



सीमा शुल्क के आयुक्त का कार्यालय (निवारक), सीमा शुल्क भवन,
जामनगर- राजकोट हाइवे, विक्टोरिया ब्रिज के पास,
जामनगर (गुजरात) – 361 001

Office of the Commissioner of Customs (Preventive),
'Seema Shulk Bhavan', Jamnagar – Rajkot Highway,
Near Victoria Bridge, Jamnagar (Gujarat) – 361 001

Email: commr-custjmr@nic.in; adj-custjmr@nic.in

DIN – 20250271MM000000BA02

1.	फाइल क्रमांक/ File Number	F. No. CUS/219/2024-Adjn. (Comp. no. 1098716)
2.	मूल आदेश क्रमांक/ Order-in-Original No.	17/ Additional Commissioner/ 2024-25
3.	द्वारा पारित/ passed by	अमित कुमार सिंह /Amit Kumar Singh अपरआयुक्त/ Additional Commissioner, सीमा शुल्क, निवारक/Customs (Preventive) जामनगर/ Jamnagar.
4.	Date of Order /आदेश दिनांक	25.02.2025
	Date of issue / आदेश जारी किया	25.02.2025
5.	कारण बताओ नोटिस क्रमांक एवं दिनांक Show Cause Notice Number & Date	ADC-14/2023-24 dated 15.01.2024
6.	नोटिसी का नाम/ Name of Noticee	Shri Rehan Aslam Khan, Proprietor of M/s Neo Traders, Room No. 18, Basheer Khan Chawl, Squatter Colony, Bandra Plot, Jogeshwari East, Mumbai, Maharashtra-400 060

01. इस आदेश की मूल प्रति संबंधित व्यक्ति को निशुल्क प्रदान की जाती है।

The original copy of this order is provided free of cost to the person concerned

02. इस मूल आदेश से व्यथित कोई भी व्यक्ति सीमा शुल्क अधिनियम, की धारा 1962 128A)(1)a(,सीमा शुल्क नियम (अपील), 1982 के नियम 3 के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से 60 दिन के भीतर फॉर्म सीए-1 में निम्नलिखित पते पर अपील दायर कर सकता है।फॉर्म सीए-1 में अपील का प्रपत्र, दो प्रतियों में दायर किया जाएगा और उसके साथ इस आदेश की समान संख्या में प्रतियाँ संलग्न की जाएंगी जिसके विरुद्ध अपील की गई है। जिनमें से कम से कम)एक प्रमाणित प्रति हो।(

आयुक्त अपील
वी मंजिल 7, मृदुल टावर,
टाइम्स ऑफ इंडिया के पीछे,
आश्रम रोड,
अहमदाबाद 009 380 –

Commissioner (Appeals),
7th Floor, Mrudul Tower,
Behind Times of India,
Ashram Road,
Ahmedabad – 380 009

Any Person aggrieved by this Order-In-Original may file an appeal in Form CA-1, within sixty days from the date of receipt of this order, under the provisions of Section 128 of the Customs Act, 1962, read with Rule 3 of the Customs (Appeals) Rules, 1982 before the Commissioner (Appeals) at the above mentioned address. The form of appeal in Form No. CA.-1 shall be filed in duplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).

03.	अपील पर 5/- रुपये का कोर्ट फीस स्टाम्प लगा होना चाहिए। जैसा कि भारतीय स्टाम्प अधिनियम, 1989 के तहत प्रदान किया गया है, या राज्य विधान द्वारा संशोधित किया जा सकता है, जबकि इस अपील के साथ संलग्न आदेश की प्रति पर रुपये) 0.50 पचास पैसे केवल (का कोर्ट फीस स्टाम्प होना चाहिए। जैसा कि न्यायालय शुल्क अधिनियम, 1870 की अनुसूची -I, मद 6 के तहत निर्धारित किया गया है।
	The appeal should bear the Court Fee Stamp of Rs. 5/- as provided under the Indian Stamp Act, 1989, modified as may be, by the State Legislation, whereas the copy of the order attached with this appeal should bear a Court Fee Stamp of Rs. 0.50 (Fifty paise only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
04.	अपीलीय ज्ञापन के साथ शुल्क भुगतान /जुर्माना /अर्थ दंड का सबूत भी संलग्न करे अन्यथा सीमा शुल्क अधिनियम, 1962 की धारा 128 के प्रावधानों का अनुपालन ना होने के कारण अपील को खारिज किया जा सकता है।
	Proof of payment of duty / fine / penalty should also be attached with the appeal memo, failing to which appeal is liable for rejection for non-compliance of the provisions of Section 128 of the Customs Act, 1962.
05.	अपील प्रस्तुत करते समय यह सुनिश्चित करे की सीमा शुल्क अपील)) नियम, और सिस्टेट 1982 नियम (प्रोसीजर) प्रक्रिया, पालन हुआ है। के सभी नियमों का पूरा 1982
	While submitting the Appeal, the Customs (Appeals) Rules, 1982, and the CESTAT (Procedure) Rules, 1982, should be adhered to in all respects.
06.	इस आदेश के खिलाफ आयुक्त (अपील), सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष मांग की गई शुल्क के %7.5 के भुगतान पर होगी, जहां शुल्क या शुल्क और जुर्माना विवाद में है, या जुर्माना विवाद में है, या जुर्माना जहां जुर्माना है अकेले विवाद में है।
	An appeal, against this order shall lie before the Commissioner (Appeals), on payment of 7.5% of the duty demanded, where duty or duty and penalty are in dispute, or penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE:

