



प्रधान आयुक्त का कार्यालय, सीमा शुल्क सदन, मुन्द्रा
**OFFICE OF THE PRINCIPAL COMMISSIONER,
CUSTOM HOUSE, MUNDRA**
Port User Building (PUB), Mundra (Gujarat – 370421)
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A	File No.	VIII/06-34/IMP/GR. 4/IR/2024-25	10228
B	OIO No.	MCH/ADC/AKM/300/2024-25	
C	Order Date	18.02.2025	
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. Tube Sales, Plot No. 58, Phase-I, Nr. Balaaji Weight Bridge, F-Road, GIDC Vatva, Ahmedabad-382445.	
G	DIN	20250271MO000000B6B2	

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 बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, 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/- रूपये 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 ऊटि/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. अपील प्रस्तुत करते समय, सीमाशुल्क (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, अथवा 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

Based on a detailed risk analysis, the NCTC has identified 04 Bills of Entry filed by M/s TUBE SALES (IEC NO. AAXFB7444G) to be risky at Custom House Code- INMUN1 in relation to mis-declaration/forged documents and misdeclaration of COO. Details of the Bes are as under:

TABLE -I

Sr. No .	Bill of entry No. and Date	Count ry of Origin	Container No.	Description of goods	Value of goods in Rs.	BL Weight (KGs)	Duty in Rs.
1.	5736628 dated 29.04.2023	UAE	EISU 3896009, TINU 1453592, TINU 3202560, TINU 3264772	Iron and Steel Re Rollable Scrap (HMS)	45,88,441/-	110240	8,25,920/-
2.	5736629 dated 29.04.2023	UAE	TCKU 2587290, TRLU 3946540, TINU 2569503, TINU 2658180, XINU 1272196, XINU 1421670	Iron and Steel Re Rollable Scrap (HMS)	68,87,657/-	165480	12,39,778/-
3.	5867103 dated 09.05.2023	UAE	OKCU 2002724, PENU 9288251, TLHU 0127797, TLHU 2282323	Iron and Steel Re Rollable Scrap (HMS)	44,56,270/-	107900	9,46,735/-
4.	5832735 dated 06.05.2023	UAE	HDMU 2536519, TCKU 2547873, TEMU 0047343, TGHU 1074200	Iron and Steel Re Rollable Scrap (HMS)	43,96,220/-	107410	7,91,320/-
5.	Total				2,03,28,588/-	491030	38,03,753/-

2. NCTC alert was received with following observation:

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.

2.1 The examination of the said consignment was carried out by the officers of Docks Examination, Custom House, Mundra and examination report is as below:

Table-II

Bill of Entry No.	Examination Report By PO	Examination Report by Superintendent	Examination Report by AC
5736628 dated 29.04.2023	Opened and examined 4 pkgs in the presence of CHA. Verified container no.(s) & seal number (s) and found in order as per BL. Vfd seal intact. opened, de-stuffed & visually examined goods under supervision of the dc (docks) and supdt (docks) in presence of customs broker's representative. verified declared product description and other details with invoice, packing list, bill of lading, etc. verified copy of psic, spcb and form 6/9 as per hazardous and other wastes (management and transboundary movement) rules, 2016. on visual examination, the goods appear to be scrap as declared. cfs weight- 110010 kgs. bl weight - 110240 kgs.	opened and examined 4 pkgs in the presence of CHA. SIIB noc vide f.no. s/43-45/tubesales/siib-d/chm/23-24 dated 09.06.2023.	Seen Examination Report
5736629 dated 29.04.2023	Opened and examined 6 pkgs in the presence of CHA. Verified container no.(s) & seal number (s) and found in order as per bl. vfd seal intact. opened, de-stuffed & visually examined goods under supervision of the dc (docks) and supdt (docks) in presence of customs broker's representative. verified declared product description and other details with invoice, packing list, bill of lading, etc. verified copy of psic, spcb and form 6/9 as per hazardous and other wastes (management and transboundary movement) rules, 2016. on visual examination, the goods appear to be scrap as declared. CFS weight- 164850 kgs., BL Weight- 165480 Kgs.	opened and examined 6 pkgs in the presence of CHA. siib noc vide f.no. s/43-45/tubesales/siib-d/chm/23-24 dated 09.06.2023	Seen Examination Report
5867103	The examination of the goods imported vide Bill of Entry No. 5832103		

