

25 JUL 2024

	<p>कार्यालय: प्रधान आयुक्त, सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 <b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS</b> <b>CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421.</b> <b>PHONE: 02838-271426/271163 FAX :02838-271425</b> <b>E-mail id- group4-mundra@gov.in</b></p>	
<b>A</b>	<b>File No.</b>	<b>CUS/APR/BE/SAO/42/2024-Gr 4-O/o Pr Commr-Cus-Mundra</b>
<b>B</b>	<b>OIO No.</b>	<b>MCH/ADC/AK/101/2024-25</b>
<b>C</b>	<b>Passed by</b>	<b>Arun Kumar, Additional Commissioner, Custom House, Mundra</b>
<b>D</b>	<b>Noticee / Party / Importer</b>	<b>M/s. Kanish Overseas (IEC: 0511024983), Delhon Road, Ludhiana – 141009</b>
<b>E</b>	<b>DIN</b>	<b>20240771MO000000EFFE</b>

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 7<sup>th</sup> 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.

**Brief facts of the Case**

M/s. Kanish Overseas (IEC: 0511024983) (hereinafter referred to as "*the importer*" for the sake of brevity) having its registered office at Delhon Road, Ludhiana-141009, filed Bill of Entry No. 3788014 dated 02-06-2024 for the import and clearance of 21790 KGS of "Stainless Steel Scrap 304" under CTH 72042190 having total assessable value of Rs. 28,80,929/-. The importer has availed the benefit of Notn. No. 50/2017 (S. No. 368). The details of the said Bill of Entry have been mentioned as under:

**TABLE – A**

(Amount in Rs.)

Bill of entry No. and Date	Description of goods	Value of goods in Rs.	BCD in Rs.	SWS in Rs.	IGST	Total duty in Rs.
3788014 dated 02-06-2024	Stainless Steel Scrap 304	28,80,929/-	NIL	NIL	5,18,567/-	5,18,567/-

2. During physical examination of the imported goods, it was observed that the goods contain circular and rectangular pipes of different dimensions, which did not appear to be scrap. The Chartered Engineer M/s. Suvikaa Associates in their report CUS/369/24-25 dated 20.06.2024 concluded that the pipes are used and old; the pipes were installed for a project and were later removed, cut and shipped; these pipes can be re-used in its current forms; these pipes need to be cut into smaller sections or crushed/flattened under a roller to be identified as scrap. The CE estimated the value of the cargo to be Rs. 43,58,000/-.

3. At the time of filing of the subject BE, the importer declared the impugned goods as Stainless Steel Scrap 304 and classified the same under CTH 72042190 and paid 0% BCD by way of taking the benefit of exemption of Notification No. 50/2017 (Sr. No. 368). However, during the course of examination, the impugned goods were found to be old and second hand serviceable pipes of grade 304 which are appropriately classifiable under CTH 73064000 and applicable rate of BCD is 10%. Hence, it appears that the importer has misclassified the goods under CTH 72042190. Further, being old and used/second-hand stainless steel pipe, import of the impugned goods are restricted as per the Para 2.31 of Foreign Trade Policy. The relevant portion of the FTP 2023 reads as under:

Sl. No.	Categories of Second-Hand Goods	Import Policy	Conditions, if any
I.	<b>Second-Hand Capital Goods</b>		
I(a)	i. Desktop Computers; ii. Refurbished / re-conditioned spares of re-furbished parts of Personal Computers/ Laptops; iii. Air Conditioners; iv. Diesel generating sets	Restricted	Importable against Authorisation
I(b)	All electronics and IT Goods notified under the Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2012 as amended from time to time	Restricted	(i) Importable against an authorization subject to conditions laid down under Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2012 as amended from time to time. (ii) Import of unregistered/non-compliant notified products as in CRO, 2012 as amended from time to time is "Prohibited"
I(c)	Refurbished / re-conditioned spares of Capital Goods	Free	Subject to production of Chartered Engineer certificate to the effect that such spares have at least 80% residual life of original spare
I(d)	All other second-hand capital goods	Free	

	{other than (a) (b) & (c) above}		
II	Second Hand Goods other than capital goods	Restricted	Importable against Authorisation
III	Second Hand Goods imported for the purpose of repair/refurbishing / reconditioning or re-engineering	Free	Subject to condition that waste generated during the repair / refurbishing of imported items is treated as per domestic Laws/ Rules/ Orders/ Regulations/ technical specifications/ Environmental / safety and health norms and the imported item is re-exported back as per the Customs Notification.