M/s Neo Traders, (IEC-CSLPK5487L) (hereinafter referred to as “the Noticee”) having its registered office at Room No. 18, Basheer Khan Chawl, Squatter Colony, Bandra Plot, Jogeshwari East, Mumbai, Maharashtra-400 060, had imported 78 units of goods namely “Soyabean Gravity Dry Destoner HS Code 84792090” having gross weight 18330 Kgs. vide Bill of Lading No. MLICPL220925355 dated 14.09.2022 through the vessel “X-Press Euphrates” under Import General Manifest (In brief – IGM) No. 2322175 dated 19.09.2022 per Container No. YMLU8516424 bearing Seal No. HLG2817920, as intimated by M/s. Alliance Container Line LLP, Gandhidham (Gujarat) to the Superintendent, Customs House, Pipavav vide their letter dated 21.09.2022. The said container with cargo declared as “Soyabean Gravity Dry Destoner HS Code 84792090” arrived at Container Freight Station (In brief – CFS) at Pipavav Port on 22.09.2022.

2. The said imported cargo remained unclaimed for a period of more than 30 days from the date of its import. Therefore, the Custodian i.e. M/s. CEVA Logistics India Pvt. Ltd., Pipavav, had issued Notices under Section 48 of the Customs Act, 1962, on 03.11.2022 and 19.12.2022, to the Noticee i.e. M/s. Neo Traders, Mumbai, for clearance of the goods. However, the Noticee had neither approached for clearance of the said cargo nor complied with the notices sent to them by the said custodian.

3. Further, as the said cargo remained unclaimed in-spite of Notices issued to the Importer-Noticee, the examination of the cargo was conducted on 30.01.2023, by the officers of the SIIB, Custom House, Pipavav, in presence of independent Panchas and representative of the said CFS i.e. Shri Tony John, Senior Manager of M/s. CEVA Logistics India Private Ltd. The Container No. YMLU8516424 bearing Seal No. HLG2817920 was opened in the presence of independent Panchas and Shri Tony John; wherein, it was found that the said container was loaded with brand new Xerox machines. Thereafter, entire cargo was unloaded from the said container and it was found that there were total 108 units of different models of brand new Xerox machines of China and Korea Origin. The details of the same are as per Table – A follows:

Table - A

Sr. No.	Machine no.	Country of origin	No. of units
01.	Work Centre 7830	Korea	12
02.	Work Centre 7830	China	10
03.	Work Centre 7855i	China	9
04.	Work Centre 7835i	China	6
05.	Work Centre 7835i	Korea	2
06.	Work Centre 7835	China	18
07.	Work Centre 7830	Korea	3
08.	Work Centre 7830i	China	1
09.	Work Centre 7845i	China	5
10.	Work Centre 7845	China	8
11.	Work Centre 7845	Korea	6
12.	Work Centre 7855	China	8
13.	Work Centre 7855	Korea	16

14.	Xerox J-A-132	China	3
15.	Xerox J-A-133	Korea	1
Total			108

4. Thus, it appeared that the cargo was mis-declared in the Bill of Lading No. MLICPL220925355 dated 14.09.2022 as "Soyabean Gravity Dry Destoner HS Code 84792090" instead of actual goods i.e. "Xerox Machines". The examination proceedings were recorded under the Panchnama dated 30.01.2023. In view of the above, it appeared that the Noticee i.e. M/s. Neo Traders, Mumbai, imported Xerox machines of China and Korea origin of different model numbers and mis-declared the same as "Soyabean Gravity Dry Destoner HS Code 84792090" and involved themselves in the concealing of the goods. The details of the IGM in respect of the said container are as follows:

Table - B

Sr. No.	Bill of Lading No. & Date	Container No.	IGM No. & Date	Goods declared in IGM
1.	MLICPL220925355 dated 14.09.2022	YMLU8516424	2322175 dated 19.09.2022	78 units of Soybean Gravity Dry Destoner - HS code 84792090

5. During the examination proceedings conducted under Panchnama dated 30.01.2023, it appeared that the items imported vide the said container, were copier machines classifiable under Customs Tariff Heading 84433940 attracting Import duty @ 7.5% on the value of the goods. As the items mentioned in the said IGM filed by M/s. Merchant Shipping Services Pvt. Ltd., Pipavav, appeared to have been mis-declared, the goods examined under Panchnama dated 30.01.2023 i.e. total 108 Xerox Machines of different models, were placed under seizure on 30.01.2023 vide Seizure Memo dated 30.01.2023 under Section 110 of the Customs Act, 1962, on the reasonable belief that the goods imported vide above mentioned Bill of Lading, were liable to be confiscated under Section 111(f), 111 (l), and 111(m) of the Customs Act, 1962.

