


DIN- 20240771ML000000BE3E

<div></div> <div>OFFICE OF THE COMMISSIONER CUSTOM HOUSE, KANDLA NEAR BALAJI TEMPLE, NEW KANDLA Phone : 02836-271468/469 Fax: 02836-271467</div>		
DIN-20240771ML000000BE3E		
A	File No.	GEN/ADJ/ADC/1170/2024-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KDL/ADC/DPB/11/2024-25
C	Passed by	Dev Prakash Bamanavat Additional Commissioner of Customs, Custom House, Kandla.
D	Date of Order	10.07.2024
E	Date of Issue	25.07.2024
F	SCN NO. & Date	Waiver of Show cause notice
G	Noticee / Party / Importer / Exporter	M/s Teneron Limited, Survey 107/1, 107/2, Navyani Village, Dasada Taluka, Surendra Nagar, Gujarat 382750

1. यह मूल आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस मूल आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 12 8A के अंतर्गत प्रपत्र सीए- 1-में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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:

“सीमाशुल्क आयुक्त (अपील),
वीं 7 मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़, अहमदाबाद 380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS),
Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380009.”

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by –

(i) उक्त अपील की एक प्रति और

DIN- 20240771ML000000BE3E

A copy of the appeal, and

- (ii) इस आदेश की यह प्रति अथवा कोई अन्यप्रति जिस पर अनुसूची-1 के अनुसार न्यायालयशुल्कअधिनियम-1870 के मदसं०-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

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. अपील ज्ञापन के साथ ड्यूटी/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

5. अपील प्रस्तुत करते समय, सीमा शुल्क) अपील (नियम, 1982और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

BRIEF FACTS OF THE CASE:-

M/s Teneron Limited, Survey 107/1, 107/2, Navyani Village, Dasada Taluka, Surendra Nagar, Gujarat 382750 (hereinafter referred to as “the importer”) had imported goods declared as **Aluminum Scrap** covered by ISRI code word “Throb” vide self filed Bill of Entry No. 2916450 dated 06-04-2024 wherein CTH was declared as 7602 00 10. The consignment was put on hold by SIIB, Custom House, Kandla for the purpose of examination.

2. The examination of the cargo was conducted by the officers from the SIIB section of Custom House, Kandla and the proceedings were recorded under Panchnama dated 26-04-2022 (RUD- 1). During the course of examination, samples were drawn which were sent to CRCL, Kandla for the purpose of testing/chemical analysis. The CRCL Kandla vide test reports dated 15-05-2024(RUD-2) has reported that sample may be considered as “Throb” as per ISRI. The report is reproduced as under:-

Sr. No.	Test Memo No.	Lab No.	Summary of Report
1	TM/SIIB/1/2024-25 dated 03-05-2024	1026-SIIB/08-05-2024	<p>% of Aluminium= 91.12% by wt. % of Silicon= 7.57% by wt</p> <p><i>Notes/ Comments:</i> Based on physical appearance of the sample, it may be considered as “Throb” as per ISRI</p>
2	TM/SIIB/2/2024-25 dated 03-05-2024	1027-SIIB/08-05-2024	<p>% of Aluminium= 91.32% by wt. % of Silicon= 7.38% by wt</p> <p><i>Notes/ Comments:</i> Based on physical appearance of the sample, it may be considered as “Throb” as per ISRI</p>

3. Statement of Shri Rakesh Kumar Modi, Deputy Manager (Accounts) and Authorized representative of the company M/s Teneron Limited was recorded under Section 108 of the Customs Act, 1962 before the Superintendent of Customs on 20-05-2024(RUD-3), wherein he inter-alia submitted as under:-

- perused the test reports bearing Lab No. 1026-SIIB/08-05-2024 and 1027-SIIB/08-05-2024 both dated 15-05-2024.*
- perused the description of goods provided under Chapter Heading 7602 0010 of chapter 76 of the Customs Tariff Act, 1975 and agreed that the aluminum scrap covered by ISRI code word “Throb” was not mentioned in the chapter heading 7602 00 10 of the Custom Tariff Act 1975.*
- since chapter heading 7602 00 10 did not mention aluminum scrap covered by ISRI code word “Throb”, therefore, appropriate classification for aluminum scrap covered by ISRI code word “Throb” was 7602 0090 i.e., other waste and scrap of aluminum.*
- As per Schedule 1 of the import policy goods covered under the chapter heading 7602 00 90 were placed under the “Restricted” category.*

