


	सीमा शुल्क के प्रधान आयुक्त का कार्यालय सीमा शुल्क सदन, मुंद्रा, कच्छ, गुजरात OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MUNDRA, KUTCH, GUJARAT Phone: 02838-271426/271428 FAX :02838-271425, Email:group4-mundra@gov.in	 सत्यमेव जयते
A. File No.	: CUS/SIIB/MISC/56/2025-SIIB-O/o Pr Commr-Cus-Mundra	
B. Order-in-Original No.	: MCH/ADC/AKM/303/2024-25	
C. Date of order	: 17.02.2025	
C. Passed by	: Amit Kumar Mishra, Additional Commissioner of Customs, Customs House, AP & SEZ, Mundra.	
F. Noticee(s) / Party / Importer	: M/s. ADN Services	
G. DIN	: 20250271MO0000000C3FF	

1. यह अपील 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 अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-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(, चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद 380009”

“The Commissioner of Customs (Appeals), Mundra, 4TH Floor, Hudco Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad-380009.”

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

Appeal shall be filed within three months 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 -

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रूपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paisa only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के सभी मामलों में पालन किया जाना चाहिए।

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

8. इस आदेश के विरुद्ध अपील हेतु जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ केवल जुर्माना विवाद में हो, Commissioner (Appeals) 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 facts of the Case

M/s. ADN Services having its registered office at 987/10/B-2, GIDC Industrial Estate, Makarpura, Vadodara-390010 (IEC: 3412004171) (hereinafter referred to as "the importer") filed a Bill of Entry bearing No. 9287533 dated 18.12.2023 (hereinafter referred to as "the said BE") through their Customs Broker M/s. Rishi International Logistics (hereinafter referred to as "the CB") for import of 1 set of pre-owned Toshiba CT Scanner System Alexion with standard accessories (CTH-90221200) (hereinafter referred to as "the impugned goods") at APSEZ, Mundra Port (INMUN1), Mundra. The year of manufacture as declared by the importer in the said BE /supporting document is 2017. The details of the said BE is as under:

Sr. No.	Bill of Entry No. and Date	Bill of Lading	Country of Origin	Container No.	Description & CTH of the imported goods	Declared Ass. Value of goods in Rs.
1.	9287533 dated 18.12.2023	10031041 7632 Dated 15.11.2023	Japan	TGBU 3691175	Pre-owned Toshiba CT Scanner System Alexion with standard accessories (CTH: 90221200)	31,19,100/-

2. On the basis of Intelligence gathered by the officers of Central Intelligence Unit, Custom House, Mundra (hereinafter referred to as "the CIU") the cargo covered under the said BE was put on hold for detailed examination. Examination of the goods covered under said BE was carried out by the officers of the CIU along with empanelled Chartered Engineer Shri Varun Chandok under Panchnama dated 28.12.2023 drawn at M/s All Cargo Logistics Ltd, CFS, Mundra. During the course of examination, it was found that, the impugned goods in the boxes were CT scan machine with accessories made by Toshiba Company. During the examination, it was further noticed that, some stickers are pasted on machine as well as accessories wherein information like Model No., Serial No., Name of the Company and MADE IN were mentioned. On visual examination, the goods appeared to be old and used CT Scan Machine. Thereafter, empanelled Chartered Engineer Shri Varun Chandok also inspected the impugned goods and informed that, the goods are old and used and confirmed that the declared value of the goods seem to be less.

3. The empanelled Chartered Engineer Shri Varun Chandok submitted his inspection-cum-valuation report bearing No. VC/CFS/MUNDRA/ADNS/@TKhgcd75*/9287533/I/04/2023-24 dated 04.01.2024 Vide the said report, it has been reported that, the impugned goods are old and used and year of manufacture as found on parts like drive motor, patient table parts, Console Monitor etc., bears year of manufacture as 2011. The empanelled Chartered Engineer Shri Varun Chandok further reported that, moreover, information available on internet for equipments of similar models with serial numbers, interpretation of serial number of present equipment's year is 2011/09; that, according to the information available on internet, Toshiba Medical Systems Corporation ceased to be subsidiary of Toshiba Corporation on 17th March 2016; that, considering all these factors, to their opinion, year mark plate bearing 2017 does not correlate with Model, Serial Number, year marks found on parts etc.

4. Further, the total CIF value of the impugned goods has been reported by the empanelled Chartered Engineer Shri Varun Chandok in his inspection-cum-valuation report dated 04.01.2024 as USD 71000. Whereas, as per the said BE, the contemporary applicable exchange rate was 1 USD = 84.30 INR. Accordingly, the CIF value in INR comes to Rs.59,85,300/- (=71,000 x 84.30). Whereas, upon going through the said inspection-cum-valuation report dated 04.01.2024 submitted by the empanelled Chartered Engineer Shri Varun Chandok, it appears that, the importer has mis-declared the description (year of manufacture) as well as assessable value of the impugned goods.