4. From the forgoing facts, it appeared that the importer has imported old and used/second hand pipes made of stainless steel of grade 304. As per para 2.31 of Foreign Trade Policy 2023, import of second hand goods other than capital goods is restricted and require import authorization from Directorate General of Foreign Trade. Accordingly, it appears that the importer has mis-declared the description of the goods. For the foregoing reasons, the goods imported vide the said BE appear liable for confiscation Section 111(d) of the Customs Act, 1962.

5. It appeared that the impugned goods are not covered under Stainless Steel Scrap as the same are old second hand pipes made of stainless steel grade 304 and the same are required to be classified under CTH 73064000. Accordingly, the importer has mis-declared the description of the impugned goods and misclassified the goods under CTH 72042190 instead of correct and proper CTH 73064000, therefore, the goods imported vide the said B/E appear liable for confiscation Section 111(m) of the Customs Act, 1962.

6. Further, as the goods appeared liable for confiscation under Section 111(d) & 111(m) of the Customs Act, 1962 for non-production of DGFT Authorization, mis-declaration of the description of the impugned goods and misclassification of the goods, the importer appears to be liable for penal action under Section 112(a)(i) & 112(a)(ii) of the Customs Act, 1962.

7. The rule-3 of the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007 (hereinafter referred to as "*the CVR, 2007*") provides the method of valuation. Rule 3(1) of the CVRs, 2007 provides that "Subject to Rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of Rule 10". Rule 3(4) *ibid* states that "if the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through Rule 4 to 9 of CVR, 2007". Whereas, it appeared that transaction value in terms of Rule 3 of the CVR, 2007, is to be accepted only where there are direct evidences with regard to the price actually paid or payable in respect of the imported goods by the importer. Whereas, in the present case, it appeared that, there is reasonable doubt regarding the truth and accuracy of the declared value, and hence is liable to be rejected in terms of Rule 12 of the CVR, 2007.

8. Whereas, it appeared that the value of the impugned goods could not be determined under Rule 4 and 5 *ibid*, since the value of contemporaneous imports of identical and similar goods of same quality and composition was not found. Proceeding sequentially, it is stipulated under Rule 6 *ibid* that where the value is not determinable under Rule 3, 4 and 5, the value is to be determined under Rule 7 or when the value cannot be determined under that Rule, under Rule 8. Whereas, Rule 7 provides for 'Deductive Value' i.e. the value is to be determined on the basis of valuation of identical goods or similar imported goods sold in

India, in the condition as imported at or about the time at which the declaration for determination of value is presented, subject to deductions stipulated under the rule. Whereas, for the reasons detailed above, the values also cannot be determined as per the said Rule 7 *ibid*. Likewise, for application of Rule 8 of the CVR, 2007, the cost of production or processing involved in the imported goods are not available. In the absence of requisite data, the value cannot be determined by taking recourse to these rules either.

9. Whereas, it appears that, the provisions of Rule 4 to 8 *ibid*, are not applicable in the instant case, the value of the impugned goods is required to be determined under the provisions of Rule 9 of the CVR 2007, which reads as under: -

***“Rule 9 : Residual method – (1) Subject to the provisions of Rule 3, where the value of the imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India:”***

10. Whereas, the assessable value of the impugned goods is required to be re-determined under Rule 9 *ibid*, i.e. as per the residual method. Hence, accordingly the assessable CIF value of the consignment value has been taken on the basis of report submitted by the Chartered Engineer for the purpose of valuation under provisions of Rule 9 of the CVR, 2007 read with note 2 of the interpretative notes for Rule 9 of the CVR, 2007. Accordingly, it appears that, the assessable value of the impugned goods Rs. 28,80,929/- declared in the said BE is liable to be rejected and assessable value of the impugned goods is liable to be re-determined as per valuation report submitted by the CE.

11. The empanelled Chartered Engineer M/s Suvikaa Associates in their report CUS/369/24-25 dated 20.06.2024 has estimated the value of the cargo to be Rs. 43,58,000/- . Accordingly, total customs duty of the impugned goods under the CTH 73064000 comes to Rs. 13,50,108/- instead of self-assessed duty of Rs. 5,18,567/- declared by the importer in the BE and the differential duty comes to Rs. 8,31,541/- as calculated hereunder:

(Amount in Rs.)

