated the submissions made by them under their written defence submissions dated 24.08.2017 and 25.08.2017 respectively and requested to decide the case accordingly.

DEFENCE SUBMISSION:-

21. Defence Reply dated 24.08.2017 to Show Cause Notice No. DRI/AZU/GRU-80/2012, dated 18.02.2013 issued by Directorate of Revenue Intelligence, Ahmedabad to M/s. P.S.M. Marketing, Gandhidham and Shri Sunil Mohatta, Authorized Signatory of M/s. P. S. M. Marketing, Gandhidham.

21.1 M/s. P.S.M. Marketing, Gandhidham ("M/s. PSM", for short) hereby take this opportunity to place on record that M/s. PSM had entered into one contract No. PSM/01-2009 dated 25.09.2010 with M/s. Prime Tobacco Trading Ltd., 21/F, ICBC Tower, Citibank Plaza, 3 Garden Road, Central Hongkong, for supply of 1000 C/S of Djarum Clove Cigarettes (length 85MM) ("goods", for short). In all, 07 consignments comprising of goods arrived into India from Indonesia. M/s. PSM filed 07 bills of entry bearing Nos. 2307623 dated 4.11.2010, 2351584 dated 22.11.2010, 4922526 dated 14.10.2011, 5880003 dated 01.02.2012, 6312829 dated 21.03.2012, 7051774 dated 08.06.2012 and 7727157 dated 22.08.2012 with Custom House, Kandla.

21.2 The goods covered by the first 06 consignments were assessed and permitted cleared by the assessing officer at Custom House, Kandla, on payment of appropriate duty after due perusal and scrutiny of the documents, namely, contract, invoice, bill of lading, Certificate of Origin, etc. presented by M/s. PSM. However, goods covered by bills of entry No. 7727157 dated 22.08.2012 was placed under seizure by DRI officers by advancing the ground of undervaluation.

21.3 That subsequently, DRI has cited Certificate of Origin (corresponding to 04 consignments) and 07 documents bearing format of shipping bill filed by exporter Pt. Djarum in Indonesia, that were gathered from one Shri Piyush Rathore, working as branch manager with M/s. Perma Shipping Line India Private Limited to allege that goods imported by M/s. PSM were undervalued.

21.4 Based on above assumption, M/s. PSM have been issued Show Cause Notice No. DRI/AZU/GRU-80/2012 dated 18.02.2013, asking them to show cause to your Honour as to why:-

- “(i) The assessable value declared in the Bills of Entry ..should not be rejected and re-determined as detailed in annexure-II to ..notice under Rules 3(1) and 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules,2007 read with Section 12 of the Customs Act,1962 and these Bills of Entry be assessed accordingly;*
- (ii) The imported 15,00,000 sticks of cigarettes having re-determined assessable value of Rs. 18,48,073/- ..under Bill of Entry No. 7727157 dated 22/08/2012 at Kandla should not be confiscated under Section 111 (m) of the Customs Act,1962;*
- (iii) The imported 75,00,000 sticks of cigarettes having total assessable value of Rs. 81,94,387/- cleared vide Bills of Entry Nos....should not be held liable to confiscation under Section 111 (m) of the Customs Act,1962.*

- (iv) *The total differential customs duty amounting to Rs. 49,28,492/- on total imported 90,00,000 sticks of cigarettes cleared/attempted to be cleared under Bills of Entry ...should not be demanded and recovered from them under Section 28(4) of the Customs Act,1962, along with applicable interest under Section 28AA of the Customs Act,1962..*
- (v) *Penalty should not be imposed on him under Section 112 (a) of Customs Act,1962;*
- (vi) *Penalty should not be imposed on him under Section 114A of Customs Act,1962.”*

21.5 Shri Sunil P. Mohatta, Authorized Signatory of M/s. PSM, is also asked to show cause to your Honour as to why penalty should not be imposed upon him under Section 112(a) and 114AA of the Customs Act,1962.

21.6 At the outset, M/s. PSM hereby say and submit that the charges of undervaluation leveled against them are completely baseless and false and hence, the same are liable to be withdrawn forthwith. Accordingly, the aforesaid proposals are also liable to be quashed, being not sustainable in the eyes of law, on the following amongst other grounds which are taken independently of and without prejudice to each other:

- A-1) Your Honour may kindly observe that as per para 14 *ibid*, the show cause notice propose to re-determine the assessable value of the goods under consideration *“by taking recourse to Section 14(1) of the Customs Act,1962 read with Rules 3 and 12(1) of the Customs Valuation Rules,2007, after considering the actual transaction value”*. It further notes that *“actual value is available in four certificates of origin and seven load port Shipping Bills”*.
- A-2) Section 14(1) of the Customs Act,1962, inter alia stipulate that the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation.
- A-3) It is submitted that M/s. PSM had purchased the goods from M/s. Prime Tobacco Trading Limited of Singapore, as duly stated by Shri Pankil Mohatta, Proprietor of M/s. PSM and Shri Sunil Mohatta, authorized signatory of M/s. PSM. The show cause notice nowhere challenges this fact. On the contrary, it is admitted in the show cause notice that all the seven consignments were covered under a single contract bearing No. PSM/01-2009 dated 25.09.2010 (para 13 *ibid* refers) entered between M/s. PSM and M/s. Prime Tobacco Trading Limited.
- A-4) The price actually paid or payable, in terms of Section 14(1) of Customs Act,1962, by M/s. PSM to M/s. Prime Tobacco Trading Limited, in terms of aforesaid contract, was USD 5 per 1000 sticks (C&F).

- A-5) The show cause notice nowhere cites any evidence regarding remittance over and above the price mentioned in the contract and invoices raised by M/s. Prime Tobacco Trading Limited on M/s. PSM.
- A-6) Therefore, for the purpose of Section 14(1) of Customs Act, 1962, the value of goods under consideration must be taken as USD 5 per 1000 sticks (C&F) and not any other value, as proposed in the show cause notice.
- B-1) Nonetheless, Section 14(1) of the Customs Act, 1962, contains a proviso, which at clause (iii), inter alia stipulate that the rules (Customs Valuation Rules, 2007) may provide for the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section.
- B-2) Rule 3(1) of Customs Valuation Rules, 2007, states that subject to rule 12, the value of imported goods shall be the transaction value.
- B-3) The show cause notice seems to have take a cue from the proviso to Section 14(1) of Customs Act, 1962 as well as Rule 3(1) of the Customs Valuation Rules, 2007 and has invoked the provisions contained in Rule 12 of Customs Valuation Rules, 2007, which inter alia permits the proper officer to doubt the declared value by assuming abnormal discount { Explanation (1)(iii)(b) to Rule 12 of the Customs Valuation Rules, 2007 refers}.
- B-4) In this regard, it is respectfully submitted that despite making repeated averments that cigarettes of the same brand were being imported by other importers at much higher value, the show cause notice does not cite or rely upon a single instance of this nature to substantiate this allegation.
- B-5) The show cause notice does not rely upon an iota of evidence showing any higher price at which identical or similar goods were sold for import into India at any point in time. It also does not rely upon any price list of supplier (M/s. Prime Tobacco Trading Limited of Singapore) or manufacturer (M/s. Pt. Djarum) suggestive of the fact that the actual price of the goods under consideration was USD 18 per thousand sticks or even in the vicinity of this price.
- B-6) In absence of above, it may be kindly appreciated that the show cause notice grossly errs in assuming that there was discount of around 72%. It may be kindly appreciated that without citing contemporaneous import price, quantum of discount cannot be determined. Consequently, the proposal to reject the transaction value by alleging abnormal discount is *ex facia* illegal and hence, not sustainable in the eyes of law.
- B-7) M/s. PSM would, therefore strongly contend that recourse to the provisions of Rule 3(1) and Rule 12 of Customs Valuation Rules, 2007 is completely ill-conceived in the eyes of law and hence, the proposal to reject transaction value by citing abnormal discount is devoid of the force of law.

- B-8) Assuming without admitting that the proper officer had reasons to doubt the declared value by assuming abnormal discount, the attempt made in the show cause notice to determine the transaction value without citing any contemporaneous import and by relying upon unsigned documents gathered from private sources, is bad in law and cannot be upheld.
- C-1) M/s. PSM hereby reiterate that the show cause notice does not rely upon any evidence showing contemporaneous import of goods into India from M/s. Prime Tobacco Trading Limited or M/s. Pt. Djarum to India at any higher price.
- C-2) The show cause notice however, relies upon 07 shipping bills supposedly filed by Pt. Djarum in Indonesia and 04 Certificates of Origin, 02 of which were supposedly issued by Municipality Office in Jakarta Barat and 02 by Municipality Office in Puri Kembangan, where price is supposedly mentioned on a higher side by M/s. Pt. Djarum.
- C-3) In this regard, it is respectfully submitted that none of the above documents bear signatures of any Customs or other Government officers of Indonesia. It is also a matter of record that these were not procured from any government authority and hence, it lacks authenticity as well as credibility.
- C-4) In the case of *Uttam Mohanlal Jain v/s Commissioner of Customs, Nhava Sheva*, 2000 (124) E.L.T. 661 (Tribunal), Hon'ble Tribunal has held that, -

*"4. The export declaration produced before us is a barely legible photocopy. The details of the consignment importer's name, the ship carrying the cargo are legible and tally correspond with the details of the imports made by the appellant. The declaration was annexed to the notice issued by the Department which has not specified the manner of its acquisition or the person from whom it acquired the document. There are no signatures of any Customs or other Government officers on it. For such a document to be accepted as evidence it will have to be shown to come within the purview of Section 139 (1) of the Act. The reasoning of the Tribunal in *East Punjab Traders v. CCE* which was confirmed by the Supreme Court that photocopy of a document which was not authenticated would not be admissible evidence would apply to this document. The presence in it of details corresponding to details of the import made would not constitute required authentication. Such details would be available to a large number of persons who could therefore fabricate such documents. In *Mehta Impex v. CCE*, 1990 (45) E.L.T. 249 cited by the Departmental representative the Tribunal had accepted as genuine invoices issued by a German supplier to an importer at Singapore which were sent by the German Customs to the Indian Customs. The appellant did not question the genuineness of these documents. The facts and contentions are obviously very different in the present case."*

