



भारत सरकार / GOVERNMENT OF INDIA
सीमा शुल्क आयुक्त का कार्यालय (पत्तन)
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS (PORT)
सीमा शुल्क सदन, 15/1 स्ट्रैंड रोड, कोलकाता- 700001 (प. बं.)
CUSTOM HOUSE, 15/1 STRAND ROAD, KOLKATA- 700001 (WB)
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फा.सं./F. No.- GEN/ADJ/ADC/1804/2023-ADJN-O/o PR COMMR-CUS-Port-KOL
DIN : 20240976NN000000FF0A

आदेश सं /Order No- KOL/CUS/ADC/PORT/Appr. Gr. - IV/ 88 /2024

Date of Order: 27-09-2024

Date of Issue:

द्वारा पारित / **Passed by:**

अन्नू दारिन,

Annu Darin

अतिरिक्त सीमाशुल्क आयुक्त (बंदरगाह),

Additional Commissioner of Customs (Port)

सीमाशुल्क सदन, 15/1, स्ट्रैंड रोड, कोलकाता – 700 001

Custom House, 15/1, Strand Road, Kolkata – 700 001.

मूल आदेश / Order-In-Original

1. This copy is granted free of charge for the private use of the person to whom it is issued.

यह प्रति संबंधित व्यक्ति के प्रयोग के लिए निःशुल्क जारी की गयी है ।

2. Any person deeming himself aggrieved by this order may appeal against the same to the Commissioner of Customs (Appeal), Customs House, 15/1, Strand Road, Kolkata 700 001 within 60 (sixty) days from the date of the receipt.

यदि कोई व्यक्ति इस आदेश से असंतुष्ट हो तो इस आदेश के विरुद्ध इस आदेश के जारी होने के 60 दिनों के अन्दर सीमा शुल्क आयुक्त (अपील) सीमा शुल्क भवन, 15/1, स्ट्रैंड रोड, कोलकाता 700001- के समक्ष अपील कर सकते हैं।

3. An appeal against this order shall lie before the Commissioner (Appeal) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty, are in dispute or penalty, where penalty alone is in dispute.

इस आदेश के खिलाफ, जहां शुल्क या शुल्क और जुर्माना विवाद में है, या दंड जहां अकेले दंड विवाद में हैं, छूटी या दंड के 7.5% के अग्रिम भुगतान पर सीमा शुल्क आयुक्त (अपील) के समक्ष अपील किया जा सकता है ।

4. Any person desirous of appealing against this order or decision shall, pending the appeal, deposit this duty demanded or the fine, penalty levied therein and produces proof of such payment along with the appeal failing which the appeal is liable to be rejected for non compliance with the provisions of Section 129E of the Customs Act, 1962.

यदि कोई भी व्यक्ति, इस आदेश या निर्णय के खिलाफ अपील करने के इच्छुक हैं, या अपील विचाराधीन हो तो

मांगा गया शुल्क अथवा जुर्माना ,अथवा लगाया गया दंड जमा करना होगा एवं भुगतान का सबूत अपील के साथ पेश करना होगा , असफल होने पर सीमा शुल्क अधिनियम, 1962 की धारा 129E के प्रावधानों के अंतर्गत गैर अनुपालन हेतु अपील खारिज किया जा सकता है।

5. Any appeal shall be filed attached with the following documents :

क) अपील की प्रति।

a) A Copy of the appeal.

ख) आदेश की यह प्रति अथवा आदेश की अन्य प्रति के साथ निम्न कोर्टफी स्टैम्प होने आवश्यक है :

b) This copy of the order or another copy of the order which must bear Court Fee stamps as below:

ग) यदि विषय के मूल्य की राशि पचास रूपए या उससे कम होतो 0.40

c) If the amount of value of the subject matter is fifty rupees or less than fifty rupees - 0.40

घ) यदि यह राशि अथवा मूल्य पचास रूपए से अधिक होतो 0.75

d) If such amount or value exceeds fifty rupees - 0.75

ङ) यदि विभागीय रिकार्ड में किसी अन्य दस्तावेज की प्रति अथवा अपील के साथ वकालतनामा दाखिल किया हो तो, उस पर भी निम्न कोर्टफी स्टैम्प होना आवश्यक है :

e) If a copy of any other documents on the record of the Department or a Vakalatnama is filed with an appeal, it must bear Court Fee Stamps as bellow:

च) विभागीय रिकार्ड में दस्तावेज की प्रति के प्रत्येक 360 शब्दों या उसके अंश के लिए रूपए 1.50

f) A copy of documents on the record of the department for every 360 words or fraction thereof Rupees 1.50

छ) आयुक्त अथवा उन के अधीनस्थ को जब वकालतनामा पेश किया जाए , तब उस पर रूपए 00.2 का कोर्टफी स्टैम्प होना अनिवार्य है।

g) Vakalatnama when presented to the Commissioner of Customs (Appeals), or his subordinate, it should bear Court Fee Stamps of Rupees 2.00

Subject: Order-in-Original in respect of Show Cause Notice No. KOL/CUS/ADC/Port/Gr.IV/66/2023 dated 29.09.2023, issued under Section 28(4) read with Section 124 of the Customs Act, 1962 to M/s Suryansh Electrical Industries.

Brief Facts:

A specific intelligence gathered by the Directorate of Revenue Intelligence, Regional Unit, Jaipur (hereinafter referred to as 'the DRI, Jaipur') indicated that M/s Topline Overseas holding GSTN 08AAJFT9023H1ZX and IEC No. 1315000849 situated at PA-010-004, Light Engineering Zone, Multi Commodity Mahindra SEZ, Ajmer Road, Jaipur was engaged in duty free import of Cold Rolled Grain Oriented Steel Coils/Sheets and diversion of the same in Domestic Tariff Area without payment of duty.

2. Further, it was gathered from the DRI, Jaipur that the goods imported by M/s Topline Overseas (SEZ unit) and cleared on the pretext of job work were being diverted in domestic market through two trucks parked at the premises of M/s T.I. Industries, (a Unit of Topline

Lamination Pvt Ltd), G1-562A & G1-563A, Road No. 6, VKIA, Jaipur (sister concern of M/s Topline Overseas and M/s Suryansh Electrical Industries) search was conducted at the premises of M/s T.I. Industries, G1-562A & G1-563A, Road No. 6, VKIA, Jaipur on 21.07.2022 under Panchnama dated 21/22.07.2022. During the search, some incriminating documents/records containing page 1 to 110 were resumed and 18,150 Kg of CRGO Electrical Steel Coils diverted from the Mahindra SEZ by M/s Topline Overseas to DTA by evading applicable Customs duty, were seized vide seizure memo dated 22.07.2022. In this regard, a Show Cause Notice F. No. VIII(H)10/58/Adj/2022-23 (DIN-20230175NJ0000212601) dated 20.01.2023 was issued to M/s Topline Overseas by the Additional Commissioner of Customs (Preventive), Jodhpur.

3. On scrutiny of the documents (by DRI, Jaipur) resumed under the above stated Panchnama, it appeared from an accounting sheet (Page No. 19 of the resumed documents) that for the imports made from Rohan Group vide Invoice Nos. 3882, 3889, 3889A, 3889B and 3909 billing rate/amount were much lower than the actual rate/amount of the imported goods. On scrutiny of the import data of supplier M/s Rohan Group, it was observed that these invoices were issued to **M/s Suryansh Electrical Industries** (IEC 1313006181), Plot No. F-265, Road No. 13, V.K.I Area, Jaipur (hereinafter referred to as '**the importer**' or '**the Noticee**') w.r.t. goods declared as "**Silicon Electrical Steel Scrap**" (hereinafter referred to as '**the imported goods**'). Further, on scrutiny of the IEC 1313006181 of M/s Suryansh Electrical Industries, it appeared that its partners are Shri Saurabh Khandelwal and Shri Akash Gupta, who are also partners of M/s Topline Overseas, Jaipur and directors in M/s T. I. Industries, Jaipur.

4. Statement of Shri Saurabh Khandelwal, Partner of M/s Topline Overseas, PA- 010-004, Light Engineering Zone, Multi Commodity Mahindra SEZ, Ajmer Road, Jaipur was recorded under Section 108 of the Customs Act, 1962 on 21/22.07.2022, wherein he, inter-alia, stated that:

i.) He is a Partner in M/s Suryansh Electrical Industries along with his brother Shri Akash Gupta.

ii.) He was shown page no. 19 of the documents recovered/resumed from M/s T. I. Industries, G1-562A & G1-563A, Road No. 6, VKIA, Jaipur under Panchnama dated 21/22.07.2022 and was appraised about the fact that against Invoice No. 3882 issued by M/s Rohan Group, rate was mentioned as 625 USD and billing rate was mentioned as 450 USD. Accordingly, it was mentioned to pay Rohan Group an amount of 8082 USD. Further, in similar manner against Invoice Nos. 3889, 3889A and 3889B issued by M/s Rohan Group, rate was mentioned as 615 USD and against billing rate it was mentioned as 450 USD and accordingly, it was mentioned to pay Rohan Group an amount of 25165.64 USD. On being asked to state what are these rate and billing rate mentioned on this page, Shri Saurabh Khandelwal stated that he does not have any knowledge about this.

5. Statement of Shri Akash Gupta, Partner of M/s Topline Overseas, PA-010004, Light Engineering Zone, Multi Commodity Mahindra SEZ, Ajmer Road, Jaipur was recorded under Section 108 of the Customs Act 1962 on 21/22.07.2022, wherein he, inter-alia, stated that:

i.) He is a Partner in M/s Suryansh Electrical Industries.

ii.) He was shown Page No. 19 of the documents recovered/resumed from M/s T. I. Industries, G1-562A & G1-563A, Road No. 6, VKIA, Jaipur under Panchnama dated 21/22.07.2022 and was appraised about the fact that on this document rate and amount in respect of some invoices were mentioned. On being asked to read this document and

provide his statement about this, he stated that the document shown to him was Page No. 19 of the documents resumed under the said Panchnama and in token of having read the same he put his dated signature on it. He further stated that he does not know about the accounting done on this document.

