



**OFFICE OF THE COMMISSIONER OF CUSTOMS
CUSTOM HOUSE KANDLA
NEAR BALAJI TEMPLE, NEW KANDLA**

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A	File No.	S/10-56/Adj/COMMR/Deco Gold/2018-19
B	Order-in-Original No.	KDL/COMMR/SKA/10 & 11/2018-19
C	Passed by	Shri Sanjay Kumar Agarwal Commissioner, Custom House, Kandla.
D	Date of order	11.12.2018
E	Date of issue	11.12.2018
F	Show Cause Notice Nos. & Date	1) Show Cause Notice F.No. S/10-16/Adj/2011-12 dated 07.07.2011 issued by Commissioner of Customs, Kandla 2) Show Cause Notice F.No. DRI/JRU/INQ-02/2008 dated 13.07.2011 issued by Additional Director General, DRI Zonal Unit, Ahmedabad
G	Noticee(s)/Co-Noticee(s)	1. M/s Deco Gold Electronics Limited situated at Old Ghuntu Road, Morbi 2. Shri Jayantilal Maganlal Pethapara, Director of M/s Deco Gold Electronics Limited situated at Old Ghuntu Road, Morbi

1. This Order - in - Original is granted to the concerned free of charge.
2. Any person aggrieved by this Order - in - Original may file an appeal under Section 129 A (1) (a) of Customs Act, 1962 read with Rule 6 (1) of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -3 to:

**Customs Excise & Service Tax Appellate Tribunal,
West Zonal Bench,**

2nd Floor, Bahumali Bhavan Asarwa,
Nr. Girdhar Nagar Bridge, Girdhar Nagar, Ahmedabad - 380004

3. Appeal shall be filed within three months from the date of communication of this order.
4. Appeal should be accompanied by a fee of Rs. 1000/- in cases where duty, interest, fine or penalty demanded is Rs. 5 lakh (Rupees Five lakh) or less, Rs. 5000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 5 lakh (Rupees Five lakh) but less than Rs.50 lakh (Rupees Fifty lakhs) and Rs. 10,000/- in cases where duty, interest, fine or penalty demanded is more than Rs. 50 lakhs (Rupees Fifty lakhs). This fee shall be paid through Bank Draft in favour of the Assistant Registrar of the bench of the Tribunal drawn on a branch of any nationalized bank located at the place where the Bench is situated.
5. The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.
6. Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. While submitting the appeal, the Customs (Appeals) Rules, 1982 and the CESTAT (Procedure) Rules 1982 should be adhered to in all respects.

Brief Fact of the Case:

An intelligence was received that M/s Deco Gold Electronics Limited situated at Old Ghuntu Road, Morbi (for the sake of brevity hereinafter referred to as "M/s Deco Gold") having IEC Number 24060000346 PAN AACCD2904P were importing Compact Fluorescent Lamps (CFL) from China, in semi-knock down condition (SKD) in different consignments at different ports by declaring the same as components of CFL, to evade Anti dumping duty (ADD) leviable under the **Customs Notification No. 138/2002-Cus dated 10.12.2002.**

1.2 During the course of investigation, Officers of DRI Regional Unit, Jamnagar have visited the premises of M/s Deco Gold on 18.01.2008 and collected copies of the import documents.

1.3 Further, in order to corroborate the evasion of Anti dumping duty by M/s Deco Gold, DRI Officers have recorded statements of various persons under Section 108 of the Customs Act, 1962 as under,-

- a. Statement of Shri Jayantilal Maganlal Pethapara, Director of M/s Deco Gold on 03.03.2008, 15.05.2008, 06.10.2010 & 25.10.2008
- b. Statement of Shri Pravin Nagda, Partner of M/s K.S. Chhaya & Co., CHA Firm, Gandhidham on 24.04.2008 & 23.09.2008; and
- c. Statement of Shri Sachit Dedhia, General Manager of M/s Airol Cargo Services Pvt. Ltd., Mumbai on 12.11.2008;

1.4 During the course of investigation Shri Jayantilal Maganlal Pethapara, Director of M/s Deco Gold has admitted/deposed that,-

- i. He was one of the Directors of the Company and looking after the entire work relating to import of CFL.
- ii. They cleared six consignments from Nhava Sheva out of which five consignments were of components of micro assembly and one consignment of tube.
- iii. From Mundra port, they have cleared ten consignments out of which three consignments were of glass tube with holder; in three, only glass tube; in two there were components of micro assembly and two consignments of machinery and testing equipments.

- iv. On being asked about the manufacturing process of CFLs, he explained that they were importing components of Micro Assembly, the PCB was prepared by mounting various components as per circuit design; that these components included transistors, resistors, capacitors, diode, transformer, fuse, ferrite core and ferrite ring etc.; that each component was planted by each worker and the process chain continued till all the required components were mounted, then dip soldering of the components were done so as to establish a complete PCB, thereafter extra length of the wires trimmed; that in the case and cover process, their company's brand name "Rema", Lumens, frequency, wattage, manufacturing period were pad printed on the plastic case and then it was fixed with metal cap, thereafter, contact points on the metal cap was fixed and electric connection given to them by joining wires; that the fluorescent tube was fixed to the base with the help of glue and the same was dried by passing through a horizontal dryer (technically known as glue mounting dryer). Then the filament was inserted into sleeve and thereafter, electrical connection was given to PCB and lamp holder. Finally, the lamp holder and tube with base was press fitted and sent for endurance testing which was commonly known as aging process; that the tested lamps were sent for packing; that the CFL manufactured by them was known by the brand name "Rema".
- v. They had manufactured CFLs ranging from 5W, 8W, 11W, 14W, 15W, 18W, 20W (spiral), 21W and 23W.
- vi. In some cases, they were manufacturing the CFL from the imported goods and no any other material/component except the connecting wires were used and in some cases, for manufacture of CFL from imported goods they had also procured plastic case & cover/aluminium metal cap from domestic markets too.
- vii. On being shown the description of the goods as per Bill of Entry No. 110019/06.12.2006, Packing List & Invoice along with letter dated 14.08.2008 of the Commander, OIC, Centre for Electronic Engineering, INS Valsura. He agreed that out of the parts indicated in the Bill of Entry, 255000 pcs of CFL could be assembled; however, he stated that plastic cover and metal caps were required to make it complete.

1.5 M/s Deco Gold Electronics Ltd., Morbi had imported the following components of CFL under the cover of Bills of Entry as shown against each as under,-

Imports at Nhava Sheva Port

Sr. No.	Bill of Entry No. & Date	Description of the Goods	CTH	Qty in Pcs	Name of the Supplier/Exporter
1	845989/ 24.07.06	Tube for Fluorescent Light (Machine for Micro Assembly)	85399010	313000	Chengzhou Sailing International Industry Co. Ltd., Changzhou, Jiangsu, China
2	951576/ 03.11.06	Machine for Micro Assembly	85399010	310000	Changzhou Keshengli Technological Development Centre, Changzhou, Jiangsu, China
3	958102/ 09.11.06	Sealed Coated Tube with Filament Part for CFL manufacturing	85399090	274200	Yangyang Electronic Fluorescent Factory, Zhonshan City, Guangdong, China
4	896172/ 09.12.06	Micro Assembly for Fluorescent Light	85399010	160000	Chengzhou Sailing International Industry Co. Ltd., Changzhou, Jiangsu, China

Imports at Kandla Port

Sr. No.	Bill of Entry No. & Date	Description of the Goods	CTH	Qty in Pcs	Name of the Supplier/Exporter
1	107081/ 27.07.06	Glass Tube with Holder	85399090	160000	Chengzhou Sailing International Industry Co. Ltd., Changzhou, Jiangsu, China
2	108182/ 12.09.06	Glass Tube with Holder	85399090	153000	Chengzhou Sailing International Industry Co. Ltd., Changzhou, Jiangsu, China
3	108359/ 19.09.06	Glass Tube with Holder	85399090	147000	Chengzhou Sailing International Industry Co. Ltd., Changzhou, Jiangsu, China
4	165/01.1 1.06	Glass Tube with Holder	85399090	420000	Changzhou Suntop International Trade Co. Ltd., Changzhou, Jiangsu, China
5	109289/ 08.11.06	Micro Assembly for Lamp	85399090	265710	Zhonshan Foodstuffs and Acquatic Import and Export Group Ltd., Guangdong, China
6	110019/ 06.12.06	Diode, Transistor, Resistor, Electrolytic Capacitor, Polyester Film, Capacitor, Fuse, Input Inductor, Ferrite Beed Ring Inductor, EE Type Ferrite Core Inductor, PCB KH, Glass Tube, Non Alkali Fibre Glass Sleeve for Cap, Wire for PCB & Holder and Copper Pin for PCB & Tube Plastic Cover for S-20W (classified under various CTHs)		143341	Bengfu First Commercial and Trading Co. Ltd., Bengbu, Anhui, China

1.6 Further, in order to ascertain whether the parts/components of CFL imported under the cover of Bill of Entry No. 110019/06.12.2006 by M/s Deco Gold, a reference was made to the Commanding Officer, (Commander Technical Services), INS, Valsura vide DRI letter dated 09.08.2008 to convey their opinion regarding whether the goods as detailed in the invoice can be assembled by merely soldering and the resultant product will be CFL or having the essential characteristics of CFL. In pursuance of the said letter, the Commander, OIC, Centre for Electronic Engineering, INS Valsura vide letter dated 14.08.2008 opined that on the basis of information provided the electronic components detailed in the invoice can be assembled by soldering to produce CFLs and also provided total number of CFLs that can be manufactured.

