CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO.III

Customs Appeal No.50079 of 2022

(Arising out of Order-in-Original No. DLI/CUS-PREV/GS/Pr. Commr./13/2021 dated 31.03.2021 passed by the Principal Commissioner of Customs (Preventive), New Delhi)

M/s Diyas Mantra Lighting Pvt. Ltd., **.....Appellant**
(BJ No.2141, KH No.651/26 FH No.104,
Opposite Palam Vihar Road, Bijwasan,
New Delhi-110061)

VERSUS

Principal Commissioner of Customs (Preventive), New Delhi **....Respondent**
(Near Customs House, Near IGI Airport,
New Delhi-110037)

WITH

Customs Appeal No.50080 of 2022

(Arising out of Order-in-Original No. DLI/CUS-PREV/GS/Pr. Commr./13/2021 dated 31.03.2021 passed by the Principal Commissioner of Customs (Preventive), New Delhi)

Shri Rahul Mehta, **.....Appellant**
(M/s Diyas Mantra Lighting Pvt. Ltd.,
B.J. No.2141, KH No.651/2G FH No.104,
Opposite Palam Vihar Road, Bijwasan,
New Delhi-110061)

VERSUS

Principal Commissioner of Customs (Preventive), New Delhi **....Respondent**
(Near Customs House, Near IGI Airport,
New Delhi-110037)

AND

Customs Appeal No.51166 of 2022

(Arising out of Order-in-Original No. DLI/CUS-PREV/GS/Pr. Commr./13/2021 dated 31.03.2021 passed by the Principal Commissioner of Customs (Preventive), New Delhi)

Shri Anil Kumar Anand, **.....Appellant**
(M/s Diyas Mantra Lighting Pvt. Ltd.,
B.J. No.2141, KH No.651/2G FH No.104,
Opposite Palam Vihar Road, Bijwasan,
New Delhi-110061)

VERSUS

Principal Commissioner of Customs (Preventive), New Delhi **....Respondent**
(Near Customs House, Near IGI Airport,
New Delhi-110037)

APPEARANCE:

Shri Prem Ranjan, Advocate for the Appellant
Shri Nikhil Mohan Goyal, Authorized Representative for the Department

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NOs.- 51642-51644/2026

DATE OF HEARING : 25.09.2026
DATE OF PRONOUNCEMENT : 29.10.2026

SANJIV SRIVASTAVA:

These appeals are directed against Order-in-Original No. DLI/CUS-PREV/GS/Pr. Commr./13/2021 dated 31.03.2021 passed by the Principal Commissioner of Customs (Preventive) New Delhi. By the impugned order following has been held:

ORDER

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

(i) I reject the declared value amounting to Rs.19,01,175/- (Rs. Nineteen lakhs one thousand one hundred and seventy five only) for live shipment i.e. bill of entry No. 8059523 dated 21.01.2015 and re-determine it at Rs.52,22,305/-(Rupees fifty two lakh twenty two thousand three hundred and five only).

(ii) I reject the declared value amounting to Rs.2, 16,95,404/- (Rupees two crores sixteen lakh ninety five thousand four hundred and four only) for past 13 bills of entry (as detailed in para-59 supra) under the provisions of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, and re-determine it at Rs.4,46,72,712/- (Rupees Four Crores Forty Six Lakhs Seventy Two Seven Hundred and Twelve only).

(iii) I confirm the demand of differential duty amounting to Rs.9,53,073/-(Rupees nine lakhs fifty three thousand seventy three only) for live shipment i.e. bill

of entry No. 8059523 dated 21.01.2015 and Rs.74,85,263/- (Rs. Seventy Four Lakhs Eighty Five Thousand Two Hundred and Sixty Three only-) for past 13 bills of entry and order it to be recovered from the importer under Section 28 of the Customs Act, 1962 by invoking extended period under proviso to Section 28(4) of the Act ibid.

(iv) *I drop the demand of differential duty amounting to Rs.48,40,974/- for seven Bills of Entry (as detailed in Para-59.3 supra), in respect of imports from Spain and China.*

(v) *I confiscate the seized goods (seized on 02.02.2015) in case of live shipment i.e. bill of entry No. 8059523 dated 21.01.2015 of re-determined value of Rs.52,22,305/- under Section 111(m) of the Customs Act, 1962. Since the goods have been released provisionally and are not available for confiscation, I impose a fine of Rs. 10,00,000/-(Rupees Ten Lakhs only) in lieu of confiscation under Section 125 of the Customs Act, 1962.*

(vi) *I also confiscate the imported goods seized on 05.02.2015 at godown of the importer value of which was re-determined at Rs.4,44,16,298/- under Section 111(m) of the Customs Act, 1962. Since the goods have been. released provisionally and are not available for confiscation, I impose a fine of Rs.89,00,000/- (Rupees Eighty Nine Lakhs only) in lieu of confiscation under Section 125 of the Customs Act, 1962.*

(vii) *I confirm the Interest on the above demand which is to be recovered from the importer under Section 28 AA (as existed during the relevant period) of the Customs Act 1962.*

(viii) *I impose penalties of Rs.9,53,073/-(Rupees Nine Lakhs Fifty Three Thousands and Seventy Three only) on M/s Diyas Mantra Lighting Pvt. Ltd., New Delhi, in respect of import made against Bill of Entry No.*

8059523 dated 21.01.2015 and Rs. 74,85,263/- (Rs. Seventy Four Lakhs Eighty Five Thousand Two Hundred and Sixty Three only) under Section 114A of the Customs Act, 1962 (which is provisioned in the Section as to be equal to the differential duty determined under Section 28(8) of the Customs Act, 1962) in respect of import made from UK vide 13 Bills of Entries in past by them.

(ix) *I impose a penalty of Rs. 10,00,000/-(Rupees Ten Lakhs only) each upon Shri: Rahul Mehta, Director and Sh. Anil Anand, Director of M/s Diyas Mantra Lighting Pvt. Ltd., New Delhi under Section 112 (b) of the Customs Act, 1962 for their omission and commission.*

2.1 The impugned order has been made in the de-novo proceedings as per the order of Hon'ble Supreme Court dated 22.04.2019 in Civil Appeal No.3138-3140/2018 against the CESTAT final Order No.C/A/57650-57652/2017-CU(DB).

2.2 The facts have been recorded in the order of Hon'ble Supreme Court as follows:

The appellant is stated to be a regular importer of electric decorative lightings, and in the process of such imports, filed a bill of entry on 21.1.2015 at the ICD, Tughlakabad, New Delhi, for clearance of electric decorative lightings. These import consignments were of brand names 'Diyas' and 'mAntra', and the enquiry proceeded to ascertain whether the goods had been correctly valued for the purposes of customs duty. On completion of the enquiry, proceedings were initiated for revaluing the current import consignment, as well as past consignments within the aforesaid window, apart from the proposal for confiscation of goods and imposition of penalties under the provisions of the Customs Act, 1962 (hereinafter referred to as the 'said Act'). A show cause notice was issued under Section 28 of the said Act, providing for recovery of

duties not levied or short-levied or erroneously refunded, for any reason other than collusion or any wilful mis-statement or suppression of facts. In substance, there were really two grounds for the show cause notice:

(a) that the appellant, knowingly, did not declare the brand of 2 imported goods, and undervalued the same with the intent of evading customs duty;

(b) that the appellant had imported the branded goods from its related party, and had undervalued the same to evade customs duty.

2.3 The show cause notice dated 29.01.2016 called upon the appellant to show cause as to why:

(i) Declared value amounting to Rs.19,01,175/- (Rs. Nineteen lakhs one thousand one hundred and seventy five only) for live shipment i.e. bill of entry No. 8059523 dated 21.01.2015 and Rs.2,16,95,404/- (Rupees two crores sixteen lakh ninety five thousand four hundred and four only) for past 20 bills of entry (as detailed in Annexure-A to SCN) should not be rejected under the provisions of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, and re-determined at Rs.52,22,305/- (Rupees fifty two lakh twenty two thousand three hundred and five only) for live shipment i.e. bill of entry No. 8059523 dated 21.01.2015 and Rs.6,43,95,379/- (Rupees six crores forty three lakhs ninety five thousand three hundred and seventy nine only) for past 20 bills of entry (as detailed in Annexure-B & C to SCN) being the actual transaction value under Rule 6, 7 & 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007;

(ii) The total differential duty amounting to Rs.9,53,073/- (Rupees nine lakhs fifty three thousand seventy three only) for live shipment i.e. bill of entry No. 8059523 dated 21.01.2015 and Rs.1,23,26,237/- (Rs. One crore twenty

three lakhs twenty six thousand two hundred and thirty seven only-) for past 20 bills of entry (as detailed in Annexure-B & C to SCN) (inclusive of BCD, CVD and other customs duty as applicable) should not be demanded and recovered from them under Section 28 of the Customs Act, 1962 by invoking extended period under proviso to Section 28(4) of the Act ibid.

(iii) the seized goods (seized on 02.02.2015) in case of live shipment i.e. bill of entry No. 8059523 dated 21.01.2015 of re-determined value of Rs.52,22,305/- should not be confiscated under 111(m) of the Customs Act, 1962.

(iv) the imported goods seized on 05.02.2015 at godown of the importer value of which was re-determined at Rs.4,44,16,298/- (value re-determined on the basis of calculation method adopted for re-determining value of imported goods as discussed in earlier paras) should not be confiscated under Section 111(m) of the Customs Act, 1962.

(v) Interest on the above demand amount should not be confirmed and recovered from them under Section 28 AA (as existed during the relevant period) of the Customs Act 1962.

(vi) Penalty should not be imposed upon M/s. Diyas Mantra Lighting Pvt. Ltd., New Delhi, under Section 112/114A of the Customs Act, 1962 for their omission and commission as discussed in the body of show cause.

(vii) *Penalty should not be imposed upon Shri Rahul Mehta, Director and Sh. Anil Anand, Director under Section 112, and 114AA of the Customs Act, 1962 for their omission and commission as discussed in the body of show cause.*

2.4 The show cause notice was adjudicated as per Order-in-Original No. DLI/Custom/Prev./MKV/Pr.Commr/08/2017 dated 31.03.2017 of the Principal Commissioner of Customs (Preventive), New Delhi, holding as follows:

(i) I reject the declared value amounting to Rs.19,01,175/- (Rs. Nineteen lakhs one thousand one hundred and seventy five only) for live shipment i.e. bill of entry No. 8059523

dated 21.01.2015 and Rs.2,16,95,404/- (Rupees two crores sixteen lakh ninety five thousand four hundred and four only) for past 20 bills of entry (as detailed in Annexure-A to SCN) under the provisions of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, and re-determined at Rs.52,22,305/-(Rupees fifty two lakh twenty two thousand three hundred and five only) for live shipment i.e. bill of entry No. 8059523 dated 21.01.2015 and Rs.6,43,95,379/- (Rupees six crores forty three lakhs ninety five thousand three hundred and seventy nine only) for past 20 bills of entry (as detailed in Annexure –B & C).

