



सीमा शुल्क निवारक के आयुक्त का कार्यालय, सीमा शुल्क भवन,
जामनगर- राजकोट हाइवे, विक्टोरिया ब्रिज के पास,
जामनगर (गुजरात) - 361 001

Office of the Commissioner of Customs (Preventive),
'Seema Shulk Bhavan', Jamnagar – Rajkot Highway,
Near Victoria Bridge, Jamnagar (Gujarat) – 361 001

Email: commr-custjmr@nic.in; adj-custjmr@nic.in

DIN – 20250171MM000088758A

1.	फ़ाइल क्रमांक/ File Number	F. No. CUS/6043/2023-Adjn
2.	मूल आदेश क्रमांक/ Order-in-Original No.	12/ Additional Commissioner/ 2024-25
3.	द्वारा पारित/ passed by	अमित कुमार सिंह / Amit Kumar Singh अपरआयुक्त/ Additional Commissioner, सीमा शुल्क, निवारक/Customs (Preventive) जामनगर/ Jamnagar.
4.	Date of Order /आदेश दिनांक Date of issue / आदेश जारी किया	31.12.2024 31.12.2024
5.	कारण बताओ नोटिस क्रमांक एवं दिनांक Show Cause Notice Number & Date	ADC-10/2023-24 dated 05.01.2024
6.	नोटिसी का नाम/ Name of Noticee	M/s. ARV Import Export(OPC) Pvt. Ltd., 11/4 Shastri Park, Krishna Nagar, Delhi-110051. Shri Vikas Gosain, Managing Director M/s. ARV Import Export (OPC) Pvt.Ltd., 11/4 Shastri Park, Krishna Nagar, Delhi-110051.

01. इस आदेश की मूल प्रति संबंधित व्यक्ति को निशुल्क प्रदान की जाती है।
The original copy of this order is provided free of cost to the person concerned

02. इस मूल आदेश से व्यथित कोई भी व्यक्ति सीमा शुल्क अधिनियम, 1962की धारा 128A)(1)a(सीमा शुल्क) अपील (नियम, 1982 के नियम 3 के साथ पठित, के प्रावधानों के तहत, इस आदेश की प्राप्ति की तारीख से 60 दिन के भीतर फॉर्म सीए-1 में निम्नलिखित पते पर अपील दायर कर सकता है।फॉर्म सीए-1 में अपील का प्रपत्र, दो प्रतियों में दायर किया जाएगा और उसके साथ इस आदेश की समान संख्या में प्रतियाँ संलग्न की जाएंगी जिसके विरुद्ध अपील की गई है।) जिनमें से कम से कम एक प्रमाणित प्रति हो।



	आयुक्त अपील 7वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 009 380 –	Commissioner (Appeals), 7 th Floor, Mrudul Tower, Behind Times of India, Ashram Road, Ahmedabad – 380 009
	Any Person aggrieved by this Order-In-Original may file an appeal in Form CA-1, within sixty days from the date of receipt of this order, under the provisions of Section 128 of the Customs Act, 1962, read with Rule 3 of the Customs (Appeals) Rules, 1982 before the Commissioner (Appeals) at the above mentioned address. The form of appeal in Form No. CA.-1 shall be filed in duplicate and shall be accompanied by an equal number of copies of the order appealed against (one of which at least shall be a certified copy).	
03.	अपील पर 5/- रुपये का कोर्ट फीस स्टाम्प लगा होना चाहिए। जैसा कि भारतीय स्टाम्प अधिनियम, 1989 के तहत प्रदान किया गया है, या राज्य विधान द्वारा संशोधित किया जा सकता है, जबकि इस अपील के साथ संलग्न आदेश की प्रति पर रुपये) 0.50 पचास पैसे केवल (का कोर्ट फीस स्टाम्प होना चाहिए। जैसा कि न्यायालय शुल्क अधिनियम, 1870 की अनुसूची – I, मद 6 के तहत निर्धारित किया गया है।	
	The appeal should bear the Court Fee Stamp of Rs. 5/- as provided under the Indian Stamp Act, 1989, modified as may be, by the State Legislation, whereas the copy of the order attached with this appeal should bear a Court Fee Stamp of Rs. 0.50 (Fifty paise only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.	
04.	अपीलीय ज्ञापन के साथ शुल्क भुगतान /जुर्माना /अर्थ दंड का सबूत भी संलग्न करे अन्यथा सीमा शुल्क अधिनियम, 1962 की धारा 128 के प्रावधानों का अनुपालन ना होने के कारण अपील को खारिज किया जा सकता है।	
	Proof of payment of duty / fine / penalty should also be attached with the appeal memo, failing to which appeal is liable for rejection for non-compliance of the provisions of Section 128 of the Customs Act, 1962.	
05.	अपील प्रस्तुत करते समय यह सुनिश्चित करे की सीमा शुल्क) अपील) नियम, 1982 और सिस्टेट प्रक्रिया) प्रोसीजर (नियम, 1982 के सभी नियमों का पूरा पालन हुआ है।	
	While submitting the Appeal, the Customs (Appeals) Rules, 1982, and the CESTAT (Procedure) Rules, 1982, should be adhered to in all respects.	
06.	इस आदेश के खिलाफ आयुक्त (अपील), सीमा शुल्क, उत्पाद शुल्क और सेवा कर अपीलीय न्यायाधिकरण के समक्ष मांग की गई शुल्क के %7.5 के भुगतान पर होगी, जहां शुल्क या शुल्क और जुर्माना विवाद में है, या जुर्माना विवाद में है, या जुर्माना जहां जुर्माना है अकेले विवाद में है।	
	An appeal, against this order shall lie before the Commissioner (Appeals), on payment of 7.5% of the duty demanded, where duty or duty and penalty are in dispute, or penalty are in dispute, or penalty, where penalty alone is in dispute.	



