

	<p>प्रधान आयुक्त का कार्यालय, सीमा शुल्क सदन, एमपी और एसईजेड, मुंद्रा, कच्छ-गुजरात -370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MP & SEZ MUNDRA, KUTCH-GUJARAT PHONE : 02838-271426/271428 FAX : 02838-271425</p>	
A	File No.	VIII/06-23/Imp/Gr-2/Adj/2025
B	Order-in-Original No.	MCH/ADC/AKM/307/2024-25
C	Passed by	Amit Kumar Mishra Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	14.02.2025
E	Noticee/Party/Importer/ Exporter	M/s. Palak Paper Mill LLP S. No. 11P2/P1 & 11P2/P2, Gorkhi Jadiya, Near Navlakhi Railway Crossing, Opp. Amerli Village Road, Morbi, Gujarat - 363641
F	DIN No.	20250271MO000071287D

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा

शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

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:

□ सीमा शुल्क आयुक्त (अपील),

चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद-380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA

Having his office at 4th Floor, HUDCO Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad-380 009.”

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य

संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must accompanied by -

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं-6 में

निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

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. अपील जापान के साथ झूटि/ व्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respects.

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्क या शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

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 are in dispute, or penalty, where penalty alone is in dispute.

Brief Facts of the case:

M/s. Palak Paper Mill LLP (IEC: AAUFP9256H) (hereinafter referred to as "the importer" for sake of brevity) having its registered office at S.No. 11P2/P1 & 11P2/P2, Gorkhi Jadiya, Near Navlakhi Railway Crossing, Opp. Amerli Village Road, Morbi, Gujrat-363641, filed the following Bill of Entry for import of Waste Paper-corrugated Containers having CTH 47071000, at Mundra Port:-

TABLE -I

Sr. No.	Bill of entry No. and Date	Country of Origin	Container No.	Description of goods	Value of goods in Rs.	BL Weight (KGs)	Duty in Rs.
1.	5998007 dated 17.05.2023	UAE	FCIU7401685 MSCU5383146 MSDU7983098 SEGU6919128	Waste Paper-corrugated Containers CTH 47071000	17,78,493/-	97.87 MTS	1,40,278/-

2. Whereas, NCTC alert was received with following observation:

Based on a detailed risk analysis, the NCTC has identified a Bill of Entry No. 5998007 dated 17.05.2023 filed by M/s. Palak Paper Mill LLP (IEC NO. AAUFP9256H) to be risky at Custom House Code- INMUN1 in relation to mis-declaration/manipulated documents, misclassification and mis-declaration of COO/PSIC. The alert is reproduced below:-

i. UAE has banned export of Paper scrap/waste under CTH 470710 and 470790. Dubai Customs Notices 08/2022 & 05/2023 - Temporary Suspension of Exports of Ferrous Scrap & Waste Paper are attached. The latest extension of three months is up to 19/06/2023.

ii. On analysis of relevant import data by NCTC, it appears that paper scrap/waste is being imported from UAE, with declared country of origin as UAE, despite the export ban by UAE authorities.

iii. The CTI of the goods declared is 47071000 which squarely fall under the ambit of the export ban notice issued by UAE authorities.

iv. As per Sr. No. (V) of the Ministry of Environment, Forest and Climate Change (MOEFCC) OM dated 10.01.2023, "the imports should be accompanied by a certificate of origin naming the foreign facility from where the material originated, whether it is a single stream waste collection, and a credible pre-paperboard and paper product wastes fall under Part D of Annexure III, which stipulates that import is permitted to the actual user or to the trader on behalf of the actual users authorised by SPCB on one time basis and subject to verification of documents specified in Schedule VIII. Schedule VIII lists out the documents required for import of paper waste, which are:- duly filled up Form 6, Pre-Shipment inspection certificate issued by the inspection agency of the exporting country, or the inspection and certificate agency approved by Directorate General of Foreign Trade, valid consents to operate, chemical analysis report and an acknowledged copy of the annual return filed with concerned State Pollution Control Board. In the absence of these documents, import of waste paper become restricted/prohibited for import.

v. The COO certificate mentioning of the foreign facility from where the material originated, as stipulated in the OM has not been uploaded on e-Sanchit.

vi. The PSIC Certificates uploaded on e-Sanchit have been issued by Asia Inspection Agency Limited. The place of inspection has been declared as Jebel Ali, UAE. As per the list of approved PSIAs, available on the DGFT website, Asia Inspection Agency Limited is an approved PSIA. It also implies that they are bound by Para 2.53(e) of the handbook which places the responsibility of uploading the photographs /video of the inspection conducted on the DGFT website by the PSIA. Neither the photographs/video nor PSICs have been uploaded on the DGFT website. As per Para 2.53(e).

