

	<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
<b>A</b>	<b>File No.</b>	<b>CUS/APR/BE/SO/135/2023-Gr 3-O/o Pr Commr-Cus-Mundra</b>
<b>B</b>	<b>OIO No.</b>	<b>MCH/30/ADC/MK/2023-24</b>
<b>C</b>	<b>Passed by</b>	<b>Mukesh Kumari,</b> <b>Additional Commissioner (Import),</b> <b>Customs House, Mundra.</b>
<b>D</b>	<b>SCN No. &amp; Date</b>	<b>Importer requested for waiver of SCN and PH vide their</b> <b>letter dated 10.05.2023</b>
<b>E</b>	<b>Noticee / Party / Importer</b>	<b>M/s Shalin Enterprise,</b> <b>Krishna, 2<sup>nd</sup> Floor, 220 Maniratna Compex,</b> <b>SH 130, Vijapur, Mahesana (Gujarat)-384340</b>
<b>F</b>	<b>DIN</b>	<b>20230571MO000000C29E</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.

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.

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**BRIEF FACT OF THE CASE**

On the basis of NCTC alert dated 23.01.2023 regarding the undervaluation, mis-declaration and concealment in consignment attempted to cleared through SEZ Warehousing Unit M/s. Rudraksh Terminal LLP, APSEZ, Mundra SEZ Bill of Entry no. 1000796 dated 17.01.2023 filed on behalf of their client/ Buyer **M/s. Shalin Enterprise**, Krishna, 2nd Floor, 220 Maniratna Complex, SH 130 Vijapur, Mahesana Gujarat-384340(EEVPP1691K) was put on hold for detail examination and further investigation by SIIB, Custom House, Mundra. Total 38 items viz. Miscellaneous Trading items such as imitation Jewellery, Pencil case, Table Coster, Backpack Bag, Highlighter, Craft Paint, Marker Canvas Painting set, Window slider bearing etc. covered under Invoice no. HXEX22120302 dated 21.12.2022 were declared in the said Bill of Entry. **Total assessable value of the imported goods is declared as Rs. 10,66,385/- and total duty amount is declared as Rs. 4,73,389/-.**

2. M/s. Rudraksh Terminal LLP had filled SEZ Bill of Entry no. 1000796 dated 17.01.2023 for warehousing the Goods covered under Bill of Lading No. 151C506219 dated 26.12.2022, Invoice No. HXEX22120302 dated 21.12.2022 and Container No. WHSU6886016. Total declared weight of the Cargo is 19,500 Kgs. Subsequently, A DTA Bill of Entry No. 2003689 dated 22.02.2023 was filled by M/s. Shalin Enterprise (IEC: EEVPP1691K) on same Invoice, having assessable value of Rs. 10,66,385/- and total duty was declared as Rs. 5,94,813/-.

**The item wise detail of said Bill of entry is as under:**

item No.	Description	Qty	Unit	CTH	CTN	Rate(USD)	total Invoice value(USD)	Assessable value	Total Duty(INr)
1	Pencil Case	312	DZ	42022290	26	0.6	187.2	15844.91	5937.09
2	Pencil Pouch	33.5	DZ	42022290	4	0.96	32.16	2722.07	1020
3	Backpack Bag	363	DZ	42022290	47	3.6	1306.8	110609.68	41445.44
4	Table Coster	250	DZ	39264049	10	0.8	200	16928.32	6343.04
5	6Pcs Marker	480	SET	96089990	2	0.06	28.8	2437.68	755.19
6	10Pcs Highlighter	96	SET	96089990	1	0.12	11.52	975.07	302.08
7	6Pcs Craft Paint	576	SET	32139000	6	0.12	69.12	5850.43	1812.5
8	6Pcs Painting Brush	720	SET	96039000	3	0.06	43.2	3656.52	1607.4
	7Pcs Painting								

[illegible]

