

	<p style="text-align: center;">सीमा शुल्क आयुक्त का कार्यालय, Office of the Commissioner of Customs, नया सीमाशुल्क सदन, New Custom House, Near Balaji Temple, नया कांडला – ३७०२१०. New Kandla – 370 210. दूरभाष /Tel. 02836-271468-469, फैक्स/Fax. 02836-271467 E-mail : adjcustomskandla22@gmail.com</p>
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DIN- 20240371ML0000111DE0

SHOW CAUSE NOTICE

M/s. Sunrise International (Unit-II) (hereinafter referred to as 'SEZ unit') is situated at Shed No. 306-307, Sector-III, Kandla Special Economic Zone, Gandhidham, Kutch. Letter of Approval (LOA) dated 13.11.2020 was granted to them vide F.No. KASEZ/IA/24/2020-21(**RUD-1**) by the Development Commissioner, Kandla SEZ under section 15(9) of the SEZ Act, 2005 read with Rule 18 of the SEZ Rules, 2006 to operate as an SEZ unit and carry out authorized operations of Warehousing Service Activity.

2. Whereas, the said SEZ Unit, namely, M/s. Sunrise Internationals (Unit-II) has filed Bill of Entry vide no. 1001430 dated 01.02.2022 (**RUD-2**) for warehousing the goods declared as "LLDPE Agglomerate" on behalf of DTA Client M/s Worldwide Exim Overseas Network, 208 Bharat Chamber, 52/C, Baroda Street, Musjid Bunder East, Mumbai, Maharashtra 400009, holding IEC NO: FWPPM6566P. Whereas, based on information was received by the SIIB, Custom House, Mundra that Container No. INKU 6531876 (40) filed under BE No. 1001430 dated 01.02.2022 and Bill of Lading No. JEAMUN1200179 dated 20.01.2022 destined to KASEZ, Gandhidham was reported in the container scanning report to have a scanning mismatch, the container was put on hold and examined at Hind CFS, Mundra Port by the SIIB Officers of Mundra-CH as per the provisions of the Customs Act, 1962. Whereas, the examination of the said container was carried out by the SIIB Officers of Mundra-CH under panchnama dated 05.02.2022 (**RUD-3**) in presence of Shri. Kiran Nair, Authorized Representative on behalf of importer M/s Worldwide Exim Overseas Network and the authorized representative of the CFS. After examination proceedings the consignment was released for transshipment to KASEZ and presently the imported goods are lying in the premises of M/s. Sunrise Internationals (Unit-II), KASEZ.

3. Whereas, during the examination proceedings carried out by the officers of SIIB, Mundra-CH it is observed that the cargo was declared as "LLDPE Agglomerate under CTH 39011010". Whereas, a total of 980 woven sacks were de-stuffed from the container. Whereas, prima facie it appeared that goods were of different types i.e. in some woven sacks bags there were shredded plastic material, in some other bags, the goods appeared to be plastic granules/pellets type and in the remaining woven sacks bags, the goods appeared to have been lumps of plastic. Whereas, it is observed by the officers of SIIB, Mundra-CH, out of 980 bags, 152 bags are found to be of Plastic granule/pellet like material, 115 bags are found to be of lumps and remaining 713 bags are found to be of shredded plastic material containing mix material. Whereas, as per declaration in the packing list, BL and other import documents the goods were supposed to be LLDPE Agglomerate under CTH 39011010 while as per examination, it appeared that 152 bags of plastic granule like material and 115 bags of lump like plastic material appear to be other than declared and thus these goods appeared to have been mis-declared by the importer which required further investigation in the matter. Accordingly, samples were drawn and sent for testing at CRCL Kandla Laboratory by the officers of SIIB, Mundra-CH vide Test Memo No.165 to 171

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all dated 05.02.2022. Whereas, the details of Test Memo queries and findings in test reports are as detailed below:

3.1. Whereas, the Test query in respect of all the Test Memos No. 165 to 171 (**RUD- 4**) for the goods having declared Description as “LLDPE Agglomerate” and declared CTH - 39011010

- i. Nature/Description of Goods
- ii. Composition
- iii. Whether the goods are other than Scrap/waste
- iv. Whether the goods are Regrind/Lumps/Agglomerated/Flakes/Reprocessed/Recycled/Offgrade/Sweeping
- v. Whether the goods are composed of single thermoplastic material or otherwise.
- vi. Whether the goods are Non-hazardous in nature or otherwise
- vii. Correct description of the goods