1.7 It is alleged that CFL imported in SKD (unassembled condition) which were used for manufacture of CFL were chargeable to Anti Dumping Duty in view of the Notification No. 138/2002-Cus dated 10.12.2002 **read with Rule 2(a) of the General Rules for the Interpretation to the First Schedule - Import Tariff.** Thus, it appeared that M/s Deco Gold placed order for import of complete CFL in SKD condition viz. (i) Glass Tube with Holder and (ii) Micro Assembly.

1.8 The Investigation also revealed that M/s Deco Gold had imported and cleared components of CFL parts covered under Bill of Entry No. 110019/06.12.2006 wherein it was seen that in the Packing List and Certificate of Origin, the number of pieces of plastic cover has been shown as **255000 pcs** while in the Commercial Invoice & in the Bill of Entry as shown as 10000 pcs. Thus, it appeared that the actual quantity of plastic covers imported were 255000 pcs. Hence, it appeared that M/s Deco Gold has mis-declared the quantity of plastic cover and evaded payment of Customs Duty to the tune of **Rs.4,29,715/-**.

1.9 M/s Deco Gold have adopted fraudulent modus operandi and thus suppressed the facts from the Customs authorities at the port of import about the import of CFL in unassembled SKD condition. Thereby, fraudulently imported **1294820 units of CFL in SKD condition** and classified as parts/components of CFL under CTH 85399010, 85399090 & 85411000. Thus, they have imported the impugned goods by splitting them in consignments at different ports at different times. Accordingly, M/s Deco Gold had suppressed the material facts that the import of components was nothing but import of CFL in SKD/CKD condition.

1.10 M/s Deco Gold have willfully mis-stated the description of the goods in the Bills of Entry as parts/components of CFL and also filed a false declaration in the import documents in violation of Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and Rules 11 & 14 of the Foreign Trade (Regulation) Rules, 1993 thereby rendering the goods liable to confiscation under the provisions of the Customs Act, 1962. Further, they have also contravened the provisions of Section 46 of the Customs Act, 1962 by way of mis-declaring the description & mis-classifying the same.

1.11 In view of the above, it appeared that M/s Deco Gold have imported CFL in SKD condition from JNCH, Nhava Sheva and Mundra Port and from the total imports effected they have assembled 1294820 pcs of CFL. Since the imports have taken place from two ports, the bifurcation of duty demanded is based on pro-rata basis of assessable value of imports. The assessable value of parts and components of CFL imported and cleared from **JNCH is Rs.1,30,56,056/-** and **Rs.1,86,43,937/- from Mundra Port**. The duty bifurcation in respect of these two imports comes to **Rs.5,96,67,365/- (41.186% of total duty demanded) from JNCH, Nhava Sheva and Rs.8,52,05,566/- (58.814% of total duty demanded) from Mundra Port**. The total duty demanded is **Rs.14,48,72,931/-**. Similarly, the total numbers of CFLs 1294820 are bifurcated on the basis of assessable value of imports. Therefore, the numbers of CFLs imported and assembled are arrived at **533825 pcs from JNCH, Nhava Sheva and 761535 pcs from Mundra Port** for the purpose of demand of duty.

1.12 Shri Jayantilal Maganlal Pethapara, Director of M/s Deco Gold was concerned in taking decision as regards to placing orders with the Chinese supplier for import of CFL SKD/CKD conditions during the period from July, 2006 to December, 2006 through two different ports viz. Nhava Sheva and Mundra. He knowingly concerned in willful mis-statement and suppression of the facts before the Customs authorities as regards with description, classification of the subject goods and declaring them as components of CFL

1.13.1 In view of the above, show cause notice F.No. S/10-16/Adj/2011-12 dated 07.07.2011 has been issued by the Commissioner of Customs, Kandla, calling upon M/s Deco Gold Electronics Limited situated at Old Ghuntu Road, Morbi to show cause to the Commissioner of Customs, Kandla, as to why:

- (i) The declared classification of 761535 pcs of CFL which can be assembled from CFL components (tube for fluorescent light and micro assembly) and CKD parts of CFL imported and cleared by them under the cover of various Bills of Entry as detailed in **Annexure - I** to the show cause notice should not be rejected and the goods be re-classified from **CTH 85399010, 85399090, 85411000 and CKD parts of other CTH to CTH 85393110** in terms of Rule 2(a) of General Rules for Interpretation of First Schedule - Import Tariff of Customs Tariff Act, 1975.
- (ii) Goods valued at **Rs. 1,86,43,937/-** imported in SKD / CKD conditions and cleared by them at Mundra port under the cover of various Bills of Entry as detailed in Annexure-I to the show cause notice should not be confiscated under Section 111(d) and 111(m) of the Customs Act, 1962. Since, the goods are not available for confiscation why fine in lieu of confiscation should not be imposed upon them under Section 125 of the Customs Act, 1962.
- (iii) Anti Dumping Duty of **Rs. 8,52,05,566/-** (Rupees Eight Crores Fifty Two Lakh Five Thousand Five Hundred Sixty Six only) as detailed in Annexure II to VII to the show cause notice should not be demanded and recovered from them under the provisions of Section 28(4) of the Customs Act, 1962 read with Section 9A(8) of the Customs Tariff Act, 1975.
- (iv) Interest should not be recovered under Section 28AA(1) of the Customs Act, 1962 read with Section 9A(8) of the Customs Tariff Act, 1975.
- (v) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962 read with Section 9A(8) of the Customs Tariff Act, 1975.
- (vi) Penalty should not be imposed upon them under Section 112(a) of the Customs Act, 1962 read with Section 9A(8) of the Customs Tariff Act, 1975.
- (vii) **245000 pcs. of plastic cover of S 20W valued at Rs.11,69,728/-** imported in excess than the declared quantity and cleared under B/E No: 110019/06.12.2006, as shown in Annexure-VIII to the show cause notice in which the aforesaid quantity was not declared before the Customs, should not be confiscated under Section 111(l) of the Customs act, 1962. Since, the goods are not available for confiscation why fine in lieu of confiscation should not be imposed upon them under Section 125 of the Customs Act, 1962.
- (viii) Customs duty amounting to **Rs. 4,29,715/- on excess 245000 pcs of plastic cover** of S. 20W valued at **Rs. 11,69,728/-** as shown in Annexure -

VIII should not be demanded and recovered from them under the provisions of Section 28(4) of the Customs Act, 1962.

- (ix) Interest should not be recovered under Section 28AA(1) of the Customs Act, 1962.
- (x) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962.
- (xi) Penalty should not be imposed upon them under Section 112 (a) of the Customs Act, 1962.

1.13.2 Further, the above Show cause notice dated 07.07.2011 also proposed to impose penalty under Section 112(a) of the Customs Act, 1962 read with section 9A(8) of the Customs Tariff Act, 1975 in respect of evasion of Anti Dumping Duty and penalty under Section 112(a) ibid in respect of evasion of Customs duty against 2,45,000 pcs. of plastic cover of S 20W (which were not declared), upon Shri Jayantilal Maganlal Pethapara, the Director of M/s. Deco Gold.

