



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

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DIN - 20250971MN000000FCB4

क	फ़ाइल संख्या FILE NO.	S/49-81/CUS/MUN/2024-25
ख	अपील आदेश संख्या ORDER-IN-APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962)	MUN-CUSTM-000-APP-188 -25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	19.09.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN-ORIGINAL NO.	Order-in-Original no. MCH/ADC/AK/285/2023-24 dated 01.04.2024
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	19.09.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s Delhi Scrap, Arti Ind Estate ST-1, Plot No. 24, Mahika Marg, B/H Manda, Rajkot-360002



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल.
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो.
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी.
(c)	Payment of drawback as provided in Chapter X of Customs Act, 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए.
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रुपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the



	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रूपए	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में है, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा ।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal-	
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or	
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	



ORDER-IN-APPEAL

Appeal has been filed by M/s Delhi Scrap, Arti Ind Estate ST-1, Plot No. 24, Mahika Marg, B/H Manda, Rajkot-360002, (hereinafter referred to as the 'Appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/AK/285/2023-24 dated 01.04.2024 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner, Customs House, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant filed the following Bill of Entry for import of "Aluminium Scrap Tense As per ISRI" at Mundra Port through their CHA M/s Shakti Forwarders Pvt Ltd:

TABLE-A

Sr. No.	Bill of entry No. and Date	Country of Origin	Description of goods	Value of goods in Rs.	Duty (in Rs.)
1	9343342 dated 21.12.2023	UAE	Aluminium Scrap Tense As per ISRI	25,89,803/-	5,50,204/-
			Total	25,89,803/-	5,50,204/-

2.1 On the basis of an intelligence gathered by the officers of CIU, Custom House, Mundra, the cargo covered under the said Bill of Entry was put on hold for detailed examination. Examination of the goods covered under the said Bill of Entry was carried out by the officers of CIU, Custom House Mundra alongwith empanelled Chartered Engineer Shri Anwar Y. Kukad under Panchnama dated 23.01.2024 drawn at M/s Transworld Terminals Pvt Limited (Unit-II) (earlier known as 'TG Terminals), CFS, Mundra. Empanelled Chartered Engineer Shri Anwar Y. Kukad submitted inspection cum valuation report No. AYK:INSP:02086:2023 dated 23.01.2024 through email dated 30.01.2024 wherein he reported that the material was Scrap: (i) HMS Scrap, (ii) Aluminium Scrap Tense as per ISRI and (iii) Copper Scrap Birch only. He further reported that the consignment could not be reconditioned for conversion at all for re-use again and that these items at best could be melted for any further process for use and hence these were only HMS Scrap, Aluminium Scrap Tense and Copper Scrap Birch for melting purpose. He further reported that that there were 18% HMS Scrap, 79% Aluminium Scrap Tense and 3% Copper Scrap Birch in Ratio.



The Chartered Engineer vide the said inspection cum valuation report also worked out the valuation of the consignment considering the prevailing market rate as detailed below: -

TABLE-B

SR NO.	DESCRIPTION	WEIGHT IN KG.	%	Rate per Kg in Rs.	TOTAL AMOUNT RS.
1	HMS (HEAVY MELTING SCRAP)	3676	18%	50	1,74,150/-
2	ALUMINIUM SCRAP TENSE	15093	79%	134	20,48,391/-
3	COPPER SCRAP BIRCH	581	3%	650	3,77,325/-
	TOTAL	19350	100%		25,99,866/-

2.2 On going through the said report submitted by the empanelled Chartered Engineer Shri Anwar Y. Kukad, it appeared that the Importer had mis-declared the description and quantity of the goods. A statement of Mr. Bevaliya Sikandar Habibbhai, Proprietor of the Importer M/s. Delhi Scrap was recorded on 31.01.2024. In his statement, Mr. Bevaliya Sikandar Habibbhai agreed with the inspection and valuation report submitted by the empanelled Chartered Engineer and also stated that goods covered under said Bill of Entry No. 9343342 dated 21.12.2023 were imported from UAE after confirming with the supplier with the fact that major part of the goods were Aluminium Scrap and they had also received documents accordingly. Mr. Bevaliya Sikandar Habibbhai further submitted that they had knowledge regarding ban on export of HMS from UAE and after examination of the goods & upon going through the inspection cum valuation report submitted by the Empanelled Charter Engineer, he agreed that there were 18% HMS Scrap, 79% Aluminium Scrap Tense and 3% Copper Scrap Birch in Ratio. Mr. Bevaliya Sikandar Habibbhai further submitted that there was no intention to make false declaration and evade any duty.