BRIEF FACTS OF THE CASE:

M/s. ARV Import Export OPC Pvt. Ltd., (IEC-AASCA5392E) (hereinafter referred to as "noticee" for sake of brevity) having its registered office at 11/4 Shastri Park, Krishna Nagar, Delhi-110051 has imported 284 Cartons of goods namely "Plastic Spare Parts for toys" having gross weight 4291.500 KGS vide Bill of Lading No. OOLU2701800097 dated 26.06.2022 through the vessel – M.V. OOCL LUXEMBOURG as per IGM No. 2317104 dated 19.07.2022. The said cargo is imported in the Container No. OOLU0345972 bearing Seal No. OOLHAK0906, which had arrived at CFS on 21.07.2022.

2. The cargo remained unclaimed for a period of more than 30 days. Consequently, the custodian, M/s. Old CFS S3 Warehouse, Gujarat Pipavav Port Ltd., APM Terminal, Pipavav issued notices under Section 48 of the Customs Act, 1962 on 14.12.2022, 02.01.2023 & 20.01.2023 to the Importer/Noticee for clearance of the goods. However, the noticee neither approached for clearance of the cargo nor complied with the notices issued to them.

3. It appeared that vide e-mail dated 31.01.2023, the SIIB Pipavav directed the Custodian i.e. M/s. Old CFS S3 Warehouse Gujarat Pipavav Port Ltd., APM Terminal, Pipavav to move Container no. OOLU2701800097 (Long standing) to port CFS for examination. The examination of the cargo was conducted by the officers of SIIB, Customs (Prev.) Jamnagar, in presence of independent Panchas and representative of concerned CFS i.e. Shri Sanjay Garg, on 31.01.2023. Thereafter, the said container was opened and it was found that the container was stuffed with cartons packed in plastic sacks. On opening of the cartons one by one plastic dolls under CKD condition were found inside the same. Detailed inventory of the dolls found in container no. OOLU0345972 during the examination is as under:

Table - A

Sl. No.	Item No.	Carton No.	Total carton	Net Weight(in Kgs)	Total Net weight(in Kgs)	Description of goods
1	3	1 to 100	100	16 Kgs each carton	1600	Body of the doll
2	8	101 to 200	100	16.5 Kgs each carton	1650	Head of the doll
3	3	251 to 280	30	13.3 Kgs each carton	399	
4	01-02	241 to 245	5	18.9 Kgs each carton	94.5	Small headless doll body with cloth & shoes
5	1	246 to 250	5	10.9 Kgs each carton	52.5	Small head of doll
6	4	201 to 210	10	20 Kgs each carton	200	Shoes of doll
7	7	281 to 284	4	11.5 Kgs each carton	46	Skirt of small doll
8	5-6	211 to 24	30	10.6 kgs weight in item no. 5 & 11.6 kgs weight in item no. 6	318	Coloured hair head of doll
Total			284		4360	

3.1 It appeared that as the goods were mis-declared, therefore, Panchnama dated 31.01.2023 was drawn in the presence of the independent panchas for the same. In view of the above, it appeared that the said Noticee imported different type of plastic doll under CKD condition by way of mis-declaring the same as "Plastic Spare Parts for toys" so as concealing the actual identity of goods.

3.2 As per the details of the examination proceedings conducted under the Panchnama dated 31.01.2023, prima facie, it appeared that, the items imported vide above mentioned container was plastic dolls under CKD condition, which had to be declared under CTH 9503, however, in Bill of



Lading, Invoice & Import General Manifest the goods were mis-declared as "Plastic Spare Parts for toys" with intention to evade duty of customs payable @ 70% on ad-valorem basis leviable thereupon on value of imported goods. The Import Policy for Toys is governed by BIS standards as specified in Policy Condition 2 of Chapter 95. Further, the Toys (Quality Control) Order, 2020 issued by DPIIT, mandated compulsory BIS Certification for safety of toys, and such goods shall bear the standard mark under a license from BIS. However, the above mentioned toys have been imported without the requisite standard mark under the mandatory BIS certification as applicable. The details of IGM in respect of above container are as under:

Table - B

Sl. No.	Bill of Lading No. & Date	Container No.	IGM No. & Date	Goods declared in IGM
1	OOLU2701800097 dated 26.06.2022	OOLU0345972	2317104 dated 19.07.2022	Plastic spare parts for toys

4. It appeared that the items mentioned in the IGM filed by M/s OOCL India Pvt. Ltd. had been mis-declared, hence on reasonable belief that goods imported vide above mentioned Bill of Lading were liable to be confiscated under Section 111(d) & 111(m) of Customs Act 1962, the above mentioned goods were seized on 31.01.2023 as per the provisions of Section 110 of Customs Act, 1962.

