

	<b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MP &amp; SEZ MUNDRA, KUTCH-GUJARAT -370421 PHONE : 02838-271426/271428 FAX :02838-271425</b>	
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<b>A</b>	<b>File No.</b>	<b>CUS/AG/MISC/303/2025-Gr 3-O/o Pr Commr-Cus-Mundra</b>
<b>B</b>	<b>OIO No.</b>	<b>MCH/ADC/AKM/323/2024-25</b>
<b>C</b>	<b>Date of Order</b>	<b>26.02.2025</b>
<b>D</b>	<b>Passed by</b>	<b>Amit Kumar Mishra Additional Commissioner, Import Assessment, Custom House, Mundra.</b>
<b>E</b>	<b>SCN No./IR No. &amp; Date</b>	<b>CUS/SIIB/INF/86/2024-SIIB dated 26.12.2024</b>
<b>F</b>	<b>Noticee / Party / Importer</b>	<b>M/s Hardik Overseas Little Flower Public School, House No.-4449, Block B Sant Nagar, Burari North Delhi, New Delhi-110084</b>
<b>G</b>	<b>DIN</b>	<b>20250271MO000000FF8E</b>

1. The Assessment/Speaking Order 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,  
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 FACTS OF THE CASE:**

M/s Hardik Overseas, having its registered office at Little Flower Public School, House No.-4449, Block B Sant Nagar, Burari North Delhi, New Delhi-110084 (IEC- CONPP6222C) (hereinafter referred to as “the Importer”) had imported a consignment of “Boy Slipper Unbranded under CTH-64021990 (hereinafter referred to as “the Impugned Goods”) and Boy Shoes Unbranded under CTH-64021990 at Mundra Port vide Bill of Entry No. 3852030 dated 06.06.2024 through their Custom House Agent O.K. Cargo Craft Pvt Ltd (hereinafter referred to as “the CHA”). A letter F. No. DRI/AZU/SRU/A/ENQ-14/2024 dated 06.06.2024 was received from DRI Regional Unit, Surat, regarding putting the consignment pertaining to bill of entry no. 3852030 dated 06.06.2024 on hold and examined in presence of officers of DRI. On the basis of said intelligence, the goods stuffed in the container no. CAIU9226114 was put on hold by SIIB Section, CH Mundra for 100% examination. The examination was carried out on 11.06.2024 in the presence of DRI officers. The details of the goods as declared in the said BE are as follows:

Sr. No.	B/E No & Date	Container No.	Gross Weight	Declared Goods	Declared Assessable Value (In Rs.)	Duty at declared Ass. Value (In Rs.)
1	3852030 dated 06.06.2024	CAIU9226114	8560	Boy Slipper Unbranded and Boy Shoes Unbranded (CTH-64021990)	620984.7	342288

2. The officers of SIIB section, CH Mundra conducted the examination in presence of officers of the DRI Regional Unit, Surat of the goods stuffed into the container no. CAIU9226114 covered under the Bill of Entry No. 3852030 dated 06.06.2024 under Panchanama dated 11.06.2024. During the course of examination of the goods, total 333 cartons/corrugated boxes were found stuffed into the said container. Out of which 54 cartons were of shoes of different sizes and colour and 279 cartons were of crocs. The total no. shoes pairs in each carton were 30 and total no. of crocs pairs in each carton was 40. During the examination, it was observed that the marking/brand name “Crocs” is mentioned on the declared goods i.e. “*boys sleeper unbranded*”. Some marking or description in name as fashion, fashion speed, Guo Chao, N 1929 etc (unbranded) and different logo without any name is mentioned on the declared goods i.e. “*boys shoes unbranded*”. From the marking mentioned on shoes, it appears that there was no specific brand name mentioned on shoes or shoes are unbranded. The details of the goods found during the course of examination are tabulated below:-

Table-1

Sr. No.	Description as Declared in Bill of entry	Total Quantity declared in bill of entry	Description found during examination	Total quantity found during examination	Difference in Quantity
1	Boys slipper Unbranded	11160= (279*40)	Crocs	11160=(279*40)	0
2	Boys Shoes Unbranded	1620= (54*30)	Shoes (markings as fashion, fashion speed, Guo Chao, N 1929 etc.)	1620=(54*30)	0

2.1 Thereafter, DRI Regional Unit, Surat, transferred the present case to SIIB, Section, Custom, House Mundra for further examination and investigation in view of their observations.

