



**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/164/2023-Gr 4-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/MK/121/2023-24
C	Passed by	Mukesh Kumari Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	17.07.2023
E	Date of Issue	18.07.2023
F	SCN No. & Date	Importer vide letter dated 31.05.2023 has requested for waiver of PH and SCN in the matter
G	Noticee/Party/Importer/ Exporter	M/s. Capital Sales (IEC No. AMWPB9523F), having address as "Jaliwala, Shop No 73, Near Masobadada Masjid, Navabazar, Vadodara" 390001
H	DIN No.	20230771MO00001681F3

1. यह अपील आदेश संबन्धित 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 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/- रुपये 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 ड्यूटी/ व्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिए।

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 जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहाँ 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.

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Brief Fact of the case:

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1. M/s. Capital Sales (IEC No. AMWPB9523F), having address as “Jaliwala, Shop No 73, Near Masobadada Masjid, Navabazar, Vadodara” (hereinafter referred to as “the importer” for the sake of brevity) has filed Bill of Entry No. 5598660 dated 20.04.2023 for import of Goods as “Wire Mesh (For civil construction usage only)” declaring under CTH 73141990.

Other details of Bill of Entry are as under:

Sl. No.	Bill of Entry /Date	Declared Assessable Value	Declared Wrong CTH	Correct CTH
1	5598660 dated 20.04.2023	7,46,498/-	73141990	76169100

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1.1 The consignment was put on hold by the officers of SIIB, Custom House Mundra for examination due to suspecting concealment/mis-declaration. The goods were examined by the SIIB officers in presence of authorised representative of the CHA under panchnama dated 25.04.2023. It was found that there was no concealment inasmuch as only wire mesh was found in the consignment. Quantity was also verified since counting of rolls was found as declared in the Bill of Entry, Invoice and Packing List.

1.2 The goods have been classified under CTH 73141990 which is a classification for goods made of Iron and Steel. At the time of examination, PMI test was conducted in presence of representative of the CHA to ascertain composition of the mesh. 4 random samples were selected for PMI testing. PMI results are as under:

Sl. No.	Composition found
1	Al-99.65%, Fe-0.229%, Zn-0.016%
2	Al-99.67%, Fe-0.235%, Zn-0.015%
3	Al-99.68%, Fe-0.226%, Zn-0.015%
4	Al-99.69%, Fe-0.229%, Zn-0.012%

1.3 Therefore, PMI testing confirmed primarily that the goods are made of Aluminium and not of Iron and Steel, as has been declared by the importer. Further, samples were also drawn and sent to CRCL laboratory for testing to ascertain exact composition of the goods. Since the goods appeared mis-declared and mis-classified after PMI test conducted during

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examination, the goods were seized under Section 110 of the Customs Act, 1962 vide seizure memo dated 27.04.2023. Test report dated 17.05.2023 was received from CRCL, Kandla. Results of the test report stated as ***“It is composed of Aluminium. It does not answer for iron”***. Therefore, the goods were found mis-declared and mis-classified.

1.4 As explained above, the goods imported are found to be “Aluminium Wire Mesh”, however, the importer declared the goods to be “Wire Mesh” and classified the goods under CTH 73141990. Aluminium Wire Mesh is correctly classifiable under CTH 76169100. Hence, the importer has imported the goods by way of mis-declaration/mis-classification in terms of CTH since the declared CTH is 73141990 while the correct CTH would be 76169100. For more appreciation of the facts, text of the CTH 7314 & 7616 are being reproduced as under:

7314 7314 CLOTH (INCLUDING ENDLESS BANDS), GRILL, NETTING AND FENCING, OF IRON OR STEEL WIRE; EXPANDED METAL OF IRON OR STEEL_

- Woven cloth :

7314 19 -- Other :

7314 19 90 --- Other

7616 OTHER ARTICLES OF ALUMINIUM

- Other :

7616 91 00 -- Cloth, grill, netting and fencing, of aluminium wire

1 . 5 Since the goods appeared mis-classified and mis-declared, summons dated 22.05.2023 was issued to the importer M/s Capital Sales Jaliwala to appear for statement on 24.05.2023. Shri Taher Iqbalbhai Bangdiwala, proprietor of M/s Capital Sales appeared for statement. In his statement dated 24.05.2023, Shri Taher Iqbalbhai Bangdiwala submitted, interalia, that:

(a) He ordered for wire mesh -Mesh Size 14X14, Wire Diameter 0.38 (approx.). He ordered for Steel wire mesh.

(b) He perused Test Result dated 17.05.2023 in respect of Test Memo No.586 dated 27.04.2023 vide which CRCL Kandla has certified that the goods imported vide Bill of Entry No.5598660 dated 20.04.2023 are of Aluminium and that he agreed with the contents of the test report.