(ii) I confirm the demand of total differential duty amounting to Rs.9,53,073/-(Rupees nine lakhs fifty three thousand seventy three only) for live shipment i.e. bill of entry No. 8059523 dated 21.01.2015 and Rs.1,23,26,237/- (Rs. One crore twenty three lakhs twenty six thousand two hundred and thirty seven only-) for past 20 bills of entry (as detailed in Annexure-B & C to SCN) and recovered from them under Section 28 of the Customs Act, 1962 by invoking extended period under proviso to Section 28(4) of the Act ibid.

(iii) I confiscate the seized goods (seized on 02.02.2015) in case of live shipment i.e. bill of entry No. 8059523 dated 21.01.2015 of re-determined value of Rs.52,22,305/-under Section 111(m) of the Customs Act, 1962. Since the goods had been released provisionally and were not available for confiscation, I impose a fine of Rs. 10,00,000/-(Rupees Ten Lakhs only) in lieu of confiscation under Section 125 of the Customs Act, 1962.

(iv) I also confiscate the imported goods seized on 05.02.2015 at godown of the importer value of which was re-determined at Rs.4,44,16,298/- under Section 111(m) of the Customs Act, 1962. Since the goods had been released provisionally and were not available for confiscation, I impose a fine of Rs.89,00,000/- (Rupees Eighty Nine Lakhs only) in lieu of confiscation under Section 125 of the Customs Act, 1962.

(v) I confirm the Interest on the above demand which is to be recovered from them under Section 28 AA (as existed during the relevant period) of the Customs Act 1962.

(vi) I impose penalties of Rs.9,53,073/-(Rupees Nine Lakhs Fifty Three: Thousands and Seventy Three only) on M/s Diyas Mantra Lighting Pvt. Ltd., New Delhi, in respect of import made against Bill of Entry No. 8059523 dated 21.01.2015 and Rs.1,23,26,237/-(Rupees One Crore Twenty Three Lakhs Twenty Six Thousands Two Hundred and Thirty Seven only) under Section 114A of the Customs Act, 1962 (which is provisioned in the Section as to be equal to the differential duty determined under section 28(8) of the Customs Act, 1962) in respect of import made vide 20 Bills of Entries in past: by them.

(vii) *I impose a penalty of Rs.13,00,000/-(Rupees Thirteen Lakhs only) each upon Shri Rahul Mehta, Director and Sh. Anil Anand, Director of M/s Divya Mantra Lighting Pvt. Ltd., New Delhi under* Section) 112(b) of the Customs Act, 1962 for their omission and commission.

2.5 Aggrieved appellants filed an appeal before the CESTAT, New Delhi challenging the said order. The CESTAT vide its Final Order No. C/A/57650-57652/2017-CU(DB) dated 06.11.2017, held as follows:

10. "We have considered their submission in this regard. It is clear that the Original Authority adopted the proposal made in the show cause notice and arrived at the redetermined value.

11. Regarding the contention of the appellant that there were similar goods imported though with different brand names, for consideration of comparable value, they pleaded that the Original Authority should have examined such value to arrive at the assessable value for the appellants also. We are not in agreement with the said proposition. It is apparent that different brand names carry different values. It is not practicable to have a comparison of one brand with another for Customs duty purpose. Such determination will

be highly subjective. As such, the Original Authority is left with only option of arriving at the correct assessable value by backward calculation, which he did. The second major point contested by the appellant is that post-importation expenditure and profit margin allowed is not correct. We note that the Original Authority considered 15% on account of profit margin, 5% on account of post-importation charges. He had also considered and allowed deductions on tax elements attributable to the impugned goods. While we note that the appellants contested the post-importation expenditure on the ground that the goods are fragile and some breakage is to be accounted for, we are not convinced by the said submission for the reason that the items are appropriately packed and no evidence is produced to support a particular quantum of breakage occurring during transportation. In the absence of such material evidence we cannot proceed based on simple assertion of the appellant. On overall analysis of the evidences and discussion of the Original Authority, we find no serious infirmity in the action of the Original Authority in both rejecting the declared value and also refixing the value for Customs Duties as well as imposing penalties. Accordingly, we find the appeals are without merit and are accordingly dismissed."

2.6 Aggrieved appellants filed an appeal before Hon'ble Supreme Court. Hon’ble Apex Court vide Order dated 22.04.2019 in Appeal No.3138-40 of 2018 remanded the matter back to the original authority for de novo consideration.

2.7 Matter was adjudicated as per the impugned order in the remand proceedings. Aggrieved appellants have filed this appeal.

3.1 We have heard Shri Prem Ranjan, Advocate for the appellant and Shri Nikhil Mohan Goyal. Authorized Representative for the revenue.

3.2 Arguing for the appellants learned counsel submits that:

- The transaction value declared by the appellant is not influenced by the relationship between the parties and therefore should have been accepted as per Rule 3 (3) (A)

of the Customs Valuation Rules, 2007. Reliance is placed on the following decisions:

- Sanjivini Non Ferrous Trading Pvt. Ltd. [2019 (365) E.L.T. 3 (SC)]
- Impex Steel & Bearing Co. [2014 (302) E.L.T. 464 (T-Del)]

- The finding recorded in the impugned order that the relationship between the importer and the UK supplier has influence the prices, is without any basis and only based on presumptions.
- The impugned order is perverse and unsustainable as it fails to adhere to the directions contained in the Hon'ble Apex Court order dated 22.04.2019.
- Comparison sheet submitted shows that the declared value has not been influenced by the relationship with the UK Supplier.
- Even if the arguments as per the impugned order are to be accepted then also the Value of the impugned goods supplied by the UK Supplier should be determined as per Rule 3 of the CVR, 2007 on the basis of same/ similar goods received by them from China. Therefore resort to rule 7 and Rule 9 of CVR, 2007 is totally erroneous.
- Extended period of limitation is no invokable for making this demand.
- Goods are not liable for confiscation as the goods have been declared as per the import documents, and there is no reason to allege mis-declaration.
- As demand of duty itself is bad in law, demand of interest should fail.
- No penalty could have been imposed on the importer and the co appellants

3.3 Arguing for the revenue Authorized Representative submitted that:

- Related person status established as a fact, not an assumption.

- Financial flow back as proof that the relationship had influenced the price.
- A shipping line official in his statement stated that a draft Bill of Lading was issued for this consignment is relied upon as indicating as unusually close commercial relationship between shipper (UK Supplier) and the buyer, inconsistent with dealings between the unrelated parties.
- In case of East African Traders [2000 (115) ELT 613 (SC)] following was held:

  "The learned Attorney General, appearing for the appellant, has restricted his argument to the observations of the Tribunal in the order under appeal relating to the piercing of the veil of the respondent company to determine whether or not the buyer and the seller were related persons, this being governed by Rule 2, sub-rule (2) of the Customs Valuation Rules, 1988. The law that would apply is that laid down in the judgment of this Court in Calcutta Chromotype Ltd. v. Collector of Central Excise, Calcutta [1998 (99) E.L.T. 202 (S.C.) = 1998 (3) SCC 681]. It is permissible for the authorities and the Tribunal to pierce the veil in given facts and circumstances to ascertain whether the buyer and the seller are indeed related persons within the meaning of the said sub-rule."

- Once the revenue shows that the relationship and an indcium of its effect on price (loan payment), the onus shifts on the importer under Rule 3(3)(b) to affirmatively show that the declared value closely approximates the test value. The appellant failed miserably for the reason that his own comparison chart showed that UK sourced goods priced at par with or higher that the same item sourced from China.
- Appellant deliberately did not declared the brand names "diyas/ mAntra" in the Bill of Entries, invoices, packing

lists etc., filed with intent to suppress and mis declare the value.

- The fact that the appellant as the sole importer/ distributor of "diyas" and "mAntra" brands s foreclosing to Rules 4/5 (identical/ similar goods). Since no independent, comparable transactions existed the resort was necessarily made to use Rule 7 read with Rule 9.
- Deductive value comparison is consistent with the CESTAT 2017 order.
- Reliance is placed on the dealers statement to establish that these Brands were being newly launched.
- Non cooperation by the Mr Anil Kumar Anand allegedly did not join the investigations and responded to the summons.
- Rahul Mehta failed to provide complete procurement/ purchase invoice details led to inference of concealment and as an independent ground for personal penal action under Section 112(b) on the Directors.
- Confiscation survives despite the provisional release.
- Penalty under Section 114A becomes natural consequence of confirmation of demand under section 28 (4)
- Reliance is placed on the decisions as follows:
  - Himanshu Gupta [Order dated 15.01.2026 in CEAC No 48/2018]
  - Xiami Technology India Pvt Ltd. [Final Order No 41324-41330/2025 dated 14.11.2025 Chennai Cestat]

4.1 We have considered the impugned order along with the submissions made in the appeals and during the course of arguments.

4.2 Impugned order records the findings as follows:

"46. From the records I find that the importer has not sought any adjournment for personal hearing either in their written submissions or during the course of personal hearing and as such I conclude that the importer has nothing more to say

in their defence against the Show Cause Notice in the instant case. Therefore, I proceed further in the adjudicating proceedings in the instant case.