2.2 In view of above, the goods were found as declared in respect of quantity mentioned in the Bill of Entry no. 3852030 dated 06.06.2024. However, from the tags, markings etc. available on the goods, the boys slipper Unbranded with markings "Crocs" in table above appeared to be of brands registered with Customs at Mundra port. Accordingly, M/s. United and United, 52, Sukhdev Vihar, Mathura Road, New-Delhi-110025, the authorized representative of IPR right holders of the brand has been informed about the imported consignment and suspicion of being branded. The IPR right holders were also requested to join the proceedings of the suspected IPR violation in terms of Rule 7 of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 (hereinafter referred to as "the IPR Rules, 2007").

3. Whereas, Ms. Samata Thakur, Advocate, the authorized representative of the IPR Right holders of the brand "Crocs" joined the proceedings and after due examination reported vide e-mail dated 25.06.2024 that the samples are counterfeit. M/s. United and United, vide e-mail dated 16.07.2024, sent the copy of surety bond and security on behalf of CROCS under Rule 5(a) of the IPR Rules, 2007 for the goods of those brands and requested that aforesaid document shall be taken on record and goods may be absolutely confiscated and destroyed in accordance with law .

3.1 Whereas, it appears that, the impugned goods of the brand "Crocs" is allegedly infringing IPR and are required to be deemed as "Prohibited" within the meaning of Section 11 of the Customs Act, 1962 read with Rule 6 of the IPR Rules, 2007, which reads as under:

***"6. Prohibition for import of goods infringing intellectual property rights.*** - After the grant of the registration of the notice by the Commissioner on due examination, the import of allegedly infringing goods into India shall be deemed as prohibited within the meaning of Section 11 of the Customs Act, 1962."

3.2 Accordingly, it appears that the impugned goods i.e. boys sleeper unbranded of the brands "Crocs" are liable for confiscation under Section

111(d) of the Customs Act, 1962 read with the IPR, Rules 2007. Further, in view of the intelligence forwarded by the DRI regional Unit, Surat, it also appears that these goods are undervalued and hence are also appears liable for confiscation under Section 111(m) of the Customs Act, 1962.

4. It appears that the remaining goods i.e. un-branded/ Non-popular brands /Non-registered brands mentioned at Sr. No. 02 in the table-1 above are undervalued and hence appears liable for confiscation under Section 111(m) of the Customs Act, 1962.

**4.1 Rejection of declared value & Redetermination of Assessable Value:**

The Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 (hereinafter referred to as "the CVR, 2007") provides the method of valuation. The Rule 3(1) of the CVR, 2007 provides that "Subject to Rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10. The Rule 3(4) *ibid* states that "if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through Rule 4 to 9 of CVR, 2007". Whereas, it appears that, transaction value in terms of Rule 3 of the CVR, 2007, is to be accepted only where there are direct evidences with regard to the price actually paid or payable in respect of the imported goods by the importer. Whereas, it further appears that, there is a reasonable doubt regarding the truth and accuracy of the value declared, and hence it appears liable to be rejected in terms of Rule 12 of the CVR, 2007.

4.2 Whereas, it appears that, if actual transaction value which means price paid or payable cannot be ascertained on the basis of Rule 3 of the CVR, 2007, the value shall be decided proceeding to subsequent rules. Thus, recourse is to be taken to the Rule 9 of the CVR, 2007 which provides for determination of value where the value of the imported goods cannot be determined under the provisions of the any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India.