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	<b>Total</b>			<b>933</b>		<b>12598.867</b>	<b>10,66,385</b>
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**3 .** The goods covered above mentioned Bill of Entry were examined under Panchnama dated 27.01.2023 in presence of representative of M/s. Rudraksh Terminal LLP and representative of Importer. During the examination of the goods overall weight and quantity of imported goods was verified with Invoice/Packing list and found as declared. Item No. 25 to 29 of the said BE were declared as different type of imitation Jewellery and there is specific rate of duty per Kg on the imitation jewellery. The weight of the same are not mentioned in invoice and packing List and due to non-availability of the small weighing Scale in the unit the item wise weight of the goods couldn't be ascertained

**3.2** With approval of the competent authority, after availability of the small weighing Scale, item No. 25 to 29 of the said BE were re- examined in order to ascertain actual weight to determine the duty vide examination report dated 28.03.2023 in presence of authorised representative of Importer, Shri Dhiren Gajra and Manager of M/s. Rudraksh Terminal LLP, Shri Rajneesh Dwivedi.

**The details of the weight found during examination are as below: -**

**Table -B**

Item Sr . No. as per BE / invoice	Description	Declared Net weight(as per BE)	Declared Duty (@BCD-Rs. 600/kg, SWS-10% AIDC-25%, IGST 3%)	Net weight ( Kgs) found on examination	Re- determine d Duty (@BCD -Rs. 600/kg, SWS-10%, IGST 3%)	Diff in weight(INR)	Diff in Duty(INR)
25	Imitation Earring	234	178879.1	1215.35	828091.74	981.35	649212.7
26	Imitation Finger Ring	20	18641.08	43.8	30258.4083	23.8	11617.33
27	Imitation Bracelet	42	39854.51	158.8	109034.7216	116.8	69180.21
28	Imitation Anklet	32	29485.08	65.44	44546.757	32.44	15061.68
29	Imitation Necklace	18	15927.11	66.96	45872.868	48.96	29945.76
<b>Total</b>		<b>346</b>	<b>2,82,786.8</b>	<b>1550.411</b>	<b>10,57,804.495</b>	<b>1,203.35</b>	<b>7,75,017.7</b>

**3.3.** In view of the above mentioned facts, it is observed that the importer has wrongly mis-declared the goods in terms of quantity (weight) 346 kgs instead of 1550.41 Kgs as mentioned in Table B above in order to

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evade/short levy and short payment of Customs Duty. The total duty for item No. 25 to 29 is calculated as **Rs. 10,57,805/-** instead of declared duty of **Rs. 2,82,787/-**. Hence, by doing this act and omission the importer tried to evade the Customs Duty to the tune of **Rs.7,75,018/-** and violated the provisions of Section 46 of the Customs Act, 1962, which rendered the goods liable for liable for confiscation under Section 111(m) and penal action under Section 112(a)(ii) of the Customs act, 1962.

**4 .** The declared value of all the 38 items was compared with NIDB data/ contemporary data of similar type goods, it was found that the declared value of all the items is in commensurate with NIDB / contemporary import data.

**5.** A summon was issued to importer/client i.e. M/s. Shalin Enterprise to give the statement on 17-02-2023 but the importer did not appear on summon date. Further, importer vide letter dated 21.02.2023 submitted that goods covered under BE no. 1000796 dated 17.01.2023 have been examined and found as declared in respect of description and quantity but department has raised the issue that goods are undervalued and for the reference of valuation of goods, they are submitting the proforma-invoice for the said goods. The contemporary data and previous import data of these Chinese goods imported by other importer also suggest that value of goods is fair as declared for these imported goods. Further, in response of summons bearing DIN no. 20230371MO000000E694 dated 24.03.2023, Shri Kanaiyalal Shah, Import Manager of M/s. Shalin Enterprise appeared before this office and tendered their statement under section 108 of the Customs Act, 1962 wherein he inter alia stated that he is authorised persons to appear and Mr. Rajan Narendra Pandya is the Proprietor of the firm; that their firm is engaged in import of various trading item from China and sell the same in Local market; that he look after all the task related to import of the goods and sell into local Market. On being asked about the individual weight of the cargo he stated that the gross weight of the cargo found as declared in invoice and packing list, however, he or authorised representative of the firm will be available at the time of examination and outcome of the examination will be accepted by them. Further, he requested that their capital got stuck due to this shipment and they are in urgent need of the cargo to stay in the market. He requested to take lenient view to decide that case and they don't want any SCN and PH in the said matter.