6. The DRI, Jaipur analyzed the documents and evidences and found that M/s Suryansh Electrical Industries had imported Silicon Electrical Steel Scrap from the suppliers viz. ten consignments from M/s Rohan Group LLC, United States and one consignment from M/s Kastor International FZE, UAE. On scrutiny of the import data by the DRI, Jaipur, it appeared that in all the consignments of Silicon Electrical Steel Scrap imported by M/s Suryansh Electrical Industries, rate was declared as USD 450 per MT (USD 0.45 per Kg), whereas in the accounting sheet which was resumed under Panchnama dated 21/22.07.2022 from the premises of M/s T. I. Industries, Jaipur, sister concern of M/s Suryansh Electrical Industries, it appeared that the actual rate of the imported goods was USD 615, 625 and 915, which was much higher to the rate declared by the importer before the Customs authorities.

The accounting sheet recovered under panchnama dated 21/22.07.2022 showing actual rate, billing rate and differential amount payable to supplier M/s Rohan Group is appended as under:-

(19)

ROHAN GROUP			
INVOICE NO.	QUANTITY	RATE	AMOUNT
3882	46.185	625	28865.63
BILLING	46.185	450	20783.25
To Pay to Rohan Group			8082.375
INVOICE NO.	QUANTITY	RATE	AMOUNT
3889	66.059	615	40626.29
3889A	65.273	615	40142.9
3889B	21.187	615	13030.01
			93799.19
BILLING	152.519	450	68633.55
To Pay to Rohan Group			25165.64
Total To Pay		33248.01	
Less previous To receive		16343.25	
NET TO PAY TO ROHAN		16904.76	
ALL AMOUNTS ARE IN USD			
3885 LC		959.5	

Interest should be pay to our bank but our bank did not paid, so Rohan Group's bank have bebited their account

Invoice no.	Quantity	Rate	kolkata
& Contract no. 3909	99.841	915	91354.52
31309			
Billing	99.841	450	44928.45
To Pay to Rohan Group			46426.07

Seen
Saurabh
22/7/22

7. From the above appended sheet, it appeared that against Invoice No. 3882, quantity was mentioned as 46.185 and rate was mentioned as USD 625 (Amount- USD 28865.63) and Billing rate was mentioned as USD 450 (Amount- USD 20783.25) and it was mentioned that differential amount of USD 8082.375 was to pay to Rohan Group. The details mentioned in the accounting sheet w.r.t. Invoice No. 3882 are as under:-

INVOICE No.	QUANTITY	RATE	AMOUNT
3882	46.185	625	28865.63

BILLING	46.185	450	20783.25
To pay to Rohan Group			8082.375

On scrutiny of the import data, the DRI, Jaipur observed that M/s Suryansh Electrical Industries had filed Bill of Entry No. 9094503 dated 03.12.2018 at Kolkata Sea Port (INCCU1) w.r.t. Invoice No. 3882 dated 27.10.2018 declaring name of exporter as Rohan Group LLC, USA, description of goods as "Silicon Electrical Steel Scrap", Quantity as 46.184 MT, unit price as USD 450/MT, total price as USD 20782.80. Thus, the details of the imported goods declared by the importer in Bill of Entry No. 9094503 dated 03.12.2018 before the Customs authorities were same as found mentioned in the above appended sheet against the "BILLING" columns. In view of the above stated facts, it appeared that the actual rate of the Silicon Electrical Steel Scrap imported vide Bill of Entry No. 9094503 dated 03.12.2018 was USD 625 per MT and the importer had submitted wrong invoice declaring lower rate of USD 450 per MT in order to evade payment of appropriate Customs duty. Thus, it appeared that the importer, by submitting invoice showing lower rate (i.e., USD 450/MT) than the actual rate (i.e., USD 625/MT), had evaded Customs duty amounting to Rs.1,46,017/- in respect of Bill of Entry No. 9094503 dated 03.12.2018 as detailed at Sr. No. 1 of the Annexure-A of the Show Cause Notice.

8. Further, from the above appended sheet, the investigating agency observed that against Invoice No. 3889, quantity was mentioned as 66.059, against Invoice No. 3889A, quantity was mentioned as 65.273 and against Invoice No. 3889B, quantity was mentioned as 21.187 and rate was mentioned as USD 615 (total amount for all three invoices -USD 93799.19) and Billing rate was mentioned as USD 450 (total amount for all the three invoices- USD 68633.55) and it was mentioned that differential amount of USD 25165.64 was to pay to M/s Rohan Group. The details mentioned in the accounting sheet w.r.t. Invoice No. 3889, 3889A and 3889B are as under:-

INVOICE No.	QUANTITY	RATE	AMOUNT
3889	66.059	615	40626.29
3889A	65.273	615	40142.9
3889B	21.187	615	13030.01
Total			93799.19
BILLING		450	68633.55
To pay to Rohan Group			25165.64

On scrutiny of the import data, the investigating agency further observed that M/s Suryansh Electrical Industries had filed Bill of Entry No. 9289423 dated 17.12.2018 at Kolkata Sea Port (INCCU1) w.r.t. Invoice No. 3889 dated 10.11.2018 declaring name of exporter as M/s Rohan Group LLC, USA, description of goods as "Silicon Electrical Steel Scrap", Quantity as 66.059 MT, unit price as USD 450/MT. Thus, the details of the imported goods declared by the importer in the subject Bill of Entry before the Customs authorities were same as found mentioned in the above appended sheet. In view of the above stated facts, it appeared that the actual rate of the Silicon Electrical Steel Scrap imported vide Bill of Entry No. 9289423 dated 17.12.2018 was USD 615 per MT and the importer had submitted wrong invoice declaring lower rate of USD 450 per MT in order to evade payment of appropriate Customs duty. Thus, it appeared that the importer, by

submitting invoice showing lower rate (i.e., USD 450/MT) than the actual rate (i.e., USD 615/MT), had evaded Customs duty amounting to Rs. 1,93,680/- in respect of Bill of Entry No. 9289423 dated 17.12.2018 as detailed at Sr. No. 2 of the Annexure-A of the Show Cause Notice.

9. Further, the investigating agency observed that M/s Suryansh Electrical Industries had filed Bill of Entry No. 9519479 dated 04.01.2019 at Kolkata Sea Port (INCCU1) w.r.t. Invoice No. 3889A dated 28.11.2018 declaring name of exporter as Rohan Group LLC, USA, description of goods as "Silicon Electrical Steel Scrap", Quantity as 86.460 MT, unit price as USD 450/MT. These details of the imported goods declared by the importer in the subject Bill of Entry before the Customs authorities were same as found mentioned in the above appended sheet against Invoice Nos. 3889A and 3889B (65.273+21.187=86.460). In view of the above stated facts, it appeared that the actual rate of the Silicon Electrical Steel Scrap imported vide Bill of Entry No. 9519479 dated 04.01.2019 was USD 615 per MT and the importer had submitted wrong invoice declaring lower rate of USD 450 per MT in order to evade payment of appropriate Customs duty. Thus, it appeared that the importer, by submitting invoice showing lower rate (i.e., USD 450/MT) than the actual rate (i.e., USD 615/MT), had evaded Customs duty amounting to Rs. 2,51,728/- in respect of Bill of Entry No. 9519479 dated 04.01.2019 as detailed at Sr. No. 3 of the Annexure-A of the Show Cause Notice.

10. Further, it appeared from the above appended sheet that against Invoice No. 3909, quantity was mentioned as 99.841 and rate was mentioned as USD 915 (total amount - USD 91354.52) and billing rate was mentioned as USD 450 (total amount - USD 44928.45) and it was mentioned that differential amount of USD 46426.07 was to pay to Rohan Group.

Invoice no. & Contract no.	Quantity	Rate	Amount
3909 & 31309	99.841	915	91354.52
BILLING	99.841	450	44928.45
To pay to Rohan Group			46426.07

On scrutiny of the import data, the investigating agency further observed that M/s Suryansh Electrical Industries had submitted 2 (two) separate invoices before the Customs authorities, i.e., 3909 and 3909A declaring quantities as 78.621 and 19.859 respectively totalling to 98.480 (matching with the quantity mentioned in the accounting sheet). It appeared that M/s Suryansh Electrical Industries had filed Bill of Entry No. 2128166 dated 20.02.2019 at Kolkata Sea Port (INCCU1) w.r.t. Invoice No. 3909 dated 08.01.2019 declaring name of the exporter as Rohan Group LLC, USA, description of goods as "Silicon Electrical Steel Scrap", quantity as 78.621 MT, unit price as USD 450/MT. In view of the above stated facts, it appeared that the actual rate of the Silicon Electrical Steel Scrap imported vide Bill of Entry No. 2128166 dated 20.02.2019 was USD 915 per MT and the importer had submitted wrong invoice declaring lower rate of USD 450 per MT in order to evade payment of appropriate Customs duty. Thus, it appeared that the importer, by submitting invoice showing lower rate (i.e., USD 450/MT) than the actual rate (i.e., USD 915/MT), had evaded Customs duty amounting to Rs.6,57,770/- in respect of Bill of Entry No. 2128166 dated 20.02.2019 as detailed at Sr. No. 4 of the Annexure-A of the Show Cause Notice.