1.14.1 Another show cause notice F.No. DRI/JRU/INQ-02/2008 dated 13.07.2011 issued by the Additional Director General, DRI Zonal Unit, Ahmedabad, calling upon M/s Deco Gold Electronics Limited situated at Old Ghuntu Road, Morbi to show cause to the Commissioner of Customs (Port-Import), JNCH, Nhava Sheva, Taluka Uran, Dist.-Raigad, Maharashtra - 400707 as to why:

- (i) The declared classification of **533285 pcs of CFL** (the components viz. tube for fluorescent light and micro assembly for fluorescent light) imported and cleared by them under the cover of various Bills of Entry as detailed in Annexure - I to the show cause notice should not be rejected and the goods be re-classified from CTH 85399010, 85399090 and 85411000 in terms of Rule 2(a) of General Rules for Interpretation of First Schedule - Import Tariff of the Customs Tariff Act, 1975.
- (ii) Goods valued at **Rs. 1,30,56,056/-** imported and already cleared by them at Nhava Sheva under the cover of various Bills of Entry as detailed in Annexure-I to the show cause notice should not be confiscated under Section 111 (d) and 111 (m) of the Customs At, 1962. Since, the goods are not available for confiscation why fine in lieu of confiscation should not be imposed upon them under Section 125 of the Customs Act, 1962.

- (iii) Anti Dumping duty of **Rs. 5,96,67,365/-** (Rupees Five Crore Ninety Six Lakh Sixty Seven Thousand Three Hundred Sixty Five only) as detailed in Annexure-II to VII to the show cause notice should not be demanded and recovered from them under the proviso to Section 28(4) of the Customs Act, 1962 read with erstwhile proviso to Section 28(1) of Customs At, 1962, read with Section 9A (8) of the Customs Tariff Act, 1975.
- (iv) Interest should not be recovered under Section 28AA(1) of the Customs Act, 1962, erstwhile Section 28 AB of Customs Act, 1962, read with Section 9A (8) of the Customs Tariff Act, 1975.
- (v) Penalty should not be imposed upon them under Section 114A of the Customs Act, 1962 read with Section 9A(8) of the Customs Tariff Act, 1975.
- (vi) Penalty should not be imposed upon them under Section 112 (a) of the Customs Act, 1962 read with Section 9A(8) of the Customs Tariff Act, 1975.

1.14.2 Further, the above Show cause notice dated 13.07.2011 also proposed to impose penalty under Section 112(a) of the Customs Act, 1962 read with section 9A(8) of the Customs Tariff Act, 1975 in respect of evasion of Anti Dumping Duty and penalty under Section 112(a) of the Customs Act, 1962 in respect of evasion of Customs duty upon Shri Jayantilal Maganlal Pethapara, the Director of M/s. Deco Gold.

Appointment of Common Adjudicating Authority (CAA):

2.1 Central Board of Excise & Customs vide letter F.No. 437/15/2011-Cus. IV dated 10.08.2011 has appointed the Commissioner of Customs, Custom House, Kandla as the common adjudicating authority with respect to Show Cause Notice F.No. DRI/JRU/INQ-02/2008 dated 13.07.2011 issued by Additional Director General, DRI Zonal Unit, Ahmedabad and Show Cause Notice F.No. S/10-16/Adj/2011-12 dated 07.07.2011 issued by Commissioner of Customs, Kandla for the purpose of adjudication.

2.2 In the instant case, the imports were effected through Mundra & Nhava Sheva Ports. Therefore, as to whether the Commissioner of Customs, Kandla can adjudicate the case, clarification was sought. It was informed that in view of Para 2(e) of the CBEC Circular No. 18/2015-Cus dated 09.06.2015 issued from F.No. 450/145/2014-Cus.IV, the CAA already appointed by the Board vide their Order dated 10.08.2011 may proceed with the adjudication of the case

2.3 Accordingly, the case is taken up for adjudication.

Defence Reply:

3.1 M/s Deco Gold have filed their written replies to the above referred two SCNs vide letters dated 31.05.2012 & 15.11.2018 and inter-alia submitted that,-

3.2 It is an undisputed fact that all consignments have been cleared for home consumption after examination, assessment by the proper officers of the Customs and on payment appropriate customs duties as assessed by the proper officer. It is also not in dispute that M/s Deco Gold have manufactured CFL out of the above parts / components on payment of Excise Duty at the time of removal of CFL from the factory. In respect of **CFLs not consisting of Choke** amount of **3.125 US \$ per unit for CFL** with choke taken for arriving at anti dumping duty is not correct.

3.3 Apart from imported components, Ink, Fevicol, Solder Wire, BOOP Self Adhesive Tap, Plastic holder, F.G. sleeves, Transistors, Cello Tape, Plastic Shell Aluminium Cap, Packing Materials are also required for manufacture of CFL. Plastic Base and Aluminium Metal Cap are essential components without which CFL cannot be manufactured. Shri Jayantilal Maganlal Pethapara, Director of M/s. Deco Gold in his statements had stated that they had used plastic case & cover / aluminium metal cap purchased locally along with imported components. It must be acknowledged here that Plastic Cover & Case, and Aluminium Cap are indispensable components without which CFL cannot be manufactured and marketed. Before the imported components are used for assembling, each of the part is required to be physically checked and after all the processes is over; CFL is subject to testing of lux-limins, wattage, operating wattage, ampere rating, endurance test etc. Commanding Officer, INS Valsura has opined that CFL can be assembled out of parts / components covered under above referred Bill of Entry. It is significant to note that he has not opined that CFL are marketable in absence of Plastic Covers. **It is settled law that documents produced under Section 108 of Customs Act, 1962, are legally admissible evidence.** In order to reinforce his above stand, he produced Purchase Bills also. This reality has been acknowledged in show cause notice. Notwithstanding production of Bills showing purchase of Plastic Cover / Case / Aluminium Cap locally or got manufactured through job work, Investigating Agency had chosen to ignore this crucial fact. In support of their statements recorded under Section 108 of the Customs Act, 1962 as a evidence, they relied upon in the case of COMMISSIONER OF CENTRAL

EXCISE, LUCKNOW Versus JAGDEO PRASAD - 2010 (258) E.L.T. 122 (Tri. - Del.)

*“Confiscation and penalty - Smuggling - Evidence - Statement recorded under Section 108 of Customs Act, 1962 providing absence of evidence of ownership of goods - **Section 108 ibid is self contained code which speaks for itself to be considered as relevant - Relevancy of such evidence has been considered by the Apex Court and the same admissible as evidence - Inquiry under proceeding under Section 108 ibid a judicial proceeding - Relevancy of statement cannot be given go bye - No evidence to refute allegation - Impugned order setting aside confiscation and penalty, not sustainable - Sections 108, 111 and 112 ibid. [para 4] Appeal allowed.”***

3.4 Commissioner of Customs, Kandla is not a **“proper officer”** within the meaning of Section 2(34) of the Customs Act, 1962, to issue show cause notice for re-assessment under Section 28 of the Act, for those bills of entry which were filed at Nhava Sheva. To reinforce their stand, they relied on decision rendered by Hon’ble Supreme Court in the case of **Commissioner of Customs v/s. Sayed Ali reported in 2011 (265) E.L.T. 17 (S.C.)**.

3.5 Further, the Customs Act, 1962 does not permit issuance of two show cause notices for demand of Anti Dumping Duty on the goods cleared under same Bills of Entry at different ports.

3.6 They stated that Rule 2 (a) of General Rules for Interpretation of First Schedule to the Customs Tariff Act, 1975, is not applicable to the present case. Proposal to change classification of imported parts to the Customs Tariff sub-heading No: 85393110 in terms of Rule 2 (a) of General Rules for Interpretation of First Schedule to the Customs Tariff Act, 1975, is devoid of merits. Rule 2 (a) of Interpretative Rules is reproduced below for ease of reference:-

*“2(a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, **as presented**, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), **presented unassembled or disassembled.** (emphasis provided)”*

3.7 It has been acknowledged in the impugned show cause notice that components of CFL have been imported **at different ports at different times**. It is well established law that each and every consignment is to be assessed separately for the purpose of levy of anti dumping duty. Therefore, imported components cleared under specific Bill of Entry by different Customs

Authorities at different ports cannot be treated as complete or finished CFL. In support of their claim, they relied upon that the Hon'ble Supreme Court of India, while examining similar issue of applying the Rule 2(a) in the case of **COMMISSIONER OF CUSTOMS, NEW DELHI Versus SONY INDIA LTD.:** **2008 (231) E.L.T. 385 (S.C.)** has held that:

EXIM - Restricted goods - Import of Colour Television (CTV) components in CKD condition whether assessable as CTVs - Rule 2(a) of Rules for Interpretation of Tariff applicable only if all components presented at same time for customs clearance - Goods brought in 94 different consignments in impugned case - Clubbing of all consignments of different dates not permissible - Goods brought not having essential character of CTV and cannot be taken as complete CTVs - No finding in impugned orders that goods brought could make specified number of CTVs - Complicated process to be undertaken for making impugned goods useable for assembling CTVs - Amended HSN Explanatory Notes not alters position - Impugned Tribunal order that components imported not treatable as complete TV, upheld - Sections 28, 28AB, 112 and 114 of Customs Act, 1962. [paras 12, 13, 14, 15, 19]