3.2. Whereas, the findings of CRCL Kandla in respect of samples forwarded vide Test Memos No. 165 to 171 are detailed as under:

- (i) Test Report no. SIIB-138 dated 11.02.2022 pertaining to Test Memo No. 165 dated 05.02.2022

*“Sample as received is in the form of off-white plastic cut pieces of irregular shape & sizes (**Agglomerated form**). It is composed of polyethylene having density less than 0.94 (single thermoplastic). Whether scrap/waste/hazardous could not ascertained.”*

- (ii) Test Report No. SIIB-139 dated 11.02.2022 pertaining to Test Memo No. 166 dated 05.02.2022.

*“Sample as received is in the form of grayish plastic cut bits of irregular shape & sizes. It is composed of polyethylene (**LDPE**) (Single thermoplastic). Whether scrap/waste/hazardous could not ascertained. It is **other than LLDPE Agglomerates**. Ash Content 9.4% by wt”*

- (iii) Test Report No. SIIB-140 dated 11.02.2022 pertaining to Test Memo No. 167 dated. 05.02.2022.

*“The sample as received is in the form of off white plastic cut pieces of irregular shapes and sizes (**agglomerate**). It is composed of polymeric material based on polyethylene, having density less than 0.94 (Single thermoplastic).Ash content 5.3% by wt. Whether the goods is waste/scrap/non-hazardous could not be ascertained.”*

- (iv) Test Report No. SIIB-141 dated. 11.02.2022 pertaining to Test Memo No. 168 dated 05.02.2022

*“The sample as received is in the form of greenish-pink coloured irregular pieces of polymeric material together with a few films of assorted shapes, sizes and colours (**agglomerates**). It is composed of polymeric material based on polyethylene having density less than 0.94 (single thermoplastic). Ash content-6.0% by wt. Whether the goods is waste/scrap/non-hazardous could not be ascertained.”*

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- (v) Test Report No. SIIB-142 dated 11.02.2022 pertaining to TestMemo No. 169 dated 05.02.2022.

*"The sample as received is in the form of assorted colour cut pieces of films & lumps of irregular shape & sizes along with coarse powder (**Agglomerate**). It is composed of polymeric material based polyethylene (Single on thermoplastic). Ash content = 7.21%. Whether the goods is waste/scrap/non-hazardous could not be ascertained."*

- (vi) Test Report No. SIIB-143 dated 11.02.2022 pertaining to Test Memo No. 170 dated 05.02.2022.

*"The sample as received is in the form of mixture of assorted coloured shredded polymeric material together with small cut pieces of polymeric films of irregular shape & size and coarse powder (**agglomerate form**). It is composed of polymeric material based on polyethylene (single thermoplastic) having density less than 0.94.% Ash content - 4.9. Whether the goods is waste/scrap/non-hazardous could not be ascertained."*

- (vii) Test Report No. SIIB-144 dated 11.02.2022 pertaining to Test Memo No. 171 dated 05.02.2022.

*"The sample as received is in the form of dirty brownish yellow **plastic lumps** of irregular shape and size. It is composed of polymeric material based on Polyethylene."*

3.3. From the examination details and the above test results, it is observed by the officers of SIIB, Mundra-CH a part of the cargo is other than Agglomerate as confirmed by the test results of CRCL Kandla reproduced above and accordingly part of the imported cargo is appears to be mis-declared.

3.4. During the course of inquiry proceedings, the officers of SIIB, Mundra-CH have recorded statement dated 03.03.2022 (**RUD-5**) under Section 108 of the Customs Act, 1962 of Shri Rahul Chetan Mehta proprietor of importing firm, namely, M/s. Worldwide Exim Overseas Network, Mumbai. The importer in his statement, inter-alia, stated that-