- *Their company did not have any license/permit from DGFT for import of this restricted item.*

4. In this regard, the relevant extract of Chapter heading 7602 from Custom Tariff Act, 1975 is reproduced hereunder for reference:

Tariff Item	Description of Goods
7602	<i>Aluminium Waste And Scrap</i>
7602 00	<i>- Aluminium waste and scrap:</i>
7602 00 10	<i>clean aluminium lithographic sheets covered by ISRI code word _Tablet; new, clean aluminium lithographic sheets covered by ISRI code word _Tabloid; mixed low copper aluminium clippings and solids covered by ISRI code word _Taboo; clean mixed old alloy sheet aluminium covered byI SRI code word _Taint/Tabor; new aluminiumcan stock covered by ISRI code word _Take; old can stock covered by ISRI code word _Talc; shredded aluminium used beverages can (U) scrap covered by ISRI code word _Talcured; densified aluminium used beverages can (UBC) scrap covered by ISRI code word _Taldack; baled aluminium used beverage can (UBC) scrap covered by ISRI code word _Taldon; briquetted aluminium used beverage can (UBC) scrap covered by ISRI code word _Taldork; painted siding covered by ISRI code word _Tale; coated scrap covered by ISRI code word _Talent; aluminium scrap radiators covered by ISRI code word _Talk; E.C. aluminium nodules covered by ISRI code word _Tall; new pure aluminium wire and cable covered by ISRI code word _Talon; new mixed aluminium wire and cable covered by ISRI code word _Tann; Old pure aluminium wire and cable covered by ISRI code word _Taste; old mixed aluminium wire and cable covered by ISRI code word _Tassel; aluminium pistons covered by ISRI code word _Tarry; segregated aluminium borings and turnings covered by ISRI code word _Teens; mixed aluminium castings covered by ISRI code word _Telic; mixed aluminium castings covered by ISRI code word _Tense; wrecked airplane sheet aluminium covered by ISRI code word _Tepid; new aluminium foil covered by ISRI code word _Terse; New aluminium foil covered by ISRI codeword 'Tetra'; Old aluminium foil covered by ISRI code word 'Tesla'; aluminium grindings covered by ISRI code word _Thigh; segregated new aluminium alloy clippings and solids covered by ISRI code word _Tooth; mixed new aluminium alloy clippings and solids covered by ISRI code word _Tough; segregated new aluminium castings, forgings and extrusions covered by ISRI code word _Tread; aluminium auto castings covered by ISRI code word _Trump;</i>

	<i>insulated aluminium wire scrap covered by ISRI code word _Twang; aluminium airplane castings covered by ISRI code word _Twist; fragmentizer aluminium scrap (from automobile shredder) covered by ISRI code word _Twitch; Aluminium auto or truck wheels covered by ISRI code word 'Troma'; Fragmentizer aluminium scrap from automobile shredders covered by ISRI code word 'Tweak'; Burnt Fragmentizer aluminium scrap(from automobile shredders) covered by ISRI code word 'Twire'; Shredded non-ferrous scrap (predominantly aluminium)covered by ISRI code word 'Zorba'; New production aluminium extrusions covered by ISRI code word 'Tata'; All aluminium radiators from automobiles covered by ISRI code word 'Tally'; Aluminium extrusions '10/10 covered by ISRI codeword 'Toto'; Aluminium extrusions dealer grade covered by the word 'Tutu';</i>
7602 00 90	<i>---other waste and scrap</i>

5. On perusal of the Chapter heading 7602, it was observed that the goods viz. Aluminum Scrap covered by ISRI code word “Throb” imported by the importer vide Bill of Entry No. 2916450 dated 06-04-2024 did not find a mention under chapter heading 7602 00 10 and therefore, the appropriate CTH for Aluminum Scrap covered by ISRI code word “Throb” appeared to be 7602 00 90. Further, on perusal of Schedule-1 of the of the import policy, it appeared that the goods falling under Chapter Heading 7602 00 90 were “Restricted” in nature. In this regard, the relevant extract of Schedule 1 Import Policy for chapter 76 (Aluminium and articles thereof) is reproduced here for reference:-