Valuation (Customs) - Assessment - Goods imported in CKD condition - Revenue seeking to assess Colour Television (CTV) components imported in CKD condition as CTVs placing reliance on Supreme Court decision in Phoenix International Ltd. [2007 (216) E.L.T. 503 (S.C.)] - Allegation of fraud present in Phoenix case while in impugned case similar charge absent - Goods under negative list in Phoenix case while in impugned case, goods under restricted list - Parts imported in impugned case independently usable as spare parts or sold in market and such case absent in Phoenix case - All parts imported in Phoenix case by two units therein in same container - Parts in impugned case imported during 22 months on different dates in 94 consignments - Ratio of Phoenix case not applicable - Section 14 of Customs Act, 1962. [para 7]

Customs Tariff - Rules for Interpretation - Goods in unfinished or dis-assembled form i.e. CKD condition - Rule 2(a) of Rules for Interpretation of Tariff applicable only if all components intended to make a final product presented at same time for customs clearance - Impugned rule applicable only when imported goods presented unassembled or disassembled can be put together by means of simple fixing device or by riveting or welding - Goods requiring complicated process to make final product, not to be considered as

unfinished goods having essential character of complete articles.
[paras 12, 16]

3.8 Similarly, in the case of **Pollar Appliances Ltd. V/s. Commissioner of Customs, New Delhi, reported in 2001(127) E.L.T. 448 (Tri.Del)**, it was held that,-

“Components not presented in unassembled condition, imports having been made at different points of time in different vessels or aircrafts – Components not having essential character of complete or finished articles at the time of import – Rule 2(a) of Interpretative Rules not applicable.”

3.8.1 Appeal preferred in the above case by the department was dismissed by the Supreme Court [2002 (142) ELT A.180 (SC)].

3.9 They further relied in the judgment delivered by the Hon'ble High Court of Calcutta in the case of **GHANSHYAM CHEJRA Vs. COLLECTOR OF CUSTOMS as reported at 1989 (44) E.L.T. 202 (Cal.)** dealing with identical question of import of VCRs in SKD condition. It was held by the Hon'ble Court that,-

“The findings of the Collector that three consignments of parts of V.C.Rs., if assembled together, would make complete V.C.Rs. or that consignments were imported in S.K.D. condition is not tenable for the reason that one part was imported by a Government Recognised Export House, M/s. Orient Leather Industries, which was already cleared and delivered to the said Export House after completing all the formalities; and another part was imported by M/s. Mercury Exports which is also a Government Recognised Export House, for their import of items Tape Deck Mechanism. There is no dispute regarding its import licence. Both the aforesaid consignments were purchased by the petitioners on 'High Sea Sales Basis'. Petitioner himself imported only one consignment i.e. P.C.B. Sub-assembly without valid import licence. Goods as aforesaid were imported by three different entities and separate individual identities. Therefore, the petitioner cannot be said to have imported complete V.C.R. in S.K.D. condition and the valuation of the goods accordingly for determination of the quantum of penalty and redemption fine, cannot be sustained. The order of adjudication is quashed. The Customs authorities shall refund the excess amount of customs duty realised by levying duty of spare parts as complete VCR Sets. Customs duties shall be charged on assessment of the consignments as components/spare parts only. [paras 31, 32,33, 47, 49 & 17]

Import - Spares and components imported under different consignments -Revenue's stand of goods being VCR in S.K.D. condition and hence goods not being covered under OGL not sustainable - Each consignment to be assessed separately - Quasi-judicial authority bound by judicial decisions - Import and Export Policy, 1985-88.

*The main contention of the Customs authorities is that the subject consignments are not spares. They are complete VCR set in SKD condition and hence not covered under OGL. This contention is wholly without any substance. Each consignment has to be separately assessed. Even if one importer brings different items which are admittedly spare parts and components, the Revenue authorities cannot take the plea that if those are assembled together, there would be complete V.C.R. sets. A quasi-judicial authority ought not to be allowed to act arbitrarily by refusing to take into consideration or by pass the relevant decisions of the Supreme Court, High Courts and the Tribunals. This by itself is a serious infirmity in the order of adjudication authority. The impugned order of the Collector is on the face of it contrary to law laid down by the Supreme Court and the Division Bench of this Court. [1983 E.L.T. 1456 (SC), 1987 (30) E.L.T. 345 and Calcutta High Court judgment dated 29-7-1988 in *Debabrata Kanjilal v. Union of India - C.O. No. 7694(W) of 1988* relied upon]. [paras 39 to 44]"*

3.10 They also submitted that Rule 2(a) of GIR cannot be borrowed for the purpose of imposing Anti Dumping Duty under Section 9A of Customs Tariff Act, 1975. Hence, invoking Rule 2(a) of GIR for Anti Dumping proceedings is not correct.

3.11 In **Circular No: 39/2005 dated 3.10.2005**, the Board considered the issue of extending the benefit of **Notification No: 21/2002-Cus. dated 1.3.2002 (Sr. No: 276)** to the import of computer castings and power supply. Even when the importer had imported chassis and power supply as separate units in the same consignment and to be fitted after their clearance thereof, it was decided that the goods have to be classified in the form as presented and Rule 2(a) of GIR cannot be applied for the sake of allowing / disallowing the benefit of Notification, unless the exemption of Notification is based on the classification of items under a particular heading of Customs Tariff. Central Board of Excise & Customs in this circular also noted that there are several rulings of CESTAT that for the sake of denial of benefit of a Notification, Rule

2(a) of GIR cannot be invoked. In view of the said circular issued by the Board, it is apparent that even when the unassembled items are imported under the same consignment, the interpretative Rule 2(a) cannot be invoked, unless the items in question are presented together for assessment. In the present case, the goods, in question, were imported under different Bills of Entry at different times and at different ports. Therefore Rule 2(a) of GIR cannot be invoked.

3.12 They relied in the case of **ANDHRA PETROCHEMICALS LTD. Versus DESIGNATED AUTHORITY 2006 (201) E.L.T. 481 (Tri. - Del.)**, it was held that,-

*“Anti-dumping duty - ‘Article under consideration’ - Section 9A(1) of Customs Tariff Act, 1975 - Expression “article” in Section 9A(1) ibid includes only the article on which anti-dumping duty may be imposed and not any other article which may be a like article to such identified article - **Anti-dumping duty imposable only on article which is subject matter of investigation after being identified for purpose under Rule 4(1)(b) of Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 and not on any other article, which may be a like article** - Definition of expression ‘like article’ under Rule 2(d) ibid cannot be projected in Section 9A(1) ibid for purpose of giving any enlarged meaning to an article which upon its importation into India may be subjected to anti-dumping duty. [para 13]”*

3.13 The Notification **No: 138/2002-Cus. dated 10.12.2002** has been invoked in this case to demand anti-dumping duty on components of CFL considering the same as import of complete CFL in SKD/ CKD condition. During the relevant period covered under the present show cause notice, **Notification No: 55/2009-Cus. dated 26.05.2009** was not in existence. In order to come to lawful conclusion as to whether “parts of CFL” or “CFL in CKD / SKD condition” were covered under Notification No: 138/2002-Cus. or not, one will have to travel through both the above cited notifications :-

Notification No: & Date	Article which was subject matter of investigation after being identified by DGAD and on which anti dumping duty is imposed.
Notification No: 138/2002-Cus. dated 10.12.2002	Compact Fluorescent Lamps (CFL) falling under sub-heading 8539.31 <u>originating in, or exported</u> from People’s Republic of China and Hong Kong, and imported into India
Notification No: 55/2009-Cus. dated 26.05.2009	Compact Fluorescent Lamps (CFL) with or without ballast or control gear or choke, whether or not assembled, <u>either in completely knocked down or semi knocked down condition</u> falling under heading 8539 <u>originating in, or exported</u> from China PR, Sri Lanka and Vietnam (hereinafter referred to as the subject countries),

3.13.1 Therefore, comparing the ruling of ANDHRA PETROCHEMICALS LTD, referred above, it is abundantly clear that anti dumping duty is imposed only on the article which was subject matter of investigation after being identified by DGAD for the purpose of levy of anti dumping duty. The **“PRODUCT UNDER INVESTIGATION” is at the central stage of entire controversy.** Designated Authority is obliged to play within four walls of description of **“PRODUCT UNDER INVESTIGATION”** while recommending imposition of anti dumping duty. Once recommendation is accepted, Ministry of Finance and Department of Revenue, New Delhi, has no option except to impose anti dumping duty on very product which has been recommended by the DGAD. No deviation is permissible.