(Emphasis Supplied)

- C-5) The above decision was duly affirmed by Hon'ble Supreme Court, as reported at 2001 (130) E.L.T. A26 (S.C.).
- C-6) Copy of the above decisions is hereby annexed herewith as Exhibit -"A" and Exhibit-"B" respectively.
- D-1) Without prejudice to above, we hereby request your Honour to kindly provide original copies of shipping bills filed by M/s. Pt. Djarum, bearing signatures of Customs authority of Indonesia to enable us to cause due verification with the overseas supplier, i.e. M/s. Prime Tobacco Trading Ltd., Hongkong and file appropriate reply/rejoinder in the matter.
- D-2) We also request your Honour to allow us to cross-examine Shri Piyush Rathore, Branch Manager of M/s. Perma Shipping Line India Private Limited, Gandhidham (who provided unsigned copies of documents akin to shipping bills filed by in Indonesia).
- E-1) Moreover, the show cause notice also does not rule out the fact more often than not, the overseas suppliers indulge in making declarations bearing over-invoicing of the export value in order to get incentives from their Government, as was the case before Hon'ble Supreme Court in the case of Commissioner of Customs, Calcutta v/s South India Television (P) Ltd., 2007 (214) E.L.T. 3 (S.C.).
- E-2) Inasmuch as show cause notice has failed to rule out over-valuation by M/s. Pt. Djarum, charge of under-valuation against M/s. PSM is not tenable in the eyes of law, particularly when contemporaneous imports have not been cited.
- E-3) A copy of the decision of Hon'ble Supreme Court of India in the case of South India Television (P) Ltd. (supra) is annexed herewith as Exhibit- "C".
- E-4) We also rely upon the decision of Hon'ble Tribunal in the case of Ozurt Systems Pvt. Ltd. v/s Commissioner of Customs, Visakhapatnam, 2016 (332) E.L.T. 381 (Tri.-Bang.)
- E-5) A copy of the decision of Hon'ble Tribunal in the case of Ozurt Systems Pvt. Ltd., (supra) is annexed herewith as Exhibit-"D".
- E-6) Thus, reliance on unauthenticated copies of documents akin to shipping bills supposedly filed in Indonesia is also misplaced.
- F-1) It is further submitted that the show cause notice, by citing unsigned and unauthenticated documents akin to shipping bills gathered from Shri Piyush Rathore and 04 Certificates of Origin, makes repeated averments that these documents bear the actual value of goods.
- F-2) However, the show cause notice ignores the settled law reiterated by Hon'ble Supreme Court from time to time, including the most recent decision in the case of Commissioner of Cus.. Visakhapatnam v/s Truwoods Pvt. Ltd., 2016 (331) E.L.T. 15 (S.C.). According to this, assessable value could not be

enhanced on the basis of documents procured by the Revenue which are without any signatures and are photocopies which are not even attested.

- F-3) On this basis, it is submitted that reliance placed on unverified, unattested and unauthenticated documents is completely misplaced.
- F-4) A copy of the decision of Hon'ble Supreme Court in the case of Truwoods Pvt. Ltd. (supra) is annexed herewith as Exhibit-"E".
- G-1) Further, reliance placed on Certificate of Origin is also misplaced inasmuch as provisions of Customs Valuation Rules,2007 does not contain any reference to Certificate of Origin for the purpose of rejecting and/or determining the value of imported goods.
- G-2) They also reserve our right to cross-examine the assessing officers who assessed the goods based on Certificate of Origin, which are now being made the basis for rejection of transaction value.
- H) Without prejudice to above, your Honour is well aware that an assessment order on the bill of entry is an appealable order and in the absence of any appeal by department, the assessment orders have already attained finality and no show cause notice demanding differential duty, without reversing the assessment order, could have been lawfully issued.
- I-1) To sum up, it may be kindly appreciated from the above submissions that in any which way, the proposals contained in the show cause notice to reject the transaction value of goods covered by 07 bills of entry under consideration and determine the same as Rs. 18,48,073/- for goods covered by bill of entry No. 7727157 dated 22.08.2012 and as Rs. 81,94,387/- for goods covered by 06 bills of entry filed earlier and to consequently demand differential Customs duty totally amounting to Rs. 49,28,492/- is not sustainable in the eyes of law.
- I-2) Inasmuch demand of differential Customs duty is not sustainable, no interest is payable by M/s. PSM on aforesaid goods.
- I-3) Inasmuch as the allegation of mis-declaration is not sustainable, no goods are liable to confiscation under the provisions of section 111 (m) of Customs Act,1962 and no penalty is imposable on M/s. PSM under the provisions of section 112(a) and 114A of Customs Act,1962.
- J) For the same reasons as enumerated hereinabove, none of the allegations leveled against Shri Sunil P. Mohatta, Authorized Signatory of M/s. PSM are sustainable in the eyes of law and hence, Shri Sunil P. Mohatta is also not liable to penalty under section 112 (a) and 114AA of the Customs Act,1962.

21.7 In view of above, they have prayed that Show Cause Notice No. DRI/AZU/GRU-80/2012 dated 18.02.2013 issued to M/s. P.S.M. Marketing, Gandhidham and Shri Sunil P. Mohatta, Authorized Signatory of M/s. P. S. M. Marketing, Gandhidham may kindly be dropped.

22. Reply to Show Cause Notice No. DRI/AZU/GRU-80/2012, dated 18.02.2013 issued by Directorate of Revenue Intelligence, Ahmedabad to M/s. Krishna Clearing Agency, Gandhidham and Shri Pankaj K. Thakker, Partner of M/s. Krishna Clearing Agency, Gandhidham (Kutch).

22.1 On the basis of available documents, M/s. Krishna Clearing Agency (KCA) would take this opportunity to say and submit that importer M/s. P.S.M. Marketing, Gandhidham ("M/s. PSM", for short), had entered into one contract No. PSM/01-2009 dated 25.09.2010 with M/s. Prime Tobacco Trading Ltd., 21/F, ICBC Tower, Citibank Plaza, 3 Garden Road, Central Hongkong, for supply of 1000 C/S of Djarum Clove Cigarettes (length 85MM) ("goods", for short). In all, 07 consignments comprising of goods arrived into India from Indonesia. Acting as Custom House Agent on behalf of M/s. PSM and based upon documents received from M/s. PSM, M/s. KCA had prepared and filed 07 bills of entry bearing Nos. 2307623 dated 4.11.2010, 2351584 dated 22.11.2010, 4922526 dated 14.10.2011, 5880003 dated 01.02.2012, 6312829 dated 21.03.2012, 7051774 dated 08.06.2012 and 7727157 dated 22.08.2012 with Custom House, Kandla.

22.2 The goods covered by the first 06 consignments were assessed and permitted clearance by the assessing officer at Custom House, Kandla, on payment of appropriate duty after due perusal and scrutiny of the documents, namely, contract, invoice, bill of lading, Certificate of Origin, etc. presented by M/s. PSM through M/s. KCA, Custom House Agent. However, goods covered by bills of entry No. 7727157 dated 22.08.2012 was placed under seizure by DRI officers by advancing the ground of undervaluation.

22.3 That subsequently, DRI has cited Certificate of Origin (corresponding to 04 consignments) and 07 documents bearing format of shipping bill supposedly filed by exporter Pt. Djarum in Indonesia, that were gathered from one Shri Piyush Rathore, working as branch manager with M/s. Perma Shipping Line India Private Limited to allege that goods imported by M/s. PSM were undervalued.

22.4 Based on above assumption, M/s. PSM have been issued Show Cause Notice No.DRI/AZU/GRU-80/2012 dated 18.02.2013, asking them to show cause to your Honour as to why:-

"(i) The assessable value declared in the Bills of Entry ..should not be rejected and re-determined as detailed in annexure-II to ..notice under Rules 3(1) and 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules,2007 read with Section 12 of the Customs Act,1962 and these Bills of Entry be assessed accordingly;

(ii) The imported 15,00,000 sticks of cigarettes having re-determined assessable value of Rs. 18,48,073/- ..under Bill of Entry No. 7727157 dated 22/08/2012 at Kandla should not be confiscated under Section 111 (m) of the Customs Act,1962;

- (iii) *The imported 75,00,000 sticks of cigarettes having total assessable value of Rs. 81,94,387/- cleared vide Bills of Entry Nos....should not be held liable to confiscation under Section 111 (m) of the Customs Act,1962.*
- (iv) *The total differential customs duty amounting to Rs. 49,28,492/- on total imported 90,00,000 sticks of cigarettes cleared/attempted to be cleared under Bills of Entry ...should not be demanded and recovered from them under Section 28(4) of the Customs Act,1962, along with applicable interest under Section 28AA of the Customs Act,1962..*
- (v) *Penalty should not be imposed on him under Section 112 (a) of Customs Act,1962;*
- (vi) *Penalty should not be imposed on him under Section 114A of Customs Act,1962.”*

22.5 Shri Sunil P. Mohatta, Authorized Signatory of M/s. PSM, is also asked to show cause to your Honour as to why penalty should not be imposed upon him under Section 112(a) and 114AA of the Customs Act,1962.

