



कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुन्द्रा,
सीमा शुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421
OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS,
CUSTOMS HOUSE, MP & SEZ MUNDRA,
KUTCH, GUJARAT-370421
PHONE: 02838-271463 **FAX :02838-271169/271475**

A	File No.	CUS/APR/INV/160/2024-Gr 3 -O/o Pr Commr-Cus-Mundra
B	OIO No.	MCH/ADC/AK/5/2024-25
C	Date of Order	09.04.2024
D	Passed by	Arun Kumar, Additional Commissioner, Import Assessment, Custom House, Mundra.
E	SCN No. & Date	Importer requested for waiver of PH & SCN vide letter dated 11.03.2024
F	Noticee / Party / Importer	M/s. A S Impex, 5th A floor, 5A50, Plot No. RC-1/2, Sector-1, Cloud 9, Vaishali Tower, Ghaziabad, Uttar Pradesh-201010
G	DIN	20240471MO0000614832

1. The Order – in – Original is granted to concern free of charge.
2. 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

The Commissioner of Customs (Appeal), MUNDRA,
Office at 7th floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380009

3. Appeal shall be filed within Sixty days from the date of Communication of this Order.
4. Appeal should be accompanied by a Fee of Rs. 5/- (Rupees Five Only) under Court Fees Act it must accompanied by (i) copy of the Appeal, (ii) 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. Proof of payment of duty / interest / fine / penalty / deposit should be attached with the appeal memo.
6. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respect.
7. 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 or Penalty are in dispute, where penalty alone is in dispute.

1. Brief facts of the Case:

1.1. An intelligence was gathered by the officers of SIIB Section, Custom House, Mundra that the cargo imported under SEZ warehouse Bill of Entry No. 1003704 dated 19.02.2024 filed by M/s. Fast Track CFS Private Limited, Plot No. 3, Block-C, Sector-11, APSEZ Ltd., Mundra-370421, Gujarat, for and on behalf of its client M/s. A S Impex, 5th A floor, 5A50, Plot No. RC-1/2, Sector-1, Cloud 9, Vaishali Tower, Ghaziabad, Uttar Pradesh-201010 holding IEC No: MHWPS7205J (hereinafter referred to as '*the importer*'), through their Customs Broker, M/s. Anon Global Logistic (hereinafter referred to as '*the CB*') at Mundra SEZ port for import of various items viz. Mobile Accessories, Readymade Garments, Fabric Tape, Car Accessories, Footwear Accessories under different CTH has possible mis-declaration and concealment of prohibited/restricted items. Hence, the container no. FCIU9238324 was put on hold for detail examination of the goods by the SIIB section, Custom House, Mundra in view of the suspicion.

2. Action taken:

2.1. Based on the above suspicion, examination of the said consignment was carried out by the officers of SIIB section, CH Mundra in presence of representative of the CB. On being asked, the representative of the CB provided copies of import documents viz. SEZ warehouse BE No. 1003704 dated 19.02.2024, Bill of Lading No. YSQ2402124 dated 31.01.2024, Invoice No. 2024/0546 dated 15.01.2024 and concerned Packing List. As per these documents, the Shipper is M/s. Hangzhou Stonetex Trading Co. Ltd, China, the consignee is the importer M/s. A S Impex, Ghaziabad and the notify party is M/s. Fast Track CFS Private Limited, APSEZ Mundra. The details of the declared cargo are as under:

made garments	62069000	33	4515	378809	20%	75762	7576	23107	1,06,445
Fabric Tape	59061000	1	16	13	10%	1.34	0.13	1.79	3.26
Ladies Dress	62042290	8	656	55038	20%	11008	1101	3357	15,466
Ladies pant	61046990	17	2013	168891	20%	33778	3378	10302	47,458
Cable Connector (car accessories)	87089900	87	30000	50340	15%	7551	755	16421	24,727
Shirt	62069000	6	680	25673	20%	5135	513	1566	7,214
Shoes Accessories	64069090	281	7690 kgs	541960	20%	108392	10839	119015	2,38,246
Shoe Sole Mould	84807900	1	1	2517	7.5%	189	19	490	698
Shoes Accessories	64069090	25	952	5591	20%	1118	112	1228	2,458
PCB and Cable (Car Accessories)	87089900	2	40000	234920	15%	35238	3524	76631	1,15,393
Metal Chain (Footwear Accessories)	64069090	15	4600	27016	20%	5403	540	5933	11,876
LCD Panel Display (Car Accessories)	87089900	17	1000	335600	15%	50340	5034	109473	1,64,847
Frames for MP5 players (Car Accessories)	87089900	60	1680	140952	15%	21143	2114	45979	69,236
Horn Speakers (Car Accessories)	87089900	100	3000	125850	15%	18878	1888	41052	61,818
Electric Heating Tube (Car Accessories)	87089900	7	90	7551	15%	1133	113	2463	3,709
Total		877		32,30,943		549060	54906	680764	12,84,730

