


Brief Facts

	<p>प्रधान आयुक्त का कार्यालय, सीमा शुल्क सदन, मुन्द्रा OFFICE OF THE PRINCIPAL COMMISSIONER, CUSTOM HOUSE, MUNDRA Port User Building (PUB), Mundra (Gujarat – 370421) ई-मेल/ E-Mail: group5-mundra@gov.in</p>	
A	फा .सं/. FILE NO.	CUS/APR/MISC/2706/2024-Group 5-6
B	मूल आदेश सं. ORDER-IN-ORIGINAL NO.	MCH/ADC/ZDC/134/2025-26
C	द्वारा पारित किया गया PASSED BY	Dipak Zala ADDITIONAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE, MUNDRA.
D	आदेश की तिथि DATE OF ORDER	18-07-2025
E	जारी करने की तिथि DATE OF ISSUE	18-07-2025
F	कारण बताओ नोटिस संपर्क तिथि . SCN NUMBER & DATE	CUS/APR/MISC/2706/2024-Gr 5-6 dated 20.07.2024
G	नोटिसीपार्टी / आयातक/ NOTICEE/ PARTY/ IMPORTER	M/s Lauren Engineers & Constructors India Pvt Ltd (IEC:0311039316) (C/O. Godwari Green Energy Ltd, 1x50 MW Solar Thermal Power Plant, Nokh, Jaisalmer, Rajasthan-111111
H	डिन सं . DIN NUMBER	20250771M0000041994C

- यह अपील आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।
This Order - in - Original is granted to the concerned free of charge.
- यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-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 380009”

“The Commissioner of Customs (Appeals), Mundra, 4TH Floor, Hudco Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad-380009.”

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

Appeal shall be filed within three months from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5 -/रुपए 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 -

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.

7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के सभी मामलों में पालन किया जाना चाहिए।

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

8. 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 (Appeals) 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 Lauren Engineers & Constructors India Pvt Ltd (IEC:0311039316) having address at (C/O. Godwari Green Energy Ltd, 1x50 MW Solar Thermal Power Plant, Nokh, Jaisalmer, Rajasthan-111111 (hereinafter referred as "the importer") had filed the following Bill of Entry no. 7231056 dated 27.06.2012 for the goods under Notification No. 104/94-Cus dated 16.03.1994, as amended and submitted RE Bond No. 2000315286 dated 13.07.2012 amount of Rs. 4,32,282/-.

2. Notification No. 104/94-Cus., dated 16th March, 1994

Exemption to containers of durable nature.

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts containers which are of durable nature, falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India, from, -

- a. *the whole of the duty of customs leviable thereon under the said First Schedule; and*
- b. *the whole of the integrated tax leviable thereon under subsection (7) of*

Provided that the importer, by execution of a bond in such form and for such sum as may be specified by the Assistant Commissioner of Customs or Deputy Commissioner of Customs binds himself to re-export the said containers within six months from the date of their importation and to furnish documentary evidence thereof to the satisfaction of the said Assistant Commissioner and to pay the duty leviable thereon in the event of the importer's failure to do so:

Explanation. - A device such as tag, tracking device or data logger already affixed on the container at the time of import shall also be eligible for exemption from the duty of customs and the integrated tax as is available to the said container under this notification amended by Notification No. 101/95-Cus., dated 26-5-1995, Not. 43/2017 - Dated 30-6-2017.

4. As per the provisions of Section 143 of the Customs Act, 1962, the said imported goods were allowed clearance by proper officer on execution of bond by the importer wherein the importer bounded themselves to discharge liability in certain manner, which they have failed to do so in as much as the re-imported goods covered under Notification No. 104/94-Cus dated 16.03.1994 have not proof of re-exportation of the subject goods within prescribed time limit. Thus, the said importer appears to have not complied with the conditions of the said Notification, and undertaking given in the Re-export Bond.