47. I find that the impugned Show Cause Notice issued to M/s. Diyas Mantra Lighting Pvt. Ltd. and its Directors Shri Rahul Mehta and Sh. Anil Kumar Anand, has genesis out of the investigations carried out by the officers of the Customs Preventive Commissionerate, New Delhi. I find that the present show cause notice essentially involves determination of the following points, as to why:-

(i) Declared value amounting to Rs.19,01,175/- (Rs. Nineteen lakhs one thousand one hundred and seventy five only) for live shipment i.e. bill of entry No. 8059523 dated 21.01.2015 and Rs.2,16,95,404/- (Rupees two crores sixteen lakh ninety five thousand four hundred and four only) for past 20 bills of entry (as detailed in Annexure-A to SCN) should not be rejected under the provisions of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, and re-determined at Rs.52,22,305/- (Rupees fifty two lakh twenty two thousand three hundred and five only) for live shipment i.e. bill of entry No. 8059523 dated 21.01.2015 and Rs.6,43,95,379/- (Rupees six crores forty three lakhs ninety five thousand three hundred and seventy nine only) for past 20 bills of entry (as detailed in Annexure-B & C to SCN) being the actual transaction. value under Rule 6, 7 & 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007;

(ii) The total differential duty amounting to Rs.9,53,073/- (Rupees Nine lakhs fifty three thousand seventy three only) for live shipment i.e. bill of entry No. 8059523 dated 21.01.2015 and Rs.1,23,26,237/- (Rs. One crore twenty three lakhs twenty six thousand two hundred and thirty seven only-) for past 20 bills of entry (as detailed in Annexure-B & C to SCN) (inclusive of BCD,

CVD and other customs duty as applicable) should not be demanded. and recovered from them under Section 28 of the Customs Act, 1962 by invoking extended period under proviso to Section 28(4) of the Act ibid.

(iii) the seized goods (seized on 02.02.2015) in case of live shipment i.e. bill of entry No. 8059523 dated 21.01.2015 of re-determined value of Rs.52,22,305/- should not be confiscated under 111(m) of the Customs Act, 1962.

(iv) the imported goods seized on 05.02.2015 at godown of the importer value of which was re-determined at Rs.4,44,16,298/- (value re-determined on the basis of calculation method adopted for re-determining value of imported goods as discussed in earlier paras) should not be confiscated under Section 111(m) of the Customs Act, 1962.

(v) Interest on the above demand amount should not be confirmed and recovered from them under Section 28 AA (as existed during the relevant period) of the Customs Act 1962.

(vi) Penalty should not be imposed upon M/s. Diyas Mantra Lighting Pvt. Ltd., New Delhi, under Section 112/114A of the Customs Act, 1962 for their omission and commission as discussed in the show cause.

(vii) Penalty should not be imposed upon Shri Rahul Mehta, Director and Sh. Anil Anand, Director under Section 112, and 114AA of the Customs Act, 1962 for their omission and commission as discussed in the show cause.

48. It is on record that impugned Show Cause Notice was already adjudicated vide OIO No. DLI/Custom/Prev./MKV/Pr.Commr/08/2017 dated 31.03.2017; that being aggrieved with the OIO, importer preferred appeal before Hon'ble CESTAT, which was decided by Hon'ble CESTAT vide Final Order No. C/A/57650-57652/2017-CU(DB) dated 06.11.2017; that further being aggrieved with the Hon'ble CESTAT's Final Order, importer

filed Civil Appeal Nos. 3138-3140/2018 before the Apex Court, whereby Apex Court vide Order dated 22.04.2019 has set aside both the orders of (i) the Principal Commissioner of Customs (Preventive), Customs, New Delhi, dated 30.3.2017 & (ii) Final Order of the CESTAT, dated 6.11.2017; and the matter remitted back to the Principal Commissioner of Customs (Preventive), Customs, New Delhi, to proceed afresh with the matter in accordance with observations in the Order dated 22.04.2019, wherein it is specified that Rules 3 to 5 which would have to be applied first, as it is provided for the Rules to apply "sequentially". The Hon'ble Supreme Court has also allowed the importer to raise all other pleas, as available in law, and has directed that the same be dealt with on merits.

49. I find that officers of the Customs Preventive Delhi, acting on intelligence, booked a case of mis-declaration and under-valuation of the goods imported vide Bill of Entry No. 8059523 dated 21.01.2015 at ICD Tughlakabad, New Delhi by M/s. Diyas Mantra Lighting Pvt. Ltd., New Delhi. It was observed that the importer had not declared brands of goods imported whereas, two brands of goods namely "Diyas" and "mAntra" were found with user manual & installation guide of the goods. These brands were not declared in the Bill of Entry, Invoice and Packing List. On suspicion that the said brands were not declared due to the reason that they intended to clear the goods on lower value the same was detained under the provisions of Section 110 of the Customs Act, 1962. Also the goods imported vide past 20 bills of entry as detailed under para 17 above, were of the "Diyas" and "mAntra" brands as the goods were of the same item codes as mentioned in catalogues of these brands. It appeared that irrespective of the origin of goods, the prices of the goods were controlled/ fixed by the brand owners. Although Sh. Rahul Mehta, in his statements stated that the goods were manufactured in China but it appeared that in all such cases price control was maintained by the

brand owners i.e. in case of 'Diyas' brand the brand owner was M/s. Inspired Lighting Ltd., U.K. or Mr. Anil Kumar Anand and in case of "mAntra" brand the brand owner was M/s. Global Manufacturing & Trading Company S.L. Spain, who were controlling the prices of these brands. Except one shipment of mantra brand which was imported directly from M/s. Global Manufacturing & Trading Company S.L. Spain, in all other shipments of both the brands supplied from UK the supplier was M/s. Inspired Lighting Ltd., U.K. Shri Rahul Mehta, Director in his statement had stated that 'Diyas' was the brand of M/s. Inspired Lighting Ltd., U.K. and "mAntra" was the brand of M/s. Global Manufacturing Trading Company S.L. Spain. Shri Rajan Jain, Director of M/s. Jainsons Lights Pvt. Ltd., main dealer of the importer, in his statement dated 22.05.2015, stated that "Diyas" & "mAntra" were famous brand In Europe and they were planning to inaugurate goods/brands in India.

50. Now, following the directions of the Hon'ble Apex Court, I proceed to take case afresh and discuss sequentially, the Rule 3, 4 & 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, towards applicability in the instant matter.

51. Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 reads as under:-

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;

…….

(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.

(4) 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.

51.1 Rule 3 of the aforementioned Valuation Rules provides for discarding the invoice price if there is evidence that the relationship between the supplier and the importer has influenced the price. I find from the record that the Memorandum as well as Article of Association and Annual Return (AR01) of M/s. Inspired Lighting Ltd., U.K. reveal that Sh. Anil Kumar Anand was the Managing Director and 100% share holder of M/s. Inspired Lighting Ltd., U.K., the overseas supplier of the goods. Sh. Anil Kumar Anand was also director and 50% share holder of M/s. Diyas Mantra Lighting Pvt. Ltd., the importer of goods in India. Shri Rahul Mehta, director in his statement dated 16.02.2015 has stated that he and his father Sh. Rakesh Mehta along with

his cousin Shri Anil Kumar Anand were three directors of the firm and he and his father were authorized signatory and looked after sale and purchase and Mr. Anil Kumar Anand looked after the finance of the company. He further stated that he and his co-director Mr. Anil Kumar Anand had 50% each share holding of their company. Thus, I find that in the instant matter, the buyer and seller are related.

51.2 Following points have emerged on the issue of related person in the present matter during investigation:

Related person	*Common interest details*
Shri Anil Kumar Anand	*Director and 100% share holder of M/s. Inspired Lighting Ltd., U.K.(overseas supplier of the goods)*
	Director and 50% share holder of M/s. Diyas Mantra Lighting Pvt. Ltd. (importer of goods in India), look after finance of M/s. Diyas Mantra Lighting Pvt. Ltd
	Cousin of Sh. Rahul Mehta, another director of M/s. Diyas Mantra Pvt. Ltd.
	Given interest free unsecured loan of Rs. 1.37 crores during 2013-14 to M/s. Diyas Mantra Lighting Pvt. Ltd & M/s. Diyas Mantra Lighting Pvt. Ltd. had transferred/ made payment Rs.1,00,00,000/- (Rs. 1 crore) on 23.02.2015 to Mr. Anil Kumar Anand, director of M/s Inspired Lighting Ltd. U.K., the overseas supplier of the goods

51.3 I observe that the foreign supplier and the Indian importers are deemed to be 'Related' in terms of Rule 2(2) of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, if one or more of the following conditions are fulfilled:-

- *they are officers or directors of one another's businesses;*
- *they are legally recognised partners in business;*
- *they are employer and employee;*
- *any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;*
- *one of them directly or indirectly controls the other,*
- *both of them are directly or indirectly controlled by a third person;*

- *together they directly or indirectly control a third person; or*
- *they are members of the same family*

51.4 In the present matter, Mr. Anil Kumar Anand, is (i) director and 100% share holder of M/s Inspired Lighting Ltd. U.K.; (ii) Director and 50% share holder of M/s. Diyas Mantra Lighting Pvt. Ltd. (importer of goods in India); (iii) looks after finance of M/s. Diyas Mantra Lighting Pvt. Ltd.; and (iv) Cousin of Sh. Rahul Mehta, another director of M/s. Diyas Mantra Lighting Pvt. Ltd. These points confirm that importer and UK supplier are Related Party in the present matter.

51.5 I find that Shri Rajeev Dhawan, Asstt. Manager, Import Documentation with M/s. CMA CGM Agencies India Pvt. Ltd. New Delhi (shipping company) in his statement dated 20.02.2015, inter-alia, stated that a draft waybill had been issued as no Bill of Lading was issued at port of loading in this case as the shipper did not have any problem for the payment of goods or the payment had been received by shipper in advance and in such cases generally shipper select the option of issue of draft way bill instead of Original Bill of Lading which showed that the supplier and buyer had some common interest. As such it appears that there was financial flow back between M/s. Inspired Lighting Ltd., U.K., overseas supplier of goods and M/s Diyas Mantra Lighting Pvt. Ltd., the importer of goods in India.

51.6 Further, it appears that on the back of catalogue of "Diyas" brand goods of M/s. Inspired Lighting (Edition Eight India) imported by M/s. Diyas Mantra Lighting Pvt. Ltd., New Delhi, following details were mentioned;

(i) India Office:

Diyas Mantra Lighting Pvt. Ltd.

Khasra No. 651, Palam Vihar Road Bijwasan New Delhi-110061 Tel. in

011-28063100 Mob. 9015584100 www. divasmantra. sales&divasmantra. in

(ii) Head Office:

Inspired Lighting Ltd, Mutual Mills, Aspinall Street, Heywood, OLIO 4HP Tell. +441706620077 Fax. +441706620079

www.mantraUghting. co. uk salesCd) mantraUghting.co.uk

51.6.1 I find that the Catalogue of "Diyas" brand shows that this brand was the property of M/s. Inspired Lighting Ltd. Heywood, U.K. and having India office at M/s. Diyas Mantra Lighting Pvt. Ltd., New Delhi. In my opinion, in any business terms, if buyer-seller are not related, no buyer would allow any seller to mention its details on the catalogue of goods or vice-versa. M/s. Diyas Mantra Lighting Pvt. Ltd., New Delhi, and M/s. Inspired Lighting Ltd. Heywood, U.K, were inter related and Mr. Anil Kumar Anand, Director of M/s. Diyas Mantra Lighting Pvt. Ltd., New Delhi, having its Head Office in U.K., controlled and managed all the financial affairs of the importing company.