3.13.2 In the instant case, it was only CFL which was subject matter of investigation by DGAD and not parts of CFL or CFL in CKD/ SKD condition. CFL has not been exported from China P.R. but Parts of CFL have been exported from China P.R. and which were imported by M/s. Deco Gold. Therefore, Notification No: 138/2002-Cus. dated 10.12.2002 is not applicable to the present case. Admittedly, parts of CFL or CFL in CKD / SKD conditions were subject matter of investigation as far as Notification No: 55/2009-Cus. dated 26/5/2009, is concerned. Therefore, “CFL in CKD / SKD condition” is covered under Notification No: 55/2009-Cus dated 26/5/2009 but not in the case of Notification No. 138/2002-Cus. Therefore, the inescapable conclusion is that,-

1. Anti Dumping Duty is not imposable on CFL in CKD /SKD condition under Notification No: 138/2002-Cus. Dated 10.12.2002 for the goods imported because it does not cover in its ambit CFL in CKD / SKD condition.
2. Anti Dumping Duty is imposable under Notification No: 55/2009-Cus. Dated 26.05.2009 on CFL in CKD / SKD condition because it covers in its ambit CFL in CKD / SKD condition also.

3.13.3 They submitted that their imports were prior to 26.05.2009. Hence, no Anti dumping duty is payable by them in the instant case. When the Notification itself does not cover within its ambit “CFL in CKD / SKD conditions”, or “parts of CFL”, question of levy of Anti Dumping Duty does not arise at all. On this context, Show Cause Notices merits to be set aside.

3.14 They also relied upon in the ruling rendered in the case of **Commissioner of Customs, Amritsar Versus Sharman Woolen Mills – 2009 (244) ELT 485 (Tri. Del.)**, wherein it has been held that at paragraph 7,-

“We are dealing with the case of levy of anti dumping duty by a Notification issued by the Central Government under Section 9A (2) of the Customs Tariff Act, on the basis of the findings of the designated authority. This levy is imposed after detailed investigation as prescribed under special law and after hearing the concerned parties including the importer, domestic industries and the exporter and other interested parties. The levy cannot be based on implication. The levy is clearly on acrylic fibre. Customs Tariff 5501 at 4 digit level refers to acrylic tow and 5503 refers to acrylic fibre. Therefore, there is conscious distinction between the acrylic tow and acrylic fibre. Notwithstanding the fact that sub-headings 5501.30 and 5503.30 have been mentioned in the notification, the levy is only on import of acrylic fibre. It cannot be extended to acrylic tow by any implications. “

3.15 DGAD and CBEC have also clarified that no Anti dumping duty is leviable on import of CFL in CKD / SKD condition. Without admitting anything but for the sake of argument, it is assumed that CFL were imported in CKD/SKD condition then also no anti-dumping duty was leviable on importation of parts. The above submission is supported by clarification dated 1.5.2006 issued by DGAD pursuant to letter dated 4.4.2006 by M/s. Khaitan Electrics Ltd. The DGAD clarified as follows:

“(a) Anti-Dumping Duties were recommended / imposed on the following two types of CFLs :

*i) **Complete, ready to use** compact fluorescent lamps wherein choke is integrated within the lamp.*

*ii) **Complete, ready to use** compact fluorescent lamps wherein choke is external.*

(b) Anti dumping duties were not recommended on parts/components of CFL.

(c) ”CFL with choke is complete ready to use compact fluorescent lamps wherein choke is an internal part.

(d) CFL without choke as defined in the final findings is complete ready to use compact fluorescent lamps wherein choke would be external part.”

3.15.1 Obviously, the parts and components imported by M/s. Deco Gold, are not complete much less ready-to-use CFLs. ‘Undisputedly, these parts and components cannot be bought and sold as complete and ready to use CFLs.

3.15.2 Concurring with the clarification dated 01.05.2006 issued by the DGAD and CBEC vide its letter F.No: 528/53/2007-Cus(TU) dated 25th

October, 2007, have clarified that Anti Dumping Duty imposed vide Notification No: 138/2002-Customs dated 10.12.2002 does not apply to the parts / components of CFL. DGAD has recommended imposition of anti dumping duty only on (i) **Complete, ready to use** compact fluorescent lamps wherein choke is integrated within the lamp (ii) **Complete, ready to use** compact fluorescent lamps wherein choke is external.

3.15.3 They relied upon in the following rulings, wherein the APEX Court has held that Circulars issued by the Board are binding on the department. Therefore, in the instant case, department cannot brush under carpet the Circulars issued by the Board to unlawfully sustain the allegations of evasion of ADD.

Name of parties.	Reference.
Collector v. Jayant Dalal Pvt. Ltd.	1996 (88) E.L.T. 638 (S.C.)
Collector v. Usha Martin Industries Ltd.	1997 (94) E.L.T. 460 (S.C.)
Commissioner v. Dhiren Chemical Industries	2002 (139) E.L.T. 3 (S.C.)
Commissioner v. Indian Oil Corporation Ltd	2004 (165) E.L.T. 257 (S.C.)
Commissioner v. Kores (India) Ltd.	1997 (89) E.L.T. 441 (S.C.)
Dabur India Ltd. v. Commissioner	2003 (157) E.L.T. 129 (S.C.)
Paper Products Ltd. v. Commissioner	1999 (112) E.L.T. 765 (S.C.)
Ranadey Micronutrients v. Collector	1996 (87) E.L.T. 19 (S.C.)

3.16 They further stated that sub-section (1A) of Section 9A ibid which was inserted by Section 58 of the Finance Act, 2011 and submitted that prior to 08.04.2011 there was no power to levy anti-dumping duty on import of the article in an unassembled or disassembled form. Therefore, both the demand notices are liable to be quashed on this ground too.

3.17 Attention was also invited towards **Notification No.125/2003-Cus. Dated 13.08.2003** imposing **Anti Dumping Duty on non brass metal flashlights**, originating in, or exported from Peoples' Republic China and submitted that whenever the Central Government wants to impose Anti Dumping Duty on import of parts in SKD Condition, the notification itself provides the same in description of the goods. In the instant case such description of CFL in SKD condition is missing in the notification No.138/2002-Cus. dated 10.12.2002, therefore, demand of anti-dumping on import of parts of CFL at two different ports at different point of time considering the CFL in SKD condition is totally beyond the scope of provisions of the notification. Thus, demand notices are liable to be quashed on this ground too.

3.18 They have also placed reliance on the decision of the **Hon'ble High Court of Delhi** in the case of **Nav Durga Associates Vs. UOI - 2013 (287) ELT**

19 (Del.) wherein same issue was before the Hon'ble High Court that manufacturer importer therein had imported various parts and components of Dry Battery Cells and customs relying upon Rule 2(a) ibid considered as import of Dry Battery Cells for the purpose of imposition of Anti-Dumping Duty. The Hon'ble Court at para 16 clearly held that Rule 2(a) is not applicable based on the findings of designated authority.

3.19 They have also relied in the case of **Delta Electronics Vs. Commissioner of Cus. & C. Ex., Meerut - 2012 (283) ELT 68 (Tri. - Del.)**.

In the said case issue before Hon'ble Tribunal was that,-

*"9. Learned SDR's contention that the parts imported by the appellants constitute 90% of the total requirement of manufacture of CFL and as such, in terms of provisions of Rule 2(a) of Interpretative Rules, the same have to be treated as complete lamps, as held by the adjudicating authority, is not appropriate inasmuch as the provisions of Rule 2(a) of the Interpretative Rules are in the form of a legal fiction created for the limited purpose of classification of incomplete or unfinished article vis-a-vis any reference in a heading to an article in schedule and cannot be used to modify physical identity of an article mentioned in notification imposing a duty on that article, which has to be interpreted strictly. The above was so held in decisions of Authority for Advance Rulings in the case of **Peramalite Electricals (P) Ltd.** as reported in 2004 (168) E.L.T. 164 (A.A.R.). It was held in the said decision that Anti-dumping Duty in terms of Notification No. 138/2002-Cus. is not leviable on the parts of CFL.*

10. Apart from the above, we find that the said issue has been the subject matter of various decisions of Tribunal as also of the Hon'ble High Courts. The Hon'ble Delhi High Court in the case of **Plaza Lamps and Tubes Ltd. v. CC [2007 (209) E.L.T. 182 (Del.)]** has held that imported items being part of CFL, without choke, Anti-Dumping Duty is not imposable. To the similar effect are the following decisions:

(1) *Anchor Daewoo Indus. Ltd. v. CC, Kandla [2007 (214) E.L.T. 230 (Tri-Ahmd.)];*

(2) *Wipro Ltd. v. CC, Chennai [2007 (217) E.L.T. 558 (Tri.-Chennai.)];*

(3) *Philips India Ltd. v. CC, Mumbai [2004 (166) E.L.T. 49 (Tri.-Mum.)]; and*

(4) *Award Electronics v. CC, Chennai [2004 (175) E.L.T. 266 (Tri.-Chennai)]*

11. The ratio of the above decisions is that parts of CFL do not attract the Anti-dumping Duty. We note that all the above

decisions were produced before the Commissioner who has chosen not to deal with the same.