6. During the course of investigation, Summons dated 24.04.2023, 02.05.2023, 12.05.2023 and 02.11.2023 were issued to the importer-Noticee i.e. Shri Rehan Aslam Khan, Proprietor of M/s. Neo Traders, Mumbai, which were undelivered and were returned back with the remarks as "Addressee cannot be located".

6.1. Further, during the course of Panchnama proceedings on 30.01.2023, on being asked by the Customs Officers, about any communication with the importer regarding clearance of the cargo, Shri Tony John stated that the notice has been served on the address of the Importer-Noticee but they had not responded till date; that one person with mobile no. 8866555965 asked him regarding availability/clearance of the above said container in the CFS and asked for the photographs of the sealed container. The inquiries made in this regard, revealed that the said mobile number belonged to Shri Nimesh Joshi. Therefore, a Search was carried out on

01.02.2023 at the residential premises of Shri Nimesh Joshi, 11, Shivam Bungalows, South Bopal, Ahmedabad. However, no incriminatory documents were found during the search proceedings.

6.2. A statement of Shri Nimesh Joshi was recorded on 01.02.2023, wherein, he *inter alia* stated that; he started working with one CHA firm and qualified for Customs Broker F Card License in 1996; that he had established his CHA firm i.e. M/s Dekor Clearing and Shipping Pvt. Ltd., Mumbai, in Directorship with his wife i.e. Smt. Devyani Joshi; that his F card license was suspended in 2017 by the Customs Mumbai and the matter is with CESTAT; that on 23.01.2023, 02 persons i.e. Shri Moni and Shri Deepak Singh, approached him for the clearance of their import consignments for the import of goods loaded in container no. YMLU8516424 lying at Pipavav Port & others consignments at Kandla SEZ, Gandhidham; that they provided him the Bills of Lading for the said import consignments on Whatsapp; that as he used to work as a Customs Broker, he agreed to consult them for the clearance of their import consignment imported vide Container no. YMLU8516424, which was examined by the officers of SIIB at the Pipavav port on 30.01.2023, under the Panchnama dated 30.01.2023; that both of these persons called him on Whatsapp and met him in hotel i.e. Hotel Meriton, 5th floor, Smruddhi Complex, Naroda, Ahmedabad on 23.01.2023; that during the meeting, they informed about the said import consignment and requested to help them out for clearance, as the said import consignment was lying at port since long; that he called Shri Tony for the confirmation of the availability of the said import consignment at Pipavav port; that in response, Shri Tony John sent him the pictures of the container and confirmed that the said container was lying at Pipavav port; that the said pictures were forwarded to Shri Moni and Shri Deepak; that he was waiting for the documents i.e. invoice, packing list, COO etc. which were supposed to be provided by Shri Deepak and Shri Moni; that after receiving the documents, they were planning to file the Bill of Entry; that he was aware of the misdeclaration in the said import consignment as Shri Moni and Shri Deepak informed him that they wanted to import the multifunction Xerox Machines; that he had asked for at least Rs. 50,000/- per container for the consultation fee and informed them that after seeing the documents he will tell his final charges for the consultation of the clearance of the import consignment; that however, till date he did not receive any money in respect of the above consignment.

6.3. A statement of Shri Jitendra Malik (Mobile no. 9099024034), Authorized Signatory of M/s Merchant Shipping Services Pvt. Ltd., Pipavav, (Authorized vide Power of Attorney dated 02.08.2016) was recorded on 09.05.2023, wherein, he *inter alia* stated that; M/s. Merchant Shipping Service Pvt. Ltd., as agent of the vessel 'Xpress Euphrates' operated by M/s Sea Consortium Shipping India Pvt. Ltd., 215 Atrium, C416, Andheri Kurla Road, Chakala, Andheri East, Mumbai-400069, had filed the EDI IGM No. 2322175 dated 19.09.2022 through ICEGATE at Pipavav; that Shri Ananda Mardhekar, Assistant Manager of M/s Sai Marine Surveyors, Plot no. 06, Sec.-11, behind Anchorage Bldg., NMSEZ Commercial Complex, "C" Wing, 1st Floor,

Off.no. 102, Township, Navi Mumbai-400707 having mobile No. 8080970229 had asked for the EDI IGM Item No. through mail and Shri Him Malam, representative of M/s Alliance Container Line LLP (Mobile No. 9724840710), had provided EDI IGM to file in ICEGATE in respect of Container No. YMLU8516424; that they filed the IGM, based on the digital file of EDI IGM provided by M/s Alliance Container LLP, Gandhidham through e-mail; that they got the information about the misdeclaration from the Seizure Memo dated 30.01.2023; that further, he didn't know any concerned person of the importer i.e. M/s Neo Traders, Mumbai.