51.6.2 I find that M/s. Diyas Mantra Lighting Pvt. Ltd. were the sole distributor/dealer in India of the brands of "Diyas" of M/s Inspired Lighting Ltd, U.K. and of "mAntra" of Spain as stated by Sh. Rahul Mehta, director in his statement dated 16.02.2015. The catalogue of these products also indicates the common interest of all these firms/company. Importer in its reply, stated that the names of the UK entity and the Spanish entity have been mentioned in the catalogues of the impugned goods only to mark a level of reputation to such brand as they were non-reputed brand which were being launched for the first time by the Noticee in India; the head office addresses in the respective catalogues was mentioned only to develop an identity in respect of the brands "diyas" and "mAntra" which were owned by the UK supplier and the Spanish supplier respectively. The contention of the importer is not

acceptable as both the brands are established brands and M/s. Diyas Mantra Lighting Pvt. Ltd. was the sole distributor/dealer in India of the brands of "Diyas" of M/s. Inspired Lighting Ltd, U.K. and of "mAntra" of Spain. This fact-gets confirmed from the statement dated 22.05.2015 of Shri Rajan Jain, Director of the firm M/s. Jainson Lights Pvt. Ltd. wherein he stated that "Diyas" & "mAntra" were famous brand in Europe and M/s. Diyas Mantra Lighting Pvt. Ltd, India planning to inaugurate goods / brands in India.

51.7 It has been observed that "Diyas" brand goods of M/s. Inspired Lighting (Edition Eight India) and "Diyas" brand was the property of M/s. Inspired Lighting Ltd. Heywood, U.K. and having India office at M/s. Diyas Mantra Lighting Pvt. Ltd., New Delhi. Thus, it is observed that M/s. Diyas Mantra Lighting Pvt. Ltd.,. New Delhi, M/s. Inspired Lighting Ltd. Heywood, U.K were inter-related and Mr. Anil Kumar Anand, Director of M/s. Diyas Mantra Lighting Pvt. Ltd., New Delhi, having its Head Office in U.K., controlled and managed all the financial affairs of the importing company.

51.8 In a similar case of related person in CC vs. East African Traders reported at 2000 (115) ELT 613 (SC), the Hon'ble Supreme Court had held that authorities can pierce the corporate veil to ascertain whether the buyer and seller are indeed related persons within the meaning of the rule. Piercing corporate veil means looking behind the facade to see the persons who are in real control. It appeared that M/s. Diyas Mantra Lighting Pvt. Ltd. & M/s. Inspired Lighting Ltd., U.K had common interest in business of each other and had common decision making with respect to related entities and their being two business entities in the eyes of law was just a corporate veil to undervalue the goods for maximizing profit which stands pierced by establishing common decision making and comrion business interest with respect to related entities, Further, the transaction between supplier and appellants cannot be at arms length.

52. Having established that the importer and supplier are related persons, I come to Rule 3(3)(a) according to which transaction value shall be accepted provided that the examination of circumstances of the sale of the imported goods indicate that the relationship did not influence the price. The financial flow between UK supplier and importer, as brought out above, clearly indicates the effect of relationship on business transactions. In any case, the examination of the circumstances detailed above does not give confidence that the price was real. Further, I observe that importer in para B.1 of their written submission contended that "This is evident from the fact that the value declared by the Noticee is at par with the value of the goods imported from the Chinese supplier and the Spanish supplier which are unrelated persons to the Noticee" which implies that Chinese & Spanish supplier are unrelated by virtue of their own submissions, it is quite evident that importer themselves accepted that UK supplier is a related person. Here, importer contended that value declared by the importer was at par with the value of the goods imported from the Chinese supplier and the Spanish supplier. Evidently, the foreign supplier has procured the goods from third party suppliers and sold the same to the Indian importer but it is not clarified as to how goods of Chinese origin were routed through UK suppliers M/s. Inspired Lighting Ltd., while in such an international trade transaction, the freight cost incurred by the foreign supplier in procuring the goods from country of origin, or, for that matter, the margin of profit were not added to local purchase cost to arrive at selling cost to Indian buyer, the importer. In fact, if one goes by the prices of some identical items, as supplied by the importer in Annexure 8 to their reply to show cause notice, the UK supplier had supplied the same items at prices comparable with or little higher than or in few cases even at less than the price of supply from China, e.g. chandlier (Item code IL 30216/BA) was purchased by importer from Homemax China (B/E no.

2398164/ dated 12.06.2013)@ Rs.4275.13 while the same item was procured from UK related party (B/E no. 2664918 dated 09.07.2013) @ Rs.3823.66. Similarly, Pendant [item code IL 30410] was purchased from Homemax China [B/E3661501 dated 28.10.2013) @Rs.1198.11 while the same item was procured form Inspired Lighting UK [B/E 2664918 dated 09.07.2013)@ Rs.1164.70. The period of purchases has been taken in these examples to be in closer vicinity and of course, the rate of exchange (Dollar for Chinese supply and GB Pound for UK supply) would have its own impact, but the fact remains that the supply from UK could not have been cheaper if the same goods were imported by UK supplier from China and then supplied to Indian importer than when the Indian importer imported it directly from China. Thus, I find that in terms of Rule 3(3)(a) of the Customs Valuation (Determination of value of Imported Goods) Rules, 2007, the examination of circumstances indicates that relationship between Indian importer and UK supplier did influence the price.

52.1 As indicated above and as can be seen from the list submitted by importer, it has not been demonstrated by the importer that the declared value of goods imported from Inspired Lighting. UK closely approximated to the value of identical goods imported by themselves from Home Max China around the same time. Thus, importer having failed to establish their case under Rule 3(3)(b) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. I proceed to apply Rule 4 to 9, sequentially.

53. Moreover, Rule 3(1) deals with the determination of the method of valuation. It provides that subject to Rule 12, the value of the imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10. Rule 10 deals with cost and services. It provides that in determining the transaction value, the amount referred to in (a), (b), (c), (d) and (e) of sub-rule (1) of Rule 10 shall be added to the price actually paid or payable for the imported goods.

The payment referred to in (e) of item sub-rule (1) of Rule 10 provides that in determining the transaction value, all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not.. included in the price actually paid or payable shall be added.

Thus, Rule 10(1)(e) contemplates two situations i.e. when other payments actually made or to be made can be added to the price actually paid for determination of the transaction value. The first is a situation when all other payments made by the buyer to the seller, as a condition of sale of the imported goods to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid, have to be added. The second is a situation when all other payments made by the buyer to a third party, as a condition of sale of the imported goods to satisfy an obligation of the seller to the extent that such payments have not been included in the price, have to be added.

53.1 I find that during the course of investigation proceedings, importer neither co-operated with the investigation team nor submitted the detailed information w.r.t. elements as mentioned in Rule 10 for deriving the transaction value. With the kind of financial relationship between importer and supplier in UK, as investigated upon, the exact nature of actual or virtual back flow such as interest on loan (declared as interest free) etc. was required to be submitted by importer but it was not submitted. Hence such additional element could not be calculated.

54. As per Rule 3, the transaction value shall be accepted if the sale of the imported goods indicate that the relationship did not influence the price, but it is evident that M/s. Diyas Mantra Lighting Pvt. Ltd., India and M/s Inspired Lighting Ltd., U.K., the overseas supplier of branded goods had common interest in business of each other and had common

decision making and were related person as per definition of related person given in Rule 2(2) of the Customs Valuation (determination of value of imported goods) Rules, 2007.

54.1 Rule 3(4) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 states that if the value cannot be determined under the provisions of sub-rule (1) of Rule 3, the value shall be determined by proceeding sequentially through Rule 4 to 9.

55. Now, I proceed to discuss Rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, which reads as under:

4. Transaction value of identical goods. -

(1)(a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imparted at or about the same time as the goods being vahied:

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of Imported goods.

(c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value.

(2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.

(3) In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

55.1 As per Rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 transaction value of identical goods can be used to arrive at value of goods imported by the importer. Identical goods are defined in Rule 2(1)(d) as follows:

d) "identical goods" means imported goods -

(i) and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods; which are same in all respects, including physical characteristics, quality

(ii) produced in the country in which the goods being valued were produced; and

(iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person,

55.2 Further, I note that Hon'ble Supreme Court in para-8 of its Order dated 22.04.2019, observed that "The aforesaid Rule envisages that the transaction value of identical goods imported at the same time as the goods valued, can be applied. It is, of course, clarified that they should be substantially of the same quantity, as there can be variation in pricing, depending on the size of the consignment. In case identical goods sold are not found in respect of the same quantity, different quantities of identical goods can be taken into account, with adjustments made on the basis of demonstrated evidence which clearly establishes the

reasonableness and accuracies of adjustment. The difference in distance, having implication on the transport cost, is another factor mentioned under the Rules. It is lastly clarified that the lowest of such value is to be used to determine the value of the goods.

55.3 The items imported here are of various categories such as Pendant, chandlier, ceiling light, floor lamp, wall lamp etc. The design and style of these items differ from those imported by others. As submitted by importer and other. dealers during the investigation, brands Diyas and mantra were being handled only by importer. Thus, imports of these goods by any other importer are not available for comparison. While it has been mentioned that goods imported from UK were also manufactured in china, it is not submitted if supplier in China was common for both UK and Indian importers. At the same time, as noted in para 52 above, even if for some limited items, price of goods supplied by Chinese manufacturer to Indian company was more than the price of same goods supplied by UK supplier (though procured from China only by UK supplier), comparison of prices of such identical goods imported by importer from both China & UK could not be made. Thus, I find that in absence of any reliable and complete data for price of identical goods, Rule 4 of Customs Valuation (Determination of Value of Imported Goods) Rules 2007 could not be applied in the present case.

56. Now, I proceed to discuss Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, which reads as under:

5. Transaction value of similar goods.-

(1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued:

Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962.