2.3 It appeared that the goods imported by the Importer covered under Bill of Entry No. 9343342 dated 21.12.2023 actually consisted of 18% HMS Scrap, 79% Aluminium Scrap Tense and 3% Copper Scrap Birch, thus, the Importer mis-declared the description of the goods as 'Aluminium Scrap Tense' only and they also mis-declared the quantity as well as value of the goods. Further, the Government Empanelled Chartered Engineer confirmed the actual value of the goods as Rs. 25,99,866/- as mentioned in Table-B. Therefore, the goods covered under Bill of Entry No. 9343342 dated 21.12.2023 were liable for confiscation under section 111(l) and 111(m) of the Customs Act, 1962 and accordingly, as per the provisions of the Section 110 of the Customs Act, 1962,



the said goods imported vide Bill of Entry No. 9343342 dated 21.12.2023 were seized vide Seizure Memo dated 12.02.2024. Thereafter, the case file was transferred to the SIIB Section, Custom House, Mundra vide letter dated 14.02.2024 for further necessary action. In view of the investigation carried out by the CIU, Custom House, Mundra, it appeared that the impugned goods had been imported by the importer by way of manipulating the relevant import documents viz. Invoice, Packing List, Bill of Lading etc. including the Pre-shipment Inspection Certificate (PSIC) to show the description of the goods as 'Aluminium Scrap Tense' instead of 18% HMS Scrap, 79% Aluminium Scrap Tense and 3% Copper Scrap Birch in Ratio. It further appeared that the mis-declaration was only to dodge the restriction of export of HMS Scrap from UAE. Accordingly, it appeared that the Importer had mis-declared the description, quantity and value of the impugned goods, therefore, the said goods appeared to be liable for confiscation under Section 111(l) and 111(m) of the Customs Act, 1962. In the inspection cum valuation report No. AYK:INSP:02086:2023 dated 23.01.2024, discrepancy in calculation of Total Amount was noticed, therefore, the empanelled Chartered Engineer Shri Anwar Y. Kukad has submitted revised inspection cum valuation report No. AYK:INSP:02086:2023 dated 29.02.2024 wherein he has confirmed the Rate per Kg, Total Amount and the Ratio of all the three goods, however, the quantity/weight of the goods has been revised in accordance to the ratio viz. 18% HMS Scrap, 79% Aluminium Scrap Tense and 3% Copper Scrap Birch. Accordingly, the CE vide revised inspection cum valuation report, has re-worked the quantification and valuation of the consignment considering the above ratio and prevailing market rate as detailed below: -

TABLE-C

SR NO.	DESCRIPTION	WEIGHT IN KG.	%	Rate per Kg in Rs.	TOTAL AMOUNT RS.
1	HMS (HEAVY MELTING SCRAP)	3483	18%	50	1,74,150/-
2	ALUMINIUM SCRAP TENSE	15286.5	79%	134	20,48,391/-
3	COPPER SCRAP BIRCH	580.5	3%	650	3,77,325/-
	TOTAL	19350	100%		25,99,866/-

2.4 The Chartered Engineer vide his reports dated 23.01.2024 and 29.02.2024 (revised) has reported that the value of the goods covered under Bill of Entry No. 9343342 dated 21.12.2023 is Rs. 25,99,866/- whereas the Importer mis-declared the value of the imported goods as Rs.25,89,803/-, which appeared to be on a lower side. In terms of Section 46(4) of the Customs Act, 1962, the Importer of any goods is required to make and subscribe to a declaration to the

truth of the contents of such Bill of Entry. Proprietor of the importer in his statement dated 31.01.2024 agreed with the re-determination of the value of the goods as per the report of the Chartered Engineer.

2.5 Valuation of imported goods for the purposes of calculation of Customs duties is governed by the provisions of Section 14 of the Customs Act, 1962. Further, the Customs Valuation Rules (Determination of Price of imported goods) 2007 (here-in-after referred to as the 'CVR, 2007'), having been framed under the provisions of Section 14, provide for determination of value in a variety of situations. More specifically, Rule 12 of Customs Valuation (Determination of Value of Imported goods) Rules, 2007 provides for rejection of the declared value when there is a doubt that the declared value does not represent the true transaction value. The declared value can also be rejected in case the parameters such as description, quantity, country of origin, brand, grade, specification etc., that have relevance to the value, are mis-declared. Further, Rule 3 of the CVR, 2007 provides that subject to Rule 12, value of the goods shall be the Transaction Value adjusted in accordance with Rule 10.....". Rule 12 of the CVR, 2007, in turn, provides that 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 the 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. Further, as per Rule 3 (4), "If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rules 4 to 9".