4.3 Whereas, it appears that, the value of the impugned goods could not be determined under Rule 4 and 5 *ibid* since the goods have been mis- declared by means of description, the value of contemporaneous imports of identical and similar goods of same quality and composition was not found. Proceeding sequentially, it is stipulated under Rule 6 *ibid* that where the value is not determinable under Rule 3, 4 and 5, the value is to be determined under Rule 7 or when the value cannot be determined under that Rule, under Rule 8. Whereas, Rule 7 provides for 'Deductive Value' i.e. the value is to be determined on the basis of valuation of identical goods or similar imported goods sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, subject to deductions stipulated under the rule. Whereas, for the reasons detailed above, the values also cannot be determined as per the said Rule 7 *ibid*. Likewise, for application of Rule 8 of the CVR, 2007, the cost of production or processing involved in the imported goods are not available. In the absence of requisite data, the value cannot be determined by taking recourse to these rules either.

4.4 Whereas, it appears that, the provisions of Rule 4 to 8 *ibid*, are not applicable in the instant case, the value of the impugned goods is required to be determined under the provisions of Rule 9 of the CVR 2007, which reads as under:-

*“Rule 9 : Residual method – (1) Subject to the provisions of Rule 3, where the value of the imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India.”*

4.5 Whereas, as per the provisions of Rule 9 *ibid*, the assessable value of the impugned goods mentioned in Table-1 above are required to be re- determined under Rule 9 *ibid*, i.e. as per the residual method. Whereas, the impugned goods were inspected by Shri Kunal Ajay Kumar, Chartered Engineer & Government approved valuer of Suvikaa Associates, who submitted his Valuation report CUS/376/24-25 dated 03.07.2024. Wherein, he has reported the value of the cargo as tabulated below:

Table-2

<b>Description</b>	<b>Value per piece (INR)</b>	<b>Total no. of pieces</b>	<b>Total value (INR)</b>
Counterfeit footwear (CROCS)	250	11,160	27,90,000/-
Unbranded Shoes	200	1620	3,24,000/-
<b>Total</b>			<b>31,14,000/-</b>

4.6 Whereas, it appears that, the assessable value of Rs. 6,20,985/- declared by the importer in the Bill of Entry No. 3852030 dated 06.06.2024 is liable to be rejected in terms of Rule 12 of the CVR, 2007. Whereas, further it appears that, the assessable value of the cargo covered under said Bill of Entry are required to be taken as Rs. 31,14,000/- on the basis of valuation report submitted by the CE for the purpose of valuation under provisions of Rule 9 of the CVR, 2007 read with note 2 of the interpretative notes for Rule 9 of the CVR, 2007.5

5. Whereas, it further appears that, Table-2 above may be further divided into two parts i.e. **(i)** Branded/Counterfeit goods infringing IPR and **(ii)** un-branded goods/ Non-popular brands /Non-registered brands as detailed in tables below:

i. Branded/Counterfeit goods/shoes infringing IPR:

**TABLE-3(a)**

<b>Description</b>	<b>Value per piece (INR)</b>	<b>Total no. of pieces</b>	<b>Total value (INR)</b>
Counterfeit footwear (CROCS)	250	11,160	27,90,000/-

- ii. Goods/Shoes not infringing IPR/ un-branded / Non-popular brands  
/Non-registered brands:

**TABLE-3(b)**

Description	Value per piece (INR)	Total no. of pieces	Total value (INR)
Unbranded Shoes	200	1620	3,24,000/-

6. Whereas, the total applicable Customs duty of the consignment of impugned goods imported vide Bill of Entry No. 3852030 dated 06.06.2024 is as under:

- i. Branded/Counterfeit shoes infringing IPR:

**TABLE-4(a)**

Ass. Value (Rs.)	BCD @ 35% (Rs.)	SWS %10 % of BCD	Value for IGST (Rs.)	IGST @12% Sl. 171A1 of IGST Notn. 01/2017	Total Duty (Rs.)
27,90,000/-	976500/-	97650/-	3864150/-	463698/-	<b>1537848/-</b>

6.1 Whereas, it appears that, the sleepers of 'Crocs' brands are counterfeit as reported by the authorized representatives of the IPR right holders. Further, IPR right holders have also fulfilled their obligations as provided under IPR Rules, 2007. Also, the cargo has been found to be declared undervalued. Hence, it appears that these goods re-valued at **Rs. 27,90,000/-** are liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962.