The investigating agency further observed that M/s Suryansh Electrical Industries

had filed Bill of Entry No. 2055105 dated 14.02.2019 at Kolkata Sea Port (INCCU1) w.r.t. Invoice No. 3909A dated 14.01.2019 declaring name of exporter as Rohan Group LLC, USA, description of goods as "Silicon Electrical Steel Scrap", Quantity as 19.859 MT, unit price as USD 450/MT. Thus, the details of the imported goods declared by the importer in the subject Bill of Entry before the Customs authorities were same as found mentioned in the above appended sheet as discussed herein above. In view of the above stated facts, it appeared that the actual rate of the Silicon Electrical Steel Scrap imported vide Bill of Entry No. 2055105 dated 14.02.2019 was USD 915 per MT and the importer had submitted wrong invoice declaring lower rate of USD 450 per MT in order to evade payment of appropriate Customs duty. Thus, it appeared that the importer, by submitting invoice showing lower rate (i.e., USD 450/MT) than the actual rate (i.e., USD 915/MT), had evaded Customs duty amounting to Rs.1,66,147/-in respect of Bill of Entry No. 2055105 dated 14.02.2019 as detailed at Sr. No. 5 of the Annexure-A of the Show Cause Notice.

11. Further, the investigating agency observed that along with the above stated consignments/Bills of Entry, M/s Suryansh Electrical Industries had also imported "Silicon Electrical Steel Scrap" from the supplier, M/s Rohan Group LLC, USA vide Bill of Entry No. 8384838 dated 09.10.2018 (Invoice No. 3854 dated 25.08.2018), Bill of Entry No. 2801375 dated 11.04.2019 (Invoice No. 3911 dated 08.02.2019), Bill of Entry No. 6019618 dated 10.12.2019 (Invoice No. 3994 dated 18.10.2019), Bill of Entry No. 6093505 dated 16.12.2019 (Invoice No. 4002 dated 16.11.2019), Bill of Entry No. 6314719 dated 01.01.2020 (Invoice No. 4009 dated 21.11.2019) and one consignment from the supplier M/s Kastor International FZE, UAE vide Bill of Entry No. 3181566 dated 10.05.2019 (Invoice No. 98/2018 dated 06.03.2019). The importer in all these Bills of Entry filed for import/clearance of "Silicon Electrical Steel Scrap" had also declared value of USD 450/MT, however the goods imported vide these six consignments (Sr. No. 6 to 11 of Annexure-A of the Show Cause Notice) were similar to the goods imported vide other five consignments as discussed supra for which clear evidence of undervaluation were found. Thus, it appeared that to evade Customs duty the importer had not declared actual rate/value of these six consignments also before the Customs authorities at the time of filing of Bills of Entry. It appeared that the goods imported by M/s Suryansh Electrical Industries vide Bills of Entry mentioned from Sr. No. 6 to 11 of Annexure-A to the Show Cause Notice were similar to the goods imported by the importer vide Bills of Entry mentioned from Sr. No. 1 to 5 of Annexure-A as these were supplied by the same foreign supplier except Sr. No. 11. Therefore, the value of the "Silicon Electrical Steel Scrap" imported by M/s Suryansh Electrical Industries vide Bills of Entry mentioned from Sr. No. 6 to 11 of Annexure-A is liable to be rejected as per Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determined as per provisions of Rule 5 the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962. Accordingly, the value of the subject imported goods along with differential duty payable is re-determined at Annexure-A of the Show Cause Notice.

12. Whereas, Section 14 of the Customs Act, 1962 stipulates that the value of the imported goods shall be the transaction value of such goods, i.e., the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation. As discussed supra, it appeared that the value declared by the importer before the Customs authorities was not the true and correct transaction value of the imported goods. From the accounting sheet resumed under Panchnama dated 21/22.07.2022, it appeared that the actual rate of the goods imported vide Invoice No. 3882 was USD 625/MT, imported vide Invoice No. 3889, 3889A & 3889B was USD 615/MT and imported vide Invoice No. 3909 was USD 915/MT, whereas the importer had declared the

rate as USD 450/MT (USD 0.45/Kg) in all the Bills of Entry filed by them for clearance of the imported goods. Hence, it appeared that the value declared by the importer before the Customs authorities was much lower than the actual value of the subject imported goods. Thus, the value of the subject imported goods appeared to be mis-declared in Bills of Entry filed by M/s Suryansh Electrical Industries. It is settled legal position that once mis-declaration in respect of value is found, the declared value cannot be accepted as true and correct transaction value under Section 14 of the Customs Act, 1962. Therefore, there are cogent reasons to doubt the truth and accuracy of the value declared in the Bills of Entry filed by M/s Suryansh Electrical Industries. The Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (here-in-after also referred to as "the CVR, 2007") provides for rejection of declared value on the basis of reasons to doubt the truth or accuracy of the declared value in relation to the imported goods. The explanation (1)(iii)(f) to Rule 12 of the CVR, 2007 provides that the proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include: - the fraudulent or manipulated documents. Since the declared unit price/value of goods covered under Bills of Entry mentioned in attached Annexure-A appeared to be substantially lower than the actual value found mentioned in the accounting sheet resumed from the premises of the sister concern of the importer, it appeared that the unit price/value declared by the importer in respect of the Bills of Entry mentioned at Sr. No. 1 to 11 in column No. 3 of attached Annexure-A was not true and correct and therefore the same is liable to be rejected under Rule 12 of CVR, 2007. Thus, in light of evidence showing mis-declaration of value in the instant case, the declared value of Rs. 2,02,10,535/- of the imported Silicon Electrical Steel Scrap imported vide total 11 Bills of Entry as detailed in Annexure-A, is liable to be rejected as per the provisions of Rule 12 of CVR, 2007. As such, value declared before Customs authority in the Bills of Entry filed for clearance of "Silicon Electrical Steel Scrap" imported and got cleared by M/s Suryansh Electrical Industries, Jaipur through Customs House, Kolkata is required to be rejected in terms of Section 14 of the Customs Act, 1962 read with provisions of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

13. Section 2(41) of the Customs Act, 1962 provides that "value" in relation to any goods, means the value thereof determined in accordance with the provisions of sub-Section (1) or sub-Section (2) of Section 14 of the Customs Act, 1962. The Section 14(1) *ibid* provides that for the purposes of the Customs Tariff Act, 1975 or any other law for the time being in force, the value of the imported goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation subject to such other conditions as may be specified in the rules made in this behalf. Further, second proviso to Section 14(1) provides that the rules made in this behalf may provide for the manner of acceptance or rejection of value declared by the importer where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this Section. As per Rule 11 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 the responsibility to declare true, correct and actual value of the imported goods has been assigned on the importer of such goods. However, in the instant case, M/s Suryansh Electrical Industries had not stated the true and correct value of the imported goods before the Customs authority at the time of clearance of the subject imported goods. In view of the facts discussed *supra* and material evidence available on record, it transpired that M/s Suryansh Electrical Industries had contravened the provisions of Section 14, Section 46 of the Customs Act, 1962 and Rule 11 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 in as much as they had knowingly and intentionally mis-declared the value of the imported goods.

14.1. Re-determination of value of the imported goods imported vide Bills of Entry mentioned from Sr. No. 1 to 5 of Annexure-A of the Show Cause Notice :- Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 provides the method of ascertaining value of imported goods. According to the Rule 3(1) of the CVR, 2007, the value of the imported goods shall be the transaction value of the goods adjusted in accordance with provisions of Rule 10. Further, as per Section 14 of the Customs Act, 1962, the value of the imported goods shall be the transaction value of such goods i.e., the price actually paid or payable for the goods for export to India for delivery at the time and place of importation. In the instant case, from the accounting sheet which was recovered/resumed under Panchnama dated 21/22.07.2022, it appeared that the actual rate/transaction value of the “Silicon Electrical Steel Scrap” imported vide Bill of Entry No. 9094503 dated 03.12.2018 was USD 625/MT, imported vide Bills of Entry No. 9289423 dated 17.12.2018 & 9519479 dated 04.01.2019 was USD 615/MT and imported vide Bills of Entry No. 2128166 dated 20.02.2019 and 2055105 dated 14.02.2019 was USD 915/MT. Thus, by no stretch of the imagination, it would be possible to accept the value of @ USD 450/MT (0.45/KG) CNF declared by the importer in the Bills of Entry and the value of the subject imported goods is re-determined on the basis of accounting sheet recovered from the premises of the sister concern of the importer, which shows the invoice wise actual payment made to the foreign supplier i.e., M/s Rohan Group, in terms of Section 14 of Customs Act, 1962 read with provisions of Rule 3(1) and Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. The importer had submitted forged invoices showing value as USD 450/MT (0.45/KG) CNF at the time of filing Bills of Entry, whereas the actual value was USD 615/MT, 625/MT and 915/MT CNF, therefore, as per provisions of Rule 10 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, to arrive at the actual assessable value the cost of insurance is taken as 1.125%. Accordingly, the value of the goods imported vide Bills of Entry mentioned at Sr. No. 1 to 5 of attached Annexure-A is re-determined in terms of Rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Rule 10 of CVR, 2007 and Section 14 of the Customs Act, 1962 as Rs.1,55,28,391/- (Rupees One Crore Fifty Five Lakhs Twenty Eight Thousand Three Hundred Ninety One) which is fair transaction value. The Bill of Entry wise details are as under:-

Table-I

Sr. No.	B/E No. & Date	Invoice No. & Date	Quantity (MTS)	Declared A/V as per B/E (Rs.)	Actual/re-determined A/V (Rs.)	Differential duty payable/demanded (Rs.)
1	2	3	4	5	6	7
01	9094503 dated 03.12.2018	3882 dated 27.10.2018	46.184	1533161.44	2129390.89	146017
02	9289423 dated 17.12.2018	3889 dated 10.11.2018	66.059	2156874.86	2947728.98	193680
03	9519479 dated	3889A dated	86.460	2803310.14	3831190.53	251728

	04.01.2019	28.11.2018				
04	2128166 dated 20.02.2019	3909 dated 08.01.2019	78.621	2599233.11	5285107.32	657770
05	2055105 dated 14.02.2019	3909A dated 14.01.2019	19.859	656544.31	1334973.43	166147
Total			297.183	97,49,124	1,55,28,391	14,15,342

14.2. Re-determination of value of the imported goods imported vide Bills of Entry mentioned from Sr. No. 6 to 11 of Annexure-A :- Rule 3 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 provides the method of ascertaining value of import goods. According to the Rule 3(1) of the said Rules, the value of the imported goods shall be the transaction value of the goods adjusted in accordance with provisions of Rule 10. In the instant case, as discussed in Paras supra, the value declared by the importer in the Bills of Entry mentioned at Sr. Nos. 6 to 11 of Annexure-A was much lower than the actual value of the subject imported goods. Thus, by no stretch of the imagination, it would be possible to accept the value declared by the importer in the Bills of Entry mentioned at Sr. Nos. 6 to 11 of Annexure-A of the Show Cause Notice. Therefore, as provided under Rule 3(4) of CVR, 2007, true and correct value of the subject imported goods is required to be re-determined by proceeding sequentially through Rule 4 to 9 of the CVR, 2007.

Rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 provides that 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 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. In the instant case, M/s Suryansh Electrical Industries had imported Silicon Electrical Steel Scrap from the foreign suppliers and had undervalued the same as discussed supra. It is pertinent to mention that M/s Suryansh Electrical Industries had never declared proper specifications, i.e., exact quality of the imported Silicon Electrical Steel Scrap in the Bills of Entry filed by them, therefore because of the absence of exact quality, it is not possible to find identical goods in the instant case. Therefore, the value of the goods imported by M/s Suryansh Electrical Industries cannot be determined in terms of Rule 4 of the CVR, 2007.

Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 provides that 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. M/s Suryansh Electrical Industries in the Bills of Entry declared description of the imported goods as Silicon Electrical Steel Scrap. Shri Akash Gupta, partner of M/s Suryansh Electrical Industries in his statement dated 21/22.07.2022 stated that they imported CRGO steel scrap strips declaring it as steel scrap. Therefore, it appeared that the goods imported vide all the 11 Bills of Entry had like characteristics and like component

materials which enable them to perform the same functions. Further, out of total 11 consignments, 10 consignments were supplied by the same supplier, i.e., M/s Rohan Group LLC, United States and one consignment by M/s Kastor International FZE, UAE. Thus, it appeared that the goods imported by M/s Suryansh Electrical Industries vide Bills of Entry mentioned at Sr. Nos. 6 to 11 of the Annexure-A were similar to the goods imported by them vide Bills of Entry mentioned at Sr. Nos. 1 to 5 of the Annexure-A as these were supplied by the same foreign supplier, from the same country except Sr. No.11, therefore the value of the "Silicon Electrical Steel Scrap" imported by M/s Suryansh Electrical Industries vide Bills of Entry mentioned from Sr. Nod. 6 to 11 of Annexure-A is liable to be determined as per provisions of Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Rule 10 of the CVR, 2007 and Section 14 of the Customs Act, 1962. The rate/value of USD 915/MT was highest amongst the evidence gathered during investigation, therefore the value of the subject imported goods imported vide Bills of Entry mentioned from Sr. No. 6 to 11 of Annexure-A is re-determined taking value/rate as USD 915/MT and thus, the transaction value of the subject goods, i.e., Silicon Electrical Steel Scrap imported vide Bills of Entry mentioned at Sr. Nos. 6 to 11 of Annexure-A is re-determined as Rs. 2,12,71,535/- (Rs. Two Crore Twelve Lakh Seventy One Thousand Five Hundred and Thirty Five only) in terms of Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, read with Rule 10 of the CVR, 2007 and Section 14 of the Customs Act, 1962. The summary of Bills of Entry wise re-determined value is as under-

Table-II

Sr. No.	Bill of Entry Number	Invoice No.	Quantity (MTS)	Declared Assessable Value as per B/E (Rs.)	Actual/Re-determined Assessable Value (Rs.)	Differential Duty payable/demanded (Rs.)
1	2	3	4	5	6	7
1	8384838 dated 09.10.2018	3854 dated 25.08.2018	86.847	2948252.65	5994780.38	746095
2	2801375 dated 11.04.2019	3911 dated 08.02.2019	20.200	638402.63	1298085.35	161556
3	6019618 dated 10.12.2019	3994 dated 18.10.2019	60.139	1959328.62	3983968.19	495834
4	6093505 dated 16.12.2019	4002 dated 16.11.2019	42.380	1380740.40	2807505.48	349415
5	6314719 dated 01.01.2020	4009 dated 21.11.2019	90.499	2928095.15	5953793.46	740993

6	3181566 dated 10.05.2019	98/2018 dated 06.03.2019	18.921	606591.24	1233402.18	153506
TOTAL			318.986	1,04,61,411	2,12,71,535	26,47,399

15. From the above two Tables, the total re-determined assessable value of the goods imported by M/s Suryansh Electrical Industries vide the aforesaid 11 Bills of Entry comes at Rs.3,67,99,926/- with the total differential duty payable at Rs.40,62,742/-.

16. Legal provisions invoked in the subject case:

16.1. The Customs Act, 1962:

i.) Section 14: Valuation of goods - (1) *For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:*

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

Provided further that the rules made in this behalf may provide for,-

1. the circumstances in which the buyer and the seller shall be deemed to be related; (ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case; (iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:

Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.

2. Notwithstanding anything contained in sub-section (1), if the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with

reference to such tariff value.

Explanation. - For the purposes of this section -

a) "rate of exchange" means the rate of exchange -

- i. determined by the Board, or*
- ii. ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;*

(b) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in clause (m) and clause (q) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).]

ii.) Section 17- Assessment of duty.

- 1. An importer entering any imported goods under Section 46, or an exporter entering any export goods under Section 50, shall, save as otherwise provided in Section 85, self-assess the duty, if any, leviable on such goods.**
- 2. The proper officer may verify the 12 [the entries made under Section 46 or Section 50 and the self- assessment of goods referred to in sub-section and for this purpose, examine or test any imported goods or export goods or such part there of as may be necessary.**

[Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.]

- 3. For [the purposes of verification] under sub-Section (2), the proper officer may require the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.]**
- 4. Where it is found on verification, examination or testing of the goods or otherwise that the self- assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.**
- 5. Where any re-assessment done under sub-Section (4) is contrary to the self-assessment done by the importer or exporter 16[***] and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re- assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.**

Explanation - For the removal of doubts, it is hereby declared that in cases where an importer has entered any imported goods under section 46 or an exporter has entered any export goods under Section 50 before the date on which the Finance Bill, 2011 receives the assent of the President, such imported goods or export goods shall continue to be governed by the provisions of Section 17 as it stood immediately

before the date on which such absent is received.

iii.) Section 28(4): *Where any duty has not been 70 [levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-*

- a. collusion; or
- b. any wilful mis-statement; or
- c. suppression of facts,

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

iv.) Section 28AA. Interest on delayed payment of duty — *(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made there under, the person, who is liable to pay duty in accordance with the provisions of Section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-Section (2), whether such payment is made voluntarily or after determination of the duty under that Section.*

(2) Interest at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty. (3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,—

(a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under Section 151A; and

(b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.]

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

Provided that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish

all the particulars of the goods required under this sub-Section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of Customs, or (b) to deposit the goods in a public warehouse appointed under Section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a Bill of Entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

.....

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

vi.) Section 111(m): *any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under Section 77 [in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-Section (1) of Section 54];*

vii.) Section 112:-Penalty for improper importation of goods, etc. - Any person -
(a) - *who in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or*
(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing or in any other manner dealing with the goods which he knows or has reason to believe are liable to confiscation under Section 111,

Shall be liable,-

- i. In the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees whichever is greater;
- ii. In the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is greater;
- iii. In the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding

the difference between the declared value and the value thereof of five thousand rupees, whichever is the greater;

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

viii.) Section 114A. Penalty for short-levy or non-levy of duty in certain cases.

-Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined:

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

x.) Section 125. Option to pay fine in lieu of confiscation. - *(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit:*

Provided that where the proceedings are deemed to be concluded under the proviso to sub-Section (2) of Section 28 or under clause (i) of sub-Section (6) of that Section in respect of the goods which are not prohibited or restricted, [no such fine shall be imposed:

Provided further that, without prejudice to the provisions of the proviso to sub-Section (2) of Section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

[(2) Where any fine in lieu of confiscation of goods is imposed under sub-Section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]

16.2. Customs Valuation (Determination of Value of Imported Goods) Amendment Rules, 2007:

i.) Rule 2(f) of the CVR, 2007:

(a) "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;

ii.) Rule 3 of the CVR, 2007:

3. Determination of the method of valuation.-

4. Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10;

5. Value of imported goods under sub-Rule (1) shall be accepted: Provided that -

- a. there are no restrictions as to the disposition or use of the goods by the buyer other than restrictions which -
 - i. are imposed or required by law or by the public authorities in India; or
 - ii. limit the geographical area in which the goods may be resold; or
 - iii. do not substantially affect the value of the goods;
 - b. the sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;
 - c. no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of rule 10 of these rules; and
 - d. the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.
3. (a) Where the buyer and seller are related, the transaction value shall be accepted
provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.
- b. In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time.