12. In view of the above, inasmuch as the issue stands decided by various decisions, referred supra, as also in the same appellants decision as also by various Circulars issued by the Ministry of Commerce as also by Finance Ministry, we find no merits in the impugned order of the Commissioner. The same is accordingly, set aside and appeal allowed with consequential relief to the appellants."

3.20 They have also relied in the case of **Anchor Daewoo Indus. Ltd. v. CC, Kandla [2007 (214) E.L.T. 230 (Tri-Ahmd)]** and submitted that noticee has imported said two parts viz. Glass Tube with Holder and Micro Assembly for Fluorescent Lamp (Electronic Parts) at two different ports at different point of time, however, in the case of M/s Anchor Daewoo Indus. Ltd., they have imported two different parts at same port only i.e. Kandla Port and at same time. Therefore, their case is stronger footing than the case of Anchor Daewoo Inds. Ltd. Therefore, both the demand notices are liable to be quashed on this ground too.

3.21 They have further invited towards the decision of the Hon'ble Mumbai tribunal in the case of Samay Electronics (P) Ltd. Vs. C.C.(Import)/(General), Mumbai - 2015 (328) ELT 238 (Tri. Mumbai) and submitted that though the said decision is against the importers except one of the importers in case of import of parts of CFL, ratio of the same is not applicable to the present case as on the date of order of the tribunal i.e. 20.01.2015, decision dated 04.11.2015 of the Hon'ble Apex Court in the case of Anchor Daewoo Inds. Ltd. was not available before Hon'ble Tribunal, Mumbai. Based on the above, it was submitted that after decision of Hon'ble Apex Court in the case of Anchor Daewoo Inds. Ltd. decision of Samay Electronics (P) Ltd. is no more good law.

3.22 It has been alleged that in the Packing List and Certificate of Origin, number of pieces of Plastic Cover has been shown as 255000 pcs. while in the Commercial Invoice No: FYD061001 dated 24.10.2006 and in the B/E. number of pieces of Plastic Cover has been shown as 10000 pcs. Therefore, importers had mis-declared the quantity of Plastic Cover and evaded of **Rs.4,29,715/-** on 245000 pcs. of plastic cover imported in excess as per Annexure VIII. In this regard, they have submit that they had imported only 10,000 pcs of plastic cover as per invoice and through oversight the supplier in packing list and certificate of origin mentioned as 2,55,000 pcs. For lapse of foreign suppliers, it is not fair to penalize M/s. Deco God, especially while there is no allegation of illegal outflow of money representing difference of quantity of Plastic Covers from M/s. Deco Gold to foreign suppliers. It is also fact that goods were allowed

after examination as well as assessment by the proper officer. Examination of goods includes verification of nature of goods as well as quantity/weight etc.

3.23 When 2,45000 pcs. of Plastic Covers have not been supplied in excess by the foreign suppliers, question of confiscation under Section 111 (l) of the Customs Act, 1962 does not arise at all. In the above scenario, question of fine in lieu of confiscation is irrelevant. Hence, the demand of customs duty along with penalty and interest on alleged excess 245000 pcs. of Plastic Cover under the impugned show cause notice merits to be set aside.

3.24 Seizure is 'SINE QUA NON' to confiscation. It is submitted that the department has never seized the goods under question. Seizure is an indispensable pre-requisite for making any order of confiscation. The goods which are not available or may not be in existence at all at the time of order of confiscation will make such order on paper without any effect. Therefore, without seizure of the goods, it cannot be confiscated. In this regard, they relied that the Hon'ble High Court of Andhra Pradesh in the case of Appellate **CC & CE Vs T.N.Khambati reported in 1988 (37) ELT (37) (A.P)** held that,-

“Seizure, confiscation and penalty - Seizure and confiscation are inter-connected Sections 110 and 124 of the Customs Act, 1962. -

There cannot be confiscation without seizure. Confiscation is only forfeiture of the goods in favour of the State. Before that, articles are taken possession of by the authorities of the State. Without that possession or control over that possession, there cannot be any confiscation. [AIR 1975 Mad. 43; 16 Guj. LR. 119 and AIR 1975 P & H 130 dissented from]. [paras 7, 9 & 13]”

3.25 Further, in the case of **COMMISSIONER OF CUSTOMS, KANDLA Versus SAHIL TRENDS - 2004 (177) E.L.T. 732 (Tri. - Del.)**, the Hon'ble Tribunal held that,-

“Confiscation and redemption fine - Customs - Goods being not seized under Section 110 of Customs Act, 1962, not liable for confiscation - Accordingly, redemption fine not imposable - Section 125 ibid. - The occasion for imposition of redemption fine can arise only if the goods are seized under Section 110. In the impugned order, though the goods have been held to be liable for confiscation there was no seizure of the goods. Consequently there was no order to confiscate the goods.

Unless the goods are seized there cannot be any confiscation thereof. [para 3]"

3.26.1 The issue is now put to the rest by the Larger Bench of Honourable Tribunal judgment in the case of **Shiv Kripa Ispat Pvt. Ltd. Vs. Commissioner of Central Excise & Customs, Nasik and Commissioner of Customs, Mumbai Vs. Rishi Ship Breakers** - reported in 2009-TIOL-388-CESTAT-MUM-LB that,-

"Redemption fine could not be imposed in the absence of the goods which had already been released by the Customs Authorities to the importer without execution of any bond/undertaking by the latter."

3.26.2 In view of the above, it is crystal clear that no order for confiscation of sold goods can be made.

3.27 No Penalty can be imposed under Section 112 when penalty under Section 114A imposed. In the instant case since penalty equal to the duty is proposed upon M/s. Deco Gold under Section 114A of the Customs Act, 1962 in the notice, therefore, no penalty can be imposed upon M/s. Deco Gold under Section 112 also.

3.28.1 No Suppression of facts or mis-declaration etc of imported goods. - Extended period not invocable. M/s. Deco Gold have classified the goods according to their own concept and understanding keeping in view of true description of the components imported. Onus is ultimately cast upon the customs authorities to classify the imported goods strictly in accordance with the law. In support of that they relied in the case of **COMMISSIONER OF CENTRAL EXCISE, DELHI Versus ISHAAN RESEARCH LAB (P) LTD.- 2008 (230) E.L.T. 7 (S.C.)**, it has been held that,-

"Demand - Limitation - Extended period - Dispute prevailed in the matter of classification of products - Appellants cannot be held guilty of suppression or mis-statement hence charge of suppression not sustainable - Proviso to Section 11A(1) of Central Excise Act, 1944 not applicable."

3.28.2 In the instant case dispute has prevailed in the matter of classification of imported goods. In terms of the above ruling, extended period is not invocable.

3.29 No interest is payable. In view of submissions made supra, since no anti-dumping duty is payable hence question of payment of interest will not arise.

3.30 No penalty can be imposed upon Shri Jayantilal Maganlal Pethapara, Director of M/s. Deco Gold under Section 112 (a) of the Customs Act, 1962. Your honour will please appreciate that provisions of penalty under Section 112 of the Customs Act, 1962 are not borrowed in the provisions of the Customs Tariff Act, 1975 no penalty can be imposed upon Shri Jayantilal Maganlal Pethapara, Director of M/s. Deco Gold under Section 112(a) of the Customs Act, 1962. As already discussed hereinabove neither goods are liable to confiscation nor Shri Jayantilal Maganlal Pethapara, Director of M/s. Deco Gold, is required to pay any differential duty. Therefore, no penalty can be imposed under section 112(a) of the Customs Act, 1962.