2.2. During the course of examination, total 877 cartons were found which were found as declared in the import documents. However, on further examination, it was found that there is mis-declaration in respect of quantity of un-declared goods i.e. 10 cartons containing 1950 pieces of T-Shirts as mentioned at Sr.No. 19 of the table below. The details of the goods found during the course of examination is as under:

S. No.	Description	No. of carton		No. of item (pieces/Kgs)	
		Declared	Actual	Declared	Actual
1	Tempered Glass	144	144	136470	136470
2	Mobile Back cover	67	67	30096	30096
3	Coat (Ready made Garments)	6	6	1063	1063
4	Top (Ready made garments)	33	23	4515	2565
5	Fabric Tape	1	1	16	16
6	Ladies Dress	8	8	656	656
7	Ladies pant	17	17	2013	2013
8	Cable Connector (car accessories)	87	87	30000	30000
9	Shirt	6	6	680	680
10	Shoes Accessories	281	281	7690 kg	7690 kg
11	Shoe Sole Mould	1	1	1	1
12	Shoes Accessories	25	25	952	952
13	PCB and Cable (Car Accessories)	2	2	40000	40000
14	Metal Chain (Footwear Accessories)	15	15	4600	4600

15	LCD Panel Display (Car Accessories)	17	17	1000	1000
16	Frames for MP5 players (Car Accessories)	60	60	1680	1680
17	Horn Speakers (Car Accessories)	100	100	3000	3000
18	Electric Heating Tube (Car Accessories)	7	7	90	90
19	T-Shirt	0	10	0	1950
	Total	877	877		

3. Investigations Conducted:

3.1. Accordingly, it is found that there are un-declared items as mentioned at Sr.No. 19 of the above table i.e. T-shirt (10 cartons containing 1950 pieces) in terms of declaration in Bill of Entry and other import documents. The assessable value of these un-declared items are being taken as per the contemporary data available on ICES in respect of the identical goods sold for export to India (from China) and imported at Mundra Port at or about the same period of time. Accordingly, the nearest CTH for these un-declared items viz. T-Shirts appears to be 61091000 and the assessable value comes to Rs. 81,803/- ($=1950 \times 41.95$) in view of Rule 4-Transaction Value of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (Transaction value of identical goods).

3.2. The rate of Basic Customs Duty in respect of goods falling under CTH- 61091000 is 20% or Rs.45/- per piece, whichever is higher. Accordingly, total differential duty of mis-declared/not-declared goods comes to Rs.96,228/- as calculated under. Thus, there appears a short levy/difference of duty of Rs.96,228/-. Accordingly, part consignment was found mis/non-declared and liable for confiscation under Section 111(l) and 111(m) of the Customs Act, 1962. For the said act of omission and commission, the importer appears liable for the penal action under the provisions of Section 112(a)(ii) of the Customs Act, 1962.

T-Shirts : CTH 61091000 (1950 pieces):

Sr. No.	Duty calculated during the investigation	Amount (Rs.)	Duty calculated by the importer in BE	Amount (Rs.)	Difference
					(Rs)
1	Quantity (pieces)	1950	NIL	0	1,950
2	Ass. Val. @ 41.95 per piece	81,803	0	0	81,803
3	BCD @ 45 per piece	87,750	BCD @ 45 per piece	0	87,750
4	SWS @0%	0	SWS @0%	0	0
5	Taxable Value for IGST (2+3+4 above)	1,69,553	Taxable Value for IGST (2+3+4 above)	0	1,69,553

6	IGST @5%	8,478	IGST @5%	0	8,478
7	TOTAL duty (3+4+6 above)	96,228	TOTAL duty (3+4+6 above)	0	96,228

3.3. The importer vide letter dated 11.03.2024 informed that during the SIIB examination, cargo is found mis-declared and 10 cartons containing 1950 pieces of T-Shirts are found therein, over and above the items declared in the BE and other import documents. They further submitted that they are ready to pay applicable Customs duty, fine and penalty as per Customs Law and requested to give waiver of SCN and PH and to decide the matter on merit. They also submitted that they will not file appeal and will not claim any refund in this case.