## 6. Relevant Legal provisions

### 6.1 SECTION 46 of the Customs Act, 1962

**Entry of goods on importation.** - (1) *The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting 3[electronically] to the proper officer a bill of entry for home consumption or warehousing in the prescribed form:*

*4[Provided that the 1[Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to make entry by presenting electronically, allow an entry to be presented in any other manner:*

*Provided further that] if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.*

*(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.*

*5[(3) The importer shall present the bill of entry under sub-section (1) before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:*

*Provided that a bill of entry may be presented within thirty days of the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:*

*Provided further that where the bill of entry is not presented within the time*

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*so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.]*

*(4) The importer while presenting a bill of entry shall 6[\* \* \*] 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.*

*(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.*

## **6.2 Section 111 of the Customs Act, 1962.**

### **Confiscation of improperly imported goods,**

*The following goods brought from a place outside India shall be liable to confiscation:*

*(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;*

*(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;*

## **6.3 Section 112 of the Customs Act, 1962**

### **Penalty for improper importation of goods, etc. - Any person, -**

*Section 112 in the Customs Act, 1962*

*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,*

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*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 216 [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, to a penalty 217 [not exceeding the duty sought to be evaded on such goods or five thousand rupees], whichever is the greater;*

*218 [(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 219 [not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;]*

*218 [(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty 220 [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;]*

*218 [(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty 221 [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.]*

## **7. In view of the above facts, it appears that**

- i. The impugned goods mentioned in Table-A imported vide DTA Bill of Entry No. 2003689 dated 22.02.2023 having total assessable value of Rs. **10,66,385 /-** are liable for confiscation under section 111(m) & 111(l) of the Customs Act, 1962.
- ii. Total differential Duty Amounting Rs. **7,75,018/-** (Rs. Seven lakhs Seventy-Five thousand and Eighteen only) to be recovered.
- iii. A penalty under Section 112 (a)(ii) of the Customs Act, 1962 on the



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importer/client, M/s. Shalin Enterprise, imposible.

### **WAIVER OF PERSONAL HEARING AND SCN**

8. The Importer, vide their letter dated 10.05.2023 Submitted that they do not want any show cause notices and personal hearing in this matter.

### **DISCUSSION & FINDING**

9. I have carefully gone through the Investigation report dated 06.05.2023 issued by the Deputy Commissioner of Customs (SIIB), Mundra and I find that M/s. Shalin Enterprise, Krishna, 2nd Floor, 220 Maniratna Complex, SH 130 Vijapur, Mahesana Gujarat-384340(EEVPP1691K) filed SEZ Bill of Entry No. 1000796 dated 17.01.2023 for importation of total 38 items as detailed in Table-A of para 1, covered under Invoice no. HXEX22120302 dated 21.12.2022. Total declared value of the imported goods is Rs. 10,66,385/- and declared total duty amount is Rs. 4,73,389/- And subsequently filed DTA Bill of Entry No. 2003689 dated 22.02.2023 by declaring total assessable value of Rs. 10,66,385 and declared duty of Rs. 5,94,813/-. Based on the alert received to this office for concealment/mis-declaration of items. The said SEZ bill of entry was put on hold for detailed examination by the SIIB section. During the examination, gross weight of the cargo found as declared, however, weight of the item no 25 to 29 found in excess as detailed in Table-B.