Sr. No.	Estimated value as per CE	Basic Customs Duty @10%	SWS @10% of BCD	IGST @18%	Total duty liability	Total duty declared in the BE	Difference of Duty
1	43,58,000/-	4,35,800/-	43,580/-	8,70,728/-	13,50,108/-	5,18,567/-	8,31,541/-

12. Thus, by the act of omission and commission at the level of importer, it appears 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.*

13. In the instant case, it appears that the importer had filed the said BE with incorrect particulars as discussed hereinabove and mis-declared the impugned goods in respect of description as well as value. The importer while filing the said BE has subscribed to a declaration regarding correctness of the contents of the said BE under Section 46(4) of the Customs Act, 1962 *ibid*. Further, Section 46(4A) of the Customs Act, 1962 *ibid* casts an obligation on the importer to ensure accuracy of the declaration and authenticity of the documents supporting such declaration. However, in the instant case, the importer failed to discharge the statutory obligation cast upon them and made wrong declaration about the description of the impugned goods.

14. Further, it also appears that the assessable value of the impugned goods Rs. 28,80,929/- declared in the said BE is also liable to be rejected under the provisions of Rule 12 of the CVR, 2007. Further, it appears that the assessable value of the impugned goods is required to be re-determined as Rs. 43,58,000/- under Rule 9 *ibid*, i.e. as per the residual method on the basis of report submitted by the empanelled CE.

15. Thus, it appears that the importer has mis-declared the impugned goods in terms of description, classification & valuation and has not produced DGFT Authorization, hence, the impugned goods appear liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962. Further, by doing so, the importer appears to have made themselves liable for penalty under Section 112(a)(i) & 112(a)(ii) of the Customs Act, 1962.

#### 16. LEGAL PROVISIONS APPLICABLE IN THE CASE:

##### 16.1 Relevant provisions of Customs Act, 1962:

*SECTION 46. Entry of goods on importation. — (1) The importer of any goods, other than goods intended for transit or trans-shipment, 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:*

....

*(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, [and such other documents relating to the imported goods as may be prescribed.*

*(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*

*I 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: —*

...

*(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force,*

...

*( m ) any goods which do not correspond in respect of value or in any other particular] with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54;*

Section 112. Penalty for improper importation of goods, etc. –

*Any person, -*

- a. *who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or*
- i. *in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;*
- ii. *in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. Of the duty sought to be evaded or five thousand rupees, whichever is higher:*

Section 117. Penalties for contravention, etc., not expressly mentioned. – *Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding four lakh rupees.*

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

...  
*"Rule 9: Residual method – (1) Subject to the provisions of Rule 3, where the value of the imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India:*

...  
*Rule 12. Rejection of declared value. – (1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3."*

### **RECORD OF WRITTEN SUBMISSIONS & PERSONAL HEARING**

17. The Importer vide letter dated 03.07.2024 has submitted that they do not wish to undergo any notice or personal hearing in relation to the shipment and that they are fully prepared to proceed with the clearance of the cargo based on the value declared in the CE Report and further requested to cut these rods into multiple pieces to ensure that these items can be considered as scrap material, thereby resolving any discrepancies.

### **DISCUSSION & FINDINGS**

18. I have carefully gone through the case records and applicable provisions of Law. I

find that the Importer vide their letter dated 03.07.2024 has requested waiver in issuance of Show Cause Notice and Personal Hearing, thus, the condition of Principles of Natural Justice under Section 122A of the Customs Act, 1962 has been complied with. Hence, I proceed to decide the case on the basis of facts and documentary evidences available on records.

19. The main issues before me are to decide whether-

- (i) the value of the imported goods is liable to be rejected and re-determined on the basis of CE report or otherwise.
- (ii) the imported goods are liable for confiscation under Section 111(d) & 111(m) of the Customs Act, 1962 or otherwise.
- (iii) the Importer is liable for penal action under Section 112(a)(i) & 112(a)(ii) of the Customs Act, 1962 or otherwise.

20. I find that the Importer filed Bill of Entry No. 3788014 dated 02-06-2024 for import and clearance of 21790 KGS of "Stainless Steel Scrap 304" under CTH 72042190 having total assessable value of Rs. 28,80,929/- and availed the benefit of Notn. No. 50/2017 (S. No. 368).

21. I find that during physical examination of the imported goods, it was found that the goods contain circular and rectangular pipes of different dimensions, which did not appear as scrap. I further find that the Chartered Engineer M/s Suvikaa Associates in their report CUS/369/24-25 dated 20.06.2024 concluded that the pipes are used and old; the pipes were installed for a projected and were later removed, cut and shipped; these pipes can be re-used in its current form; these pipes need to be cut into smaller sections or crushed/flattened under a roller to be identified as scrap. The CE estimated the value of the cargo to be Rs. 43,58,000/- as per current condition of the cargo. I further find that the grade of the old and used/second-hand stainless steel serviceable pipe was 304.