The PSIA will also be required to take photographs or make video of the inspection carried out, duly capturing the following activities/details:

Photograph(s) or video clipping of the place of inspection with PSIA inspector (mandatory) and representatives of exporter / importer, if available (optional); with time, date of the inspection (at least 1 photograph or video clipping);

Photograph(s) or video clipping of the testing instrument(s) used for inspection;

Photograph(s) or video clipping of the process of stuffing of containers showing the container number (at least 1 photograph or video clipping per container).

Photograph(s) or video clipping of the sealing process (at least 1 photograph or video clipping per container).

One Photo of Inspector shall be captured with empty container in the background having only one door closed (door with container number) and container number shall be clearly readable in photo. Another photo of Inspector shall be captured with sealed container with same container number on the door clearly readable.

Photo of Instrument used for Inspection shall be captured along with container seal, having container seal number and instrument serial number, visible in the same photo.

vii. No annual return filed with State Pollution Control Board has been uploaded, which is a necessary requirement under the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016.

viii. Since the export of such goods is banned from UAE, it is highly improbable that the Inspection was carried out in UAE, calling into question the veracity of the document. There is risk of the PSIC being issued without actual inspection, a necessary precondition for issuance of such Certificate.

ix. It appears that this consignment shipped from Jebel Ali UAE would not have been declared as waste paper before Dubai Customs; therefore, this consignment could not have been inspected and stuffed in the declared container as waste paper by the Inspection Agency. As per para 2.53 (a) and (b) of the Handbook, any kind of mis-declaration in PSIC can lead to penal action for the PSIA, Importer and exporter under the Foreign Trade (Development & regulation) Act, 1992, as amended. This mis-declaration can also lead to suspension/cancellation of recognition for the PSIA in question.

x. Based on the documents uploaded and the COO declarations made by the Importer, the goods are prima facie in violation of the MOEFCC OM, FTP and Hazardous And Other Wastes (Management and Transboundary

Movement) Rules, 2016, and consequently are restricted/prohibited for import. In addition, there seems to be misdeclaration of COO as UAE in the BE. It thus appears that the goods could be originating in a third country including Pakistan and are being transhipped via UAE to evade the higher duty (Pakistan, BCD @ 200%) or circumvent the restriction on import/export, aside from being hazardous and safety risks.

3. Enquiry:-

3.1 Whereas, the examination of the said consignment was carried out by the officers of Docks Examination, Custom House, Mundra and examination report in the EDI system is as below:-

Table-II

Bill of Entry No.	Examination Report
5998007 dated 17.05.2023	The examination of goods was done in Hind CFS Pvt. Ltd. on 30.05.2023 under supervision of DC(DE) and Supdt(DE) and in presence of CHA M/s. Pankaj Goyal and Co. During examination goods appears to be as declared i.e., Waste paper-corrugated containers. Further, no marks, numbers and signs have been found indicating the goods being originated from country other than the declared in bill of entry.

3.2 From the dock examination officers report it appears that during the examination there is nothing adverse found regarding the mis-declaration of Country of Origin.

3.3 Further, Importer vide letter Nil dated submitted the all import documents required as per Foreign Trade Policy. (1) Commercial Invoice/Packing list (2) Pre-shipment inspection certificate as per formate to Appendix 2H from Inspection & Certification agencies as given in Appendix-2G i.e Aisa Inspection Agency Limited, Thailand. (3) Bill of lading (4) Form 6, Certificate of Analysis, Pollution Control Certificate etc. and further vide letter dated 04.08.2023 requested to release the cargo on provisionally basis.