6.4. A statement of Shri Sangit Raj (Mobile No. 9574111710), Partner of M/s Alliance Container LLP, Gandhidham, was recorded on 29.05.2023, wherein he *inter alia* stated that; he is one of the partner of M/s Alliance Container Line LLP, Gandhidham; that the IGM no. 2322175 dated 19.09.2022 was filed by M/s Merchant Shipping Service Pvt. Ltd. as agent of the vessel Xpress Euphrates, operated by M/s Sea Consortium Shipping India Pvt. Ltd., Mumbai and documents of the container/ goods were provided by M/s Alliance Container LLP; that all the documents, related to the subject container were provided by Shri Sahil Sodha, Manager of M/s MLI Logistics India Pvt. Ltd.; that no other agency/ person had approached for the clearance of the import consignment at Pipavav port and they were not aware about filing of Bill of Entry for the said import consignment; that they were not aware of the misdeclaration in respect of imported goods, when they inquired about the status of the container, they were informed by Shri Tony John, M/s CEVA Logistics India Pvt. Ltd. that the container was seized for misdeclaration of goods by the importer; that they don't know any person from the importer side.

6.5. A statement of Shri Sahil Karim Sodha (Mobile No. 8657563631), Authorized Signatory of M/s MLI Logistics India Pvt. Ltd., Gandhidham, was recorded on 07.06.2023, wherein he *inter alia* stated that; the IGM No. 2322175 dated 19.09.2022 was filed by M/s. Merchant Shipping Service Pvt. Ltd. Pipavav as agent of the vessel 'Xpress Euphrates' operated by M/s Sea Consortium Shipping India Pvt. Ltd., Mumbai; that M/s. CAPE Line Shipping LLC, Dubai is their agent in Dubai; that on 13.09.2022, M/s. CAPE Line Shipping LLC provided a pre-alert mail to them on opsmun@mlilogistics.com from docs1.dxb@capeship.com in which details like Container Number (YMLU8516424), Container Size(1*40'), Port of Loading, Port of Discharge, Vessel name and Vessel Voyage(22037) had been given for a shipment from Jebel Ali to Pipavav Port; that on 14.09.2022, they received the final draft of Bill of Lading from POL Agent to file the manifest at Pipavav port in which the Cargo is mentioned as "78 Units of Soyabean Gravity Dry Destoner"; that on 17.09.2022, they received the surrendered BL copy from POL agent i.e. M/s. CAPE Line Shipping LLC to release the shipment without presentation of Original Bill of Lading; that M/s. MLI Logistics India Pvt. Ltd. do not have port registration at Pipavav Terminal and Customs as a Liner; that therefore, they approached to M/s Alliance Container Line LLP, Gandhidham, for using their port code at Pipavav for discharging the Container and provided

final draft of Bill of Lading for preparing the EDI IGM File which needed to be submitted to the Vessel Agent i.e. M/s. Merchant Shipping Services Pvt. Ltd., Pipavav for filing the IGM in respect of above Shipment; that M/s. CAPE Line Shipping LLC, Dubai had issued the said Bill of Lading having Cargo description as "78 Units of Soyabean Gravity Dry Destoner" having Gross Weight 18330 Kgs.; that they were not aware about the misdeclaration in respect of subject imported goods; that M/s. Alliance Container LLP informed them on 02.02.2023 through e-mail that the said container was opened for examination and Customs had found misdeclaration of goods in the said container; that M/s. Cape Line Shipping LLC had provided an email id- neotraders86@gmail.com and mobile number +919767555510 to inform about the arrival of the consignment; that they had sent e-mail to this email ID but no one responded to the Emails; that they also contacted on the mobile number to check the clearance plan of the said consignment but the concerned person informed them that he wasn't aware about such consignment from Dubai; that on 04.04.2023, they received an email from POL agent i.e. M/s Cape Line Shipping LLC, Dubai, in which it was stated that Container is released by the Customs side and Consignee is ready to take the delivery of the Cargo; that it was further informed that the consignee has asked some waiver in Detention Charges; that for this, their company has not confirmed any waiver till date; that they further asked from the POL agent to provide any alternate Contact details of the importer; that therefore, on 13.04.2023, the POL agent had provided two alternate consignee email IDs i.e. theviaanenterprises589@gmail.com & neeraj.indel@bilanderlogistics.com; that on 05.05.2023, the POL agent provided one more email ID i.e. rakesh.singh150380@gmail.com and mobile Number of Mr. Rajan-9987297665; that they did not approach to this person and also they did not send any email to these email IDs.

6.6 Further, the Summons dated 24.04.2023, 02.05.2023, and 12.05.2023 were issued to Mr. Rehan Aslam Khan, Proprietor of the Noticee, to appear for tendering his statement, however, he did not appear.

7. As the investigation in the matter could not be completed within the prescribed time period of six months in terms of Section 110(2) of the Customs Act, 1962 due to non-cooperative attitude of the importer- Noticee, an extension for a further period of six months under First Proviso to Section 110(2) of the Customs Act, 1962 was issued by the competent authority vide Order dated 28.07.2023 bearing DIN-20230771MM0000777C02. Further, Summons were issued to the Noticee i.e. M/s Neo Traders on 02.11.2023 and Shri Nimesh Joshi on 11.09.2023 and 13.10.2023, after extension of time limit in the case.

