



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

"सीमा शुल्क भवन," पहली मंजिल, पुराने हाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद - 380 009.

दूरभाष : (079) 2754 4630 E-mail: cus-ahmd-adj@gov.in फैक्स : (079) 2754 2343

PREAMBLE

A	फाइल संख्या/ File No.	:	VIII/10-207/ICD Khodiyar/O&A/HQ/2024-25
B	कारणबता ओनोटिस संख्या-तारीख / Show Cause Notice No. and Date	:	Waiver of SCN by the Importer
C	मूल आदेश संख्या/ Order-In-Original No.	:	140/ADC/VM/O&A/2024-25
D	आदेश तिथि/ Date of Order-In-Original	:	30.08.2024
E	जारी करने की तारीख/ Date of Issue	:	30.08.2024
F	द्वारा पारित/ Passed By	:	Vishal Malani, Additional Commissioner, Customs, Ahmedabad.
G	आयातक का नाम और पता / Name and Address of Importer / Passenger	:	(1) M/s. Linux Magnetics , Plot No. 118, Road no. 6, GIDC, Kathwada, Ahmedabad - 382430 (2) M/s Dynamic Shipping & Logistics , (CHA Lic. No. BFTPP8249HCH001), 702, Sukhsagar Complex, next to Fortune Landmark Hotel, Usmanpura, Ahmedabad - 380013.
(1)	यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हे यह जारी किया जाता है।		
(2)	कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के ६० दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), ४वीं मंजिल, हुड़को भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है।		
(3)	अपील के साथ केवल पांच (५.००) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए:		
(i)	अपील की एक प्रति और;		
(ii)	इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (५.००) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए।		
(4)	इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५% अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या इयूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा।		

Brief facts of the Case:

M/s. Linux Magnetics, Plot No. 118, Road No. 6, GIDC, Kathwada, Ahmedabad – 382430 (herein after referred to as the said “importer”), having Import Export Code 0811031209, is also registered with Goods and Services Tax Department and have GSTIN- 24ANLPR1926L1ZM.

2. The importer filed Bill of Entry No. 5068265 dated 15.08.2024, through Customs Broker Dynamic Shipping & Logistics (CHA Lic. No. BFTPP8249HCH001), for import of various goods, including PVD Guide at S. No. 20, PVC Film @ S. No. 21, PVC Film @ S. No. 22, Jointing Machine Water Cooling @ S. No. 23 and Finger Machine 1600 MM @ S. No. 24, all of these falling under Customs Tariff Item CTH 59100090, through **ICD - Khodiyar**.
3. During the course of assessment discrepancy regarding classification of goods were observed which are as under:

TABLE- I

Sr. No.	Item Description	Assessable Value Rs.	Classification by Importer in Bill of Entry No. 5068265 dated 15.08.2024	Proper Classification
01.	PVC Guide	382366.07	Item Sr. No. (20) HSN Code: 59100090	Item Sr. No. (20) HSN Code: 39269090
02.	PVC Film White Colour	86901.38	Item Sr. No. (21) HSN Code: 59100090	Item Sr. No. (21) HSN Code: 39204300
03.	PU Film White Colour	156422.48	Item Sr. No. (22) HSN Code: 59100090	Item Sr. No. (22) HSN Code: 39204300
04.	Jointing Machine Water Cooling	364985.79	Item Sr. No. (23) HSN Code: 59100090	Item Sr. No. (23) HSN Code: 84778000
05.	Finger Machine	143387.28	Item Sr. No. (24) HSN Code: 59100090	Item Sr. No. (24) HSN Code: 84778000
	Total Assessable Value	1134063/-		

4. Thus, items at:

- a) S. No. 20 i.e. PVC Guide should be correctly classified under CTS 39269090 & having BCD rate of 15%;
- b) S. No. 21 i.e. PVC Film should be correctly classified under CTS 39204300 & having BCD rate of 25%;
- c) S. No. 22 i.e. PVC Film should be correctly classified under CTS 39204300 & having BCD rate of 25%;
- d) S. No. 23 i.e. Jointing Machine Water Cooling should be correctly classified under CTS 84778000 & having BCD rate of 7.5%;
- e) S. No. 24 i.e. Jointing Machine Water Cooling should be correctly classified under CTS 84778000 & having BCD rate of 7.5%;

5. It, therefore appeared that the importer had imported goods, which were liable for confiscation and by the said act of misclassification though omission and commission, they appeared to have rendered themselves liable to penalty as provided under the provisions of the Customs Act, 1962. Therefore, the importer was requested to submit clarification, if any, in this regard, along with relevant documents, failing which action as per law would be initiated.