3.4. Further, it is found that the importer has imported 136470 Pcs of Tempered Glass under CTH 70072190 and declared assessable of Rs.10,23,500.30/- . Accordingly, per piece rate of the same comes to Rs.7.50, which appears to be low. As per the contemporary data available on NIDB in respect of the identical goods sold for export to India (from China) and imported at or about the same time, rate of Tempered Glass is ranging from Rs.8.38/- to Rs.15.25/- per piece. Hence, it appears that the assessable value of these Tempered Glass declared by the importer is liable to be rejected in view of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (*hereinafter referred to as CVR, 2007*) and is required to be taken from the contemporary data available on NIDB for the identical goods in view of Rule 4 of the CVR, 2007. Sub-rule (3) of the said Rule-4 of CVR, 2007 states that in applying these rules, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods. Accordingly, the assessable value of 136470 Pcs of Tempered Glass is required to be re-determined as Rs.11,43,618.60/- (=136470 x 8.38) instead of Rs.10,23,500.30/- as declared in the BE. Accordingly, the applicable Customs duty on the same comes to Rs. 4,28,514/- and the differential duty comes to Rs.45,008/- as calculated under:

(Amt. in INR)

Re-assessed Value	BCD@15%	SWS@10%	IGST@18%	Total Duty	Declared Duty	Differential Duty
11,43,618.60/-	1,71,543/-	17,154/-	2,39,817/-	4,28,514/-	3,83,506/-	45,008/-

4. **RELEVANT LEGAL PROVISIONS:**

(A) RELEVANT PROVISIONS OF SEZ ACT, 2005:

2. Definitions.— In this Act, unless the context otherwise requires,

.....

(o) “**import**” means—

(i) *bringing goods or receiving services, in a Special Economic Zone, by a Unit or Developer from a place outside India by land, sea or air or by any other mode, whether physical or otherwise; or*

(ii) *receiving goods, or services by a Unit or Developer from another Unit or Developer of the same Special Economic Zone or a different Special Economic Zone;*

Section 21: Single enforcement officer or agency for notified offences.-

1. *The Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for the purposes of this Act.*
2. *The Central Government may, by general or special order, authorise any officer or agency to be the enforcement officer or agency in respect of any notified offence or offences committed in a Special Economic Zone.*
3. *Every officer or agency authorised under sub-section (2) shall have all the corresponding powers of investigation, inspection, search or seizure as is provided under the relevant Central Act in respect of the notified offences.*

Section 22: Investigation, inspection, search or seizure.—

The agency or officer, specified under section 20 or section 21, may, with prior intimation to the Development Commissioner concerned, carry out the investigation, inspection, search or seizure in the Special Economic Zone or in a Unit if such agency or officer has reasons to believe (reasons to be recorded in writing) that a notified offence has been committed or is likely to be committed in the Special Economic Zone:

Provided that no investigation, inspection, search or seizure shall be carried out in a Special Economic Zone by any agency or officer other than those referred to in sub- section (2) or sub-section (3) of section 21 without prior approval of the Development Commissioner concerned:

Provided further that any officer or agency, if so authorised by the Central Government, may carry out the investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner

Notification Nos. 2665(E) and 2667(E) dated 05.08.2016:

1. *In exercise of the powers conferred by section 22 of the Special Economic Zones Act, 2005 (28 of 2005), the Central Government by Notification No. 2667(E) dated 05.08.2016 issued by the Ministry of Commerce & Industry, has authorized the jurisdictional Customs Commissioner, in respect of offences under the Customs Act, 1962 (52 of 1962) to be the enforcement officer(s) in respect of any notified offence or offences committed or likely to be committed in a Special Economic Zone. The enforcement officer(s), for the reasons to be recorded in writing, may carry out the investigation, inspection, search or seizure in a Special Economic Zone or Unit with prior intimation to the Development Commissioner, concerned. Under Section 21(1) of the SEZ Act, 2005, the Central Government may, by notification, specify any act or omission made punishable under any Central Act, as notified offence for the purposes of this Act.*
2. *The Central Government, by the Notification 2665(E) dated 05.08.2016 has notified offences contained in Sections 28, 28AA, 28AAA, 74, 75, 111, 113, 115, 124, 135 and 104 of the Customs Act, 1962 (52 of 1962) as offences under the SEZ Act, 2005.*

47 (5) *Refund, Demand, Adjudication, Review and Appeal with regard to matters relating to authorise operations under Special Economic Zones Act, 2005, transactions, and goods and services related thereto, shall be made by the Jurisdictional Customs and Central Excise Authorities in accordance with the relevant provisions contained in the Customs Act, 1962, Central Excise Act, 1944, and the Finance Act, 1994 and the rules made thereunder or the notifications issued thereunder.*

(B) RELEVANT PROVISIONS OF 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(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-46. Entry of goods on importation:

(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.