8. The valuation of the total imported cargo i.e. 108 units of Xerox Machines of China and Korea origin of different model numbers, was ascertained by M/s. Pankaj N. Udani (Skil Link India), Government Approved Valuer and as per the Valuation Report dated 17.03.2023

submitted by him, the total value of the seized imported cargo i.e. China and Korea origin 108 units of Xerox Machine (Brand New) of different models, was ascertained to **Rs. 1,41,70,000/-**.

9. In view of the facts and circumstances of the case as discussed in the foregoing para, it appeared as follows:

- a) M/s Neo Traders had imported consignment of "108 units of Xerox machines of China and Korea origin of different model numbers" at Pipavav Port vide Bill of Lading No. MLICPL220925355 dated 14.09.2022 and IGM No. 2322175 dated 19.09.2022, by way of mis-declaring the same as "78 units of Soybean Gravity Destoner" and classifying them under HS Code 84792090;
- b) M/s Neo Traders, Mumbai had not filed Bill of Entry till the date as required under Section 46 of the Customs Act, 1962, even after landing of cargo at Pipavav Port. M/s Neo Traders, Mumbai, neither came forward to claim the goods nor filed the Bill of Entry *in spite* of Notices dated 03.11.2022 and 19.12.2023 which were issued under Section 48 of the Customs Act, 1962 by the Custodian i.e. M/s CEVA Logistics India Pvt. Ltd.;
- c) Despite repeated Summons issued to the Noticee i.e. M/s Neo Traders, Mumbai, the Proprietor of the Noticee did not present himself to tender his statement/ clarification on misdeclaration of goods and violations of provisions of the Customs Act. It therefore, appeared from the non-compliance to repeated Summons that the Noticee was not in a position to explain their misdeclaration.

10. Thus, it appeared that the Noticee, in violation of provisions of Section 46 and Section 48 of the Customs Act, 1962, mis-declared the imported goods and hence, rendered the imported i.e. "108 units of Xerox machines of China and Korea origin of different model numbers" liable for confiscation under Section 111(f), 111(l) and 111(m) of the Customs Act, 1962.

11. The Noticee, by not appearing before the investigation in connection to the subject import, appeared to be acted wilfully for illegal import of the seized goods i.e. "108 units of Xerox Machines of China and Korea origin of different model numbers" by mis-declaring them as "78 units of Soybean Gravity Destoner" under IGM No. 2322175 dated 19.09.2022 and Bill of Lading No. MLICPL220925355 dated 14.09.2022.

12. The Noticee by way of various acts of omission rendered the goods i.e. "108 units of Xerox Machines of China and Korea origin of different model numbers" imported by them vide Bill of Lading No. MLICPL220925355 dated 14.09.2022 and IGM No. 2322175 dated 19.09.2022 having total assessable value of Rs. 1,41,70,000/- (Rupees one crore, forty one lakh and seventy thousand only) liable to confiscation under Section 111(f), 111(l) & 111(m) of the Customs Act,

1962. By mis-declaring the imported goods, the Noticee also rendered themselves liable to penalty under Section 112 of the Customs Act, 1962. Further by mis-declaring the goods in IGM & Bill of Lading and thereby presenting falsified documents before the Customs, M/s Neo Traders, Mumbai has rendered himself liable for penalty under Section 114AA of the Customs Act, 1962.

13. In view of the above, a Show Cause Notice No. ADC-14/2023-24 dated 15.01.2024 was issued to the Noticee i.e. M/s. Neo Traders (IEC – CSLPK5487L), having its registered office at Room No. 18, Basheer Khan Chawl, Squatter Colony, Bandra Plot, Jogeshwari East, Mumbai Sub urban, Maharashtra-400060, as to why:-

- i) The import consignment i.e. "108 units of Xerox Machines of China and Korea origin of different model numbers" totally valued at Rs. 1,41,70,000/- (Rupees one crore, forty one lakh and seventy thousand only), should not be confiscated under Section 111(f), 111(l) & 111(m) of the Customs Act, 1962;
- ii) Penalty should not be imposed on them under Section 112 of the Customs Act, 1962;
- iii) Penalty should not be imposed on him under Section 114AA of the Customs Act, 1962.

13.1 The said Show Cause Notice was dispatched to the Noticee on the address registered with the department via Speed Post but the same was returned undelivered with the postal remarks as "Insufficient Address". Even the said Show Cause Notice delivered on the available email ID i.e. neotraders86@gmail.com of the Noticee, was not responded. Therefore, the same was served under the provisions of Section 153(e) of the Customs Act, 1962.

Defense reply and records of personal hearing:

14. The Noticee neither responded to any of the communications of the department nor filed any reply to the said Show Cause Notice No. ADC-14/2023-24 dated 15.01.2024. The reminder in this regard, was also issued to them on the available Email ID: neotraders86@gmail.com on 10.05.2024 seeking their defense reply, if any, however, the same was also not responded too. Further, the intimation for attending the personal hearing was sent vide letter dated 05.06.2024, 20.06.2024, 12.07.2024, 15.10.2024, 06.11.2024 and 20.11.2024 via Speed Post on the address of the Noticee mentioned in the said Bill of Lading alongwith on the said Email ID i.e. neotraders86@gmail.com, but the same were also not responded as all the letters dispatched vide speed post were returned undelivered with the postal remarks as "Left". Thus, no personal hearing could be conducted in the instant case.

