

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

**PRINCIPAL BENCH-COURT NO. 4**

**CUSTOMS APPEAL NO. 57 OF 2009  
WITH  
CUSTOMS MISC. APPLICATION NO. 50389 OF 2025**

[Arising out of Order in Original No. 60/2008 dated 06.11.2008 passed by the  
Commissioner of Customs, ICD, Tughlakabad, New Delhi]

**KDS EXPORTS** .....**APPELLANT**  
I-145, Laxmi Nagar Extn. Delhi

Vs.

**COMMISSIONER OF CUSTOMS (ICD)** .....**RESPONDENT**  
**NEW DELHI**  
ICD, Tughlakabad, New Delhi

**WITH**

**CUSTOMS APPEAL NO. 58 OF 2009  
WITH  
CUSTOMS MISC. APPLICATION NO. 50390 OF 2025**

[Arising out of Order in Original No. 60/2008 dated 06.11.2008 passed by the  
Commissioner of Customs, ICD, Tughlakabad, New Delhi]

**SH. HIMANSHU GUPTA** .....**APPELLANT**  
I-145, Laxmi Nagar Extn. Delhi

Vs.

**COMMISSIONER OF CUSTOMS (ICD)** .....**RESPONDENT**  
**NEW DELHI**  
ICD, Tughlakabad, New Delhi

**WITH**

**CUSTOMS APPEAL NO. 59 OF 2009  
WITH  
CUSTOMS MISC. APPLICATION NO. 50391 OF 2025**

[Arising out of Order in Original No. 60/2008 dated 06.11.2008 passed by the  
Commissioner of Customs, ICD, Tughlakabad, New Delhi]

**SH. SUDHANSHU GUPTA** .....**APPELLANT**  
I-145, Laxmi Nagar Extn. Delhi

Vs.

**COMMISSIONER OF CUSTOMS (ICD)** .....**RESPONDENT**  
**NEW DELHI**  
ICD, Tughlakabad, New Delhi

**WITH**  
**CUSTOMS APPEAL NO.60 OF 2009**  
**WITH**  
**CUSTOMS MISC. APPLICATION NO. 50392 OF 2025**

[Arising out of Order in Original No. 60/2008 dated 06.11.2008 passed by the Commissioner of Customs, ICD, Tughlakabad, New Delhi]

**SH. DEEPAK AGGARWAL** **.....APPELLANT**

F-58, West Jawahar Park, Street,  
No. 7, Laxmi Nagar, Delhi

Vs.

**COMMISSIONER OF CUSTOMS (ICD)** **.....RESPONDENT**  
**NEW DELHI**

ICD, Tughlakabad, New Delhi

**WITH**  
**CUSTOMS APPEAL NO. 61 OF 2009**  
**WITH**  
**CUSTOMS MISC. APPLICATION NO. 50393 OF 2025**

[Arising out of Order in Original No. 60/2008 dated 06.11.2008 passed by the Commissioner of Customs, ICD, Tughlakabad, New Delhi]

**GOKUL OVERSEAS** **.....APPELLANT**

I-145, Laxmi Nagar Extn. Delhi

Vs.

**COMMISSIONER OF CUSTOMS (ICD)** **.....RESPONDENT**  
**NEW DELHI**

ICD, Tughlakabad, New Delhi

**WITH**  
**CUSTOMS APPEAL NO. 62 OF 2009**  
**WITH**  
**CUSTOMS MISC. APPLICATION NO. 50394 OF 2025**

[Arising out of Order in Original No. 60/2008 dated 06.11.2008 passed by the Commissioner of Customs, ICD, Tughlakabad, New Delhi]

**M/S KRISH ENTERPRISES** **.....APPELLANT**

F-58, West Jawahar Park, Street,  
No. 7, Laxmi Nagar, Delhi

Vs.

**COMMISSIONER OF CUSTOMS (ICD)** **.....RESPONDENT**  
**NEW DELHI**

ICD, Tughlakabad, New Delhi

**AND**  
**CUSTOMS APPEAL NO. 63 OF 2009**  
**WITH**  
**CUSTOMS MISC. APPLICATION NO. 50395 OF 2025**

[Arising out of Order in Original No. 60/2008 dated 06.11.2008 passed by the Commissioner of Customs, ICD, Tughlakabad, New Delhi]

**M/S K.K. ENTERPRISES** **.....APPELLANT**

F-58, West Jawahar Park, Street,  
No. 7, Laxmi Nagar, Delhi

Vs.