- i. the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;
- ii. the deductive value for identical goods or similar goods;
- iii. the computed value for identical goods or similar goods:

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

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

iii.) Rule 5 of the CVR, 2007:

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), sub-Rule (3), of Rule 4 shall, mutatis mutandis, also apply in respect of similar goods.

iv.) Rule 11. Declaration by the importer:

1. The importer or his agent shall furnish -
 - a. a declaration disclosing full and accurate details relating to the value of imported goods; and
 - b. any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer, as considered necessary by the proper officer for determination of the value of imported goods under these rules.
2. Nothing contained in these rules shall be construed as restricting or calling into question the right of the proper officer of customs to satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes.
3. The provisions of the Customs Act, 1962 (52 of 1962) relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished under these rules.

v.) Rule 12 of the CVR, 2007:

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

16.3. The Foreign Trade (Development and Regulation) Act, 1992.

Section 11: *Contravention of provision of this Act, rules, orders and exports and import policy:- (1) No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the export and import policy for the time being in force.*

2. Where any person makes or abets or attempts to make any export or import in contravention of any provision of this Act or any rules or orders made thereunder or the export and import policy, he shall be liable to a penalty not exceeding one thousand rupees or five times the value of the goods in respect of which any contravention is made or attempted to be made, whichever is more.
3. Where any person, on a notice to him by the Adjudicating Authority, admits any contravention, the Adjudicating Authority may, in such class or classes of cases and in such manner as may be prescribed, determine, by way of settlement, an amount to be paid by that person.
4. A penalty imposed under this Act may, if it is not paid, be recovered as an arrear of land revenue and the Importer-exporter Code Number of the person concerned, may, on failure to pay the penalty by him, be suspended by the Adjudicating Authority till the penalty is paid.
5. Where any contravention of any provision of this Act or any rules or orders made thereunder or the export and import policy has been, is being, or is attempted to be, made, the goods together with any package, covering or receptacle and any conveyances shall, subject to such requirements and conditions as may be prescribed, be liable to confiscation by the Adjudicating Authority.
6. The goods or the conveyance confiscated under sub-section (5) may be released by the Adjudicating Authority, in such manner and subject to such conditions as may be prescribed, on payment by the person concerned of the redemption charges equivalent to the market value of the goods or conveyance, as the case may be.

16.4. Foreign Trade (Regulation) Rules, 1993

i.) Rule 11: Declaration as to value and quality of imported goods:- *On the importation into, or exportation out of, any Customs ports of any goods, whether*

liable to duty or not, the owner of such goods, shall in the Bill of Entry or the Shipping Bill or any other documents prescribed under the Customs Act, 1962 (52 of 1962), state the value, quality and description of such goods to the best of his knowledge and belief and in case of exportation of goods, certify that the quality and specification of the goods as stated in those documents, are in accordance with the terms of the export contract entered into with the buyer or consignee in pursuance of which the goods are being exported and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry or Shipping Bill or any other documents.

ii.) Rule 14: Prohibition regarding making, signing of any declaration, statement or documents:-*No person shall make, sign or use or cause to be made, signed or used any declaration, statement or document for the purposes of obtaining a license or importing any goods knowing or having reason to believe that such declaration, statement or document is false in any material particular.*

2. No person shall employ any corrupt or fraudulent practice for the purposes of obtaining any licence or importing or exporting any goods.

17. In view of above, the undersigned had issued the Show Cause Notice No. KOL/CUS/ADC/Port/Gr.IV/66/2023 dated 29.09.2023, wherein-

A.) M/s Suryansh Electrical Industries (Noticee No. 01) had been asked to show cause in writing to the undersigned, within 30 days of the receipt of the Notice, as to why-

i.) Total assessable value of Rs. 97,49,124/- (Rs. Ninety Seven Lakh Forty Nine Thousand One Hundred and Twenty Four only) declared by them/assessed at the time of clearance of goods, i.e., "Silicon Electrical Steel Scrap" for Bills of Entry mentioned at Sr. Nos. 1 to 5 of Annexure- A to this Show Cause Notice, should not be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determined at Rs. 1,55,28,391/- (Rs. One Crore Fifty Five Lakh Twenty Eight Thousand Three Hundred and Ninety One only) as mentioned at respective column No. 19 of Annexure- A to the Show Cause Notice, as per the provisions of Rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Rule 10 of the CVR, 2007 and Section 14 of the Customs Act, 1962;

ii.) Total assessable value of Rs 1,04,61,411/- (Rs. One Crore Four Lakh Sixty One Thousand Four Hundred and Eleven only) declared by them/assessed at the time of clearance of goods, i.e., "Silicon Electrical Steel Scrap" for Bills of Entry mentioned at Sr. Nos. 6 to 11 of Annexure- A to this Show Cause Notice, should not be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and re-determined at Rs. 2,12,71,535/- (Rs. Two Crore Twelve Lakh Seventy One Thousand Five Hundred and Thirty Five only) as mentioned at respective column No. 19 of Annexure- A to the Show Cause Notice, under the provisions of Rule 5 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Rule 10 of CVR, 2007 and Section 14 of the Customs Act, 1962;

iii.) The differential amount of Customs duty aggregating to Rs. 40,62,742/- (Rupees Forty Lakh Sixty Two Thousand Seven Hundred Forty Two only) as detailed in column No. 24 of

Annexure- A to the Show Cause Notice leviable on the “Silicon Electrical Steel Scrap” imported vide Bills of Entry as listed in column No. 03 of Annexure- A, should not be demanded and recovered from them under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962;

iv.) 616.169 MTs of Silicon Electrical Steel Scraphaving re-determined value of Rs. 3,67,99,926/- (Rs. Three Crore Sixty Seven Lakh Ninety Nine Thousand Nine Hundred and Twenty Six only) imported by them at the Kolkata Port covered under the Bills of Entry as detailed in Annexure-A of the Show Cause Notice, should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962;

v.) Penalty should not be imposed upon them under Sections 114A and Section 114AA of the Customs Act, 1962 for the reasons discussed in the Show Cause Notice.

B.) Shri Saurabh Khandelwal (Noticee No. 02) and Shri Akash Gupta (Noticee No. 03), both the Partner(s) of M/s Suryansh Electrical Industries had been asked to show cause in writing to the undersigned, within 30 days of the receipt of the Notice, as to why-

i.) Penalty should not be imposed on them under Section 112(a)(v) and/or Section 112(a)(ii) and Section 114AA of the Customs Act, 1962 for the reasons discussed in the Show Cause Notice.

18. Submissions & Personal hearings:

The following submissions were made by the Noticees w.r.t. the Show Cause Notice No. KOL/CUS/ADC/Port/Gr.IV/66/2023 dated 29.09.2023:

18.1. The Noticees, vide letters dated 05.12.2023, requested for the extension of time for filing reply to the Show Cause Notice and adjournment of the Personal hearing scheduled to be held on 05.12.2023, vide the departmental notice dated 21.11.2023. They requested to fix the hearing after reasonable period so that they can inspect the documents and do what is needful for the purpose of hearing.

18.2. The Noticees, vide letter dated 20.12.2023, submitted the reply to the Show Cause Notice, wherein they stated that-

i.) They denied and disputed each and every allegation made in the Show Cause Notice.

ii.) They imported 11 consignments as mentioned in Annexure A to the SCN in course of international trade where the price was sole consideration for sale and there was no relationship between them and the foreign supplier. They declared the value of the goods on the basis of transaction value which was the value assessed under Section 14 of the Customs Act, 1962.

Silicon Electrical Steel Scrap is imported in plenty in India. The DoV data

of Silicon Electrical Steel Scrap would show that the value of goods imported at various ports in India would be around USD 400 to 450 per MT and their price declared was in consonance with Section 14 of the CA'62 and the valuation of the goods was accepted by the Assessing Officer.

The Assessing Officer passed the assessment order in respect of each of the 11 Bills of Entry and they paid the duty and out of charge were issued and the assessment so made were final and binding and no appeal there from was preferred and all the assessments became *res judicata*.

iii.) The Show Cause Notice had been issued without challenging the original assessment so made which contrary to the law laid down by the Hon'ble Supreme Court in the case of ITC Ltd. Vs. Commissioner of Central Excise, Kolkata reported in 368 ELT 216 (SC) and very recent judgment of the Kolkata Tribunal in the case of Shahjahan Mazumdar 2023 (8) TMI 1055 which has been accepted by the department and no appeal has been preferred there from. The law gets settled that without challenging the assessment order the proceeding under Section 28 initiating a fresh round of litigation cannot be made.

iv.) Without prejudice to the aforesaid they stated that the dispute in relation to the Bill of Entry is raised by the DRI officers at Jaipur. On the basis of the purported statement of account being relied upon document No. 2 which purportedly incorporates the invoices under the Bills of Entry which *ex facie* is a prepared document and this document was not part of the seizure from the office premises of T. I. Industries, Jaipur. It is alleged that at the time of seizure of goods at T. I. Industries, Jaipur on 22.07.2022, this document which is also part of the RUD4 was seized whereas there is no Panchanama and/or seizure memo from which it would appear that this document was seized from the premises of T. I. Industries. There is no seizure memo annexed to the relied upon document.

The statement of the invoices under the 11 Bills of Entry being part of RUD 4 was not seized from the petitioner's premises and both the partners being of the Customs Act, 1962 and both Sourav Khandelwal and Mr. Gupta stated in their respective statement that they had never seen such documents before. They also stated to the Investigating Officer that this document is sought to be planted or sought to be shown as part of the seized document when no such document was seized.

On the basis of this fabricated document relied unscrupulously, their declared valuation cannot be challenged.