<i>Product Description and Import Policy</i>					
<i>HS Code</i>	<i>Description</i>	<i>Import Policy</i>	<i>Policy Condition</i>	<i>Notification No.</i>	<i>Notification Date</i>
76020090	<i>---other waste and scrap</i>	<i>Restricted</i>			

6. Further, attention is drawn to Para 2.08 (Export/Import of Restricted Goods/Services) of the Foreign Trade Policy 2023 which reads as follows:-

2.08 (Export/Import of Restricted Goods/Services)

Any goods /service, the export or import of which is ‘Restricted’ may be exported or imported only in accordance with an Authorisation / Permission or in accordance with the Procedures prescribed in a Notification / Public Notice issued in this regard.

7. Therefore, in view of the above, the importer was required to apply for an authorization to DGFT seeking permission for the import of restricted goods they intended to import viz. Aluminum Scrap covered by ISRI code word “Throb”.
8. On perusal of the documents uploaded in the e-sanchit portal by M/s. Teneron Limited while filing the Bill of Entry No. 2916450 dated 06-04-2024 and as confirmed by Shri Rakesh Kumar Modi in his statement dated 20-05-2024, it appeared that the importer had no such authorization issued by the DGFT, required to import such restricted items as imported by them vide Bill of Entry No. 2916450 dated 06-04-2024. Therefore, the importer by filing Bill of Entry No. 2916450 dated 06-04-2024 to

DIN- 20240771ML000000BE3E

import Aluminum Scrap covered by ISRI code word “Throb” had imported goods which were restricted and required authorization from DGFT.

9. In view of the above, it appeared that by importing restricted goods without any authorization from DGFT, the importer failed to fulfill the conditions prescribed under Para 2.08 (Export/Import of Restricted Goods/Services) of the Foreign Trade Policy 2023.
- 10.In view of the above, the Investigation report dated 27.06.2024 proposed the following:-
- i. it appeared that the classification of goods imported vide Bill of Entry No. 2916450 dated 06-04-2024 declared as Aluminum Scrap covered by ISRI code word “Throb” under CTH 76020010 was incorrect and appeared to be classified under CTH 7602 0090.

ii. Further, the goods appeared to be liable for confiscation under the provisions of Section 111(d) of the Customs Act, 1962. Accordingly, the subject goods i.e., 52MT of aluminum scrap covered by ISRI code word “Throb” valued at Rs. 99,25,190/- (Rupees Ninety nine lacs twenty five thousand one hundred and ninety only) were placed under seizure under the provisions of Section 110(1) of the Customs Act, 1962 vide seizure Memo bearing F. No. CUS/SIIB/HOC/52/2024-SIIB dated 22-05-2024 (RUD-4).

iii. Therefore, for the acts of omission of commission committed by the importer, the importer is liable for penalty under Section 112(a)(i) of the Customs Act, 1962.
- 11.The importer has submitted an undertaking exercising his right to waiver of a Show Cause Notice and agreed to pay all the Customs duty, fine and penalty in the matter.

WAIVER OF SHOW CAUSE NOTICE:-

12. The importer has, vide letter dated 24.05.2024 has requested for waiver of a Show Cause Notice and agreed to pay all the dues in the matter.
13. In the instant matter, the issue pertains to Section 124 of the Customs Act. As per first proviso to Section 124 of the Customs Act, 1962 the show cause notice and personal hearing may be considered oral at the request of the person concerned. Therefore, in light of the said provision, waiver of Show cause notice is allowed.