WRITTEN SUBMISSION :-

6. Vide their letter dated 24.08.2024 the Importer M/s. Linux Magnetics submitted that the mis-classification was due to their mistake, wherein they put all items under CTS 59100090. The importer accepted the classification as under:

- (a) S. No. 20 i.e. PVC Guide should be correctly classified under CTS 39269090 & having BCD rate of 15%;
- (b) S. No. 21 i.e. PVC Film should be correctly classified under CTS 39204300 & having BCD rate of 25%;
- (c) S. No. 22 i.e. PVC Film should be correctly classified under CTS 39204300 & having BCD rate of 25%;
- (d) S. No. 23 i.e. Jointing Machine Water Cooling should be correctly classified under CTS 84778000 & having BCD rate of 7.5%;
- (e) S. No. 24 i.e. Jointing Machine Water Cooling should be correctly classified under CTS 84778000 & having BCD rate of 7.5%.

6.1. They also submitted that they do not want any SCN or personal hearing in this matter and they agree with the classification proposed by the department.

7. The CHA in this instance of import i.e. M/s Dynamic Shipping & Logistics, vide their letter dated 28.08.2024 submitted that the misclassification was due to typing error. They further added that they do not want any SCN or Personal hearing in this regard.

LEGAL PROVISIONS:

8. Section 111(m) of the Customs Act, 1962 reads as follows:

"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;"*

9. Section 125 reads as follows:

"(1) Whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this 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 1 [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit:"

10. Section 112(b) reads as follows:

"Section 112. Penalty for improper importation of goods, etc.-

Any person, -

(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,-

*...
(ii) in the case of dutiable goods, other than prohibited goods,.....*

to a penalty [not exceeding ten percent of the duty sought to be evaded on such goods or five thousand rupees, whichever is higher.]

11. The importer of goods has been defined in the Integrated Goods and Service Tax Act, 2017 (herein after referred to as the "IGST Act, 2017") as bringing goods in India from a place outside India. All import shall be deemed as inter-state supplies and accordingly integrated tax shall be levied in addition to the applicable Customs duties. The IGST Act, 2017 provides that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of Customs are levied on the said goods under the Customs Act, 1962. Section 5 of the Integrated Goods and Services Tax Act, 2017 stipulates that "Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975 (51 of 1975) on the value as determined under the said Act at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962.

12. As per Sub-Section 7 of Section 3 of the Customs Tariff Act, 1975, any article which has been imported into India shall, in addition, be liable to Integrated tax at such rate not exceeding forty percent, as is leviable under Section 5 of the Integrated Goods and Service Tax, 2017 on a like article on its supply in India, on the value of the Imported article as determined under sub-section 8 or sub-section 8A as the case may be.

13. After introduction of self-assessment through amendment in Section 17 of the Customs Act, 1962 vide Finance Act, 2011, it is the responsibility of the importer to correctly declare the description, classification, applicable exemption notification, applicable duties, rate of duties and its relevant notifications etc. in respect of said imported goods and pay the appropriate duty accordingly, whereas, in the instant case, the importer has failed to correctly classify the imported

goods the Bills of Entry of the said imported goods and suppressed the said material facts with an intent to evade payment of duty and thereby they have not paid the appropriate Customs Duty on the said imported goods.

14. It, therefore appears that M/s. Linux Magnetics and their CHA i.e. M/s Dynamic Shipping and Logistics has willfully contravened the provisions of Section 17(1) of the Customs Act, 1962 inasmuch as they have failed to correctly self-assess the impugned goods and have also contravened the provisions of sub-sections (4) and (4A) of Section 46 of the Customs Act, 1962 inasmuch as they have failed to ensure the accuracy and completeness of the information given therein.