5. It further appeared that Summons was issued to M/s OOCL (India) Pvt. Ltd., Mumbai. Shri Thaker Kuldip Bhupatrai, Assistant Manager (Operations) of M/s OOCL (INDIA) Pvt. Ltd., Pipavav branch appeared for his statement on 06.06.2023 to be recorded under Section 108 of the Customs Act, 1962. He interalia stated as under:

- That, he is the Assistant Manager (Operations) of M/s. OOCL (INDIA) Pvt Ltd, Pipavav Branch;
- The IGM No. 2317104 dated 19.07.2022 was filed by M/s. OOCL (INDIA) Pvt Ltd, Pipavav, as agent of the vessel OOCL Luxembourg, operated by M/s Orient Overseas Container Line Limited (OOCL), 31/F, Harbour Centre, 25 Harbour Road, Wanchai, Hong Kong. Further, he stated that M/s OOCL, Hong Kong has a Centralized Web Portal System in which any Forwarder/Supplier who wants to ship any cargo can register and fill, all the cargo related details in system; that documents/Details of the consignment are provided by forwarder/agent of the Shipper/Exporter or directly by Shipper/Exporter to M/s OOCL at Port of Loading; that in this case, the Forwarder i.e. M/s Summer Win International Supply Chain Management Co. Ltd., China provided the details through Web Portal of M/s OOCL (China) Co. Ltd., Shenzhen Branch on behalf of M/s A H Toy Industrial company Ltd., China at the loading port i.e. Shantou port; that thereafter, on re-confirmation of details received from the Forwarder/Shipper the Bill of Lading was issued/generated by M/s OOCL (China) Co. Ltd., Shenzhen Branch; that on receipt of the details on the OOCL Web portal, M/s OOCL(India) Pvt.Ltd., Pipavav branch were required to file the EDI IGM in the ICEGATE of Indian Customs;
- That all the documents related to the above container were provided by the Forwarder i.e. M/s Summer Win International Supply Chain Management Co. Ltd., China in the designated portal of OOCL. He further stated that, Mr Judy, Summer Win International Supply Chain Management Co. Ltd., had sent mail having details of Consignee i.e. M/s ARV Import Export OPC Pvt. Ltd. on the mail id BBYIBDOC@oocl.com from mail id judy@summerwin.com;
- That they filed the IGM based on the data provided by the consignor in the designated portal of the OOCL; that further they made several correspondences with the importer M/s ARV Import Export OPC Pvt Ltd. for clearing the shipment and pay the outstanding Charges, however, they didn't verify the actual cargo which was stored in the said Container;
- That M/s OOCL (China) Co. Ltd., Shenzhen Branch had issued the above said Bill of Lading having Cargo description as "284 CARTONS PLASTC SPARE PARTS FOR TOYS" having Gross Weight 4291.50 Kgs.;
- That they were not aware about the actual goods stored in the said container; that they got the information about the mis-declaration from the Seizure Memo dated 31.01.2023; that although, they are in touch with the Importer i.e. Shri Vikas Gosain, director of M/s ARV Import Export OPC Pvt Ltd, having contact no. 9821313851 and they would persuade him to

appear before Customs(Preventive), Jamnagar for further investigation in the matter of this mis-declared imported consignment.

6. It further appeared that Summons dated 5th May 2023, 7th June 2023, 28th June 2023 & 21st July 2023 were issued to the importer i.e. Shri Vikas Gosain, Managing Director of M/s ARV Import Export (OPC) Pvt. Ltd., Delhi to appear for statement, however, no one appeared for the same. The Investigation in the matter could not be completed within prescribed time period of six months in terms of Section 110(2) of the Customs Act, 1962 due to non-cooperation on the part of the Importer, hence, an extension for a further period of 06 months under first proviso to Section 110(2) of the Customs Act, 1962 was issued by the competent authority vide Order dated 31.07.2023, DIN-20230871MM0000000DD7A. Further, after extension of time limit on 31.07.2023 and 11.09.2023, summonses were once again issued to the noticee. However, the same were also not complied with by the Importer. Again, another summons was issued on 26.10.2023 and in response Shri Vikash Gosain, MD, vide e-mail dated 26.10.2023, requested for 15-days extension to appear in the office. However, Shri Vikash Gosain, MD failed to attend.

7. It further appeared that the valuation of the cargo i.e. 284 Cartons of plastic doll under CKD condition weighing 4360 KGs" was conducted by M/s. Pankaj N. Udani (Skil Link India), Government Approved Valuer and as per their Valuation Report dated 12.06.2023, the cargo was valued at Rs. 40,30,824/-. During the scrutiny of the documents, it is found that the consignment i.e. "plastic doll under CKD condition" falls under Customs Tariff heading No. 95030030 which falls the restricted category and can only be imported against the licensing procedure prescribed by the DGFT under Foreign Trade Policy (FTP) - 2015-2020. As per Para 2.08 of FTP -2015 -2020; "**Any goods, export or import of which is restricted under ITC(HS) may be exported or imported only in accordance with an authorisation or in terms of a public notice issued in this regard**".

8. It further appeared that the following provisions of law are applicable in the present case:

SECTION 11 (1) OF THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992:

"No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made there under and the export and import policy (now termed as Foreign Trade Policy) for the time being in force".