22.6 M/s. KCA and Shri Pankaj Thakker, Partner of M/s. KCA have been asked to show cause as to why separate penalty under the provisions of section 112(a) and 114AA of Customs Act,1962 should not be imposed upon them.

22.7 At the outset, M/s. KCA and Pankaj Thakker, partner of M/s. KCA hereby say and submit that the charges of abetment in mis-declaration of value by M/s. PSM, etc. leveled against them are completely baseless and false and hence, the same are liable to be withdrawn forthwith. Accordingly, the aforesaid proposals are also liable to be quashed, being not sustainable in the eyes of law, on the following amongst other grounds which are taken independent of and without prejudice to each other:

- A-1) M/s. KCA had only acted as Custom House Agent and had produced before the assessing officer all the documents like invoice, certificate of origin, etc. that were placed in their hands by the importer for assessment purpose.
- A-2) It is a matter of record that the assessing officer had found all these documents, including the Certificate of Origin, in order and permitted clearance of goods covered by the earlier six bills of entry bearing Nos. 2307623 dated 4.11.2010, 2351584 dated 22.11.2010, 4922526 dated 14.10.2011, 5880003 dated 01.02.2012, 6312829 dated 21.03.2012 and 7051774 dated 08.06.2012.
- A-3) The show cause notice does not rely upon Certificate of Origin corresponding to the seventh and last bill of entry bearing No. 7727157 dated 22.0.2012 and hence, allegation of under-valuation by making a general and vague reference

to certificate of origin insofar as this bill of entry is concerned is even otherwise bad in law and hence, liable to be quashed and set aside.

- A-4) It may be kindly appreciated that it is not the case of department that M/s. KCA and/or Shri Pankaj Thakker, partner of M/s. KCA had manipulated any document received from the importer for presentation to the assessing officer for assessment. It is also not the case of department that M/s. KCA and/or Shri Pankaj Thakker, partner of M/s. KCA had held back any document received from the importer for presentation to the assessing officer for assessment. All the documents including Certificates of Origin, as received, from M/s. PSM were presented to the assessing officer for assessment and were duly taken into consideration in the course of assessment.
- B-1) Hon'ble Tribunal has held in the case of Akanksha Enterprises v/s Commissioner of Customs, Mumbai-I, 2006 (203) E.L.T. 0125 (Tri.-Del) that CHA is not required to make any declaration of the value nor is he required, under the law to file description of goods; that his role is limited to facilitate the proper filing of the documents as received from the exporter; that he is not required to go in to the authenticity of the value of the goods etc.; that his job is confined to the submissions of the papers as given by the exporter and to identify the exporter to the authorities. A copy of this judgment is attached herewith as Exhibit-"A".
- B-2) Hon'ble followed the above decision in the case of Commr. of Cus., Tuticorin v/s Moriks Shipping and Trading Pvt. Ltd., 2008 (227) E.L.T. 577 (Tri.-Chennai) to hold that a CHA is not required to go into the authenticity of the declarations made in the export documents and his job is confined to submission of the documents given by the exporter as also to identify the exporter to the Customs authorities. A copy of this judgment is annexed herewith as Exhibit-"B".
- B-3) In the case of P. P. Dutta v/s Comm. of Cus. & C. Ex., Ghaziabad, 2014 (313) E.L.T. 351 (Tri.-Del.), Hon'ble Tribunal has observed that CHA cannot step into the shoes of customs officer and make inquiry about the correctness of the value of the goods. A copy of the judgment is attached herewith as Exhibit-"C".
- B-4) Reliance is also placed on the decisions of Hon'ble Tribunal in the case of World Cargo Movers v/s Commissioner of Customs, New Delhi, 2002 (139) E.L.T. 408 (Tri.-Del.) as well as the decision in Dipankar Sen v/s Commissioner of Customs, Kolkata, 2003 (159) E.L.T. 260 (Tri.-Kolkata), wherein, it is inter alia, held that it is not the job of CHA to enquire into valuation. Copies of these judgments are attached herewith as Exhibit-"D" & "E" respectively.
- B-5) In all the above as well as a large number of similar decisions, Hon'ble Tribunal has set aside the penalty imposed on the Custom House Agent. Therefore, on this basis, it is submitted that M/s. KCA and Shri Pankaj Thakker have been wrongly implicated in the case inasmuch as they had merely acted as Custom House Agent and had produced all the documents placed in their hands by the

importer before the assessing officer for making proper assessment in accordance with law.

- C-1) Notwithstanding above, it is respectfully submitted that reliance placed on Certificate of Origin is also completely misplaced owing to the fact that the provisions of Customs Valuation Rules, 2007 does not contain any reference to Certificate of Origin for the purpose of rejecting and/or determining the value of imported goods.
- C-2) They reserve their right to cross-examine the assessing officers who assessed the goods based on Certificate of Origin, which are now being made the basis for rejection of transaction value.
- D) M/s. KCA and Shri Pankaj Thakker, partner of M/s. KCA say and submit that the show cause notice wrongly alleges that they did not enquire about the actual value with importer before filing bills of entry. Your Honour may kindly appreciate from the reply given by Shri Pankaj Thakker, to a question on page 2 of his statement dated 1.11.2012 that he had indeed enquired about the value of goods with the importer and the importer had not only provided copy of contract but the importer had also informed that the supplier wanted to introduce their brand in India and hence, the promotional rate. It is a matter of record that M/s. KCA and Shri Pankaj Thakker, in their capacity as CHA had duly produced this contract to the assessing officer alongwith bill of entry. Your Honour may further appreciate from the said statement of Shri Pankaj Thakker that the assessing officer had duly verified the declared value with the NIDB data and had assessed the goods only after finding the declared value in order. Thus, the allegation that M/s. KCA and Shri Pankaj Thakker, partner of M/s. KCA had not made enquiry regarding value with the importer is contrary to the evidence available on record and hence, the same is liable to be quashed and set aside
- E-1) As regard to the documents presented by Shri Piyush Rathore, Branch Manager of M/s. Perma Shipping Line India Private Limited, Gandhidham, it is the contention of M/s. KCA and Shri Pankaj Thakker that the show cause notice ignores the settled law reiterated by Hon'ble Supreme Court from time to time, including the most recent decision in the case of Commissioner of Cus.. Visakhapatnam v/s Truwoods Pvt. Ltd., 2016 (331) E.L.T. 15 (S.C.). According to this, assessable value could not be enhanced on the basis of documents procured by the Revenue which are without any signatures and are photocopies which are not even attested.
- E-2) On this basis, it is submitted that reliance placed on unverified, unattested and unauthenticated documents is completely misplaced.
- E-3) A copy of the decision of Hon'ble Supreme Court in the case of Truwoods Pvt. Ltd. (supra) is annexed herewith as Exhibit-"F".
- E-4) The above notwithstanding, it is requested to provide original copies of shipping bills filed by M/s. Pt. Djarum, bearing signatures of Customs

authority of Indonesia to enable us to cause due verification with M/s. PSM Marketing (importer) and file appropriate reply/rejoinder in the matter.

- E-5) It is also prayed that Shri Piyush Rathore, Branch Manager of M/s. Perma Shipping Line India Private Limited, Gandhidham (who provided unsigned copies of documents akin to shipping bills filed in Indonesia) may be offered for cross-examination.
- F) Without prejudice to above, it may be kindly appreciated that at the time of preparing the bills of entry and presenting the same before the assessing officer, M/s. KCA and Shri Pankaj Thakker had no knowledge about any shipping bills said to be filed by M/s. Pt. Djarum in Indonesia or any material particulars contained therein. The show cause notice also does not suggest or allege otherwise. Therefore, it cannot be alleged or held that M/s. KCA and Shri Pankaj Thakker were in any manner, responsible for rendering the goods liable to confiscation under the provisions of Section 111(m) of Customs Act,1962 so as to render themselves liable to confiscation under the provisions of Section 112(a) and Section 114AA of the Customs Act,1962 on the basis of documents that were undisputedly not within their knowledge at the material time.
- G-1) Thus, it may be kindly appreciated that in the facts and circumstances where M/s. KCA and Shri Pankaj Thakker, partner of M/s. KCA, while acting as Custom House Agent, had presented all the documents, as received from the importer to the proper officer for assessment and the same were duly taken into consideration by the proper officer for permitting clearance, it cannot be lawfully alleged or held that they had rendered the goods liable for confiscation under the provisions of section 111 (m) of Customs Act,1962. Consequently, it is contended that M/s. KCA and Shri Pankaj Thakker, partner of M/s. KCA are not liable to penalty under the provisions of section 112(a) of Customs Act,1962.
- G-2) The precursor for invocation of section 114AA of Customs Act,1962 is the presence of prior knowledge about transaction of a false or incorrect declaration, statement or document. However, as already submitted hereinabove, the documents akin to shipping bills filed at the port of export, based on which undervaluation is alleged against the importer, were not in the knowledge of M/s. KCA and Shri Pankaj Thakker at the time of filing shipping bills and hence, it is respectfully submitted that the primary requirement of law for invocation of section 114AA of Customs Act,1962 is not satisfied. Therefore, it is contended that M/s. KCA and Shri Pankaj Thakker, partner of M/s. KCA are not liable to penalty under the provisions of section 114AA of Customs Act,1962.
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- G-3) The above notwithstanding, section 114AA is wrongly invoked against M/s. KCA inasmuch as it is qua person and not a juristic person. Therefore, in any eventuality, it cannot be invoked against M/s. KCA.

