CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Customs Appeal No. 86144 of 2022

(Arising out of Order-in-Original No. MUM-CUSTM-APSC-APP-1969&1970/2021-22 dated 28.03.2022 passed by the Commissioner of Customs (Appeals), Mumbai-III)

M/s. Swastik Creation **Appellant**
Shop No.2, Ground Floor,
Aishabai Chambers,
66, Sofia Zubair Road,
Mumbai 400 008.

Vs.

Commissioner of Customs, Air Special Cargo **Respondent**
6th Floor, Awas Corporate Point,
Makwana Lane, Andheri-Kurla Road,
Behind S.M. Centre, Andheri (E),
Air Cargo Complex, Sahar, Mumbai 400 059.

AND

Customs Appeal No. 86151 of 2022

(Arising out of Order-in-Original No. MUM-CUSTM-APSC-APP-1969&1970/2021-22 dated 28.03.2022 passed by the Commissioner of Customs (Appeals), Mumbai-III)

Shri Manish Shah, Proprietor **Appellant**
M/s. Swastik Creation,
Shop No.2, Ground Floor,
Aishabai Chambers,
66, Sofia Zubair Road,
Mumbai 400 008.

Vs.

Commissioner of Customs, Air Special Cargo **Respondent**
6th Floor, Awas Corporate Point,
Makwana Lane, Andheri-Kurla Road,
Behind S.M. Centre, Andheri (E),
Air Cargo Complex, Sahar, Mumbai 400 059.

Appearance:

Shri Kuldeep Singh Nara, Advocate, for the Appellant
Shri S.K. Hatangadi, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 26.10.2022
Date of Decision: 18.11.2022

FINAL ORDER NO. A/86089-86090/2022

PER: SANJIV SRIVASTAVA

M/s Swastik Creation (IEC No. AAGPS5318H) (Appellant 1) and Shri Manish Shah (Appellant 2) have filed two separate appeals, which arising from the same impugned order are taken up for consideration together. These appeals are directed against Order in Appeal No MUM-CUSTM-APSC-APP-1969 & 1970/2021-22 dated 28.03.2022 of the Commissioner of Customs (Appeals), Mumbai Zone -III. By the impugned order, order in original No ADC/PK/390/2019-20 APSC dated 09.01.2020 of the Additional Commissioner PCCCC, APSC, Mumbai, has been modified as follows:

"14. In view of the above discussions, I modify the order-in-original under section 128A (3)(a) of the Customs Act, 1962. I reduce the quantum of redemption fine from Rs. 6,00,000/ to Rs 4,00,000(Rupees Four Lakh only). Further I anull the penalty of Rs. 6,100/- imposed on Shri Manish Shah, proprietor of M/s Swastik Creation. Rest of the Order-in-Original is upheld."

1.2 Additional Commissioner has held as follows:

"21. In view of the above findings I pass the following order:

ORDER

(i) I reject the declared CTH of goods under Bill of Entry No. 5520389 dated 01.11.2019 and order the goods to be classified under CTH 7104 9090.

(ii) I reject the value of the impugned goods imported vide B/E no. 5520389 dated 01.11.2019 declared at Rs. 60,049 under Rule 12 of Customs Valuation Rules 2007 and re-determine the same at Rs. 11,14,752/- under Rule 5 and Rule 9 of Customs Valuation Rules, 2007 as discussed in para 17 and 18 above.

(iii) I order for confiscation of goods under Bill of Entry No. 5520389 dt. 01.11.2019 having declared value of Rs. 60,049/- and re-determined value of Rs. 11,14,752/- under Section 111 (m) of the Customs Act, 1962. However, I give an option to the importer to redeem the goods on payment of redemption fine

of Rs. 6,00,000/- (Rs. Six Lakhs) in lieu of confiscation under Section 125 of the Customs Act, 1962 taking into consideration the outright mis-declaration in the case.

(iv) I impose penalty of Rs. 6,100 (Six thousands and one hundred) on M/s. Swastik Creation under section 112 (a) (ii) of the Customs Act, 1962

(v) I impose a penalty of Rs. 6,100 (Six thousands and one hundred) on Shri Manish Shah, proprietor of M/s. Swastik Creation u/s 112 (a) (ii) of Customs Act, 1962.

(vi) i impose a penalty of Rs. 5,00,000) (Rs. Five lakhs) on Shri Manish Shah, proprietor of M/s. Swastik Creation u/s 114AA of Customs Act, 1962.

(vii) I order that the goods are to be cleared only after compliance of the order above and after proper assessment and payment of applicable duty of Rs. 68422.4 as calculated in Table IV and ensuring compliances of all the other procedures as applicable in respect of such import goods,

22. This order is issued without prejudice to any other action that may be taken against the importer or any other person under the provisions of Customs Act, 1962 and rules framed thereunder or under any other law for the time being in force."

2.1 Appellant 1 filed bill of entry no. 5520389 dated 07.11.2019 covered by invoice no. GM18 dated 28.10.2019 for clearance of 103.55 kg. of 'glass stone' of various sizes under HS Code 71031029. They had filed the B/E under first check. The country of origin of goods was China. Total declared value of the goods was Rs. 60,049/-. The details of goods are given as under:

S No	Description	Quantity in KG	Price/ Kg(In USD)	Amount (In USD)
1	Glass Stone Round(size 3mm to 10mm)	24.82	8.00	198.56
2	Glass Stone Square(Size 4*4 to 5*5	9.3	8.00	74.40

	mm)			
3	Glass Stone pear (Size4*6 to 5*7 mm)	10.03	8.00	82.40
4	Glass Stone Marquise(Size 2.5*5,3*6 mm)	2.75	8.00	22.00
5	Glass Stone Oval(Size 5*7 mm)	4.31	8.00	34.48
6	Glass Stone Round(Size 1*3 mm)	17.47	8.00	139.76
7	Glass Stone Pear(Size 3*5,4*6mm)	6.29	8.00	50.32
8	Glass Stone Marquise (3*6mm)	3.86	8.00	30.88
9	Glass Stone Round(Size 2.5mm)	8.37	8.00	66.96
10	Glass Stone Pear Oval(Size5*7,6*8 mm)	16.35	8.00	130.80
	Total	103.55		830.56

2.2 During the course of examination of the consignment, RSS was forwarded to Gemological Institute of India (GII) for identification. After receiving the test report from GII, the panel member had given his report as under:

"I have seen the report of GII laboratory dtd. 11.11.2019. Declaration of the product as Glass Stones by importer is wrong for all the lots, based on the lab report. Lot No. 1 to 8 and 10 are cut & polished synthetic Cubic Zirconia. Declared price at 8$/Ct is very low. For Customs duty purpose, it should be taken as 40 USD/Ct. Lot no, lot No. 9 is identified as Synthetic rubies-Cut and Polished (round), Weighing 8.37kg. This lot for Customs duty purpose be taken as 125 USD/KG."

2.3 The goods under lot 1 to 8 and lot 10 of invoice are found to be Cubic Zirconia (cut and polished), classifiable under CTH 71049090 The goods under lot no. 9 of the invoice are found to be synthetic ruby classifiable under CTH 71049090.

2.4 The panel member suggested the value of Synthetic Cubic Zirconia @ USD 40 (Rs.2892) per Kilogram and the value of Synthetic Ruby @ USD 125 per kilogram.

2.5. As per contemporaneous NIDB database it was noticed that Cubic Zirconia from China was cleared in other ports as per details given below:

Bill of Entry No	Date.	Quantity in kg	Value (Rs/per KG)
4824552	09.09.2019	78.52	11065.6
5031821	24.09.2019	92.34	10974.4

5287862	12.10.2019	109.26	10966.8
5400739	22.10.2019	107.2	10917.3

No import data in respect of Synthetic Ruby was found in NIDB.

