

	<b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS</b> <b>CUSTOMS HOUSE, MP &amp; SEZ</b> <b>MUNDRA, KUTCH-GUJARAT -370421</b> <b>PHONE : 02838-271426/271428</b> <b>FAX :02838-271425</b>	 सत्यमेव जयते
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<b>A</b>	<b>File No.</b>	<b>CUS/APR/BE/SO/95/2023-Gr 4-O/o Pr Commr-Cus-Mundra</b>
<b>B</b>	<b>OIO No.</b>	<b>MCH/12/ADC/MK/2022-23</b>
<b>C</b>	<b>Passed by</b>	<b>Mukesh Kumari, Additional Commissioner (Import), Customs House, Mundra.</b>
<b>D</b>	<b>SCN No. &amp; Date</b>	<b>Importer requested for waiver of SCN and PH vide their letter dated 27.03.2023</b>
<b>E</b>	<b>Noticee / Party / Importer</b>	<b>M/s Falkon Traders, Flat No. A-105, Ashi Apartment, Shamshan Bhoomi Road, Ghansoli, Navi Mumbai-400701</b>
<b>F</b>	<b>DIN</b>	<b>20230471M00000333CSB</b>

1. The Order – in – Original is granted to concern free of charge.
2. 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.

**The Commissioner of Customs (Appeal), MUNDRA,  
Office at 7<sup>th</sup> floor, Mridul Tower, Behind Times of India,  
Ashram Road Ahmedabad-380009**

3. Appeal shall be filed within Sixty days from the date of Communication of this Order.
4. Appeal should be accompanied by a Fee of Rs. 5/- (Rupees Five Only) under Court Fees Act it must accompanied by (i) copy of the Appeal, (ii) this copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five Only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
5. Proof of payment of duty / interest / fine / penalty / deposit should be attached with the appeal memo.
6. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respect.
7. 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 or Penalty are in dispute, where penalty alone is in dispute.

**BRIEF FACT OF THE CASE:**

1. M/s Falkon Traders, Flat No. A-105, Ashi Apartment, H No Smashan Bhoomi Road, Ghansoli, Navi Mumbai -400701 (the Importer) has imported consignments of Goods as “ACP Coil A2 Core” under Bill of Entry No. 2973159 dated 20.10.2022 with declared assessable value of Rs. 11,65,050/- and duty of Rs. 3,60,932/- and CTH 76109090 (other aluminum structures).

1.2 As per Investigation Report dated 03.03.2023 the said Bill of Entry was put up on hold for the examination the goods by the SIIB section. During the examination of the goods, it was observed that the goods were packed in 14 rolls placed on Wooden Pallet and are in form of some non-metallic white boards/ sheet and prima-facie the goods were other than the goods covered under Chapter 76 (Aluminium and Articles thereof). Therefore, to ascertain the characteristics of the goods 03 representative samples were drawn from the consignment for the testing purpose.

1.3 The Samples of Goods were sent to CRCL, Kandla for testing purpose under and in response the Chemical Examiner Grade-I, Custom House Laboratory, Kandla vide his report dated 22.11.2022 submitted that '*it is composed of Polymeric fibre along with inorganic filling material (calcareous material)*'. It is also reported by the Chemical Examiner, CRCL, Kandla that 'it is free from metallic aluminium'.

1.4 Meanwhile, in response to e-mail dated 13.11.2022 of NCTC regarding testing the samples for NDPS, the Samples of Goods were sent to CRCL, New Delhi on 24.01.2023 requesting them for testing the samples for NDPS. In response, the Chemical Examiner Grade-I, CRCL, New Delhi forwarded the Test Report No. CRCL/76/614(SIIB)/03.02.2023 dated 13.02.2023.

