



OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOM HOUSE: MUNDRA, KUTCH
MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421
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A	File No.	CUS/APR/BE/SO/162/2023-Gr 4-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/MK/117/2023-24
C	Passed by	Mukesh Kumari Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	11.07.2023
E	Date of Issue	14.07.2023
F	SCN No. & Date	Importer requested vide letter dated 13.06.2023 for waiver of SCN/PH
G	Noticee/Party/ Importer/ Exporter	M/s. Rushabh Ferro Alloys, B/H Shop 10, Block No. 522, Karanvati Complex, Rakanpur, Ghandhingar, Gujarat- 382721
H	DIN No.	20230771MO000061186B

1. यह अपील आदेश संबंधित को नि:शुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A 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:

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

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

A copy of the appeal, and

- (ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं-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 ड्रॉटि/ व्याज/ 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.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और 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.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

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 are in dispute, or penalty, where penalty alone is in dispute.

Brief Fact of the case:

1. M/s. Rushabh Ferro Alloys (IEC 0314014098) (hereafter referred as the Importer for sake of brevity) has filled Bill of Entry No. 5545997 dated 17.04.2023 for import of “Electrolytic Manganese Metal Flakes” with declared COO as Indonesia.

1.1 As per Alert received through email dated 21.04.2023 from NCTC, the consignment was placed on hold and examination of the goods was conducted on 25.04.2023 at Allcargo CFS. The examination was conducted by de-stuffing the goods which were packed in Jumbo Bags of 1000 kgs each. Representative samples were drawn to getting the goods tested from CRCL Kandla. The weight and number of packages were found to be as mentioned and declared by the Importer.

1.2. The NCTC alert conveyed the following:

- i. *The IEC has previously imported Rs. 51.39 Cr of goods under the CTI 81110010 wherein, the majority of the bills had declared the COO as China;*
- ii. *The IEC has also port hopped between INSBI6, INMUNI, INNSA1 and INPAV1 while importing this CTI. However, this bill of entry, even though being dispatched from Xiamen port in China, has COO as Indonesia;*
- iii. *Further, in the last 5 years the importer has filed 181 bills of entries out of which 167 have their COO as China and only 3 have COO as Indonesia. The 2 bills having COO as Indonesia;*
- iv. *Other than the instant BE, are 3579037 dt 03.12.2022 and 8990506 dt 06.06.2022. Out of these only the bill dated 06.06.2022 has been shipped directly from the port of Indonesia with the supplier being PT Indonesia Tsingshan Stainless Steel and the other bill has been shipped from CNXMN;*
- v. *The BE in question, the IEC is claiming the benefit of BCD Notification No. 046/2011 Sr. No. 1021(I) and paying Rs 0 as BCD. The BCD on this CTI is 5% per kg and the CTI 81110020 is restricted for import;*
- vi. *The supplier in the instant BE is DK Metal World Limited Hong Kong. This supplier has supplied to the instant IEC 8 times previously and none of the Bills have COO as Indonesia. Further, most of the recent bills from this supplier have COO as Brazil and the item is LOW CARBON FERRO CHROME with the CTH 72024900;*
- vii. *As per Sr. No. 1021 of Notification No. 046/2011, 0% BCD is applicable HSN 8111 (except 81110090), in accordance with Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of*

India] Rules, 2009 Notification No. 189/2009 - Customs (N. T.) dated 31-12-2009;

viii. *As per Rule 3 of this Notification :*

"3. Origin criteria.- The products imported by a party which are consigned directly under rule 8, shall be deemed to be originating and eligible for preferential tariff treatment if they conform to the origin requirements under any one of the following:-"

Thus, the Rule 8 which needs to be examined is reproduced below:

"8. Direct Consignment.- The following shall be considered as consigned directly from the exporting party to the importing party, -

(a) if the products are transported passing through the territory of any other AIFTA parties;

(b) if the products are transported without passing through the territory of any non-AIFTA parties;

(c) if the products whose transport involves transit through one or more intermediate non-parties with or without transshipment or temporary storage in such non-parties provided that -

(i) the transit entry is justified for geographical reason or by consideration related exclusively to transport requirements;