DISCUSSION AND FINDINGS:-

14. I find that M/s Teneron Limited, had imported goods declared as Aluminum Scrap covered by ISRI code word “Throb” vide self filed Bill of Entry No. 2916450 dated 06-04-2024 wherein CTH was declared as 7602 00 10.
15. I find that during the course of examination, samples were drawn which were sent to CRCL, Kandla for the purpose of testing/chemical analysis. The CRCL Kandla vide test reports dated 15-05-2024(RUD-2) has reported as under:-

Sr. No.	Test Memo No.	Lab No.	Summary of Report
1	TM/SIIB/1/2024-25 dated 03-05-2024	1026-SIIB/08-05-2024	<div>% of Aluminium= 91.12% by wt.</div> <div>% of Silicon= 7.57% by wt</div> <div>Notes/Comments:</div> <div>Based on physical appearance of the sample, it may be considered</div>

DIN- 20240771ML000000BE3E

			as “Throb” as per ISRI
2	TM/SIIB/2/2024-25 dated 03-05-2024	1027-SIIB/08-05-2024	<div>% of Aluminium= 91.32% by wt.</div> <div>% of Silicon= 7.38% by wt</div> <div>Notes/Comments:</div> <div>Based on physical appearance of the sample, it may be considered as “Throb” as per ISRI</div>

16. On perusal of the relevant extract of Chapter heading 7602 from Custom Tariff Act, 1975, reproduced hereunder for reference, I find that the imported goods merit classification under CTH76020090:

Tariff Item	Description of Goods
7602	Aluminium Waste And Scrap
7602 00	- Aluminium waste and scrap:
7602 00 10	<div>clean aluminium lithographic sheets covered by ISRI code word _Tablet;</div> <div>new, clean aluminium lithographic sheets covered by ISRI code word _Tabloid;</div> <div>mixed low copper aluminium clippings and solids covered by ISRI code word _Taboo;</div> <div>clean mixed old alloy sheet aluminium covered byI SRI code word _Taint/Tabor;</div> <div>new aluminiumcan stock covered by ISRI code word _Take;</div> <div>old can stock covered by ISRI code word _Talc;</div> <div>shredded aluminium used beverages can (U) scrap covered by ISRI code word _Talcured;</div> <div>densified aluminium used beverages can (UBC) scrap covered by ISRI code word _Taldack;</div> <div>baled aluminium used beverage can (UBC) scrap covered by ISRI code word _Taldon;</div> <div>briquetted aluminium used beverage can (UBC) scrap covered by ISRI code word _Taldork;</div> <div>painted siding covered by ISRI code word _Tale;</div> <div>coated scrap covered by ISRI code word _Talent;</div> <div>aluminium scrap radiators covered by ISRI code word _Talk;</div> <div>E.C. aluminium nodules covered by ISRI code word _Tall;</div> <div>new pure aluminium wire and cable covered by ISRI code word _Talon;</div> <div>new mixed aluminium wire and cable covered by ISRI code word _Tann;</div> <div>Old pure aluminium wire and cable covered by ISRI code word _Taste;</div> <div>old mixed aluminium wire and cable covered by ISRI code word _Tassel;</div> <div>aluminium pistons covered by ISRI code word _Tarry;</div> <div>segregated aluminium borings and turnings covered by ISRI code word _Teens;</div> <div>mixed aluminium castings covered by ISRI code word _Telic;</div> <div>mixed aluminium castings covered by ISRI code word _Tense;</div> <div>wrecked airplane sheet aluminium covered by ISRI code word _Tepid;</div> <div>new aluminium foil covered by ISRI code word _Terse;</div> <div>New aluminium foil covered by ISRI codeword 'Tetra';</div> <div>Old aluminium foil covered by ISRI code word 'Tesla';</div> <div>aluminium grindings covered by ISRI code word _Thigh;</div> <div>segregated new aluminium alloy clippings and solids covered by ISRI code word _Tooth;</div> <div>mixed new aluminium alloy clippings and solids covered by ISRI code word _Tough;</div> <div>segregated new aluminium castings, forgings and extrusions covered by ISRI code word _Tread;</div> <div>aluminium auto castings covered by ISRI code word _Trump;</div> <div>insulated aluminium wire scrap covered by ISRI code word _Twang;</div> <div>aluminium airplane castings covered by ISRI code word _Twist;</div> <div>fragmentizer aluminium scrap (from automobile shredder) covered by ISRI code word _Twitch;</div> <div>Aluminium auto or truck wheels covered by ISRI code word 'Troma';</div> <div>Fragmentizer aluminium scrap from automobile shredders covered by ISRI code word 'Tweak';</div> <div>Burnt Fragmentizer aluminium scrap(from automobile shredders) covered by ISRI code word 'Twire';</div> <div>Shredded non-ferrous scrap (predominantly aluminium)covered by ISRI code word 'Zorba';</div> <div>New production aluminium extrusions covered by ISRI code word 'Tata';</div>