10. In view of the above mentioned facts, I find that the importer has wrongly mis-declared the goods in terms of quantity as mentioned in Table B above in order to evade/short levy and short payment of Customs Duty. The total duty for item No. 25 to 29 is calculated as **Rs. 10,57,805/-** instead of declared duty of **Rs. 2,82,787/-**. Hence, by doing this act and omission the importer tried to evade the Customs Duty to the tune of **Rs.7,75,018/-** and violated the provisions of Section 46 of the Customs Act, 1962, which rendered the goods liable for liable for confiscation under Section 111(m) and penal action under Section 112(a)(ii) of the Customs act, 1962.

11. The declared value of all the 38 items was compared with NIDB data/ contemporary data of similar type goods, it was found that the

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declared value of all the items is in commensurate with NIDB / contemporary import data.

**12.** I find that the statement of Shri Kanaiyalal Shah, Import Manager of M/s. Shalin Enterprise was recorded under section 108 of the Customs Act, 1962 wherein he inter alia stated that their firm is engaged in import of various trading item from China and sell the same in Local market; that he look after all the task related to import of the goods and sell into local Market. he stated that the gross weight of the cargo found as declared in invoice and packing list, however, he or authorised representative of the firm will be available at the time of examination and outcome of the examination will be accepted by them. Further, he requested that their capital got stuck due to this shipment and they are in urgent need of the cargo to stay in the market. He requested to take lenient view to decide that case and they don't want any SCN and PH in the said matter.

**14.** I find that the importer while filing the impugned Bill of Entry has subscribed to a declaration regarding correctness of the contents of Bill of Entry under Section 46(4) of the Act, *ibid*. Further, Section 46(4A) of the Act, 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 description & CTH of imported goods.

**15.** In view of the above, I find that the importer has mis-declared in terms of description, and classification therefore the import goods liable for confiscation under Section 111(m) & 111(l) of the Customs Act, 1962 and importer is liable for penal action under Section 112 (a)(ii) of the Customs Act, 1962. Section 125 of the Customs Act, 1962 Provide that Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation where 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 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.

**16.** I find that the importer vide its letter dated 10.05.2023 submitted

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that they don't want personal hearing & Show Cause Notice and requested for releasing the goods on payment of Fine/Penalty.

**17.** In view of above, I pass the following order.

### **ORDER**

**i.** I order to confiscate the impugned goods mentioned in Table-A imported vide DTA Bill of Entry No. 2003689 dated 22.02.2023 having total assessable value of **Rs. 10,66,385/-** (Rupees Ten Lakhs Sixty Six Thousand Three Hundred Eighty Five Only) under section 111(m) and 111(l) of the Customs Act, 1962. However, considering facts of the case and provisions of the Section 125 of the Customs Act, 1962, I give option to re-deem the same on payment of Redemption Fine of Rs. 50,000/- (Rs. Fifty Thousand only/-) in lieu of confiscation.

**ii.** I order to recover total differential Duty Amounting **Rs. 7,75,018/-** (Rupees Seven lakh Seventy-Five Thousand Eighteen only) under provisions of Custom Act, 1962.

**iii.** I impose a penalty of Rs. 50000/- (Rs. Fifty Thousand only) under Section 112 (a)(ii) of the Customs Act, 1962 on the importer M / s . Shalin Enterprise, Krishna, 2nd Floor, 220 Maniratna Complex, SH 130 Vijapur, Mahesana Gujarat-384340.

**18.** 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.

MUKESH KUMARI  
ADDITIONAL COMMISSIONER  
Custom House, Mundra

F.NO. CUS/APR/BE/SO/135/2023-Gr 3-O/o Pr Commr-Cus-Mundra

12-05-2023

To

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M/s. Shalin Enterprise, Krishna,  
2nd Floor, 220 Maniratna Complex,  
SH 130 Vijapur, Mahesana,  
Gujarat-384340

**Copy to;**

- i. The Deputy/Assistant Commissioner (RRA), Custom House, Mundra
- ii. The Deputy/Assistant Commissioner (TRC), Custom House, Mundra
- iii. The Deputy/Assistant Commissioner (EDI), Custom House, Mundra
- (iv) The Deputy/Assistant Commissioner (SIIB), Custom House, Mundra