(c) He accepted test report and that he did not want to challenge the test report. The report was acceptable to him.

(d) The mis-declaration was not deliberately done by them but the importer sent the goods of aluminium not ordered by them.

(e) The value is much higher in case of aluminium goods.

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- (f) He never imported aluminium wires mesh in the past and it is first consignment. In the past, testing of imported goods was done in respect of Bill of Entry 3122301 dated 01.11.2022 wherein the goods were found to be of alloy of Iron, Nickel, Chromium and no discrepancy was noticed.
- (g) He agreed that the goods are Wire Mesh of Aluminium and that he was ready for the valuation of goods accordingly.
- (h) The NIDB data, if available, for similar or identical goods, may be taken for valuation.
- (i) He did not insist on SCN (Show Cause Notice) or Personal Hearing in the matter and requested for re-assessment and conclusion of enquiry.
- (j) That the goods may be released to avoid heavy demurrage and detention charges.

1.6 Further, a letter dated 31.05.2023 received over email whereby the importer requested again that they accept that the goods are of Aluminium and that they do not need any SCN/PH in the matter.

1.7 As the goods were found mis-declared in terms of description and classification, the assessable Value declared by the importer is liable to be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Hence, to re-determine correct value as per Customs Valuation Rules, 2007, NIDB data was searched. As the value of impugned goods could not be determined under the provisions of sub-rule (1) of Rule 3 of the Customs Valuation Rules (CVR), 2007, the same was required to be determined sequentially under rule 4 to 9 of CVR 2007.

1.8 As per Rule 4 of CVR, 2007, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued; and As per Rule 5 of CVR, 2007 the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued. To determine the value of the imported goods as per Rule 4 or Rule 5 of CVR 2007, contemporaneous data of import of identical or similar goods for three months was retrieved from ICES 1.5. On perusal of the retrieved data, data of similar items [Rules 5 of the Customs Valuation Rules (CVR), 2007] in terms of description, mesh size and country of origin was found. As per the NIDB data, values of two mesh sizes are found to be Rs. 176 per KG and Rs. 320.64 per KG for mesh size 18x16 and 14x14, respectively. Quantities of 14x14 mesh and 18x16 mesh size are found as 14.219 MTS and 6.781 MTS, respectively. Accordingly, values for the mesh sizes 14x14 & 18x16 are Rs. 4559180/- & Rs. 1193456/-, respectively. Therefore, total value of the consignment comes out to be Rs 57,52,636/- as against declared value of Rs. 7,46,498/-.

Relevant legal provisions**2. SECTION 46 of the Customs Act, 1962**

Entry of goods on importation. - (1) *The importer of any goods, other than goods intended for transit or transshipment, shall make entry thereof by presenting electronically to the proper officer a bill of entry for home consumption or warehousing in the prescribed form :*

Provided that the ¹[Principal Commissioner of Customs or Commissioner of Customs] may, in cases where it is not feasible to make entry by presenting electronically, allow an entry to be presented in any other manner:

Provided further 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.

(3) The importer shall present the bill of entry under sub-section (1) before the end of the next day following the day (excluding holidays) on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:

Provided that a bill of entry may be presented within thirty days of the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:

Provided further that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.]

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods.

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

2.1. SECTION 111 (m) OF THE CUSTOMS ACT, 1962:***111. Confiscation of improperly imported goods etc.***

The following goods brought from the 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 transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54

2.3. SECTION 112 OF THE CUSTOMS ACT, 1962:

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

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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;

1[(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;

(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.

2.4. Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (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.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation.-(1) For the removal of doubts, it is hereby declared that:-

(i) This rule by itself does not provide a method for determination of value, it provides a

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mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include -

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents.

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Personal Hearing and Importer's submission:

Importer vide letter dated 31.05.2023 has stated that they imported the Good as Wire Mesh, as per test conducted by the Lab the goods found made of Aluminium. Further, they mentioned that they don't want any PH/SCN in the said matter.

Discussions and Findings:

I have carefully gone through the case records, Investigation Report dated 26.06.2023 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 31.05.2023 and has stated that 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.

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4.2 The issues before me are to decide whether-

- a. Declared CTH 73141990 of the imported goods i.e., Wire Mesh is correct or otherwise the goods imported falls in other CTH i.e. 76169100.
- 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 M/s. Capital Sales (IEC No. AMWPB9523F), having address as “Jaliwala, Shop No 73, Near Masobadada Masjid, Navabazar, Vadodara” has imported “Wire Mesh” vide Bill of Entry No. 5598660 dated 20.04.2023 declaring under CTH 73141990. Value declared is Rs. 37.29 per KG.