4.1 The empanelled Chartered Engineer Shri Varun Chandok vide his inspection-cum-valuation report dated 04.01.2024 has reported as under:

S r N o.	Description Old & Used and make/Model/Sr No./ COO as declared in invoice/look/ap pearance (medical Equipment's)	Approx. year of manufa cture as per look/ spec. plate	Extent of recondi tioning if any	Expec ted residual life	Qty. (set /No ./ Unit)	Invoice Value (USD) FOB	Sugges tive Estima ted FOB Value in year of manuf acture (Includi ng all access ories) (USD)	Rat e of De p %	Cost of Reconditi oning in (USD) if any	Estima ted Depreci ated CIF Value in USD	Total of column s (10+11) CIF Value in USD
1	2	3	4	5	6	7	8	9	10	11	12
1	CT Scanner Medical Equipment Make: TOSHIBA MEDICAL SYSTEMS CORPORATIN Model/Type: ALEXION TSX- 032A Sr. No.: 1BA1192209 Made in Japan With standard accessories like Gantry, Cabinet, Cables, Console Monitor with Keyboard, Patient Table, Covers etc	2011	Yes Cleane d, etc.	More than 8 years (Subjec t to Proper mainte nance)	1	37000	230000	70 %	2000	69000	71000

5. Whereas, it appears that, the policy condition for import of goods Computed Tomography (CT) Apparatus falling under CTH: 90221200 was revised vide Notification No. 03/2015-2020 dated 16.04.2018 issued by DGFT. Vide the said notification, the import of Computed Tomography (CT) Apparatus falling under CTH: 90221200 are permitted subject to Atomic Energy Act, 1962, and Rules thereunder including prior regulatory clearance from AERB. The concerned part is re-produced as under:

Subject: Amendment in import policy conditions under Exim Code 9022 of Chapter 90 of ITC (HS), 2017, Schedule - I (Import Policy).

S.O. (E): In exercise of powers conferred by Section 3 of FT (D&R) Act, 1992, read with paragraph 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby amends the import policy conditions of the following items under Exim Code 9022 of Chapter 90 of ITC (HS), 2017, Schedule - I (Import Policy) as under:

Exim Code	Item Description	Policy	Policy Conditions	Revised Policy Conditions
9022 12 00	Computed tomography apparatus	Free		Imports are permitted subject to Atomic Energy Act, 1962 and Rules thereunder including prior regulatory clearance from AERB.
9022 14 10	X - ray generators and apparatus (non-portable)	Free	Diagnostic Medical X - Ray Equipment must conform to IS 7620 (Pt 1).	Diagnostic Medical X - Ray Equipment must conform to IS 7620 (Pt 1). Imports are permitted subject to Atomic Energy Act, 1962 and Rules thereunder including prior regulatory clearance from AERB.
9022 14 20	Portable X - ray machine	Free	Diagnostic Medical X - Ray Equipment must conform to IS 7620 (Pt 1).	Diagnostic Medical X - Ray Equipment must conform to IS 7620 (Pt 1). Imports are permitted subject to Atomic Energy Act, 1962 and Rules thereunder including prior regulatory clearance from AERB.
9022 30 00	X - ray Tubes	Free		Imports are permitted subject to Atomic Energy Act, 1962 and Rules thereunder including prior regulatory clearance from AERB.
9022 90 10	X - ray valves	Free		Imports are permitted subject to Atomic Energy Act, 1962 and Rules thereunder including prior regulatory clearance from AERB.

5.1 Atomic Energy Research Board (AERB) vide their letter Ref. No. AERB/RSD/MDX/Service Agencies-RR/2015 dated 18.09.2015 has prescribed the condition No. 2(iii) regarding import of pre-owned medical diagnostic x-ray equipment, which is reproduced below:

*"The pre-owned medical diagnostic x-ray equipment, which is more than **seven years old**, shall not be imported in the country. However, the used diagnostic x-ray equipment, which is not more than ten years old, may be permitted for import by original equipment manufacturer (OEM) or OEM authorized agency in the country for refurbishment prior to supply to the end-user(s)".*