DISCUSSION AND FINDINGS :-

15. I have carefully gone through the facts of the case and documents and evidences available on record.

16. The request of Importer and the CHA for waiver of written Show Cause Notice is allowed in terms of first proviso to Section 124 of the Customs Act, 1962.

17. The importer through their CHA M/s. Dynamic Shipping and Logistics had filed the said Bill of Entry No. 5068265 dated 15.08.2024 for import of PVC Belt, PVC Guide, PVC Film White Colour, PU Film White Colour, Jointing Machine Water Cooling and Finger Machine. The said Bill of Entry has been pushed to PAG for assessment due to non-compliance of query raised by the FAG and mis declaration of CTH in respect of items mentioned at Sr. no. 4 and 5 of the Table- I above.

18. On scrutiny of the import documents, it was found that other than the items mentioned at Sr. no. 4 & 5, CTH were also mis declared in the items mentioned at Sr. No. 1, 2 and 3 above. Accordingly, the CHA was requested to clarify the same. The CHA vide his letter dated 28.08.2024 and the Importer vide his letter dated 24.08.2024 has therefore, requested to amend the CTH, as mentioned in the above table. They have also stated that they do not want SCN or PH in the matter.

19. I find that, as revealed from the foregoing paras, M/s. Linux Magnetics and their CHA i.e. M/s Dynamic Shipping and Logistics has mis-declared (in terms of classification), the imported goods in the Bills of Entry of the said imported goods and suppressed the said material facts with an intent to evade proper payment of Customs Duty.

20. I find that the importer imported various items under wrong CTSH while filing their Bill of Entry bearing no. 5068265 dated 15.08.2024 as mentioned at Sr. no. 1 to 5 of Table-I above. Thus, they have rendered the impugned goods valued at Rs. 11,34,063/- liable for confiscation under section 111(m) of the Customs Act, 1962.

21. I find that if, the discrepancy had not been pointed out by the department, the importer and their CHA would have cleared the goods under wrong CTSH. The importer and the CHA, while filing the Bill of Entry wrongly self-assessed their duty liability. If, the discrepancy had not been pointed out by the department, the importer and their CHA would have cleared the goods under wrong CTSH. Thus, the aforesaid acts of omission and commission on the part of the importer (along with their CHA) has rendered them liable to penalty as provided under Section 112(a) of the Customs Act, 1962.

22. In view of the foregoing, I pass the following order :

ORDER:

- a. I order confiscation of goods mentioned in Table - I having assessable value of Rs.11,34,063/- under the provisions of Section 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the goods on payment of Redemption Fine of **Rs.80,000/- (Rupees Eighty Thousand Only)** in terms of the provisions of Section 125(1) of the Customs Act, 1962.

- b. I impose penalty of **Rs.10,000/- (Rupees Ten Thousand Only)** on M/s. Linux Magnetics in terms of the provisions of Section 112(a)(ii) of the Customs Act, 1962.

c. I impose penalty of **Rs.5,000/- (Rupees Five Thousand Only)** on CHA M/s. Dynamic Shipping and Logistics in terms of the provisions of Section 112(b)(ii) of the Customs Act, 1962.

Vishal
30/8/24

(Vishal Malani)
Additional Commissioner
Customs : Ahmedabad

F. No. VIII/10-207/ICD Khodiyar/O&A/HQ/ 2024-25 Date: 30.08.2024
DIN : 20240871MN000000E331

To,

(1) **M/s. Linux Magnetics**, (Through ICD-Khodiyar)
Plot No. 118, Road no. 6, GIDC,
Kathwada, Ahmedabad – 382430

(2) **M/s Dynamic Shipping & Logistics**, (Through ICD-Khodiyar).
(CHA Lic. No. BFTPP8249HCH001),
702, Sukhsagar Complex, next to Fortune Landmark Hotel,
Usmanpura, Ahmedabad – 380013.

Copy To:

- a) The Pr. Commissioner of Customs, Ahmedabad (Kind Attn : RRA Section).
- b) The Deputy Commissioner, Customs, ICD-Khodiyar, Ahmedabad.
- c) The Superintendent, Systems Section, Customs Ahmedabad to upload the order on website of Customs Ahmedabad.
- d) Guard File.