Discussions and Findings:

15. I have carefully gone through the facts available on records. I observe that ample opportunities were given to the Noticee to defend themselves in the case on hand, but the

Noticee had neither submitted any written defense nor appeared for personal hearing to represent his side at any point of time. Thus, I find confined to conclude that the principles of natural justice as provided under Section 122A of the Customs Act, 1962, have been complied with. As the matter could not be kept in abeyance for infinite period and in view of Section 28BB of the Customs Act, 1962, I have no other option except to decide the instant case on the basis of the documentary evidences available on records and therefore, I proceed further to decide the case on hand accordingly. I find that the following points are to be decided in the instant case, as to whether:

- i) the imported consignment consisting of 108 Xerox Machines of China and Korea origin of different model numbers, totally valued at Rs. 1,41,70,000/- are liable for confiscation under Section 111(f), 111(l) and 111(m) of the Customs Act, 1962, or otherwise;
- ii) Penalty is liable under Section 112 and 114AA of the Customs Act, 1962.

16. From the various documents produced before me, I observe that the significant document related to the import of the impugned goods i.e. Bill of Lading No. MLICPL220925355 dated 14.09.2022 has been issued by the carrier i.e. Metro Logistics International (Pvt.) Ltd. in respect of transportation of 78 units of goods viz. "Soyabean Gravity Dry Destoner HS Code 84792090" carried by the Vessel "X-Press Euphrates" from port of loading – Jebel Ali to the final destination – Port of Pipavav in favour of the consignee viz. M/s. Neo Traders, who is the Noticee in the instant case. I observe the significance of the Bill of Lading to the effect that it contains the goods being transported, the destination, the name of the shipper and consignee, and other important information. Further, I also observe that in the Import General Manifest No. 2322175 dated 19.09.2022 filed by M/s Merchant Shipping Services Pvt. Ltd. as an Agent of the vessel "X-Press Euphrates", the imported goods have been declared as "78 Units of Soybean Gravity Dry Destoner HS Code 84792090" and declared consignee is the Noticee.

17. I further observe that, after import of the goods vide the said container; it remained unclaimed even after the lapse of the stipulated period as prescribed under the provisions of Section 46 of the Customs Act, 1962, i.e. more than 30 days. Consequently, the custodian, M/s. CEVA Logistics India Pvt. Ltd., Pipavav issued notices under Section 48 of the Customs Act, 1962 on 03.11.2022 and 19.12.2022 to the Importer-Noticee i.e. M/s. Neo Traders for clearance of the goods. I further observe that, as the notices issued by the said custodian were not responded to by the Noticee, therefore, the department was confined to examine the imported goods contained in the said Container No. YMLU8516424 bearing Seal No. HLG2817920 in absence of the Noticee but within the presence of the Independent Panchas and representative of the concerned CFS, i.e. Shri Tony John, Senior Manager, on 30.01.2023 to adhere to the provisions of Section 48 of the Customs Act, 1962. Thereafter, the said container was opened and during examination, it was found that the container was stuffed with 108 units of different models of brand new Xerox Machines from China and Korea origin. The detailed inventory of

the Xerox Machines found in the container no. YMLU8516424 during the examination is detailed at Table-A of Para 3 above.

18. I also observe that the examination process was recorded under Panchnama dated 30.01.2023 which was drawn in the presence of the Independent Panchas and representative of the Custodian. As per the Panchnama dated 30.01.2023, the said Noticee had imported "108 units of different models of brand new Xerox Machines from China and Korea origin" by way of mis-declaring the same as "78 units of Soyabean Gravity Dry Destoner HS Code 84792090", so as to conceal the actual identity of the imported goods.

19. I find that, as per the details of the examination proceedings conducted under the Panchnama dated 30.01.2023, the items imported vide above mentioned container were copier machines classifiable under Customs Tariff Heading 84433940, however, in the Bill of Lading, the same were mis-declared as "78 units of Soyabean Gravity Dry Destoner HS Code 84792090" with intention to evade the payment of duty of customs, as the valuation of copier machines being always on higher side.

20. I observe that, as the Noticee did not come forward to clear the imported goods and also avoided the filing of Bill of Entry, therefore, the valuation of the said imported goods i.e. 108 units of different models of brand new Xerox Machines from China and Korea origin, was conducted on 08.02.2023 by M/s. Pankaj N. Udani (Skil Link India), Government Approved Valuer, Ahmedabad and as per his Valuation Report dated 17.02.2023/17.03.2023, the said imported goods were totally valued at Rs.1,41,70,000/- (Rupees one crore, forty one lakh and seventy thousand only).

20. I find that, the actual goods imported do not correspond with the goods mentioned in the Import General Manifest bearing No. 2322175 dated 19.09.2022 filed by M/s Merchant Shipping Services Pvt. Ltd. and have been mis-declared as "78 units of Soyabean Gravity Dry Destoner HS Code 84792090" instead of actual imported goods i.e. "108 units of different models of brand new Xerox Machines from China and Korea origin" which were seized vide Seizure Memo dated 30.01.2023 under the provisions of Section 110 of the Customs Act, 1962 under the reasonable belief of the same being liable for confiscation under Section 111(f), 111(l) & 111(m) of the Customs Act 1962.