8.1 IMPORT POLICY CONDITION NO 2 of CHAPTER 95:

Import policy condition no 2 for Chapter 95 as stipulated by Directorate General of Foreign Trade is as follows:

"Import of Toys (all items under EXIM Codes 95030010, 95030020, 95030030 and 95030090) shall be permitted freely when accompanied by the following certificates:

- (i) A certificate that the toys being imported conform to the standards prescribed by Bureau of Indian Standards (BIS): a) IS: 9873 (Part 1) - Safety of toys; Part - 1 Safety aspects related to mechanical and physical properties (Third Revision). b) IS:9873 (Part 2) - Safety of Toys; Part - 2 Flammability (Third Revision) c) IS : 9873 (Part 3) - Safety of Toys; Part - 3 Migration of certain elements (Second Revision) d) IS: 9873 (Part 4) Safety of Toys; Part - 4 Swings, Slides and similar activities Toys for indoor and outdoor family domestic use. e) IS: 9873 (Part 7) - Safety of Toys; Part - 7 Requirements and test methods for finger paints. f) IS: 9873 (Part 9) - Safety of Toys; Part - 9 Certain phthalates esters in toys and Childrens products. g) IS: 15644 - Safety of Electric Toys.
- (ii) A Certificate that the toys being imported conform to the standards prescribed in IS: 9873 Part - 1, Part - 2, Part - 3, Part - 4, Part - 7, Part - 9 and 15644:2006.
- (iii) Sample will be randomly picked from each consignment and will be sent to NABL accredited Labs for testing and clearance may be given by Customs on the condition that the product cannot be sold in the market till successful testing of the sample. Further, if the sample drawn fails to meet the required standards, the consignment will be sent back or will be destroyed at the cost of importer."

8.2 SECTION 23(2) OF CUSTOMS ACT, 1962:

"The owner of any imported goods may, at any time before an order for clearance of goods for home consumption under Section 47 or an order for permitting the deposit of goods in a



warehouse under Section 60 has been made, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon".

"Provided that the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force".

8.3 SECTION 111 (d), (f), (l) & (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

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs water 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.

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an arrival manifest or import manifest or import report which are not so mentioned;

(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 transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54.

8.4 SECTION 112(a) OF THE CUSTOMS ACT, 1962 :

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, 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, to a penalty [not exceeding the duty sought to be evaded on such goods or five thousand rupees], whichever is the greater;*

8.5 Section 114AA. Penalty for use of false and incorrect material.

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

9. It appeared that in view of the facts and circumstances of the case as discussed in the foregoing paras, it appeared that:

- a. M/s ARV Import Export OPC Pvt. Ltd. has Imported consignment of "Plastic Dolls in SKD condition" at Pipavav Port vide Bill of Lading No. OOLU2701800097 dated 26.06.2022 and IGM No. 2317104 dated 19.07.2022, by way of mis-declaring the same as "Plastic Spare Parts";
- b. M/s. ARV Import Export OPC Pvt. Ltd., did not file Bill of Entry for the goods unloaded at Pipavav Port, as required under Section 46 of the Customs Act, 1962;
- c. The import was made in violation of the Import Policy Condition No.2 of Chapter 95 of the Customs Tariff Act, 1985 which prescribes that import of Toys falling under HS Code 95030030 shall not be permitted freely unless only when accompanied by a Certificate issued by Bureau of Indian Standards (BIS) to the effect that the import goods conforming to the standard as stipulated under IS:9873. It further appeared that, M/s ARV Import Export OPC Pvt. Ltd., imported the said consignment at Pipavav Port without any such BIS



Certificate. Therefore, this import appeared to have been made in gross violation of Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992, and Para 2.08 of the FTP-2015-20 which categorically prescribes that no export or import shall be made by any person except in accordance with the provisions of the Act, Rules, and the Orders made thereunder and the Import Policy for the time being in force;

- d. Despite repeated Summons issued to the Importer i.e. M/s ARV Import Export OPC Pvt. Ltd., the Director Shri Vikash Gosain, he deliberately avoided to tender his statement/clarification on the above violations of the Customs Act and the Import Policy (presently known as Foreign Trade Policy). From the non-compliance of the repeated summons on the part of the noticee/MD Shri Vikash Gosain, it appeared that he was not in a position to explain mis-declaration on his part;

10. In view of the above, that goods imported at Pipavav Port vide Bill of Lading No. OOLU2701800097 dated 26.06.2022 and IGM No. 2317104 dated 19.07.2022, having declared as plastic spare parts for toys, on examination, appeared to be plastic dolls under CKD condition. Thus, the goods appeared to have been mis-declared. Further, above goods appeared to have been imported in violation of Section 11(1) of the Customs Act, 1962 in as much as import was made without any Certificate issued by Bureau of Indian Standard (BIS) conforming to the requisite standard as stipulated under the Import Policy Condition No. 2 of Chapter 95 by Directorate General of Foreign Trade. By reason of the gross violation of the provisions of the Customs Act, 1962 and the Import Policy Condition of DGFT, the imported goods i.e. 284 Cartons of Plastic Dolls in CKD Condition rendered liable for confiscation under Section 111(d), 111(f), 111(l) and 111(m) of Customs Act, 1962.

11. Further, the importer/beneficial owner Shri Vikas Gosain, Managing Director of importer company M/s ARV Import Export OPC Pvt. Ltd., despite repeated Summons deliberately failed to respond and provide documents in his support in this illegal import of the goods as detailed under IGM No. 2317104 dated 19.07.2022 and B/L No. OOLU2701800097 dated 26.06.2022, forged documents for importing the restricted goods in India and mis-declared the goods in IGM & Bill of Lading and falsified documents to the Customs. The omission and commission on the part of the Noticee, rendered the import goods liable for confiscation and also liable to penalty under Section 112 (a)(i) & 114AA of the Customs Act, 1962.