1.5 As per test reports, it was clear that the goods are mainly composed of Inorganic material i.e. carbonate of calcium and the same cannot be classified with the goods falling under CTH 76 i.e. Aluminium and Articles thereof. Further, the goods are in form of sheet sandwiched between two layers of polymeric sheet and the sheets of plaster appears correctly classifiable under CTH 68091900 and attracts BCD @ 10%. Whereas, sub-heading 6809 reads as under:

<b>6809</b>	<b>Articles of plaster or of compositions based on plaster</b>
	<ul style="list-style-type: none"> <li>• Boards, sheets, panels, tiles and similar articles, not ornamented</li> </ul>

68091100	--- Faced or reinforced with paper or paperboard only
68091900	--- other
68099090	- other articles

1.6 As the goods imported i.e. 'ACP Coil A2 Core' were found mis-declared with reference to the CTH, and the same has been informed to the Authorized Representative of the CHA of the importer. The importer vide their letter dated 01.03.2023 has submitted that they have mistakenly declared the in-correct CTH and they agreed to the contention of the department and they gave their consent for re-assessment of the instant Bill of Entry under appropriate heading. They further submitted that they do not want any Show Cause Notice or Personal hearing in this matter and are ready to pay differential duty, fine and penalty, if any.

1.7 In view of the above, it was evident that the Importer has mis-declared the CTH of the imported goods; hence, the subject goods imported vide Bill of Entry No. 2973159 dated 20.10.2022 becomes liable for confiscation under Section 111(m) of the Customs Act, 1962. Accordingly, the goods are put under seizure under Section 110(1) of the Customs Act, 1962 vide seizure memo dated 08.02.2023 and the seized goods are handed over to the authorized person of M/s landmark CFS, Adani Port, Mundra under Supradnama dated 08.02.2023 for safe custody.

1.8 The Importer has vide its letter **dated 01.03.2023** stated that they do not required any PH or SCN in the matter.

### **RELEVANT LEGAL PROVISIONS**

**2. In context of this case, the following legal provisions are reproduced for reference:**

Section 2(25) defined the terms "Import Goods":

*"Imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption.*

2.1 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, relating to the imported goods.*

*[(4A) the importer who presents a bill of entry shall ensure the following, namely:*

- (a) The accuracy and completeness of the information given therein;*
- (b) The authenticity and validity of any document supporting it; and*
- (c) Compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.]*

2.2 Section 111. Confiscation of improperly imported goods, etc. – *The following goods brought from a place outside India shall be liable to confiscation:-*

*(a)*

*(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 transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;*

2.3 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;*

- iii. *in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 in either case hereafter in this section referred to as the declared value is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;*
- iv. *in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;*
- v. *in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.*

**SUBMISSION MADE BY THE IMPORTER:**

3. The Importer vide its letter dated 27.03.2023 has stated that they do not required any PH or SCN in the matter and informed that value of the cargo is very low and has requested to impose nominal fine and penalty.

**DISCUSSION & FINDINGS:**

4. I have carefully gone through the case records and investigation Report received from Investigation Agency (SIIB) and applicable provisions of Law. The importer submitted that they don't require Personal Hearing and Show Cause Notice in the matter. I find that the condition of Principle of Natural Justice under Section 122A of the Customs Act, 1962 has been complied. Hence, I proceed to decide the case on the basis of facts and documentary evidences available on records.

4.1 The issues before me are to decide whether-

- a. The imported goods are rightly classified under CTH 76109090 or CTH 68091900.
- b. The Goods imported by importer are liable for confiscation under section 111(m) and penalty should be imposed under section 112 a (ii) of the Customs Act, 1962 or otherwise.

4.2 I find that M/s. Falkon Trader filed Bill of Entry No. 2973159 dated 20.10.2022 for

clearance of goods 'ACP Coil A2 Core' classifying the same under Chapter 76, which is for the goods 'Aluminium and Articles thereof'.