- (ii) Goods/Shoes not infringing IPR/ un-branded / Non-popular brands /Non-registered brands:

**TABLE-4(b)**

Ass. V	BCD @	SWS %10	Value f	IGST @12% Sl. 171A1 o	Total D
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alue (Rs.)	35% (Rs.)	% of BCD	or IGST (Rs.)	f IGST Notn. 01/2017	uty (Rs.)
324000/-	113400/-	11340/-	448740/-	53849/-	<b>178559/-</b>

6.2 In view of the above, those undervalued shoes not infringing IPR/ un-branded goods/ Non-popular brands /Non-registered brands valued at **Rs. 3,24,000/-** appears liable for confiscation under Section 111(m) of the Customs Act, 1962 and total applicable duty on the same is calculated as Rs. 1,78,559/-.

7. The importer has submitted letter dated 27.09.2024 wherein, they have requested for waiver of SCN and PH in respect of import of impugned goods vide Bills of Entry No. 3852030 dated 06.06.2024.

8. **LEGAL PROVISIONS:** Legal provisions applicable in this case under the Customs Act, 1962 are as follows:

## **Section 2: Definitions -**

“(4): “Bill of entry” means a bill of entry referred to in Section 46;

22. : “goods” includes (a) vessels, aircrafts and vehicles; (b) stores; (c) baggage; (d) currency and negotiable instruments; and (e) any other kind of movable property;

23. : “import”, with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

(25): “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;

( 26 ) : “importer”, in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes [any owner, beneficial owner] or any person holding himself out to be the importer;

(39): “smuggling”, in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113.”

## **Section 11A: Definitions-**

In this Chapter, unless the context otherwise requires,-

*“(a) illegal import” means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force.”*

#### **Section 46: 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 electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed.*

*4. : The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall,*

*in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.*

*(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.”*

#### **Section 111: Confiscation of improperly imported goods, etc. -**

*d. : of the Customs Act 1962 states that any goods which are imported or attempted to be imported or are brought within the Indian customs*

*waters for*

*the purpose of being imported, contrary to any prohibition imposed by or under*

*this Act or any other law for the time being in force are 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;*

## **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. *.....,*

*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 the higher;”*

## **9. Summary of Investigation:**

9.1 Whereas, from the investigation conducted in the present case and

from the foregoing discussions, it appears that, the impugned goods imported vide Bill of Entry No. 3852030 dated 06.06.2024 was put on hold on the direction of DRI, regional unit, Surat on the suspicion of undervaluation and violation of IPR. The examination of the consignment was carried out and found as declared in respect of the quantity. However, the consignments appeared to be undervalued and violating IPR Rules, 2007, hence the consignment was made to be examined by the Chartered Engineer and authorized representative of the IPR right holders. The CE has given his inspection/valuation report and IPR right holder has reported part of the consignment as counterfeit and also submitted Bond/Security fulfilling the requirements of the IPR Rules, 2007.

9.2 Whereas, from the investigation conducted in the present case and from the foregoing discussions, it further appears that, the impugned goods imported vide Bill of Entry No. 3852030 dated 06.06.2024 have been mis-declared by the importer M/s Hardik Overseas (IEC- CONPP6222C ) in respect of assessable value. Whereas, it further appears that, there is a reasonable doubt regarding the truth and accuracy of the assessable value of Rs. 6,20,985/- declared by the importer in above said bill of entry and hence are liable to be rejected in terms of Rule 12 of the CVR, 2007. Whereas, further it appears that, the assessable value of the cargo covered under said bill of entry is required to be taken as Rs. 31,14,000/- on the basis of valuation report submitted by the Chartered Engineer for the purpose of valuation under provisions of Rule 9 of the CVR, 2007 read with note 2 of the interpretative notes for Rule 9 of the CVR, 2007.