(ii) the products have not entered into trade or consumption there; and

(iii) the products have not undergone any operation there other than unloading and reloading or any operation required to keep them in good condition."

ix. *As it can be seen from the bill of entry and the attached COO, that the goods are purportedly being transshipped from a port in China and not from a port in AIFTA region as per Rule 8. Further, as per sub-section (c) of Rule 8, there should just be transit from a non-party and that should be justified by geographical reasons. Here, any entry into a port of China is not justified by geographical reasons. Further, as per the COO attached - the exporter from Indonesia is Pt Indonesia Tsingshan Stainless Steel; the third party (who is also the supplier in the BE) mentioned in the COO is DK Metal World Limited; and the buyer is Rushabh Ferro Alloys (the IEC of the BE). However, as per the Certificate of re-export attached along with the COO certificate, the exporter mentioned is Xiamen Jlashang Supply Chain Managemnet Co. Ltd from China. Thus, the presence of multiple parties across the various documents attached is making the actual origin of the goods appear dubious;*

I/1288526/2023

- x. *Further, the COO uploaded on e-sanchit was examined, and it was found that the QR code in the COO could not be scanned. However, on checking the other COO uploaded in other consignments from Indonesia, it has been observed that the QR code is easily scannable. This leads to the possibility that manipulated COO certificate is being used to import the consignment and the same needs to be verified. Further, the vessel mentioned in the COO certificate "SITC LICHENG" has also been tracked from open source and it does not seem to have been to the Xiamnen port of China at all in April, a screenshot of the same is attached. Thus, the claim in the certificate of re-export from China does not appear to be correct, as the vessel carrying the goods mentioned in the COO certificate from Indonesia (dt 04.04.2023) has not reached Xiamen port. Instead, the imported consignment seems to have originated from China not from Indonesia. The identity and the origin of the goods in the present consignment needs to be verified;*
- xi. *The good also appear to be undervalued as the unit price is 2.29 USD per kg, but the importer has previously imported at USD 3.2/kg from China in INNSA1. Further, their classification may also be verified by testing so as to ensure that the goods fall under the preview of the AIFTA benefits and are not prohibited;*
- xii. *Accordingly, requested to carry out a thorough 100% examination of this consignment in conjunction with the related documents and the applicability of the notification benefits. Furthermore, the COO and the condition under AIFTA may be got verified under CAROT.*

1.3. The test reports of the samples sent for testing with CRCL Kandla also confirmed the goods to containing Manganese 99.7% by weight.

1.4. A statement of Shri Rakesh Maheshwari, authorised person for M/s. Rushabh Ferro Alloys was recorded under Section 108 of the Customs Act, 1962 on 06-06-2023. Shri Rakesh Maheshwari had stated that –

- He has been authorised by the Proprietor of M/s. Rushab Ferro Alloys, Shed No. 42, Survey No. 2221, Block No. 1346, Shreeram Industrial Estate, Opp. Shah Alloys, Village Santej, Dist. Gandhinagar to give statement in the matter concerning Import under Bill of Entry No. 5545997 dated 17-04-2023;
- M/s. Rushabh Ferro Alloys is engaged in trading of raw materials required by the tiles manufacturing units. The firm is registered under GST with GSTIN 24AABPM5649L1ZG;
- Their client M/s. Rushabh Ferro Alloys had imported Electrolytic Manganese Flakes from M/s. D K Metal World Limited, Hong Kong and the import was initiated under Bill of Entry No. 5545997 dated 17-04-2023;

- The goods had originally been supplied by M/s. P T Indonesia Tsingshan Stainless Steel, Indonesia thereafter routed through M/s. D K Metal World Limited, Hong Kong;
- In relation to the clearance of this cargo, he stated that as the consignment is valued at only ₹ 51,22,616/- and the duty involved by foregoing the benefit of FTA works out to nothing more than ₹ 3,00,000/-, the Importer decided to forego the FTA benefits and clear the goods by paying the applicable duty after understanding that the FTA benefits will be available only after the verification of Country of Origin, which normally gets verified in a time frame extending about 6 to 12 months;
- This decision to clear the goods without FTA benefits is solely being done by our client to fulfill their commitments of supply and safeguard their image in the business;
- Requested to clear the goods at an early date and our client does not intend to attend personal hearing or received any Show Cause Notice and;
- Requested to conclude the investigation under merits and in terms of the Customs Act, 1962 and also submitted a letter dated 06-06-2023 explaining the reasons related to the above stand of the Importer.

