

	<p style="text-align: center;">प्रधान आयुक्त का कार्यालय, सीमा शुल्क सदन, मुन्द्रा OFFICE OF THE PRINCIPAL COMMISSIONER, CUSTOM HOUSE, MUNDRA Port User Building (PUB), Mundra (Gujarat - 370421) ईमेल: group4-mundra@gov.in</p>	 राष्ट्रपत्र जयते
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A	File No.	VIII/06-31/GR-IV/IR/2024-25	/ ००१
B	OIO No.	MCH/ADC/AKM/297/2024-25	/ ००१
C	Order Date	15.02.2025	
D	Passed by	Amit Kumar Mishra, Additional Commissioner of Customs, Customs House, AP & SEZ, Mundra.	
E	SCN No. & Date	Importer requested for waiver of SCN & PH	
F	Noticee / Party / Importer	M/s Samyak Impex, Plot No. 42, Second Floor, Opp. Old Court Road, Sector 1/A Gandhidham-370201.	
G	DIN	20250271MO0000444A7B	

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है।

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमा शुल्क आयुक्त) अपील, चौथी मंजिल, हुडको विलिंग, ईश्वर भुवन रोड, नवरांगपुरा, अहमदाबाद 380009”

“The Commissioner of Customs (Appeals), Mundra, 4th Floor, Hudco Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad-380009.”

3. उक्त अपील यह आदेश भेजने की दिनांक से तीन माह के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/-/रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए -

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be accompanied by -

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिए। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के सभी मामलों में पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and the Customs Act, 1962 should be adhered to in all respects.

8. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अपवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (Appeals) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

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

Brief Facts of the case

M/s. Samyak Impex (IEC: AESFS5046Q) (hereinafter referred to as "the importer" for sake of brevity) having its registered office at Plot No. 42, Second Floor, Opp. Old Court Road, Sector 1/A Gandhidham-370201, filed the following Bill of Entries for import of Heavy Melting Scrap-Iron and Steel Remelttable Scrap, and Cast Iron Scrap(Rotors and Drums) at Mundra Port:-

TABLE -I

Sr. No.	Bill of entry No. and Date	Country of Origin	Container No.	Description of goods	Value of goods in Rs.	BL Weight (KGs)	Duty in Rs.
1	5722652 Dated 28.04.2023	UAE	CBHU5712695 CXDU1487126	Heavy Melting Scrap- Iron and Steel Remelttable Scrap	Rs. 16,52,724/-	46.91 MTS	2,97,490/-
2.	5722654 Dated 28.04.2023	UAE	PCIU2208293 TDTU2907284	Heavy Melting Scrap- Iron and Steel Remelttable Scrap	Rs. 17,33,337/-	46.85 MTS	3,12,001/-
3.	6164393 Dated 29.05.2023	UAE	SLDU2204161	Cast Iron Scrap(Rotors and Drums)	Rs. 11,17,781/-	27.53 MTS	Rs. 2,01,201/-
4.	6164394 Dated 29.05.2023	UAE	FCIU3371073 TDRU1218998	Heavy Melting Scrap-Iron and Steel Remelttable Scrap	Rs. 16,41,554/-	47.53 MTS	Rs. 2,95,480/-
Total					Rs. 61,45,396/-	168.82 MTS	Rs. 11,06,172/-

2. Based on a detailed risk analysis, the NCTC has identified two Bill of Entries no. 5722652 Dated 28.04.2023 and 5722654 Dated 28.04.2023 filed by M/s Samyak Impex (IEC: AESFS5046Q) to be risky at Custom House Code- INMUN1 in relation to

mis-declaration/forged documents and misdeclaration of COO. The alert is reproduced below:-