4 . 3 I find that the examination was carried out by the officers of SIIB. During examination, It was observed that the goods were packed in 14 rolls placed on Wooden Pallet and are in form of some non-metallic white boards/ sheet and prima-facie the goods were other than the goods covered under Chapter 76 (Aluminium and Articles thereof). Representative Samples were drawn from the consignment and forwarded to CRCL, Kandla lab for testing purpose.

4.4 I find that as Chemical Examiner Grade-I, Custom House Laboratory, Kandla vide his report dated 22.11.2022 and Chemical Examiner Grade-I, CRCL, New Delhi vide his Test Report No. CRCL/76/614(SIIB)/03.02.2023 dated 13.02.2023 submitted to SIIB, Goods is '*composed of Polymeric fibre along with inorganic filling material (calcareous material)*' and '*it is free from metallic aluminium*'.

4.5 I find from the above fact that importer has mis-classified the imported goods i.e. 'ACP Coil A2 Core' under CTH-76109090 which actually falls under CTH-68091900.

4.6 I find that the goods were declared by the importer as "ACP Coil A2 Core" under CTH-76109090 which attracts BCD @10%, SWS@10% and IGST @18%. However, correct classification of the goods is CTH-68091900 which also attracts the same duty structure i.e. BCD @10%, SWS@10% and IGST @18%. Thus, there is not difference in duty declared and duty payable. However, the importer has mis-classified the above imported goods.

4.7 I find that the importer while filing impugned bill of entry has subscribed to a declaration regarding correctness of the contents of the Bill of Entry under Section 46(4) of the Act, ibid. Further, Section 46(4A) of the Act, ibid casts an obligation on the importer to ensure accuracy of the declaration and authenticity of the documents supporting such declaration. In the instant case, the importer failed to discharge the statutory obligation cast upon him and made wrong declaration about the CTH of the imported goods i.e. "ACP Coil A2 Core ". Thus, the importer has misclassified the imported goods and hence, the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962 and M/s Falkon Traders has made them-selves liable for penalty under section 112(a)(ii) of the Customs Act, 1962.

4 . 8 As discussed above, since the subject goods are not prohibited/restricted. Section 125 of the Customs Act, 1962 provides that whenever confiscation of any goods is

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authorised by the Customs Act, 1962, The officer adjudicating it may, in the case of any goods, the importation or exportation whereof is prohibited under the 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 an option to pay in lieu of confiscation such fine as the said officer thinks fit.

I find that said provision makes it mandatory to grant an option to owner of the confiscated goods to pay fine in lieu of confiscation in case the goods are not prohibited. I find it appropriate to allow for redeem under section 125 of the Customs Act, 1962

### **ORDER**

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

- i. I reject the declared classification CTH-76109090 of imported goods 'ACP Coil A2 Core' and order to re-assess of Bill of Entry 2973159 dated 20.10.2022 under Section 17 (4) of the Customs Act, 1962 with correct CTH 68091900.
- ii. I confirm and order for confiscation of the goods valued Rs. 11,65,050/- pertaining to Bill of Entry 2973159 dated 20.10.2022 as declared goods was mis-classified and are in contravention of Section 46 of the Customs Act and are therefore liable for confiscation under Section 111 (m) of the Customs Act, 1962. However, I give an option to re-deem the goods in lieu of confiscation under provision of section 125 of customs Act, 1962 on payment of Redemption Fine of Rs. 20,000/- (Rs. Twenty Thousand Only)
- iii. I impose a penalty of Rs.5,000/- (Rs. Five Thousand Only ) on the Importer M/s. Falkon Traders under section 112(a)(ii) of Customs Act, 1962.

**6.** 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.

Signed by Mukesh Kumari  
Date: 21-04-2023 17:18:50  
(Mukesh Kumari)

Additional Commissioner of Customs  
Custom House, Mundra

F.No.

Dated: .03.2023

To,

I/1143565/2023

M/s Falkon Traders, Flat No. A-105,  
Ashi Apartment, H No Smashan Bhoomi Road,  
Ghansoli, Navi Mumbai -400701

Copy to:

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