(2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

56.1 As per Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 Transaction value of the similar goods can be used to arrive at value of goods imported by the importer. Similar goods are defined in Rule 2(1)(1), as follows:

" "similar goods" means imported goods -

(i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark;

(ii) produced in the country in which the goods being valued were produced; and

(iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;"

56.2 As per Note to Rule 5, while applying Rule 5, the proper officer of customs shall, wherever possible, use a sale of similar goods at the same commercial level and in substantially the same quantities as the goods being valued. For the purpose of Rule 5, the transaction value of similar imported goods means the value of imported goods,

adjusted as provided for in Rule 5(2) which has already been accepted under Rule 3. Further, all other provisions contained in note to Rule 4 shall mutatis mutandis also apply in respect of similar goods. I find that M/s. Diyas Mantra Lighting Pvt. Ltd., India, was the sole importer/distributor in India in respect of impugned goods, hence, issue of using the data of similar goods i.e. decorative electrical lighting fixtures, is not feasible. As noted earlier, the design, style and functioning of each item (which has unique item code assigned by brand owner) is such that comparable similar goods can't be located to take the value of those similar goods to arrive at the value of the imported goods. As noted earlier, even identical goods value is not available. Therefore, in my view, valuation of the subject imported goods cannot be determined by applying the provisions of Rule 5 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

57. Now, I proceed to discuss Rule 6 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, which reads as under:

> *"6. Determination of value where value cannot be determined under Rules 3, 4 and 5.-*
>
> *If the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8.*
>
> *Provided that at the request of the importer, and with the approval of the proper officer, the order of application of rules 7 and 8 shall be reversed."*

57.1 1 find that value of imported goods cannot be determined under the provisions of rules 3, 4 and 5 as discussed above in paras- 54 to 56. The transaction value method cannot be applied in cases where the buyer and seller are related and the relationship has influenced the

price. The scope of relationship is defined in Sub-Rule 2 (2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. In such cases the burden of proof shifts to the importer, who should satisfy the Customs that the declared price closely approximates to the test values. I find that the importer failed to discharge this responsibility, hence the declared value could be rejected and valuation done under any of the subsequent methods applied in sequential order.

58. It is further observed that the value of the imported goods has beer re-determined/arrived in the show cause notice from sale price of the importe taken from sale invoices by reverse calculation as deductive value as per Rule 7 (1 of the Customs Valuation (Determination of value of Imported Goods) Rules, 200 read with rule 9 of rules ibid. Rule 7 (1) reads as under:

7. Deductive value.

(1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions:-

(i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses în connection with sales in India of imported goods of the same class or kind:

(ii) the usual costs of transport and insurance and associated costs incurred within India;

(iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

58.1 It appeared that in case of most of the items sale price had been available from their sale invoices and on being

noticing that the sale price of the goods was 2 to 8 times higher than the declared/ import value of the goods, therefore, in respect of items where sale price was not available 3 times higher than the declared/ import value had been taken as sale price on average basis in terms of rule 9 of rules ibid. From the sale price of the importer, factor of 15% has been deducted on account of margin of profit (MOD) and from the price so arrived, further factor of 5% has been deducted on account of post importation charges to arrive at cum duty price. From cum duty price the elements of customs duty aggregate to 28.85% have been deducted to arrive at the assessable value of the goods. The assessable value so arrived was in the range of 25 to 30% of the MRP/RRP of the goods fixed by the importer. It is also observed that M/s. Diyas Mantra Lighting Pvt. Ltd. was the sole importer and distributor of "Diyas" and "mAntra' brand electric decorative lightings Fixtures imported from M/s. Inspired Lighting Ltd., U.K and the overseas supplier and importer were related entities. Also the importer had not submitted any data with regard to the cost of the material /labour consumed for manufacturing the said imported goods as such the value of goods needs determination under Rule 7 (1) of the Customs Valuation (Determination of value of imported goods) Rules, 2007. The method adopted for arriving at the assessable value in respect of goods imported from UK is found to be as per the provisions of the Customs Valuation (Determination of value of Imported Goods) Rules, 2007.

58.2 The claim of the importer about deduction on account of margin of profit and other expenses to be given more than what was proposed in the show cause notice was examined by Hon'ble Tribunal also in final order dated 06.11.2017 and not found sustainable in absence of any material evidence. The situation remains the same here. The importer has not provided any evidence/ records to get any higher deductions. It is already noted that where sale

price was not available, extrapolation, as in case of other item was done

58.3. In respect of the importer's deposition that for element of value addition they refer to UK Recommended Retail Price (RRP) pricelist to make their Indian RRP Pricelist to cover the value addition factor and had given 60%-80% discount on RRP/MRP price, it was noticed that MRP/RRP price of imported goods as mentioned/ printed on catalogues of goods resumed from the premises of C.No.VIII(Cus. Prev.)Adj./Commr/Diyas/02/2016

importer and their dealer M/s. Jainsons Lights Pvt. Ltd., New Delhi (main dealer of the importer) was found to correspond to price of goods downloaded from internet which refuted the claim made by Sh. Rahul Mehta, Director in his statement dated 07.05.2015 that their dealer were free to make pricelist of their products on their own as they were independent businessman and there was no direct relation of this dealer price catalogue with their firm i.e., M/s Diyas Mantra Lighting Pvt. Ltd., This argument of Sh. Rahul Mehta was also found negated by the statement dated 22.05.2015 of Sh. Rakesh Kumar Aggarwal, Partner of M/s Shimer Lights, wherein he stated that they did not fix any sale price or MRP on the products of M/s Diyas Mantra Pvt. Ltd. as they were not authorized to do so. Sample comparative chart showing price of same items as mentioned in catalogue, MRP/RRP printed by dealer M/s. Jainsons Lights, price downloaded from internet, import invoice price, sale invoice price and re-determined assessable value has been tabulated under para 31 above.

59. The importer in para B.27 of their written submissions, stated that "It is submitted that in the instant case, out of the total consignments imported by the Noticee, only the imports made from the UK supplier may be construed as import from a related party of the Noticee". Details of re-determined assessable value & differential duty in respect of the 13 Bills of Entry pertaining to imports, imported from

M/s. Inspired Lighting Ltd., U.K (related entity) are as under:

Sl.No.	*Bill of Entry No.*	*Import from*	*Sale value of the importer as per Sale Bill*	*Total duty payable as per SCN*	*Duty already paid as per Bill of entry*	*Diff. Duty payable*
1	*9358869 dt. 19.02.2013*	*UK*	*13706834*	*2541747*	*997485*	*1544262*
2	*9496253 dt. 06.03.2013*	*UK*	*6688594*	*1240309*	*453047*	*787262*
3	*2664918 dt. 09.07.2013*	*UK*	*7115879*	*1319544*	*444779*	*874765*
4	*4312167 dt. 09.01.2014*	*UK*	*10113717*	*1875452*	*536707*	*1338745*
5	*4350584 dt. 15.01.2014*	*UK*	*59500*	*11033*	*4362*	*6671*
6	*4977550 dt. 22.03.2014*	*UK*	*265535*	*49240*	*21658*	*27582*
7	*5459631 dt. 12.05.2014*	*UK*	*107685*	*19969*	*3900*	*16069*
8	*5605272 dt. 26.05.2014*	*UK*	*25600*	*4747*	*1945*	*2802*
9	*5646046 dt. 29.05.2014*	*UK*	*6340307*	*1175724*	*439513*	*736211*
10	*6061312 dt. 05.07.2014*	*UK*	*8647176*	*1603502*	*468156*	*1135346*

11	*3598358 dt. 21.10.2013*	*UK*	*403771*	*74874*	*35412*	*39462*
12	*7163436 dt. 25.10.2014*	*UK*	*7806683*	*1447644*	*478002*	*969642*
13	*7610152 dt. 06.12.2014*	*UK*	*99128*	*18382*	*11939*	*6443*
						7485263

59.1 As such the re-determined assessable value of the live shipment i.e. the goods imported vide bill of entry No.8059523 dated 21.01.2015 has beer correctively arrived at Rs.52,22,305/-in place of declared value of Rs. 19,01,175/- involving differential duty of Rs.9,53,073/- and applying the same method the re-determined assessable value of the past imports from U.K. in respect of 13 Bills of Entry comes to Rs.4,46,72,712/-involving differential duty of Rs.74,85,263/-, as above.

59.2 Further, importer in para B.4 of their written submissions, stated that "Without prejudice, it is submitted that out of the three suppliers, only the UK supplier may be construed as a related party. The department has given no justification as to why the transaction value in respect of the impugned goods imported from the Chinese supplier and the Spanish supplier is liable to be rejected or how the other two suppliers can be considered as 'related person' to the Noticee".

59.3 While the name and brand of Spainish supplier has been used by importer in branding their products in India including displaying name & address of Spainish company on their catalogues, the elements to declare the importer as related to Spainish company in term of Rule 2(2) of Customs Valuation (Determination of value of Imported goods) Rules, 2007 have not been established in the Show Cause Notice.

Thus, I find force in the contention of the importer and find no evidence on record with regard to related person in respect of imports from Spain and China, hence, I am inclined to accept the transaction value declared by the importer in respect of imports from Spain and China and drop the demand raised in respect of Bills of Entry pertaining to imports from Spain and China. Details of 07 Bills of Entry and differential duty liable to be dropped in respect of imports from Spain and China, is as under:

Sl. No.	*Bill of Entry No.*	*Import from*	*Sale value as per SCN*	*Diff. Duty as per SCN*
1	*9538135 dt. 12.03.2013*	*Spain*	*4966744*	*598244*
2	*8735949 dt. 11.12.2012*	*China*	*13394342*	*1631814*
3	*2398164 dt. 12.06.2013.*	*China*	*10907114*	*1426130*
4	*3661501 dt. 28.10.2013*	*China*	*9304900*	*1165029*
5	*4367980 dt. 17.01.2014*	*China*	*29750*	*1126*
6	*7182641 dt. 27.10.2014*	*China*	*75160*	*6708*
7	*7794850 dt. 23.12.2014*	*China*	*133572*	*11923*
				4840974

60. I find that Shri Rajan Jain, Director of the firm M/s. Jainson Lights Pvt. Ltd. in his Statement dated 22.05.2015 stated that they met Mr. Rahul Mehta who introduced himself as representative of M/s Diyas Mantra Lighting Pvt. Ltd. and told that "Diyas" & "mAntra" were famous brand in Europe and they were planning to inaugurate goods / brands in India, hence the contention of the importer that "Diyas" & "mAntra" were not famous brands is not tenable.