dated 09.05.2023	<p>dated 09.05.2023 filed by Importer M/s. TUBE SALES (IEC: AAXFB7444G), was done in Saurashtra CFS on 05.06.2023 under supervision of DC (DE), Supt (DE) and in presence of CHA/CB M/s. Freight Link Logistics (CHA License No. AEXPM7049ECH003). The goods/cargo of the said Bill of Entry stuffed in Four (NUMBERS) 20' Containers bearing No. OKCU2002724, PENU9288251, TLHU0127797 AND TLHU2282323. On visual examination, the goods appear to be as declared i.e. Iron and Steel Re-Rollable Scrap for HMS Melting Purpose. Further, no marks, numbers and signs have been found indicating the goods being originated United Arab Emirates (UAE).</p> <p>The goods have been inspected by authorized PSIA M/s Ravi Energie Inc and issued Post-Shipment Inspection certificate (PSIC) No. 003/ALMN-RN/IIBEB54/2023 dated 26-05-2023 after inspecting the said goods. (Copy of the said PSIC is attached herewith)</p>
5832735 dated 06.05.2023	<p>The examination of the goods imported vide Bill of Entry No. 5832735 dated 06.05.2023 filed by Importer M/s. TUBE SALES (IEC: AAXFB7444G), was done in Saurashtra CFS on 05.06.2023 under supervision of DC (DE), Supt (DE) and in presence of CHA/CB M/s. Freight Link Logistics (CHA License No. AEXPM7049ECH003). The goods/cargo of the said Bill of Entry stuffed in Four (NUMBERS) 20' Containers bearing No. HDMU2536519, TCKU2547873, TEMU0047343 & TGHU1074200. On visual examination, the goods appear to be as declared i.e. Iron and Steel Re-Rollable Scrap for HMS Melting Purpose. Further, no marks, numbers and signs have been found indicating the goods being originated United Arab Emirates (UAE).</p> <p>The goods have been inspected by authorized PSIA M/s Ravi Energie Inc and issued Post-Shipment Inspection certificate (PSIC) No. 001/ALMN-RN/IIBEB52/2023 dated 26-05-2023 after inspecting the said goods. (Copy of the said PSIC is attached herewith)</p>

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

Table-III

Sr. No.	Bill of Entry No.	Post-Shipment Inspection Ref. No.	
1	5736628 dated 29.04.2023	005/ALMN-RN/IIBEB56/2023	dated 26.05.2023
2	5736629 dated 29.04.2023	006/ALMN-RN/IIBEB57/2023	dated 26.05.2023
3	5867103 dated 09.05.2023	003/ALMN-RN/IIBEB54/2023	dated 26.05.2023
4	5832735 dated 06.05.2023	001/ALMN-RN/IIBEB52/2023	dated 26.05.2023

3.1 Statement of Shri Surani Riyaz Sudhirbhai, Authorised Representative of the importer unit M/s. Tube Sales, was recorded under Section 108 of the Customs Act, 1962, on 08.02.2022, wherein he inter alia stated that they have imported Iron and Steel Re Rollable Scrap under CTH 72044900 and confirmed country of Origin as UAE and also informed that he was not aware about the ban on export from UAE.

3.2 He further stated that as per Indian Government laws and DGFT/Customs policies, the scrap is freely importable and the restrictions imposed from UAE is not in their knowledge neither their supplier informed them.

4 Scrutiny of import documents and the documents submitted under statements 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 Bills of Entry and Port of Loading as Jebel Ali, U.A.E. In below mentioned Pre-Shipment Inspection Certificates, shows the Country of Inspection as UAE, place of Inspection as Jebel Ali.

Table-IV

Sr. No.	Bill of Entry No.	Country of Origin	PSIC No.
1	5736628 dated 29.04.2023	UAE	128592AM24 dated 13.04.2023
2	5736629 dated 29.04.2023	UAE	128574AM24 dated 13.04.2023
3	5867103 dated 09.05.2023	UAE	134402AM24 dated 30.04.2023
4	5832735 dated 06.05.2023	UAE	132782AM24 dated 28.04.2023

4.2 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.

4.3 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. Paradip, 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.

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. 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. 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 may be tantamount to mis-declaration on the part of PSIA and such PSIC may be treated as invalid.

5.1 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.

5.2 Therefore, the goods were seized vide seizure memo dated 12.05.2024 and 30.05.2024. However, the goods were released provisionally upon bond of full value of the goods and BG of 10% of the Value. The importer submitted BG as per below table :

Table-V

Sr. No.	Bill of Entry No.	BG No.	BG Amount
1	5736628 dated 29.04.2023	006GT01231520003	4,58,844/-
2	5736629 dated 29.04.2023	006GT01231520002	6,88,766/-
3	5867103 dated 09.05.2023	006GT01231520004	4,45,627/-
4	5832735 dated 06.05.2023	006GT01231520001	4,39,662/-
	Total		20,32,899/-

6. 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;

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

7.2 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 Entry submitted for assessment of Customs duty. M/s. Tube Sales submitted PSIC issued from UAE with place of examination in UAE/Dubai. DGFT vide Office Memorandum dated 13.06.2023 clarified that these PSIC may be considered invalid. M/s. Tube Sales imported the said goods valued at Rs. 2,03,28,588/- in India without valid PSIC, in violation and contrary to the provisions of Foreign Trade Policy of Government of India and accordingly the goods were 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. By their such acts of omission and commission, the importer rendered the said goods liable for confiscation under section 111 (d) & 111 (m).