2.6 The importer vide its letter dated 23.11.2019 disputed the valuation and requested personal hearing and assessment order. Subsequently importer again submitted a letter dated 04.12.2019, wherein they accepted the value given by the Customs and they did not want Show Cause Notice or personal hearing in the case to avoid delay.

2.7 Adjudicating authority thereafter proceeded to adjudicate the matter as per the order referred in para 1.2 above, adopting the value as per NIDB data for the Cubic Zirconia and value as suggested by panel member for synthetic ruby.

2.8 By the impugned order Commissioner (Appeal) modified the order of adjudicating authority as indicated in para 1 above.

3.1 We have heard Shri Kuldeep Singh Nara, Advocate for the Appellant and Shri S K Hatangadi, Assistant Commissioner, Authorized Representative for the revenue.

3.2 Arguing for the appellants learned counsel submits that

- First check was sought by importer/Appellant Firm. The first check was sought to verify the nature, quantity and quality of the goods since 'Glass Stones' is a sweeping and general term. Thus, there is no mala fide claim made by the importer/appellant.
- The Ld. Adjudicating Authority and Ld. Commissioner Appeals did not appreciated the following facts and submissions;
    - The description declared is 'GLASS STONES', which is main class species of the specific description given by dept. as Zirconia and synthetic ruby. The ld. Lower authorities erred in holding misdeclaration of goods.
    - The 'SYNTHETIC CUBIC ZIRCONIA is held similar to 'CUBIC ZIRCONIA' and revalued as per 4 Bills of

Entry. The 'CUBIC ZIRCONIA' can be synthetic as well as Natural. Also, the definition of similar goods" provided under rule 2(f) of CVR, 2007 is completely overlooked for revaluing the goods under rule 5 of CVR, 2007.

- The adjudicating authority has simply mentioned the numbers or + bills of entry in the subject order.
- The Appellant declared the description correctly and the classification in 71031029 with similar rate of duty in 'SYNTHETIC RUBY' and even higher rate of duty in case of 'SYNTHETIC CUBIC ZIRCONIA'. Therefore, no mens rea to evade duty, hence no confiscation and penalty.
- No extra sale consideration was paid by the appellant. The adjudicating authority and appellate authority ignored these facts. Therefore, keeping in view of the legal position and the spirit of the law, the transaction values declared ought to be accepted without any loading and the baseless loading may please be set aside.
- Public Notice 30/2018 issued by commissioner of Customs Airport special cargo categorically says that report of the PANEL shall be accepted by department. The Panel member's value of Rs. 2892/- (USD 40/Kg) of Item 1 to 8 & 10 of bill of entry is evidence that the contemporary valuation is at the most is Rs. 2892/-(USD 40/Kg) per kg for Item 1 to 8 & 10 of bill of entry.
- The Panel member's value of Rs. 2892 per Kg for Item 1 to 8 & 10 of bill of entry should have been adopted
- In case of similar goods, lowest transaction value of similar goods must be adopted for determination of price of goods under import as envisaged under Rule 4(3) of CVR, 2007. The adjudicating authority failed to follow his established law by not producing the

unedited NIDB DATA for the previous three months period and relying on select 4 Bills of Entry.

- The confiscation made in the subject case is not correct nor proper nor legal and therefore bad in law for the following reasons:
  - The first check was sought/opted to verify the nature, quantity and of the goods since 'Glass Stones' is a sweeping and general term.
  - The adjudicating authority was in error in loading the value per kg of the impugned goods without producing comprehensive evidence of the contemporaneous imports for the subject goods.
  - the assessing authority has disregarded the Panel member's value of Rs. 20921-LSD 40/Kg) per unit of Item 1 to 8 & 10 of bill of entry without cy basis and made the enhancement of value on the basis of wrong
  - The Panel Member is a technical person in the subject semi precious stones who, after examining the impugned CUBIC ZIRCONILM in respect to Size, Colour, purity, quantity, cut etc. has valued the subject goods at USD 40/Kg i.e., Rs 2,892/- per Kg. In this respect, it is humbly submitted that the opinion of one expert cannot be disputed. The subject goods, therefore, are not be liable for confiscation s111 (m) of the Customs Act, 1962,
  - As the goods are not liable for confiscation redemption fine could not have been imposed. Further the fine of Rs. 4,00,000/- is without keeping in mind the margin of profit, as when allegedly duty attempted to be evaded is only Rs. 61,650/-.
- There are no circumstantial or corroborative evidence to indicate the involvement of the appellants in any way. Hence imposing penalty under section 112 (a) and 114AA is not warranted & not called for under the subject conditions of first check assessment. The adjudicating

authority and first appellate authority did not consider the legal and facts of the case properly.

- The importer is not at all involved in any forgery. Further penalty under 114AA is applicable only in case of exports so no penalty under 114AA can be imposed, as has been held in the following cases:-
  - Interglobe Aviation Ltd. [2022 (379) ELT 235 (T-Bang)]
  - Sri Krishna Sounds and Lightings [2019 (370) ELT 594 (T)]

3.3 Arguing for the revenue learned authorized representative while re-iterating the findings recorded in the impugned order submits:

- When the panel expert of GII examined the RSS it was confirmed that the goods are wrongly declared as Glass stones.. they are actually cut and polished Cubic Zirconia and Synthetic Ruby both classifiable under CTH 71049090.
- The Appellant in a letter dated 04.12.2019accepted and admitted the valuation done by the department and the applicable duty on the subject goods amounted to Rs 68,422/- as against the declared duty of Rs 6,772/-. Thus the differential duty was Rs 61,650/
- The value of the goods declared in the invoice and Bill of entry was originally only Rs 60,0497- and the applicable duty after re assessment was Rs 68, 422/- which was accepted and admitted by the Appellant and it is clearly evident from the above that the original value mentioned in the invoice and B/E was not true and correct
- Glass stones is very generic in nature and the Appellant is clearing in Precious cargo modes on from ab initio he was aware of the mis declaration and mis classification to evade customs duty.
- The value adopted by the department was done in a very procedural manner by firstly appreciating the report of the panel expert and also through the NIDB data for which similar goods contemporaneous imports of similar goods were there. It is a fact and on record that the same was

accepted and admitted by the Appellant. He further requested that he did not want a Show cause Notice nor a personal hearing and now he has come to the tribunal challenging the OIA.

- The goods definitely warranted Redemption Fine as it was confiscated for outright mis declaration as the re assessed value was Rs 11,14, 752/- under Rule 5 and Rule 9 of the CVR, 2007 which was admitted and accepted by the Appellant.
- The main point of whether section 114 AA can be invoked in a case of imports was the submissions of the learned counsel for the Appellant and he cited two case laws with his synopsis and compilation.
- The plain reading of the section 114AA, is very lucid simple and clear having no ambiguity whatsoever in the language of the Statute. Nowhere it is mentioned that this section shall apply only to exports and not to imports.
- In section 114AA nowhere the words import or export is mentioned nor the word forged is mentioned. The language of section 114AA is explicitly clear and unambiguous by the plain reading of it.
- Principal Bench order, CESTAT Delhi in case of S.D. Overseas 2022-TIOL-675-CESTAT-DEL is relied upon for this preposition. two Apex court case laws for the Interpretation of Statutes and shall distinguish the above orders of the tribunal cited by the Id counsel of the Appellant.
- The case of Sri Krishna Sounds and Lightings 2019(370)E.L.T. 594 (tri-Chennai) cited in M/s S.D. Overseas, but it was distinguished by the Principal Bench of CESTAT, Delhi and held that section 114AA is imposable
- The language of section 114AA is explicitly clear and unambiguous by the plain reading of it. Reliance is place on following decisions of Hon'ble Apex court on the Interpretation of Statutes.
    - Doypack Systems 9pvt) Ltd. [1988 (36) ELT 204 (SC)]

- Dilip Kumar and Company [2018 (361) ELT 577 (SC)]

- In view of the decision in case S.D. Overseas Tribunal upholding section 114AA The two case laws cited by the Ld counsel for the Appellants cannot advance the case of appellant. The two Apex court judgments on Interpretation of statutes, clearly held that the language of the legislation is more important than the discussions of any committee or noting of files or discussions but what is enacted by the parliament and mentioned in the provision and when there is no ambiguity then the plain reading and meaning shall be taken.
- Appeal needs to be dismissed.