(4A) the importer who presents a bill of entry shall ensure the following, namely:

- (a) The accuracy and completeness of the information given therein;
- (b) The authenticity and validity of any document supporting it; and
- (c) Compliance with the restriction or prohibition, if any, relating to the goods under this Act or under 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:-

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

(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 transhipment, with the declaration for transhipment 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.
- 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:*

Section 125. Option to pay fine in lieu of confiscation. -

(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 [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:

Provided that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, [no such fine shall be imposed]:

Provided further that without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

Explanation.- For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.]”

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

“Rule 4. Transaction value of identical goods. - (1) (a) Subject to the provisions of rule 3, 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;

.....

(3) *In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.*

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.*

5. Summary of Investigations Conducted:

5.1. M/s Fast Track CFS Private Limited, SEZ had filed SEZ warehouse Bill of Entry No. 1003704 dated 19.02.2024 for and on behalf of its client M/s. A. S. Impex holding IEC No: MHWPS7205J through their Customs Broker, M/s Anon Global Logistics at Mundra SEZ port for import of various items viz. Mobile Accessories, Readymade Garments, Fabric Tape, Car Accessories, Footwear Accessories under different CTH. Furthermore, the said goods have also been brought into the APSEZ, Mundra i.e. a place in India from a place outside India by sea. Hence, the same falls under the definition of 'import' as provided in the SEZ Act, 2005.

5.2. On the basis of the examination report and investigation carried out in this regard, there were un-declared item mentioned at Sr.No. 19 of the table in Para 2.1 above i.e. T-shirts (10 cartons containing 1950 pieces) in terms of declaration in Bill of Entry and other import documents. Furthermore, the item mentioned at Sr.No. 1 of the table i.e. 136470 Pcs of Tempered Glass are found undervalued in view of the contemporary data. The same are required to be re-assessed on the basis of NIDB data for the identical goods in view of Rule 4 of the CVR, 2007. Accordingly, it appeared that part of the import consignment is mis/non-declared in respect of valuation as well as quantity and hence, is liable for confiscation under Section 111(l) and 111(m) of the Customs Act, 1962. For the said act of omission and commission, the importer appears liable for the penal action

under the provisions of Section 112(a)(ii) of the Customs Act, 1962.

5.3. Thus, by the act of omission and commission at the level of importer, it appeared that the importer has 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.

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 on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed:

5.4. In view of the above, it appeared that the importer has mis/non-declared the correct and proper quantity as well as assessable value of the goods imported vide SEZ warehouse Bill of Entry No. 1003704 dated 19.02.2024 which resulted into non-levy/short-levy of duty amounting to Rs.1,41,236/-[Rs.96,228/-(T-shirts) + Rs.45,008/- (Tempered Glass)].

5.5. The importer vide letter dated 11.03.2024 informed that during the SIIB examination, cargo is found mis-declared and 10 cartons containing 1950 pieces of T-Shirts are found therein over and above the items

declared in the BE and other import documents. They further submitted that they are ready to pay applicable Customs duty, fine and penalty as per Custom Laws and requested to give waiver of SCN and PH and to decide the matter on merit. They also submitted that, they will not file appeal and will not claim any refund in this case.

