



सत्यमेव जयते

**OFFICE OF THE PRINCIPAL COMMISSIONER
OF CUSTOMS MUNDRA COMMISSIONERATE**
Custom House, Mundra (Kachchh)
MUNDRA PORT & SPL ECONOMIC ZONE,
MUNDRA-370421
PHONE No: 02838-271165/66/67/68,
FAX No.02838-271169/62



A	FILE NO.	GEN/ADJ/ADC/125/2023-ADJN
B	OIO NO.	MCH/ADJ/ADC/RK/103/2023-24
C	PASSED BY	RAGHUVANSH KUMAR, ADDITIONAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MUNDRA.
D	DATE OF ORDER	22.06.2023
E	DATE OF ISSUE	03.07.2023
F	SCN NUMBER & DATE	3/15-15/3IIB/PIHU/CHM/22-23 Dated 31.03.2023
G	NOTICEE / PARTY / IMPORTER	M/S PIHU IMPEX, B-136, GROUND FLOOR, KHASRA NO. 1 / 2, STREET NO. 10, SHANTI MOHALLA, NEAR USMANPURA, EAST DELHI, DELHI - 110 053
H	DIN NUMBER	20230771MO000008073EO

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 to

The Commissioner of Customs (Appeal), MUNDRA
4th floor, HUDCO Building, IshwarBhuvan Road,
Navrangpura, 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 FACTS OF THE CASE

M/s Pihu Impex, (hereinafter referred to as M/s. Pihu), b-136, Khasra No. 1 / 2, Street No. 10, Shanti Mohalla, New Usmanpur, East Delhi, Delhi – 110 053 (IEC No: AWAPY5227G) have filed 12 Shipping Bills No. 1307735, 1307736, 1307743, 1307744, 1307745, 1307766, 1307775, 1307778, 1307781, 1307796, 1307811 and 1307820 all dated 11.05.2022 (hereinafter referred as 'Shipping Bills') at Mundra Port (INMUNI), for export of Ready Made Garments through their Customs Broker, M/s Benchmark Shipping & Logistics (hereinafter referred as 'Customs Broker').

2. NCTC alert was received for Shipping Bills, it was observed that Shipping Bills filed are of high value and for risky commodity destined to risky country. Therefore, the same were put on hold on 13.05.2022.

The Exporter has registered the goods, details of which are as under

*Received
Raj
(Rajm Rajan Raj)*

TABLE - A

(1\$ = INR 75.35)

SL. No.	Shipping Bill No.	Description	CTH	QTY (PCS)	Declared Value Per Unit (in USD)	Declared Value Per Unit (in INR)	Declared FOB (in USD)	DBK Claimed (in INR)	RoSCTL Claimed (in INR)
01	1307778	Girls Legging (Baby Garments)	6204 2290	6480	6.95	523.68	45036	98410	161190
02	1307775	Boys Ensemble 2 PC Set (Baby Garments)	6204	6336	6.95	523.68	44035.2	96224	157607
03	1307781	Boys Ensemble 2 PC Set (Baby Garments)	2290	6624	6.95	523.68	46036.8	100597	164771
04	1307735	Boys Ensemble 2 PC Set (Baby Garments)	6204 2290	6624	6.95	523.68	46036.8	100597	164771
05	1307743	Girls Legging (Baby Garments)	6204 2290	3024	6.95	523.68	21016.8	98410	161190
		Boys Ensemble 2 PC Set (Baby Garments)		3456	6.95	523.68	24019.2		
06	1307745	Ladies Legging of MMF	6204 2290	6200	7.25	546.29	44950	98222	160882
07	1307796	Ladies Legging of MMF	6204 2290	1200	7.25	546.29	08700	99061	162254
		Baby Frock	6204 2290	4608	7.95	599.03	36633.6		
08	1307736	Baby Frock	6204 2290	5760	7.95	599.03	45792	100062	163895
09	1307744	Baby Frock	6204 2290	3648	7.95	599.03	29001.6	99457	162904
		Girls Legging (Baby Garments)	6204 2290	2376	6.95	523.68	16513.2		
10	1307711	Girls Legging (Baby Garments)	6204 2290	6480	6.95	523.68	45036	98410	161190
11	1307766	Boys Ensemble 2 PC Set (Baby Garments)	6204 2290	6624	6.95	523.68	46036.8	100597	164771
12	1307820	Boys Ensemble 2 PC Set (Baby Garments)	6204 2290	6336	6.95	523.68	44035.2	96224	157607
TOTAL							542879	1186271	1943032