12. It is therefore, M/s ARV Import Export OPC Pvt. Ltd., (IEC-AASCA5392E), having its registered office at 11/4 Shastri Park, Krishna Nagar, Delhi-110051 was called upon to show cause to the Additional Commissioner of Customs, Custom(Prev.), Jamnagar, having office at Customs (Prev.) Commissionerate, 3rd Floor, Customs Office, Jamnagar-Rajkot Highway, Gulab Nagar, Jamnagar-361007 as to why:

- i) The import consignment i.e. "Plastic dolls under CKD Condition" valued Rs.40,30,824/- (Rupees forty lakhs thirty thousand eight hundred twenty four only), should not be confiscated under Section 111(d), 111(f), 111(l) & 111(m) of the Customs Act, 1962, as amended.
- ii) Penalty should not be imposed on them under Section 112(a)(i) of the Customs Act, as amended.
- iii) Shri Vikash Gosain, MD of M/s ARV Import Export OPC Pvt.Ltd., (IEC-AASCA5392E), having its registered office at 11/4 Shastri Park, Krishna Nagar, Delhi-110051 is hereby called upon to show cause to the Additional Commissioner of Customs, Custom(Prev.), Jamnagar, having office at Customs (Prev.) Commissionerate, 3rd Floor, Customs Office, Jamnagar-Rajkot Highway, Gulab Nagar, Jamnagar-361001 as to why a penalty should not be imposed on him under Section 114AA of the Customs Act, 1962 as amended.

Defense Submission:

13. M/s. ARV Import Export OPC Pvt. Ltd. vide their letter dated 25.07.2024 filed defense submission wherein they interalia submitted that they had challenged that the Show Cause Notice



ought to have been issued within 6 months from the date of seizure i.e. by 31.07.2023, however the first action in the matter has been taken up by Investigating Authority by way of recording of statement of Shri Kuldip on 06.06.2023 (i.e. after five months). As per the letter dated 31.07.2023 (when the show cause notice ought to have been issued), it was informed to us that the Hon'ble Commissioner of Customs (P), Jamnagar has extended the time limit for issuance of the show cause notice up to 31.01.2024. As per the said letter, the investigating authority made a request dated 21.07.2023 for extension of time for issuance of notice for the period of 6 months on the grounds mentioned therein. However, the grounds under which the extension was sought is not made available to us nor is it mentioned in the letter. The officers had sufficient time to investigate, the consignment is also not very huge or complicated, it can be verified with the naked eye itself, no test appears to have been conducted, so there is no apparent reason for delay. As enumerated above, the investigating authority itself took more than 5 months just to initiate the Investigation, there is no evidence on record to support that they were unavoidable reasons due to which they could not move further, hence there cannot be any valid reason for extension of time limit. In absence of the same, they respectfully seek to know the reasons for extension of time limit, if no justification is provided to us we reserve our right to challenge the notice as being hit by limitation of time and further the goods ought to have been returned.

14. They have further submitted that as per para 2 of the Show Cause Notice, it is alleged that the cargo remained unclaimed for a period of more than 30 days and that the custodian viz. M/s. Old CFS S3 Warehouse Gujarat Pipavav Port Ltd., issued notices to them under section 48 of the Customs Act, 1962 on various dates for clearance of goods and that they had neither approached them for clearance of the cargo nor complied the notice. In this connection, it is submitted that they have never received such notice from the said custodian.

15. They have further submitted that as per Para 4 of the Show Cause Notice, the goods were imported vide Bill of lading and were liable to be seized. In this regard, they have to submit that the goods are imported through Bill of Entry and not through Bill of Lading and therefore the allegations are misplaced. They had never filed any Bill of Entry and therefore there cannot be any allegation of mis-declaration.

16. They have further submitted that as per Para 5 of the Show Cause Notice, Shri Taker Kuldip Bhupatrai, in his statement dated 06.06.2023, the Assistant Manager of M/s. OOCL (India) Pvt. Ltd. who is the agent of the vessel has categorically stated, while responding to the Question No. 3, that the documents/details of the consignment are provided by the forwarder/agent of the shipper/exporter or directly by the shipper/exporter to them and then IGM was filed after receiving confirmation of details from the Forwarder/Shipper. This clearly proves that they did not have any role even at the stage of filing of IGM. Further, they have submitted that as per Para 6 of Show Cause Notice, summons were issued to them on various dates, however, they had responded to the summons and had sought extension of time, as Shri Vikas Gosain was not well and could not travel.

17. They have further submitted that as per Para 9 of the Show Cause Notice, one of the contentions is that Shri Vikas Gosain deliberately avoided to attend, in this regard, it to submit that there was no malafide intention not to attend to the summons, it was a genuine case of ill health.

18. They have further submitted that they had placed a purchase order for the import of "Plastic Spare Parts" vide Bill of Lading No. OOLU2701800097 dated 21st July, 2022 and which was lying in Port, since 21.07.2022. However, they were apprehensive that the goods sent to them were not what they had ordered, and therefore, they were under the process of coordinating from the exporter to understand and to take appropriate action. In fact, they were honest enough not to file Bill of Entry till the facts were known to them and thereby mis-declare anything to the government. Thus, the allegation of mis-declaring the goods is not justified. Further, the Panchnama also is not beyond doubt since the last para of the said Panchnama dated 31.01.2023 mentions the name of Shri Tony John and what was his role is not known

19. They have further submitted that as per Para 10 of the Show Cause Notice, the goods

were imported vide Bill of lading, in this regard, it is to submit that they have never filed any Bill of Entry. The Bill of lading is not a document for import and therefore the allegation of importing or making an attempt to import is not backed by any evidence.