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

4.2 In the impugned order Commissioner (Appeal) has observed as follows:

"12.1 I have carefully gone through the Order-in-Original as well as the grounds of appeal of the appellant. First I take up the issue of jurisdiction raised by the appellant. In its grounds of appeal the appellant has stated that in terms of section 28 read with 2(2)(c) of the Customs Act, 1962 and in terms of judgment given by the Hon'ble Supreme Court in the case of M/s Canon India Private Limited vs. Commissioner of Customs the order has been passed by Additional Commissioner of Customs without any authority of law and jurisdiction. In the said case, it was held that only assessing authority is the proper officer" and not any officer. In the impugned case, the subject order of assessment was not issued by the "proper officer" i.e. the assessing authority of appraising Group-PCCC but issued by the Additional Commissioner of Customs, Adjudication Cell, APSC. Therefore, the order issued is bad in law. Hence, the impugned order of assessment is null and void. On this ground alone, the impugned order ought to be set aside,

12.2 In this regard I find that the appellants have wrongly placed reliance upon the Canon India case decided by the Apex Court. The Canon India judgment is Applicable in case of DRI

and any other authority other than the officers of jurisdictional Commissionerate. In the present case the adjudication has been done by the Additional Commissioner, APSC having jurisdiction over PCCCC. Since it is a live case, the adjudication powers have been conferred upon him by section 122 of the Customs Act, 1962. It is not a case of duty demand by any outer agency such as DRI under section 28. It may be mentioned that section 122 of the statute, confers the power of Adjudication without a limit of value on the Jurisdictional Additional Commissioner. It is a simple case of misdeclaration of description and value, which has been adjudicated by the jurisdictional Addl Commissioner.

12.3 The logic of the appellants that as per Canon India case, the Additional Commissioner is not an assessing officer, therefore he cannot adjudicate the case, is wrong as per Customs Act itself. In this regard I place reliance upon provisions of section 5(2) of the Customs Act, 1962 which says, "An officer of customs may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of customs who is subordinate to him." Therefore by this analogy also the Additional Commissioner can exercise the powers of assessing officer who happens to be his subordinate. Therefore, in my view reliance has been wrongly placed by the appellant on the Canon India case law in the present matter. The Additional Commissioner having jurisdiction over PCCCC cannot be deprived of the jurisdiction and is well within his rights and duties to adjudicate the cases pertaining to PCCCC.

12.4 Secondly I observe that the appellant in his grounds of appeal has time and again raked up the issue of first check assessment and examination. By virtue of first check he claims that the misdeclaration of description and value should be absolved of. In this regard I would like to state that in general cases, where there is not much difference between the declaration of goods and the actual god argument is sustainable as its factually correct that APSC has first check mandatory for all consignments but it is also to be noted that in spite of first check being in practice, there is no dearth of such cases where importer or exporter has tried to misdeclare by counting on their luck or the reasons best known to them. I also feel that correct

declaration should be the priority of the importer/ exporter in the regime of self-assessment and faceless assessment. In the self assessment regime, the onus is upon the importer to correctly and accurately self- assess the bill of entry. As far as first check is concerned, the benefit of doubt has to be given on case to case basis on the overall circumstances of the case.

12.5 As per the new scheme of self- assessment, while the responsibility for assessment has shifted to the importer/exporter, the Customs officers would have the power to verify such assessments and make re-assessment, where warranted. Thus, Importers/exporters are required to declare the correct description, value, classification, notification number, if any, and themselves assess the Customs duty leviable, if any, on the imported / export goods. The Section 17 of the Customs Act, 1962 provides for self-assessment of duty on imported and export goods by the importer or exporter himself by filing a Bill of Entry or Shipping Bill, as the case may be, in the electronic form (Section 46 or 50). Self-Assessment is covered under Sections 17, and also supported by Sections 18, 46 and 50 of the Customs Act, 1962. Important changes are also made in Section 46 of the Customs Act, 1962 whereby it has been made mandatory for the importer to make correct entry for the imported goods by presenting a Bill of Entry electronically to the proper officer.

12.6 Self-assessment scheme has also enacted provisions to impose penal liability on erring importer/exporter, for the commission or omission of act willfully, whereas it would result in trade facilitation for the compliant importers/ exporters, however, non-compliant importers/ exporters could face penal actions on account of wrong self-assessment done with the intent to evade duty or to avoid compliances under Customs law/ Foreign Trade policy. However, bonafide errors are excluded from the ambit of invocation of penal provisions. Therefore, to avail of the benefit of the facility, trade now need to put in place robust systems and processes to ensure that accurate information is submitted to the Customs as the onus would lie largely on the importer. It is specialized trade and importers are supposed to be more careful in declaring the correct description

and value of these specialized items. Onus is definitely more tilted towards importers.

12.7 In the present case as evident from GII report, the importer had grossly misdeclared the description of goods as their identity is found totally different from that declared in the bill of entry. I find that Adjudicating authority has given detailed reasoning for rejection of such declared value and I find myself in agreement of such reasoning. Therefore, I hold that the declared assessable value (Transaction Value) of the imported goods is liable for rejection under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, Since, the declared value is liable for rejection and is accordingly rejected and therefore the Adjudicating Authority has rightly proceeded to re-determine the value as per Customs Valuation Rules, 2007. I observe that on the basis of test report, the panel had suggested the value of synthetic cubic zirconia at USD 40 per carat and the value of synthetic ruby at USD 125 per carat. Contemporaneous import data of Cubic Zirconia is available in NIDB database as discussed in table Il of the Order-in-Original. I find that in absence of data of identical import goods, the value of the goods under Lots No. 1 to 8 and lot no. 10 i.e. Cubic Zirconia cannot be re-determined under Rules 4 of CVR, 2007. However, data of similar goods for goods under lots no. 1 to 8 and lot no. 10 is available on NIDB database, I observe that contemporaneous import data of synthetic cubic zirconia shows that the similar goods are being imported at a minimum price of Rs. 10,917(USD 151) per kilograms at the same quantity level. Therefore, I hold that the Adjudicating Authority has rightly taken value of goods under Lots No. 1 to 8 and lot no. 10 i.e. Synthetic Cubic Zirconia at USD 151 per kilogram for assessment under Rule 5 of CVR, 2007.As for the goods under lot no. 9, in absence of identical/similar import data, the value of goods under lot no. 9 i.e. synthetic ruby cannot be re determined under rule 4 and 5 of CVR, 2007. Further the adjudicating authority has found that the data related to sale prices of identical or similar imported goods, on which they are sold in India and cost structure of the goods production, are also not available, therefore, the value of

imported goods cannot be redetermined under R 7 and 8 of CVR, 2007. Therefore the value of the goods under lot no. 9 needs to be re-determined under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007(as amended). Therefore the Adjudicating Authority has rightly held that the value of the goods under lot no. 9 i.e. synthetic -ruby(total weight 8.37 KG is to be taken at USD 125 (Rs. 9037.5) per kilogram for assessment under Rule 9 of CVR, 2007 on the basis of panel report dated 04.11.2019.