- i. UAE has banned export of Ferrous scrap under CTH 7204. Dubai Customs Notices 08/2022 & 05/2023 - Temporary Suspension of Exports of Ferrous Scrap & Waste Paper are attached. The latest extension of three months is up to 19/06/2023.
- ii. On analysis of relevant import data by NCTC, it appears that metallic scrap is being imported from UAE, with declared country of origin as UAE, despite the export ban by UAE authorities. The goods and the CTH as declared by the Importer squarely fall within the ambit of the export ban notice issued by UAE.
- iii. As per para 2.32 of FTP 2023, import of metallic waste and scrap is free subject to the conditions as mentioned in para 2.51 of the Handbook of Procedures. Para 2.51 of the Handbook stipulates that 'freely' importable metallic waste and scrap should be accompanied by a pre shipment inspection certificate (PSIC) and a copy of the contract with the Exporter, among other things. In the absence of these documents, these goods become restricted/prohibited for import.
- iv. The details of PSIC Certificates and copies of the contracts as available and downloaded from e-sanchit are also mentioned in the attached Annexure. The place of inspection and port of shipment have been mentioned as Jebel Ali, UAE in PSICs. Since the export of such goods is banned from UAE, it is highly improbable that the Inspection was carried out in UAE, calling into question the veracity of the document. Thus, it appears that the PSIC uploaded by the importer was issued without actual inspection, a necessary precondition for issuance of such Certificates as prescribed by DGFT.
- v. Apparently, these consignments shipped from Jebel Ali UAE would not have been declared as metal scrap before Dubai Customs; therefore, this consignment could not have been inspected and stuffed in the declared container as metal scrap by the Inspection Agency. As per para 2.53 (a) and (b) of the Handbook, any kind of mis-declaration in PSIC can lead to penal action for the PSIA, importer and exporter under the Foreign Trade (Development & regulation) Act, 1992, as amended. This mis-declaration can also lead to suspension/cancellation of recognition for the PSIA in question. Para 2.53(e) also places the responsibility of uploading the photographs/video of the inspection conducted on the DGFT website by the PSIA. The same may be verified from DGFT to ascertain the place and nature of inspection of the goods.
- vi. Regarding the requirement of a copy of the contract with the Exporter, it is noted that considering the ban of exports of metallic scrap from UAE, the

veracity of the contract with a UAE based exporter, if any, is highly dubious. It is intriguing how could the UAE exporter enter into a contract when the export of the goods per se is prohibited from the UAE.

vii. Based on the documents uploaded and the COO declarations made by the Importer, the goods are *prima facie* in violation of the FTP and consequently are restricted/prohibited for import. In addition, there seems to be misdeclaration of COO as UAE in the BE. It thus appears that the goods could be originating in a third country including Iran/Pakistan/Yemen and are being transhipped via UAE to evade the higher duty (Pakistan @200%) or circumvent the restriction on import of only shredded scrap from Iran/Yemen (para 2.51 (c) of the Handbook), aside from posing safety/security risks.

3. As mentioned in NCTC, the importer had filed Bill of Entry no. 5722652 and 5722654 both Dated 28.04.2023 for import of Heavy Melting Scrap- Iron and Steel Remelttable Scrap, hence examination of the said bill of entries consignment was carried out by the officers of Docks Examination, Custom House, Mundra and examination report in the EDI system is as below:-

TABLE -II

Bill of Entry No.	Examination Report By PO	Examination Report by Superintendent	Examination Report by AC
5722652 Dated 28.04.2023	Opened and examined 2 pkgs in the presence of CHA. One container selected for scanning and reported mismatch. Checked container no.(s) and seal no.(s) vfd seal intact. Opened and examined the cargo as per order/ccr instr on random check basis under the supervision of de(de), Supdt(docs) in presence of cb'r. checked description & qty w.r.t. bl, invoice and other import docs. On visual examination, goods appeared to be as declared. Cfs wt. 46910 kgs, bl wt. 46910 kgs.	Opened and Examined 1 pkgs in the presence of cha. Cargo hold by siib and subsequently after investigation given NOC vide f.no. S/43-46/samyak impex/siib-a/chm/23-24	Seen documents uploaded in e-sanchit
5722654 Dated 28.04.2023	Opened and examined 2 pkgs in the presence of CHA. One container selected for scanning and reported mismatch. Checked container no.(s) and seal no.(s) vfd seal intact. Opened and examined the cargo as per order/ccr instr on random check basis under the supervision of de(de), Supdt(docs) in presence of cb'r. checked description & qty w.r.t. bl, invoice and other import docs. On visual examination, goods appeared to be as declared. Cfs wt. 46740 kgs, bl wt. 46850 kgs.	Opened and Examined 1 pkgs in the presence of cha. Cargo hold by siib and subsequently after investigation given NOC vide f.no. S/43-46/samyak impex/siib-a/chm/23-24 dated 26.05.2023	Seen documents uploaded in e-sanchit