20. They have further submitted in respect of Para 11 of the Show Cause Notice, that they have not declared anything so where is the question of mis-declaration and also they have not submitted any documents to the department so where is the question of providing the falsified documents, which are alleged in the Para 11 of the Show Cause Notice. Further, the allegations are not backed by any irrefutable evidences and liable to be quashed. Shri Vikas Gosain has been wrongly alleged to be liable for penalty under Section 112(a)(i) & 114AA of the Customs Act, 1962.

21. They have further submitted in respect of Para 12 of the Show Cause Notice, that they have imported goods vide Bill of Lading No. OOLU2701800097 dated 26.06.2022 and IGM No.2317104 dated 19.07.2022, liable for confiscation under section 111(d), 111(f), 111(l) and 111(m) of the Customs Act, 1962, that they have rendered themselves liable for penalty under section 112(a)(i) of the Customs Act, 1962, by causing the import of goods covered under bill of Lading No. OOLU2701800097 dated 26.06.2022 and IGM No.2317104 dated 19.07.2022, contrary to prohibition imposed by or under this act or import policy condition no.2 and that they have wrongly rendered themselves liable for penalty under section 114AA of the Customs Act, 1962.

22. They have submitted that the allegation made in the instant Show Cause Notice are not tenable as they have never filed any Bill of Entry, so there is no ground of mis-declaration on their part. The allegation of importing a consignment against an alleged Bill of Lading is not legal as a Bill of Lading is not the document against which import is made.

23. They have submitted that there is no irrefutable evidence on record, which proves that they had committed any act or omission which would render such goods liable for confiscation under section 111 or abets the doing or omission. No attempt has been made by them to import the goods in contravention to the act. They have not even filed the Bill of Entry in this case. Allegation proves nothing by itself. Allegation to merit consideration must be supported by evidence.

24. In view of the above, in nutshell, they have submitted that the proposal raised in the show cause notice for confiscation of Goods under various sub-sections of Section 111 and imposition of penalties under various sections is legally not sustainable. Therefore, liable to be dropped in the interest of justice.

PERSONAL HEARING

25. Personal hearing in the matter was held on 18.07.2024. Shri Sanjay Saraswat, National Head Consultancy, JHS Consulting, attended the hearing on behalf of the Noticee. He requested to take lenient view while imposing penalty. He further submitted they will file written submission with a week time in the matter. Then after, due to change of Adjudicating Authority, the further Personal Hearing in the matter was given on 24.10.2024, but the noticee, vide letter dated 22.10.24 has submitted that their Reply dated 25.07.2024 may be taken on records and they relinquished their right of further Personal Hearing in the subject matter.

DISCUSSION & FINDINGS

26. I have carefully gone through the facts of the case, Show Cause Notice and written defence submissions dated 25.07.2024. I further find that, the Noticee has relinquished their right to Personal Hearing accorded to him on account of change of the Adjudicating Authority and stated that their Reply dtd. 25.07.2024 may be taken on records.

27. I find that, the issues to be decided in the instant case are as follows:

(a) Whether the import consignment i.e. "Plastic dolls under CKD Condition", valued Rs. 40,30,824/- should be confiscated under provisions of Section 111 of the Customs Act, 1962 or otherwise;



(b) Whether Penalty under Section 112(a)(i) of the Customs Act, 1962 is imposable upon the Noticee or otherwise; and

(c) Whether Penalty under Section 114AA of the Customs Act, 1962 is imposable upon Shri Vikas Gosain, MD of Noticee - M/s. ARV Import Export OPC Pvt. Ltd. or otherwise.

28. I observe that, M/s. ARV Import Export OPC Pvt. Ltd. had intended to import 284 Cartons of goods namely "Plastic Spare Parts for toys" having gross weight 4291.500 KGs vide Bill of Lading No. OOLU2701800097 dated 26.06.2022 through the vessel – M.V. OOCL LUXEMBOURG as per IGM No. 2317104 dated 19.07.2022. The said cargo is imported in the Container No. OOLU0345972 bearing Seal No. OOLHAK0906 and had arrived at Port CFS –Pipavav Port on 21.07.2022.

29. I also observe that, the cargo remained unclaimed for a period of more than 30 days. Consequently, the custodian, M/s. Old CFS S3 Warehouse Gujarat Pipavav Port Ltd., APM Terminal, Pipavav issued notices under Section 48 of the Customs Act, 1962 on 14.12.2022, 02.01.2023 & 20.01.2023 to the Importer Noticee, M/s. ARV Import Export OPC Pvt. Ltd. for clearance of the goods.

30. I further observe that, vide e-mail dated 31.01.2023, the SIIB Pipavav directed the Custodian i.e. M/s. Old CFS S3 Warehouse Gujarat Pipavav Port Ltd., APM Terminal, Pipavav to move Long Standing Container no. OOLU2701800097 to port CFS for examination. Since, the Noticee did not respond to any of the Notices issued to them by the Custodian, therefore, the department was confined to examine the cargo in absence of the Noticee but within the presence of Independent Panchas and representative of concerned CFS, Shri Sanjay Garg, on 31.01.2023 to adhere to the provisions of Section 48 of the Customs Act, 1962. Thereafter, the said container was opened and it was found that the container was stuffed with cartons packed in plastic sacks. On opening of the cartons one by one plastic dolls under CKD condition were found inside the said container. The detailed inventory of the dolls found in container no. OOLU0345972 during the examination is detailed at Table-A of Para 3 above.

31. I further find that Panchnama dated 31.01.2023 was drawn in the presence of the Independent Panchas. As per the Panchnama dated 31.01.2023 the said Noticee had imported plastic dolls under CKD condition by way of mis-declaring the same as "Plastic Spare Parts for toys" so as concealing the actual identity of goods.