- H-1) Without prejudice to above, M/s. KCA and Shri Pankaj Thakker, partner of M/s. KCA would say and submit that simultaneous penalty on partner and his partnership firm is not imposable.
- H-2) Reliance is placed on the decisions of Hon'ble High Court of Gujarat in the case of Commissioner of Central Excise v/s Jai Prakash Motwani, 2010 (258) E.L.T. 201 (Guj) as well as C.C.E. & C., Surat-II v/s Mohammed Farookh Mohammed Ghani, 2010 (259) E.L.T. 179 (Guj.).
- H-3) Therefore, it is prayed that proposal to impose simultaneous penalty upon M/s. KCA and Shri Pankaj Thakker, partner of M/s. KCA may kindly be dropped.

22.8 In view of above, they have prayed that Show Cause Notice No. DRI/AZU/GRU-80/2012 dated 18.02.2013 issued to M/s. Krishna Clearing Agency, Gandhidham and Shri Pankaj Thakker, partner of M/s. Krishna Clearing Agency, Gandhidham may kindly be dropped.

DISCUSSION AND FINDINGS:-

23. I have carefully gone through the records of the case, including the Show Cause Notice dated 18.02.2013, the written submissions dated 24.08.2017 and 25.08.2017 respectively submitted at the time of personal hearing as well as the oral submissions made during the Personal Hearing.

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

- (i) Whether the assessable value declared in the Bills of Entry No. (i) 2307623 dated 4.11.2010, (ii) 2351584 dated 22.11.2010, (iii) 4922526 dated 14.10.2011, (iv) 5880003 dated 01.02.2012, (v) 6312829 dated 21.03.2012, (vi) 7051774 dated 08.06.2012 and (vii) 7727157 dated 22/08/2012 should be rejected and re-determined as detailed in annexure-II of this notice, under Rules 3(1) and 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962 and these Bills of Entry be assessed accordingly;
- (ii) Whether the imported 15,00,000 sticks of cigarettes having re-determined assessable value of Rs. 18,48,073/- attempted to be cleared under the Bill of Entry No. 7727157 dated 22/08/2012 at Kandla should be confiscated under Section and 111 (m) of the Customs Act, 1962;
- (iii) Whether the imported 75,00,000 sticks of cigarettes, having total assessable value of Rs. **81,94,387/-**, cleared vide Bills of Entry No. (i) 2307623 dated 4.11.2010, (ii) 2351584 dated 22.11.2010, (iii) 4922526 dated 14.10.2011, (iv) 5880003 dated 01.02.2012, (v) 6312829 dated 21.03.2012 and (vi) 7051774 dated 08.06.2012 should be held liable to confiscation under Sections 111 (m) of the Customs Act, 1962.
- (iv) Whether the total differential customs duty amounting to **Rs. 49,28,492/-** on total imported 90,00,000 sticks of Cigarettes cleared/ attempted to be cleared

under Bills of Entry No. (i) 2307623 dated 4.11.2010, (ii) 2351584 dated 22.11.2010, (iii) 4922526 dated 14.10.2011, (iv) 5880003 dated 01.02.2012, (v) 6312829 dated 21.03.2012, (vi) 7051774 dated 08.06.2012 and (vii) 7727157 dated 22/08/2012 (As per Annexure-II of this notice), should be demanded and recovered from them under Section 28 (4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962 (Section 28 AB prior to 08/04/2011);

- (v) Whether Penalty should be imposed on M/s. P.S.M. Marketing under Section 112(a) Customs Act, 1962;
- (vi) Whether Penalty should be imposed on M/s. P.S.M. Marketing under Section 114A Customs Act, 1962;
- (vii) Whether penalty should be imposed on Shri Sunil Parshotam Mohatta under Sections 112(a) and 114AA of the Customs Act, 1962.
- (viii) Whether penalty should be imposed on M/s. Krishna Clearing Agency under Sections 112(a) and 114AA of the Customs Act, 1962.
- (ix) Whether penalty should be imposed on Shri Pankaj Karsanbhai Thakker under Sections 112(a) and 114AA of the Customs Act, 1962.

25. First issue to be decided here is that whether the assessable value declared in the Bills of Entry No. (i) 2307623 dated 4.11.2010, (ii) 2351584 dated 22.11.2010, (iii) 4922526 dated 14.10.2011, (iv) 5880003 dated 01.02.2012, (v) 6312829 dated 21.03.2012, (vi) 7051774 dated 08.06.2012 and (vii) 7727157 dated 22/08/2012 should be rejected and re-determined as detailed in annexure-II of this notice, under Rules 3(1) and 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962 and these Bills of Entry be assessed accordingly.

In this regard, I find that in all the above mentioned seven Bills of Entry, M/s. P.S.M. Marketing declared C & F value of the cigarettes as US \$ 5 per thousand sticks, whereas at the contemporary period some other parties had imported identical goods at significantly higher value. Thus, it is observed that M/s. P.S.M. Marketing have resorted to undervaluation in the import of subject seven consignments of cigarettes. Further from the import documents and the seven Bills of Entry filed by M/s. P.S.M. Marketing, it is observed that all the seven consignments were of identical goods and produced by the same manufacturer and they were covered under single contract bearing No. PSM/01-2009 dated 25/09/2010 which shows that the contract was for total 1000 Cases (A case = 50 CTN X 200 sticks) i.e., for 1,00,00,000 sticks. I observe that during recording of his statement, the local representative of the container line has produced photocopies of all load port Shipping Bills pertaining to subject seven consignments. As a trade practice and in accordance with the customs law, export goods can be loaded on any vessel only on the basis of Shipping Bills duly passed by concerned customs authorities. Further, container lines used to issue Bills of Lading on the basis of such authentic documents. Thus, it is clear that the load port Shipping

Bills were available with the counterpart of the container line at load port. In all these Shipping Bills name of the exporter has been shown as Pt. Djarum and name of buyer has been shown as P.S.M. Marketing, Gandhidham; freight has been shown as "00" and FOB value has been shown as US \$ 18,000 (where total number of sticks is 10,00,000) or US \$ 27,000 (where total number of sticks is 15,00,000) i.e., US \$ 18 per thousand sticks. Simultaneously the certificates of origin available in files pertaining to Bills of Entry No. 6312829 dated 21/03/2012, 7051774 dated 08/06/2012, 5880003 dated 01/02/2012 and 4922526 dated 14/10/2011 also show FOB value of respective consignments as US \$ 18 per thousand sticks.

Considering these facts, I hold that M/s. P.S.M. Marketing have grossly undervalued the subject seven import consignments of cigarettes and evaded payment of appropriate amount of customs duty.

25.1 Rejection of Declared Value:

I find that the proprietor of M/s. P.S.M. Marketing, Shri Pankil Sunil Mohatta in his statement dated 30.10.2012 has shown his ignorance in respect of value and other vital details pertaining to import of subject seven consignments stating that the impugned consignment was dealt by his father Shri Sunil Parshotam Mohatta on the strength of authorization given by him. Therefore, statement of Shri Sunil Parshotam Mohatta was recorded on 31.10.2012. In respect of remittance against the said import, he has stated that it was to be done through Telegraphic Transfer and that part payment was still to be made. Regarding the value being declared by other importers in respect of identical goods, I find that Shri Sunil Parshotam Mohatta in his statement has stated that he was not aware that cigarettes of the same brand were being imported by other importers at various ports at much higher prices and that he was not aware of contracts of such importers.

I further observe that regarding actual value of the subject seven consignments, Shri Sunil Parshotam Mohatta in his statement dated 31.10.2012 has stated that during talks it was stated by the supplier that for introducing their brand they would provide 1000 cases at the rate of US \$ 50 per case (*i.e., US \$ 5 per thousand sticks*) and that after that they would charge higher price. However, the certificates of origin and load port Shipping Bills show FOB value of impugned consignments, as US \$ 18 per thousand sticks, which is much higher than the declared value. I observe that though Shri Sunil Parshotam Mohatta had attempted to show that for introducing their brand the supplier agreed to provide 1000 cases at the promotional rate of US \$ 50 per case (*i.e., US \$ 5 per thousand sticks*), but the discount/ reduction of around 72% (*US \$ 13 out of US \$ 18*) is evidently abnormal.

I also find that as per Rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, value of any imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10. Rule 12 *ibid* provides mechanism of rejection of declared value on the basis of reason to doubt the truth or accuracy of the declared value. The explanation (iii) to this Rule provides reasons on the basis of which the proper officer shall have the powers to raise doubts

on the truth or accuracy of the declared value. Such reasons include significantly higher value of contemporaneous import of identical goods and abnormal discount/reduction or special discount limited to exclusive agents.

From the above discussed facts, I find that contemporaneous import of identical goods was affected at much higher value and subject imports of M/s. P.S.M. Marketing was affected at discount of around 72% from the value mentioned in certificates of origin and load port Shipping Bills. During recording of statements of the importer and his authorized person, sufficient opportunity was granted to them to provide actual value. However, they could not produce any cogent evidence in support of their declaration and when confronted with the certificates of origin and load port Shipping Bills, the authorized person stated that they wanted to pay differential duty on such value. Looking to the evidences in the form of load port Shipping Bills and certificates of origin (showing higher value) and admission of Shri Sunil Mohatta, I find that the declared value cannot be considered as actual transaction value under Rule 3 ibid read with Section 14 of the Customs Act, 1962. Further, the above discussed facts straight away satisfy the conditions enumerated in Rule 12 ibid and explanation (iii) to that Rule, under which doubts in respect of truth and accuracy of the declared value can be raised by proper officer. Thus, the value declared in all the above mentioned seven Bills of Entry is liable for rejection under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

25.2 Ascertaining correct value:-

I find that Section 2 (41) of the Customs Act, 1962 states that "value" in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of Section 14 the Customs Act, 1962. It has been categorically stated under sub-section (1) of Section 14 ibid that the value of the imported goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale, subject to such other conditions as may be specified in the rules made in this behalf.