4.4 I find that during physical examination of the goods carried out by the SIIB officers, the goods were found as “Aluminium Wire Mesh”. Samples were drawn and reports suggested that the goods were not as declared i.e. “Steel/Iron Wire Mesh” (classified under CTH 73141990) but rather the goods were found to be “Aluminium Wire Mesh”. Therefore, it appears that goods are mis-declared in respect of description, classification and value.

4 . 5 I find from the above fact that importer has mis-classified the imported goods i.e. “Aluminium Wire Mesh” under CTH-73141990 which actually falls under CTH-76169100.

4.6. As discussed above, the goods were found mis-declared and mis-classified; the Assessable Value declared by the importer is liable to be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 and require to determine under rule 4 or 5 CVR 2007. I find that redetermined value of the goods was found to be Rs 57,52,636/- as per contemporaneous import.

In view of the above, duty calculation is given below: Unit in Rs.

Value Declared	Declared Duty (BCD+IGST+SWS)	Re-Determined Value	Revised Duty (BCD+IGST+SWS)	Differential Duty
7,46,498/-	2,31,265/-	Rs 57,52,636/-	Rs 17,82,167/-	Rs 15,50,902/-

4.7 I find that the importer has mis-declared goods while importing in contravention to section 46 of the Customs Act, 1962. Therefore, the subject goods covered under Bill of Entry bearing number 5598660 dated 20.04.2023 having declared value as Rs. 746498/-

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and redetermined value as Rs. 57,52,636/- are liable for confiscation under section 111(m) of the Customs Act, 1962. Further, for this act of commissions on their part, the importer is liable for penalty under Section 112(a)(i) of the Customs Act, 1962..

4.8 In view of the above, I find that as per Section 17 of the Customs Act, 1962, which provides for self-assessment by the importer and as per Section 46(4) of the Customs Act, 1962, the importer while presenting a Bill of Entry shall make and subscribe to a declaration as to the truth of such Bill of Entry, and shall in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods, as may be prescribed. Therefore, the responsibility is upon the importer to make a true declaration in Bill of Entry in respect of the CTH, description, weight of goods etc. However, in the present case, the importer has violated Section 17 & 46(4) of the Customs Act, 1962 by not declaring the correct description and classification, hence, the impugned goods are liable for confiscation under Section 111(m) of the Customs Act, 1962. Further, for this act of commissions on their part, the importer is liable for penalty under Section 112(a)(i) of the Customs Act, 1962.

4.9 As discussed above, section 125 of the Customs Act, 1962 provides that whenever confiscation of any goods is authorised by the Customs Act, 1962, the officer adjudicating it may, in the case of any goods, the importation or exportation whereof is prohibited under the act or under any other law for the time being in force and shall, in the case of any other goods, give to the owner of the goods an option to pay in lieu of confiscation such fine as the said officer thinks fit. I find that said provision makes it mandatory to grant an option to owner of the confiscated goods to pay fine in lieu of confiscation in case the goods are not prohibited. Since the subject goods have not been found to be prohibited. I find it appropriate to allow for redeem under section 125 of the Customs Act, 1962.

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ORDER

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

- i. I order to reject the declared CTH i.e. 73141990 by the Importer and confirm and order to re-assess of Bill of Entry No. 5598660 dated 20.04.2023 under Section 17 (4) of the Customs Act, 1962 with correct CTH as 76169100.
- ii. I order to reject the declared assessable value Rs 7,46,498/- of the goods imported vide BE No. No. 5598660 dated 20.04.2023 and re-determine the same at Rs 57,52,636/- under Rule -5 of Customs Valuation (Determination of Value of Imported Goods) Rules 2007. Further, I order to re-assess the said Bill of Entry accordingly.
- iii. I order to recover differential duty of Rs. 15,50,902/- from the importer alongwith applicable interest.
- iv. I confirm and order for confiscation of the goods pertaining to Bill of Entry No. 5598660

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dated 20.04.2023 valued at Rs 57,52,636/- as Goods declared are in contravention of Section 46 of the Act and are therefore liable for confiscation under Section (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 Lakh only).

- v. I impose a penalty of Rs. 3,00,000/- (Rupees Three Lakh only) on the Importer M/s. Capital Sales (IEC No. AMWPB9523F), having address as “Jaliwala, Shop No 73, Near Masobadada Masjid, Navabazar, Vadodara” under section 112(a) 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/43-26/Capital Sales/SIIB-A/CHM/23-24 dated 23.06.2023 issued by the Deputy Commissioner (SIIB), Custom House Mundra is hereby disposed of.

Signed by

Mukesh Kumari

Date: 17-07-2023 16:11:08

Additional Commissioner of Customs
Custom House, Mundra

Dated: 17 .07.2023

To,
M/s. Capital Sales (IEC No. AMWPB9523F),
having address as “Jaliwala, Shop No 73,
Near Masobadada Masjid, Navabazar, Vadodara” 390001

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, Mundr
5. Guard file