3.4 During the scrutiny of import documents submitted by the importer as above mentioned herein above revealed that the Country of Origin of the subject consignment was mentioned as "United Arab Emirates" in the above said Bills of Entry and Port of Loading as Jebel Ali, U.A.E. In below mentioned Pre-Shipment Inspection Certificate, shows the Country of Inspection as UAE, place of Inspection as Jebel Ali, UAE.

Table-III

Sr. No.	Bill of Entry No.	Country of Origin	Place of Inspection	Date of Inspection	PSIC No.
1	5998007 dated 17.05.2023	UAE	Jebel Ali	07.05.2023	GCC-AL-88135-23 Dated 08.05.2023

3.5 Pre-Shipment Inspection report was carried out for this consignment by the Agency approved by the DGFT, Asia Inspection Agency Limited. They have submitted reports as per above table-III and certified that the consignment was checked and found that consignment is actually waste paper as per the internationally acceptable parameters, and there is no putrefiable organic matter in this consignment. The approximately content of Non-Recyclable Material is not more than 1% and there is no municipal solid waste or medical waste or hazardous waste in this consignment.

3.6 The Pre-shipment Inspection Certificate (PSIC) is one of the mandatory documents for the import of Scrap/Waste paper. According to the Ministry of Environment, Forest and Climate (MOEF), Office memorandum F.No. 23/7/2022-HSMD dated 10.01.2023. The importer needs to furnish the credible pre-shipment inspection report based on a bale break report for Customs clearance.

3.7 Relevant provisions for import of Paper Waste/scrap are as under:

Part D of Schedule III of HAZARDOUS AND OTHER WASTES(MANAGEMENT AND TRANSBOUNDARY MOVEMENT), RULES, 2016

SCHEDULE III

[See rules 3 (1) (17) (iii), 3 (23), 12, 13 and 14]

Part D

List of other wastes applicable for import and export without permission from Ministry of Environment, Forest and Climate Change:-

.....

....

B3 Wastes containing principally organic constituents, which may contain metals and inorganic materials

B3020 Paper, paperboard and paper product wastes (Import permitted in the country to the actual user or to the trader on behalf of the actual users authorised by SPCB on one time basis and subject to verification of documents specified in Schedule VIII of these rules by the Custom Authority).

The following materials, provided they are not mixed with hazardous wastes:
Waste and scrap of paper or paperboard of:

- unbleached paper or paperboard or of corrugated paper or paperboard
- other paper or paperboard, made mainly of bleached chemical pulp, not coloured in the mass

- paper or paperboard made mainly of mechanical pulp (for example newspapers, journals and similar printed matter)

- other, including but not limited to

(1) laminated paperboard

(2) unsorted scrap

SCHEDULE VIII

[See rules 13(2) and 13 (4)]

List of documents for verification by Customs for import of other wastes specified in

Part D of Schedule III

B3020 Paper, paperboard and paper product wastes

(a) Duly filled up Form 6 – Movement document;

(b) The import license from Directorate General of Foreign Trade, wherever applicable;

(i) Pre-shipment inspection certificate issued by the inspection agency of the exporting country or the inspection and certification agency approved by Directorate General of Foreign Trade;

(c) The valid consents to operate under the Air and Water Acts and the authorisation under these rules, for actual users. For traders, only valid authorisation from concerned SPCB is required;

(d) The chemical analysis report of the waste being imported;

(e) an acknowledged copy of the annual return filed with concerned State Pollution Control Board for import in the last financial year.

Provisions of Foreign Trade Policy for import

2.56 Responsibility and Liability of PSIA and Importer.

(a) In case of any mis-declaration in PSIC or mis-declaration in application form for recognition as PSIA, PSIA would be liable for penal action under Foreign Trade (Development & Regulation) Act, 1992, as amended, in addition to suspension/cancellation of recognition.

(b) The importer and exporter would be jointly and severally responsible for ensuring that the material imported is in accordance with the declaration given in PSIC. In case of any mis-declaration, they shall be liable for penal action under Foreign Trade (Development & Regulation) Act, 1992, as amended.

(c) The scanned copy of the PSIC (in pdf format) shall have to be uploaded by the PSIA on DGFT website or emailed to DGFT (atpsic-dgft@gov.in). The certificate shall be issued in prescribed form Appendix 2H.