The Seizure memo and panchanama do not disclose and prove that the statement of account alleged to be seized from their premises.

v.) Rejection of the transaction value under Rule 12 on the basis of this non-admissible document is *ex facie* wrong and further this document is not even a sufficient document for raising a conjecture on valuation of goods when the contemporaneous import of similar goods have been taken place in plenty throughout various ports in India at the rate of USD 400 per MT and below. In the Show Cause Notice, there is no reference to the contemporaneous import of

identical or similar goods which have been taken at the various ports. The Show Cause Notice has been issued on the basis of a statement of account which is not proved. On the contrary, it was disproved in course of investigation.

vi.) The invoices covered under Sr. Nos. 01 to 05 of RUD 4 which is treated at the transaction value under Rule 3(1) of the Customs Valuation Rules. The Bills of Entry under Sr. Nos. 6 to 11 are being disputed on the basis of the valuation dispute raised in respect of Sr. Nos. 1 to 5 which is ex facie not tenable inasmuch as on the basis of disputed Bill of Entry, a proposed value cannot be given and the value of the goods cannot be loaded as held by the Calcutta High Court in the case of 1993 (68) ELT 537 (Cal) Sushil Kumar Kayan Vs. Assistant Collector of Customs.

vii.) The demand of duty of Rs.14,15,342 in respect of first 5 Bills of Entry under Annexure I are not tenable and there is no short levy of duty and the charge of short levy is wholly misconceived and not tenable.

viii.) The valuation dispute of Rs.26,47,399/- raised in respect of 6 Bills of Entry under Annexure-A is misconceived and raised contrary to law and the transaction value cannot be rejected on the basis of the material put forward in the SCN.

ix.) They requested to cross-examine the Panchas and the seizing authority in the adjudication proceeding since the statement of account is only made on the basis of the valuation dispute and there is no material corroborating the under valuation of goods.

x.) There is no case in the Show Cause Notice (as it could not be) that they made any payment without any banking process or in any clandestine manner.

xi.) It is settled principle of law that the valuation dispute is to be made on the basis of contemporaneous import of higher value and without bringing contemporaneous import of higher value and transaction value cannot be rejected and therefore rejection of transaction value is bad in law.

xii.) In the SCN for disputing the valuation of 5 Bills of Entry under Sr. Nos. 1 to 5, Rule 3(1) is applied which deals with the transaction value of the goods. It is not a case that the parallel invoices were found at their place or were being proved. The statement of account which was not found at their place could not and cannot be treated as the transaction value and therefore application of Rule 3(1) is out and out flawed and not tenable. The rejection of the transaction value in respect of all the 5 Bills of Entry is erroneous inasmuch as there is no material on the basis of which the transaction value could be rejected under Rule 12.

The purported statement of account cannot be taken as valuation under Rule 3(1) and there is no basis for disputing the valuation in the Show Cause Notice.

xiii.) With respect to the imports in respect of 6 Bills of Entry where Rule 5 is applied and the value is adopted. The value of 5 Bills of Entry is being taken as the proposed value in the 6 Bills of Entry which is ex facie erroneous and as it is not permissible to raise a value on the basis of disputed valuation under Section 28 of the CA'62.

xiv.) The declared transaction value at the rate of USD 450 per MT was the correct value and this transaction value cannot be rejected and there is no contemporaneous import of the higher value. It is settled principle of law that the burden of proof is on the department and that burden has not been discharged. They relied upon the judgments of the Supreme Court in Century Metal Recycling Pvt. Ltd. Vs. Union of India 2019 (367) ELT 3 (SC), the details of which are at CSP 149-159.

xv.) The Show Cause Notice has been issued without jurisdiction inasmuch as the same could not be issued by the SCN issuing authority without challenging the assessment. The Kolkata Tribunal in Shahjahan Mazumdar 2023 (8) TMI 1055 relied upon the law laid down in the ITC case wherein it was held-

"10. We observe that the self-assessment of the Bills of Entry by the importer was not challenged by the department. The Hon'ble Supreme Court in the case of ITC Ltd. has held as -

when we consider the overall effect of the provisions prior to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act.

11. We observe that the ratio of the above said decision is squarely applicable in this case. We find that the impugned order passed demanding differential duty without challenging the original assessment of the Bills of Entry is not sustainable. Hence, the demand is not sustainable on this count also.

12. In view of the above decision, we set aside the impugned order and allow both the appeals filed by the appellant."

In the case of ITC (supra), it was held-

"43. As the order of self-assessment is nonetheless an assessment order passed under the Act, obviously it would be appealable by any person aggrieved thereby. The expression 'any person' is of wider amplitude. The revenue, as well as assessee, can also prefer an appeal aggrieved by an order of assessment. It is not only the order of re-assessment which is appealable but the provisions of Section 128 make appealable any decision or order under the Act including that of self-assessment. The order of self-assessment is an order of assessment

as per Section 2(2), as such, it is appealable in case any person is aggrieved by it. There is a specific provision made in Section 17 to pass a reasoned/speaking order in the situation in case on verification, self-assessment is not found to be satisfactory, an order of re-assessment has to be passed under Section 17(4). Section 128 has not provided for an appeal against a speaking order but against 'any order' which is of wide amplitude. The reasoning employed by the High Court is that since there is no lis, no speaking order is passed, as such an appeal would not lie, is not sustainable in law, is contrary to what has been held by this Court in Escorts (supra).

44. The provisions under Section 27 cannot be invoked in the absence of amendment or modification having been made in the Bill of Entry on the basis of which self-assessment has been made. In other words, the order of self-assessment is required to be followed unless modified before the claim for refund is entertained under Section 27. The refund proceedings are in the nature of execution for refunding amount. It is not assessment or re-assessment proceedings at all. Apart from that, there are other conditions which are to be satisfied for claiming exemption, as provided in the exemption notification. Existence of those exigencies is also to be proved which cannot be adjudicated within the scope of provisions as to refund. While processing a refund application, re-assessment is not permitted nor conditions of exemption can be adjudicated. Re-assessment is permitted only under Section 17(3), (4) and (5) of the amended provisions. Similar was the position prior to the amendment. It will virtually amount to an order of assessment or re-assessment in case the Assistant Commissioner or Deputy Commissioner of Customs while dealing with refund application is permitted to adjudicate upon the entire issue which cannot be done in the ken of the refund provisions under Section 27. In Hero Cycles Ltd. V. Union of India- 2009 (240) ELT 490 (BOM) though the High Court interfered to direct the entertainment of refund application of the duty paid under the mistake of law. However, it was observed that amendment to the original order of assessment is necessary as the relief for a refund of claim is not available as held by this Court in Priya Blue Industries Ltd. (supra)."

xvi.) The Jurisdictional Tribunal at Kolkata in the case of S. K. Timber & Co. Vs. Commissioner of Customs (Port) held that

"10. In view of the aforesaid legal position, neither the assessee can seek refund already sanctioned without challenging the earlier order by way of remedy provided in Section 128 of the Act. Having not challenged the previous order, the revenue cannot be allowed to re-open the issue. Without going into any other issue raised by both sides, I set aside the impugned order. Consequently, the demand of duty, interest and penalty imposed in the original order is quashed."

xvii.) The Hon'ble Supreme Court of India in the case of Collector of Customs, Bombay Vs. Nippon Bearings (P) Ltd. 1996 (82) ELT 3 (SC) held that -

"3. Learned counsel appearing for the appellant has contended that CEGAT was unjustified in making a wide observation to the following effect:

It is also equally settled that in the absence of evidence of contemporaneous import of like kind of goods at higher prices the invoice price should be the basis for the assessable value under Section 14.

It is contended by the learned counsel for the appellant that the law has not been settled to the effect that there is an obligation on the part of the department to produce documents by way of evidence to show contemporaneous import of like kind of goods at higher price for the purpose of establishing that the invoice was undervalued. It has been submitted that such statement as a legal proposition is likely to affect decisions in other cases. We have looked into the impugned judgment passed by the CEGAT. It appears to us that in the instant case, the CEGAT has considered the material before it and has accepted the invoice price to be the correct price and not a product of undervaluation. It is only in that context the aforesaid observation was made which according to us was only intended to mean that if a dispute is raised, despite evidences about the correct prices of invoices being filed by the importer, it would be necessary to produce the evidence of alleged higher price of the commodity imported by producing contemporaneous import documents justifying the assertion that goods imported were costlier than the price shown in the disputed invoice. It does not appear to us that any general proposition has been laid down by the CEGAT by making the aforesaid observation. As it appears to us that the decision of the CEGAT is correct and no interference in these appeals are called for, the same are dismissed."

xviii.) They submitted that the relied upon document is not a proved document and the document when Mr. Suman Khandelwal was confronted, he has denied the document and stated that he had never seen the document. The document is not being proved. This document is not being proved in the subject proceeding and therefore the Show Cause Notice is not tenable and the charges made in the Show Cause Notice were liable to be dropped.

xix.) They denied that any charge of penalty under Section 112(a) or under Section 114AA or as alleged in the SCN can be imposed on them.

xx.) The partners are the compendious mode of calling all partners together. Both firm and partners cannot be made parties to Show Cause Notice separately.

xxi.) Thus, they requested that the proceedings under the Show Cause Notice are liable to be dropped in view of above facts and circumstances.

xxii.) They want an opportunity of being heard.

xxiii.) They also requested for cross-examination or witness examination before final adjudication of the matter so that the principles of natural justice be

complied with.