6. In view of the above facts, it appears that-

- i. The assessable value of the un-declared item i.e. 1950 pieces of T-Shirts is liable to be determined as Rs. 81,803/- under Rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules,2007 read with Section 14 of the Customs Act,1962. Total Customs duty involved in those un-declared 1950 pieces of T-Shirts comes to Rs.96,228/- (Rupees Ninety Six Thousand Two Hundred and Twenty Eight only).
- ii. The assessable value of the mis-declared item i.e. 136470 Pcs of Tempered Glass is liable to be re-determined as Rs. 11,43,618.60 (instead of Rs.10,23,500.30 as declared in the BE) under Rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules,2007 read with Section 14 of the Customs Act,1962. Total Customs duty involved in those mis-declared item i.e. 136470 Pcs of Tempered Glass comes to Rs. 4,28,514/- (Rupees Four Lacs Twenty Eight Thousand Five Hundred and Fourteen only) instead of Rs.3,83,506/- (Rupees Three Lacs Eighty Three Thousand Five Hundred and Six only) as declared in the BE.
- iii. The said Bill of Entry is liable to be re-assessed accordingly under Section 17(4) of the Customs Act,1962.
- iv. The mis/un-declared goods imported in contravention of Sec 46 of the Customs Act, 1962 are liable for confiscation under Section 111 (l) and 111(m) of the Customs Act,1962.
- v. The importer M/s. A S Impex, 5th A floor, 5A50, Plot No. RC-1/2, Sector-1, Cloud 9, Vaishali Tower, Ghaziabad, Utter Pradesh- 201010 holding IEC No: MHWPS7205J is liable for penalty under Section 112(a)(ii) of the Customs Act,1962.

WAIVER OF SHOW CAUSE NOTICE AND PERSONAL HEARING

7. The importer vide letter dated 11.03.2024 has submitted that they are ready to pay applicable Customs duty, fine and penalty as per Customs

Law and requested to give waiver of SCN and PH and to decide the matter on merit. They also submitted that they will not file appeal and will not claim any refund in this case.

DISCUSSION AND FINDINGS

8. I have carefully gone through Investigation Report No. 68/2023-24 dated 19.03.2024 issued by Deputy Commissioner of Customs (SIIB), Custom House, Mundra.

9. I find that M/s. Fast Track CFS Private Limited, APSEZ Ltd., Mundra had filed SEZ Warehouse Bill of Entry No. 1003704 dated 19.02.2024 for and on behalf of its client M/s. A S Impex, Ghaziabad holding IEC No: MHWPS7205J through their Customs Broker, M/s. Anon Global Logistics at Mundra SEZ port for import of various items viz. Mobile Accessories, Readymade Garments, Fabric Tape, Car Accessories, Footwear Accessories under different CTH. The said goods have been brought into the APSEZ, Mundra i.e. a place in India from a place outside India by sea. Hence, the same falls under the definition of 'import' as provided in the SEZ Act, 2005.

9.1. I find that an intelligence was gathered by the officers of SIIB Section, Custom House, Mundra that the cargo imported under subject SEZ BE has possible mis-declaration and concealment of prohibited/restricted items. Hence, the container no. FCIU9238324 was put on hold for detailed examination of the goods by the SIIB section, Custom House, Mundra in view of the suspicion. Accordingly, examination of the said consignment was carried out by the officers of SIIB section, CH Mundra in presence of representative of CB who provided copies of import documents as per which, the Shipper is M/s. Hangzhou Stonetex Trading Co. Ltd, China, the consignee is the importer M/s. A S Impex, Ghaziabad and the notify party is M/s. Fast Track CFS Private Limited, APSEZ Mundra. The details of the declared cargo are as mentioned in Para 2.1 above.

10. During the course of examination, total 877 cartons were found which were found as declared in the import documents. However, on further examination, it was found that there is mis-declaration in respect of quantity of un-declared goods i.e. 10 cartons containing 1950 pieces of T-Shirts as mentioned at Sr.No. 19 of the table in Para 2.2 above which contains details of all the goods found during the course of examination.

11. I find that there are un-declared items as mentioned at Sr.No. 19 of the table in Para 2.2 above i.e. T-shirt (10 cartons containing 1950 pieces) which have not been mentioned in the subject Bill of Entry and other import documents. The assessable value of these un-declared items are being taken as per the contemporary data available on ICES in respect of the identical goods sold for export to India (from China) and imported at Mundra Port at or about the same period of time. Accordingly, the nearest CTH for these un-declared items viz. T-Shirts appears to be 61091000 and the assessable value comes to Rs. 81,803/- ($=1950 \times 41.95$) in view of Rule 4-Transaction Value of the Customs Valuation (Determination of Value of Imported Goods) Rules,2007 (Transaction value of identical goods).

11.1. The rate of Basic Customs Duty in respect of goods falling under CTH- 61091000 is 20% or Rs.45/- per piece, whichever is higher. Accordingly, total duty of mis-declared/not-declared goods comes to Rs.96,228/- as calculated in Para 3.2 above. Thus, there appears a short levy/difference of duty of Rs.96,228/-. Accordingly, part consignment is found mis/non-declared and liable for confiscation under Section 111(l) and 111(m) of the Customs Act, 1962. For the said act of omission and commission, the importer appears liable for the penal action under the provisions of Section 112(a)(ii) of the Customs Act,1962.