Legal Provisions

2. In context of this case, the following legal provisions are reproduced for reference:

Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India Rules, 2009. [Notification No. 189/2009 - Customs (N.T.) dated 31-12-2009]

3. Origin criteria –

The products imported by a party which are consigned directly under rule 8, shall be deemed to be originating and eligible for preferential tariff treatment if they conform to the origin requirements under any one of the following:- a) products which are wholly obtained or produced in the exporting party as specified in rule 4; or, b) products not wholly produced or obtained in the exporting party provided that the said products are eligible under rule 5 or 6.

8. Direct Consignment –

The following shall be considered as consigned directly from the exporting party to the importing party, -

- (a) *if the products are transported passing through the territory of any other AIFTA parties;*
- (b) *if the products are transported without passing through the territory of any non-AIFTA parties;*
- (c) *if the products whose transport involves transit through one or more intermediate non parties with or without transshipment or temporary storage in such non-parties provided that –*
 - (i) *the transit entry is justified for geographical reason or by consideration related exclusively to transport requirements;*
 - (ii) *the products have not entered into trade or consumption there; and*
 - (iii) *the products have not undergone any operation there other than unloading and reloading or any operation required to keep them in good condition.*

Section 46: Entry of goods on importation. – “(1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting electronically to the proper officer a Bill of Entry for home consumption or warehousing in the prescribed form:

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

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

(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, relating to the imported goods."

Section 111. *Confiscation of improperly imported goods, etc.* - The following goods brought from a place outside India shall be liable to confiscation: -

(m) any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the case of goods under trans-shipment, with the declaration for trans-shipment 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) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111, shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty 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 higher:

Provided that where such duty as determined under sub-Section (8) of Section 28 and the interest payable thereon under Section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this Section shall be twenty-five per cent. of the penalty so determined;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under Section 77 (in either case hereafter in this Section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

I/1288526/2023

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

Personal Hearing and Importer's submission

The importer vide letter dated 13.06.2023 has requested to this office to re-call the said Bill of Entry for removal of ASEAN-India free Trade Area Preferential Tariff Certificate and assess without Basic Custom Duty Benefit. They also mentioned that they did not require any PH/SCN in the said matter and are ready to pay differential duty and any other liabilities.

Discussions and findings:

I have carefully gone through the case records, Investigation Report dated 06.06.2023 received from the Special Intelligence and Investigation Agency (SIIB) and applicable provisions of Law.

4.1 Before proceeding to examine the merit of the case, I would like to discuss the principles of natural justice. I find that the importer has submitted their written submission dated 13.06.2023 and has stated that they don't require Personal Hearing and Show Cause Notice in the matter. I find that the condition of Principle of Natural Justice under Section 122A of the Customs Act, 1962 has been complied. Hence, I proceed to decide the case on the basis of facts and documentary evidences available on records.

4.2 The issues before me are to decide whether-

- a. The Basic Customs Duty exemption as per Notification No. 046/2011 of AIFTA agreement regarding origin of goods is applicable or not in the consignment.
- b. The Goods imported by importer are liable for confiscation under section 111(m) and penalty should be imposed under section 112(a)(ii) of the Customs Act, 1962 or otherwise.

4.3. I find that importer filed the Bill of Entry ensuring the benefit of Customs duty exemption as available under the provisions of as per Sr. No. 1021 of Notification No. 046/2011, 0% BCD is applicable HSN 8111 (except 81110090), in accordance

I/1288526/2023

with Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India] Rules, 2009. The products imported by the Importer were not consigned directly under rule 8 thus deemed to be originating from a non-AIFTA country (i.e. Hong Kong) thereby, being ineligible for preferential tariff treatment. Moreover, the goods were not transported passing through the territory of any other AIFTA parties; the products have been transported by passing through the territory of any non-AIFTA parties; the transit entry through Hong Kong is not justified for geographical reason or by consideration related exclusively to transport requirements. Thus, it reasonably appears that the goods were not of Indonesian Origin.