19. The following opportunities of being heard have been given to the Noticees to defend against the allegations made in the Show Cause Notice dated 29.09.2023:

Sr. No.	PH Notice dated	Date & Time of Personal hearing	Remarks
01	21.11.2023	05.12.2023 @ 11:45 AM	- None appeared in the Personal hearing. However, the Noticee(s), vide letters dated 05.12.2023, requested for the extension of time for filing reply to the Show Cause Notice and adjournment of the Personal hearing. They requested to fix the hearing after reasonable period so that they can inspect the documents and do what is needful for the purpose of hearing.
02	05.12.2023	20.12.2023 @ 11:45 AM	- None appeared in the Personal hearing.
03	20.12.2023	24.01.2024 @ 11:30 AM	- Shri Sudhir Kumar Mehta, Advocate appeared in the personal hearing held on 24.01.2024 on behalf of the Noticees and stated that no evidence is forthcoming in the SCN about where the statement based on which unit value proposed to be enhanced was seized by the investigating agency. The Noticees denied the same at the time of the statement. The document relied upon has no mention in the seizure memo. - He further re-iterated their written reply dated 20.12.2023 and requested to drop the SCN proceedings. He further stated that partnership firm and partners cannot be prosecuted separately as they are one entity.
04	09.09.2024	11.09.2024 @ 12:30 PM	- Shri Sudhir Kumar Mehta, Advocate appeared in the personal hearing held on 24.01.2024 on behalf of the Noticees and re-iterated the points in their written reply to the SCN stressing upon the point that the purported document based on which the SCN has been issued doesn't find mention in the seizure memo.

19.1 The Noticee, vide letter dated 21.08.2024, submitted that they already had personal hearing and they submitted all the relevant documents in this regard. They further requested that no further personal hearing may be given in the subject case.

20. Discussion and Findings:

20.1. At the very outset I would like to examine whether the Principles of Natural Justice have been followed in the subject case.

It is on record that the subject Show Cause Notice was issued to the Noticees, M/s Suryansh Electrical Industries and Ors. as per the provisions of Section 153 of the Customs Act, 1962. In the instant case, the last date for the issuance of the Show Cause Notice was taken for consideration from the Bill of Entry No. 8384838 dated 09.10.2018 (the earliest date among the 11 Bills of Entry mentioned in the Show Cause Notice) and the last date for issuance of the Show Cause Notice under Section 28(4) of the Customs Act, 1962 comes on 08.10.2023. Thus, the Show Cause Notice dated 29.09.2023 issued to M/s Suryansh Electrical Industries and Ors. is proper and within the time limit as specified under Section 28(4) of the Act *ibid*.

Further, opportunity of being heard was granted to the Noticees to defend themselves from the charges & allegations leveled in the subject Show Cause Notice (SCN) as detailed at Para 19 *supra* which they have waived before the present adjudicating authority and requested in writing to consider the submissions already made. Thus, the Principles of Natural Justice were duly followed and complied with. In this regard, I rely upon the following judgments:

a) In the case of **Assistant Commissioner, Commercial Tax Department Vs M/s Shukla & Brothers [2010 (254) E.L.T 6 (S.C.)]**, the Hon'ble Supreme Court held that Principles of Natural Justice have twin ingredients, namely (i) person, likely to be adversely affected by action of authorities is to be given notice to show cause and (ii) opportunity of hearing. It has been further observed by the Hon'ble Court that violation of either of them, in the given facts and circumstances of a case, vitiates the order itself. Whereas I find that in the subject case, both the ingredients laid down by the Apex Court have been satisfied.

b) In the case of **Uma Nath Pandey vs State of U.P. [2009(237) E.L.T 241(S.C.)]**, the Hon'ble Supreme Court held that there are two rules of Principles of Natural Justice. First rule is 'nemo iudex in causa sua' meaning 'no man shall be a judge in his own cause' and second rule of natural justice is 'audi alteram partem', meaning no one should be condemned unheard. It is observed by the Hon'ble Court that notice is first limb of this principle, notice must be precise and unambiguous and it is essential that party is put on notice before passing adverse order against him. Second limb is time given should be adequate so as to enable party to make representation.

In the instant case, it is undisputed that not only the proper Show Cause Notice was issued to the Noticee but also opportunity of being heard was granted to them to defend themselves against the charges alleged in the subject SCN. Several opportunities of being heard were granted to the Noticees to defend themselves from the charges & allegations levelled in the subject Show Cause Notice (SCN) as detailed at Para 19 *supra* which they have waived before the present adjudicating authority and requested in writing to consider

the submissions already made. In these circumstances, it is established that Principles of Natural Justice have been comprehensively and demonstratively complied with.

20.2. I have carefully gone through the investigation report forwarded by the Directorate of Revenue Intelligence (DRI), Jaipur, evidence of record, Relied Upon Documents, submissions made by the Noticees and the case laws relied upon by the Noticees and found that the following main issues are required to be decided at the stage of adjudication:-

i) Whether the investigating agency, i.e., DRI, Jaipur has recovered the Self statement of account/Kachchi Parchiya/Computer generated, on which the case of undervaluation revolves around, from the premises of M/s T. I. Industries, Jaipur (a unit of M/s Topline Lamination Private Limited and a sister concern of M/s Topline Overseas & M/s Suryansh Electrical Industries) as the same has been contested by the Noticees in their submissions as well as in the Personal hearings stating that there is no mention of such document in the seizure memo and both the directors of M/s Suryansh Electrical Industries have denied knowledge of such records/documents in their statements recorded by the investigating agency.

ii) The investigation initiated by the Directorate of Revenue Intelligence (DRI), Jaipur focused on the suspected undervaluation of the goods, declared as “Silicon Electrical Steel Scraps” imported by M/s Suryansh Electrical Industries, vide 11 Bills of Entry as detailed at Table I & II supra and the Annexure A of the Show Cause Notice in order to evade the Customs duty. During the investigation being carried out by the DRI, Jaipur, a search and seizure were conducted at the premises of M/s T. I. Industries, Jaipur (a unit of M/s Topline Lamination Private Limited and a sister concern of M/s Topline Overseas & M/s Suryansh Electrical Industries) under Panchanama dated 21/22.07.2022. The main issue is whether it is legally appropriate to attribute allegations of undervaluation without proper and specific evidences.

iii) During search and seizure at the premises of M/s T. I. Industries, Jaipur (a unit of M/s Topline Lamination Private Limited and a sister concern of M/s Topline Overseas & M/s Suryansh Electrical Industries) under Panchanama dated 21/22.07.2022, incriminating documents/records were recovered by the investigating agency, i.e., DRI, Jaipur. Incriminating documents in the form of statement of account/Kachchi Parchiya/computer generated were recovered, which allegedly showed the actual value of the goods and the Tax Invoice submitted before the Customs reflects the lower value for lower Customs duty. It is also on record that both the directors of M/s Suryansh Electrical Industries did not admit the same in their statements recorded by the investigating agency. The main issue is whether the aforesaid document/record may be considered as a proper and sufficient

evidence in the eyes of the law.

iv) The assessable value of the goods imported by M/s Suryansh Electrical Industries vide the aforesaid 11 Bills of Entry was re-determined by the investigating agency on the basis of the Statement of account/Kachchi Parchiya/Computer generated. The issue to be decided at the stage of adjudication is whether such method for re-determination of the assessable value and the calculation of the differential duty payable against the aforesaid 11 Bills of Entry is legally justified without any supporting evidence(s) viz. Bank transaction, trace of any Hawala transaction and without proving the tax invoice submitted before the Customs as fake or incorrect.

v) Whether the re-determination of assessable value of the goods imported vide Bills of Entry mentioned at Table II and at Sr. Nos. 06-11 of the Annexure A of the Show Cause Notice dated 29.09.2023 by taking the highest value/rate (USD 915 per MT) among them to calculate the differential duty payable is proper and justifiable in terms of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

20.3. I find from the Panchanama dated 21-22.07.2022 that incriminating documents/records were recovered by the investigating agency during the seizure at the premises of M/s T. I. Industries, Jaipur (a unit of M/s Topline Lamination Private Limited and a sister concern of M/s Topline Overseas & M/s Suryansh Electrical Industries). The Statement of account/Kachchi Parchiya/computer generated, around which the case of undervaluation revolves, has been found at page 19 of the recovered documents duly mentioned in the Panchanama dated 21-22.07.2022. The seizure memo dated 22.07.2022 talks about the seizure of 9 CRGO Electric Steel Coil Rolls weighing 18510 Kg, which were intended to divert the duty free imported goods to domestic market without payment of applicable Customs duty and the same has also been mentioned in the aforesaid Panchanama. I also find from the statement of both the Directors of M/s Suryansh Electrical Industries that they have been shown the aforesaid document/record at the time of recording the statement and they put their signature on it for official records.

20.4. Determination of the assessable value must adhere to the price actually paid, as stipulated in Section 14 of the Customs Act, 1962. It is crucial to emphasize that the declared price can only be rejected with well-founded and substantial evidences or reasons. In case of rejecting the transaction value, it becomes the responsibility of the assessing officer to provide clear and compelling justifications for why the transaction value declared in the Bills of Entry is being rejected and also to establish that the price is not the sole consideration. The declared transaction value cannot be rejected solely on the basis of the Statement of account/Kachchi Parchiya/Computer generated without any supporting

evidences viz. Bank transaction, trace of any hawala transaction etc. The investigating agency also failed to recover the correct invoice (at enhanced value) and the invoices recovered by the investigating agency have the value as declared in the Bills of Entry. Moreover, the investigating agency failed to establish that the invoices submitted before the Customs are fake or incorrect. The investigating agency also failed to produce corroborative evidences for undervaluation and evidences for justification of value mentioned in the statement of account/kachchi parchiya on which the subject case of undervaluation is based. The lack of comprehensive evidence to substantiate the alleged undervaluation in the aforesaid 11 Bills of Entry raises questions on the allegations. I rely upon the findings of the Hon'ble Tribunal in the case of Samar Polytex Ltd. [2009(238) E.L.T. 621 (Tri- Delhi), wherein it has been emphasized on the importance of adhering to the declared transaction value unless there is substantial and justifiable evidence to the contrary.