2.6 Thus, in terms of Rule 12 of the said CVR, 2007, value declared by an importer can be rejected in certain circumstances. Explanation (i) to the said Rule 12 ibid lists out certain reasons based upon which the proper officer has the powers to raise doubts on the accuracy of the declared value. Mis-declaration of the description of the goods is one such reason. In the impugned imports, the description of the goods has been mis- declared inasmuch as that the "18% HMS Scrap, 79% Aluminium Scrap Tense and 3% Copper Scrap Birch" has been mis-declared as "Aluminium Scrap Tense As per ISRI". Thus, it appeared that the description of the goods has been wilfully mis-declared to camouflage the actual description and values. It, therefore, appeared that 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. As per Rule 4 of the CVR, 2007, subject to the provisions of Rule 3, the value of imported goods shall be the Transaction Value of identical goods sold for export to India and imported at or about the same time as the goods being valued, subject to certain conditions and parameters. 'Identical goods' are defined as those imported goods which are same in all respects including physical characteristics, quality, reputation as the goods being valued except for minor differences in appearance that do not affect value of the goods. Further, as per Rule 5 of the CVR, 2007, value of imported goods shall be the Transaction Value of similar goods sold for export to India and imported at or about the same time as the goods being valued, subject to certain conditions and parameters. Scrutiny of import data available in the Customs database reveals that there are no contemporaneous imports of consignments of "18% HMS Scrap, 79% Aluminium Scrap Tense and 3% Copper Scrap Birch". Accordingly, value of the subject goods cannot be determined under Rule 4 or 5 of the CVR, 2007. In these cases, under the provisions of Rule 3 of the CVR, 2007, the transaction value is liable to be re-determined by proceeding sequentially through Rules 6 to 9.

2.7 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. As per Rule 7 of the CVR, 2007, subject to the provisions of Rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported, at or about the time at which the declaration for determination of value is presented, the value of the imported goods shall be based on the unit price at which the imported goods/identical goods/similar goods are sold in India in the greatest aggregate quantity to persons who are not related to the sellers subject to certain deductions. However, in absence of reliable data of sale of such goods to persons who are not related to the sellers in India, the value of the subject goods cannot be determined under the said Rule 7. As per Rule 8 of the CVR, 2007, subject to the provisions of Rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of the cost or value of materials and fabrication or other processing employed in producing the imported goods and an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or



kind as the goods being valued which are made by producers in the country of exportation for export to India. In the instant case, 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. Rule 9 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.

2.8 In the present case, 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, the Chartered Engineer vide his reports dated 23.01.2024 and 29.02.2024 (revised) has reported that the value of the goods covered under Bill of Entry No. 9343342 dated 21.12.2023 is Rs. 25,99,866/- Proprietor of the importer in his statement dated 31.01.2024 agreed with the re-determination of the value of the goods as per the report of the Chartered Engineer. It therefore appeared that these prices can be considered to be the fair value of the goods imported and liable to be taken for arriving at the Customs duty payable. This appeared to be consistent with the provisions of Rule 9 of the CVR, 2007. These re-determined values are accordingly proposed to be adopted for the purpose of assessment to duty. 11. Further, the applicable Customs duty on the impugned goods is calculated as detailed below:

TABLE-D

St. N O.	Description	Total Value	BCD Tariff rate	Effective rate of BCD	BCD	SWS @10% of BCD	IGST 18%.	Total Duty
1	IIMS (HEAVY MELTING SCRAP) (CTH-72044900)	1,74,150	2.50%	0% (Nilin 50/2017 -Cus. -Sl. No. 368)	0	0.001	31,347.00	31,347.00
2	ALUMINIUM SCRAP TENSE (CTH-76020010)	20,48,391	2.50%	2.50%	51,209.78	5,120.98	3,78,849.92	4,35,180.68
3	COPPER SCRAP BIRCH (CTH-74040012)	3,77,325	2.50%	2.50%	9,433.13	943.31	69,786.26	80,162.70
	TOTAL	25,99,866			60,642.91	6,064.29	4,79,983.18	5,46,690.38