5. Thus, it appears that the said importer is liable to pay duty forgone of **Rs 5,11,409/- (Rupees Five Lakh Eleven thousand Four Hundred and Nine Only)** on the said imported goods along with interest at the applicable rate on the imported goods in terms of conditions of the said Notification and conditions of the bond executed by the importer read with Section 143 of the Customs Act, 1962. The duty calculation are as under:-

Sr. No.	Bill of Entry no. and Date	Item No.	Description	CTH	Assessable Value	BCD @7.5%	CVD @12%	Customs Cess @3%	Spl.Addl duty 4%	Total duty recoverable
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1	7231056 dated 27.06.2012	3	TRANSPORTATION RACK NO. 577,1009 FOR RE-EXPORT	84195010	659394	49454.55	85061.826	4035	31918	170470
		6	TRANSPORTATION RACK NO. 610,2050 FOR RE- EXPORT		659394	49454.55	85061.826	4035	31918	170470
		9	TRANSPORTATION RACK NO. 911,2075 FOR RE-EXPORT		659394	49454.55	85061.826	4035	31918	170470
					1978182					511409

LEGAL PROVISIONS IN RESPECT OF IMPORTED GOODS:

6. The relevant provisions of the Customs Act, 1962 and the rules made there under are as follows: -

A. Section 143. Power to allow import or export on execution of bonds in certain cases. -

7. Where this Act or any other law requires anything to be done before a person can import or export any goods or clear any goods from the control of officers of customs and the 1 [Assistant Commissioner of Customs or Deputy Commissioner of Customs] is satisfied that having regard to the circumstances of the case, such thing cannot be done before such import, export or clearance without detriment to that person, the 1 [Assistant Commissioner of Customs or Deputy Commissioner of Customs] may, notwithstanding anything contained in this Act or such other law, grant leave for such import, export or clearance on the person executing a bond in such amount, with such surety or security and subject to such conditions as the 1 [Assistant Commissioner of Customs or Deputy Commissioner of Customs] approves, for the doing of that thing within such time after the import, export or clearance as may be specified in the bond.
8. If the thing is done within the time specified in the bond, the 1 [Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall cancel the bond as discharged in full and shall, on demand, deliver it, so cancelled, to the person who has executed or who is entitled to receive it; and in such a case that person shall not be liable to any penalty provided in this Act or, as the case may be, in such other law for the contravention of the provisions thereof relating to the doing of that thing.
9. ***If the thing is not done within the time specified in the bond, the 1 Assistant Commissioner of Customs or Deputy Commissioner of Customs] shall, without prejudice to any other action that may be taken under this Act or any other law for the time being in force, be entitled to proceed upon the bond in accordance with law.***

- B. Section 46(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 46(4A) The importer who presents a bill of entry shall ensure the following, namely :—

- a. the accuracy and completeness of the information given therein;
- b. the authenticity and validity of any document supporting it; and
- B. compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.]”

C. 111. Confiscation of improperly imported goods, etc.

- The following goods brought from a place outside India shall be liable to confiscation: -

- a.
- b.

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non- observance of the condition was sanctioned by the proper officer;

7. In the present case, it appears that the said importer has failed to discharge the conditions laid down under Notification No. 104/94-Cus dated 16.03.1994 inasmuch as they claimed the benefit of 104/94-Cus dated 16.03.1994 the said importer has also not submitted documentary evidence pertaining to re-export of the said imported goods within prescribed time limit. Thus, the said importer appears to have not complied with the conditions of the said Notification, and undertaking given in the Re-export Bond. Thus, the said importer appears to have wrongly claimed and availed the benefit of the above-mentioned notification and therefore contravened the above said provisions with an intent to evade payment of Customs Duty leviable and payable on the import of subject goods. It appears that the said importer had contravened the provisions of sub-section (4) and (4A) of Section 46 of the Customs Act, 1962 inasmuch as while filing Bill of Entry, they had to ensure the accuracy and completeness of the information given therein for assessment of Customs duty. Therefore, the said importer appears liable to pay the Customs duty amounting of **Rs 5,11,409/-, (Rupees Five Lakh Eleven thousand Four Hundred and Nine Only)** in respect of the said imported goods along with interest at the applicable rate, in terms of the condition of Re-export Bond executed by the importer and Section 143 of the Customs Act, 1962 and also the Re-export Bond furnished by the importer is required to be enforced / appropriated for such recovery.