3.1 Meanwhile, importer had filed another two bill of entries no. 6164393 Dated 29.05.2023 for import of Cast Iron Scrap (Rotors and Drums) and 6164394 Dated 29.05.2023 for import of Heavy Melting Scrap-Iron and Steel Remelttable Scrap from UAE, hence examination of the said consignment was carried out by the officers of Docks Examination, Custom House, Mundra and examination report dtd. 07.06.2023 is as below:-

TABLE -III

Bill of Entry No.	Examination Report
6164393 Dated 29.05.2023	The examination of goods was done in Saurashtra CFS under supervision of DC(DE) and Supdt(DE) and in presence of CHA M/s. Aman Seatrans Private Limited. During examination goods appears to be as declared i.e., Cast iron scrap (Rotors and Drums). Further no marks, numbers and signs have been found indicating the goods being originating from country other than the declared in BOE.
6164394 Dated 29.05.2023	The examination of goods was done in Saurashtra CFS under supervision of DC(DE) and Supdt(DE) and in presence of CHA M/s. Aman Seatrans Private Limited. During examination goods appears to be as declared i.e., Heavy Melting Scrap- Remelttable Iron & Steel Scrap. Further no marks, numbers and signs have been found indicating the goods being originating from country other than the declared in BOE.

3.2 From the dock examination officers report it appears that during the examination there is nothing adverse found regarding the mis-declaration of country of origin.

3.3 Statement of Shri Vishal Vinodbhai Morbia S/o Shri Vinodbhai Morbia Manager of M/s. Samyak Impex was recorded on 16.05.2023 under Section 108 of the Customs Act, 1962, wherein he inter alia stated that they have imported Heavy Melting Scrap-Iron and Steel Remelttable Scrap under CTH 72044900 vide bill of entries no. 5722652 & 5722654 both Dated 28.04.2023 and confirmed country of Origin as UAE and also informed that he was not aware about the ban on export from UAE.

3.4 Further, during the scrutiny of import documents and the documents submitted under statement as discussed herein above have revealed that the Country of Origin of the subject consignment was mentioned as "United Arab Emirates" in the above said Bill of Entries and Port of Loading as Jebel Ali, U.A.E. In below mentioned Pre-Shipment Inspection Certificate, shows the Country of Inspection as UAE, place of Inspection as Jebel Ali.

TABLE -IV

Sr. No.	Bill of Entry No.	Country of Origin	Place of inspection	Date of Inspection	PSIC No.
1.	5722652 Dated 28.04.2023	UAE	SHARJAH	19.04.2023	PSIC Metal Services 131798AM24 Dated 20.04.2023
2.	5722654 Dated 28.04.2023	UAE	SHARJAH	20.04.2023	PSIC Metal Services 131174AM24 Dated 21.04.2023
3.	6164393 Dated 29.05.2023	UAE	SHARJAH	08.05.2023	PSIC Metal Services 141126AM24 Dated 09.05.2023
4.	6164394 Dated 29.05.2023	UAE	SHARJAH	08.05.2023	PSIC Metal Services 141115AM24 Dated 09.05.2023

3.5 The Pre-shipment Inspection Certificate (PSIC) is one of the mandatory documents for the import of shredded, un-shredded, compressed, and loose forms of metallic waste and scrap. According to the Foreign Trade Policy of India, the importer needs to furnish the original copy of the PSIC document for Customs clearance.

4. Relevant provisions under Foreign Trade Policy for import of Metal scrap are as under:

Para 2.32:

Import of Metallic waste and Scrap

(a) Import of any form of metallic waste, scrap will be subject to the condition that it will not contain hazardous, toxic waste, radioactive contaminated waste/scrap containing radioactive material, any types of arms, ammunition, mines, shells, live or used cartridge or any other explosive material in any form either used or otherwise as detailed in Para 2.54 of Handbook of Procedures.

(b) The types of metallic waste and scrap which can be imported freely, and the Procedures of import in the shredded form; unshredded compressed and loose form is laid down in Para 2.54 of Handbook of Procedures.

Provisions under Hand Book of Procedure:

Para 2.54:

Import of Metallic Waste and Scrap Import of any form of metallic waste, scrap will be subject to the condition that it will not contain hazardous, toxic waste, radioactive contaminated waste / scrap containing radioactive material, any type of arms, ammunition, mines, shells, live or used cartridge or any other explosive material in any form either used or otherwise.