32. I find that, as per the details of the examination proceedings conducted under the Panchnama dated 31.01.2023, the items imported vide above mentioned container was plastic dolls under CKD condition, which had to be declared under CTH 9503, however, in Bill of Lading, Invoice & Import General Manifest the goods, the same were mis-declared as "Plastic Spare Parts for toys" with intention to evade the duty of customs payable @ 70% on ad-valorem basis leviable thereupon on the value of the imported goods.

33. I observe that, the Noticee avoided filing of Bill of Entry as discussed supra, therefore, the valuation of the cargo i.e. 284 Cartons of plastic doll under CKD condition weighing 4360 KGs" was conducted by M/s. Pankaj N. Udani (Skill Link India), Government Approved Valuer and as per their Valuation Report dated 12.06.2023, the cargo was valued at Rs.40,30,824/- .

34. I observe that, the Import Policy for Toys is governed by the BIS Standards as specified in Policy Condition 2 of Chapter 95. Further, the Toys (Quality Control) Order, 2020 issued by DPIIT, mandated compulsory BIS Certification for safety of toys, and such goods shall bear the standard mark under a license from BIS. However, I find that the above mentioned toys have been imported without the requisite standard mark under the mandatory BIS certification as applicable.

35. I find that, the actual goods imported do not correspond with the goods mentioned in the Import General Manifest bearing No. 2317104 dated 19.07.2022 filed by M/s OOCL India Pvt. Ltd. and have been mis-declared as "plastic spare parts for toys" instead of actual imported goods i.e. "plastic dolls under CKD condition" which are restricted goods subject to be imported under BIS

Certification as specified in Policy Condition 2 of Chapter 95 of FTP 2015-20 and which were seized vide Seizure Memo dated 31.01.2023 under the provisions of Section 110 of Customs Act, 1962 as they are liable to be confiscated under Section 111(d), 111(f), 111(l) & 111(m) of Customs Act 1962.

36. I find that the Summons dated 5th May 2023, 7th June 2023, 28th June 2023 & 21st July 2023 were issued to the Noticee i.e. Shri Vikas Gosain, Managing Director of M/s ARV Import Export (OPC) Pvt. Ltd., Delhi to appear for statement, however, no one appeared for the same. Further, the Investigation in the matter could not be completed within the prescribed time period of six months in terms of Section 110(2) of the Customs Act, 1962 due to non-cooperation on the part of the Importer-Noticee, hence, an extension for a further period of 06 months under first proviso to Section 110(2) of the Customs Act, 1962 was issued by the Competent Authority vide Order dated 31.07.2023, DIN-20230871MM0000000DD7A.

37. I find that, on extension of time limit under Section 110(2) by Competent Authority, Summons was once again issued to the Noticee. However, the same were also not been complied with by the Noticee. Again, another Summons was issued on 26.10.2023 and in response, the Importer/Noticee, Shri Vikash Gosain, MD, vide e-mail dated 26.10.2023, requested for 15-days extension to appear in the office. However, thereafter Shri Vikash Gosain, MD failed to attend that too.

38. I find that, Shri Vikash Gosain, Managing Director of M/s ARV Import Export OPC Pvt. Ltd. vide his letter dated 25.07.2024 filed his defense reply in the subject Show Cause Notice; wherein at Para 13 of the said defense reply stated that,

"We had placed a purchase order for import of "Plastic Spare Parts", Bill of Lading No. OOLU2701800097 dtd. 21st July, 2022 and was lying in port since 21.07.2022. However, we were apprehensive that the goods sent to us were not what we had ordered, and therefore we were under the process of coordinating from the exporter to understand and to take appropriate action"

The said statement of the Noticee itself clarifies that, the Noticee was well aware that goods being received at Pipavav port were restricted goods i.e. "Plastic Dolls under CKD Condition" in terms of Import Policy Condition No.2 of Chapter 95 of the Customs Tariff Act, 1985 which prescribes that import of Toys falling under HS Code 95030030 shall not be permitted freely unless only when accompanied by a Certificate issued by Bureau of Indian Standards (BIS) to the effect that the import goods conforming to the standard as stipulated under IS:9873.

39. I further find that, the contention of the Noticee that they were under the process of co-ordinating with their exporter to understand and to take appropriate action w.r.t. clearance of imported goods, only to be an afterthought. As the Noticee has neither produced any relevant documentary evidence with respect to their communication with the Foreign Supplier nor any documents supporting the actual goods he ordered for purchase from Foreign Supplier in the form Purchase Order, Proforma Invoice, etc. I also find that, in case the Noticee would have been bonafide then he would have presented himself before the Proper Officer of Customs when summoned for recording statement under Section 108 of the Customs Act, 1962, however, he always refrained from the same, which itself indicates that, he was well aware about the mis-declaration of the goods and has nothing to explain.

40. I find that, that the Noticee/Importer have never approach department or made any request before department for amendment of the import manifest since inception, even though he was apprehensive w.r.t. original goods being imported are not the one he has ordered. It is strange that after investing considerably in this transaction, no Bill of Entry was filed by the Noticee/Importer before the Department to clear the goods since inception which clearly shows the reluctance of the Noticee to appear before the department. I find that, the Noticee always took veil of one or another excuse such as apprehensiveness, communication with Foreign Supplier, ill health, etc. but has always refrained from producing any documentary evidence in the form of communication with Foreign Supplier, Shipping Line, etc or any communication with the department. as proof for the same. I find that, the Noticee has simply relied upon different excuses to justify his afterthought behavior and avoid penal action.