3.31 For imposition of penalty under Section 112, it must be proved beyond doubt that in which manner Shri Jayantilal Maganlal Pethapara, the Director of M/s. Deco Gold had dealt with the goods which may have rendered such goods liable to confiscation or with reasonable belief that same were liable to confiscation as provided under Section 112(a) and 112(b).

3.32 Alternatively, it was also prayed that there is proposal to impose penalty under Section 112(a) of the Customs Act, 1962 upon one of the directors Shri Jayantilal M. Pethapara, of the Noticee, however, no penalty is imposable upon him as held by Mumbai Tribunal in the case of Samay Electronics (P) Ltd. supra that separate penalties on the partner/director/employees of the appellant firm is not warranted

3.33 Based on the above submissions, it was prayed that both the demand show cause notices are liable to be quashed.

PERSONAL HEARING:

4.1 Personal hearing in respect of above referred two SCNs was fixed on 01.11.2018 before the Commissioner of Customs, Kandla. Shri P.D. Rachchh, Advocate appeared on behalf of the noticees and he reiterated the written submissions made already. He requested to allow 20 days time to submit a synopsis of arguments made. Accordingly, the time was allowed upto 20.11.2018. In pursuance of that, they have accordingly filed their submissions vide their letter dated 15.11.2018.

DISCUSSION AND FINDINGS:

5.1 I have carefully gone through the Show Cause Notices, records of the cases, written submissions filed by the Noticees as well as submissions made at the time of Personal Hearing.

5.2 In the instant case following issues are to be decided:

1. Whether in the facts and circumstances of the case, the impugned imported goods are Complete, ready to use compact fluorescent lamps (CFL) or otherwise?
2. Whether prior to issuance of notification no. 55/2009-Cus dated 26.05.2009, anti dumping duty was leviable on CFLs imported in CKD/SKD condition or otherwise?
3. Whether there is any mis-declaration of quantity of Plastic Covers 2,45,000 pcs (excess) in Bill of Entry No. 110019 dated 06.12.2006 cleared through Mundra Port and its consequential penal provisions are attracted?

6. From the impugned SCNs, defense submissions of the noticees and records available before me, I find that they have imported goods describing as tube for Fluorescent Light, Micro Assembly for Fluorescent Light & Glass Tube with Holder and classifying mostly under the CTH 85399010 & 85399090. Further, in one Bill of Entry No. 110019/06.12.06, they have also cleared the goods describing as Diode, Transistor, Resistor, Electrolytic Capacitor, Polyester Film, Capacitor, Fuse, Input Inductor, Ferrite Beed Ring Inductor, EE Type Ferrite Core Inductor, PCB KH, Glass Tube, Non Alkali Fibre Glass Sleeve for Cap, Wire for PCB & Holder and Copper Pin for PCB & Tube Plastic Cover for S-20W (classified under various CTHs). The impugned goods have been cleared through two different ports namely Nhava Sheva & Mundra Port at different point of times and from different suppliers.

6.1 Therefore, it is not in dispute that the noticee have imported the parts / components of CFLs. In the DRI investigation a case has been made out that the noticee have imported parts & components in such a manner that it can be termed as import of CFLs in SKD condition. Thus the first issue is answered that the noticee have not imported the complete ready to use CFLs.

7. On second issue, I find that the issue is no more res-integra and decided by the Hon'ble CESTAT (214) ELT 230 (Tri. – Ahmd.) vide order dated 18.05.2007 wherein CESTAT has held that,-

“7. The anti-dumping duty is imposed on the goods which are dumped into India by Directorate General, Anti-Dumping and Allied Duty. On complete investigation of the complaint of dumping of a specified article, a Notification No. 138/02-Cus., dated 10-12-02 was issued by the Ministry of Finance, Deptt. of Revenue, on recommendation by the DGAD for imposition of anti-dumping duty on the “Compact fluorescent lamp with or without choke”. It is seen from the notification that the specified article on which definitive anti-dumping duty was imposed was a complete compact fluorescent lamp and not on a semi-knocked down condition of CFL. It is also seen from the records that DGAD imposes anti-dumping duty on the SKD condition of the specified article as and when it comes to the conclusion that even the parts are also dumped into India. (Notification No. 125/2002-Cus., dated 13-8-03 on non-brass metal flash light). On this factual understanding of the imposition of definitive anti-dumping duty, we proceed ahead to decide the issue in this case. It is on record that appellants had imported parts of CFL. The parts have been found as has been declared by the appellant. We find that the parts the condition in which they were imported could in itself, may not answer to the description of a complete CFL. There is no evidence put on record by the authorities, as to whether the sample being tested by them in the Customs laboratory in order to ascertain whether these parts in themselves can be considered as a complete CFL. In the absence of any such evidence, we find that the process of manufacture (as explained by the advocate from the record) would be required to be undertaken on these parts to make these parts as a complete CFL, this is not controverted by the Revenue.”

“9. It can be noticed from the above reproduced office memorandum, the authority that recommends imposition of definitive anti-dumping duty, have clearly indicated in the above memoranda that (a)(i), (ii) that the anti-dumping duty were recommended on ready to use compact fluorescent lamp, whether chokes are integrated within the lamp or whether the choke is external. It is to be understood that the authority which recommends anti-dumping duty has clearly indicated that the anti-dumping duty has to be imposed only on ready to use CFL. It is not brought on record by the Revenue in this case that the goods imported by the appellant and which were sought to be cleared are “ready to use” compact fluorescent lamps. In the absence of any evidence to suggest that the imported goods were ready to use CFL, we have hold that imported goods are parts of CFL and they are

not liable for imposition of anti-dumping duty as per the office memorandum (as reproduced above)."

"14. *Accordingly, we set aside the impugned order and allow the appeal with consequential relief, if any."*

7.1 Aggrieved by the above order of the Hon'ble CESTAT, the department had preferred an appeal with the Supreme Court of India. The appeal was dismissed by the Hon'ble Apex Court [Commissioner Vs. Anchor Daewoo Inds. Ltd. – 2016 (331) ELT A138 (SC)] and held that,-

"In the present case, we find that what was imported was glass parts of lamp making, electronics parts of lamp making and not Compact Fluorescent Lamp.

Admittedly, insofar as the parts are concerned, no anti-dumping duty could be charged.

We, thus, do not find any infirmity in the order passed by the Customs, Excise and Service Tax Appellate Tribunal."

7.2 I find that in the case before CESTAT referred supra, the importer had filed two separate bills of entry for import of "Glass Parts of Lamp Making" and "Electronic Parts for Lamp Making" at Kandla Port and department had considered that as import of a complete Compact Fluorescent Lamps, thereby confirmed demand of anti-dumping duty. Hon'ble Apex Court while upholding the order of Hon'ble Tribunal has given clear findings that what was imported was glass parts of lamp making, electronic parts of lamp making and not Compact Fluorescent Lamp and therefore, no anti-dumping duty could be charged. The facts of the case before me are similar to the referred case except in case before me the parts have been imported at Kandla as well as Nhava Sheva. Therefore, relying upon the CESTAT order affirmed by the Hon'ble Supreme Court, the anti dumping duty cannot demanded on parts / components of CFLs even if considered as import under SKD condition for period prior to issuance of notification no. 55/2009-Cus dated 26.05.2009 when CFLs in CKD/SKD condition were also covered under the ambit of levy of anti dumping duty.

7.3 Before parting on the issue, it is pertinent to refer to the case of Samay Electronics (P) Ltd. Vs. C.C.(Import)/(General), Mumbai – 2015 (328) ELT 238 (Tri. Mumbai), wherein the Hon'ble tribunal (relevant para) has held as under,-

"2. The appellants are M/s. Samay Electronics Pvt. Ltd., M/s. Wipro Limited, M/s. Amar Energy Systems, M/s. Shell & Pearl Ceramics Ltd., M/s. Sunora Electronics Industries and their partners/employees. The issue involved in all these appeals is common and it relates to levy of anti dumping duty on Compact Fluorescent Lamps

(CFL) imported from China in SKD form and in different consignments and at different ports. The facts involved in each of these cases are discussed below :-

(1) *Samay Electronics Pvt. Ltd.:* During the period from November 2004 to February 2007, M/s. Samay Electronics Pvt. Ltd. ('Samay' in short) had imported 106 consignments of CFL from China in SKD form without payment of anti dumping duty leviable on CFL vide Customs Notification No. 138/2002-Cus., dated 20-12-2002.