(d) The PSIA will also be required to take photographs or make video of the inspection carried out, duly capturing the following activities/details:

Photograph(s) or video clipping of the place of inspection with PSIA inspector (mandatory) and representatives of exporter / importer, if available (optional); with time, date of the inspection (at least 1 photograph or video clipping);

Photograph(s) or video clipping of the testing instrument(s) used for inspection;

Photograph(s) or video clipping of the process of stuffing of containers showing the container number (at least 1 photograph or video clipping per container)

Photograph(s) or video clipping of the sealing process (at least 1 photograph or video clipping per container)

(e) The photographs and/or video clippings [as per 2.56 (d) above] and PSIC shall be uploaded on DGFT website by PSIA, through digital signatures or sent to psicdgft@gov.in through registered e-mail of PSIA. Till such time the DGFT website link is operationalized, the PSIC and photographs/videos will be e-mailed to the DGFT (at psicdgft@gov.in).

As per the above rules of Hazardous Waste Management and provisions of FTP, the import of waste paper is not permitted without Pre-Shipment Inspection Certificate from the PSIA approved by the DGFT.

3.8 In the instant case, it appears that imported paper waste/scrap was not inspected at the Jebel Ali Port at UAE and the PSIC was issued without inspecting the imported waste paper as UAE has banned export of waste paper under CTH 470710 and 470790 vide Dubai Customs Notices 08/2022 & 05/2023 having subject "Temporary Suspension of Exports of Ferrous Scrap & Waste Paper. Therefore, it appears that the paper waste/scrap imported are without mandatory PSIC certificate in violation and contrary to condition imposed under Foreign Trade Policy of Government of India and Hazardous waste management rules, 2016 under Ministry of Environment Forest and climate change, rendering the said goods as 'restricted' for import into India.

3.9 Whereas, Post-Shipment Inspection was also carried out on 29.07.2023 for this consignment by the Global Marine Inspection(PSIA) approved by the DGFT. They have submitted reports as per below table-IV and certified that the consignment is import of compressed and loose forms of waste paper and scrap. HS Code: 47071000. The consignment was checked and certified that putrefiable organic matter in this consignment and content of non-recyclable material is not more than 01%, and it does not have municipal solid waste or medical waste or hazardous waste in the consignment.

Table-IV

Sr. No.	Bill of Entry No.	Post-Shipment Inspection Ref. No.
1	5998007 dated 17.05.2023	S.No. IN11202385017

3.10 The DGFT, vide their Office Memorandum dated 13.06.2023 clarified that UAE has banned export of Ferrous Scrap under ITC HS 72047. It further clarified that if there are cases where PSIC shows place of inspection in UAE and import item is banned by UAE for export, such PSIC may be treated as invalid.

3.11 From the Office Memorandum it is clear that if any goods which are banned from export from UAE and shows place of inspection in UAE and import item is banned by UAE for export, such PSIC may be treated as invalid. In the instance case PSIC was showing place of inspection as UAE, and as UAE has banned export of waste paper under CTH 470710 and 470790. Therefore,

the PSIC appears invalid and the import of the goods is liable to be treated without Pre-Shipment Inspection Certificate.

3.12 Therefore, the goods were seized vide seizure memo dated 03.06.2023. However, the goods were released provisionally on 24.06.2023 upon Execution of Bond No. 2002141664 amounting to Rs. 17,78,494/- and BG No. 101GT01231660001 amounting to Rs. 1,78,000/-(10% of value).

4. For the sake of brevity, the relevant provisions of the Customs Act, 1962 are reproduced 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.

SECTION 46. Entry of goods on importation

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

SECTION 111. Confiscation of improperly imported goods, etc. -The following goods brought from a place outside India shall be liable for 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

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -

(i) 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:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section shall be twenty-five percent of the penalty so determined;

5. Outcome of Investigation:-

5.1. It is evident from the above discussion and evidences available on record that the goods are not fulfilling the condition of PSIC in Bills of Entry mentioned in Table-I. It, therefore, appears that PSIC showing the place of inspection as UAE does not appear to be genuine and appears to be issued without inspecting the goods in UAE.