2.9

In view of above, it appeared that, the total duty calculated on the



value arrived as per the report of the Chartered Engineer comes to Rs. 5,46,690.38/- (Rupees Five Lakh Forty Six Thousand Six Hundred Ninety and Paise Thirty Eight only). Hence, it appeared that false declaration about the description, quantity and value of the goods imported by the Importer has been presented before the department, thus making the impugned goods liable for confiscation under Section 111 (1) and 111 (m) of the Customs Act, 1962. As the goods liable for confiscation under Section 111(1) and 111(m) of Customs Act, 1962, the importer appeared to be liable for penal action under Section 112(a)(ii) of the Customs Act, 1962.

2.10 The appellant vide their letter dated 31.01.2024 submitted that they do not want any Show Cause Notice and Personal Hearing in this matter. The appellant vide their letter dated 01.03.2024 further submitted that they were ready to pay Custom duty on 18% HMS Scrap, 79% Aluminium Scrap Tense and 3% Copper Scrap Birch. The appellant vide letter dated 05.03.2024 reiterated the above submissions and requested to impose minimum fine and penalty.

2.11 Consequently, the Adjudicating Authority passed the following order:

- i. He rejected the declared transaction value of Rs. 25,89,803/- of the goods imported vide Bill of Entry No. 9343342 dated 21.12.2023 under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods), Rule, 2007 read with Section 14 of the Customs Act, 1962. He ordered to re-determine the same as Rs. 25,99,866/- on the basis of reports dated 23.01.2024 and 29.02.2024 (revised) of Chartered Engineer under Rule 9 of the CVR, 2007 read with Section 14 of the Customs Act, 1962. He ordered re-assessment of the goods imported vide Bill of Entry No. 9343342 dated 21.12.2023 accordingly including amendment of description, quantity and value of the goods.
- ii. He ordered for confiscation of the goods imported vide Bill of Entry No. 9343342 dated 21.12.2023 under Section 111(l) and 111 (m) of the Customs Act, 1962. However, he gave an option to the Importer M/s Delhi Scrap to re-deem the goods under provisions of Section 125 of Customs Act, 1962 on payment of Redemption Fine of Rs.3,50,000/- (Rs. Three Lakh Fifty Thousand only).




- iii. He ordered to impose a penalty of Rs. 5,000/- (Rs Five thousand Only) on the Importer M/s Delhi Scrap under Section 112a(ii) of Customs Act, 1962.
- iv. He further ordered that the goods imported vide Bill of Entry No. 9343342 dated 21.12.2023 are to be released only after payment of applicable duties, Redemption Fine and Penalty as above.

3. SUBMISSIONS OF THE APPELLANT:

Being aggrieved with the impugned order, the Appellant has filed the present appeals wherein they have submitted grounds which are as under:-

3.1 The appellant submits that it is on records and admitted fact that during the investigation process, a statement of Shri Shikandar Habibbhai Bevaliya, Proprietor of the appellant was recorded, however, copy of said statement was not provided to the appellant to defend the case. Further, as per the Para 15 of the OIO in the "Discussion and Finding", there is mention of Investigation Report No. 66/2023-24 dated 01.03.2024 (revised), however, no copy of said Investigation Report No. 66/2023-24 dated 01.03.2024, has been provided to the appellant to defend the case. As per the OIO, there are two Inspection-cum-Valuation Report issued by Shri Anwar Y Kukad: (i) Inspection-cum-Valuation Report NO. AYK:INSP:02086:2023 dated 23.01.2024, (ii) Inspection-cum-Valuation Report NO. AYK:INSP:02086:2023 dated 29.02.2024. The appellant submits that the department has not provided copy of above Reports issued by the Chartered Engineer. The whole case has been decided by the adjudicating authority without providing copy of Chartered Engineer's report(s), statement of partner of the appellant.

3.2 The appellant further submits that the adjudicating authority, in the Para 15 of the OIO, has referred to the appellant's letters dated 31.01.2024, 01.03.2024 and 05.03.2024, wherein the appellant has waived the issuance of SCN and personal hearing. The appellant submits that in fact, these letters dated 31.01.2024, 01.03.2024 and 05.03.2024, were originally addressed either to the Deputy Commissioner of Customs (SIIB) and Deputy Commissioner of Customs (Gr-IV), of the Custom House Mundra. In other words, the appellant has never



addressed any letter to the adjudicating authority (Additional Commissioner of Customs) for waiver of SCN and personal hearing. So far as the appellant's requested for waiver of SCN and personal hearing before the Deputy Commissioner (CIU) and the Deputy Commissioner (Gr.- IV), was due to reason that the value of detention was just equal to the value of the goods and it was not possible for the appellant, who is a small trader, to bear such a huge loss. Therefore, the appellant submits that the order passed by the adjudicating authority should to be set aside on this sole ground alone for not following the principals of natural justice.