**COMMISSIONER OF CUSTOMS (ICD)** **.....RESPONDENT**  
**NEW DELHI**

ICD, Tughlakabad, New Delhi

**Appearance:**

Dr. Seema Jain and Shri Vimlesh Kumar, Advocates for the Appellant  
Shri Rakesh Kumar, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)**  
**HON'BLE MR. P.V. SUBBA RAO, MEMBER ( TECHNICAL )**

**FINAL ORDER NO'S. 51666-51672 /2025**

**DATE OF HEARING : 22/09/2025**  
**DATE OF DECISION : 03/11/2025**

**P.V. SUBBA RAO**

1. These seven appeals have been filed by four importers and three individuals- M/s KDS Exports(C/57/2009), Shri Himanshu Gupta(C/58/2009), Shri Deepak Aggarwal(C/60/2009), Shri Sudhanshu Gupta(C/59/2009), Shri Krish Enterprises (C/62/2009) and Shri K.K. Enterprises (C/63/2009) and Shri Gokul Overseas (C/61/2009). The importer-appellants assailed the differential duty demanded as well as redemption fine and the penalties imposed on them. The miscellaneous applications have been filed seeking to incorporate additional grounds in the appeals. The individual- appellants assailed the penalties imposed on them. The details are as follows:

Name of the appellant	Designation	Appeal No.	Demand of Diff. Duty confirmed	Penalty Imposed	Redemption fine imposed
KDS	Importer	C/57/2009	1,54,26,697/-	1,54,26,697/-	1,00,00,000/-
Himanshu Gupta	Prop. Gokul Overseas	C/58/2009	-	10,00,000/-	
Sudhanshu Gupta	Auth. Sign. KDS Exports	C/59/2009	-	10,00,000/-	
Deepak Aggarwal	Prop. Of KK Ent. & Auth Sig of Krish Ent.	C/60/2009	-	10,00,000/-	
Gokul Overseas	Importer	C/61/2009	29,38,207/-	29,38,207/-	20,00,000/-
Krish Overseas	Importer	C/62/2009	35,86,514/-	35,86,514/-	25,00,000
K.K. Enterprises	Importer	C/63/2009	56,94,432/-	56,94,432/-	40,00,000/-

2. In all these appeals Order-in-Original dated 05.09.2007<sup>1</sup> passed by the Commissioner of Customs (Adjudication), New Delhi deciding the proposals in the show cause notice dated 04.05.2007 issued by the Additional Director General<sup>2</sup>, Directorate of Revenue Intelligence<sup>3</sup> has been assailed. The importers imported artificial flowers from China during the period 2002-2006 from China and filed Bills of Entry declaring the invoice values in them. During the relevant period section 14 of the Customs Act, 1962<sup>4</sup> provided that the value of the imported goods shall be the value at such goods are ordinarily sold in the course of international trade for delivery at the time and place of importation. Later, with effect from 10.10.2007 Section 14 of the Act was substituted and the valuation was shifted to the transaction value.

3. During the relevant period Bills of Entry had to be assessed by the proper officer. Later, with effect from 08.04.2011, section 17 was amended and the concept of self-assessment by the

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**1 Impugned order**  
**2 ADG**  
**3 DRI**  
**4 Act**