5.2 Confiscation: In terms of Section 46 (4) of the Customs Act, 1962, the importers are required to make a declaration as to the truth of the contents of the Bills of Entry submitted for assessment of Customs duty. M/s. Palak Paper Mill LLP submitted PSIC issued from UAE with place of examination UAE/Jebel Ali. Whereas, UAE has banned export of waste paper under CTH 470710 and 470790 from their country. In view of the above, it appears that M/s. Palak Paper Mill LLP, imported the said goods valued at Rs. 17,78,493/- in India without valid PSIC, in violation and contrary to the provisions of Foreign Trade Policy of Government of India and HWM rules, 2016. Hence, it appears that the importer had knowingly involved themselves in the suppression of the material facts and also indulged in mis-statement of facts. The importer by their acts of omission and commission renders imported goods liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962.

5.3 Violation by the Importer: It appears from the above discussion and evidences available on record that the importer M/s. Palak Paper Mill LLP had wilfully and intentionally produced invalid Pre-Shipment Inspection Certificates. It also appears that M/s. Palak Paper Mill LLP had deliberately by wilful mis-statement and suppression of the facts in contravention of various provisions of the Customs Act and Rules made thereunder as discussed above with intent to clear goods without valid PSIC. The said acts of omission and commission on the part of the M/s. Palak Paper Mill LLP have rendered themselves liable for penalty under the provisions of Section 112(a) of the Customs Act, 1962.

5.4 M/s. Palak Paper Mill LLP, vide their letter dated NIL requested to conclude the proceedings against them in respect of bill of entry no. 5998007 dated 17.05.2023 which were assessed provisionally on the submission of Bond No. 2002141664 amounting to Rs. 17,78,494/- and BG No. 101GT01231660001 amounting to Rs. 1,78,000/-(10% of value). They are ready to pay any fine and penalty leviable on them. They did not want any Show Cause Notice and Personal Hearing in this matter.

6. In view of above, the following is proposed:-

1. 97.87 MTS of Waste Paper double sorted corrugated containers imported under Bill of Entry mentioned in Table-I above, valued at Rs. 17,78,493/- (Rs. Seventeen Lakh Seventy Eight Thousand and Four Hundred Ninety Three only), is liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962.
2. M/s. Palak Paper Mill LLP is liable for Penalty under Section under the provisions of Section 112(a) of the Customs Act, 1962.
3. Bond executed by the importer to be enforced in terms of Section 143(3) of the Customs Act, 1962 for the recovery of fine and penalty leviable against the importer.

7. As the Importer have already requested for waiver of the Show Cause Notice in the matter, necessary adjudication proceeding/action may be initiated in respect of the Bill of entry no. 5998007 dated 17.05.2023 as per the Customs Act, 1962.

8. Discussion and findings:

I have gone through the facts of the case, submissions by Noticee in written and in person. I now proceed to frame the issues to be decided in the instant IR before me. On a careful perusal of the subject IR and case records, I find that following main issues are involved in this case, which are required to be decided: -

1. Whether the goods ie 97.87 MTS of Waste Paper double sorted corrugated containers imported under Bill of Entry mentioned in Table-I above, valued at Rs. 17,78,493/- (Rs. Seventeen Lakh Seventy Eight Thousand and Four Hundred Ninety Three only), are liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962 or otherwise.
2. Whether M/s. Palak Paper Mill LLP is liable for Penalty under Section under the provisions of Section 112(a) of the Customs Act, 1962.
3. Whether the Bond executed by the importer to be enforced in terms of Section 143(3) of the Customs Act, 1962 and Bank Guarantee amounting to Rs. 1,78,000/- for the recovery of fine and penalty leviable against the importer.

9. CONFISCATION OF THE IMPORTED GOODS UNDER SECTION 111(d), and 111 (m) AND 125 OF THE CUSTOMS ACT, 1962:

9.1 I find that it is alleged in the IR that the goods are liable for confiscation under Section 111(d), and 111(m) of the Customs Act, 1962. In this regard, I find that as far as confiscation of goods are concerned, Section 111 of the Customs Act, 1962, defines the Confiscation of improperly imported goods. The relevant legal provisions of Section 111 of the Customs Act, 1962 are reproduced below: -

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(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;"

9.2 I find that the DGFT vide their Office Memorandum dated 13.06.2023 clarified that UAE has banned export of Ferrous Scrap under ITC HS 72047. It also clears that if any goods which are banned from export from UAE and shows place of inspection in UAE, such PSIC may be treated as Invalid.