9.3 Whereas, it appears that the branded/counterfeit footwear (Crocs) infringing IPR re-valued at Rs.27,90,000/- (total duty involved Rs. 1537848/-) imported vide BE No. 3852030 dated 06.06.2024 are found prohibited as well as undervalued and hence are liable for confiscation under section 111(d) and 111(m) of the Customs Act, 1962 read with the Intellectual Property Rights, Rules 2007. Further, the goods/shoes not infringing IPR/ un-branded / Non-popular brands /Non-registered brands re-valued at Rs. 3,24,000/- (total duty involved Rs. 1,78,559/-) imported vide BE No. 3852030 dated 06.06.2024 are found undervalued and hence are liable for confiscation under section 111(m) of the Customs Act, 1962.

10. In view of the above facts, it appears that –

10.1 The assessable value of the impugned goods declared by the importer as Rs. 6,20,985/- in bill of entry no. 3852030 dated 06.06.2024 is required to be rejected in terms of Rule 12 of the CVR, 2007.

10.2 The impugned goods covered under bill of entry no. 3852030 dated 06.06.2024 is required to be re-assessed on the total assessable value of Rs. 31,14,000/- as detailed in Para no. 4.5 above.

10.3 The branded/counterfeit goods/shoes infringing IPR re-valued at Rs. 27,90,000/- (total duty involved Rs. 15,37,848/-) imported vide BE No. 3852030 dated 06.06.2024 are liable for confiscation under section 111(d) & 111(m) of the Customs Act, 1962 read with the Intellectual Property Rights, Rules 2007.

10.4 The goods/shoes not infringing IPR/ un-branded/ Non-popular brands /Non-registered brands re-valued at Rs. 3,24,000/- (total duty involved Rs. 1,78,559/-) imported vide BE No. 3852030 dated 06.06.2024 are liable for confiscation under section 111(m) of the Customs Act, 1962.

10.5 The importer M/s Hardik Overseas (IEC- CONPP6222C), having its registered office at Little Flower Public School, House No.-4449, Block B, Sant Nagar, Burari, North Delhi, New Delhi-110084, are liable for penalty under provisions of Section 112(a)(i) & 112(a)(ii) of the Customs Act 1962.

### WAIVER OF NOTICE AND PERSONAL HEARING

**11.** The Importer vide their letter dated 27.09.2024 has submitted that they do not want personal hearing and show cause notice in the matter.

### DISCUSSION & FINDING

**12.** I have carefully gone through the Investigation Report dated 26.12.2024 issued by the Deputy Commissioner (SIIB), Custom House, Mundra and I find that M/s. Hardik Overseas had filed Bill of Entry No. 3852030 dated 06.06.2024 through their CB M/s O.K Cargo Craft Pvt Ltd for the goods having description as mentioned in table at Para-1 above. I find that the letter F. No. DRI/AZU/SRU/A/ENQ-14/2024 dated 06.06.2024 was received from DRI Regional Unit, Surat, regarding putting the consignment pertaining to bill of entry no. 3852030 dated 06.06.2024 on hold and to be examined in presence of officers of DRI.

**13.** I find that Officers of SIIB Section, CH Mundra conducted the Examination in presence of Officers of DRI Regional Unit, Surat of the goods stuffed into the containers no. CAIU9226114 covered under the Bill of Entry No. 3852030 dated 06.06.2024 under Panchanama dated 11.06.2024. During the course of examination of the impugned goods, total 333 cartons/corrugated boxes were found stuffed into the said container. Out of which 54 cartons were of shoes of different sizes and colour and 279 cartons were of crocs. The total no. shoes pairs in each carton were 30 and total no. of crocs pairs in each carton was 40. During the examination, it was observed that the marking/brand name "Crocs" is mentioned on the declared goods i.e. "boys sleeper unbranded". Some marking or description in name as fashion, fashion speed, Guo Chao, N 1929 etc (unbranded) and different logo without any name is mentioned on the declared goods i.e. "boys shoes unbranded". From the marking mentioned on shoes, it appears that there was no specific brand name mentioned on shoes or shoes are unbranded. The details of the goods found during the course of examination are tabulated below:-

Table-5

Sr. No.	Description as Declared in Bill of entry	Total Quantity declared in bill of entry	Description found during examination	Total quantity found during examination	Difference in Quantity
1	Boys slipper Unbranded	11160= (279*40)	Crocs	11160=(279*40)	0
2	Boys Shoes Unbranded	1620= (54*30)	Shoes (marking as fashion, fashion speed, Guo Chao, N 1929 etc.)	1620=(54*30)	0