(a) As part of the investigation, officers of the DRI, Ahmedabad visited the office and factory premises of M/s. Samay on 28-11-2006. During the visit, it was found that M/s. Samay was importing glass tubes with base from China at Kandla port and holders with wire and populated PCBs for CFL at Mumbai. The CFLs were being assembled at their factory by soldering the above goods. All the components put together, constituted CFL in SKD form and as per Rule 2(a) of the General Interpretative Rules of the Customs Tariff Act, 1975, the same merited classification as CFL under CTH 8539 3110 and not as components of CFL under CTH 8539 9010 as claimed by the appellant. During the investigation 158257 pieces of CFL of different watts in SKD condition was seized by the officers under a panchanama dated 28-11-2006 as it appeared that the same were liable to confiscation.

5.7 In respect of imports made by M/s. Samay Electronics, both Shri Vasantbhai Chunibhai Patel, Chief Engineer and Shri Rameshbhai Patel, Director have admitted that they assembled CFL by simply soldering the glass tubes with base imported at Kandla and holders with wire and populated PCB imported at Mumbai and they did not use any other material other than the imported components. It is also an admitted position that imports were managed by the appellant-firm by negotiating with various manufacturers in China, it is also revealed that the entire CFL in SKD condition have been supplied under the same number and date of invoice. However, a suffix to the said invoices were added as K & M in respect of consignments imported at Kandla port representing 'K' and consignments imported at Mumbai port representing 'M'. Suppliers of the goods were the same in all the cases. In the present case, it is seen that in one of the imports, the same vessel carried both these consignments and a part of the consignment was unloaded at Mumbai and the balance at Kandla. In other words, the order was placed by M/s. Samay Electronics for complete CFL and they were also transported by the same vessel. Only the consignments were artificially split up, part of which was offloaded at Mumbai and the balance at Kandla. Quantity of parts imported at Mumbai was matching with the quantity imported at Kandla and these consignments complemented each other so as to constitute a complete CFL.

5.18 In these circumstances, we are of the considered view that the goods imported by the three appellants, namely, M/s. Samay Electronics Pvt. Ltd., M/s. Wipro Ltd.,

and M/s. Amar Energy Systems merits classification as CFL in SKD/CKD form falling under Chapter 85 of the Customs Tariff Act and, therefore, they were correctly leviable to anti-dumping duty in terms of Notification 128/2002”.

7.4 On judicial analysis of decisions of both the cases i.e. Samay Electronics (P) Ltd. Vs. C.C.(Import)/(General), Mumbai - 2015 (328) ELT 238 (Tri. Mumbai) and the decision of Hon'ble Apex Court in the case of Anchor Daewoo Inds. Ltd., it is observed that the Hon'ble Tribunal, Mumbai had passed the decision on **20.01.2015**, however, the Hon'ble Apex Court in the case of Anchor Daewoo Inds. Ltd had decided the issue on **04.11.2015**. I find that the decision of the Hon'ble Apex Court dated 04.11.2015 was not available before Hon'ble Tribunal, Mumbai. Therefore, the order passed by the Hon'ble Tribunal, Mumbai is no more good law in an identical issue as settled by the Hon'ble Apex Court of India.

7.5 Once the issue of levy of anti dumping duty is settled in favour of the noticee, the allegation of mis-declaration in this regard will also not hold good and therefore, I hold that the impugned goods are not liable for confiscation under Section 111 of the Customs Act, 1962 and consequent penalties under Section 114A or Section 112 of the Customs Act, 1962 cannot be imposed on M/s Deco Gold or their director.

8. Now coming to the third issue i.e. Whether there is mis-declaration of quantity of Plastic Covers 2,45,000 pcs (excess) cleared under Bill of Entry No. 110019 dated 06.12.2006 through Mundra Port?

8.1 In this regard, M/s Deco Gold contested that they had imported only 10,000 Plastic Cover of S-20W which was also shown as per Invoice No. FYD061001 dated 24.10.2006. Further, they have submitted that the supplier had through oversight put that figure in Packing List. It is also submitted that looking to the size of plastic cover of S-20W, 255000 pieces cannot be imported in the said containers with other goods. Further, they argued that for lapse of foreign suppliers, it is not fair to penalize M/s. Deco God, especially while there is no allegation of illegal outflow of money representing difference of quantity of Plastic Covers from M/s. Deco Gold to foreign suppliers.

8.2 I find that M/s Deco Gold have filed Bill of Entry No. 110019 dated 06.12.2006 at Mundra Customs and declared 10,000 pcs of Plastic Covers. However, during the course of DRI investigation, it appeared to them that as per packing list / Country of Origin certificate No. CCPIT0506720140 total 2,55,000 pcs of Plastic Covers were imported against the declared 10,000 pcs, thereby, the noticee had alleged to have cleared excess of 2,45,000 pcs.

8.3 To bring clarity to the issue, I have perused the opinion relied upon in the SCN. It is seen that the opinion in the letter dated 14.08.2008 obtained by the DRI from the Commander, OIC, Centre for Electronic Engineering, INS Valsura in respect of components imported under Bill of Entry No. 110019 dated 06.12.2006 is as under,-

(a) The electronic components detailed in the invoice can be assembled by soldering to produce CFLs.

(b) The details regarding watt-wise matching of components for CFLs of respective wattage is placed at Enclosure to this letter. It can be concluded with sufficient degree of confidence that the total no. of CFLs, of respective wattages, that can be manufactured from the given components is as appended below:-

Description	Quantity (Nos.)
5W	40000
8W	32000
11W	35000
14W	65000
18W	53000
20W	10000
21W	10000
23W	10000

8.3.1 The component wise quantity required to assemble is also annexed with the letter. From the opinion, it is evident and the same has been formed on the basis of invoice and not on the basis of packing list / Country of Origin Certificate. It is also seen that the quantity of CFL of 20W that can be assembled out of the components is stated as 10,000. It is further seen from the subject Bill of Entry along with the corresponding Invoice & Packing List that the plastic covers imported were for assembling 20W CFL. In the Country of Origin certificate also same were mentioned for 20W CFL only. Even in Bill of Lading the same were mentioned for 20W CFL only. All these facts, if correlated give the only conclusion that the quantity mentioned in the Commercial Invoice on the basis of which the Bill of Entry was filed indicated the correct quantity. Further, it does not make sense to import plastic covers 2,55,000 in numbers for assembly of 10,000 CFLs of 20W.

8.4 In the investigation, it is not brought on record that plastic cover for different watts i.e. 5W, 8W, 11W, 14W, 18W, 20W, 21W & 23W are of the same size and can be interchangeably used for manufacture of CFL of any wattage. The weight of plastic covers shown in the Packing List is 299 Kgs (Net Weight). The noticee in the submission have pointed out that looking to the size of the

plastic cover of 20W, 2,55,000 pcs cannot be imported in the said containers with other goods. I find force in the defense arguments of the noticee. The investigation has not brought on record that plastic cover used in CFL is of the same size for different wattage of CFL and its weight would be around 1 gram so that quantity of 2,55,000 pcs would have total weight of 299 Kgs. Therefore, the allegation that they have imported 2,55,000 pcs instead of quantity of 10,000 pcs mentioned in Commercial Invoice & Bill of Entry would not hold good. Accordingly, the demand of duty on excess quantity cannot be sustained. Since the proposal for holding the excess goods liable for confiscation is linked to mis-declaration of quantity, in absence of mis-declaration of quantity as per the findings above, there is no ground to hold the goods liable of confiscation under Section 111 of the Customs Act, 1962 and consequently no penalty is imposable under Section 112(a)/114A of the Customs Act, 1962.

9. In view of the above, I pass the following order:

ORDER

- I. I hereby drop the proceedings initiated vide show cause notice F.No. DRI/JRU/INQ-02/2008 dated 13.07.2011 issued by the Additional Director General, DRI Zonal Unit, Ahmedabad & show cause notice F.No. S/10-16/Adj/2011-12 dated 07.07.2011 issued by Commissioner of Customs, Kandla.


[SANJAY KUMAR AGARWAL]
COMMISSIONER

F.No. S/10-56/Adj/COMMR/Deco Gold/2018-19

Dated 11.12.2018

BY RPAD/ SPEED POST:

To,

1. M/s Deco Gold Electronics Limited situated at Old Ghuntu Road, Morbi - 363642.
2. Shri Jayantilal Maganlal Pethapara, Director of M/s Deco Gold Electronics Limited situated at Old Ghuntu Road, Morbi - - 363642

Copy to:

1. The Chief Commissioner of Customs, Gujarat Zone, Ahmedabad.
2. The Additional Director General, DRI, Ahmedabad Zonal Unit, Ahmedabad
3. The Deputy/Assistant Commissioner (Recovery), CH, Kandla.
- ✓ 4. Guard file.