I find that as per Rule 11 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the responsibility to declare true, correct and actual value of the imported goods has been assigned on the importer of such goods. The said rule specifically provides that the importer or his agent shall furnish - (a) a declaration disclosing full and accurate details relating to the value of imported goods; and (b) any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer, as considered necessary by the proper officer for determination of the value of imported goods under these rules.

In view of the facts discussed in the foregoing paras and material evidences available on records, I find that that M/s. P.S.M. Marketing, Gandhidham have contravened the provisions of Section 14, Section 46(4) of the Customs Act, 1962, Rules 3 and 11 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, Section 11 of the Foreign Trade (Development and Regulation) Act,

1992 read with Rules 11 & 14 of the Foreign Trade (Regulation) Rules, 1993, in as much as they have intentionally mis-declared the value of the imported goods.

I observe that the import of above consignment of Cigarettes have been made by employing fraudulent means under pre-determined agreement/ understanding between themselves and the suppliers to derive illegal benefit out of such deal by evasion of Customs duty. As per the pre-conceived plan, the overseas supplier had deliberately issued manipulated invoices, which enabled the importer to evade the duty due on the above goods. Therefore, the declared value of the impugned goods is not in conformity with Section 14 of the Customs Act, 1962 read with Customs Valuation (Determination of Value of the imported goods) Rules, 2007.

Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, provides the method of valuation. Rule 3(1) of the Customs Valuation Rules, 2007 provides that "subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10". Rule 3(4) ibid states that "if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rule 4 to 9 of Custom Valuation Rules, 2007". In the instant case, the available evidences clearly indicate that the invoices raised by overseas supplier on M/s. P.S.M. Marketing, Gandhidham, which were submitted before Customs authorities in respect of the subject seven consignments, do not indicate true and correct transaction value of the said goods. Further as per the evidences true, correct and actual FOB value of the cigarettes imported by M/s. P.S.M. Marketing is US \$ 18 per thousand sticks. Shri Sunil Mohatta, authorized person of M/s. P.S.M. Marketing has also agreed with the same in his statement. The FOB value of US \$ 18 per thousand sticks, is observed to be fair and correct rate of FOB value of the impugned seven consignments. Thus, the said agreed value is observed to be acceptable in accordance with Rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.

It is therefore observed that in respect of the said seven consignments of imported cigarettes, which were admittedly undervalued, the value declared by M/s. P.S.M. Marketing, Gandhidham before the designated authority of Customs cannot be treated as true transaction value as per Section 14 of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation Rules 2007. It is further observed that the actual transaction value of such imported goods is available from the evidences mentioned above. As there is a reasonable doubt regarding the truth & accuracy of the values declared by M/s. P.S.M. Marketing, Gandhidham, the same are liable to be rejected in terms of Rule 12 of the Customs Valuation Rules, 2007. Since evidences and admission of actual transaction value is available in this case, recourse is to be taken to the provisions of Section 14(1) of the Customs Act, 1962 read with Rule 3(1) of the Customs Valuation Rules, 2007 for re-determining the value of the said seven consignments (six cleared vide Bills of Entry mentioned in table - II and one attempted to be cleared under Check-list for Bill of Entry No. 7727157 dated 22/08/2012 filed in the name of M/s. P.S.M. Marketing, Gandhidham).

The value of the cigarettes imported by M/s. P.S.M. Marketing, under the seven Bills of Entry, accordingly re-determined in accordance with the aforesaid evidences and admission of transaction value by Shri Sunil Mohatta in his statement dated 31/10/2012. In the light of the fact that actual value is available in four certificates of origin and seven load port Shipping Bills, this is observed to be the most reasonable method for valuation, using reasonable means consistent with the principles and general provisions of the Valuation Rules to arrive at the transaction value for the purpose of Rule 3 *ibid*.

In view of the above facts, the assessable value, in respect of the impugned seven import consignment of cigarettes of M/s. P.S.M. Marketing, have accordingly been re-determined and computed by taking re-course to Section 14(1) of the Customs Act, 1962 read with Rules 3 and 12 (1) of the Customs Valuation Rules, 2007, after considering the actual total transaction value of the seven consignments, which works out to Rs. 1,00,42,460/- (As detailed in Annexure-II) against total declared value of Rs. 23,29,087/-, for the impugned goods covered under the seven Bills of Entry.

25.3 Correct duty calculation:

As discussed above, it is evident that the value of the impugned consignments of cigarettes were mis-declared in respective Bills of Entry and accordingly the customs duty was wrongly calculated. Appropriate duty is required to be calculated on the re-determined FOB value at the rate of US \$ 18 per thousand sticks. In addition to this, it is also observed that the specific CVD has been calculated in the Bills of Entry No. 6312829 dated 21.03.2012, 7051774 dated 08.06.2012 and Check-list for Bill of Entry No. 7727157 dated 22/08/2012 at the pre-revised rate of 10% ad valorem + Rs. 1,624/- per thousand sticks, in stead of the actual rate of Rs. 1,974/- per thousand sticks, as enumerated vide the Finance Act, 2012. By virtue of Provisional Collection of Taxes Act, 1931, the revised rate came in existence from 16/03/2012 i.e., on the day the Finance Bill, 2012 was introduced in parliament with declaration under Section 3 of that Act. Further, as per clause 85 of the Finance Act, 2005, Health Cess as additional duty of excise @ Rs. 145 per thousand sticks was also leviable but in Bills of Entry No. 6312829 dated 21.03.2012, 7051774 dated 08.06.2012 and 7727157 dated 22/08/2012 the same has not been levied. Considering all these facts, it is observed that the correct calculation of the total customs duty and differential duty has been mentioned in the Annexure-II of this notice.

Confiscation:-

26. I find that the Show Cause Notice has proposed that -(i) the imported 15,00,000 sticks of cigarettes having re-determined assessable value of Rs. 18,48,073/- attempted to be cleared under the Bill of Entry No. 7727157 dated 22/08/2012 at Kandla should be confiscated under Section 111 (m) of the Customs Act, 1962 and (ii) the imported 75,00,000 sticks of cigarettes, having total assessable value of Rs. 81,94,387/-, cleared vide Bills of Entry No. (i) 2307623 dated 4.11.2010, (ii) 2351584 dated 22.11.2010, (iii) 4922526 dated 14.10.2011, (iv) 5880003 dated 01.02.2012, (v) 6312829 dated 21.03.2012 and (vi) 7051774 dated 08.06.2012 should be held liable to confiscation under Sections 111 (m) of the Customs Act, 1962.

In the context of above mentioned proposals, as already discussed in above para, it is evident that all the seven import consignments were grossly undervalued by M/s. P.S.M. Marketing by declaring C & F value of the subject consignments in respective Bills of Entry as US \$ 5 per thousand sticks against actual FOB value of US \$ 18 per thousand sticks. During the course of investigation, evidences collected in the form of load port Shipping Bills of all the seven consignments and certificates of origins in respect of four, out of the total seven consignments, also showed actual value as US \$ 18 per thousand sticks FOB basis. Accordingly Bills of Entry wise correct assessable value has been arrived and mentioned in Annexure - II of this notice. I find that the authorized person of M/s. P.S.M. Marketing i.e. Shri Sunil Mohatta who attended the imports has failed to provide any proper explanation in respect of these evidences and has admitted his liability and stated that he would pay differential duty calculated on the value mentioned in these evidences. Thus, it is evident that the subject consignment was grossly undervalued and that actual FOB value of the subject goods was US \$ 18 per thousand sticks. Accordingly, total assessable value worked out to Rs. 1,00,42,460/- (Bills of Entry wise assessable value mentioned in Annexure-II to this notice). Considering the above facts, I find that by adopting such modus operandi, M/s. P.S.M. Marketing attempted to evade customs duty in the subject imports. They cleared six consignments and attempted to clear one consignment by mis-declaring value in respective seven Bills of Entry. From the evidences it is evident that in all the seven Bills of Entry they deliberately suppressed actual value from the Customs Authorities. Thus, by the above act, M/s. P.S.M. Marketing have contravened the provisions of Section 46 of the Customs Act, 1962 read with Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and Rules 11 & 14 of the Foreign Trade (Regulation) Rules 1993, in as much as they did not disclose the actual value of the goods while filing the subject seven Bills of Entry at the time of the importation of the goods. The same was done with ulterior motive of evading payment of appropriate customs duty leviable thereon. This act of mis-declaration on the part of M/s. P.S.M. Marketing has rendered the import consignment of 15,00,000 sticks of cigarettes covered under Bill of Entry No. 7727157 dated 22/08/2012, having total assessable value of Rs. 18,48,073/-, liable for confiscation under the provisions of the Sections 111(m) of the Customs Act, 1962 and rendered the same liable to be treated as smuggled goods within the meaning of Section 2(39) of the Customs Act, 1962.

I further find that apart from the said seized quantity, the deliberate act of undervaluation in respect of imported 75,00,000 sticks of cigarettes covered under above mentioned six Bills of entry and having total re-determined assessable value of Rs. 81,94,387/-, falls within the purview of the nature of offence prescribed under section 111(m) of the Customs Act, 1962. Thus I hold that the said goods are liable for confiscation under Section 111(m) of the Customs Act, 1962.

26.1 I find that there is a difference between “confiscation” and “liable for confiscation”. It is settled law that that the goods which are “liable for 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 to derive illegal benefit by evasion of customs duty. In cases where value of the imported goods is not correctly declared for some purpose, then it would not only amount to violation of the

conditions for import/export of the goods but it would certainly amount to illegal/unauthorized imports and against the statute.