**14.** I find that the case was transferred by DRI Surat to SIIB ,CH-Mundra for

further detail examination and investigation. The goods were found as declared in respect of quantity mentioned in the Bill of Entry no. 3852030 dated 06.06.2024. However, from the tags, markings etc. available on the goods, the boys slipper Unbranded with markings "Crocs" in table above appeared to be of brands registered with Customs at Mundra port. Further, M/s. United and United, 52, Sukhdev Vihar, Mathura Road, New-Delhi-110025, the authorized representative of IPR right holders of the brand was requested to join the proceedings of the suspected IPR violation in terms of Rule 7 of the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 (hereinafter referred to as "the IPR Rules, 2007").

**15.** I find that right holders authorized representative of the IPR Right holders of the brand "Crocs" joined the proceedings and after due examination reported vide e-mail dated 25.06.2024 that the samples are counterfeit. M/s. United and United, vide e-mail dated 16.07.2024, sent the copy of surety bond and security on behalf of CROCS under Rule 5(a) of the IPR Rules, 2007 for the goods of those brands and requested that aforesaid document shall be taken on record and goods may be absolutely confiscated and destroyed in accordance with law. Accordingly, items of these brand, as detailed in the Tables- 3A at Para 5 above, are allegedly infringing IPR and are required to be deemed as "Prohibited" within the meaning of Section 11 of the Customs Act, 1962 read with Rule-6 of the IPR Rules, 2007.

**16.** I find that the impugned goods have been inspected by the Chartered Engineer Shri Kunal Ajay Kumar of M/s. Suvikaa Associates who has submitted his Inspection-cum-Valuation Reports vide no. CUS/376/24-25 dated 03.07.2024 wherein he has reported that the cargo are counterfeit and not upto standards of CROCS. He has also submitted the valuation of the cargo which is detailed in Tables- 2 at Para-4.5 above. Therefore, I find that the assessable value of Rs. 6,20,985/- declared by the importer in the Bill of Entry No. 3852030 dated 06.06.2024 is rejected in terms of Rule 12 of the CVR, 2007 and the assessable value of the cargo covered under said Bill of Entry to be re-determined as Rs. 31,14,000/- on the basis of valuation report submitted by the CE for the purpose of valuation under provisions of Rule 9 of the CVR, 2007 read with note 2 of the interpretative notes for Rule 9 of the CVR, 2007.

**17.** I find that Tables- 2 at Para 4.5 above, may further be divided into two categories i.e. (i) Branded/Counterfeit items infringing IPR and (ii) un-branded goods/ Non-popular brands /Non-registered brands as detailed in tables below:

- i. Branded/Counterfeit goods/shoes infringing IPR:

**TABLE-6(a)**

Description	Value per piece (INR)	Total no. of pieces	Total value (INR)
Counterfeit footwear (CROCS)	250	11,160	27,90,000/-

- ii. Goods/Shoes not infringing IPR/ un-branded / Non-popular brands / Non-registered brands:

**TABLE-6(b)**

Description	Value per piece (INR)	Total no. of pieces	Total value (INR)
Unbranded Shoes	200	1620	3,24,000/-

**18.** I find that the Counterfeit items infringing IPR, as mentioned in Tables-6(a) above, are liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962 read with the IPR Rules, 2007. Further, the goods i.e Unbranded shoes valued at Rs 3,24,000/- mentioned in Table-6(b) are liable for confiscation under Section 111(m) of the Customs Act, 1962. The total Customs duty on the goods mentioned at Table-6(b) is calculated below:

Ass. Value (Rs.)	BCD @ 35% (Rs.)	SWS %10% of BCD	Value for IGST (Rs.)	IGST @12% Sl. 171A1 of IGST Notn. 01/2017	Total Duty (Rs.)
324000/-	113400/-	11340/-	448740/-	53849/-	<b>178559/-</b>

**19.** In view of the foregoing paras, I find that the branded items valued at **Rs. 27,90,000/-** (BE No. 3852030 dated 06.06.2024) and which are reported counterfeit by the authorized representatives of the IPR right holders and where IPR right holders have also fulfilled their obligations as provided under the IPR Rules, 2007, are required to be deemed as “Prohibited” within the meaning of Section 11 of the Customs Act, 1962 read with Rule-6 of the IPR Rules, 2007 and are liable for confiscation under Section 111(d) and 111(m) of the Customs Act.