12.8 I note that appellants have argued that Adjudicating Authority has erred by accepting Panel Member's report for one lot and not accepting for another lot, whereas I note that Adjudicating authority has rightly and sequentially followed the valuation rules and the order is logical. I reject the contention of the appellant here.

12.9 Accordingly, as per re-determined rate and value of goods, the re-determined total value of the goods under impugned bill of entry is Rs. 11,14,752/- against the declared assessable value of Rs. 60049.49.

12.10 In view of the above, I hold that the importer has mis declared the description and value of the goods and attempted to import the said goods by grossly undervaluing them and thereby tried to evade the legitimate Customs Duty to the tune of Rs. 61,650.4 (differential duty). Accordingly, the Adjudicating Authority has rightly held that the impugned goods of declared assessable value of Rs. 60,049/- and re-determined value of Rs. 11,14,752/ are liable for confiscation under Section 111(m) of the Customs Act, 1962.

12.11 I also hold that in view of their above acts of omissions and commission which have rendered the impugned goods liable for confiscation under section111(m)of the Customs Act, 1962, the importer is liable for penalty under Section 112 (a) of the Customs Act, 1962 and as there is clearly evident gross mis declaration on the part of importer and specifically Shri Manish Shah who is the proprietor of M/s. Swastik creation and gross mis-declaration of this extent cannot be without active involvement of concerned responsible person who in this case is

Shri Manish Shah and therefore Shri Manish Shah is liable for penal action under section 112 (a) and/or 112 (b) and Section 114AA of the Customs Act, 1962 for violations and mis-declarations as referred above.

13. Now I will deal with the quantum of redemption fine and penalty. I observe that the re-determined assessable value as per Adjudicating Authority is Rs. 11,14,752. Thus the applicable duty on the subject goods comes to Rs. 68,422/ as against the self assessed duty of Rs. 6,772/. Thus the differential duty was calculated to Rs. 61,650/ under the bill of entry no. 5520389 dated 01.11.2019. I further observe that the Adjudicating Authority has imposed the redemption fine of Rs. 6,00,000. Considering the margin of profit in the present case, the redemption fine appears to be on higher side and the needs to be rationalised. Further I observe that penalty of Rs. 6,100/ under section 112(a)(ii) has been imposed both on the importer and its proprietor. Being a proprietary firm the penalty can be either imposed on the firm or its proprietor and the same cannot be imposed on both.

4.3 Original authority in the order in original observed as follows:

15. I have carefully gone through the facts of the case as well as the submissions made by the importer. ***I find that the importer vide their letter dated 04.12.2019 had submitted that they do not want a Show Cause Notice or Personal Hearing in the case.*** *Further the importer has also submitted that they accept the value given by the Customs for assessment. I also find that all the violations in the case have been duly explained to the importer. I allow their request for waiver of Show Cause Notice and proceed to decide the case on the basis of merits of the case and records available.*

16. I find that M/s Swastik Creation had filed B/E No. 5520389 dated 01.11.2019 for clearance of goods - declared as Glass Stone; that the goods were referred to panel for verification of description and value of the goods; that panel member Shri Sripalkumar N Desai had, suggested to send the goods to GII for test; that GlI in its test report dated 11.11.2019 has reported that the goods under lot 1 to 8 and lot 10 of invoice are

synthetic cubic zirconia and goods under lot no. 9 of invoice are synthetic ruby: I find that the CTH of the goods is declared in Bill of Entry as 71031029. As the goods under lot 1 to 8 and lot 10 of invoice are found to be Cubic Zirconia, I hold that the same are to be classified under appropriate CTH 7104 9090. Further goods under lot 9 of the invoice are found to be synthetic ruby, 1 hold that the same are to be classified under appropriate CTH 7104 9090.

17. As evident from the Gll report, the importer had mis-declared the description of goods as their identity is found totally different from that claimed. Therefore, I hold that the declared assessable value. (Transaction Value) of the imported goods is liable for rejection under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Since, the declared value is liable for rejection and is accordingly rejected and therefore I proceed to re-determine the value as per Customs Valuation Rules, 2007. I find that on the basis of test report the panel had suggested the value of synthetic cubic zirconia at USD 40 per carat and the value of synthetic ruby at USD 125 per carat. I find that contemporaneous import data of Cubic Zirconia is available in NIDB database as discussed in table II above. I find that in absence of data of identical import goods, the value of the goods under Lots No. 1 to 8 and lot no. 10 i.e. Cubic Zirconia cannot be re-determined under Rules 4 of CVR, 2007. However, data of similar goods for goods under lots no. 1 to 8 and lot no. 10 is available on NIDB database. I find that contemporaneous import data of synthetic cubic zirconia shows that the similar goods are being imported at a minimum price of Rs. 10,917 (USD 151) per kilogram as shown in the table 11 above at the same quantity level. Therefore, I hold that the value of goods under Lots No. 1 to 8 and lot no. 10 i.e. Synthetic Cubic Zirconia is to be taken at USD 151 per kilogram for assessment under Rule 5 of CVR, 2007. As for the identical or similar imported goods, on which they are sold in India and Cost Structure of the goods production, are also not available, therefore, the value of the imported goods cannot be re-determined under Rules 7 & 8 of CVR, 2007. Therefore, the value of the goods under lot no. 9 needs to be re determined

under Rule 9 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (as amended). In view of the same, 1 hold that the value of the goods under lot 9 i.e. synthetic ruby (total weight 8.37 kilogram) is to be taken at USD 125 (Rs. 9037.5)per kilogram for the assessment under Rule 9 of CVR, 2007 on the basis of the panel report dated 14.11.2019.

18. Accordingly, as per re-determined rate and value of goods, held in para 17 above, I re-determine the total value of the goods under impugned bill of entry at Rs. 11,14,752/-against the declared assessable value Rs. 60049.49/-. 19. !n view of the above, I hold that the importer has mis declared the description and value of the goods and attempted to import the said goods by grossly undervaluing them and thereby tried to evade the legitimate Customs Duty to the tune of Rs. 61,650.4 (differential duty).

19. Accordingly, I hold that the impugned goods of declared assessable value of Rs. 60,049/- and re-determined value of Rs. 11,14,752/ are liable for confiscation under Section 111(m) of the Customs Act, 1962.

20. I also hold that in view of their above acts of omissions and commission which have rendered the impugned goods liable for confiscation under section 111(m) of the Customs Act, 1962, the importer is liable for penalty under Section 112 (a) of the Customs Act, 1962 and as there is clearly evident gross mis declaration on the part of importer and specifically Shri Manish Shah who is the proprietor of M/s. Swastik creation and gross mis-declaration of this extent cannot be without active involvement of concerned responsible person who in this case is Shri Manish Shah and therefore Shri Manish Shah is liable for penal action under section 112 (a) and/or 112 (b) and Section 114AA of the Customs Act, 19962 for violations and mis-declarations as referred above.