- M/s. Worldwide Exim Overseas Network was registered in the year 11.03.2020, IEC No. FWPPM6566P. This is a Sole Proprietorship firm and they have imported about 40 to 45 Containers till date. This is the 3rd import consignment of LLDPE Agglomerate. Earlier two containers were also cleared from KASEZ.
- They are getting the benefit of duty deferment as and when their cargo is cleared from the KASEZ Warehouse on piecemeal basis. The warehousing charges are also comparatively reasonable as compared to the CFS charges of Port.
- The clearance and documentation work is carried out by M/s. Akshar Impex Services, Prop. Mr. Nandkumar P. Nair, having office at Shop No. 15, Kandla Industrial Association Building, Nr. Punjab National Bank, - 370230
- On being asked that, as per the B.E No. 1001430 dated 01.02.2022, the goods declared are LLDPE Agglomerate 39011010 which is meant for Polymers of Ethylene in primary forms- having a specific gravity of less than 0.94. Sub-heading 39011010 pretends to LLDPE (Linear Low Density Polyethylene). Upon seeing the test reports given by CRCL Kandla Laboratory in respect of Test Memos No. 165 to 171 dated 05.02.2022, he signed all the test reports after seeing them and stated that the test reports no. 166, 169, 171 dated 05.02.2022 are different from LLDPE Agglomerates and the goods belong to the group of Polyethylene.

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- Upon being shown the Panchnama dated 05.02.2022 along with the photos of the material received in the container it was very much evident that whole of the cargo is not plastic agglomerates. On being asked the reason for the same, he stated that he accepts that whole of the cargo is not agglomerates, but they are of different types as narrated in the Panchnama. He further stated that he was totally unaware about this when he came to know about the cargo he complained to the shipper. The shipper sent updated packing list with complete details of no. of bags of agglomerates, reprocessed granules and lumps which we submitted to the department on 08.02.2022.
- He accepted that there is some change in value although there is no change in the rate of duty. In case if the value is on the higher side of the overall cargo he is ready to pay the differential duty.
- He is ready to pay the fine penalty and do not want show cause notice.

4. Whereas, the SEZ Unit has declared the goods as LLDPE Agglomerate classifying them under 39011010. Whereas, based on examination proceedings and lab test results, the details of imported goods along with quantity are as tabulated below:

Table-I

Sr.No	Test Memo No. (all dated 05.02.2022)	Declared description and Classification	Description/ Classification as per examination proceedings and Lab test results	Quantity found during examination
1	165	LLDPE Agglomerates 39011010	As declared	--
2	166	LLDPE Agglomerates 39011010	LDPE (cut bits) 39011020	152bags x 25kg = 3800 kg
3	167	LLDPE Agglomerates 39011010	As declared	
4	168	LLDPE Agglomerates 39011010	As declared	
5	169	LLDPE Agglomerates 39011010	As declared	
6	170	LLDPE Agglomerates 39011010	As declared	
7	171	LLDPE Agglomerates 39011010	Others 39011090	115 bags x 25kg =2875 kg

4.1. Whereas, the samples sent under Test Memo No.s 166 & 171 are found to be other than LLDPE Agglomerates and appear to merit classifiable as LDPE (CTH-39011020) and Others (CTH-39011090) respectively. Whereas, the findings of lab test reports corroborates and reconfirms the observations made during the examination of the goods under panchnama and the statement dated 03.03.2022 of Shri. Rahul C. Mehta. Whereas, during the statement the DTA client has accepted that the imported goods are other than declared in the Bill of Entry. He has attributed the reason for importing goods other than that declared in the B.E due to shipper's fault and produced a letter dated 05.02.2022 from the shipper wherein the shipper JHR General Trading LLC sent the revised packing list and accepted that the some of the goods are other than LLDPE Agglomerates. Whereas, from the foregoing facts, it appears that out of the total 22520 Kgs of goods declared as LLDPE Agglomerates, **3800Kg of LDPE CTH 39011020 and 2875Kg of Lumps Others CTH 39011090 totaling 6675kg valued at Rs.3,78,772/- @ Rs. 56.475/- per Kg appear to be mis-declared and mis-classified.** The details of same tabulated below for ready reference.

Table-II

Sr.No	Declared description as per BE No. 1001430 dated 01.02.2022	Classification as per BE No. 1001430 dated 01.02.2022	Description as per examination proceedings and Lab test results	Classification as per examination proceedings and Lab test results	Quantity found during examination
1	LLDPE Agglomerates	39011010	LLDPE Agglomerates	39011010	15845 kg (found as declared)
2			LDPE (pellets/cut bits)	39011020	3800 kg (mis-declared)
3			Lumps-Others	39011090	2875 kg (mis-declared)

4.2. Based on the test results and finding of examination proceedings, it appears that the goods of approx. weight 3800 kgs in 152 bags which are in the form of plastic cut bits/pellets classifiable under CTH 39011020 and the goods of approx. weight 2875 kgs in 115 bags which are in the form of plastic lumps classifiable under CTH 39011090 are mis-declared in terms of description and classification and are liable for confiscation under the reasonable belief under the provisions of the Customs Act, 1962 and hence the said goods placed under seizure under Section 110 of the Customs Act, 1962 vide panchnama dated 28.09.2023 (**RUD-6**).