DIN- 20240771ML000000BE3E

	<i>All aluminium radiators from automobiles covered by ISRI code word 'Tally'; Aluminium extrusions '10/ 10 covered by ISRI codeword 'Toto'; Aluminium extrusions dealer grade covered by the word 'Tutu';</i>
7602 00 90	<i>---other waste and scrap</i>

- 17.It is amply clear that the goods viz. Aluminum Scrap covered by ISRI code word “Throb” imported by the importer vide Bill of Entry No. 2916450 dated 06-04-2024 did not find a mention under chapter heading 7602 00 10 and therefore, the appropriate CTH for Aluminum Scrap covered by ISRI code word “Throb” is 7602 00 90
- 18.I find that Shri Rakesh Kumar Modi, Deputy Manager (Accounts) & Authorized representative of the company M/s Teneron Limited, in his statement dated 20.05.2024, has agreed that the aluminum scrap covered by ISRI code word “Throb” was not mentioned in the chapter heading 7602 00 10 of the Custom Tariff Act 1975.
- 19.Further, on perusal of Schedule-1 of the of the import policy, I find that the goods falling under Chapter Heading 7602 00 90 are “Restricted” in nature. In this regard, the relevant extract of Schedule 1 Import Policy for chapter 76 (Aluminium and articles thereof) is reproduced here for reference:-

Product Description and Import Policy					
<i>HS Code</i>	<i>Description</i>	<i>Import Policy</i>	<i>Policy Condition</i>	<i>Notification No.</i>	<i>Notification Date</i>
76020090	<i>---other waste and scrap</i>	<i>Restricted</i>			

- 20.Further, attention is drawn to Para 2.08 (Export/Import of Restricted Goods/Services) of the Foreign Trade Policy 2023 which reads as follows:-
- 2.08Export/Import of Restricted Goods/Services)**
Any goods / service, the export or import of which is ‘Restricted’ may be exported or imported only in accordance with an Authorisation / Permission or in accordance with the Procedures prescribed in a Notification / Public Notice issued in this regard.
- 21.Therefore, in view of the above, it is evident that the importer was required to apply for an authorization to DGFT seeking permission for the import of restricted goods they intended to import viz. Aluminum Scrap covered by ISRI code word “Throb”.

CONFISCATION OF GOODS:-

- 22.It is apparent that the importer has mis-declared the goods. Further the goods were restricted in nature and were allowed to be imported only after taking necessary approval from the DGFT, as discussed in the foregoing paras. Such acts on their part have rendered their goods liable for confiscation under the provisions of Section 111(d) of the Customs Act, 1962.
- Further, in this regard, I rely on the judgement of CC Mumbai Vs Multimetal Ltd-2002(Tri-Mumbai) wherein the Hon’ble Tribunal held that when mis-declaration is established, goods are liable for confiscation irrespective of whether there was malafide or not-. This judgement of Hon’ble Tribunal has been upheld in Apex court in 2003 (ELT A309 (SC)).

23. Whether the instant goods fall under the category or Restricted/Prohibited in Nature and whether the same can be released in domestic market on payment of Redemption fine:-

23.1 The Central Government has the authority to issue notifications under Section 11 of the Customs Act, 1962, declaring the export or import of any items as forbidden. The prohibition can be unconditional or conditional. A notification under Section 11 can be issued for a variety of reasons, including maintaining India's security, preventing a shortage of goods in the country, conservation of foreign exchange, safeguarding balance of payments etc.