4.4 Undisputedly both the authorities i.e. Additional Commissioner and Commissioner (Appeal) have referred to letter dated 04.12.2019 of the Appellant whereby the appellant have agreed to revised classification and value as determined by the Customs for the impugned goods which is based on the NIDB for

the goods mentioned in lot 1 to 8 and lot 10, and on the basis of the report given by the panel expert in respect of the goods mentioned at lot No 9. Tribunal has in the case of Hanuman Prasad and Sons [2021-TIOL-36-CESTAT-DEL] in similar circumstances has held as follows:

"30. The very fact that the importers had agreed for enhancement of the declared value in the letters submitted by them to the assessing authority, itself implies that the importers had not accepted the value declared by them in the Bills of Entry. The value declared in the Bills of Entry, therefore, automatically stood rejected. Further, once the importers had accepted the enhanced value, it was really not necessary for the assessing authority to undertake the exercise of determining the value of the declared goods under the provisions of rules 4 to 9 of the Valuation Rules. This is for the reason that it is only when the value of the imported goods cannot be determined under rule 3(1) for the reason that the declared value has been rejected under sub rule 2, that the value of the imported goods is required to be determined by proceeding sequentially through rule 4 to 9. As noticed above, the importers had accepted the enhanced value and there was, therefore, no necessity for the assessing officer to determine the value in the manner provided for in rules 4 to 9 of the Valuation Rules sequentially.

31. In this connection, it would be useful to refer to a decision of this Tribunal in Advanced Scan Support Technologies vs Commissioner of Customs, Jodhpur [2015 (326) ELT 185 (Tri.-Del)] , wherein the Tribunal, after making reference to the decisions of the Tribunal in Vikas Spinners vs Commissioner of Customs, Lucknow [2001 (128) ELT 143 (Tri.-Del)] and Guardian Plasticote Ltd. v. CC (Port), Kolkotta [2008 (223) ELT 605 (Tri.-Kol)] , held that as the Appellant therein had expressly given consent to the value proposed by the Revenue and stated that it did not want any show cause notice or personal hearing, it was not necessary for the Revenue to establish the valuation any further as the consented value became the declared transaction value requiring no further investigation or justification. Paragraph 5 of the decision is reproduced below:

"5. We have considered the contentions of both sides. We find that whatever may be the reasons, the appellant expressly gave its consent to the value proposed by Revenue and expressly stated that it did not want any Show Cause Notice or personal hearing. Even the duty was paid without protest. By consenting to enhancement of value and thereby voluntarily foregoing the need for a Show Cause Notice, the appellant made it unnecessary for Revenue to establish the valuation any further as the consented value in effect becomes the declared transaction value requiring no further investigation or justification. To allow the appellant to contest the consented value now is to put Revenue in an impossible situation as the goods are no longer available for inspection and Revenue rightly did not proceed to further collect and compile all the evidences/basis into a Show Cause Notice as doing so, in spite of the appellant having consented to the enhancement of value and requested for no Show Cause Notice, could/would have invited allegation of harassment and delay in clearance of goods. When Show Cause Notice is expressly foregone and the valuation is consented, the violation of principles of natural justice cannot be alleged. In the present case, while value can be challenged but such a challenge would be of no avail as with the goods not being available and valuation earlier having been consented, the onus will be on the appellant to establish that the valuation as per his consent suffered from fatal infirmity and such onus has not been discharged. Further, valuation of such goods requires their physical inspection and so reassessment of value in the absence of goods will not be possible. The case of Eicher Tractors v. Union of India (supra) cited by the appellant is not relevant here as in that case there was no evidence that the assessee had consented to enhancement of value." [emphasis supplied]

32. In Vikas Spinners, the Tribunal dealing with a similar situation, observed as under :

"7. In our view in the present appeal, the question of loading of the value of the goods cannot at all be legally agitated by the appellants. Admittedly, the price of the imported goods declared by them was US $ 0.40 per Kg. but the same was not accepted

and loaded to US $ 0.50 per Kg. This loading in the value was done in consultation with Shri Gautam Sinha, the Representative and Special Attorney of the appellants who even signed an affirmation accepting the loaded value of the goods on the back of the Bill of Entry dated 7-5-1999. After loading of the value, the appellants produced the special import licence and paid the duty on the goods accordingly of Rs. 4,22,008/- on 19-5-1990. Having once accepted the loaded value of the goods and paid duty accordingly thereon without any protest or objection they are legally estopped from taking somersault and to deny the correctness of the same. There is nothing on record to suggest that the loaded value was accepted by them only for the purpose of clearance of the goods and that they reserved their right to challenge the same subsequently. They settled their duty liability once for all and paid the duty amount on the loaded value of the goods. The ratio of the law laid down by the Apex Court in Sounds N. Images, (supra) is not at all attracted to the case of the appellants. The benefit of this ratio could be taken by them only if they had contested the loaded value at the time when it was done, but not now after having voluntarily accepted the correctness of loaded value of the goods as determined in the presence of their Representative/Special Attorney and paid the duty thereon accordingly." [emphasis supplied]

33. In Guardian Plasticote Ltd., the Tribunal after placing reliance on the decision of the Tribunal in Vikas Spinners, had also observed as follows :

"4. The learned Advocate also cites the decision of the Tribunal in the case of M/s. Vikas Spinners v. C.C., Lucknow - 2001 (128) E.L.T. 143 (Tri.-Del.) in support of his arguments. We find that the said decision clearly holds that enhanced value once settled and duty having been paid accordingly without protest, importer is estopped from challenging the same subsequently. It also holds that enhanced value uncontested and voluntarily accepted, and accordingly payment of duty made discharges the burden of the department to establish declared value to be incorrect. In view of the fact that the Appellants in this case have not established that they had lodged any protest and on the contrary their letter dated 21-4-1999 clearly points to acceptance of the

enhanced value by them, the cited decision advances the cause of the department rather than that of the Appellants contrary to the claim by the learned Counsel." [emphasis supplied]

34. In BNK Intrade (P) Ltd. vs Commissioner of Customs, Chennai [2002 (140) ELT 158 (Tri.-Del)] , the Tribunal observed as follows :

"2…….. It is also to be noted that the importer had also agreed for enhancement of the price based on contemporaneous prices available with the Department. We, therefore, find no merit in the contention raised in the appeal challenging the valuation and seeking the refund of the differential duty paid by the appellants on enhancement."

35. The following position emerges from the aforesaid decisions of the Tribunal:

- *(i) When an importer consents to the enhancement of value, it becomes unnecessary for the revenue to establish the valuation as the consented value, in effect, becomes the declared transaction value requiring no further investigation;*
- *(ii) When an importer accepts the loaded value of the goods without any protest or objection, the importer cannot be permitted to deny its correctness; and*
- *(iii) The burden of the Department to establish the declared value to be in correct is discharged if the enhanced value is voluntarily accepted.*

46. Learned counsel for the respondent has also emphasized that NIDB data cannot be the sole basis to reject the transaction value without any cogent reasons. As seen above, the importers had in writing accepted the transaction value and it is perhaps for this reason that they did not require any show cause notice to be issued to them or a personal hearing to be granted to them. The respondent is, therefore, not justified in asserting that the transaction value has been determined on the basis NIDB data. It was their acceptance of the value that formed the basis for determination of the value. The decisions relied upon by the respondent to support the contention sought to be raised are, therefore, of no benefit to them.

47. The general observations made the Commissioner (Appeals) in the impugned order that the value declared in the Bills of Entry were being enhanced uniformly by the Department for a considerable period of time was uncalled for. The Commissioner (Appeals) completely failed to advert to the crucial aspect that the importers had themselves accepted the enhanced value. The Commissioner (Appeals) in fact, proceeded to examine the matter as if the assessing officer had enhanced the declared value on the basis of other factors and not on the acceptance by the importers. This casual observation is not based on the factual position that emerges from the records of the case."