11.2. I find that the importer has imported 136470 Pcs of Tempered Glass under CTH 70072190 and declared assessable of Rs.10,23,500.30. Accordingly, per piece rate of the same comes to Rs.7.50/-, which appears to be low. As per the contemporary data available on NIDB in respect of the identical goods sold for export to India (from China) and imported at or about the same time, rate of Tempered Glass is ranging from Rs.8.38/- to Rs.15.25/- per piece. Hence, assessable value of these Tempered Glass declared by the importer is liable to be rejected in view of Rule 12 of the CVR, 2007 and is required to be taken from the contemporary data available on NIDB for the identical goods in view of Rule 4 of the CVR, 2007. Sub-rule (3) of the said Rule-4 of CVR, 2007 states that in applying these rules, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods. Accordingly, the assessable value of 136470 Pcs of Tempered Glass is required to be re-determined as Rs.11,43,618.60 ($=136470 \times 8.38$) instead of Rs.10,23,500.30 as declared in the BE. Accordingly, the

applicable Customs duty on the same comes to Rs. 4,28,514/- and the differential duty comes to Rs.45,008/- as calculated in Para 3.4 above.

11.3. In view of the above, it is evident that the importer has mis/non-declared the correct and proper quantity as well as assessable value of the goods imported vide SEZ warehouse Bill of Entry No. 1003704 dated 19.02.2024 which resulted into non-levy/short-levy of duty amounting to Rs.1,41,236/- [Rs.96,228/- (T-shirts) + Rs.45,008/- (Tempered Glass)].

12. I find that by the act of omission and commission, the importer has 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. Hence, the importer has rendered the goods liable for confiscation under section 111(l) and 111(m) of the Customs Act,1962 and is, therefore, liable for penalty under section 112(a)(ii) of the Customs Act,1962. I further find that the goods in question can be redeemed on payment of redemption fine in terms of Section 125 of the Customs Act,1962.

13. In view of the above, I pass the following order:

ORDER

- i. I order to determine the assessable value of the un-declared item i.e. 1950 pieces of T-Shirts as Rs.81,803/- under Rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.
- ii. I demand Customs duty of Rs.96,228/- (Rupees Ninety Six Thousand Two Hundred and Twenty Eight only) on the un-declared 1950 pieces of T-Shirts mentioned in Para (i) above on re-assessment.
- iii. I reject the assessable value of the mis-declared item i.e. 136470 Pcs of Tempered Glass and re-determine the same as Rs.11,43,618.60/- (instead of Rs.10,23,500.30/- as declared in the BE) under Rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.
- iv. I demand differential Customs duty of Rs. 45,008/- (Rupees Forty Five Thousand and Eight only) on the mis-declared item i.e. 136470 Pcs of Tempered Glass mentioned in Para (iii) above on re-

assessment.

- v. I confiscate the mis/un-declared goods imported in contravention of Section 46 of the Customs Act,1962 under Section 111(l) and 111(m) of the Customs Act,1962. However, considering facts of the case and provisions of the Section 125 of the Customs Act,1962, I give an option to the importer to re-deem the same on payment of Redemption Fine of Rs. 1,23,000/- (Rupees One lakh Twenty Three Thousand Only) in lieu of confiscation.
- vi. I impose penalty of Rs. 6,000/- (Rupees Six Thousand Only) on the importer M/s A S Impex, Ghaziabad, under Section 112(a)(ii) of the Customs Act, 1962.

14. 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.

Signed by
Arun Kumar
ADDITIONAL COMMISSIONER
ADC/JC-II-O/o Pr Commr-Cus-Mundra
Date: 09/04/2024 17:07:45

To,
M/s. A S Impex,
5th A floor, 5A50, Plot No. RC-1/2,
Sector-1, Cloud 9, Vaishali Tower,
Ghaziabad, Uttar Pradesh-201010.

Copy to:

1. The Deputy Commissioner of Customs (SIIB), CH, Mundra.
2. The Assistant Commissioner of Customs (RRA), CH, Mundra.
3. The Assistant Commissioner of Customs (TRC), CH, Mundra
4. The Assistant Commissioner of Customs (EDI), CH, Mundra.
5. Office Copy.

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