60.1 Further, I find that importer placed reliance on the case of Commissioner of C. Ex., Bangalore vs. Brindavan Beverages (P) Ltd., 2007 (6) TMI 4 - SUPREME COURT and many other judgements, wherein the Hon'ble Court observed that the show cause notice is the foundation on which the department has to build up its case and if the allegations in the Show Cause Notice are not specific and on the contrary are vague and lack details, it would be sufficient to hold that the Noticee was not given proper opportunity to meet the allegations. Here, I observe that Sh.

Anil Kumar Anand, being the Director of the importing company, handling the finance, deliberately avoided various summons issued by the department and not co-operated in departments efforts of finding facts. At the same time, details of the allegation and demand were clearly brought out in the show cause notice, as already upheld by Hon'ble CESTAT in final order dated 06.11.2017. Therefore, this contention of importer is not tenable.

61. From the facts on record, it emerges that the importer had imported branded "Electric Decorative Lighting" from its related party and had mis-declared the imported goods and suppressed the brands of the goods namely "Diyas" and "mAntra". Sh. Anil Kumar Anand, Managing Director and 100% share holder of M/s. Inspired Lighting Ltd., U.K., and the overseas supplier of the goods was also director and 50% share holder of M/s. Diyas Mantra Lighting Pvt. Ltd., the importer of goods in India. The foreign supplier has procured the goods from third party suppliers and sold the same to the importer. Further, importer has not been able to establish that M/s. Inspired Lighting Ltd., U.K. sold identical or similar goods to other importers in India at the same price. It is highly unlikely that in such an international trade transaction, the freight cost incurred by the foreign supplier in procuring the goods from country of origin, or, for that matter, the margin of profit will not be added to arrive at selling cost to Indian buyer, the importer. As noted earlier, in the present case, on the contrary, supply to India from UK was cheaper in some case than supply from China. It is clear that M/s Diyas Mantra Lighting Pvt. Ltd. & M/s. Inspired Lighting Ltd., U.K, were related person in terms of Rule 2(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and they had common interest in business of each other, had common control and decision making as well as financial flow back with respect to related entities. It is also observed that M/s. Diyas Mantra Lighting Pvt. Ltd. was the sole importer and distributor of

"Diyas" and "mAntra" brand electric decorative lightings fixtures imported from M/s. Inspired Lighting Ltd., U.K and the overseas supplier and importer were related entities.

61.1 The importer knowingly did not declare the brands of imported goods i.e. "Diyas" which were found printed on the material and user manual of the goods with intent to undervalue the goods. As per statement of Sh. Rahul Mehta, Sh. Anil Kumar Anand had looked after finance of M/s. Diyas Mantra Lighting Pvt. Ltd.; had given interest free unsecured loan of Rs. 1.37 crores during 2013-14 to M/s. Diyas Mantra Lighting Pvt. Ltd. Also M/s. Diyas Mantra Lighting Pvt. Ltd. was the sole distributor/dealer in India of M/s. inspired Lighting Ltd, U.K. Thus, they had common interest in business of each other and had common control and decision making and also had financial flow back and were related person in terms of rule 2(2) of the Customs Valuation (Determination of value of imported. goods) Rules, 2007. Further, I find that Shri Anil Kumar Anand had never joined the investigation of this case and had not supplied the purchase invoices or any other detail of procurement of the said imported goods. Shri Rahul Mehta who was authorized by him to give all the information, had also failed to give all the relevant information to the department. Thus, it is clear that M/s. Diyas Mantra Lighting Pvt. Ltd, India and M/s Inspired Lighting Ltd., U.K. had common interes in business of each other and had common decision making as well as financial flow back with respect to related entities and were related person as per definition of related person given in Rule 2(2) of the Customs Valuation (Determination of value of imported goods) Rules, 2007. Since the value of goods was mis-declared, therefore, the declared value merited rejection under Rule 12 of the Customs: Valuation (Determination of Value of Imported Goods) Rules, 2007. The value of the same had been appraised as per Rule 6, 7 and 9 of the Customs Valuation: (Determination of Value of Imported Goods) Rules, 2007.

61.2 The seized goods are also found liable for confiscation under Section 111(m) of the Customs Act, 1962. The importer has objected to proposal for confiscation of goods already cleared on the ground that the goods were no longer available for confiscation. However, I find that the liability to confiscation is not dependent upon the fact of availability of goods but on the violations prescribed under Section 11 of the Customs Act. In this regard, I draw strength from the judgment dated. 11.08.2017 of Hon'ble High Court of Madras in the case of M/s VISTEON AUTOMOTIVE SYSTEMS INDIA SYSTEMS VS (i) CESTAT, Chennai and (ii) Commissioner of Customs Chennai (Import).

In the said judgment Honorable High Court has decided:

> *"The Fine under Section 125 of Customs Act 1962 is in lieu of confiscation of the goods. The Payment of fine followed up by payment of duty and other charges leviable as per sub section (2) of section 125, fetches relief for the goods from getting confiscated, by subjecting the goods to payment of duty and other charges the Importer and irregular importation is sought to be regularized where by subjecting the goods to payment of fine under sub-Section (2) of Section 125, the goods are saved from getting confiscated.*
>
> *Hence, the availability of the goods is not necessary for imposing the Redemption fine. The opening words of Section 125 "whenever confiscation of any goods is authorized by this Act....." brings out the point clearly. The power to impose redemption fine springs from the authorization of confiscation of goods provided for under section 111 of the Act. When once power of authorization for confiscation of goods gets traced to the said section 111 of the Act, we are of the opinion that the physical availability of goods is not so much relevant. The redemption fine is in fact to avoid such consequence flowing from section 111 only.*

> *Hence the payment of redemption fine saves the goods from getting confiscated. Hence their physical availability does not have any significant for imposition of redemption fine under Section 125 of the Act."*

Further in the case of R.K. Agnihotri Vs Unknown, Honourable CESTAT, Mumbai, relying on the ratio of the said Judgment dt. 11.08.2017 of the Honorable High Court of Madras in the case of M/s Visteon Automotive System India Ltd. Vs (i) CESTAT, Chennai and (ii) Commissioner of Customs(import) Chennai has decided that:

> *"Once the goods are held liable for confiscation, the physical availability of the goods or their presence is not mandatory for proceedings under section 125 of the Customs Act 1962."*

In any case, in the present matter, goods were seized vide letter dated 27.03.2015 and later on released provisionally vide letter dated 18.06.2015 (as per RUD-17 to Show Cause Notice). Thus, liability to make available the goods is on the importer in terms of the bond submitted by them and in lieu of the same, redemption fine is imposable.

62. Next, I will take up the penalty provisions invoked against the noticees in the SCN. I find that Shri Rahul Mehta, Director, handling the day to day affairs of the company and Sh. Anil Kumar Anand, Director of M/s. Diyas Mantra Lighting Pvt. Ltd. have actively participated in the import of the subject goods & were knowingly concerned in mis-statement and suppression of import value of imported goods with an intent to evade due customs duty. They have also personally dealt with the clearance of formalities of the subject goods from the port including mis declaration and undervaluation. Further, Sh. Anil Kumar Anand, Director, deliberately avoided various summons issued by the department and did not co-operate in departments efforts of finding facts and thus this act of Sh. Mehta and Sh. Anand made them liable to penal action under Section 112 (b) of

the Customs Act, 1962. By their acts of omission and commission these two directors have rendered the goods liable for confiscation while rendering themselves liable to penalty under the provisions of Section 112(b) of the Customs Act, 1962. M/s. Diyas Mantra Lighting Pvt. Ltd. also is liable to penalty under Section 114A of Customs Act, 1962.

63. Further, the mis-declaration and suppression in import value of imported goods as well as its brands is found done willfully by the Importer with sole intention to evade customs duty and therefore Section 28(4) of the Customs Act, 1962 read with Section 110 of the Act ibid is found invokable."

4.3 Before the matter is further examined its necessary to take note of the observations made by the Hon'ble Supreme Court while remanding the matter back to the original authority for de-novo adjudication. We reproduce the same below:

12. In the context of the aforesaid, it is the submission of learned counsel for the appellant that the factual matrix of the present case shows that the twenty one consignments (including the one directly in question) were not imported from one source, but three different sources. Out of the three different sources, the competent authority came to the conclusion that the import from United Kingdom, from M/s. Inspired Lighting Limited, is liable to be construed as import from a related party. Though this is sought to be disputed by the appellants, but even assuming that to be correct, it was contended that there were imports available from two other sources, from China and Spain. These suppliers are not found to be related parties. Thus, the pricing from these two sources, with requisite adjustments for the distance or any other parameter, could always be taken as the transactional value for all the goods forming part of the twenty one consignments.

13. A further explanation offered on behalf of the appellants, in respect of the second aspect, i.e., non-declaration of the

brand 'Diyas' and 'mAntra', pertaining to the consignments in question, was that the brands were not so well-known as to make a difference to the value. In fact, for the import from China, the brand 'Diyas' had been clearly mentioned. The consignments had been cleared after physical verification. In effect, the plea was that the two brands really do not attract any intrinsic market value.

14. It is a submission that the sequential application of Rules, thus, required the valuation to be done in accordance with Rules 3 to 5, before proceeding to the subsequent Rules, and it is not a case where valuation was not possible under Rules 3 to 5.

15. As an alternative submission, it was also pleaded that even where identical or similar goods are not available, data is available, of the value of the goods in the National Import Database ('NIDB') or the Department of Valuation database ('DOV').

16. In a nutshell, the submission really is that the valuation was possible on the basis of import from the other two countries if the brand was to be given some significance, and in the alternative, if the plea was accepted that the brand was not of any significance, then the other imports from the U.K. of the same kind of lights could be taken into consideration. It was clarified that the endeavour was not to compare oranges and apples, but to compare apples of a particular variety with the apples of the same variety, i.e., if it was one lamp light, it was to be compared with one lamp light. In this behalf data was available.

17. We may notice there were certain other pleas advanced, including the plea of limitation, but that is not of much significance for redetermination, on account of the conclusion we are reaching hereinafter.

18. We must first take note of the fact that electrical decorative lightings, normally, are not highly branded products, exceptions apart. It does appear that even though

the imports were under the brand names 'Diyas' and 'mAntra', they were not trademarks of such nature as would make them an exclusive product. It also appears that there has been some mix up in the understanding of a trademark protection, as the same has been compared with 'patented goods'. Thus, data was certainly available, which could have been utilised to obtain the pricing for imports from the U.K., of identical goods or similar goods.