3.3 In support of their submission, the appellant relies upon decision of Hon'ble CESTAT in the case of M/s PERFECT CARGO AND LOGISTICS Vs COMMISSIONER OF CUSTOMS, reported in 2022-TIOL-320- CESTAT-DEL:

"12. In this case, there are no details in the SCN or in the inquiry report or in the impugned order as to how the DGARM came to the conclusion that the exporters did not exist and how after considering the defence submissions, the Commissioner came to a conclusion that the appellant had violated Regulation 10(n) of CBLR, 2018. This case has been made and the licence has been revoked not only taking the alleged communication from DGARM as conclusive proof that the exporters did not exist but also inferring from it that the appellant has not conducted the verification as per Regulation 10(n) of CBLR, 2018. The SCN did not even supply a copy of the communication from the DGARM to the appellant, let alone the details of its inquiries which led to the conclusion that the exporters did not exist. The entire case, therefore, is not built on conclusive evidence.

13. We are surprised that the Commissioner found it proper to deprive the appellant and its employees of their livelihood in such a casual and callous manner. The impugned order cannot be sustained and needs to be set aside."

3.4 Above case law is applicable mutatis mutandis in the instant case as the department has not supplied copy of Chartered Engineer's Report(s), copy of statement of the partner of the appellant, Investigation Report No. 66/2023-24 dated 01.03.2024. Further, case has been decided without issuance of show cause notice and personal hearing. The appellant has never asked the adjudicating authority (Additional Commissioner) not to issue SCN and personal




hearing in the instant case. Thus, there is gross violation of principal of natural justice. B.2 Reliance placed on Inspection Report(s) of Shri Anwar Y Kukad is legally wrong: B.2.1 Your kind attention is invited towards Public Notice No. 11/2021 dated 10.11.2021, issued by the Commissioner of Customs, Custom House, Mundra. As per the said Public Notice, Shri Anwar J Kukad, Chartere Engineer has been empanelled as Charter Engineer for valuation of Second Hand Machineries, Electrical and Electronic goods, Metal Scrap, Chemical, Textile and Engineering Goods, General Mercandise etc. Further, as per the Public Notice, the educational qualification of Shri Kukad is BE (Mech.), CE.

3.5 Shri Anwar Kukad in his Inspection-cum-Valuation Report NO. AYK:INSP:02086:2023 dated 23.01.2024, inter alia, reported that the material was: (i) 79% Aluminium Scrap Tense as per ISRI, (ii) 18% HMS Scrap and (iii) 3% Copper Scrap Birch. The appellant submits that nothing has been mentioned in the OIO about as to how Shri Anwar Kukad ascertained the grade of Copper Scrap as "Birch" and how he ascertained the HMS mixed with Aluminium Scrap Tense. There is also no mention as to how he ascertained the exact percentage of other scrap i.e., (18% of HMS and 3% of Copper Scrap Birch) mixed with Aluminium Scrap Tense. Shri Kukad is qualified as a mechanical engineer. He is not qualified engineer in Metallurgy. Therefore, reliance placed by the adjudicating authority on the reports of Shri Anwar Kukad is without application of mind.

3.6 In support of above submission, the appellant relies upon the decision of Hon'ble CESTAT in the case of M/s RG GUPTA AND COMPANY Vs COMMISSIONER OF CUSTOMS, LUDHIANA (ICD GRFL, SAHNEWAL, LUDHIANA, PUNJAB) reported in 2020- TIOL-1485-CESTAT-CHD.

3.7 It is on record that the appellant has imported the "SCRAP" and not a finished goods. The scrap can never be 100% in pure form. It always consist of some other impurities. Therefore, if there are some attachment of other metals, viz., HMS and copper with pre- dominant metal Aluminum Tense, it is always permissible for import. It is on record that there are two Inspection Report of the Chartered Engineer. The department has admitted that both the reports as correct and taken on records. "Inspection Report Number of both the reports are same but issued on different dates, i.e., 23.01.2024 and 29.02.2024. The adjudicating authority has not negated the earlier report of the CE, before relying upon the later report. Therefore, the appellant submits that reliance on both the



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Inspection Report for same goods without giving any cogent findings is legally wrong. In view of the above, the appellant submits that the order passed by the adjudicating authority by placing reliance on the Reports of Shri Anwar Kukad should to be set aside on this sole ground alone.