**20.** I find that the items unbranded / non reputed branded shoes are valued at Rs. 3,24,000/- (BE No. 3852030 dated 06.06.2024). As per Tables- 6B at Para-21 above, total duty on items unbranded shoes is calculated as **1,78,559/-** (BE No. 3852030 dated 06.06.2024) .It appears that these goods do not correspond to the value as declared in the said Bill of Entry and hence, are

liable for confiscation under Section 111(m) of the Customs Act, 1962.

**21.** I find that the goods mentioned in para 20 above are liable for confiscation under Section 111(m) of the Customs Act, 1962. I find that these goods in terms of Section 125 of the Customs Act, 1962 can be redeemed on payment of redemption fine. Accordingly, in view of Section 125 of the Customs Act, 1962, I allow redemption of goods mentioned in para 20 on payment of appropriate redemption fine.

**22.** By their acts of omission and commission, the importer has rendered themselves liable for penal actions under section 112(a)(i) and 112(a)(ii) of the Customs Act, 1962.

**23.** In view of the above, I pass following Order:

### **ORDER**

- i. I reject the assessable value of **Rs. 6,20,985/-** (BE No. 3852030 dated 06.06.2024) declared by the importer and order to re-determine the same as **Rs. 31,14,000/-**.
- ii. I order absolute confiscation of goods infringing IPR (as mentioned in Tables- 6A at Para-17 above) having re-determined assessable value of **Rs. 27,90,000/-** under Section 111(d) and 111(m) of the Customs Act, 1962 as the same are counterfeit goods imported in violation of the IPR Rules, 2007, as confirmed by the Intellectual Right holders of respective brands. I further order to destroy the said goods under official supervision in view of Rule 11(1) of IPR (Imported Goods) Enforcement Rules, 2007 and the cost of destruction has to be borne by the importer which shall be paid by/recovered from the importer.
- iii. I impose penalty of **Rs. 10,00,000/- (Rupees Ten Lakhs only)** on the importer M/s Hardik Overseas under Section 112(a)(i) of the Customs Act, 1962 in respect of the goods mentioned at Para-(ii) above;
- iv. I order to confiscate the other goods i.e. unbranded / non reputed branded goods having re-determined assessable value of **Rs. 3,24,000/-** (BE No. 3852030 dated 06.06.2024) under Section 111(m) of the Customs Act, 1962. However, considering facts of the case and provisions of the Section 125 of the Customs Act, 1962, I give an option to the importer to re-deem the same on payment of Redemption Fine of **Rs. 32,000/- (Rupees Thirty Two thousand only)** in lieu of confiscation;

- v. I order to recover the duty amounting Rs 1,78,559/- on the unbranded/non reputed branded goods mentioned at Para-(iv) above.
- vi. I impose penalty of **Rs. 17,000/- (Rupees Seventeen thousand only)** on the importer M/s Hardik Overseas under Section 112(a)(ii) of Customs Act, 1962 in respect of the goods mentioned at Para-(iv) above.

**24.** 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  
Amit Kumar Mishra  
Date: 26-02-2025, 13:17:13  
(Amit Kumar Mishra)  
Additional Commissioner  
Import Assessment, MCH

To,

M/s Hardik Overseas,  
Little Flower Public School,  
House No.-4449, Block B Sant Nagar,  
Burari North Delhi,  
New Delhi-110084

Copy to:

1. The Deputy/Assistant Commissioner of Customs (SIIB), CH, Mundra.
2. The Deputy/Assistant Commissioner of Customs (RRA), CH, Mundra.
3. The Deputy/Assistant Commissioner of Customs (TRC), CH, Mundra
4. The Deputy/Assistant Commissioner of Customs (EDI), CH, Mundra.
5. Office Copy.