22. I find that in the impugned imports, the description of the goods has been mis-declared inasmuch as that the "old and used/second-hand stainless steel serviceable pipe of grade 304" has been mis-declared as "Stainless Steel Scrap 304", therefore, the declared value of the said goods is liable to be rejected under the provisions of Rule 12 of the CVR, 2007 and liable to be re-determined by proceeding sequentially through Rules 4 to 9. Further, I find that there are no contemporaneous imports of consignments of "old and used/second-hand stainless steel pipe grade 304", accordingly, value of the subject goods cannot be determined under Rule 4 or 5 of the CVR, 2007.

23. Further, I find that Rule-6 of the CVR, 2007 stipulates that where value cannot be determined under Rules 3, 4 and 5, the value shall be determined under the provisions of Rule 7 or, when the value cannot be determined under that Rule, under Rule 8, provided that at the request of the importer, and with the approval of the proper officer, the order of application of Rules 7 and 8 shall be reversed.

24. I find that in absence of reliable data of sale of imported goods/identical goods/similar goods to persons who are not related to the sellers in India, the value of the subject goods cannot be determined under Rule 7. Further, I find that for application of Rule 8, the parameters of value of materials and fabrication or other processing employed in producing the imported goods are not available. Therefore, recourse of Rule 9 has to be

taken to arrive at the transaction value in the instant case which provides the residual method for arriving at the transaction value using reasonable means consistent with the principles and general provisions of the Customs Valuation Rules, 2007 and as per the conditions set out therein.

25. In view of the foregoing facts, I hold that the declared value is liable to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962. Further, I find that the Chartered Engineer vide Report CUS/369/24-25 dated 20.06.2024 has estimated the value of the cargo to be Rs. 43,58,000/-. I find that these prices can be considered to be the fair value which is consistent with the provisions of Rule 9 of the CVR, 2007. Accordingly, I hold that the said Bill of Entry is to be re-assessed as per these re-determined values for the purpose of assessment to duty *under Section 17(4) of the Customs Act, 1962.*

26. I find that the importer has actually imported old and used/second hand serviceable pipes made of stainless steel and as per para 2.31 of Foreign Trade Policy 2023, import of second hand goods other than capital goods is restricted and require import authorization from Directorate General of Foreign Trade, therefore, I hold the goods imported vide the said BE liable for confiscation under Section 111(d) of the Customs Act, 1962.

27. I find that the impugned goods are not covered under Stainless Steel Scrap as the same are old and second hand serviceable pipes made of stainless steel grade 304 and the same are required to be classified under CTH 73064000 instead of declared CTH 72042190, therefore, I hold the goods imported vide the said B/E liable for confiscation Section 111(m) of the Customs Act, 1962.

28. I find that the Importer vide letter dated 03.07.2024 has requested to cut these rods into multiple pieces to ensure that these items can be considered as scrap material, thereby resolving any discrepancies. In this connection, Section 24 of the Customs Act, 1962 is reproduced below for ease of reference:

*Section 24. Power to make rules for denaturing or mutilation of goods.-The Central Government may make rules for permitting at the request of the owner the denaturing or mutilation of imported goods which are ordinarily used for more than one purpose so as to render them unfit for one or more of such purposes; and where any goods are so denatured or mutilated they shall be chargeable to duty at such rate as would be applicable if the goods had been imported in the denatured or mutilated form.*

I find that the Chartered Engineer M/s Suvikaa Associates in their report CUS/369/24-25 dated 20.06.2024 concluded that the pipes were installed for a project and were later removed, cut and shipped; these pipes can be re-used in its current form: these pipes need to be cut into smaller sections or crushed/flattened under a roller to be identified as scrap. I find that if any goods are mutilated, they shall be chargeable to duty only at the rate applicable to goods in mutilated form. The petitioner in this case has itself requested for mutilation of the goods so that the goods may only be used for scrap after the mutilation. What would be released to the petitioner would therefore be only scrap. Further, I find that the declared goods were Stainless Steel Scrap 304 and grade of the old and used/second-hand stainless steel serviceable pipe was also 304. Accordingly, in view of the examination report, CE report and the submissions of the Importer, I hold that the request of the



Importer may be considered for mutilation of imported old and second hand serviceable pipes. Further, as per Section 24 of the Customs Act, 1962, where any goods are denatured or mutilated, they shall be chargeable to duty at such rate as would be applicable if the goods had been imported in the denatured or mutilated form. Accordingly, details of the applicable duty are as mentioned below:

(Amount in Rs.)