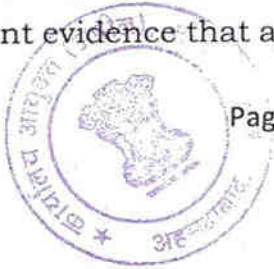
3.8 The department has assessed the value of the goods on market value ascertained by the Chartered Engineer, which is as under:

SR NO.	DESCRIPTION	WEIGHT IN KG.	%	Rate per Kg in Rs.	TOTAL AMOUNT RS.
1	HMS (HEAVY MELTING SCRAP)	3483	18%	50	1,74,150/-
2	ALUMINIUM SCRAP TENSE	15286.5	79%	134	20,48,391/-
3	COPPER SCRAP BIRCH	580.5	3%	650	3,77,325/-
	TOTAL	19350	100%		25,99,866/-

It is submitted that Indian market value of scrap cannot be the base to ascertain the value of imported goods. In the international market value of the impugned goods is as under:

Sr. No.	Description	Value in international Value market (per kg in Rs.)
1	HMS	30/-
2	Aluminium Scrap Tense	90/-
3	Copper Scrap Birch	550/-

The value of the copper has to be ascertained only on the basis of LME. The appellant submits that the department failed to ascertain the value of the impugned goods on the basis of "Internationally Accepted Norms". Re-assessment of bill of entry has caused revenue loss to the government: The appellant submits that they have assessed the value of the impugned goods as Rs. 25,89,803/- and applicable Customs duty is calculated as Rs. 5,50,204/-. However, after re-assessment by the adjudicating authority, the Customs duty comes to Rs. 5,46,690.38/-. Thus, there is loss of Customs duty Rs. 3,514/- to the government after re-assessment of the bill of entry. In view of the above, the appellant submits that the adjudicating authority has erred in relying upon the Valuation-cum-Inspection Report(s) of Shri Anwar J Kukad, Chartered Engineer and re-assessment of goods under rule 9 of the Customs Valuation (Redetermination of Value of Imported Goods), Rules, 2007. Thus, the adjudication order is full of infirmities and without any cogent evidence, and as such, it is not sustainable under Law. There is no cogent evidence that appellant



has mis-declared the description of goods, therefore, confiscation of goods under section 111(1) and (m) of the Customs Act, 1962 does not survive. Hence penalty imposed on appellant under section 112(a)(i) of the Customs Act, 1962 is also requires to be set aside.

PERSONAL HEARING:

4. Personal hearing was granted to the Appellant on 27.05.2025, 12.06.2025, 24.06.2025 and 02.07.2025, following the principles of natural justice. However, no one appeared for personal hearing on the given dates. A copy of the appeal memorandum was also send to the jurisdictional authority for comments. However no response has been received. Hence I proceed to decide the case on the basis of available records

DISCUSSION AND FINDINGS:

5. I have carefully gone through the case records, impugned order passed by the Additional Commissioner, Customs House, Mundra and the defense put forth by the Appellant in their appeal.

5.1 On going through the material on record, I find that the following issues need to be addressed:

- (i) Whether the delay of 18 days in filing the appeal should be condoned.
- (ii) Whether the rejection of the declared transaction value and its re-determination are legally sustainable.
- (iii) Whether the reliance on the Chartered Engineer's report for re-determination of value is legally correct.
- (iv) Whether the principles of natural justice were violated.
- (v) Whether the confiscation of goods and imposition of redemption fine and penalty are justified.