9.3 I find that PSIC is showing place of inspection as UAE and the same should be treated as invalid as per the DGFT Office Memorandum dated 13.06.2023 making the imported goods liable for confiscation under Section 111 (d) and 111 (m) of the Customs Act, 1962.

10. REDEMPTION FINE IN LIEU OF CONFISCATION:

(i) I find that goods were released provisionally to the Importer upon furnishing of provisional duty bond of Rs. 17,78,494/-.

(ii) As I already held these goods liable for confiscation in previous para under Section 111(d), and 111(m) of the Customs Act, 1962, I find that it is necessary to consider as to whether redemption fine under Section 125 of Customs Act, 1962, is liable to be imposed in lieu of confiscation in respect of the impugned goods as alleged vide subject IR. The Section 125 ibid reads as under:-

"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 1[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."

(iii) A plain reading of the above provision shows that imposition of redemption fine is an option in lieu of confiscation. It provides for an opportunity to owner of confiscated goods for release of confiscated goods by paying redemption fine. I find that in the instant case option to redeem the goods for Home Consumption for goods has already been availed by the Importer. Now the question remains that whether redemption fine can be imposed on the goods which already allowed for Home Consumption. In this regard, I place reliance on the judgment of the Hon'ble Apex Court in the case of **M/s. WESTON COMPONENTS LTD. Versus COMMISSIONER OF CUSTOMS, NEW DELHI 2000 (115) E.L.T. 278 (S.C.)** wherein the Apex Court held that:

"It is contended by the learned Counsel for the appellant that redemption fine could not be imposed because the goods were no longer in the custody of the respondent-authority. It is an admitted fact that the goods were released to the appellant on an application made by it and on the appellant executing a bond. Under these circumstances if subsequently it is found that the import was not valid or that there was any other irregularity which would entitle the customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond

being executed, would not take away the power of the customs authorities to levy redemption fine."

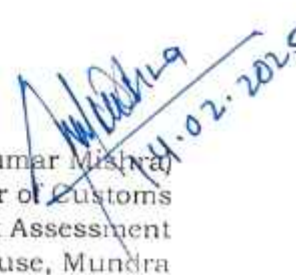
I believe the ratio of the aforementioned judgment is directly applicable to the present case, as the goods in the current shipment were also allowed under Bond. Consequently, I find that a redemption fine is warranted in this matter and see no grounds to challenge its imposition.

11. IN VIEW OF DISCUSSION AND FINDINGS SUPRA, I PASS THE FOLLOWING ORDER:

ORDER

1. I order to confiscate the goods ie 97.87 MTS of Waste Paper double sorted corrugated containers imported under Bill of Entry mentioned in Table-I above, valued at Rs. 17,78,493/- (Rs. Seventeen Lakh Seventy Eight Thousand and Four Hundred Ninety Three only) under Section 111(d) and 111(m) of the Customs Act, 1962. As the goods already redeemed by the Importer availing option for home consumption, I impose a redemption fine of **Rs. 1,77,000/- (Rupees One Lakh Seventy Seven Thousand only)** under Section 125 of Customs Act, 1962 in lieu of confiscation of the goods for the reasons state in foregoing paras.
2. I impose penalty of **Rs. 36,000/- (Rupees Thirty Six Thousand only)** upon the Importer M/s. Palak Paper Mill LLP under Section 112(a)(i) of the Customs Act, 1962.
3. I order to **enforce the Bond amounting to Rs. 17,78,494/- and Bank Gurantee No. 101GT01231660001 amounting to Rs. 1,78,000/-** furnished by M/s. Palak Paper Mill LLP at the time of provisional release of the goods i.e. by way of Home Consumption. If the amount of redemption fine & penalty (as confirmed above) paid in full by the Noticee, the Bond may be cancelled by the competent authority and Bank Guarantee may be released by the competent authority.

This OIO is issued without prejudice to any other action that may be taken against the claimant under the provisions of the Customs Act, 1962 or rules made there under or under any other law for the time being in force.


(Amit Kumar Mishra)
Additional Commissioner of Customs
Import Assessment
Custom House, Mundra

Copy submitted to:

1. The Deputy Commissioner (EDI/RRA/TRC), Custom House, Mundra.
2. Guard file.