4.5 from the facts as narrated in the impugned order and the order of original authority we have no hesitation in holding that both the authorities have concluded that the appellant have grossly mis-declared the consignment imported by them from the China both in respect of value and description. It is not the case of misclassification of goods but purely the case of mis-declaration of the goods. Appellant have in the B/E and the import documents declared the goods to be Glass Stone stones whereas on examination and assessment the same have been found to be "Cubic Zirconia" and "synthetic Ruby". These findings are supported by the test reports of GLL and Panel Member Report to whom the matter was referred as per the Public Notice 30/2018 dated 19.12.2018. The defence put forth by the appellant do not inspire any confidence in this regard. It cannot be accepted that the appellants were importing the goods without knowing the true nature of the goods. Appellants submission that they have opted for first check, also cannot be said to be valid defence for the reason that first check is a facility to determine the exact nature of the goods, and not a facility to mis-declare. The invoice of the Chinese Supplier is not having any details to infuse any confidence. Hence in our view the appellant have deliberately misdeclared the goods.

4.6 The goods were sought to be cleared on the value as per the invoice. The Bill of Entry was filed declaring the value as per invoice. To the query raised by the bench, the counsel for the appellant affirmed that the value declared on the invoice was inclusive of freight and other charges. That being so, the Chinese

supplier has supplied the goods by declaring the value of goods which would not even be commensurate the air freight charges for transportation of this consignment from China to Mumbai. The value declared do not have any ingredients of the "transaction value" and should have been outright rejected, which have been done by the authorities below. The invoice has been issued without referring to any purchase order stipulating the terms of the supply including the terms of payment. Appellant have no answer to any of these questions which are so essential to determine the validity of the transaction and the declaration made on the Bill of entry. Lower authorities have rightly rejected the value declared and have determined the correct value by following the procedure as laid down by the Customs Valuation (determination of the Price of Imported Goods) Rules, 2007. On comparison of the declared value with the re-determined value it is observed that appellants have undervalued the goods to the extent of 1700% [= (11,14,752-60,049)/60,049 * 100].

4.7 For the reason of the misdeclaration made with intent to evade the payment of the duty goods have been rightly held to be liable for confiscation under section 111 (m) of the Customs Act, 1962. We also do not find any merits in the submission of the appellant that the redemption fine imposed for redeeming the goods is excessive. Commissioner (Appeal) has in her order already reduced the redemption fine from Rs 6,00,000/- to Rs 4,00,000/-.

4.8 Appellants have argued against the penalty imposed under Section 114 AA of the Customs Act, 1962. The crux of the argument advance is based on the decision rendered by this tribunal in the following cases:

Interglobe Aviation Ltd. [2022 (379) ELT 235 (T-Bang)]:

20. ……. The appellants also contended that the penalty under the Section 114AA can be imposed when the goods have been exported by forging the documents knowingly or intentionally. The present case does not relate to export at all and even for imports, all the documents presented for imports were genuine and not forged and thus penalty is not imposable under Section

114AA of the Customs Act, 1962. We find that there is merit in the argument of the appellants. As the case is not of export, we find that no penalty under Section 114AA of the Customs Act, 1962 is imposable. …".

Sri Krishna Sounds and Lightings [2019 (370) ELT 594 (T)]

"6. *The Ld. AR has submitted that the Commissioner (Appeals) has set aside the penalty under Section 114AA for the reason that penalty has been imposed by the adjudicating authority under Section 112(a) and therefore there is no necessity of further penalty under Section 114AA. I find that this submission is incorrect for the reason that in the impugned order in paras 7 and 8, the Commissioner (Appeals) has discussed in detail the provision with regard to Section 114AA. It is seen stated that as per the Taxation Laws (Amendment) Bill, 2005, introduced in Lok Sabha on 12-5-2005, the Standing Committee has examined the necessity for introducing a new Section 114AA. The said Section was proposed to be introduced consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. The said Section envisages enhanced penalty of five times of the value of the goods. The Commissioner (Appeals) has analyzed the object and the purpose of this Section and has held that in view of the rationale behind the introduction of Section 114AA of the Customs Act and the fact that penalty has already been imposed under Section 112(a), the appellate authority has found that the penalty under Section 114AA is excessive and requires to be set aside. Thus, the penalty under Section 114AA is not set aside merely for the reason that penalty under Section 112(a) is imposed. After considering the ingredients of Section 114AA and the rationale behind the introduction of Section 114AA, the Commissioner (Appeals) has set aside the penalty under Section 114AA.*

7. *On appreciating the evidence as well as the facts presented and after hearing the submissions made by both sides, I am of the view that the Commissioner (Appeals) has rightly set aside the penalty under Section 114AA since the present case involves importation of goods and is not a situation of paper transaction.*

I do not find any merit in the appeal filed by the department and the same is dismissed. The cross-objection filed by respondent also stands dismissed."

4.9 We do not find any merits in these submissions for the reason that the Delhi bench has in case of S D Overseas (Fianl Order No 50480/2022 dated 02.06.2022 after considering the above decisions has concluded as follows:

"28. As far as the penalty under Section 114AA is concerned, it is imposable 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. We find that the appellant has mis-declared the value of the imported goods which were only a fraction of a price the goods as per the manufacturer's price lists and, therefore, we find no reason to interfere with the penalty imposed under Section 114AA. The case laws relied upon by the learned Counsel for the appellant were all of on a different footing. Learned Counsel relied on Modern Overseas [2005 SCC OnLine CESTAT 1345] to assert that the onus is on the Department to prove that the invoice value does not represent the true commercial value in the international market. In this case, in our view the Revenue has discharged its liability by comparing the declared value with contemporaneous imports as well as with the manufacturer's price list for the same goods and the difference was very large. In some cases the declared price was less than half. In the case of Neha Intercontinental (P) Ltd. [2006 SCC OnLine CESTAT 1102], the factual finding of the Tribunal was that the rejection of the goods was only based on NIDB data which is not the case in the present dispute. The goods in question were food supplements and there were manufacturer's price list as well as imports by others of the same product. In the case of Eicher Tractors Ltd. [(2001) 1 SCC 315] there was a specific finding that the discount from the vendors price list was admissible which tilted the case in favour of the appellant. No such discount applied in this case. In the case of Bharat Marketing, the allegation of under valuation was only based on NIDB data. In the case of Polyglass Acrylic [(2016) 13 SCC 740], the Tribunal

recorded that the Department has not relied upon any contemporaneous import of similar or identical goods to justify the enhancement. None of these cases will come to the aid of the appellant because in the present case there were contemporaneous data as well as manufacturer's price list and the appellant was questioned about the difference and its submission is that it had imported inferior quality goods with short shelf life and hence the goods were sold cheap by the overseas supplier. Neither the bill of entry nor its supporting documents supported this assertion. Further, such goods could not have been imported with a short shelf life and of inferior quality without obtaining a no objection certificate in the FSSAI which has not been done in this case. The cases of Agarwal Industries [2005 SCC OnLine CESTAT 719], Oswal Fats & Oils [2007 SCC OnLine CESTAT 2905] and J.D. Orgochem Ltd. [(2008) 16 SCC 576] were relied upon by the appellant to assert that assessable value can be rejected if the buyer and seller are related parties. There is no such allegation in this case and, therefore, and these cases laws are not relevant to this appeal. The case of Kelvin Infotech [2014 SCC OnLine CESTAT 2328] was relied upon by the appellant to assert that there was no evidence of additional consideration for sale which is also irrelevant to this case as there is no such allegation."