23.2 In order to understand the meaning of the terms 'Restriction' and 'Prohibition', it becomes essential on my part to first try and understand the literal meanings of the same. The Cambridge Dictionary, defines prohibition as "law or rule that officially stops something from being done, or the fact of not being allowed by official rules or laws" similarly, it defines restriction as "an official limit set by law on something". Understandably, the peripheral understanding after reading the above definitions shows that the definition for the prohibition is strongly worded with no scope for an exception. In contrast, the definition for restriction is not strongly worded compared to prohibition and carries a scope for the exception.

23.3 Similarly, under the Customs Act, 1962, the definition for "prohibited goods" is strongly drafted with no scope of exception and carries a penalty in the form of confiscation of goods as per sections 111, 113, 112 & 124 of the act. However, on the other hand, sections 3 to 5 of the Foreign Trade (Development and Regulation) Act, 1992 are not so strongly worded and carry the scope of an exception in issuing a license for import and export of the restricted commodity. For example, the export of human skeletons is prohibited as per section 2 (33). In contrast, export of cattle which is restricted suitable as per the 'ITC- HC' list, is allowed against an export licence obtained under schedule II ITC(HS) Classification of Export and Import Items, 2018.

23.4 Moreover, the restriction and prohibition of goods are not just limited to the Customs act, 1962 and Notifications of DGFT. Import and export of some specified goods will also be restricted/prohibited under other laws such as Environment Protection Act, Wild Life Act, Indian Trade and Merchandise Marks Act, Arms Act, etc. The prohibition under these acts will also apply to the penal provisions of the Customs Act, rendering such goods liable for confiscation under section 111(d) of the Customs Act (for import) and 113 (d) of the Customs Act (for export)11.

23.5 The relief for the distinction and differentiation in treating restricted and prohibited goods lies in lieu of section 125 of the Customs Act, 1962. *Section 125 of the act makes a clear distinction between prohibited goods and other goods and obligates the release of other goods on payment of redemption of a fee. Similarly Section 112 makes a clear distinction between prohibited and dutiable goods.*

23.6 In this regard, I rely on the following judgements:-

- (i) *Shaik Md. Omer v. Collector of Customs AIR 1967 Cal*

It is the most highlighted case, which elaborates the meaning and the scope of the word 'prohibition' as per section 2(33) of the act. In this case, the Hon'ble High Court of Calcutta observed that prohibition means every prohibition: and restriction is also a type of prohibition. The Court further explained that whenever there is a condition attached with the import or export of the good, then such goods are labelled as 'restricted goods' and import or export of such goods can be permitted on account of the fulfilment of the necessary condition. *Shaik Md. Omer*

(ii) *Commissioner of Customs v. Atul Automation (P.) Ltd*

The Hon'ble Supreme Court, in this case, has underscored the difference between what is prohibited and what is restricted. **The goods imported or exported without authorisation were found to be restricted goods. Restricted goods have the option of being redeemed and do not deserve the treatment of absolute confiscation, which could be applied only to prohibited goods.**

(iii) *Horizon Ferro Alloys (P.) Ltd. v. Union of India*

In this case, the difference between prohibited and restricted goods was made considering the tainted characteristics they hold.¹⁵ It was observed that goods like fake currency, pornographic material, dead animal skin or body etc., are prohibited goods as per section 2 (33) of the act. *Moreover, in this case, it was also observed that merely exceeding the quantity restriction over restricted goods will not make them fall under the category of prohibited goods.* The Adjudication Authority can use its discretion according to section 125 to declare such goods as restricted goods.

23.7 In this regard, I also rely on the judgement of Hon'ble Supreme Court of India in the matter of M/s. Raj Grow Impex LLP & others [CIVIL APPEAL NO(s). 2217-2218 of 2021] wherein the Apex court vide order dated 17.06.2021 has referred the judgement in the matter of Commissioner of Customs v. Atul Automation (P.) Ltd and clearly distinguished between the restricted goods and prohibited goods and laid down the principle of redemption of restricted goods.

67.4. Learned counsel for the importers have strongly relied upon a 3-Judge Bench decision of this Court in *Atul Automations (supra)* to submit that therein, the goods imported without authorisation were held to be 'restricted' goods; and the same principle applies to the subject goods when they have been imported without import licence and hence, they cannot be taken as prohibited goods. The submissions have been countered by the ASG that the said decision related to the matter under the FTDR Act and different facts and different regulations concerning the goods were involved therein.