7.3 It appears from the above discussion and evidences available on record that the importer M/s. Tube Sales had wilfully and intentionally submitted invalid PSIC before the Customs authority at the time of import. It also appears that M/s. Tube Sales 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. Tube Sales have rendered themselves liable for penalty under the provisions of Section 112(a) of the Customs Act, 1962.

8. In view of above, the following is proposed by SIIIB, Customs House Mundra vide Investigation Report No. 21/2024-25:-

- (i) 491030 Kgs of Iron and Steel Re Rollable Scrap (HMS) imported under Bills of Entry mentioned under Table-I, valued at Rs. 2,03,28,588/- (Rs. Two Crore Three Lakh Twenty-Eight Thousand Five Hundred Eighty-Eight), is liable for confiscation under Section 111 (d) and 111(m) of the Customs Act, 1962.
- (ii) M/s. Tube Sales is liable for penalty 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 Customs Act, 1962 and the Bank Guarantees having value Rs.

20,32,899/- (Twenty Lakh Thirty Thousand Eight Hundred Ninety-Nine) to be encashed for recovery of fine & penalty leviable against the importer.

RECORD OF WRITTEN SUBMISSIONS & PERSONAL HEARING

10. Importer, vide their letter dated 11.12.2024 and 13.02.2025 received by this office on 13.02.2025, 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 13.02.2025 received by this office on 13.02.2025 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. 491030 Kgs of Iron and Steel Re Rollable Scrap (HMS) imported under Bills of Entry mentioned under Table-I, valued at Rs. 2,03,28,588/- (Rs. Two Crore Three Lakh Twenty-Eight Thousand Five Hundred Eighty-Eight), is liable for confiscation under Section 111 (d) and 111(m) of the Customs Act, 1962 or otherwise.
- ii. Whether M/s. Tube Sales is liable for Penalty under Section under the provisions of Section 112(a) of the Customs Act, 1962 or otherwise.
- iii. Whether executed by the importer to be enforced in terms of section 143 (3) of Customs Act, 1962 and the Bank Guarantees having value Rs. 20,32,899/- (Twenty Lakh Thirty Thousand Eight Hundred Ninety-Nine) to be encashed for recovery of fine & penalty leviable against the importer, or otherwise.

13. I find that importer M/s. Tube Sales filed Bill of Entry 5736628 dated 29.04.2023, 5736629 dated 29.04.2023, 5867103 dated 09.05.2023 and 5832735 dated 06.05.2023 for import of Iron and Steel Re Rollable Scrap (HMS) 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 Jebel Ali, U.A.E. Pre-Shipment Inspection Certificate No. 005/ALMN-RN/IIBEB56/2023 dated 26.05.2023, 006/ALMN-RN/IIBEB57/2023 dated 26.05.2023, 003/ALMN-RN/IIBEB54/2023 dated 26.05.2023 and 001/ALMN-RN/IIBEB52/2023 dated 26.05.2023 shows the Country of Inspection as UAE, place of Inspection as Jebel Ali.

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 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, 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 TUBE SALES submitted PSIC issued from UAE with place of examination UAE. I find that M/s TUBE SALES, imported the said goods valued at Rs. 2,03,28,588/- 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 TUBE SALES had wilfully and intentionally produced invalid Pre-Shipment Inspection Certificates. The importer M/s TUBE SALES 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 TUBE SALES 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. 2,03,28,588/- and the Bank Guarantee having amounting to Rs. 20,32,899/- (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 [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. 491030 Kgs of Iron and Steel Re Rollable Scrap (HMS) imported under Bills of Entry mentioned under Table-I, valued at Rs. 2,03,28,588/- (Rs. Two Crore Three Lakh Twenty-Eight Thousand Five Hundred Eighty-Eight), is liable for confiscation 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.20,00,000/- (Rupees Twenty 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.3,00,000 /- (Rupees Three Lakh only) upon the Importer M/s. Tube Sales under Section 112(a)(i) of the Customs Act, 1962.
- iii. I order to enforce the Bond and to encash the Bank Guarantee having amounting to Rs. 20,32,899/-furnished by M/s. Tube Sales 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/06-34/IMP/GR. 4/IR/2024-25

Dated: 18.02.2025

To,

M/s. Tube Sales, Plot No. 58,
Phase-I, Nr. 'Balaji Weight Bridge,
F-Road, GIDC Vatva, Ahmedabad-382445

Copy to:

1. The Dy. Commissioner of Customs, SIIB 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