26.2 In the instant case, I find that M/s. P.S.M. Marketing, Gandhidham have contravened the provisions of Section 14, Section 46(4) of the Customs Act, 1962, Rules 3 and 11 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 read with Rules 11 & 14 of the Foreign Trade (Regulation) Rules, 1993, in as much as they have intentionally mis-declared value. Since the goods are “not available for confiscation” but they are “liable for confiscation” under Section 111(m) of the Customs Act, 1962, therefore, I hold that M/s. P.S.M. Marketing is liable for redemption fine under Section 125 of the Customs Act, 1962 in lieu of confiscation.

27. I find that the Show Cause Notice has proposed that the total differential customs duty amounting to Rs. 49,28,492/- on total imported 90,00,000 sticks of Cigarettes cleared/ attempted to be cleared under Bills of Entry No. (i) 2307623 dated 4.11.2010, (ii) 2351584 dated 22.11.2010, (iii) 4922526 dated 14.10.2011, (iv) 5880003 dated 01.02.2012, (v) 6312829 dated 21.03.2012, (vi) 7051774 dated 08.06.2012 and (vii) 7727157 dated 22/08/2012 (As per Annexure-II of this notice), should be demanded and recovered from them under Section 28 (4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962 (Section 28 AB prior to 08/04/2011).

With regards to demand of differential customs duty, as already discussed in above para, the four certificates of origin, seven load port Shipping Bills and statements of various persons clearly establish that in the place of actual FOB value of US \$ 18 per thousand sticks, it was willfully mis-declared as US \$5 (C&F) per thousand sticks. Accordingly, they declared total duty in the seven Bills of Entry as 1,95,48,055/- against the actual amount of Rs. 2,44,76,547/- (Bills of Entry wise bifurcation shown in Annexure - II of the SCN). Thus, I find that they evaded/ attempted to evade payment of duty to the tune of Rs. 49,28,492/- in the subject seven Bills of Entry. The said amount is therefore, liable to be demanded and recovered from M/s. P.S.M. Marketing, Gandhidham. I observe that the importer and Shri Sunil Mohatta have resorted to willful mis-declaration of value in the subject seven Bills of Entry, with an ulterior motive of evading payment of the applicable duty on imported Cigarettes. For the said act of suppression and willful mis-declaration in the subject seven Bills of Entry, Section 28(4) of Customs Act, 1962, invoking extended period for demand of duty is squarely applicable in the instant case. Therefore, I hold that M/s. P.S.M. Marketing is required to pay the differential Customs duty of Rs. 49,28,492/- as demanded vide the Show Cause Notice under Section 28 (4) of the Customs Act 1962.

Further, as per the wordings of Section 28AA of the Customs Act, 1962, I find that when the said notice is liable to pay duty in accordance with the provisions of Section 28ibid, they in addition to such duty are also liable to pay interest as well. The said Section provides for payment of interest automatically along with the duty. I

have already held that Customs duty of Rs. 49,28,492/- is required to be recovered from them. In view of this, I hold that said noticee i.e. M/s. P.S.M. Marketing is liable to pay interest involved on the amount of Rs. 49,28,492/- under the provisions of Section 28 AA ibid (Section 28 AB prior to 08/04/2011).

28. As regards imposition of penalty on M/s. P.S.M. Marketing under Section 112(a) and 114A of Customs Act, 1962, I find that Shri Pankil Sunil Mohatta is proprietor of M/s. P.S.M. Marketing, Gandhidham. He had authorized his father Shri Sunil Parshotam Mohatta for attending import of subject seven consignments of cigarettes. As provided under Section 46 of the Customs Act, 1962, it was duty of the importer to ensure true and correct declaration in the Bill of Entry. However, Shri Pankil Sunil Mohatta himself has admitted in his statements that he had not attended subject imports and was not aware of value and other vital details of the subject seven consignments. Under due authorization of the proprietor, Shri Sunil Parshotam Mohatta had attended all the work pertaining to indenting, import and clearance of subject seven consignments of cigarettes. Therefore, M/s. P.S.M. Marketing, Gandhidham is responsible for all the acts done by Shri Sunil Parshotam Mohatta in respect of the subject seven imports.

I find that Shri Sunil Parshotam Mohatta, being authorized signatory, in his statement dated 31.10.2012, has attempted to show that the value mentioned in invoices and declared in the seven Bills of Entry were actual values of the subject seven consignments of cigarettes, however, when confronted with certificates of origin showing higher FOB values of the subject consignment, he has failed to give convincing reply and stated that he was not aware of the reasons of higher value mentioned in the certificates of origin. He was also shown photocopies of seven Shipping Bills filed by Pt. Djarum at the load port. He agreed that the subject Shipping Bills pertained to the seven consignments imported in the name of M/s. P.S.M. Marketing. The invoice numbers mentioned in the subject Shipping Bills tally with respective certificates of origin, shown to him. The invoices produced by him before the customs authorities were having different numbers and dates than the same mentioned in the Shipping Bills. The invoices received by him were issued by M/s. Prime Tobacco Trading Limited of Singapore and were having numbers and dates different from the invoice numbers mentioned in the load port Shipping Bills and certificates of origins. Looking to the evidences in the form of load port Shipping Bills and certificates of origin showing actual value, he stated that he was willing to pay differential duty, accepting the value mentioned in the shown certificates of origin and load port Shipping Bills. He was specifically asked about actual value of the subject goods but avoiding clear reply he again stated that he was willing to pay differential duty, accepting the value mentioned in the shown certificates of origin and load port Shipping Bills.

I find from his statement that Shri Sunil Parshotam Mohatta initially has pretended that the declared value was actual transaction value of the subject seven consignments. However, when he could not give proper replies of certain queries he has preferred to accept of liability of differential duty. Thus, it is amply clear that the value declared in the subject seven Bills of Entry were not correct and the same were deliberately undervalued substantially on the basis of the concocted invoices, with

intention to evade payment of appropriate amount of customs duty. The deliberate act of undervaluation in the Bill of Entry No. 7727157 dated 22/08/2012 has rendered the 15,00,000 sticks of cigarettes covered therein, having re-determined assessable value of Rs. 18,48,073/-, liable to confiscation under Section 111(m) of the Customs Act, 1962 and also rendered M/s. P.S.M. Marketing, Gandhidham liable to penalty under Section 112(a) of the Customs Act, 1962.

I find that apart from the said seized quantity, in the same manner his deliberate act of undervaluation in remaining six Bills of Entry has also held 75,00,000 sticks of cigarettes covered therein and having total re-determined assessable value of Rs. 81,94,387/- liable to confiscation under Section 111(m) of the Customs Act, 1962 (though the same are not available for confiscation) and also rendered themselves liable to penalty under Section 112(a) of the Customs Act, 1962.

The ratio of judgements quoted by the importer and their authorized person does not appear applicable to the instant issue in the light of the facts of the case but the penalty is rather justified in the light of the CESTAT, West Zonal Bench, Ahmedabad's judgement in C.C.E & S.T, Surat Vs. Shri Anand Mahendra Kapadia (partner of M/s D.K. Polyn Industries, 100% EOU) 2014(3) ECS(133) (Tri.-Ahd.) taking cue from different judgements including that of Hon'ble Bombay H.C. and Hon'ble Apex Court judgements viz. Hon'ble Supreme Court orders in the case of M/s Prakash Metal Works Vs CCE, Ahmedabad, 2007(216)E.L.T. 660(S.C) & CESTAT, Bangalore in the case of M/s Sunrise impex, R.A. Spinning Vs. CC reported in 2003(162) ELT 474 Trib. Bangalore. Therefore, I hold that M/s. P.S.M. Marketing, Gandhidham is liable for penalty under Section 112(a) of the Customs Act, 1962.

I further find that the above mentioned act of suppression and mis-declaration of value was done by M/s. P.S.M. Marketing with intention to evade payment of customs duty of Rs. 49,28,492/- on the above mentioned seven consignments. Therefore, I hold that penalty is rightly liable to be imposed upon M/s. P.S.M. Marketing under Section 114A of the Customs Act, 1962.

29. Now, I proceed to decide the issue on proposal for imposition of penalty on Shri Sunil Parshotam Mohatta, under Section 112(a) and Section 114AA of the Customs Act, 1962.

As discussed in above paras, I find Shri Sunil Parshotam Mohatta, being authorized signatory in M/s. P.S.M. Marketing has played an active role in undervaluing all the seven consignments of cigarettes. I find that he has negotiated with the supplier and has finalized deal with them for 1000 cases (A case = 50 Ctn x 200 sticks) at the rate of US \$ 50 per case (i.e., 10,000 sticks). I find from his statement that initially he has pretended the declared value to be actual transaction value of the subject consignments. However, when he could not give proper replies of certain queries he preferred to accept the liability of differential duty. It clearly shows his culpable mental state. Thus, I find that he was fully aware of the actual value of the subject import consignments but deliberately managed invoices showing substantially lower value with intention to evade payment of appropriate amount of customs duty. I find that on the strength of the invoices showing false value he

managed to file the seven Bills of Entry with gross undervaluation. His deliberate act of undervaluation in Bill of Entry No. 7727157 dated 22/08/2012 has rendered the 15,00,000 sticks of Cigarettes covered therein and having re-determined assessable value of assessable value of Rs. 18,48,073/- liable to confiscation under Section 111(m) of the Customs Act, 1962 and also rendered himself liable to penalty under Section 112(a) of the Customs Act, 1962.

I find that in the same manner his deliberate act of undervaluation in remaining six Bills of Entry has held 75,00,000 sticks of Cigarettes covered therein and having total re-determined assessable value of Rs. 81,94,387/- liable to confiscation under Section 111(m) of the Customs Act, 1962 and also rendered himself liable to penalty under Section 112(a) of the Customs Act, 1962.