6. In view of above it is found that, the importer has imported the pre-owned CT Scanner machine (impugned goods) which is more than seven years old as per inspection-cum-valuation report dated 04.01.2024 of empanelled Chartered Engineer Shri Varun Chandok. Further, it appears that, such goods are not permitted to be imported in view of DGFT policy conditions prescribed vide Notification No. 03/2015-2020 dated 16.04.2018 in respect of CTH 90221200 read

with para 2(iii) of letter Ref. No. AERB/RSD/MDX/Service Agencies-RR/2015 dated 18.09.2015 issued by the Atomic Energy Research Board (AERB). Therefore, it appears that, the importer failed to comply with the conditions prescribed for import of pre-owned CT scanner machines (impugned goods) making them "prohibited goods" as defined under section 2(33) of the Customs Act, 1962, which reads as under:

Section 2(33): "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;

6.1 It further appears that, the declared assessable value (Rs.31,19,700/-) of the impugned goods in the said BE is much less than the value (Rs.59,85,300/-) given by the empanelled Chartered Engineer Shri Varun Chandok in his inspection-cum-valuation report dated 04.01.2024. Accordingly, it appears that, the importer has imported the impugned goods by way of mis-declaration of description (year of manufacture) as well as under valuation of the impugned goods. Therefore, it appears that, the impugned goods imported vide the said BE are liable for confiscation under section 111(d) and 111(m) of the Customs Act, 1962, which reads as under:

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

.....
(d) 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;

.....
(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;

6.2 Accordingly, as per the provisions of the Section 110 of the Customs Act, 1962, the impugned goods have been seized by the officers of the CIU vide seizure memo dated 15.01.2024.

7. Statement of Shri Lukka Chetan Prabhudasbhai, Partner of the importer was recorded on 29.01.2024 by the officer of the CIU, wherein, he interalia stated that, an authorization is required to be obtained from AERB for import of old and used CT Scanner Machine and they have the permission/ authorization from AERB for supplying/ Servicing & Maintenance/ Quality Assurance of medical diagnostic X-ray equipment which is valid up to 28.04.2024; that, they know about the conditions for import of pre-owned medical diagnostic x-ray equipment; that, if it is more than seven-year old then shall not be imported; that, they have purchased the goods from supplier M/s Fair Medical Co. Ltd. 1215, Izumi Kashiwa City Chiba 270-1456 Japan upon verbal discussions after confirming the year of manufacture of CT scan Machine as May-2017; that, considering the impugned goods less than 07 seven years old, they have purchased it without physical inspection.

8. Thereafter the case file was transferred by the CIU to the SIIB Section, CH Mundra vide letter dated 17.03.2024 for further necessary action.

9. The importer, vide letter (inward date 21.05.2024), requested for re-examination of the impugned goods. In response of the same an expert opinion from the empanelled chartered engineer Shri Varun Chandok was sought regarding the issues raised by the importer. The empanelled chartered engineer, Shri Varun Chandok, vide letter ref no. VC/CFS/MUNDRA/ADNS/9287533/1/ 01/A/2024-25

dated 30.05.2024 reiterated that his recommendations are grounded in his professional expertise and experience in the field of valuation.

10. A further statement of Shri Lukka Chetan Prabhudasbhai, partner of the importer was recorded on 26.06.2024, wherein, he perused his earlier statement dated 29.01.2024 and agreed with the same. He interalia stated that, they have not issued any purchase order to the supplier in this case; that, they have visited the website of the supplier and contacted them on phone and after confirmation, the supplier provided proforma invoice; that, on receipt of proforma invoice, they made 50% payments of USD 18500 in advance on 24.11.2023 as per payment conditions mentioned therein; that, remaining 50% payments of USD 18500 was made before receipt of Bill of Lading on 08.12.2023; that, entire payment of USD 37000 as per invoice in respect of present import consignment been made by them in advance before reaching of the consignment at Mundra Port, India; that, only, after receipt of the full payments, the supplier has forwarded the relevant import documents to them. Shri Lukka Chetan Prabhudasbhai, partner of the importer under his statement dated 26.06.2024 also perused the Panchnama dated 28.12.2023 drawn during the course of examination of the goods and agreed with the same. He further stated that, he knows that more than seven-year old pre-owned medical diagnostic x-ray equipments are not allowed to be imported into the country.

10.1 Shri Lukka Chetan Prabhudasbhai, partner of the importer also perused the inspection-cum-valuation report dated 04.01.2024 of empanelled chartered engineer Shri Varun Chandok but did not agree with the same. He stated that, the assessable value of the imported goods is USD 37000 as per the purchase invoice FM2023-0811-01H dated 08.11.2023 issued by their supplier M/s Fair Medical Co. Ltd. 1215, Izumi Kashiwa City Chiba 270-1456 Japan; that, they have declared the value of the impugned goods on the basis of purchase invoice and other documents and they have also made full payments according to those documents; that, their supplier has sent a test certificate of their chartered engineer bearing no. CE No. : FM2023-0811-01H dated NIL confirming the year of manufacture May-2017 and value CIF 37000 USD in respect of present import consignment; that, considering that the CT scan machine old less than 07 years, they have purchased the said machine without physical inspection; that, the empanelled chartered engineer Shri Varun Chandok has submitted his report on the basis of year of manufacture found on parts like patient table mattress, display monitor etc. and they do not agree with the said report. On being asked, he further stated that, Alexion is a CT scan machine of Toshiba make and it has the unique serial number as mentioned 1BA1192209; that, he does not know about the co-relation between the serial number and year of manufacture of the imported machine.