Sr. No.	Estimated value as per CE	Effective Basic Customs Duty @0% with Notn. No. 50/2017 (S. No. 368)	SWS @10% of BCD	IGST @18%	Total duty liability	Total duty declared in the BE	Difference of Duty
1	43,58,000/-	NIL	NIL	7,84,440/-	7,84,440/-	5,18,567/-	2,65,873/-

29. I find that though the goods have been held liable for confiscation under Section 111(d) & 111(m) of Customs Act, 1962, when the request of the Importer is considered for mutilation of imported old and second hand serviceable pipes, what would be released to the petitioner would be only Stainless Steel Scrap Grade 304 and clearance of the same is not subject to DGFT Authorization. Accordingly, I deem it fit to allow clearance of impugned goods on payment of Redemption Fine in terms of Section 125 of the Customs Act, 1962 which is reproduced below for ease of reference:

*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, 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.*

30. However, it is undisputed fact that the Importer has filed Bill of Entry for clearance of Stainless Steel Scrap 304, however, on physical examination, the goods were actually found to be old and second hand serviceable pipes and that the CE in its report has categorically stated that these old and second hand pipes can be re-used in its current form and estimated value of the pipes to be Rs. 43,58,000/-. The importer while filing the said B/E has subscribed to a declaration regarding correctness of the contents of the said BE under Section 46(4) of the Customs Act, 1962. Further, Section 46(4A) of the Customs Act, 1962 casts an obligation on the importer to ensure accuracy of the declaration and authenticity of the documents supporting such declaration. However, in the instant case, the

importer failed to discharge the statutory obligation cast upon them and made wrong declaration about the description of the impugned goods. As the Importer has mis-declared the impugned goods in terms of description, classification & valuation and has not produced DGFT Authorization, I hold the importer liable for penalty under Section 112(a) (i) & 112(a)(ii) of the Customs Act, 1962.

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

**ORDER**

- i. I reject the declared transaction value of Rs. 28,80,929/- of the goods imported vide Bill of Entry No. 3788014 dated 02-06-2024 under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods), Rule, 2007 read with Section 14 of the Customs Act, 1962. I order to re-determine the same as Rs. 43,58,000/- under Rule 9 of the CVR, 2007 read with Section 14 of the Customs Act, 1962. I order re-assessment of the goods imported vide Bill of Entry No. 3788014 dated 02-06-2024 accordingly under Section 17(4) of the Customs Act, 1962.
- ii. I order complete mutilation of the imported goods to obtain scrap at the cost of the Importer M/s. Kanish Overseas before clearance.
- iii. I order confiscation of the goods imported vide Bill of Entry No. 3788014 dated 02-06-2024 having re-determined assessable value of Rs. 43,58,000/- under Section 111(d) & 111(m) of Customs Act, 1962. However, I give an option to the Importer M/s. Kanish Overseas to re-deem the goods under provisions of Section 125 of Customs Act, 1962 on payment of Redemption Fine of Rs.4,30,000/-(Rs. Four lakh thirty thousand Only).
- iv. I order to impose a penalty of Rs. 50,000/-(Rs. Fifty Thousand Only) under Section 112(a)(i) of Customs Act, 1962 and a penalty of Rs. 20,000/- (Rs. Twenty Thousand Only) under Section 112(a)(ii) of Customs Act, 1962 on the Importer M/s. Kanish Overseas.
- v. The goods imported vide Bill of Entry No. 3788014 dated 02-06-2024 are to be released only after payment of applicable duties, fine and Penalties as above.

32. 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

(Arun Kumar)

Date: 23-07-2024 15:46:23

Additional Commissioner,  
Custom House, Mundra

To,

M/s. Kanish Overseas (IEC: 0511024983)  
Delhon Road, Ludhiana – 141009.

Date: 23-07-2024

Copy to:

- ✓ 1. The Dy. Commissioner of Customs, Review Section, CH, Mundra
- ✓ 2. The Dy. Commissioner of Customs, TRC Section, CH, Mundra

- ✓ 3. The Dy. Commissioner of Customs, EDI Section, CH, Mundra
4. Guard file

5-5-5