4.10 Further from plain reading of the Section 114AA of the Customs Act, 1962, we do not find any such stipulation in the said Section that it applies only to the cases of export. On the issue of interpretation of statue we would rely on the observations made by the Hon'ble Apex Court in the case relied upon by the authorized representative wherein following has been observed:

Doypack Systems Pvt Ltd [1988 (36) ELT 201 (SC)]

"37. In our opinion Sections 3 and 4 of the Act interpreted either on their own language or along with Sections 7 and 8, are not ambiguous; so documents are not relevant. It was further urged, that even if to construe the language is not clear and there is need to resort to aids of construction, it is clear that such aids can be either internal or external. Internal aids of construction

are definitions, exceptions, explanations, fictions, deeming provisions, headings, marginal notes, preamble, provisos, punctuation's, saving clauses, non-obstante clauses etc. The nothings in the flies of various officials do not fall in the category of internal aids for consideration. Dictionaries, earlier acts, history of legislation, Parliamentary history, parliamentary proceedings, state of law as it existed when the Act was passed, the mischief sought to be suppressed and the remedy sought to be advanced by the Act are external aids. Documents which have been required to be produced do not, in our view fall within the category of external aids as indicated. Having considered the facts and circumstances of the case, we are unable to accept the prayer of the petitioner to direct disclosure and production of the documents sought for. In our opinion, the language used in Section 4 of the Act, is clear enough read with Section 3 of the Act. We have set out the provisions of the said two sections. Section 3 states that "on the appointed day every textile undertaking and the right, title and Interest of the Company in relation to every textile undertaking shall stand transferred to and shall vest in the Central Government". Section 4 says that "Section 3 shall be deemed to include all assets, leaseholds, powers, authorities, privileges and all properties, movable and immovable... pertaining to the textile undertakings and all other rights and interests in or arising out of such property".

38. Francis Bennion in "Statutory Interpretation 1984 Edition page 526 para 238 states that Hansard reports, and other reports of parliamentary proceedings on the Bill which became the Act in question, are of obvious relevance to its meaning. They are often of doubtful reliability however, (emphasis supplied). The documents in question which are sought for do not relate to the enacting history or any past enactment or the present enactment. The notings made in various Departments at various levels by the officers namely, the Under Secretary, Deputy Secretary, Joint Secretary, Secretary etc., whatever their view might be, is not the view of the Cabinet. The ultimate decision is taken by the Cabinet. So the notings cannot and are not guides as to what decision the Cabinet took. See for example the Task Force report referred to in National Textile Corporation

Ltd. v. Sitaram Mills Ltd. and Others (supra). This Task Force Report demonstrated the irrelevancy of the documents summoned to be produced. The Task Force Report manifested that certain mills were viable. But from the circumstance under which managements of these mills were taken over, it was clear that the Cabinet had taken the decision contrary to what was contained in the Task Force Report. But it appears that the decision of the Cabinet was different from the views of the Officers at various levels. As Dennion has stated at para 261 (page 560 of the same book) that In interpreting an enactment a two stage approach is necessary. Here there is no real doubt on an informed basis as we shall indicate hereafter about the real meaning of the enactment. There is therefore no question of resolving the doubt. The second stage does not arise here.

39. This Court in Sanjeev Coke Manufacturing Company v. Bharat Coking Coal Ltd. and Another (supra) held that no one may speak for the Parliament and Parliament is never before the Court. After the Parliament has said what it intends to say, only the Court may say what the Parliament meant to say. None else. See also in this connection Dr. (Mrs.) Sushma Sharma and Others v. State of Rajasthan and Others (supra). The objects and purposes of the person who initiated the Bill are not admissible as aids to construction since it is impossible to contend that such purposes in the minds of some officials of the Government before the matter is discussed by the Cabinet, would at all be relevant. See in this connection State of West Bengal v. Union of India (supra) where this Court reiterated that the Statement of Objects and Reasons, accompanying when introduced in the Parliament cannot be used to determine the true meaning and effect of the substantive provisions of the statute. Such statement cannot be used to show that the legislature did not intend to take over any particular property. See also The Central Bank of India v. Their Workmen (supra}.

40. It has to be reiterated, however that the objects and reasons of the Act should be taken into consideration in interpreting the provisions of the statute in case of doubt. This is the effect of the decision of this Court in K.P. Verghese v. The Income-tax Officer, Ernakulam and Another (982 1 S.C.R. 629), where this Court

reiterated that the speech made by the Mover of the Bill explaining the reason for the introduction of the Bill could certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation was enacted. It has been reiterated that interpretation of a statute being a exercise in the ascertainment of meaning, everything which is logically relevant should be admissible. See in this connection the observations of this Court in Chern Taong Shang & Another etc. v. Commander S.D. Baijat & Others (J.T. 19881 S.C. 202). The documents now sought for by the petitioner do not fall within this category. It is neither the object and scheme of the enactment nor the language used therein, that is sought for in the instant case. It is certainly relevant to know the mischief that was intended to be remedied. But in the documents in question which the petitioner is seeking no such correlation has been established. These are, therefore, not relevant. We reiterate that no officer of the Department can speak for the Parliament even after the Act has been passed. This Court has to interpret the Act on the basis of informed basis by applying external and internal aids to the language is ambiguous. In the words of Lord Scarman "We are to be governed not (by) Parliaments intentions but by Parliament's enactment's". See Cross "Statutory Interpretation" 2nd Edition page 22. Blackstone in his "Commentaries on the Laws of England" (Fascimile of 1 st edn. 1765, University of Chicago Press 1979) Vol. 1 at 59 suggests 'The fairest and most rational method to interpret the will of the legislator is by exploring his intention at the time when the law was made, by signs most natural and probable. And these signs are the words, the context, the subject matter, the effect and consequence, or the spirit and reason of the law." The documents whose production is sought are none of these. So in our opinion these are not relevant. We must further reiterate that the Members of Parliament had before them only the Bill. The notings of the various officials in the files were not before the Parliament. Therefore members could not be attributed with the knowledge of the notings in the files. Therefore, the notings made by the officials are not relevant. In this connection reliance may be

placed on the principles of interpretation as enunciated by the Federal Court in Auckland Jute Co. Ltd. v. Tulsi Chandra Goswami (1949 F.C.R. 201 at 244). It is trite saying that the interpreter of the statute must take note of the well known historical facts. In conventional language the interpreter must put himself in the arm chair of those who were passing the Act i.e. the Members of the Parliament. It is the collective will of the Parliament with which we are concerned. See in this connection the observations of the Federal Court in RM.AR.AR.R.M.AR. Umayhal Achi v. Lakshmi Achi and Others (l945 F.C.R. 1). We are therefore, of the opinion that the documents sought for are not relevant for the purpose for which they were sought for. In this case we are concerned only with the construction of the statute to determine whether the shares vested in the Government or not. As Lord Reid has said in Black-Clawson International Ltd. v. Papier-werke Waldhof Achaffenburg A G(1975 A.C. 591 at 613) "We often say that we are looking for the intention of Parliament, but that is not quite accurate. We are seeking the meaning of the words which Parliament used. We are seeking not what Parliament meant but the true meaning of what they said." - See in this connection the discussion in Cross Statutory Interpretation - 2nd Edition, pages 20-30.

56. The words in the statute must, prima facie, be given its ordinary meaning. Where the grammatical construction is clear and manifest and without doubt, that construction ought to prevail unless there are some strong and obvious reasons to the contrary. Nothing has been shown to warrant that literal construction should not be given effect to See Chandravarkar S.R. Rao v. Asha Lata (1986 4 S.C.C. 447 at page 476), approving 44 Halsbury's Laws of England, 4th Ed. paragraph 856 at page 552. Nokes v. Doncaster Amalgamated Colliery Limited (1940 Appeal Cases W14 at 1022). It must be emphasised that interpretation must be in consonance with the Directive Principles of State Policy in Article 39(b) and (c) of the Constitution.