10.2 Shri Lukka Chetan Prabhudasbhai, partner of the importer also perused letter dated 30.05.2024 of the empanelled chartered engineer Shri Varun Chandok and reiterated that, they have purchased the impugned goods from supplier on verbal discussions over phone. He further stated that, their supplier has sent a test certificate of their chartered engineer bearing no. CE No. : FM2023-0811-01H dated NIL confirming the year of manufacture May-2017; that, the empanelled chartered engineer Shri Varun Chandok has submitted his report on the basis of year of manufacture found on parts like patient table mattress, display monitor etc. and they do not agree with the said report. On being asked he further stated that, their supplier M/s. Fair Medical Co. Ltd, Japan has not provided any invoice/bill of the hospital from where they (M/s Fair Medical Corporation) has bought this machine since this is trade secret for them; that, they have not inspected the impugned goods before purchasing the same, however, after initiation of present inquiry they have consulted it with the supplier who sent the confirmatory mail dated 10.01.2024 to the CIU that the year of manufacture of imported machine is May-2017.

11. In view of the investigation carried out by the CIU and the inspection-cum-valuation report dated 04.01.2024 submitted by the empanelled Chartered Engineer

Shri Varun Chandok, it appears that, the impugned goods are old and used and year of manufacture of CT scanner Machine is 2011. The importer has declared the year of manufacture of the CT scanner machine covered under the said BE as 2017. Furthermore, the empanelled Chartered Engineer Shri Varun Chandok vide his inspection-cum-valuation report dated 04.01.2024 reported that the assessable CIF value of the impugned goods is Rs.59,85,300/-. Whereas, the importer has declared the assessable value of the impugned goods only Rs.31,19,700/- which appears to be on a much lower side.

11.1 In view of further investigation carried out in the present case, it appears that, the importer failed to submit any concrete documentary evidence or additional document in support of their claim that the imported CT scan machine is not more than 7 year old. Whereas, it appears that, the supplier's chartered engineer certificate bearing no. CE No.: FM2023-0811-01H dated NIL uploaded by the importer at the filing of the said BE also does not contain any picture of the imported machine such as plate embossed with the details of Model Name, Model Number, Serial Number, Year of Manufacture etc. to substantiate their said report. Furthermore, the importer also failed to establish any co-relation between serial number and year of manufacture of the imported CT scan machine. Accordingly, it appears that, the importer failed to comply with the conditions prescribed for import of pre-owned CT scanner machines (impugned goods) making them "prohibited goods" as defined under section 2(33) of the Customs Act, 1962.

11.2 Accordingly, it appears that, the importer has mis-declared the description (year of manufacture) to by-pass the restrictions/ prohibitions prescribed by the DGFT/AERB. It further appears that. The importer has also mis-declared the assessable value of the impugned goods therefore, the same appears to be liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962.

12. In terms of section 46(4) of the Customs Act, 1962, the importer of any goods is required to make and subscribe to a declaration to the truth of the contents of such Bill of Entry. Whereas, it appears that, by the act of omission and commission at the level of importer, they have contravened the provisions of Section 46 and Section 17 of the Customs Act, 1962, in as much as, they failed to make correct and true declaration and information to the Customs Officer in the form of Bill of Entry and also failed to assess their duty liability correctly. The relevant portion of said provisions is as under:

Section 17. Assessment of duty. -

(1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

13. LEGAL PROVISIONS APPLICABLE IN THE CASE:

13.1 RELEVANT PROVISIONS OF THE CUSTOMS ACT, 1962:

Section 2(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;

Section 2(23): "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

Section 2(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;

Section 2(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;

Section 2(33): "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;

Section 2(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: "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 111. Confiscation of improperly imported goods, etc. – The following goods brought from a place outside India shall be liable to confiscation:-

.....
(d) 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;

.....
(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) 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.

13.2 Relevant Provisions of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007:

"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:"

Rule 12. Rejection of declared value, - (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or

other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

14. **Rejection of declared value and Redetermination of Assessable Value:**

Rule 3 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 (hereinafter referred to as "the CVR, 2007" for the sake of brevity) provides the method of valuation. Rule 3(1) of the CVRs, 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". 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, in the present case, it appears that, there is reasonable doubt regarding the truth and accuracy of the declared value, and hence is liable to be rejected in terms of Rule 12 of the CVR, 2007.