20.5. In terms of Rule 3(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, the value of imported goods shall be the transaction value, subject to Rule 12, adjusted in accordance with provisions of Rule 10. There is no substantiated evidence provided by the investigating agency to indicate that the Noticee(s) has furnished additional considerations to their suppliers. When the declared invoice value, founded on contracts executed by the Noticee(s) with the foreign supplier(s), has been furnished to the Customs and the investigating agency fails to substantiate any breach of contract, financial discrepancies or payments exceeding the invoiced amount, the authority cannot merely discard this invoice value based on the Statement of account/Kachchi Parchiya/Computer generated, which even the directors of the noticee company has denied having any knowledge about, in their statements given to the investigating agency. Thus, the findings of the investigating agency to reject the declared invoice value lack a proper factual and evidentiary basis and cannot be considered legally tenable. The investigating agency must substantiate its allegations with specific and concrete evidence in this regard.

20.6. In the instant case, it is undisputed that the goods in question had been imported from an exporter and the invoice was raised by them. This position has neither been denied nor disputed by the investigating agency. It is well settled in law that the invoice should not be doubted unless the same is found as fake or not genuine. I rely upon the judgment of the Hon'ble Supreme Court in the case of Eicher Tractors Ltd. Vs. Commissioner of Customs, Mumbai [2000 (122) E.L.T. 321 (S.C.)], wherein it has been held that-

12. Rule 4(1) speaks of the transaction value. Utilization 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 Ruel 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.

20.7. It is imperative to mention here that the Noticee is not the sole importer of identical/similar goods. These goods were also being imported and cleared by various importers across the country. The Noticee(s), in their reply to the Show Cause Notice, submitted that the impugned goods were imported in plenty in India and the DGoV data of the same would show that the value of goods imported at various ports in India would be around USD 400 to USD 450 per MT. They further submitted that their declared value was in consonance with Section 14 of the Customs Act, 1962 and the valuation of the goods was accepted by the Assessing Officer.

As the impugned Bills of Entry are dated back to the year 2018, 2019 and 2020, no import data/NIDB data of the impugned goods for the relevant period can be recovered from the official website of the Directorate General of Valuation being the old records. However, from the contemporaneous import data of the same goods for the relevant period, having the same description and classification and from the various country of origin including the origin of US etc. retrieved from the ICES/EDI of Port Code INCCU1 (Kolkata Port), I find a number of consignments have been imported into India and cleared by various importers at the rate of USD 450 per MT, the declared value in the impugned Bills of Entry. A few of them may be illustrated here for ready reference:

Sr. No.	B/E No. & Date	Importer	Goods declared	CTH declared	Origin of the Goods	Quantity (MT)	Declared/assessed value of the goods
1	8279265 dated 01.10.2018	Jai Mata Stamping Works	Silicon Electrical Steel Scrap	72044900	BH	104.915	USD 450
2	8325987 dated 05.10.2018	Transcore Traders	-do-	-do-	US	17.833	USD 450
3	8416298 dated 11.10.2018	Mohit Industries	-do-	-do-	US	45.388	USD 450
4	8578442 dated 23.10.2018	Ansun Systems Consulting Pvt. Ltd.	-do-	-do-	US	84.514	USD 450
5	8794433 dated 10.11.2018	Jai Mata Stamping Works	-do-	-do-	US	19.945	USD 450*

6	8992798 dated 24.11.2018	Shree Shyam Ispat	-do-	-do-	NL	80.573	Euro 390** (USD 444.53)
7	9092654 dated 03.12.2018	Mohit Industries	-do-	-do-	US	29.022	USD 450
8	9140118 dated 06.12.2018	Sagarsons (India)	-do-	-do-	US	113.871	USD 450
9	9216533 dated 11.12.2018	Jai Mata Overseas	-do-	-do-	US	19.586	USD 450
10	9322915 dated 19.12.2018	Sagarsons (India)	-do-	-do-	PL	51.220	USD 450
11	9464737 dated 29.12.2018	Jai Mata Stamping Works	-do-	-do-	US	20.956	USD 450
12	9521463 dated 04.01.2019	Mohit Industries	-do-	-do-	US	109.755	USD 450
13	2000107 dated 09.02.2019	Jai Mata Stamping Works	-do-	-do-	US	69.247	USD 450
14	2040961 dated 13.02.2019	Transcore Traders	-do-	-do-	US	13.123	USD 450
15	2136953 dated 20.02.2019	Skynet Exim	-do-	-do-	US	20.158	USD 450
16	2790631 dated 10.04.2019	Mohit Industries	-do-	-do-	US	70.847	USD 450
17	2807780 dated 11.04.2019	Ansun Systems Consulting Pvt. Ltd	-do-	-do-	US	16.402	USD 450
18	3064757 dated 01.05.2019	Shree Shyam Ispat	-do-	-do-	US	17.092	USD 450
19	3132362 dated 07.05.2019	Transcore Traders	-do-	-do-	US	38.917	USD 450
20	3131007 dated 07.05.2019	Manish Sales Corporation	-do-	-do-	IT	110.88	USD 450
21	5913362 dated 02.12.2019	Mohit Industries	-do-	-do-	US	17.427	USD 450
22	6069495 dated	Ansun Systems	-do-	-do-	US	134.011	USD 450

	13.12.2019	Consulting Pvt. Ltd.					
23	6214501 dated 24.12.2019	Mohit Industries	-do-	-do-	US	82.454	USD 450
24	6314637 dated 01.01.2020	Mohit Industries	-do-	-do-	US	68.353	USD 450

Note: **The declared value of USD 400 per MT has been re-assessed at USD 450 per MT.*

*** The declared unit price of Euro 365.000062 per MT has been re-assessed at Euro 390 per MT, which would be equivalent to USD 444.53 after considering the exchange rate of the Euro and USD in Indian Rupees.*

The NIDB import data of the similar goods for the relevant period also contain such declared value and if it takes a view that NIDB import data were tainted with undervalued goods, it would be arbitrary and erroneous without specific examples or evidence. Action should have been taken if the department was having evidence of malpractice. It was only possible through proper investigation.

20.8. I rely upon the decisions of the Apex Court in the case of Motor Industries Co. Ltd. Vs. Commissioner of Customs [2009 (244) ELT 4 (SC)], wherein it has been held that-

“.....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 in corrector unacceptable, the department has to find out whether there are any imports of identical goods or similar goods at higher price at around the same time. Unless the evidence is gathered in this regard, the question of importing Section 14(1A) does not arise. In the absence of such evidence, invoice price has to be accepted as transaction value. Invoice is the evidence of value. Casting suspicion on the 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.”

20.9. I find from the Rule 5(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Rule 4(3) of the Rules *ibid* that - If more than one transaction value of similar goods is found, the lowest such value shall be used to determine the value of imported goods. The selective approach in justifying the re-determination of value on the basis of the value re-determined by the DRI, Jaipur for the Bills of Entry mentioned at Table II *supra* and at Sr. Nos. 6-11 of the Annexure A is not in line with the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and Section

14 of the Customs Act, 1962 and thus, legally not sustainable.

20.10. In view of above findings from the facts and circumstances of the case, I am of the view that the Show Cause Notice issued completely based on the investigation report furnished by the DRI, Jaipur is not legally sustainable as the investigating agency has completely failed to establish the charge of undervaluation through proper and substantial evidences including but not limited to the details of comparable imports during the relevant period, conclusive proof of any breach of contract, the submitted invoice before the Customs for assessment as fake or not genuine, flow back of money, excess payment to the overseas supplier(s) over and above the invoice value submitted before the Customs etc. Thus, the allegations of undervaluation of the goods made by the investigating agency by rejecting the declared value in terms of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962 appear to be inappropriate in view of above terms and discussions.

ORDER

21. In view of above discussion and findings, I drop the proceedings initiated in the Show Cause Notice No. KOL/CUS/ADC/Port/Gr.IV/66/2023 dated 29.09.2023, issued under Section 28(4) read with Section 124 of the Customs Act, 1962 to M/s Suryansh Electrical Industries w.r.t. the aforesaid 11 Bills of Entry and thus, the impugned Show Cause Notice is set aside & quashed in view of above terms.

22. This Order-in-Original is issued without prejudice to any other action that may be taken against the Noticee(s) of the subject Show Cause Notice or any other person(s) concerned with this case under the Customs Act, 1962 or any other law for the time being in force in India.

(ANNU DARIN)

ADDITIONAL COMMISSIONER

Appraising Group – 4 & 4A

Custom House, Kolkata -700001

To

1. M/s Suryansh Electrical Industries, F-256, Road No. 13, V.K.I Area, Jaipur (Rajasthan) - 302013.

2. Shri Saurabh Khandelwal, Partner M/s Suryansh Electrical Industries, F- 256, Road No. 13, V.K.I Area, Jaipur (Rajasthan) - 302013.

3. Shri Akash Gupta, Partner M/s Suryansh Electrical Industries, F-256, Road No. 13, V.K.I Area, Jaipur (Rajasthan) -302013.

Copy for information and n/a please to:-

1. The Commissioner of Customs, Kolkata Customs Zone, Kolkata, for review, along with a copy of the SCN No. KOL/CUS/ADC/Port/Gr.IV/66/2023 dated 29.09.2023 in the matter of M/s Suryansh Electrical Industries and Ors.
2. The Asst./Dy. Commissioner of Customs, Review Cell (AP & ACC), Custom House, Kolkata -700001.
3. The Asst. Commissioner of Customs (AP & ACC), Special Tax Recovery Cell (STRC), Custom House, Kolkata-700001.
4. The Asst./Dy. Commissioner of Customs, EDI Cell (Port), Custom House, Kolkata for uploading the said O-I-O on the official website of Kolkata Customs in terms of Section 153(1)(e) of the Customs Act, 1962.
5. Office Copy.
6. Guard File.