(a) Import of following types of metallic waste and scrap will be free

(b) subject to conditions detailed below:

Sl. Exim Item description

1. 720410.00 Waste and scrap of cast iron

5. 72043000 Waste and scrap of tinned iron or Steel

9. 74040012 Copper scrap

10. 74040022 Brass scrap

11. 75030010 Nickel scrap

12. 76020010 Aluminium scrap

13. 79020010 Zinc scrap

14. 80020010 Tin scrap

15. 81042010 Magnesium scrap

(b) "Freely" importable metallic waste and scraps (shredded) as listed above shall be permitted through all ports of India subject to following conditions: (i) At the time of the clearance of goods, importer shall furnish to the Customs pre-shipment inspection certificate as per the format to Appendix 2H from any of the Inspection & Certification agencies given in Appendix-2G, to the effect that the consignment was checked for radiation level and scrap does not contain radiation level (gamma and neutron) in excess of natural background. The certificate shall give the value of background radiation level at that place as also the maximum radiation level on the scrap; and Importer shall also furnish copy of the contract with the exporter stipulating that the consignment does not contain any radio-active contaminated material in any form.

(c)

(d) Import of un-shredded compressed and loose form of metallic waste, scrap listed in paragraph 2.54(a) above in shall be subject to the following conditions:-

(i) At the time of the clearance of goods, importer shall furnish to the Customs pre-shipment inspection certificate as per the format in Appendix 2H from any of the Inspection & Certification agencies given in Appendix-2G to the effect that the consignment does not contain any type of arms, ammunition, mines, shells, cartridges, or any other explosive material in any form either used or otherwise, and that the consignment was checked for radiation level and it does not contain radiation level (gamma and neutron) in excess of natural background. The certificate shall give the value of background radiation level at that place as also the maximum radiation level on the scrap.

(ii) The imported item (s) is actually a metallic waste/ scrap /seconds /defective as per the internationally accepted parameters for such a classification.

(iii) Copy of the contract between the importer and the exporter stipulating that the consignment does not contain any type of arms, ammunition, mines, shells,

cartridges, radioactive contaminated, or any other explosive material in any form either used or otherwise.

(iv) Import of scrap would take place only through following designated ports and no exceptions would be allowed even in case of EOUs, SEZs:- 1. Chennai, 2. Cochin, 3. Ennore, 4. JNPT, 5. Kandla, 6. Mormugao, 7. Mumbai, 8. New Mangalore, 9. Paradeep, 10. Tuticorin, 11. Vishakhapatnam, 12. Pipavav, 13. Mundra, 14. Kolkata, 15. Krishnapatnam, 16. Kattupalli, 17. Hazira and 18. Kamarajar.

(v) Only entry sea ports will be designated and notified for import of unshredded Metallic Waste and Scrap subject to the following:

- (i) Any sea port to be designated for import of un-shredded metallic scrap will be required to install Radiation Portal Monitors and Container Scanner with adequate security. The sea port having completed the above shall approach jurisdictional Customs for inspection and certification. Customs may give necessary clearance on receipt of certification from AERB. On getting clearance from Customs, DGFT will notify such a port as designated port for import of un-shredded scrap.
- (ii) The existing designated sea ports namely Chennai, Cochin, Ennore, JNPT, Kandla, Mormugao, Mumbai, New Mangalore, Paradeep, Tuticorin, Vishakhapatnam, Pipavav, Mundra and Kolkata will be allowed to import unshredded scrap till 30.09.2022 by which time they are required to install and operationalize Radiation Portal Monitors and Container Scanner. Such sea ports which fail to meet the deadline will be derecognized for the purpose of import of un-shredded metallic scrap w.e.f. 01.10.2022.
- (iii) Further, any ICD can handle clearance of un-shredded metallic scrap provided the same passes through any of the designated sea ports as mentioned above or any new ports to be notified/designated from time to time, where Radiation Portal Monitors and Container Scanner are in operation and the consignment is subjected to risk-based scanning/ monitoring as per the protocol laid down by Customs.
- (iv) Import consignments of metallic waste and scrap shall be subject to preshipment inspection certificate (PSIC) from the country of origin. However, metallic waste and scrap (both shredded and unshredded) imported from safe countries / region i.e. the USA, the UK, Canada, New Zealand, Australia and the EU will not require PSIC if consignments are cleared through Ten (10) ports namely, Chennai, Tuticorin, Kandla, JNPT, Mumbai, Krishnapatnam, Mundra, Kattupalli, Hazira and Kamarajar. Consignments from these six countries / regions will be accompanied by certificate from the supplier / scrap yard authority to the effect that it does not contain any radioactive materials / explosives. These will however be subject to radiation and explosive checks through portal monitors and container scanner at these ports. Trans-shipments through these countries / regions will not be allowed this facility. Import through remaining eight (8) other ports (for both shredded and unshredded scrap /waste), irrespective of country of origin, will be subject to PSIC.