42. As in the instant case, when Noticee avoided filing of Bill of Entry and no other import related documents such as Proforma Invoices, Purchase Order, etc. are available with department then Bill of Lading becomes the only crucial document w.r.t. ownership of imported goods and to decide the case. Therefore, the copy of Bill of Lading is reproduced herein below for the sake of clarity:

44. I find that, the main defense argument of the Noticee is that they have not filed any Bill of Entry hence, they are not liable for any penal action.

45. In this regard, I here rely upon the judgment passed by the Hon'ble High Court of Madras in the case of the Commissioner of Customs (Exports), Chennai versus M/s. Royal Impex reported at 2015(325) E.L.T.740 (Mad.); wherein it has held that, "filing of Bill of Entry not necessary as it is not a pre-condition for proceeding against Importer. Non-filing of Bill of Entry does not absolve Importer from liability to be proceeded against the provisions of the Customs Act for any violation which renders goods improperly imported and liable for confiscation and subsequent penalties thereof."

Further, the Hon'ble High Court, in para has observed as follows:

"The plea of the importer that the import manifest is filed by the steamer and the importer has no role to play appears to be a fallacy. There is no explanation from the importer why the Bill of Entry was not filed or no effort was made to amend the import manifest for more than two months from the date of arrival of the vessel. At the first instance, as an importer, the first respondent chooses to abandon the goods."

I find that the facts of the above case are squarely applicable in the instant case. The importer cannot brush away his liability simply by non-filing of Bill of Entry without any proper justification.

46. I observe that, proviso to Section 23(2) of the Customs Act, 1962 *ibid* stipulates, "**that the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force**".

47. In view of foregoing discussions, I find that, as the consignment of "Plastic Dolls in CKD condition" imported at Pipavav Port vide Bill of Lading No. OOLU2701800097 dated 26.06.2022 and IGM No. 2317104 dated 19.07.2022 is in gross violation of Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992, and Para 2.08 of the FTP-2015-20 and mis-declared as "Plastic Spare Parts for Toys" and as the goods being restricted in nature, therefore, are liable for absolute confiscation under sub-section (d), (f), (l) & (m) of Section 111 of the Customs Act, 1962.

48. I find that, as the said goods are liable for absolute confiscation under the various provisions of Section 111 of the Customs Act, 1962 and therefore, the same falls under the category of 'smuggled goods' as defined under Section 2 (39) of the Customs Act, 1962 and therefore the Noticee/Importer has render himself liable for penalty for improper importation of goods, etc. under Section 112(a)(i) of the Customs Act, 1962.

49. I find that, the Shri Vikas Gosain, Managing Director, was well aware of the commodity being ordered by him for import from his Foreign Supplier and accordingly, in pre-planned manner has managed to obtain Bill of Lading, Invoice and other documents from its Foreign Supplier mis-declaring the goods as "Plastic Spare parts for Toys" instead of "Plastic Dolls in CKD Condition" with intention to evade the duty of customs, hence, render himself liable for penalty under Section 114AA of the Customs Act, 1962 for use of false and incorrect import documents.

50. In view of the above discussion and findings, I pass the following order.

:: ORDER::

- (I) I order for absolute confiscation of the import consignment i.e. "Plastic dolls under CKD Condition", of 284 number of cartoons, having quantity admeasuring 4360 kgs. valued at Rs. 40,30,824/- (Rupees forty lakh, thirty thousand, eight hundred and twenty four only), under the provisions of sub-section (d),(f),(l) & (m) of Section 111 of the Customs Act, 1962.
- (II) I impose penalty of Rs.10,00,000/- (Ten Lakhs only) on M/s. ARV Import Export (OPC) Pvt. Ltd., 11/4, Shastri Park, Krishna Nagar, Delhi-110051, under the provisions of Section 112(a)(i) of the Customs Act, 1962.
- (III) I also impose penalty of Rs.10,00,000/- (Ten Lakhs only) On Shri Vikas Gosain, Managing Director of M/s. ARV Import Export(OPC) Pvt. Ltd.,11/4,Shastri Park,



Krishna Nagar, Delhi-110051, under the provisions of Section 114AA of the Customs Act, 1962.

51. This order is issued without prejudice to any other action that may be taken against the importer or any other person under the Customs Act, 1962 or any other law for the time being in force.

(Amit Kumar Singh)
Additional Commissioner

Date: 31.12.2024

फाइल सं : CUS/6043/2023-Adjn.

BY SPEED POST/ HAND DELIVERY:

To

1. M/s. ARV Import Export(OPC) Pvt. Ltd.,
11/4 Shastri Park, Krishna Nagar,
Delhi-110051.
2. Shri Vikas Gosain, Managing Director
M/s. ARV Import Export (OPC) Pvt Ltd.,
11/4 Shastri Park, Krishna Nagar,
Delhi-110051.

Copy to:

1. The Commissioner, Customs (Preventive), Commissionerate, Jamnagar
2. The Deputy Commissioner(Prev.), Customs (Prev.), Jamnagar.
3. The Assistant Commissioner, Customs Division, Pipavav.
4. The Superintendent(RRA), Customs (Prev.), Jamnagar.
5. The Superintendent(TRC), Customs (Preventive), Commissionerate Jamnagar
6. Guard File.



(7)
K. S. NAIYA
EXECUTIVE ASSISTANT
02/01/2025