importer was introduced. Therefore, during the relevant period all Bills of Entry were assessed by the proper officers. The proper officer had not accepted the invoice values and instead assessed Bills of Entry at a much higher value of US\$ 1.46 per kg. Later, DRI initiated an investigation into the appellant and came to the conclusion that the appellant had undervalued the goods and that the real values were found in the CPU of the computer seized from the appellant. Two CPUs were seized by DRI on 28.09.2006 under a panchnama. These were, however, not examined or sealed at the time of seizure. Later, on 15.11.2006 CPU at Sr. No. 15 of the Panchnama was first examined and nothing incriminating was found. Thereafter, CPU at Sr. No. 14 of the Panchnama was examined and two pages of excel files were printed from the folder named "my received files" from drive C from the CPU and then it was sealed. During the period from 28.09.2006 to 15.11.2006 both CPUs were lying without seal in the office of DRI. On 15.11.2006 DRI sealed both the CPUs. Thereafter, on 4.1.2006, DRI broke the seals of CPU at Sr. No. 14 and forensically examined the CPU using specialized software "Encase Forensic" and took out 51 pages of prints. Based on the retrieved documents, the allegation in the show cause notice<sup>5</sup> is that the appellants had actually purchased the imported goods at much higher prices ranging from US\$ 1.45 per kg to US\$ 6.1 per kg but declared lower values. The details of the different values are as follows:

Invoice No.	Issued by	Issued to	Retrieved value per kg	Invoice Value per kg	Value in BE per kg
6-10 dt. 1.7.06	Guangdong Hangyang	Krish Ent	29954.7 \$ @ 6.1\$/kg	7052.98 \$ @ 1.44\$/kg	1.46 \$/kg
6-11 dt 11.07.06	Guangdong Hangyang	K.K. Ent.	32377.77\$ @5.91\$/kg	7663.6\$ @ 1,39\$/kg	1.46 \$/kg

26E095F dt 23.6.06	Everglory	KDS	6555.45\$@ 1.45\$/kg	6555.45\$@ 1.45\$/kg	1.46\$/kg
AO-jun 06/006 dt 28.6.06	Mikura Impex	KDS	26077 \$ @ 5.18 \$/kg	6945.54\$ @ 1.38\$/kg	1.46\$/kg
AO-Jun 06/005 dt 28.6.06	Mikura Impex	KK	37750\$ @4.08 \$/kg	1.46\$/kg	

4. Demand of duty as per above values were proposed in the SCN which was confirmed in the impugned order as follows:

**Valuation adopted by Department in SCN**

1) Consignments imported through Invoices No 6-10 and 6-11 were valued as per the retrieved values. Value of all other consignments from Guangdong Hangyang were re-determined @ 5.9 \$/kg based on the value of invoice no. 6-11 dated 11.07.2006.

2) Value of all three consignments of Everglory were re-determined @5.7 \$/kg as per invoice no. 26E119F dated 12.08.2006 (consignment not cleared). Retrieved Value of Invoice No 26E095F dated 23.6.06 was not considered.

3) Both Consignments of Mikura Impex were valued as per values retrieved from the CPU.

4) Values of all other consignments from other suppliers were re-determined @ 4.08 \$/kg as per invoice no. AO-06/005 dated 28.06.2006 of Mikura Impex (lowest of the retrieved values).

**Submission on behalf of the appellants**

5. Learned counsel for the appellants submitted as follows:

- (i) The printouts taken from the seized CPUs in the office of the DRI have no evidentiary value because they were not sealed at the time of seizure and were lying in the office of DRI from 28.09.2006 to 15.11.2006. On 28.09.2006 and 15.11.2006, DRI examined both CPUs and took printouts of two pages of excel file from the

CPU listed at Sr. No. 14 of the panchnama. It is only after taking this printout did DRI seal both the CPUs. On 4.12.2006, DRI re-opened its own seal on the CPU at Sr. No. 14 and forensically examined the CPU and took out 51 pages of printout.

- (ii) These documents cannot be relied upon-firstly, for the reason that the CPUs were not sealed and were lying with the DRI for 47 days unsealed when the CPUs were not under the control of the appellant. Secondly, the printouts are not admissible as per Section 138C(2) of the Act as no certificate under that section has been issued by the officers.
- (iii) During the period of dispute, assessment was to be done only by the proper officer who had NOT accepted the invoice values submitted by the appellant and valued the goods at the values of contemporaneous imports. Therefore, the second enhancement of values by DRI of the same goods cannot be sustained. The invoice values, the values at which they were assessed values and the re-determined values in the SCN are as follows:

<b>Name of the Importer</b>	<b>Invoice value at diff rates Total in Rs.</b>	<b>Assessed value @ 1.46 USD/Kg TOTAL in Rs.</b>	<b>Redetermined value</b>
KDS Exports	1,64,40,33/-	1,82,89,937/-	5,37,61,817/-
Gokul Overseas	30,96,810/-	32,90,708/-	1,12,05,261/-
K.K. Enterprises	53,79,601/-	58,94,113/-	2,13,48,313/-
Krish Enterprises	34,34,575/-	41,67,453/-	1,63,56,001/-

(iv) The Electronic Data Interchange<sup>6</sup> data of artificial flowers imported into India from China for the period 2004-05 shows that they were assessed at values ranging from US\$ 0.5 per kg to US\$ 4.4 per kg, whereas the Bills of Entry of the appellants were assessed at US\$ 4.1 per kg at the time of filing the Bills of Entry.

(v) The second enhancement of value after initial enhancement by the proper officer and its acceptance by the importer amounts to review the order of the proper officer himself which is not sustainable. Reliance is placed on the following:

- C. Cus (Imports) Mumbai vs. Lord Shiva Overseas 2005 (181) ELT 213.
- Htashi Fine Kraft Indus Pvt Ltd vs. CCus, West Bengal 2002(148) ELT 364
- Junaid Kudia vs. CCus, Mumbai Import-II (2024) 16 Centax 503 Deptt appeal dismissed by SC (2024)16 Centax 504(SC).

(vi) There is no evidence that all imports were undervalued even if the retrieved invoices were considered. The valuations in the retrieved invoices were extrapolated to all other imports as follows:

Invoice No.	Issued by	Issued to	Value as per retrieved data	Invoice value/Kg	Value at which cleared
6-11 dated 11.7.06	Guangdong Hangyang	K.K. Ent.	32377.77 \$ @ 5.91\$/kg	7663.6\$ @ 1,39 \$/Kg	1.46 \$/kg
6-10 dated 2.7.06	Guangdong Hangyang	Krish Ent	29954.7 \$ @6.1\$/kg	7052.98\$ @ 1,.44	1.46\$/kg



(vii) The goods had already been cleared and they were not available for confiscation at the time of issue of SCN and confiscation of the goods under section 111(m) of the Act or the imposition of redemption under section 125 of the Act cannot be sustained.

(viii) Some goods were seized on 28.09.2006 and were provisionally released on 20.02.2007. However, the SCN was issued on 04.05.2007. As per section 110(2) of the Act, SCN to confiscate of the seized goods had to be issued within six months of the seizure or else the seizure would automatically stand vacated. In this case, since the SCN was not issued within six months from the date of the seizure, the goods automatically stand released.

(ix) Penalties cannot be imposed on both the proprietorship firms and the proprietors as has been done in the impugned order as follows:

Name of the importer	Prop	Authorised Rep	Penalty on firm	Penalty on
KDS Exports	Smt. Kusum Gupta	Sudhanshu Gupta	1,54,26,697	10,00,000/- on Sudhanshu Gupta
Gokul Overseas	Himanshu Gupta		29,38,207/-	10,00,000/- on Himanshu Gupta
K.K. Enterprises	Deepak Agarwal		56,94,432/-	10,00,000/- on
Krish Enterprises	Smt Deepti Agarwal	Deepak Agarwal	35,86,514/-	Deepak Agarwal

(x) During investigation, DRI asked the appellants to obtain from their suppliers invoices which were submitted by those suppliers before the Chinese customs. The appellants obtained those invoices which also showed much lower values than the values which are reckoned by the department. The details are as follows:

Invoice No.	Issued by	Issued to	Weight in Kgs	Invoice value USD	Value declared at Chinese Customs
5-7 dt 9.8.05	Guangduang	Krish Ent.	6604	8651	30829.98\$-@ 2.88. per Kg
5-10 dt 9.8.05	Guangduang	KK Ent.	6157	8619.8	
6-08F dt 22.5.06	Guangduang	Krish Ent.	5081.9	7114.66	13877\$ @2.62 per Kg
26E094F dt 03.06.2006	Everyglory	KDS Exp	4600	6670.73F	9258 @ 2.01 per Kg
26E096F dt 06.07.06	Everyglory	KDS Exp	4966	7051.72	9441.7 @ 1.90 per Kg