2.56 Responsibility and Liability of PSIA and Importer.

- (a) In case of any mis-declaration in PSIC or mis-declaration in application form for recognition as PSIA, PSIA would be liable for penal action under Foreign Trade (Development & Regulation) Act, 1992, as amended, in addition to suspension/cancellation of recognition.
- (b) The importer and exporter would be jointly and severally responsible for ensuring that the material imported is in accordance with the declaration given in PSIC. In case of any mis-declaration, they shall be liable for penal action under Foreign Trade (Development & Regulation) Act, 1992, as amended.
- (c) The scanned copy of the PSIC (in pdf format) shall have to be uploaded by the PSIA on DGFT website or emailed to DGFT (atpsic-dgft@gov.in). The certificate shall be issued in prescribed form Appendix 2H.
- (d) The PSIA will also be required to take photographs or make video of the inspection carried out, duly capturing the following activities/details:
 - (i) Photograph(s) or video clipping of the place of inspection with PSIA inspector (mandatory) and representatives of exporter / importer, if available (optional); with time, date of the inspection (at least 1 photograph or video clipping);
 - (ii) Photograph(s) or video clipping of the testing instrument(s) used for inspection;
 - (iii) Photograph(s) or video clipping of the process of stuffing of containers showing the container number (at least 1 photograph or video clipping per container)
 - (iv) Photograph(s) or video clipping of the sealing process (at least 1 photograph or video clipping per container)
- (e) The photographs and/or video clippings [as per 2.56 (d) above] and PSIC shall be uploaded on DGFT website by PSIA, through digital signatures or sent to psicdgft@gov.in through registered e-mail of PSIA. Till such time the DGFT website link is operationalized, the PSIC and photographs/videos will be e-mailed to the DGFT (at psicdgft@gov.in).

As per the above provisions of FTP and Hand Book of Procedure, the import of metallic scrap is not permitted without PSIC certificate certifying that the consignment was checked for radiation level and that the scrap did not contain radiation level (gamma and neutron) in excess of natural background.

5. In the instant case, it appears that imported metallic scrap was not inspected at the Jebel Ali Port at UAE and the PSIC was issued without inspecting the imported scrap as UAE has banned export of Ferrous scrap under CTH 7204 vide Dubai Customs Notices 08/2022 & 05/2023 having subject "Temporary Suspension of Exports of Ferrous Scrap & Waste Paper". Therefore, it appears that the metallic scrap imported are without mandatory PSIC certificate in violation and contrary to condition

imposed under Foreign Trade Policy of Government of India, rendering the said goods as 'restricted' for import into India.

5.1 Whereas, Post-Shipment Inspection was also carried out for this consignment by the Agency approved by the DGFT, M/s. Ravi Energie Inc and M/s. Global Marine Inspection. They have submitted reports as per below table-V and certified that the consignment was checked and found that it does not have radiation level in excess of natural background.

Table-V

Sr. No.	Bill of Entry No.	Post-Shipment Inspection Ref. No.
1	5722652 Dated 28.04.2023	012/ANSP-RN/IIBEA69/2023 Dated 19.05.2023
2	5722654 Dated 28.04.2023	011/ANSP-RN/IIBEA68/2023 Dated 19.05.2023
3.	6164393 Dated 05.05.2023	IN11202385023 Dated 06.06.2023
4	6164394 Dated 29.05.2023	IN11202385024 Dated 06.06.2023

5.2 The DGFT, vide their Office Memorandum dated 13.06.2023 clarified that UAE has banned export of Ferrous Scrap under ITC HS 72047. It further clarified that any PSIC showing the place of inspection in UAE and import item banned by UAE for export, such PSIC may be treated as invalid.