14.1 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."

14.2 The assessable value of the impugned goods is required to be re-determined under Rule 9 *ibid*, i.e. as per the residual method. Hence, accordingly the assessable CIF value of the impugned goods has been taken on the basis of inspection-cum-valuation report dated 04.01.2024 submitted by the empanelled chartered engineer Shri Varun Chandok 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. Accordingly, it appears that, the assessable value (Rs.31,19,100/-) of the impugned goods declared in the said BE is liable to be rejected in terms of Rule 12 of the CVR, 2007 and assessable value of the impugned goods is liable to be re-determined as Rs.59,85,300/- under the provisions of Rule 9 of the CVR 2007 in view of the inspection-cum-valuation report dated 04.01.2024 submitted by the empanelled chartered engineer Shri Varun Chandok.

15. **Summary of the investigation:** The importer filed the said BE through their CB for import of 1 set of old & used/pre-owned Toshiba CT Scanner System Alexion with standard accessories (CTH-90221200) at APSEZ, Mundra Port, Mundra. On being examined by the empanelled chartered engineer the impugned goods are found to be more than seven years old. Whereas, the policy condition for import of goods falling under CTH: 90221200 was revised vide Notification No. 03/2015-2020 dated 16.04.2018 issued by DGFT, wherein, the import of goods under CTH-90221200 are permitted subject to Atomic Energy Act, 1962, and Rules thereunder. Furthermore, in this regard, Atomic Energy Research Board vide their letter Ref. No. AERB/RSD/MDX/Service Agencies-RR/2015 dated 18.09.2015 has clarified the condition No. 2(iii) regarding import of pre-owned medical diagnostic x-ray equipment, which is reproduced below:

*"The pre-owned medical diagnostic x-ray equipment, which is more than **seven years old**, shall not be imported in the country. However, the used diagnostic x-ray equipment, which is not more than **ten years old**, may be permitted for import by original equipment manufacturer (OEM) or OEM authorized agency in the country for refurbishment prior to supply to the end-user(s)".*

15.1 It appears that, in the present case, the impugned goods i.e. CT Scanner Machine, which is more than seven-year-old as per the Chartered Engineer's report, is not permitted to be imported into India as per policy condition of CTH: 90221200 prescribed vide Notification No. 03/2015-2020 dated 16.04.2018 issued by the DGFT read with condition no. 2(iii) prescribed vide AERB letter dated 18.09.2015. Accordingly, it appears that, the importer has violated the policy condition prescribed for import of impugned goods falling under CTH 90221200 by the DGFT/AERB. Whereas, it further appears that, the declared assessable value of the impugned goods covered under the said BE is on the lower side than the assessable CIF value given by the empanelled chartered engineer in his report dated 04.01.2024. Therefore, it appears that, the impugned goods are liable for confiscation under Section 111 (d) and 111(m) of the Customs Act, 1962.

15.2 It appears that, the declared assessable value (Rs.31,19,100/-) is required to be rejected under Rule 12 of the CVR, 2007 read with Section 14 of the Customs Act, 1962. Whereas, the assessable value of the imported goods appears liable to be for re-determined as Rs.59,85,300/- in accordance with the report submitted by the empanelled chartered engineer, as per Rule 9 of the CVR, 2007 i.e. 'Residual Method'. Accordingly, it appears that, the said BE is liable to be re-assessed, accordingly, under section 17(4) of the Customs Act, 1962.

15.3 It appears that, false declaration about the description (year of manufacture) as well as assessable value of the impugned goods has been presented by the importer before the department, thus making the impugned goods liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962. As the impugned goods appears liable for confiscation under Section 111(d) and 111(m) of Customs Act, 1962, the importer also appears to be liable for penal action under Section 112 of the Customs Act, 1962.

16. Therefore, the importer M/s. ADN Services having its registered office at 987/10/B-2, GIDC Industrial Estate, Makarpura, Vadodara-390010 (IEC: 3412004171) were called upon to show cause to the Additional Commissioner of Customs, Mundra having office at, Port User Building, Mundra, within 30 days of the receipt of Notice as to why:

- (A) The declared assessable value of Rs. 31,19,100/- of the impugned goods covered under Bill of Entry No. 9287533 dated 18.12.2023 should not be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.
- (B) The assessable value of the impugned goods should not be re-determined under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 as Rs.59,85,300/- (Rupees Fifty Nine Lakhs Eighty Five Thousand Three Hundred only) read with Section 14 of the Customs Act, 1962 as per the inspection-cum-valuation report dated 04.01.2024 of the empanelled Chartered Engineer.
- (C) The said Bill of Entry should not be re-assessed accordingly under Section 17(4) of the Customs Act, 1962.
- (D) The impugned goods imported vide Bill of Entry No. 9287533 dated 18.12.2023 having assessable value of Rs.59,85,300/- (Rupees Fifty Nine Lakhs Eighty Five Thousand Three Hundred only) should not be confiscated under Section 111(d) and 111(m) of the Customs Act, 1962.
- (E) The importer M/s. ADN Services having its registered office at 987/10/B-2, GIDC Industrial Estate, Makarpura, Vadodara-390010 (IEC: 3412004171) should not be penalised action under Section 112 of the Customs Act, 1962.

17. Records of Personal Hearing and written Submissions of the Importer:

Shri Rakesh Soni, Partner in M/s. ADN Services has appeared for Personal Hearing on 09.12.2024. He inter-alia has re-iterated his earlier reply and submitted that CT Scan machine is manufactured in 2017 and the same is available on the marking plate of the Machine, which was not considered by the CE appointed by the department and therefore requested for re-examination of the Machine in Importer's presence. The importer has also vide their letter dated 09.12.2024 submitted that:

- i. CE certificate provided by the shipper and mail confirmation of the said CE Certificate has confirmed the value and declared month and year of manufacture.
- ii. Photograph of the plate affixed on the Machine showing the month and year of manufacture as 2017/05.
- iii. CE Certificate issued by Mr. Ajay Raj Singh B Jhala, confirmed the value and YOM as declared.
- iv. The year mentioned on the cables and accessories have been taken as date of manufacture of the machine by the CE appointed by investigation however The YOM of the machine is clearly embossed on YOM plate and the same has been completely ignored by the CE appointed by investigation.
- v. The CE appointed by the department is not from AERB approved agency and has given contradictory report, which is contrary to the facts and figures submitted above.
- vi. In view of the above, it is requested to grant permission for re-examination by an AERB approved Engineer/Agency.

18. In view of the above facts, it appears that CE Varun Chandok & Associates and CE Ajay Raj Singh B Jhala, (Both Customs Approved CE) has given contradictory reports and YOM plate embossed on the Machine has also been completely ignored by the CE and year mentioned on the cables and accessories have been taken as date of manufacture of the machine. Accordingly, re-examination of the subject goods conducted by Shri Kaushik Kumar C. Patel, Technical Manager, Gujarat Radiation Services LLP and empanelled Chartered Engineer Shri Tushar Zankat under supervision of SIIB officers.

19. Shri Kaushik Kumar C. Patel, Technical Manager, Gujarat Radiation Services LLP (AERB authorized) has submitted his inspection report dated 10.01.2025. Vide the said report it has been reported that the CT Scan Machine comprises of Gantry, Patient Table, Control Console and Power distribution Unit and during inspection he has found all these parts are intact. The name of manufacturer, Made in Country, Model, Sr. No., Year of Manufacture, are clearly mentioned on manufacture's plate affixed on the Machine. The name of Manufacturer Toshiba Medical System Corporation, Japan, Medel Alexion, Sr. No. 1BA1192209 and Year of Manufacture 2017-05 are embossed clearly embossed on the machine. Shri Kaushik Kumar C. Patel, vide the said report also submitted that as an AERB authorized RSO he thereby confirm that the Year of Manufacture of the CT Scan Machine is 2017-05.

20. The empanelled Chartered Engineer Shri Tushar Zankat submitted his inspection-cum-valuation report bearing No. CE/TZ/MUN/JAN-050/2024-25 dated 22.01.2025. Vide the said report, it has been reported that, as per physical appearance and condition viewed visually shows the present state of the items as used and not-reconditioned recently but preventive and periodic maintenance was done. Based on which, the residual life of the said items is estimated to be more than 08 years. The cargo checked fully and items are Computed Tomography scanner alongwith its standard accessories consist of Gantry, bed, covers, cabinet, transformer and other essential parts which can be used in the medical diagnosis in hospitals. Hence, they can be classified as capital goods. The consignment does not contain any E-waste and hazardous waste in it.

21. Further, the total CIF value of the impugned goods has been reported by the empanelled Chartered Engineer Shri Tushar Zankat in his inspection-cum-valuation report dated 22.01.2025 as USD 56000. Whereas, as per the said BE, the contemporary applicable exchange rate was 1 USD = 84.30 INR. Accordingly, the CIF value in INR comes to Rs.47,20,800/- (=56,000 x 84.30). Upon going through the said inspection-cum-valuation report dated 22.01.2025 submitted by the empanelled Chartered Engineer Shri Tushar Zankat, it appears that, the importer has mis-declared the assessable value of the impugned goods.