The ratio of judgement quoted in their defence does not appear to be applicable in the instant case as the involvement of the importer and its authorized person is brazenly established in investigation stage and in the SCN. Hence, I hold for imposition of penalty on Shri Sunil Parshotam Mohatta for his omissions and commissions explained at above in the light of the judgement of CESTAT, West Zonal Bench, Ahmedabad in C.C.E & S.T, Surat V/s Shri Anand Mahendra Kapadia (partner of M/s D.K.Polyn Industries, 100% EOU) 2014(3) ECS(133) (Tri.-Ahd.) taking cue from different judgements including that of Hon'ble Bombay H.C. and Hon'ble Apex Court judgements viz. Hon'ble Supreme Court orders in the case of M/s Prakash Metal Works Vs CCE, Ahmedabad, 2007(216)E.L.T. 660(S.C) & CESTAT, Bangalore in the case of M/s Sunrise impex, R.A. Spinning Vs. CC reported in 2003(162) ELT 474 Trib. Bangalore.

Considering the above facts and looking to the active role played by Shri Sunil Parshotam Mohatta in managing all the seven invoices of cigarettes presented before the customs showing false value and knowingly utilizing such false invoices for undervaluation, I hold that penalty under Section 114AA of the Customs Act, 1962 is also attracted on Shri Sunil Parshotam Mohatta .

PENALTY UNDER SECTION 112(a) AND SECTION 114 AA ON CHA M/S KRISHNA CLEARING AGENCY, GANDHIDHAM & ITS PARTNER SHRI PANKAJ KARSANBHAI THAKKER

30. I find that M/s. Krishna Clearing Agency, Gandhidham is a Custom House Agent (CHA) firm and Shri Pankaj Karsanbhai Thakker is their partner and has attended customs clearance work pertaining to subject seven import consignments of cigarettes for the importer M/s. P.S.M. Marketing, Gandhidham. I find that the Show Cause Notice has proposed for imposition of penalty on both the aforesaid noticees under Sections 112(a) and Section 114AA of the Customs Act, 1962.

In this regard, first I discuss the relevant provisions of the Act, i.e. Section 112(a) and Section 114AA of the Customs Act, 1962, as amended, which has been proposed in the Show Cause Notice.

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 not exceeding the value of the goods or five thousand rupees, whichever is the greater;
- (ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater;
- (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 not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;
- (iv) in the case of goods falling both under clauses (i) and (iii), to a penalty 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;
- (v) in the case of goods falling both under clauses (ii) and (iii), to a penalty 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.

SECTION 114AA. Penalty for use of false and incorrect material. - If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

I find that Section 112(a) of the Customs Act, 1962 provides provision for imposition of penalty on any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act. Further, Section 114AA ibid provides provision for imposition of penalty on the person who knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act.

I find that M/s. Krishna Clearing Agency, Gandhidham and their partner Shri Pankaj Karsanbhai Thakker, had only acted as Customs House Agent(CHA) and they had prepared and filed 07 Bills of entry on the basis of documents received by them from the importer M/s. P.S.M. Marketing, Gandhidham. The CHA is not required

to make any declaration in the value nor they are required to go into the authenticity of the declarations made in the import documents and authenticity of the value of the goods. Their job is confined to submission of documents given by the importer to the Customs authorities as also to identify the importer to the Customs Authorities. It is no job of the CHA to compare the invoice price with the market price of identical goods for the purpose of checking correctness of the value declared in import documents. The CHA can act only in accordance with the instruction of the importers and it is for the importers to ensure the correctness of the value declared in the import documents. I find that under C.H.A. licensing Regulation, the Customs House Agent is required to take precautions as regards the correctness of the goods based upon the information given by the importer/exporter. I find that in the present case, the CHA has acted accordingly and there is no evidence on record either in shape of the statements of the importer or any other relied upon documents that CHA was in knowledge of the fact of misdeclaration of the goods. With regards to allegation in the instant SCN that Shri Pankaj Karsanbhai Thakker, partner in CHA firm **M/s. Krishna Clearing Agency**, Gandhidham, deliberately did not enquire about the actual value before filing of Bill of entry and did not take any initiative to declare actual value in the Bill of entry, I find that Shri Pankaj Karsanbhai Thakker in his statement dated 01.11.2012 has stated that he had enquired about the actual value of the goods from the importer M/s. P.C.M. Marketing and the said importer had not only provided him copy of contract between M/s. Prime Tobacco Trading Limited and themselves but also informed that the supplier wanted to introduce their brand in India and hence they were supplying cigarettes at promotional rate. From the statement I further find that they have acted purely bonafide in the normal course of their business and they did not collude with the importer in any manner with intent to mis-declare the value of the imported goods. Thus, I find that the allegation is contrary to the evidence available on the record. The valuation in the Bills of entry were done on the basis of documents and information provided by the importer. As such the violation of CHALR 2004 does not arise at all. I find that both the noticees have relied upon various judgements in support of their contention and have submitted that they are neither liable for action under Customs House Agents Licensing Regulations, 2004 nor liable for penalty under the provisions of the Section 112(a) and Section 114AA of the Customs Act, 1962. They have relied upon the case laws/judgements in the case of Akanksha Enterprises V/s Commissioner of Customs, Mumbai-I, 2006(203) E.L.T. 0125(Tri.-Del), Commr. Of Cus., Tuticorin V/s Moriks Shipping and Trading Pvt. Ltd., 2008(227) E.L.T. 577(Tri.-Chennai), P.P. Dutta V/s Comm. Of Cus. & C.Ex., Ghaziabad, 2014(313) E.L.T.351(tri.-Del), World Cargo Movers V/s Commissioner of Customs, New Delhi, 2002(139) E.L.T. 408(Tri.-Del.), Dipanker Sen V/s Commissioner of Customs, Kolkata, 2003(159) E.L.T. 260(Tri.-Kolkata) as well as Commissioner of Cus. Visakhapatnam V/s Truwoods Pvt. Ltd Ltd., 2016(331) E.L.T. 15(S.C.). I find that for imposing penalty under Section 112(a) *ibid* on the ground of mis-declaration of value of imported goods, the noticees are required to be shown to have willfully mis-declared the import goods thereby rendering the goods liable for confiscation. It is a matter of record that imported goods covered by first six consignments were assessed and permitted clearance by the department as the same were found as declared without any mis-declaration or objectionable goods against the declaration made by

them under Section 46 of the Customs Act, 1962. The goods covered by bill of entry no. 7727157 dated 22.08.2012 were placed under seizure by DRI Officers by advancing the ground of undervaluation. I find that once on examination of goods found to be as declared, the Customs House Agent who acted in bonafide manner submitting all the documents to the Customs can not be held responsible for penal action. I also find that as per investigation, there was no malafide intention on the part of M/s. Krishna Clearing Agency, Gandhidham and their partner Shri Pankaj Karsanbhai Thakker.

Further, I have gone through the order of Principal Bench of the CESTAT in the matter of Akanksha Enterprises Vs. Commissioner of Customs, Mumbai-1, reported at 2006 (203) E.L.T. 125 (Tri. - Del.), wherein it was held that:

4. From the plain reading of the provisions of the section it would be clear that the penalty can be imposed only if there is mis-declaration of value and description of the goods that are sought to be exported. In this case the appellant is only a CHA and he is not required to make any declaration of the value nor is he required, under the law to file description of goods. His role is limited to facilitate the proper filing of the documents as received from the exporter. He is not required to go in to the authenticity of the value of the goods etc. His job is confined to the submissions of the papers as given by the exporter and to identify the exporter to the authorities which he did so when the goods were examined by the authorities. The Exporter was physically present when the authorities examined the goods. To my mind, in this case the CHA has acted in a responsible way by producing the exporter who had filed the documents for export of goods. No motive could be attributed to the appellants in this for imposition of penalty under Section 114 of the Customs Act, 1962, as there are no specific allegations as to the commission and omissions of the appellant with knowledge.

Further, I have also gone through the order of CESTAT in the matter of Commissioner of Customs, Tuticorin Vs. Moriks Shipping and Trading Pvt. Ltd., reported at 2008 (227) E.L.T. 577 (Tri. - Chennai), wherein it has been held that:

4. I find that, on the facts of the present case, the case law cited by learned counsel is squarely applicable. For a penalty under Section 114 of the Customs Act on the ground of abetment of exporter's offence of misdeclaration of description and value of export goods, the CHA should be shown to have actually abetted the said offence thereby rendering the goods liable for confiscation. In the present case, even according to the appellant, the CHA's failure was in the matter of ensuring the correctness of the declarations made in the export documents. The appellant refers to CHA's obligation under Regulation 13(d) of CHALR, 2004 and states that he has a duty to advise his client to comply with the provisions of the Act or, in the event of non-compliance, to bring the

matter to the notice of the Customs authorities. There is no denial of these obligations of a CHA. The exporter filed Shipping Bills for export of what was declared as 'organic dye intermediate G-salt' with a claim for drawback on the declared value of over Rs. 64.00 lakhs. The exporter authorized the CHA to file such documents with such declarations, and the CHA did accordingly. Whether the goods presented for export was G-salt or common salt was a fact known to the exporter but not to the CHA. It is a question to be addressed by the Customs authorities through examination of the goods. The same is the position, when it comes to the value of the goods. As rightly held in the case of *Akanksha Enterprises (supra)*, a CHA is not required to go into the authenticity of the declarations made in the export documents. His job is confined to submission of the documents given by the exporter as also to identify the exporter to the Customs authorities. The appellant has no case that the respondents did not discharge these obligations. If they say that the CHA violated Regulation 13(d), let them proceed against the CHA under the CHALR. In the absence of evidence of the CHA having abetted misdeclaration of description or value of the goods, it cannot be held that they are liable to be penalized under Section 114(iii) of the Customs Act. The case law cited by learned counsel is to this effect.