21. I find that the Summons dated 24.04.2023, 02.05.2023 and 12.05.2023 were issued to the Noticee i.e. Shri Rehan Aslam Khan, Proprietor of M/s Neo Traders i.e. the Noticee, to appear for statement, however, no one appeared for the same. As a result, the Investigation in the matter could not be completed within the prescribed time period of six months in terms of Section 110(2) of the Customs Act, 1962 due to non-cooperation on the part of the Importer-

Noticee, hence, an extension for a further period of 06 months under first proviso to Section 110(2) of the Customs Act, 1962 was issued by the Competent Authority vide Order dated 28.07.2023, DIN-20230771MM0000777C02. I find that, on extension of time limit under Section 110(2) by Competent Authority, one more Summons dated 02.11.2023 was issued to the Noticee. However, the same was also not responded to by the Noticee. I therefore apparently find that, in case it would have been *bona fide* mistake then the Noticee would have *suo motto* presented himself before the Proper Officer of Customs when summoned for recording statement under Section 108 of the Customs Act, 1962, however, he always refrained from the doing so, which itself indicates that, he was well aware about the mis-declaration of the goods and has nothing to explain.

22. I find further that, the intimation for attending the personal hearing was sent to Noticee vide the departmental letter dated 05.06.2024, 20.06.2024, 12.07.2024, 15.10.2024, 06.11.2024 and 20.11.2024 via Speed Post on his address mentioned in the said Bill of Lading as well as verified from the official website of DGFT at the material point of time using his IEC Number, but the same were not responded to, as all the letters dispatched vide speed post were returned undelivered with the postal remarks as "Left". Moreover, the said letters were also sent on the Email ID i.e. neotradlers86@gmail.com of the Noticee as reported by Shri Sahil Karim Sodha, Authorized Signatory of M/s MLI Logistics India Pvt. Ltd., in his statement dated 07.06.2023, however, the same were also not responded to by the Noticee. I therefore find that, the Noticee had ab-initio conspired to avoid penal action for improper importation by providing fake address while obtaining IEC and fake email ID to Shipping Lines, so as to resort to the mis-declaration with intention to evade the duty of customs.

23. As in the instant case, when Noticee avoided filing of Bill of Entry and no other import related documents such as Proforma Invoices, Purchase Order, packing list etc. are available with the department then the Bill of Lading becomes the only crucial document w.r.t. ownership of imported goods and to decide the case. Therefore, the copy of Bill of Lading is reproduced herein follows for the sake of clarity:

Royal Impex reported at 2015(325) E.L.T.740 (Mad.); wherein it has been held that, *"filing of Bill of Entry not necessary as it is not a pre-condition for proceeding against Importer. Non-filing of Bill of Entry does not absolve Importer from liability to be proceeded against the provisions of the Customs Act for any violation which renders goods improperly imported and liable for confiscation and subsequent penalties thereof."*

26. I observe from the Statement dated 01.02.2023 of Shri Nimesh Joshi that, he was aware of the misdeclaration in the said import consignment, as two persons i.e. Shri Moni and Shri Deepak informed him that they wanted to import the multifunction Xerox Machines and for the purpose, he had asked for at least Rs. 50,000/- per container for the consultation fee and informed them that after seeing the documents he will tell his final charges for the consultation of the clearance of the import consignment. This leads to inference that the Noticee without coming forward himself tried to find a suitable person through Shri Moni and Shri Deepak, who can clear the mis-declared goods.

27. I also observe from the Statement dated 07.06.2023 of Shri Sahil Karim Sodha, Authorized Signatory of M/s MLI Logistics India Pvt. Ltd., Gandhidham, wherein he stated that the vessel 'Xpress Euphrates' is operated by M/s Sea Consortium Shipping India Pvt. Ltd., Mumbai and M/s. CAPE Line Shipping LLC, Dubai is their agent in Dubai, who provided a pre-alert mail to them in which details like Container Number (YMLU8516424), Container Size(1*40'), Port of Loading, Port of Discharge, Vessel name and Vessel Voyage(22037) had been given for a shipment from Jebel Ali to Pipavav Port. He further stated that M/s. Cape Line Shipping LLC had also provided an email id - *neotradars86@gmail.com* and mobile number +919767555510 to inform about the arrival of the consignment but the same were not responded. Thus, ongoing through this fact, it can be very well anticipated that the said container was suspicious right from the beginning of its voyage and therefore, when the shipping line issued a pre-alert, the Noticee also got alerted and disappeared and did not respond to any of the agencies including their shipping line by any means directly or indirectly. The reason for this is obvious i.e. to escape from being penalized for the smuggling of goods. Thus, I am of the considered view that the Noticee had intentionally mis-declared the goods with an intention to evade the payment of duty of customs as the present import consignment is being of higher value goods than the value of goods being mis-declared.