22. The empanelled Chartered Engineer Shri Tushar Zankat vide his inspection-cum-valuation report dated 22.01.2025 has reported as under:

Sr No	Description of the item as per the declaration	Specification details noticed	Qty in Unit	Year of MFG	Declared Invoice CIF Value (in USD)	Cost of item at the time of manufacture (in USD) (per unit)	Evaluated CIF Value by CE in USD	CE Remarks
1	2	3	4		7	8	11	12
1	Pre-owned TOSHIBA CT Scanner System ALEXION with standard accessories	Make: TOSHIBA Model: ALEXION Sr. No. 1BA1192209	1 SET	05/2017	37000	128,000	56,000	Used and not Reconditioned

23. Shri R. P. Singh, Partner of Rishi International Logistics, authorised by Importer vide their letter dated 28.01.2025 has appeared for Personal Hearing on 28.1.2025, 4:00 PM. He has accepted examination report submitted by AERB Authorized engineer and CE Inspection Certificate dated 22.01.2025 and requested to issue final order accordingly.

DISCUSSION AND FINDINGS

24. I have carefully gone through the Show Cause Notice dated 11.07.2024 issued to M/s. ADN Services as well as available records of the case and submissions made vide letter dated 06.08.2023 and 09.12.2024 and that made during the course of Personal Hearing dated 09.12.2024 and 28.01.2025. Shri Rakesh Soni, Partner in M/s. ADN Services has appeared for Personal Hearing on 09.12.2024 and Shri R. P. Singh, Partner of Rishi International Logistics, authorized by Importer vide their letter dated 28.01.2025 has appeared for Personal Hearing on 28.1.2025. Thus, I find that principal of natural justice as provided in Section 122A of the Customs Act, 1962 have been complied with and therefore, I proceed to decide the case on the basis of documentary evidences available on records.

25. I find that importer i.e. M/s. ADN Services (IEC: 3412004171) filed Bill of Entry No. 9287533 dated 18.12.2023 through their Customs Broker M/s. Rishi International Logistics for import of 1 set of pre-owned Toshiba CT Scanner System Alexion with standard accessories (CTH-90221200) at APSEZ, Mundra Port (INMUN1), Mundra. The year of manufacture as declared by the importer in the

said BE /supporting document is 2017 and total declared value of the goods is Rs. 31,19,100/- .

26. I find that CE Varun Chandok & Associates and CE Ajay Raj Singh B Jhala, (Both Customs Approved CE) has given contradictory reports and YOM plate embossed on the Machine has also been completely ignored by the CE and year mentioned on the cables and accessories have been taken as date of manufacture of the machine. Accordingly, re-examination of the subject goods conducted by Shri Kaushik Kumar C. Patel, Technical Manager, Gujarat Radiation Services LLP and empanelled Chartered Engineer Shri Tushar Zankat under supervision of SIIB officers.

27. Shri Kaushik Kumar C. Patel, Technical Manager, Gujarat Radiation Services LLP has submitted his inspection report dated 10.01.2025 confirm that the Year of Manufacture of the CT Scan Machine is 2017-05.

28. The empanelled Chartered Engineer Shri Tushar Zankat Vide his inspection-cum-valuation report no. CE/TZ/MUN/JAN-050/2024-25 dated 22.01.2025 submitted that Year of manufacture of the CT Scan Machine is 2017-05 and total CIF Value assessed by CE in INR comes to Rs.47,20,800/-.

29. At this..., it is appropriate to discuss, the policy condition for import of goods Computed Tomography (CT) Apparatus falling under CTH: 90221200. Atomic Energy Research Board (AERB) vide their letter Ref. No. AERB/RSD/MDX/Service Agencies-RR/2015 dated 18.09.2015 has prescribed the condition No. 2(iii) regarding import of pre-owned medical diagnostic x-ray equipment, which is reproduced below:

*"The pre-owned medical diagnostic x-ray equipment, which is more than **seven years old**, shall not be imported in the country. However, the used diagnostic x-ray equipment, which is not more than ten years old, may be permitted for import by original equipment manufacturer (OEM) or OEM authorized agency in the country for refurbishment prior to supply to the end-user(s)".*

30. Shri Kaushik Kumar C. Patel, Technical Manager, Gujarat Radiation Services LLP and Chartered Engineer Shri Tushar Zankat, vide their reports have confirmed that Year of Manufacture of CT Scan Machine is 2017-05 and the same is embossed on the machine. Hence, I find that Importer has correctly declared the description (year of manufacture -2017). Accordingly, the said machinery is not under prohibition as per DGFT policy condition prescribed vide Notification No. 03/2015-2020 dated 16.04.2018 in respect of CTH 90221200 read with para 2(iii) of letter Ref. No. AERB/RSD/MDX/Service Agencies-RR/2015 dated 18.09.2015 issued by the Atomic Energy Research Board (AERB). Hence, the same are not liable for confiscation under Section 111(d) of the Customs Act, 1962.