67.4.1. **In the case of Atul Automations (supra), the goods imported without authorisation were found to be not 'prohibited' but 'restricted' items for import and the orders for their release with payment of fine in lieu of confiscation were approved.** However, a close look at the factual aspects puts it beyond the pale of doubt that therein, this Court has neither laid down the law that in every case of import without authorisation, the goods are to be treated as restricted and not prohibited nor that the goods so imported without authorisation are always to be released on payment of redemption fine.

67.4.2. The factual aspect of *Atul Automations (supra)* makes it clear that the imported Multi-Function Devices, Photocopiers and Printers (MFDs) involved in that case were restricted items, importable against authorisation under Clause 2.31 of the Foreign Trade Policy. Thus, the MFDs were found to be restricted items for import and not prohibited items. **That had not been the case where import was restricted in terms of quantity in the manner that the goods were**

DIN- 20240771ML000000BE3E

importable only up to a particular extent of quantity and that too against a licence. It was also found therein that the Central Government had permitted the import of used MFDs having utility for at least five years, keeping in mind that they were not being manufactured in the country.

67.4.3. **The present case is of an entirely different restriction where import of the referred peas/pulses has been restricted to a particular quantity and could be made only against a licence. The letter and spirit of this restriction, as expounded by this Court earlier, is that, any import beyond the specified quantity is clearly impermissible and is prohibited.**

This Court has highlighted the adverse impact of excessive quantity of imports of these commodities on the agricultural market economy in the case of Agricas (supra) whereas, it had not been the case in Atul Automations (supra) that the import was otherwise likely to affect the domestic market economy. In contrast to the case of Atul Automations, where the goods were permitted to be imported (albeit with authorisation) for the reason that they were not manufactured in the country, in the present case, the underlying feature for restricting the imports by quantum has been the availability of excessive stocks and adverse impact on the price obtainable by the farmers of the country. The decision in Atul Automations (supra), by no stretch of imagination, could be considered having any application to the present case.”

23.8 In view of the above discussion and findings and case laws referred herein above, I find that the goods are not under the category of ‘absolute prohibition’. The goods are restricted in nature as the goods have been imported without a valid authorisation from DGFT. Thus the goods can be redeemed on payment of redemption fine for clearance in the domestic market.

24. I find that the importer has agreed to pay fine/penalty. Accordingly, redemption fine is to be imposed under Section 125 of the Customs Act, 1962.

25. I further find that their acts of mis-declaration and attempt to import the goods, without having any valid authorization/permission from DGFT, has rendered them liable for penalty under Section 112(a) of the Customs Act, 1962.

26. In view of the above, I hereby pass the following order:-

- (i) I reject the classification of goods imported vide Bill of Entry No. 2916450 dated 06-04-2024 declared as Aluminum Scrap covered by ISRI code word “Throb” under CTH 76020010 order to re-classify the same under CTH 7602 0090.
- (ii) I order to confiscate 52MT of aluminum scrap covered by ISRI code word “Throb” valued at Rs. 99,25,190/- (Rupees Ninety nine lakhs twenty five thousand one hundred and ninety only) under Section 111(d) of the Customs Act, 1962.

However, I give them an option to pay Redemption fine of Rs. 10,00,000/- (Rupees Ten Lakhs only) in lieu of confiscation under Section 125 of the Customs Act, 1962.

- (iii) I impose penalty of Rs. 5,00,000/- (Rupees Five Lakhs only) under Section 112(a) of the Customs Act, 1962.

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

(Dev Prakash Bamanavat)

Additional Commissioner

DIN- 20240771ML000000BE3E

F.No. GEN/ADJ/ADC/1170/2024-Adjn-O/o Commr-Cus-Kandla

DIN- 20240771ML000000BE3E

To,

M/s Teneron Limited, Survey 107/1, 107/2,
Navyani Village, Dasada Taluka,
Surendra Nagar, Gujarat 382750

Copy to:-

1. The Assistant Commissioner Review/EDI/TRC/SIIB, Customs House, Kandla for necessary action.
2. Guard File.