28. In view of the foregoing discussions, I find that the said imported goods have been improperly imported by way of resorting to misdeclaration while obtaining Bill of Lading and filing Import General Manifest and were found to be concealed in the container and not corresponding with the value and other particulars as declared in the Bill of Lading. Therefore, I am of the view that, the said actually imported goods i.e. "108 units of different models of brand new Xerox Machines from China and Korea origin" should be charged to duty under

appropriate Customs Tariff Heading 84433940 amounting to Rs. 39,30,050/- (BCD @ 7.50% + SWS @ 10% + IGST @ 18%) by considering the assessable value of Rs. 1,41,70,000/- (value as approved by the Government Approved Valuer) and the same are also liable for confiscation under sub-section (f), (l) and (m) of Section 111 of the Customs Act, 1962 on account of mis-declaration as "78 units of Soyabean Gravity Dry Destoner HS Code 84792090". I find that, as the said goods are liable for confiscation under sub-section (f), (l) and (m) of Section 111 of the Customs Act, 1962, the same falls under the category of 'smuggled goods' as defined under Section 2(39) of the Customs Act, 1962 which defines 'smuggling' as "in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 and section 113" and therefore, the Noticee has rendered himself liable for penalty for improper importation of goods, etc. under Section 112(a)(ii) of the Customs Act, 1962.

29. I find that, the Noticee has provided fake address while obtaining IEC and fake email ID to Shipping Lines, so as to resort to the mis-declaration with intention to evade the duty of customs and was well aware of the goods being ordered by them for import from their Foreign Supplier and accordingly, in pre-planned manner has managed to obtain the Bill of Lading from its Foreign Supplier by mis-declaring the goods as "78 units of Soyabean Gravity Dry Destoner HS Code 84792090" instead of "108 units of different models of brand new Xerox Machines from China and Korea origin" with intention to evade the duty of customs, hence, render himself liable for penalty under Section 114AA of the Customs Act, 1962 for use of false and incorrect import documents.

30. I further observe that, Section 125(1) of the Customs Act, 1962 regarding Option to pay fine in lieu of confiscation stipulates, *"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 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."*

30.1 It is therefore, I find that, the Noticee may be provided with an option to pay fine in lieu of confiscated goods for its redemption. I further find the actually imported goods are not restricted/ prohibited goods and are freely importable & therefore, an option to pay fine in lieu of confiscated goods for its redemption should be accorded to the Noticee, subject to payment of applicable duty of customs along with interest in view of sub-section (2) of Section 125 of the Customs Act, 1962, as assessed by the Assessing Officer at the time of filing of Bill of Entry.

31. In view of the above discussion and findings, I pass the following order.

ORDER

- (i) I order to confiscate of the entire goods i.e. total 108 units of different models of brand new Xerox machines of China and Korea Origin under Section 111(f), 111(l) & Section 111 (m) of the Customs Act, 1962, having total value of Rs. 1,41,70,000/- (Rupees one crore, forty one lakh and seventy thousand only) which were seized vide Panchnama dated 30.01.2023. However, I give an option to the Noticee to redeem the said confiscated goods on payment of redemption fine of Rs. 50,00,000/- (Rupees fifty lakhs only) under Section 125(1) of the Customs Act, 1962 within one hundred and twenty days from the receipt to this order subject to payment of duty of customs and charges payable in respect of such goods in view of sub-section (2) of Section 125 of the Customs Act, 1962, as assessed by the Assessing Officer at the time of filing of Bill of Entry or else this option shall become void in terms of sub-section (3) of the Section 125 of the Customs Act, 1962;
- (ii) I hereby impose penalty of Rs. 3,93,000/- (Rupees three lakh, ninety three thousand only) under Section 112(a)(ii) of the Customs Act, 1962;
- (iii) I impose a penalty of Rs. 1,41,70,000/- (Rupees one crore, forty one lakh and seventy thousand only) under Section 114AA of the Customs Act, 1962.

32. This order is issued without prejudice to any other action that may be taken against the importer/Noticee or any other person under the Customs Act, 1962 or any other law for the time being in force.

(Amit Kumar Singh)
Additional Commissioner

Date: 25.02.2025

F. No. CUS/219/2024-Adjn.

BY Speed Post/ Email:

To

Shri Rehan Aslam Khan, Proprietor of M/s Neo Traders,

1.	Room No. 18, Basheer Khan Chawl, Sutter Colony, Bandra Plot, Jogeshwari East, MUMBAI, (Maharashtra) – 400 060	2.	M1,Tailoring Material, Shop No. 12 Block, Near Rehemanya Hotel, Bandra Plot, Opp. Jullah, Maidan Police Chowky, Jogeshwari East, MUMBAI, (Maharashtra) – 400 080	3.	Room No. 77, Bandra Plot, Aslam Khan Chawl, Opp Expressway Highway, Jogeshwari East, MUMBAI, (Maharashtra) – 400 080
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Copy to:

1. The Commissioner of Customs (Prev.), Jamnagar.
2. The Deputy Commissioner (Prev.), Customs (Preventive) HQ, Jamnagar.
3. The Assistant Commissioner, Customs House Pipavav.
4. The Assistant Commissioner, Systems, Customs (P), Jamnagar.
5. Guard File.