5.2 The Appellant has sought condonation of a delay of 12 days in filing appeal beyond the maximum permissible period of 60 days. I find that the appeal has been filed actually with a delay of 18 days and not 12 days which is wrongly



mentioned by the appellant. The reason cited is that appellant is ignorant of procedure of filing of appeal before the Appellant Authority and hence the appellant was in search of proper Advocate to draft the appeal and to file it in proper manner. Section 128 of the Customs Act, 1962, provides for a period of sixty days for filing an appeal, with a further grace period of thirty days if sufficient cause is shown for the delay. In this case, the appeal was filed with a delay of eighteen days beyond the initial sixty-day period, but within the extended thirty-day period. The Appellant has attributed the delay to ignorance of procedure of filing of appeal and searching for proper Advocate. While parties are expected to exercise due diligence, minor delays attributable to administrative oversights, especially when the appellant acts promptly upon discovering the issue, are generally condoned by appellate authorities to ensure that justice is not denied on mere technicalities. Considering the explanation provided, which indicates no deliberate inaction or gross negligence, I find that the Appellant has shown "sufficient cause" for the delay. Therefore, the miscellaneous application for condonation of delay is allowed in the interest of natural justice.

5.3 The Appellant declared the goods as "Aluminium Scrap Tense as per ISRI." However, the Chartered Engineer's report, based on inspection and valuation, clearly established that the consignment consisted of 18% HMS Scrap, 79% Aluminium Scrap Tense, and 3% Copper Scrap Birch. The composition of metal scrap is a crucial "material particular" as it directly impacts the classification, assessable value, and applicable duties. Declaring a pure form (or a different composition) when the actual goods are a mixture with varying proportions of different metals/scraps constitutes a material mis-declaration. Even if "Aluminium Scrap Tense" is not 100% pure, declaring it as such without specifying the other components and their proportions, especially when they are significant (18% HMS, 3% Copper), is a misrepresentation of the goods. The Appellant's argument that "Aluminium Scrap Tense" is not 100% pure does not negate the fact that the declared composition was different from the actual composition as found by the expert. The Bill of Entry should reflect the true nature of the goods. Therefore, the finding of material mis-declaration of the description and composition of the imported goods is upheld.

5.4 The adjudicating authority rejected the declared transaction value of ₹25,89,803/- under Rule 12 of CVR, 2007. This is legally sound. When the




goods imported are found to be materially different from what was declared (i.e., the description and composition are mis-declared), the declared transaction value cannot be accepted as it does not relate to the goods actually imported. The very basis of the transaction value (Rule 3) is that it is the price paid or payable for the goods actually imported. The value was re-determined at ₹25,99,866/- based on the Chartered Engineer's report. This re-determination was done under Rule 9 (residual method) of CVR, 2007. Rule 9 allows for valuation by reasonable means consistent with the principles and general provisions of the CVR, when other methods (Rules 4-8) cannot be applied. Given that the actual composition of the scrap was determined by an expert, using that expert's valuation based on market prices for such a composition is a reasonable means.

5.5 The slight discrepancy in the re-determined value mentioned in the OIO (₹25,89,803/- vs ₹25,99,866/-) is a minor factual error in the text of the order and does not invalidate the principle of re-determination based on the correct composition. The higher value of ₹25,99,866/- was consistently used in the calculation of duty and penalties. Therefore, the rejection of the declared transaction value and its re-determination based on the actual composition of the goods are legally sustainable.

5.6 The Appellant challenged the reliance on Shri Anwar Y. Kukad's report, arguing he was not qualified in metallurgy and his empaneled scope did not specifically cover Aluminium Scrap. Public Notice No. 11/2021 dated 10.11.2021 clearly states that Shri Anwar Y. Kukad is empaneled as a Chartered Engineer for valuation of "Metal Scrap". Aluminium scrap is indeed a type of metal scrap. While he may not be a metallurgist, a Chartered Engineer empaneled for "Metal Scrap" is generally considered competent to assess and value various types of scrap, especially when the report details the composition and market rates. The Appellant's argument about the CE's specific qualification in metallurgy or the exact wording of his empaneled scope is a narrow interpretation. The broad category of "Metal Scrap" under which he is empaneled is sufficient. Furthermore, the Appellant's own letters (31.01.2024, 01.03.2024, 05.03.2024) indicate their acceptance of the revised composition and willingness to pay duty on it, which implicitly acknowledges the findings of the Chartered Engineer's report. Therefore, the reliance on the Chartered Engineer's report for re-determination of value is legally correct and justified.



5.7 The Appellant claims violation of natural justice due to non-provision of investigation reports and CE reports, and that their waiver of SCN/PH was only for release, not for value enhancement.