The said order was challenged by the Department before the Hon'ble High Court of Madras. However vide judgment dated 05.12.2014 [reported as 2015 (317) E.L.T. 3 (Mad.)] the Hon'ble High Court dismissed Department's appeal observing that:

6. Even at the very outset, it is evident from the order of the Tribunal that the goods were examined by the Customs Department in its laboratory, and analysis revealed that the goods were common salt instead of Organic Dye Intermediate G-Salt, as declared. Such being the case, this Court is baffled to note how penalty can be levied on the CHA. When the Department itself, only on the basis of the chemical analysis, was able to ascertain that the goods attempted to be exported was not common salt, how can a CHA be expected to know of the exact nature of the product at sight. In the above stated scenario, this Court has no hesitation to hold that the Commissioner (Appeals) and the Tribunal's reasoning for setting aside the penalty imposed on the CHA is fully justified.

Considering the above mentioned facts, aforesaid case laws and legal positions and in the absence of evidence against the aforesaid noticees in respect of involvement of mis-declaration of value of the goods and knowingly using false documents, I find that M/s Krishna Clearing Agency and their partner Shri Pankaj Karsanbhai Thakker have been wrongly implicated in this case as there is no deliberate mis-declaration on their part. Thus I hold that they are neither liable for action under Customs House Agents Licensing Regulations, 2004 nor liable for penalty under the Section 112(a) and Section 114AA of the Customs Act, 1962.

31. I find that in their written defence submissions the noticees have asked for cross examination of Shri Piyush Rathore, Branch Manager of M/s Perma Shipping Line India Pvt. Ltd., Gandhidham and the assessing officers who assessed the goods based on certificate of origin which have been made the basis of rejection of transaction value. In this context, it is to be noted that primary objective of the cross examination is to seek information of any deviation on the part of the investigating officers and to ascertain whether the case is made out of genuine or malafide actions of the offenders or the case is just foisted without adequate justification. Generally, such cross examination is required under criminal cases for identification of certain facts.

Further, in the case of Commissioner of Customs, Chennai Vs. D. Bhoormul, reported in 1993(13) ELT 1546(SC), the Hon'ble Supreme Court has held that the provisions of the Evidence Act as well as Code of Criminal Procedure, in terms are not applicable to the adjudication proceedings. Further, Hon'ble Madras High Court, in the case of K. Balan Vs. Govt. of India, reported in 1982 ELT (386) Madras has held that right to cross examination is not necessarily a part of reasonable opportunity and depends upon the facts and circumstances of each case. In the instant case, whole case lies upon the evidences which have already been provided to the noticees. Accordingly, I find that the cross-examination will be of no relevance as far as the issue covered in the Show Cause Notice is concerned.

32. I find that consultant of M/s P.S.M. Marketing, Gandhidham during the course of personal hearing and in their written submissions have placed reliance on various decisions/judgement in support of their contention. I am of the view that the conclusions arrived may be true in those cases, but the same can not be extended to other case(s) without looking to the hard realities and specific facts of each case. Those decisions/judgements were delivered in different context and under different facts and circumstances, which can not be made applicable in the facts and circumstances of this case. Further, these would have been relevant had there been any doubt for taking a decision regarding the declaration and classification of the impugned goods imported and covered by the Show Cause Notice. As such, there would not have even a need for referring to those decision/judgements. Therefore, I find that applying the ratio of one case to that of the other, the decisions of the Supreme Court are always required to be borne in mind. The Hon'ble Supreme Court in the case of CCE, Calcutta Vs Alnoori Tobacco Products [2004(170)ELT 135(SC) has stressed the need to discuss, how the facts of decision relied upon fit factual situation of a given case and to exercise caution while applying the ratio of one case to another. This has been reiterated by the Hon'ble Supreme Court in its judgement in the case of Escorts Ltd. Vs CCE, Delhi [2004(173) ELT 113(SC)] wherein it has been observed that one additional or different fact may make difference between conclusion in two cases, and so, disposal of cases by blindly placing reliance on a decision is not proper. Again in the case of CC(Port), Chennai Vs Toyota Kirloskar[2007(2013)ELT4(SC)], it has been observed by the Hon'ble Supreme Court that, the ratio of a decision has to culled from facts of given case, further, the

decision is an authority for what it decides and not what can be logically deduced there from.

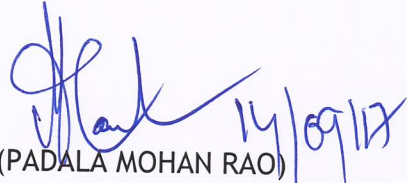
33. In view of the foregoing discussions, I pass the following order-

ORDER

- (i) I reject the assessable value declared in the Bills of Entry No. (i) 2307623 dated 4.11.2010, (ii) 2351584 dated 22.11.2010, (iii) 4922526 dated 14.10.2011, (iv) 5880003 dated 01.02.2012, (v) 6312829 dated 21.03.2012, (vi) 7051774 dated 08.06.2012 and (vii) 7727157 dated 22/08/2012 and order to re-determine as detailed in annexure-II of this notice, under Rules 3(1) and 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962 and these Bills of Entry be assessed accordingly.
- (ii) I order for confiscation of the imported 15,00,000 sticks of cigarettes having re-determined assessable value of Rs. 18,48,073/- attempted to be cleared under the Bill of Entry No. 7727157 dated 22/08/2012 at Kandla under Section 111 (m) of the Customs Act, 1962 and impose redemption fine of Rs.6,00,000/-(Rupees Six lakhs only) under Section 125 of the Customs Act,1962, in lieu of confiscation of the goods .
- (iii) I order for confiscation of the imported 75,00,000 sticks of cigarettes, having total assessable value of Rs. 81,94,387/-, cleared vide Bills of Entry No. (i) 2307623 dated 4.11.2010, (ii) 2351584 dated 22.11.2010, (iii) 4922526 dated 14.10.2011, (iv) 5880003 dated 01.02.2012, (v) 6312829 dated 21.03.2012 and (vi) 7051774 dated 08.06.2012 under Section 111 (m) of the Customs Act, 1962.
- However, since the impugned goods are not available for confiscation, I impose redemption fine of Rs.25,00,000/-(Rupees Twenty five lakhs only) under Section 125 of the Customs Act,1962, in lieu of confiscation of the goods.
- (iv) I confirm the demand of the total differential customs duty amounting to Rs. 49,28,492/- on total imported 90,00,000 sticks of Cigarettes cleared/ attempted to be cleared under Bills of Entry No. (i) 2307623 dated 4.11.2010, (ii) 2351584 dated 22.11.2010, (iii) 4922526 dated 14.10.2011, (iv) 5880003 dated 01.02.2012, (v) 6312829 dated 21.03.2012, (vi) 7051774 dated 08.06.2012 and (vii) 7727157 dated 22/08/2012 (As per Annexure-II of this notice), and accordingly I order recovery of the same from M/s P.S.M. Marketing, Plot No.255, Sector 1/A, Gandhidham(Kutch) under Section 28 (4) of the Customs Act, 1962, along with applicable interest under Section 28 AA of the Customs Act, 1962 (Section 28 AB prior to 08/04/2011);
- (v) I impose a penalty of Rs.25,00,000/- (Rupees Twenty five lakhs only) on M/s P.S.M. Marketing, Plot No.255, Sector 1/A, Gandhidham(Kutch) under Section 112(a) of Customs Act, 1962;

- (vi) I impose a penalty of Rs.49,28,492/-(Rupees Forty nine lakhs twenty eight thousand four hundred ninety two only) on M/s P.S.M. Marketing, Plot No.255, Sector 1/A, Gandhidham(Kutch) under Section 114A of Customs Act, 1962.
- (vii) I impose a penalty of Rs.3,00,00,000/-(Rupees Three Crores only) on Shri Sunil Parshotam Mohatta under Sections 112(a) and 114AA of the Customs Act, 1962.
- (viii) I drop the proposal of penalty under Sections 112(a) and 114AA of the Customs Act, 1962 on M/s. Krishna Clearing Agency, Shop No. 53/54-A, Tanker Association Building, Transport Nagar, National Highway, Gandhidham (Kutch)-370201
- (ix) I drop the proposal of penalty under Sections 112(a) and 114AA of the Customs Act, 1962 on Shri Pankaj Karshanbhai Thakkar, partner of M/s. Krishna Clearing Agency, No.53/54-A, Tanker Association Building, Transport Nagar, National Highway, Gandhidham (Kutch)-370201

34. This order is passed without any prejudice to any other action that may be taken against the above mentioned firms and the persons under provisions of the Customs Act, 1962 or any other law for the time being in force.


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

F.No.S/10-183/ADJ/ADSC/PSM/2016-17

Dated 14.09.2017

BY REGISTERED POST /A.D.

To:-

1. M/s. P.S.M. Marketing, Plot No.255, Sector 1/A, Gandhidham (Kutch)-370201
2. M/s. Krishna Clearing Agency, Shop No. 53/54-A, Tanker Association Building, Transport Nagar, National Highway, Gandhidham (Kutch)-370201
3. Shri Sunil Parshotam Mohatta, S/o Sh. Parshottam M. Mohatta, Plot No.65, Ward 7-C, Near Gurukul, Gandhidham (Kutch)-370201
4. Shri Pankaj Karshanbhai Thakkar, C/o M/s. Krishna Clearing Agency, No.53/54-A, Tanker Association Building, Transport Nagar, National Highway, Gandhidham (Kutch)

Copy to:-

1. The Deputy Director, Directorate of Revenue Intelligence(DRI), Gandhidham-370201
2. The Deputy/Assistant Commissioner(RRA), Custom House, Kandla
3. The Deputy/Assistant Commissioner (Recovery), Custom House, Kandla
4. Guard File