8. Whereas, as per clause (o) of Section 111 of the Customs Act, 1962, any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under the Customs Act, 1962 or any other law for the time being in force, in respect of which the condition is not observed, shall be liable to confiscation. As the exemption under Notification No. 104/94-Cus dated 16.03.1994 was granted to the said re-imported goods subject to the condition of their re-exportation within prescribed time limit, whereas the said condition has not been observed, therefore, the aforesaid goods appear liable for confiscation under Section 111(o) of the Customs Act, 1962. Therefore, the said imported goods totally valued at **Rs. 19,78,182/- (Rupees Nineteen Lakh**

Seventy-Eight Thousand One Hundred and Eighty Two Only), appear liable for confiscation under Section 111(o) of the Customs Act, 1962.

9. The aforesaid acts of omission and commission on the part of the said importer appear to have rendered them liable to penalty as provided under Section 112(a)/114A of the Customs Act, 1962.

10. Therefore, SCN F. No. CUS/APR/MISC/2706/2024-Gr 5-6 was issued to **M/s Lauren Engineers & Constructors India Pvt Ltd** (IEC:0311039316) having address at (C/O. Godwari Green Energy Ltd, 1x50 MW Solar Thermal Power Plant, Nokh, Jaisalmer, Rajasthan-111111 to show cause to the **Additional Commissioner of Customs**, having office at PUB Building, Custom House, Mundra as to why: -

- i. The exemption under Notification No. 104/94-Cus dated 16.03.1994 claimed and availed in respect of Bill of Entry No. 7231056 dated 27.06.2012 should not be denied.
- ii. The imported goods of declared Assessable value of **Rs. 19,78,182/- (Rupees Nineteen Lakh Seventy-Eight Thousand One Hundred and Eighty Two Only)** should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962 read with conditions of Bond executed in terms of Section 143 of the Customs Act, 1962 read with Notification No. 104/94-Cus dated 16.03.1994 as amended / applicable and why redemption fine should not be imposed in lieu of confiscation under Section 125 of the Customs Act, 1962;
- iii. Duty foregone amount of **Rs 5,11,409/-, (Rupees Five Lakh Eleven thousand Four Hundred and Nine Only)** along with applicable interest (from the date of clearance of goods to the date of payment of duty) should not be demanded and recovered also in terms of conditions of Bond executed under section 143 of the Customs Act, 1962 read with Notification No. 104/94-Cus dated 16.03.1994, as amended / applicable from them.
- iv. Penalty should not be imposed on the importer under Section 112(a)/114A of the Customs Act, 1962 for the acts of omission and commission.
- v. Re-export Bond furnished by the importer should not be enforced in terms of Section 143(3) of the Customs Act, 1962 for recovery of the duty, interest, penalty and Redemption Fine leviable on the importer, if any.

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RECORD OF PERSONAL HEARING

11. The personal hearing dates scheduled on 30.06.2025, 10.07.2025 and 17.07.2025 were informed to the importer in pursuit of following the principal of natural justice. However, no one appeared for personal hearing, neither any submission on the in the matter was received from them. Therefore, the case has been taken up for finalization based on the documents available on the records.

DISCUSSION & FINDING

12. I have carefully gone through the case records and applicable provisions of Law. I proceed to decide the case on the basis of facts and documentary evidences