5.3 In the instance case all the PSICs were showing place of inspection as UAE, therefore, the PSICs are liable to be treated as invalid and the goods are liable to be treated without PSIC.

6. Therefore, the goods were seized vide seizure memo dated 12.05.2023 for bill of entry no. 5722652 & 5722654 both dated 28.04.2023 and goods were seized vide seizure memo dated 07.06.2023 for bill of entry no. 6164393 & 6164394 both dated 29.05.2023 However; the goods were released provisionally on 26.05.2023 for bill of entries no. 5722652 & 5722654 both dated 28.04.2023 and on 22.06.2023 for bill of entries no. 6164393 and 6164394 both dated 29.05.2023 upon execution of bond of full value of the imported goods and BG of 10% of the Value of the imported goods. The importer submitted following Bank Guarantees for provisionally release of the imported goods.

Sr. No.	Bill of Entry no. & Date	Bank Guarantee no.	BG amount(10% of assessable value)
1.	5722652 Dated 28.04.2023	01900ILG001323	Rs. 1,65,273/-
2.	5722654 Dated 28.04.2023	01900ILG001223	Rs. 1,73,335/-
3.	6164393 Dated 29.05.2023	01900ILG001823	Rs. 1,11,780/-
4.	6164394 Dated 29.05.2023	01900ILG001723	Rs. 1,64,160/-

7. For the sake of brevity, the relevant provisions of the Customs Act, 1962 are reproduced as under:-

SECTION 17. Assessment of duty. - (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

SECTION 46. Entry of goods on importation

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

SECTION 111. Confiscation of improperly imported goods, etc. -The following goods brought from a place outside India shall be liable for confiscation: -

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

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

SECTION 112. Penalty for improper importation of goods, etc.- Any person, -

(a) Who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher;

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five per cent. of the penalty so determined;

8. It is evident from the above discussion and evidences available on record that the goods are not fulfilling the condition of PSIC in Bills of Entries mentioned in Table-I. It, therefore, appears that PSICs showing the place of inspection as UAE does not appear to be genuine and appears to be issued without inspecting the goods in UAE.

8.1 In terms of Section 46 (4) of the Customs Act, 1962, the importers are required to make a declaration as to the truth of the contents of the Bills of Entries submitted for assessment of Customs duty. M/s. Samyak Impex submitted PSICs issued from UAE with place of examination UAE/Dubai. DGFT vide Office Memorandum dated 13.06.2023 clarified that these PSICs may be considered invalid. In view of the above, it appears that M/s. Samyak Impex, imported the said goods valued at Rs. 61,45,396/- (Rs. 16,52,724/- + Rs. 17,33,337/- + Rs. 11,17,781/- + Rs. 16,41,554/-) in India without valid PSICs, in violation and contrary to the provisions of Foreign Trade Policy of Government of India. Hence, it appears that the importer had knowingly involved themselves in the suppression of the material facts and also indulged in mis-statement of facts. The importer by their acts of omission and commission renders imported goods liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962.

8.2 Violation by the Importer: It appears from the above discussion and evidences available on record that the importer M/s. Samyak Impex had wilfully and intentionally produced invalid Pre-Shipment Inspection Certificates. It also appears that M/s. Samyak Impex had deliberately by wilful mis-statement and suppression of the facts in contravention of various provisions of the Customs Act and Rules made thereunder as discussed above with intent to clear goods without valid PSICs. The said acts of omission and commission on the part of the M/s. Samyak Impex have rendered themselves liable for penalty under the provisions of Section 112(a) of the Customs Act, 1962.

9. In view of above, the following is proposed by SIIB, Customs House Mundra vide Investigation Report No. 19/2024-25:-

- (i) 1,68,820 Kgs of Heavy Melting Scrap-Iron and Steel Remeltable Scrap, and Cast Iron Scrap(Rotors and Drums) imported under Bill of Entry mentioned under Table-I, valued at Rs. 61,45,396/- (Rs. Sixty One Lakhs, forty five thousand and three hundred ninety six only), is liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962.

- (ii) M/s. Samyak Impex is liable for Penalty under Section under the provisions of Section 112(a) of the Customs Act, 1962.
- (iii) Bond executed by the importer to be enforced in terms of Section 143(3) of the Customs Act, 1962 and the Bank Guarantees having total amounting to Rs. 6,14,548/- (10% of value) to be encashed for the recovery of fine and penalty leviable against the importer.