Differential duty after removing COO benefit.

Declared Assessable value	BCD (5%)	Total differential duty payable in (₹) (Including SWS and IGST)
Rs 51,22,616/-	Rs 2,56,131/-	Rs 3,17,347/-

4.4. I find that Importer vide letter dated 06-06-2023 has informed that as per Custom Notification No. 189/2009 (NT) rule 8 C (II) due to transportation requirement, the cargo was routed from non FTA Country as supplier M/s. Pt Indonesia Tsingshan Stainless Steel was providing cargo in bulk and as they wanted a small quantity, they had opted for buying from third party. The goods had only been re-transited from China port, it was not repacked & locally consumed. Importer has stated in their statement that the goods had originally been supplied by M/s. P T Indonesia Tsingshan Stainless Steel, Indonesia thereafter routed through M/s. D K Metal World Limited, Hong Kong. However, the vessel mentioned in the COO certificate "SITC LICHENG" has also been tracked from open source and it does not seem to have been to the Xiamnen port of China at all in April 2023. Thus, it reasonably appears that the goods were not of Indonesian Origin.

4.5 It is found that the Importer had filed the Bill of Entry No. 5545997 dated 17-04-2023 along with documents as received from their Supplier but, in view of its failure to establish the Country of Origin of goods in terms of Rule 8 of Customs Tariff [Determination of Origin of Goods under the Preferential Trade Agreement between the Governments of Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of India Rules, 2009. [Notification No. 189/2009 - Customs (N.T.) dated 31-12-2009] especially based on the documents submitted, the Importer decided to forego the benefits available under FTA and clear the goods under payment of applicable Customs duty.

4.6 Thus, it appears that the Importer has failed to make proper entries for presenting the import of goods electronically as required under the provisions of Section 46 of the Customs Act, 1962 and resulting in the goods liable for confiscation under the provisions of **Section 111 (m) of the Customs Act, 1962 for improperly importing the goods. This contravention by the Importer has also made themselves liable for penalty under Section 112 (a)(ii) of the Customs Act, 1962.**

Order

5. In view of foregoing discussion and findings, I pass the following order:

- i. I confirm and order to re-assess of Bill of Entry No. 5545997 dated 17.04.2023 under Section 17 (4) of the Customs Act, 1962.
- ii. I confirm and order for confiscation of the goods pertaining to Bill of Entry No. 5545997 dated 17.04.2023 valued at Rs 51,22,616/- and attempt for evading the duty of amount Rs 3,17,347/- as Goods declared are in contravention of Section 46 of the Act and are therefore liable for confiscation under Section 111 (m) of the Customs Act, 1962. However, I give an option to re-deem the goods in lieu of confiscation under provision of section 125 of customs Act, 1962 on payment of Redemption Fine of Rs. 6,00,000/- (Rs. Six lakhs only).
- iii. I impose a penalty of Rs. 30,000/- (Rs.Thirty thousand only) on the Importer M/s. Rushabh Ferro Alloys, under section 112(a)(ii) of Customs Act, 1962.

6. 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.

7. The investigation Report vide F. No. S/43-24/Rushabh Ferro/SIIB-E/CHM/22-23 dated 06.06.2023 issued by the Deputy Commissioner (SIIB), Custom House Mundra is hereby disposed of.

Signed by

Mukesh Kumari
Additional Commissioner of Customs
Date: 11.07.2023 17:20:02
Custom House, Mundra

Dated: .07.2023

To,

M/s. Rushabh Ferro Alloys,
B/H Shop 10, Block No. 522,
Karanvati Complex, Rakanpur, Ghandhingar,

I/1288526/2023

Gujrat- 382721

Copy to:

1. The Dy. Commissioner of Customs, RRA, CH, Mundra
2. The Dy. Commissioner of Customs, TRC, CH, Mundra
3. The Dy. Commissioner of Customs, SIIB, CH, Mundra
4. The Dy. Commissioner of Customs, EDI, CH, Mundra
5. Guard file