19. The irony is that if the competent authority thought that these were goods where trademark was of significance, it could not simultaneously have ignored the imports under the same trademark, from different countries, where there were no related parties. Naturally, there would have to be made adjustments for the distance from which the import was made, or the size of the consignment, if applicable, as set out in Rules 3 to 5. There was really no occasion to straightaway proceed to determine the transactional value by relying on Rules 7 to 9. We have no doubt this principle of sequential application would apply, especially in view of sub-Rule (4) of Rule 3, which provides that there has to be a sequential implementation of the Rules, i.e., that Rules 3 to 5 would have to be exhausted first, and only in the eventuality of an inability to apply the Rules would the assessing authority proceed to impose Rules 7 to 9.

20. Learned counsel for the respondent did endeavour to persuade us that since there were concurrent findings, this Court ought not to interfere, given the scope of appeal before this Court under Section 130E(b) of the said Act, and referred to the judgment in Collector of Customs, Bombay v. Swastic Woollens (P) Ltd. & Others [1988 Suppl. SCC 796] , where it was observed as under:

> *"9. ..... The decision of such a question of fact must be arrived at without ignoring the material and relevant facts and bearing in mind the correct legal principles. Judged by these yardsticks the finding of the Tribunal in this case is unassailable. We are,*

however, of the view that if a fact finding authority comes to a conclusion within the above parameters honestly and bona fide, the fact that another authority be it the Supreme Court or the High Court may have a different perspective of that question, in our opinion, is no ground to interfere with that finding in an appeal from such a finding. In the new scheme of things, the Tribunals have been entrusted with the authority and the jurisdiction to decide the questions involving determination of the rate of duty of excise or to the value of goods for purposes of assessment. An appeal has been provided to this Court to oversee that the subordinate tribunals act within the law. Merely because another view might be possible by a competent court of law is no ground for interference under Section 130-E of the Act though in relation to the rate of duty of customs or to the value of goods for purposes of assessment, the amplitude of appeal is unlimited. But because the jurisdiction is unlimited, there is inherent limitation imposed in such appeals. The Tribunal has not deviated from the path of correct principle and has considered all the relevant factors. If the Tribunal has acted bona fide with the natural justice by a speaking order, in our opinion, even if superior court feels that another view is possible, that is no ground for substitution of that view in exercise of power under clause (b) of Section 130-E of the Act."

21. We are, however, not persuaded by this argument because there appears to be a fundamental mistake committed in the manner of implementation of the statutory Rules. Once the statutory Rules exist and provide for sequential implementation, the assessing authority has no option but to proceed in accordance with those Rules, in that manner. We did put this squarely to learned senior counsel for the respondent, who really could not persuade us, or give a satisfactory answer as to why the concerned authority

chose to ignore, in the given facts of the case, Rules 3 to 5, and did not proceed "sequentially".

22. The result of the aforesaid discussion is that both, the order of the Principal Commissioner of Customs (Preventive), Customs, New Delhi, dated 30.3.2017, as well as the order of the CESTAT, dated 6.11.2017, are liable to be set aside, and the matter remitted back to the Principal Commissioner of Customs (Preventive), Customs, New Delhi, to proceed afresh with the matter in accordance with our observations aforesaid, and thus, it is Rules 3 to 5 which would have to be applied first, as it is provided for the Rules to apply "sequentially".

23. We make it clear that since we have not gone into other pleas sought to be raised by the appellant, all pleas can be raised by the appellant, as are available to the appellant in law, and the same will be dealt with on merits."

4.4 From the observations made by the Hon'ble Apex Court it is evident that the directions were given to proceed sequentially while applying the Rule 3 to 9 of the Customs Valuation Rules, for determining the value of the imported goods.

4.5 From para 61 of the impugned order it is evident that brand used for selling these goods in India is the brand of the supplier in Spain, who has been held to be non related person with importer in India. In fact the demand made against the imports of identical/ similar goods imported from Spain and China have been dropped. We observe that in Para 18 and 19, Hon'ble Supreme Court has specifically dealt with the issue of non mention of Brand Name etc., on the import documents filed by the appellant. Non mention of the Brand Name on the import documents have been the ground for invoking the extended period of limitation and also for holding that Appellant and the UK suppliers were related person.

4.6 Even if were to conclude that the Appellant (Importer) and the UK Supplier were the related persons, then also in terms of the Custom Valuation Rules, it has to be established that the

relationship has in fact impacted the declared transaction value of the imported goods. We do not find any attempt made to determine the impact of the relationship on the price of the imported goods. On the contrary impugned order has accepted the prices of the same/ similar goods imported from Spain and China as the transaction value and have dropped the demand made against such goods.

4.7 In the case of Impex Steel & Bearing Co. [2014 (302) E.L.T. 464 (T-Del)] following was held:

> *4. After hearing both the sides, we find that the dispute in the present appeal relates to the correct value of the PU belts with buckles of Chinese origin. As per the appellant, the supplier of the goods is the manufacturer of the same and the value declared by them in the Bill of Entry is the same value which is reflected in the invoice raised by the foreign supplier. The Revenue has not advanced any evidence to show that the said declared value is not correct value. In terms of the provision of Rule 3 of the Customs (Valuation) Rules, 2007, the value of the imported goods shall be the transaction value and the same is required to be accepted unless there are strong reasons to reject the same.*
>
> *5. We find that the Hon'ble Supreme Court in the case of Union of India v. Mahindra & Mahindra - 1995 (76) E.L.T. 481 (S.C.) has held as under :*
>
> > *"Ordinarily the Court should proceed on the basis that the apparent tenor of the agreements reflect the real state of affairs. It is, no doubt, open to the revenue to allege and prove that the apparent is not the real and that the price for the sale of the CKD packs is not the true price, and the price was determined by reckoning or taking into consideration the lump sum payment made under the collaboration agreement in the sum of 15 million French Francs. The short question is whether the revenue has succeeded in showing that the apparent is not the real and that the price shown*

in the invoices does not reflect the true sale price and so section 14(1)(b) of the Act was properly invoked".

As such the transaction value should be taken as correct value unless there is evidence to the contrary. Further, it is well settled law that unless there is additional consideration involved or any of the exception of Rule 4(2) are attracted transaction value cannot be rejected. Reference can be made to the decision in the case of Commissioner of Customs (Bombay) v. Bureau Veritas - 2005 (181) E.L.T. 3 (S.C.) and Tolin Rubber (P) Limited v. Commissioner of Customs, Cochin - 2004 (163) E.L.T. 289 (S.C.).

6. In the present case, we find that the Revenue has not produced any evidence to show that there was any additional consideration flowing back from the appellant to the foreign supplier, in which case the Revenue is bound to accept the declared transaction value. Apart from that we note that the attention of the lower authorities was drawn to the fact of another import made by the appellant at Tuglagabad wherein the value of the identical goods declared by them @ US $ 1.50 per dozen were accepted and there is no appeal of the Revenue against the said assessment order. If that be so, we really fail to understand as to why the said imports at Tuglagabad, which is in respect of the same very goods and from the same supplier, would not constitute contemporaneous import so as to adopt the same for the purposes of assessment.

4.8 In case of Sanjivani Non Ferrous Trading Pvt. Ltd. [2019 (365) E.L.T. 3 (SC)], Hon'ble Supreme Court has held as follows:

"6. It was submitted that if the Original Authority/Assessing Officer had failed to examine the evidence that was available with the Department and had not undertaken the exercise regarding price being not the sole consideration, the Tribunal should have remanded the case back to the Assessing Officer for examining the material and undertaking that exercise. To put it otherwise, the entire thrust of the argument of Mr. Radhakrishna was that appeals could not have been allowed straightaway by accepting the transaction value given by the

respondent/assessee and another opportunity should have been given to the Assessing Authority in this behalf.

7. This argument may seem to be attractive, but only when there is a cursory look at the aforesaid observations of the Tribunal that the Assessing Officer did not examine the evidence available with the Department which was necessitated for such a purpose. However, the observations of the Tribunal have to be understood in their entirety and in the context in which these are made. The Tribunal has categorically mentioned that as per the provisions of Section 14 of the Customs Act and the principles laid down in the case law (which it referred to in the earlier part of the judgment) interpreting this provision, the assessable value has to be arrived at on the basis of the price which is actually paid. It is the basic principle enshrined in the aforesaid provision, i.e., Section 14, which can be culled out from the catena of judgments pronounced by this Court.

8. In Eisher Tractors Ltd., Haryana v. Commissioner of Customs, Mumbai-1, (2001) 1 SCC 315 = 2000 (122) E.L.T. 321 (S.C.), this Court held as under :

> *"6. Under the Act Customs duty is chargeable on goods. According to Section 14(1) of the Act, the assessment of duty is to be made on the value of the goods. The value may be fixed by the Central Government under Section 14(2). Where the value is not so fixed, the value has to be determined under Section 14(1). The value, according to Section 14(1), shall be deemed to be the price at which such or like goods are ordinarily sold, or offered for sale, for delivery at the time and place of importation - in the course of international trade. The word "ordinarily" necessarily implies the exclusion of "extraordinary" or "special" circumstances. This is clarified by the last phrase in Section 14 which describes an "ordinary" sale as one "where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale ...". Subject to these three conditions laid down in Section 14(1) of time, place and absence of special circumstances, the price of imported goods is to be determined under Section 14(1A) in accordance with the Rules framed in this behalf.*
>
> *xxx xxx xxx*
>
> *9. These exceptions are in expansion and explicatory of the special circumstances in Section 14(1) quoted earlier. It follows that unless the price actually paid*

for the particular transaction falls within the exceptions, the Customs Authorities are bound to assess the duty on the transaction value.

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12. Rule 4(1) speaks of the transaction value. Utilisation of the definite article indicates that what should be accepted as the value for the purpose of assessment to Customs duty is the price actually paid for the particular transaction, unless of course the price is unacceptable for the reasons set out in Rule 4(2). "Payable" in the context of the language of Rule 4(1) must, therefore, be read as referring to "the particular transaction" and payability in respect of the transaction envisages a situation where payment of price may be deferred.