(xi) During investigation, some Bills of Entry were processed and the appellants were forced to file Bills of Entry by the Customs Officers declaring much higher prices and they did so. These are as follows:

Invoice No. & Date	Supplier Name	Importer	Weight in Kgs	Declared value	Remarks
6-12 dt 20.7.06	Guangdang Hangyang	Gokul Ovr.	5485.7	7679.98	Cleared at \$ 19284 @ 3.515 \$/Kg
6-14 dt 09.8.06	Guangdang Hangyang	KK Ent.	5160.6	21977.50@ 4.25	Cleared as per declared value
6-15 dt 17.8.06	Guangdang Hangyang	Gokul Ovr.	4859.6	19825 @4.07	Cleared as per declared value
6-16 dt 26.8.06	Guanghang Hangyang	Krish Ent.	5299.70	18240 @ 3.44	Cleared as per declared value

(xii) The show cause notice relied heavily on statements of various persons which were not admitted by the Adjudicating authority as evidence after following the procedure prescribed under Section 138B of the Act.

(xiii) In view of the above, the impugned order may be set aside and all appeals may be allowed.

### **Submission on behalf of the Revenue**

6. Learned authorized representative appearing for the department vehemently supported the impugned order and submitted as follows:

(i) The appellant importers had mis-declared values of the goods which mis-declaration was discovered by the DRI

on the basis of specific intelligence and the investigation. The CPU which was seized from the appellant's premises was forensically examined and the true commercial invoices were recovered from the laptop/ computer and email. These documents were corroborated by various statements. The appellant could not explain the invoices found in the email of the laptop.

- (ii) The documents were retrieved not from the computer but from any email id which can be retrieved from any computer system. As per section 139 of the Act, the court shall presume, unless the contrary is proved, that the signature and every other part of such document which purports to be the handwriting of the person or which the court may reasonably assume to have been signed by or to be any handwriting of any particular person is in that person's handwriting and in case of the documents executed or attested, that was executed or attested by the person by whom it purports to have been so executed or attested and admit the document in evidence.
- (iii) No penalties were imposed on the proprietors of the importers. As can be seen from the above table the proprietors of the importer were different and personal penalties were imposed on authorized representatives of the importers and NOT on their proprietors.

(iv) The impugned order calls for no interference. All appeals may be dismissed.

7. We have considered the submissions advanced by both sides and perused the records.

8. The undisputed facts of the case are that during the relevant period assessment had to be done only by the proper officer and there was no scope for self assessment by the importers. The value of the goods under section 14 was to be the price at which such goods were ordinarily sold in the course of international trade. In other words, before the amendment to section 14 in 2007, valuation had to be done not based on the price at which such goods were bought in that particular case but based on the price at which such goods were ordinarily sold. The proper officer assessing the Bills of Entry had rejected the declared value of the appellant and enhanced the values US\$ 1.46 per kg uniformly in all Bills of Entry. It will not be unreasonable to conclude that the proper officer had enhanced the values based on the prices at which such goods were ordinarily sold in the course of international trade during the relevant period. The appellant paid duty as per the enhanced values.

9. What the SCN proposed to do was to again reject that declared assessable value and further enhance the values. Since the declared values had already been rejected by the proper officer and enhanced at the time of Bills of Entry, what the SCN proposed to do is to reject the contemporaneous value on the basis of which Bills of Entry were assessed by the proper officer

and assess them at values in another set of invoices which are said to be the real invoices. We are not aware of any provision under which-during the relevant period-the officer of DRI could issue an SCN rejecting the values at which the proper officer had assessed the Bills of Entry and substitute them with another set of values. Evidently, the new values cannot be the values at which such goods were ordinarily sold in the course of international trade; otherwise, the proper officer would have adopted them. The case of the Revenue is that when there were a parallel set of invoices under which the importers had imported the goods at much higher values which should form the basis of assessment.

10. Therefore, the invoices said to have been obtained by forensically examining the CPU seized during panchanma were adopted to re-determine the duty. According to the learned counsel for the appellant these cannot be relied upon for the reason that the CPU was NOT sealed at all at the time of panchnama and was only sealed after 47 days by the DRI. It is also her submission that the certificate as per section 139C of the Act was not issued and, therefore, the electronic evidence recovered from the CPUs cannot be relied upon.