31. I find that assessable value of the impugned goods is required to be re-determined under Rule 9 *ibid*, i.e. as per the residual method. Hence, accordingly the assessable CIF value of the impugned goods has been taken on the basis of inspection-cum-valuation report dated 22.01.2025 submitted by the empanelled chartered engineer Shri Tushar Zankat 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. Accordingly, I find that, the assessable value (Rs.31,19,100/-) of the impugned goods declared in the said BE is liable to be rejected in terms of Rule 12 of the CVR, 2007 and assessable value of the impugned goods is liable to be re-determined as Rs.47,20,800/- and the duty as per re-determined assessable value, is calculated as under:-

Declared Goods	CTH	Total Assessable Value	BCD	SCD	CUS HEALTH CESS	IGST	TOTAL DUTY
Pre-owned Toshiba CT Scanner System with standard accessories	90221200	31,19,100	2,33,933	38,989	1,55,955	4,25,757	8,54,634
	90221200	47,20,800	3,54,060	59,010	2,36,040	6,44,389	12,93,499
Total Differential Duty							4,38,865

32. CONFISCATION OF THE GOODS UNDER SECTION 111(m) OF THE CUSTOMS ACT, 1962:

(i). I find that it is alleged in the subject SCN that the goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. In this regard, I find that as far as confiscation of goods are concerned, Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111(m) of the Customs Act, 1962 are reproduced below: -

"(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;"

(ii). On plain reading of the above provisions of the Section 111(m) of the Customs Act, 1962 it is clear that any goods which *in respect of value or in any other particular has not been declared correctly*, will be liable to confiscation. As discussed in foregoing paras, it is evident the Importer has not declared the correct value of goods and filed bill of entry 9287533 dated 18.12.2023 by mis-declaring the value of the imported goods. I find that Importer declared assessable value of the goods as Rs. 31,19,100/- instead of actual/correct assessable value of the goods which arrive at **Rs. 47,20,800/-**. Thus the Importer has suppressed the fact, and undervalued the impugned goods. If the department had not initiated the inquiry, the duty evasion would not have been unearthed. In light of these facts, I find that the impugned imported goods are liable for confiscation as per the provisions of Section 111(m) of Customs Act, 1962. I hold so.

33. Hence, in view of the above discussion, I pass the following order.

ORDER

- A. I reject the declared assessable value of Rs. 31,19,100/- of the impugned goods covered under Bill of Entry Number 9287533 dated 18.12.2023 under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.
- B. I re-determine the assessable value of the impugned goods under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 as Rs. 47,20,800/- (Rupees Forty Seven Lakhs Twenty Thousands Eight Hundred only).
- C. I order to re-assess the said Bill of Entry accordingly under Section 17(4) of the Customs Act, 1962.
- D. I order to confiscate the impugned goods imported vide Bill of Entry No. 9287533 dated 18.12.2023 having assessable value of Rs. 47,20,800/- (Rupees Forty Seven Lakhs Twenty Thousands Eight Hundred only) under 111(m) of the Customs Act, 1962. However I give the Importer an option under provision of Section 125(1) of the Customs Act, 1962, to redeem the goods for home consumption on payment of redemption fine of Rs. 4,00,000 (Rs. 4 Lakhs only). However, I do not confiscate the impugned goods under 111(d) of the Customs Act, 1962 for the reason stated above.

E. I impose a penalty of Rs. 43,000 (Forty-Three Thousands only) on the importer M/s. ADN Services under Section 112 (a) (ii) of the Customs Act, 1962.

34. This order is passed without prejudice to the any other action which may be contemplated against the importer or any other person in terms of any provision of the Customs Act, 1962 and/or any other law for the time being in force.

35. Show Cause Notice dated 11.07.2024 vide F.No. CUS/APR/INV/327/2024-Gr 5-6 issued vide DIN No. 20240771MO0000777EFA is hereby disposed off.


17.02.2025
Additional Commissioner,
Custom House, Mundra

To,
M/s. ADN Services (IEC: 3412004171)
987/10/B-2, GIDC Industrial Estate,
Makarpura, Vadodara-390010

Copy to:

- (i) The Deputy Commissioner of Customs (RRA Cell/TRC), Customs House, Mundra.
- (ii) The Deputy Commissioner of Customs (EDI) Customs House, Mundra.
- (iii) Guard File.