2.2 The FOB value of the Goods covered under the subject Shipping Bills was declared to be Rs. 4,09,05,948/- (Rupees Four Crores Nine Lacs Five Thousand Nine Hundred Forty Eight Only); total Drawback Claimed is Rs.11,86,271/- (Rupees Eleven Lacs Eighty Six Thousand Two Hundred Seventy One Only) and RoSCTL claimed is Rs.19,43,032/- (Rupees Nineteen Lacs Forty Three Thousand Thirty Two Only).

3. Examination of the goods covered under these Shipping Bills was conducted by the Officers of SIIB, Custom House, Mundra on 18.05.2022 under Panchnama; Prima facie the goods appeared to be highly over priced in comparison to their quality; therefore, letter was issued for withholding all the post export benefits in respect of Shipping Bills; reference made as well as reminded for verification of inward supply and existence of exporter and verification of inward / outward supply of supplier entities:

3.1 Additional Commissioner, CGST, Delhi East vide letter dated 06.01.2023 interalia, informed that, M/s Pihu Impex has been found to be non-existence at their declared principal place of business during physical verification; registered with the State GST, Delhi and presently, suspended w.e.t. 09.12.2022 due to non filing of periodical Returns of last six months.

3.2 No reply received w.r.t. verification of inward / outward supply of supplier entities.

3.3 Value Declared by the exporter was not the proper / actual value and liable to be rejected and the value has to be re-determined by following under residual method. Therefore, opinion of Chartered Engineer was taken by way of Market Research. Chartered Engineer vide their report / valuation certificate Ref: ABJ:INSP:CE:22-23:162 to 174 Dated 21.03.2023 suggested estimated value of the Goods as under :

TABLE - B

(1\$ = INR 75.35)

SL. No.	Shipping Bill No.	Description	CTH	QTY (PCS)	Declared Value Per Unit (in USD)	Declared FOB (in USD)	ReDetermined Value Per Unit (in USD)	ReDetermined FOB (in USD)
01	1307778	Girls Legging (Baby Garments)	6204 2290	6480	6.95	45036	1.99	12895.20
02	1307775	Boys Ensemble 2 PC Set (Baby Garments)	6204	6336	6.95	44035.2	2.65	16790.4
03	1307781	Boys Ensemble 2 PC Set (Baby Garments)	2290	6624	6.95	46036.8	2.65	17553.6
04	1307735	Boys Ensemble 2 PC Set (Baby Garments)	6204 2290	6624	6.95	46036.8	2.65	17553.6
05	1307743	Girls Legging (Baby Garments)	6204 2290	3024	6.95	21016.8	1.99	6017.76
		Boys Ensemble 2 PC Set (Baby Garments)		3456	6.95	24019.2	2.65	9158.40
06	1307745	Ladies Legging of MMF	6204 2290	6200	7.25	44950	2.65	16430
07	1307796	Ladies Legging of MMF	6204 2290	1200	7.25	08700	2.65	3180
		Baby Frock	6204 2290	4608	7.95	36633.6	3.32	15284.74
08	1307736	Baby Frock	6204 2290	5760	7.95	45792	3.32	19105.92
09	1307744	Baby Frock	6204 2290	3648	7.95	29001.6	3.32	12100.42
		Girls Legging (Baby Garments)	6204 2290	2376	6.95	16513.2	1.99	4728.24
10	1307711	Girls Legging (Baby Garments)	6204 2290	6480	6.95	45036	1.99	12895.2
11	1307766	Boys Ensemble 2 PC Set (Baby Garments)	6204 2290	6624	6.95	46036.8	2.65	17553.6
12	1307820	Boys Ensemble 2 PC Set (Baby Garments)	6204 2290	6336	6.95	44035.2	2.65	16790.4
TOTAL (IN USD)						5422879		198037
TOTAL (IN INR)						40905948		14922123

3.4

- Therefore, the Notice was issued to M/s Pihu Impex, The FOB Value of Rs.4,09,05,948/- should not be rejected and re-determined as Rs.1,49,22,123/- under Rule 6 of Customs Valuation (Determination of Export Goods) Rules, 2007
- Goods covered under Shipping Bill should not be confiscated under Section 113 (i), (ia) and (ja) of the Customs Act, 1962
- The Drawback claimed in Shipping Bill should not be rejected.
- The RoSCTL claimed in Shipping Bill should not be rejected.
- Penalty should not be imposed under Section 114 (iii) of the Customs, Act, 1962.