5. The following are the legal provisions, which are in general applicable in the present case. The list given herein is indicative and not exhaustive, as the context of legal provisions may otherwise require reference of other legal provisions, reference of which are also to be invited, as and when required:

5.1. The Customs Act, 1962:

- 5.1.1. Section 46 of the Customs Act, 1962
- 5.1.2. Section 111 (f) of the Customs Act, 1962.
- 5.1.3. Section 111 (m) of the Customs Act, 1962.
- 5.1.4. Section 112 of the Customs Act, 1962
- 5.1.5. Section 117 of the Customs Act, 1962

5.2. The SEZ Act, 2005& SEZ Rules, 2006

- 5.2.1 Section 15(9) of the SEZ Act, 2005.
- 5.2.2 Rule 18 of the SEZ Rules, 2006.
- 5.2.3 Rule 27(10) of the SEZ Rules, 2006.
- 5.2.4 Rule 29(1) of the SEZ Rules, 2006.
- 5.2.5 Rule 29(2) of the SEZ Rules, 2006.

6. Whereas, Section 17 of the Customs Act, 1962 provides for self-assessment of duty on imported and export goods by the importer and exporter himself by filing a bill of entry or shipping bill, as the case may be. Under self-assessment the importer or exporter has to ensure correct description/classification, applicable rate of duty, value and exemption notifications, if any, in respect of imported / export goods while presenting bill of entry or shipping bill. Further, Rule 75 of the SEZ Rules, 2006 also provides that unless and otherwise specified in these rules all inward or outward movements of the goods into or from SEZ by the Unit/Developer shall be based on self-declaration made by the Unit/Developer.

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While importing subject goods, the said SEZ unit and their DTA client were bound for true and correct declaration and assessment. As the said SEZ unit was engaged in business of providing warehousing services in respect of subject goods, they were fully aware of specifications, characteristics, nature and description of the goods imported and warehoused on behalf of DTA client. From the above, it is evident that the said SEZ unit and the said DTA client deliberately suppressed specifications, characteristics, nature and description of the goods and wrongly declared the classification and description of said product/goods.

7. Whereas, as per Section 46(4A) of the Customs Act, 1962, the importer, who is presenting the bill of entry should ensure the accuracy and completeness of the information given therein, the authenticity and validity of any document supporting it; and compliance with the restriction or prohibition, if any, relating to the goods under the Customs Act, 1962 or under any other law for the time being in force. Apparently, it appears the said SEZ unit and said DTA client has violated the provisions of Section 46(4A) by way of mis-declaring the subject goods as detailed in foregoing paras. Such indulgence and endeavor on the part of their part are in violation of the provisions of Section 46 of the Customs Act, 1962, irrespective of the importability of the impugned goods and other aspects involved in the case, which makes the impugned goods liable for confiscation in terms of Section 111(f) and 111(m) of the Customs Act, 1962 and said SEZ unit and their DTA client liable for penalty under Section 112/114A and Section 117 of the Customs Act, 1962.

8. Charging Paras

8.1. Now, therefore, the DTA client/Importer, namely, M/s Worldwide Exim Overseas Network (IEC NO: FWPPM6566P), 208 Bharat Chamber, 52/C, Baroda Street, Musjid Bunder East, Mumbai, Maharashtra 400009, is hereby called upon to Show Cause to the Additional Commissioner of Customs having his office situated at Customs House, Near Balaji temple, Kandla, District Kutch within 30 days from the receipt of this notice as to why:

- a. The classification of 3800kg of the imported goods declared as "LLDPE Agglomerates" under Customs Tariff Item 39011010 of the Customs Tariff Act, 1975, in the Bills of Entry no. 1001430 dated 01.02.2022, should not be rejected and re-classified as "LDPE (cut bits/ pellets)" under Customs Tariff item 39011020;
- b. The classification of 2875kg of the imported goods declared as "LLDPE Agglomerates" under Customs Tariff Item 39011010 of the Customs Tariff Act, 1975, in the Bills of Entry no. 1001430 dated 01.02.2022, should not be rejected and re-classified as "Lumps-Others" under Customs Tariff item 39011090;
- c. The mis-declared goods mentioned at Sr. No. 2 & 3 of Table-II above should not be held liable for confiscation under section 111(f) and 111(m) of the Customs Act, 1962;
- d. Penalty under Section 112 of the Customs Act, 1962 should not be imposed on them for reasons discussed above.
- e. Penalty under Section 117 of the Customs Act, 1962 should not be imposed on the importer for the reasons discussed above.