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13. That Rule 4 is limited to the transaction in question is also supported by the provisions of the other rules each of which provide for alternate modes of valuation and allow evidence of value of goods other than those under assessment to be the basis of the assessable value. Thus, Rule 5 allows for the transaction value to be determined on the basis of identical goods imported into India at the same time; Rule 6 allows for the transaction value to be determined on the value of similar goods imported into India at the same time as the subject goods. Where there are no contemporaneous imports into India, the value is to be determined under Rule 7 by a process of deduction in the manner provided therein. If this is not possible the value is to be computed under Rule 7A. When value of the imported goods cannot be determined under any of these provisions, the value is required to be determined under Rule 8 "using reasonable means consistent with the principles and general provisions of these Rules and sub-section (1) of Section 14 of the Customs Act, 1962 and on the basis of data available in India". If the phrase "the transaction value" used in Rule 4 were not limited to the particular transaction then the other rules which refer to other transactions and data would become redundant.

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22. In the case before us, it is not alleged that the appellant has misdeclared the price actually paid. Nor was there a mis description of the goods imported as

was the case in Padia Sales Corpn. [1993 Supp. (4) SCC 57] It is also not the respondent's case that the particular import fell within any of the situations enumerated in Rule 4(2). No reason has been given by the Assistant Collector for rejecting the transaction value under Rule 4(1) except the price list of vendor. In doing so, the Assistant Collector not only ignored Rule 4(2) but also acted on the basis of the vendor's price list as if a price list is invariably proof of the transaction value. This was erroneous and could not be a reason by itself to reject the transaction value. A discount is a commercially-acceptable measure which may be resorted to by a vendor for a variety of reasons including stock clearance. A price list is really no more than a general quotation. It does not preclude discounts on the listed price. In fact, a discount is calculated with reference to the price list. Admittedly in this case a discount up to 30% was allowable in ordinary circumstances by the Indian agent itself. There was the additional factor that the stock in question was old and it was a one-time sale of 5-year-old stock. When a discount is permissible commercially, and there is nothing to show that the same would not have been offered to anyone else wishing to buy the old stock, there is no reason why the declared value in question was not accepted under Rule 4(1)."

9. To the same effect, are other judgments, reiterating the aforesaid principle, such as, Commissioner of Customs, Calcutta v. South India Television (P) Ltd., (2007) 6 SCC 373 = 2007 (214) E.L.T. 3 (S.C.), Chaudhary Ship Breakers v. Commissioner of Customs, Ahmedabad, (2010) 10 SCC 576 = 2010 (259) E.L.T. 161 (S.C.) and Commissioner of Customs, Vishakhapatnam v. Aggarwal Industries Ltd., (2012) 1 SCC 186 = 2011 (272) E.L.T. 641 (S.C.).

10. The law, thus, is clear. As per Sections 14(1) and 14(1A), the value of any goods chargeable to ad valorem duty is deemed to be the price as referred to in that provision. Section 14(1) is a deeming provision as it talks of 'deemed value' of such goods. Therefore, normally, the Assessing Officer is supposed to act on the basis of price which is actually paid and treat the same as assessable value/transaction value of the goods. This, ordinarily, is the course of action which needs to be followed by the Assessing Officer. This principle of arriving at transaction value to be the assessable value applies. That is also the effect of Rule 3(1) and Rule 4(1) of the Customs Valuation Rules, namely,

the adjudicating authority is bound to accept price actually paid or payable for goods as the transaction value. Exceptions are, however, carved out and enumerated in Rule 4(2). As per that provision, the transaction value mentioned in the Bills of Entry can be discarded in case it is found that there are any imports of identical goods or similar goods at a higher price at around the same time or if the buyers and sellers are related to each other. In order to invoke such a provision it is incumbent upon the Assessing Officer to give reasons as to why the transaction value declared in the Bills of Entry was being rejected; to establish that the price is not the sole consideration; and to give the reasons supported by material on the basis of which the Assessing Officer arrives at his own assessable value.

11. In South India Television (P) Ltd., the Court explained as to how the value is derived from the price and under what circumstances the deemed value mentioned in Section 14(1) can be departed with. Following discussion in the said judgment needs to be quoted hereunder :

> *"10. We do not find any merit in this civil appeal for the following reasons. Value is derived from the price. Value is the function of the price. This is the conceptual meaning of value. Under Section 2(41), "value" is defined to mean value determined in accordance with Section 14(1) of the Act. Section 14 of the Customs Act, 1962 is the sole repository of law governing valuation of goods. The Customs Valuation Rules, 1988 have been framed only in respect of imported goods. There are no rules governing the valuation of export goods. That must be done based on Section 14 itself. In the present case, the Department has charged the respondent importer alleging misdeclaration regarding the price. There is no allegation of misdeclaration in the context of the description of the goods. In the present case, the allegation is of underinvoicing. The charge of underinvoicing has to be supported by evidence of prices of contemporaneous imports of like goods. It is for the Department to prove that the apparent is not the real. Under Section 2(41) of the Customs Act, the word "value" is defined in relation to any goods to mean the value determined in accordance with the provisions of Section 14(1). The value to be declared in the bill of entry is the value referred to above and not merely the invoice price.*
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> *xxx xxx xxx*

12. However, before rejecting the invoice price the Department has to give cogent reasons for such rejection. This is because the invoice price forms the basis of the transaction value. Therefore, before rejecting the transaction value as incorrect or unacceptable, the Department has to find out whether there are any imports of identical goods or similar goods at a higher price at around the same time. Unless the evidence is gathered in that regard, the question of importing Section 14(1A) does not arise. In the absence of such evidence, invoice price has to be accepted as the transaction value. Invoice is the evidence of value. Casting suspicion on invoice produced by the importer is not sufficient to reject it as evidence of value of imported goods. Undervaluation has to be proved. If the charge of undervaluation cannot be supported either by evidence or information about comparable imports, the benefit of doubt must go to the importer. If the Department wants to allege undervaluation, it must make detailed inquiries, collect material and also adequate evidence. When undervaluation is alleged, the Department has to prove it by evidence or information about comparable imports. For proving undervaluation, if the Department relies on declaration made in the exporting country, it has to show how such declaration was procured. We may clarify that strict rules of evidence do not apply to adjudication proceedings. They apply strictly to the Courts' proceedings. However, even in adjudication proceedings, the AO has to examine the probative value of the documents on which reliance is placed by the Department in support of its allegation of undervaluation. Once the Department discharges the burden of proof to the above extent by producing evidence of contemporaneous imports at higher price, the onus shifts to the importer to establish that the invoice relied on by him is valid.

Therefore, the charge of underinvoicing has to be supported by evidence of prices of contemporaneous imports of like goods.

13. Section 14(1) speaks of "deemed value". Therefore, invoice price can be disputed. However, it is for the Department to prove that the invoice price is incorrect. When there is no evidence of contemporaneous imports at a higher price, the invoice price is liable to be accepted. The value in the

export declaration may be relied upon for ascertainment of the assessable value under the Customs Valuation Rules and not for determining the price at which goods are ordinarily sold at the time and place of importation. This is where the conceptual difference between value and price comes into discussion."

12. The observations of the Tribunal made in the impugned judgment are to be appreciated in the light of the principles of law specified in the aforesaid judgment, inasmuch as the Tribunal has categorically remarked that the normal rule is that assessable value has to be arrived at on the basis of the price which is actually paid, as provided by Section 14 of the Customs Act and the case law referred to by it (In paragraph 5, the Tribunal referred to its own judgments which follow the aforesaid principle laid down by this Court).

13. It is, therefore, rightly contended by Mr. Dushyant A. Dave, Learned Senior Counsel appearing for the respondent that the reason given for setting aside the order that the normal rule was that the assessable value has to be arrived at on the basis of the price which was actually paid, and that was mentioned in the Bills of Entry. The Tribunal has clearly mentioned that this declared price could be rejected only with cogent reasons by undertaking the exercise as to on what basis the Assessing Authority could hold that the paid price was not the sole consideration of the transaction value. Since there is no such exercise done by the Assessing Authority to reject the price declared in the Bills of Entry, Order-in-Original was, therefore, clearly erroneous."

4.9 The decision of Hon'ble Delhi High Court, in case of Himanshu Gupta, relied by the Authorized Representative during the course of hearing, is on the issue of relevance of cross examination in the proceedings of demand made under Central Excise Act, 1944. We do not find any relevance of the said decision in these proceedings and the said decision is clearly distinguishable.

4.10 The decision of Chennai Bench in the case of Xiaomi Technology India Pvt. Ltd. referred by the Authorized Representative was in respect of addition of the royalty and license fees paid under exclusive agreements with the license holders. Tribunal has in the facts of the case concluded that such royalty and license fees are to be added to the declared

transaction value for determining the assessable value for the purpose of payment of the customs duty in terms of Rule 10 (c) of the Custom Valuation Rules. WE do not have any such case for consideration and do not find any relevance of the said decision here. The decision of tribunal is an authority only in respect of the issues decided.

4.11 All the other issues raised by the authorized representative in respect of the piercing of corporate viel etc., become irrelevant as in the instant case we find that prices of the identical/ similar goods imported by the appellant from non related suppliers in Spain and China have been accepted by the adjudicating authority and it has not been shown that the transaction prices of the goods imported from the related supplier in UK are impacted by the relationship. The crux of Rule 3 (3) (a) of the Custom Valuation Rules, 2007 needs to be applied in letter and spirit to the facts of the present case. In any case the assessable value of the goods imported from UK could not be higher than the value determined in respect of identical/ similar goods imported from of Spain and China.

4.12 In view of the discussions as above we do not find any merits in the impugned order whereby the demand of duty in respect of the import made from UK (14 Bill of entries detailed in para 59 of the impugned order) has been confirmed. Similarly we do not find any merits in redetermination of the value of the good imported vide Bill of Entry No 8059523 dated 21.01.2015 (para 59.1) of the impugned order as the said determination is also based on the similar logic without recording any recording any separate findings.

4.13 As we are setting aside the basic charge of mis-declaration and accepting the value as declared by the appellant on the Bill of Entry No 8059523 dated 21.01.2025, we set aside the order of confiscation of the said goods.

4.14 We also set aside the confiscation of the goods seized at the godown of the appellant on 05.02.2015 as we do not find any merits in the charge of mis-declaration.

4.15 As we have set aside the demand of duty and the order of confiscation of goods we also do not find any merits in the order imposing penalties under Section 114A of the Customs Act, 1962 on the importer and penalties imposed under Section 112 (b) ibid on the Directors (Appellant 2 and Appellant 3) in the appellant company (importer).

5.1 Appeals are allowed.

(Order pronounced in open court on - **29.10.2026**)

Sd/-
(MR. SOMESH ARORA)
MEMBER (JUDICIAL)

Sd/-
(MR. SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

LKS