4.

WRITTEN SUBMISSION

M/s Pihu Impex, Delhi vide their letter Dated 06.06.2023, interalia, submitted that the Carge under SIIB Examination for 12 shipping Bills all Dated 11.05.2022 and requested to clear the file as soon as possible and also waive their right for Personal Hearing in the Matter and also shown the willingness to pay Fine and Penalty and requested to allow Back to Town permission for the Goods covered under said 12 Shipping Bills filed by them on 11.05.2022.

5.

PERSONAL HEARING

Personal Hearing in the matter, was waived by Exporter vide their Letter Dated 06.06.2023.

6.

DISCUSSION & FINDING

I have carefully gone through the facts of the case, allegation made in the show cause notice, following the principles of natural justice as per the provisions of the Customs Act / Rules.

The case before me is to decide, (i) FOB Value of Rs.4,09,05,948/- should not be rejected and re-determined as Rs.1,49,22,123/- under Rule 6 of Customs Valuation (Determination of Export Goods) Rules, 2007; (ii) Goods covered under Shipping Bill should not be confiscated under Section 113 (i), (ia) and (ja) of the Customs Act, 1962 (iii) The Drawback claimed in Shipping

Bill should not be rejected (iv) The RoSCTL claimed in Shipping Bill should not be rejected (v) Penalty should not be imposed under Section 114 (iii) of the Customs, Act, 1962.

7. Exporter vide their letter Dated 06.06.2023 waived Personal Hearing in the matter. Principle of Natural Justice as provided in Section 122A of the Customs Act, 1962 have been complied with.

8. In the case, the Exporter has wilfully mis-declared the value of the goods in the base. Therefore, the case is of gross misdeclaration with an intend to claim Higher Benefit i.e. of Drawback and RoSCTL by overvaluing the Export Cargo then the eligible as per the Policy.

Therefore, I hold that benefit claimed at the rate which was normally not admissible on the ground that the same were procure by Exporter by way of mis declaration and therefore the same is liable for Confiscation under the Customs Act, 1962.

Further, there is provision in the Customs Act, 1962 to give an option to get the said goods redeemed on payment of Redemption Fine under Section 125 of the Customs Act, 1962.

8.1 During Investigation, reference was made to ascertain the existence of the Supplier for verification of inward / outward supply by supplier entities, even after two reminders nothing is heard in the matter.

8.2 Further, IGST registration of the Exporter was suspended by the SGST on account of Non Filing of Periodical Returns as per the provisions of the IGST Act.

8.3 Further, during the Proceedings, the Exporter or their Custom Broker, never challenged the Valuation Report given by the Chartered Engineer.

8.4 On findings of the case, it has been observed that the Benefit claimed by the Exporter were total amounting to Rs.1186271/- and Rs. 1943032/- Totalling to Rs. 31,29,303/- and as per the Revised Value as per the Valuation Report given by the Chartered Engineer it works out to Rs. 11,41,540/-.

8.4 Vide letter Dated 06.06.2023, Exporter, requested for Back to Town Permission of the goods covered under mentioned 12 Shipping Bills on payment of Redemption Fine and Penalty.

8.5 In view of the discussion above, I hold that, the value declared by the Exporter for the Goods to be Exported covered under said 12 Shipping Bills as listed in Table I and II above all Dated 11.05.2022 was overvalued to get the Benefit of Duty Drawback and RoSCTL, and the same is to be Re-Determined as per the Provisions of the Customs Determination of Value of Goods Rules, and Value of the Goods so under Export as suggested by the Government Valuer vide their Valuation Report reveals that the Declared Value of the Cargo was overvalued and thereby M/s PIHU, have rendered the goods liable for confiscation as per the provision of Section 113 of the Customs Act, 1962; and also liable for penalty under section 114 (iii) of the Customs Act, 1962. And as per the provisions of Section 125, I am giving him an opportunity to pay Redemption Fine in lieu of Confiscation.