57. It has to be reiterated that the object of interpretation of a statute is to discover the intention of the Parliament as expressed in the Act. The dominant purpose in construing a

statute is to ascertain the intention of the legislature as expressed in the statute, considering it as a whole and in its context. That intention, and therefore the meaning of the statute, is primarily to be sought in the words used-in the statute itself, which must, if they are plain and unambiguous, be applied as they stand. In the present case, the words used represent the real intention of the Parliament as we have found not only from the clear words used but also from the very purpose of the vesting of the shares. If we bear in mind the fact that these shares were acquired from out of the investments made by these two companies and furthermore that the assets of the company as such minus the shares were negative and further the Act in question was passed to give effect to the principles enunciated in clauses (b) and (c) of Article 39 of the Constitution, we are left with no doubt that the shares vested in the Central Government by operation of Sections 3 and 4 of the Act. See in this connection the observations of Halsbury's Laws of England, 4th Edition, Volume 44, paragraph 856 at page 522 and the case noted therein."

Dilip Kumar & Company [2018 (361) ELT 577 (SC)]

"15. *In doing so, the principles of interpretation have been evolved in common law. It has also been the practice for the appropriate legislative body to enact Interpretation Acts or General Clauses Act. In all the Acts and Regulations, made either by the Parliament or Legislature, the words and phrases as defined in the General Clauses Act and the principles of interpretation laid down in General Clauses Act are to be necessarily kept in view. If while interpreting a Statutory law, any doubt arises as to the meaning to be assigned to a word or a phrase or a clause used in an enactment and such word, phrase or clause is not specifically defined, it is legitimate and indeed mandatory to fall back on General Clauses Act. Notwithstanding this, we should remember that when there is repugnancy or conflict as to the subject or context between the General Clauses Act and a statutory provision which falls for interpretation, the Court must necessarily refer to the provisions of statute.*

16. *The purpose of interpretation is essentially to know the intention of the Legislature. Whether the Legislature intended to apply the law in a given case; whether the Legislature intended to exclude operation of law in a given case; whether Legislature intended to give discretion to enforcing authority or to adjudicating agency to apply the law, are essentially questions to which answers can be sought only by knowing the intention of the legislation. Apart from the general principles of interpretation of statutes, there are certain internal aids and external aids which are tools for interpreting the statutes.*

17. *The long title, the preamble, the heading, the marginal note, punctuation, illustrations, definitions or dictionary clause, a proviso to a section, explanation, examples, a schedule to the Act etc., are internal aids to construction. The external aids to construction are Parliamentary debates, history leading to the legislation, other statutes which have a bearing, dictionaries, thesaurus.*

18. *It is well accepted that a statute must be construed according to the intention of the Legislature and the Courts should act upon the true intention of the legislation while applying law and while interpreting law. If a statutory provision is open to more than one meaning, the Court has to choose the interpretation which represents the intention of the Legislature. In this connection, the following observations made by this Court in District Mining Officer v. Tata Iron and Steel Co., (2001) 7 SCC 358, may be noticed :*

"… A statute is an edict of the Legislature and in construing a statute, it is necessary, to seek the intention of its maker. A statute has to be construed according to the intent of them that make it and the duty of the Court is to act upon the true intention of the Legislature. If a statutory provision is open to more than one interpretation the Court has to choose that interpretation which represents the true intention of the Legislature. This task very often raises the difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought

or that the assembly of Legislatures consisting of persons of various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative Legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the Courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the Legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words the legislative intention, i.e., the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed...”

19. *The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the Courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the Legislature. In Kanai Lal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907, it was held that if the words used are capable of one construction only then it would not be open to the Courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.*

20. *In applying rule of plain meaning any hardship and inconvenience cannot be the basis to alter the meaning to the language employed by the legislation. This is especially so in fiscal statutes and penal statutes. Nevertheless, if the plain language results in absurdity, the Court is entitled to determine the meaning of the word in the context in which it is used keeping in view the legislative purpose [Assistant Commissioner, Gadag Sub-Division, Gadag v. Mathapathi Basavannewwa, 1995 (6) SCC 355]. Not only that, if the plain construction leads to anomaly and absurdity, the Court having regard to the hardship and consequences that flow from such a provision can even explain the true intention of the legislation. Having observed general principles applicable to statutory interpretation, it is now time to consider rules of interpretation with respect to taxation.*

21. *In construing penal statutes and taxation statutes, the Court has to apply strict rule of interpretation. The penal statute which tends to deprive a person of right to life and liberty has to be given strict interpretation or else many innocent might become victims of discretionary decision-making. Insofar as taxation statutes are concerned, Article 265 of the Constitution [265. Taxes not to be imposed save by authority of law - No tax shall be levied or collected except by authority of law.] prohibits the State from extracting tax from the citizens without authority of law. It is axiomatic that taxation statute has to be interpreted strictly because State cannot at their whims and fancies burden the citizens without authority of law. In other words, when competent Legislature mandates taxing certain persons/certain objects in certain circumstances, it cannot be expanded/interpreted to include those, which were not intended by the Legislature.*

22. *At the outset, we must clarify the position of 'plain meaning rule or clear and unambiguous rule' with respect of tax law. 'The plain meaning rule' suggests that when the language in the statute is plain and unambiguous, the Court has to read and understand the plain language as such, and there is no scope for any interpretation. This salutary maxim flows from the phrase "cum inverbis nulla ambiguitas est, non debet admitti voluntatis quaestio". Following such maxim, the Courts sometimes have*

made strict interpretation subordinate to the plain meaning rule [Mangalore Chemicals case (Infra para 37).], though strict interpretation is used in the precise sense. To say that strict interpretation involves plain reading of the statute and to say that one has to utilize strict interpretation in the event of ambiguity is self-contradictory."

By applying the above principles are of the view that if the interpretation made by the Bangalore and Chennai bench was to be adopted it would be not without inserting the word "export" in the Section 114AA. Courts/ tribunal do not have any authority to legislate on the statue as have been enacted by the legislature. Accordingly we do not find any merits in the submissions made by the appellant relying on these decisions.

4.11 Hon'ble Supreme Court has in case of Balkrishna Chhaganlal Soni [1983 (13) ELT 1527 (SC)]while considering the cases of white collared criminals have observed as followed:

"19. *The penal strategy must be formed by social circumstances, individual factors and the character of the crime. India has been facing an economic crisis and gold smuggling has had a disastrous impact on the State's efforts to stabilize the country's economy. Smugglers, hoarders, adulterators and others of their ilk have been busy in their under-world because the legal hardware has not been able to halt the invisible economic aggressor inside. The ineffectiveness of prosecutions in arresting the wave of white-collar crime must disturb the judges' conscience. While we agree that penal treatment should be tailored to the individual, in the extreme category of professional economic offenders, incarceration is peculiarly potent. When all is said and done, the offences for which the appellant has been convicted are typical of respectable racketeers who, tempted by the heavy pay-off face the perils of the law and hope that they could smuggle on a large scale and even if struck by the court they could get away with a light blow.*

20. *Mr. Justice Abhyankar observed in a Bombay case (State v. Drupd AIR 1965 Bom. 6 Para 11 under Section 5, Imports and Exports Control Act :*

"A serious view must therefore be taken of such offences which show a distressingly growing tendency. The argument that the accused comes from a respectable or high family rather emphasises the seriousness of the malady. If members belonging to high status in life should show scant regard for the laws of this country which are for public good, for protecting our foreign trade or exchange position of currency difficulties, the consequential punishment for the violation of such laws must be equally deterrent. The offences against export and import restrictions and customs are of the species of `economic' crimes which must be curbed effectively."

4.12 In view of the above observations of the Hon'ble Apex Court we do not find any reasons to interfere with the fine and penalties imposed on the appellants.

5.1 Appeals are dismissed.

(Order pronounced in the open court on 18.11.2022)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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