8.2. Now, therefore, the SEZ Unit, namely, M/s. Sunrise International (Unit-II), Shed No. 306-307, Sector-III, Kandla Special Economic Zone, Gandhidham is hereby called upon to Show Cause to the Additional Commissioner of Customs having his office situated at Customs House, Near Balaji temple, Kandla, District Kutch within 30 days from the receipt of this notice as to why:

- a. The classification of 3800kg of the imported goods declared as "LLDPE Agglomerates" under Customs Tariff Item 39011010 of the Customs Tariff Act, 1975, in the Bills of Entry no. 1001430 dated 01.02.2022, should not be rejected and re-classified as "LDPE (cut bits/ pellets)" under Customs Tariff item 39011020;

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- b. The classification of 2875kg of the imported goods declared as "LLDPE Agglomerates" under Customs Tariff Item 39011010 of the Customs Tariff Act, 1975, in the Bills of Entry no. 1001430 dated 01.02.2022, should not be rejected and re-classified as "Lumps-Others" under Customs Tariff item 39011090;
- c. The mis-declared goods mentioned at Sr. No. 2 & 3 of Table-II above should not be held liable for confiscation under section 111(f) and 111(m) of the Customs Act, 1962;
- d. Penalty under Section 112 of the Customs Act, 1962 should not be imposed on them for reasons discussed above.
- e. Penalty under Section 117 of the Customs Act, 1962 should not be imposed on the importer for the reasons discussed above.
- f. Bond-cum-Legal Undertaking in Form-H furnished by the said SEZ Unit should not be enforced towards the duty and other liabilities arising out of subject goods removed from the said SEZ unit to DTA as detailed in Annexure-A.

9. The Notices are directed to mention in their reply to this notice whether they wish to be heard in person before the case is adjudicated. If no cause is shown against the action proposed to be taken or they do not appear in person before the adjudicating authority when the case is posted for hearing, the case will be decided ex-parte on the basis of evidence available on record.

11. Further, the notices are advised to mention their email address in writing for virtual hearing as per CBIC's Instruction dated 21.08.2020 issued vide F.No. 390/Misc/3/2019-JC.

12. The list of relied upon documents (RUDs) in this case is as per Annexure-R.

13. This notice is issued without prejudice to any other action that may be taken against the said Noticees or any other person(s) concerned with the said act(s) of commission(s) and omission(s), whether mentioned hereinabove or not under the provisions of Customs Act, 1962 and the rules framed there under, and/or any other laws for the time being in force.

(Dev Prakash Bamanawat)
Additional Commissioner of Customs
Custom House, Kandla

To,

- i. M/s. Sunrise International (Unit-II), Shed No. 306-307, Sector-III, Kandla Special Economic Zone, Gandhidham.
- ii. M/s Worldwide Exim Overseas Network (IEC NO: FWPPM6566P), 208 Bharat Chamber, 52/C, Baroda Street, Musjid Bunder East, Mumbai, Maharashtra 400009.

Copy to: -

1. The Development Commissioner, Kandla Special Economic Zone, Gandhidham, Kutch.
2. The Commissioner of Customs, Kandla.
3. Guard File.

Annexure-R

(List of Relied Upon Documents)

- RUD-1: Copy of LOA.
- RUD-2: Copy of Bill of Entry along with supporting documents.
- RUD-3: Copy of Panchanama dated 05.02.2022.
- RUD-4: Copies of Test Memos No. 165 to 171 along with respective Test Reports.
- RUD-5: Copy of Statement dated 03.03.2022 of Shri Rahul Chetan Mehta, proprietor of DTA client firm, namely, M/s. Worldwide Exim Overseas Network, Mumbai.
- RUD-6: copy of Panchnama dated 28.09.2023.