9.1 Accordingly, I uphold the charges levelled against the exporter as they were actively involved in the process of export of the said goods. Even after re-determination of value of the export cargo, the exporter has abandoned their intention to export and claim export benefits as per re-determined value of the export cargo. Therefore, the Exporter does not seem to be motivated by economic factors albeit at the time of defiance of the law. No substantial marked aversion has been found on their part. It is also on record that nowhere at the stage of investigation, the Exporter has raised the objection or contested the finding out of the investigation or for that matter made any kind of plea. Furthermore, the burden of penalties has to be based on the principle of proportionality, a view endorsed and adopted by the Hon'able Supreme Court in its judgment while deciding the Civil Appeal No. 1526 of 2016 filed by M/s Alembic Pharmaceuticals Ltd., Vs. Rohit Prajapati and Others. So, after taking into consideration of all the facts and circumstances and relying on the material facts available on records, I am much inclined towards a just, fair, reasonable stance towards the Exporter and Hence, takes the Lenient View in the proper

perspective. Further, I accept the request made by the Exporter to take the Goods meant for Export covered under impugned 12 Shipping Bills to take Back to Town.

Accordingly, I pass the following order :-

ORDER

- (1) I order to reject the Declared Export Value of Rs. 4,09,05,948/- (Rupees Four Crores Nine Lacs Five Thousand Nine Hundred Forty Eight Only) having total Drawback Claim of Rs.11,86,271/- (Rupees Eleven Lacs Eighty Six Thousand Two Hundred Seventy One Only) and RoSCTL claim of Rs.19,43,032/- (Rupees Nineteen Lacs Forty Three Thousand Thirty Two Only), Benefit Totaling to Rs. 31,29,303/- in the impugned 12 Shipping Bills all dated 11.05.2022, as mentioned in Table A above as per the provisions of the Customs Act, 1962.
- (2) I order to recall and reassess the impugned 12 Shipping Bills all dated 11.05.2022, as mentioned in Table A as per the Value so determined by the Valuer as Rs.1,49,22,123/- (Rupees One Crore Forty Nine Lacs Twenty Two Thousand One Hundred Twenty Three Only) vide their Valuation Report Ref: ABJ:INSP:CE:22-23:162 to 174 Dated 21.03.2023 at the admissible rate of Duty Drawback and RoSCTL Benefit Total Rs.11,41,542/-, as per the prevailing provisions under the Act in respect of Goods covered under 12 Shipping Bills all Dated 11.05.2022, as mentioned in Table A above.
- (3) I order to Confiscate the Goods proposed to be Exported covered under 12 Shipping Bills all dated 11.05.2022, as mentioned in Table A as per the provisions of the Customs Act, 1962, however I give an option to the Exporter to pay Redemption Fine in lieu of the Confiscation amounting to Rs. 6,00,000/- (Rupees Six Lacs only) as per the provisions of the Section 125 of the Customs Act, 1962.
- (4) I Impose a Penalty of Rs. 3,00,000/- (Rupees Three lacs Only) on the noticee M/s PIHU under section 114 (iii) of the Customs Act, 1962.
- (5) I consider the request made by the Exporter and allow the Cargo Back to Town and thereby rejecting the admissible Duty Drawback and RoSCTL benefit available on the 12 Shipping Bills all Dated 11.05.2022, as mentioned in Table A of the Order.

This order is issued without prejudice to any other action which may be required to be taken against any person as per the provision of the Customs Act, 1962 or any other law for the time being in force.

RAG
3/7/23

रघुवंश कुमार / **Raghuvansh Kumar**
अपर आयुक्त, / Additional Commissioner
सीमा शुल्क सदन, मुंद्रा / Custom House, Mundra

BY Registered/Speed Post :-

**M/S PIHU IMPEX, B-136, KHASRA NO. 1 / 2, STREET NO. 10,
SHANTI MOHALLA, NEW USMANPUR, EAST DELHI,
DELHI - 110 053.**

Copy to:

- 1) The Deputy Commissioner of Customs (RRA), Custom House, Mundra
- 2) The Deputy Commissioner of Customs (Export), Custom House, Mundra
- 3) The Deputy Commissioner of Customs (TRC), Custom House, Mundra
- 4) The Deputy Commissioner of Customs (Drawback), Custom House, Mundra
- 5) The Deputy Commissioner of Customs, EDI, Custom House, Mundra
- 6) Guard File