RECORD OF WRITTEN SUBMISSIONS & PERSONAL HEARING

10. Importer, vide their letter dated 11.12.2024 and 01.02.2025 received by this office on 04.02.2025, have requested waiver in issuance of Show Cause Notice and Personal Hearing.

DISCUSSION AND FINDINGS

11. I have carefully gone through the case records and applicable provisions of Law. I find that the Importer vide their letter dated 11.12.2024 and 01.02.2025 have requested waiver in issuance of Show Cause Notice and Personal Hearing, thus, the condition of Principles of Natural Justice under Section 122A of the Customs Act, 1962 has been complied with. Hence, I proceed to decide the case on the basis of facts and documentary evidences available on records.

12. The main issues before me are to decide whether-

- i. Whether the goods i.e. 1,68,820 Kgs of Heavy Melting Scrap-Iron and Steel Remeltalbe Scrap, and Cast Iron Scrap(Rotors and Drums) imported under Bill of Entry mentioned under Table-I, valued at Rs. 61,45,396/- (Rs. Sixty One Lakhs, forty five thousand and three hundred ninety six only), is liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962 or otherwise.
- ii. Whether M/s. Samyak Impex is liable for Penalty under Section under the provisions of Section 112(a) of the Customs Act, 1962 or otherwise.
- iii. Whether Bond executed by the importer to be enforced in terms of Section 143(3) of the Customs Act, 1962 and the Bank Guarantee having total amounting to Rs. 6,14,548/- (10% of value) to be encashed for the recovery of fine and penalty leviable against the importer.

13. I find that importer M/s. Samyak Impex filed Bill of Entry 5722652 Dated 28.04.2023, 5722654 Dated 28.04.2023, 6164393 Dated 29.05.2023 and 6164394 Dated 29.05.2023 for import of Heavy Melting Scrap-Iron and Steel Remeltalbe Scrap at Mundra Port. The Country of Origin of the subject consignment was mentioned as "United Arab Emirates" in the above said Bill of Entry and Port of Loading as Sharjah, U.A.E. Pre-Shipment Inspection Certificate No. PSIC Metal Services 131798AM24 Dated 20.04.2023, PSIC Metal Services 131174AM24 Dated 21.04.2023, PSIC Metal Services 141126AM24 Dated 09.05.2023 and PSIC Metal Services 141115AM24 Dated 09.05.2023, shows the Country of Inspection as UAE, place of Inspection as Sharjah.

LIABILITY TO CONFISCATION OF THE IMPORTED GOODS UNDER SECTION 111(d) and 111 (m)

14. As per para 2.32 of FTP 2023, import of metallic waste and scrap is free subject to the conditions as mentioned in para 2.51 of the Handbook of Procedures. Para 2.51 of the Handbook stipulates that 'freely' importable metallic waste and scrap should be accompanied by a pre shipment inspection certificate (PSIC) and a copy of the contract with the Exporter, among other things. In the absence of these documents, these goods become restricted/prohibited for import.

15. The DGFT, vide their Office Memorandum dated 13.06.2023 clarified that UAE has banned export of Ferrous Scrap under ITC HS 7204. It further clarified that any PSIC showing the place of inspection in UAE and import item banned by UAE for export, such PSIC may be treated as invalid.

16. In the view of the above, I find that imported metallic scrap was not inspected at the Sharjah at UAE and the PSIC was issued without inspecting the imported scrap as UAE has banned export of Ferrous scrap under CTH 7204 vide Dubai Customs Notices 08/2022 & 05/2023 having subject "Temporary Suspension of Exports of Ferrous Scrap & Waste Paper". Therefore, the metallic scrap imported are without mandatory PSIC certificate in violation and contrary to condition imposed under Foreign Trade Policy of Government of India, rendering the said goods as 'restricted' for import into India.

17. In terms of Section 46 (4) of the Customs Act, 1962, the importers are required to make a declaration as to the truth of the contents of the Bills of Entries submitted for assessment of Customs duty. M/s. Samyak Impex submitted PSIC issued from UAE with place of examination UAE. I find that M/s. Samyak Impex, imported the said goods valued at Rs. 61,45,396/- in India without valid PSIC, in violation and contrary to the provisions of Foreign Trade Policy of Government of India. Hence, the importer had knowingly involved themselves in the suppression of the material facts and also indulged in mis-statement of facts. Therefore, I held the imported goods liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962.