- i. Waiver and Subsequent Conduct: The Appellant, through multiple letters, explicitly stated that they did not want an SCN or PH and agreed to pay duty on the revised composition. This constitutes a clear waiver of their right to SCN and PH. While they now claim it was only for "release" and not "value enhancement," the revised composition inherently leads to value enhancement. By agreeing to pay duty on the revised composition, they implicitly accepted the re-valuation based on that composition.
- ii. Opportunity to Appeal: Even if there was a procedural lapse in not providing the reports before the impugned order, the Appellant has had a full opportunity to present their arguments and contest all findings, including the valuation and the CE report, before this appellate authority. The right to appeal serves as a significant safeguard against any initial procedural infirmities. While the rejection of transaction value was justified due to mis-declaration of goods, the Appellant's subsequent waiver of SCN/PH and their current appeal fully address any potential natural justice concerns.

Therefore, the principles of natural justice were not violated in a manner that would vitiate the entire proceedings, especially given the Appellant's waiver of SCN/PH and their subsequent opportunity to appeal.

5.8 Since there was a material mis-declaration of the description and composition of the imported goods, they are clearly liable for confiscation under Section 111(l) (goods not corresponding with description in Bill of Entry) and 111(m) (false/incorrect document/declaration) of the Customs Act, 1962. The imposition of a redemption fine of ₹3,50,000/- is legally sustainable as it is an option to redeem confiscated goods. The fine is well within the statutory limit (up to the market price of the goods) and is proportionate to the gravity of the mis-declaration and the potential revenue implication. Section 112(a)(ii) imposes a penalty on any person who does or omits to do any act which would render any goods liable to confiscation. The Appellant's act of filing a Bill of Entry with a



mis-declared description and composition directly rendered the goods liable for confiscation.

5.9 While the Appellant argues lack of intent, the responsibility for accurate declaration lies squarely with the importer. The significant difference in the actual composition of the scrap compared to the declaration, leading to a different valuation and duty, suggests at least gross negligence, which is sufficient to attract penalty under Section 112(a). The Supreme Court in *Union of India vs. Dharmendra Textile Processors* [2008 (231) E.L.T. 3 (S.C.)] clarified that mens rea is essential for imposing penalty, but it can be inferred from the circumstances and the nature of the contravention. The mis-declaration of the very identity/composition of the goods is not a mere technicality.

5.10 The Appellant cited *Hindustan Steel Ltd. vs. State of Orissa* [1978 (2) E.L.T. J159 (SC)] which states that penalty should not be imposed for mere technical breaches without mens rea. However, the mis-declaration of the fundamental nature of the goods (composition of scrap) is not a mere technical breach. It directly impacts revenue and regulatory control. Therefore, the confiscation of goods, imposition of redemption fine, and penalty are legally justified and proportionate.

5.11 In view of the detailed discussions and findings above, this appellate authority concludes that the appeal filed by M/s. Delhi Scrap is not sustainable on merits. In exercise of the powers conferred under Section 128A of the Customs Act, 1962, I pass the following order:



- (i) The finding of material mis-declaration of the imported goods' description and composition, as confirmed by the impugned Order-in-Original No. MCH/ADC/AK/285/2023-24 dated 01.04.2024, is hereby upheld.
- (ii) The rejection of the declared transaction value and its re-determination at ₹25,99,866/-, as confirmed by the impugned order, is hereby upheld.
- (iii) The confiscation of the imported goods under Section 111(l) and 111(m) of the Customs Act, 1962, with an option to pay a redemption fine of ₹3,50,000/-, as confirmed by the impugned order, is hereby upheld.

(iv) The imposition of penalty of ₹5,000/- on the Appellant under Section 112(a)(ii) of the Customs Act, 1962, as confirmed by the impugned order, is hereby upheld.

(v) Any amount deposited by the Appellant towards the confirmed demands, fines, or penalties shall be appropriated accordingly.

6. The appeal filed by M/s. Delhi Scrap is hereby rejected.



सत्यापित/ATTESTED
[Signature]
अधीक्षक/SUPERINTENDENT
सीमा शुल्क (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD.

[Signature]
(AMIT GUPTA)
Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-81/CUS/MUN/2024-25
3657

Date: 19.09.2025

By Registered post A.D/E-Mail

To,
M/s. Delhi Scrap,
Arti Industrial Estate, Plot No. 24,
Mahika Marg, B/h Manda,
Rajkot-360002.

Copy to:

1. The Chief Commissioner of Customs, Ahmedabad zone, Custom House, Ahmedabad.
2. The Principal Commissioner of Customs, Custom House, Mundra.
3. The Additional Commissioner of Customs, Custom House, Mundra.
4. Guard File.