11. On the other hand the submission of the learned authorized representative for the Revenue is that the values were retrieved from the emails of the importer and these could have been downloaded from anywhere. He relied on the decision of this Tribunal in the case of **Nitin Khandelwal vs. Principal Commissioner of Customs, Tughlakabd, New Delhi** vide Final Order No's. 58587-58589/2014 dated 13.09.2024.

12. We have considered the submission of both sides on this question. The case of Shri Nitin Khandelwal was different inasmuch as the invoices were retrieved from the emails of Shri Nitin Khandelwal and were only printed in the office of SIIB. There were no electronic gadgets or computers from which the invoices were retrieved. It is in that context, this Tribunal found that section 139C would not apply because the data was not saved on the electronic gadget or computer but it was in the Gmail server of Shri Khandelwal. In this case, evidently, the data was retrieved from the CPU through forensic analysis by DRI. Even if some emails of the importers had been downloaded and saved in the CPU which were then retrieved during the forensic analysis, they were not downloaded from the server of the Gmail or any email service provider. The data was printed out of the seized CPU. Such being the case, we find section 139C of the Act squarely applies to this case. In the absence of any certificate under section 139C, the data cannot be relied on. Furthermore, the computer/ CPU was not sealed at the time of panchnama and was lying with the investigating agency for 47 days after which it was first examined and then sealed which raises questions about the authenticity of the data. We do not find that the data can be relied upon.

13. As far as the values of the imported goods are concerned, evidently there are multiple values. Value at US\$ 1.4 per kg was declared by the appellant by the importers in their Bills of Entry. The Bills of Entry were assessed by the proper officer at US\$ 1.46 per kg based on contemporaneous values of imports. Values of US\$ 4 or 5 per kg were retrieved by the DRI from the CPU and US \$ 2.2 per kg was the value declared by the overseas

exporters before the Chinese Customs. The case of the Revenue is that the values retrieved from the CPU by the DRI are the correct values and should be the basis for assessment in these cases. We find no reason to discard all the other values, namely, the values declared by the exporter to the Chinese Customs and the values declared by the importer to the Indian Customs and the values determined by the proper officer based on the contemporaneous values of imports at the time of assessment.

14. The question which would arise is which value should be adopted since there were multiple values for the same goods. Ignoring for the time being the credibility and dependability of values derived from the CPU, relevant extract of section 14 of the Customs Act as applicable during the relevant period read as follows:

**“14. Valuation of goods for purposes of assessment. -**

(1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975) or any other law for the time being in force whereunder a duty of customs is chargeable on any goods by reference to their value, the value of such goods shall be deemed to be -

*the price at which such or like goods are ordinarily sold, or offered for sale; for delivery at the time and place of importation or exportation, as the case may be, in the course of international trade, where the seller and the buyer have no interest in the business of each other and price is the sole consideration for the sale or offer for sale :*

Provided 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 or bill of export, as the case may be, is presented under Section 50;

(1A) Subject to the provisions of sub-section (1) the price referred to in that sub-section in respect of imported goods shall be determined in accordance with the rules made in this behalf.

(2) Notwithstanding anything contained in sub-section (1) or sub-section (1A) if the Central Government 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.

(3) ....”

15. Assessment had to be done during the relevant period based on the values at which such goods were ordinarily sold in the course of international trade. In other words, contemporaneous values of imports formed the basis for determination of value during the relevant period. Such values are available in this case as per which the proper officer had assessed the Bills of Entry.

16. In view of the above, we find that the redetermination of the value by the adjudicating authority based on the values retrieved by DRI from the CPU seized during panchnama cannot be sustained. Consequently, the demand of differential duty cannot be sustained. Consequently, the penalties imposed on various persons also cannot be sustained.

17. All appeals are allowed and the impugned orders are set aside with consequential relief to the appellant. The miscellaneous applications also stand disposed of.

[Order pronounced on **03/11/2025**]

**(DR. RACHNA GUPTA)**  
**MEMBER (JUDICIAL)**

**(P. V. SUBBA RAO)**  
**MEMBER ( TECHNICAL )**