IMPOSITION OF PENALTY:

18. The importer M/s. Samyak Impex had wilfully and intentionally produced invalid Pre-Shipment Inspection Certificates. The importer M/s. Samyak Impex had deliberately by wilful mis-statement and suppression of the facts in contravention of various provisions of the Customs Act and Rules made thereunder as discussed above with intent to clear goods without valid PSIC. The said acts of omission and commission on the part of the M/s. Samyak Impex have rendered themselves liable for penalty under the provisions of Section 112(a)(i) of the Customs Act, 1962.

REDEMPTION FINE IN LIEU OF CONFISCATION:

19. I find that goods were released provisionally to the Importer upon furnishing of provisional duty bond of Rs. 61,45,396/- and the Bank Guarantees having amounting to Rs. 6,14,548/-(10% of value).

20. As I already held these goods liable for confiscation in para 17 under Section 111(d), and 111(m) of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject IR. The Section 125 ibid reads as under:-

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

21. A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods by paying redemption fine. I find that in the instant case option to redeem the goods for Home Consumption for goods has already been availed by the Importer. Now the question remains that whether redemption fine can be imposed on the goods which already allowed for Home Consumption. In this regard, I place reliance on the judgment of the Hon'ble Apex Court in the case of M/s. WESTON COMPONENTS LTD. Versus COMMISSIONER OF CUSTOMS, NEW DELHI- 2000 (115) E.L.T. 278 (S.C.) wherein the Apex Court held that:

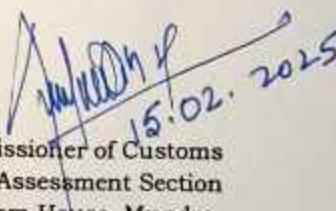
"It is contended by the learned Counsel for the appellant that redemption fine could not be imposed because the goods were no longer in the custody of the respondent- authority. It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under these circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the customs authorities to levy redemption fine."

I believe the ratio of the aforementioned judgment is squarely applicable to the present case, as the goods in the current shipment were also allowed under Bond and Bank Guarantee. Consequently, I find that a redemption fine is warranted in this matter and see no grounds to challenge its imposition.

22. In view of the foregoing discussion and findings, I pass the following order:

ORDER

- i. I order to confiscate the goods i.e. 1,68,820 Kgs of Heavy Melting Scrap-Iron and Steel Remeltalbe Scrap, and Cast Iron Scrap (Rotors and Drums) imported under Bill of Entry mentioned under Table-I, valued at Rs. 61,45,396/- (Rs. Sixty One Lakhs, forty five thousand and three hundred ninety six only) under Section 111(d) and 111(m) of the Customs Act, 1962. As the goods already redeemed by the Importer availing option for home consumption, I impose a redemption fine of Rs. 6,00,000/- (Rupees Six Lakh only) under Section 125 of Customs Act, 1962 in lieu of confiscation of the goods for the reasons stated in foregoing paras.
 - ii. I impose penalty of Rs. 1,00,000 /- (Rupees One Lakh only) upon the Importer M/s. Samyak Impex under Section 112(a)(i) of the Customs Act, 1962.
 - iii. I order to enforce the Bond amounting to Rs. 61,45,396/- and to encash the Bank Guarantee having total amounting to Rs. 6,14,548/-furnished by M/s. Samyak Impex at the time of provisional release of the goods i.e. by way of Home Consumption. If the amount of redemption fine & penalty (as confirmed above) paid in full by the Noticee, the Bond may be cancelled and Bank Guarantee may be released by the competent authority.
23. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.


Additional Commissioner of Customs
Import Assessment Section
Custom House, Mundra.

F. No. VIII/06-31/GR-IV/IR/2024-25

Dated: 15.02.2025

To,

M/s Samyak Impex (IEC: AESFS5046Q)
Plot No. 42, Second Floor, Opp. Old Court Road,
Sector 1/A Gandhidham-370201

Copy to:

1. The Dy. Commissioner of Customs, SIIIB Section, CH, Mundra
2. The Dy. Commissioner of Customs, Review Section, CH, Mundra
3. The Dy. Commissioner of Customs, TRC Section, CH, Mundra
4. The Dy. Commissioner of Customs, EDI Section, CH, Mundra
5. Guard file