available on records. The main issues before me are to decide whether-

- i. The exemption under Notification No. 104/94-Cus dated 16.03.1994 claimed and availed in respect of Bill of Entry No. 7231056 dated 27.06.2012 should not be denied.
 - ii. The imported goods of declared Assessable value of **Rs. 19,78,182/- (Rupees Ninteen Lakh Seventy-Eight Thousand One Hundred and Eighty Two Only)** should not be held liable for confiscation under Section 111(o) of the Customs Act, 1962 read with conditions of Bond executed in terms of Section 143 of the Customs Act, 1962 read with Notification No. 104/94-Cus dated 16.03.1994 as amended / applicable and why redemption fine should not be imposed in lieu of confiscation under Section 125 of the Customs Act, 1962;
 - iii. Duty foregone amount of **Rs 5,11,409/- , (Rupees Five Lakh Eleven thousand Four Hundred and Nine Only)** along with applicable interest (from the date of clearance of goods to the date of payment of duty) should not be demanded and recovered also in terms of conditions of Bond executed under section 143 of the Customs Act, 1962 read with Notification No. 104/94-Cus dated 16.03.1994, as amended / applicable from them.
 - iv. Penalty should not be imposed on the importer under Section 112(a)/114A of the Customs Act, 1962 for the acts of omission and commission.
 - v. Re-export Bond furnished by the importer should not be enforced in terms of Section 143(3) of the Customs Act, 1962 for recovery of the duty, interest, penalty and Redemption Fine leviable on the importer, if any.
13. I find that **M/s Lauren Engineers & Constructors India Pvt Ltd** (IEC:0311039316) having address at (C/O. Godwari Green Energy Ltd, 1x50 MW Solar Thermal Power Plant, Nokh, Jaisalmer, Rajasthan-111111 (hereinafter referred as "the importer") had filed the following Bill of Entry no. 7231056 dated 27.06.2012 for the goods under Notification No. 104/94-Cus dated 16.03.1994, as amended and submitted RE Bond No. 2000315286 dated 13.07.2012 amount of Rs. 4,32,282/-.
14. I find that as per Notification No. 104/94-Cus dated 16.03.1994, the said goods/container shall be re-exported within time of six months from the date of importations. In the present case, the goods were imported vide Bill of Entry no. 7231056 dated 27.06.2012. The importer, even after expiry of one year from the import of the said goods, the said importer had not submitted proof of re-exportation of the said goods/container to the satisfaction of the Deputy /Assistant Commissioner of C u s t o m s , Therefore, consultative clarification letters F. No. CUS/APR/MISC/2706/2024-Gr 5-6 dated: -19.03.2024 and 18.06.2024 have been issued to the said importer informing that the re-export bond was still pending for closure, requesting to submit all the documents pertaining to re-export of the goods within prescribed time limit, failing which action under the provisions of the Customs Act, 1962 would be initiated. However, as per the available records, the said importer has not submitted the required documents and therefore the aforesaid Bonds have not been closed.
15. I find that As per the provisions of Section 143 of the Customs Act, 1962, the said imported goods were allowed clearance by proper officer on execution of bond by the importer wherein the importer bounded themselves to discharge

liability in certain manner, which they have failed to do so in as much as the re-imported goods covered under Notification No. 104/94-Cus dated 16.03.1994 have not proof of re-exportation of the subject goods within prescribed time limit. Thus, the said importer has not complied with the conditions of the said Notification, and undertaking given in the Re-export Bond.

16. I find that the importer is liable to pay duty forgone o**Rs 5,11,409/-, (Rupees Five Lakh Eleven thousand Four Hundred and Nine Only)** on the said imported goods along with interest at the applicable rate on the imported goods in terms of conditions of the said Notification and conditions of the bond executed by the importer read with Section 143 of the Customs Act, 1962.
17. I find that importer has failed to discharge the conditions laid down under Notification No. 104/94-Cus dated 16.03.1994 inasmuch as they claimed the benefit of 104/94-Cus dated 16.03.1994 the said importer has also not submitted documentary evidence pertaining to re-export of the said imported goods within prescribed time limit. Thus, the said importer has not complied with the conditions of the said Notification, and undertaking given in the Re-export Bond. Thus, the said importer has wrongly claimed and availed the benefit of the above-mentioned notification and therefore contravened the above said provisions with an intent to evade payment of Customs Duty leviable and payable on the import of subject goods. I find that the said importer had contravened the provisions of sub-section (4) and (4A) of Section 46 of the Customs Act, 1962 inasmuch as while filing Bill of Entry, they had to ensure the accuracy and completeness of the information given therein for assessment of Customs duty. Therefore, the said importer is liable to pay the Customs duty amounting of **Rs 5,11,409/-, (Rupees Five Lakh Eleven thousand Four Hundred and Nine Only)** in respect of the said imported goods along with interest at the applicable rate, in terms of the condition of Re-export Bond executed by the importer and Section 143 of the Customs Act, 1962 and also the Re-export Bond furnished by the importer is required to be enforced / appropriated for such recovery.
18. I find that as per clause (o) of Section 111 of the Customs Act, 1962, any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under the Customs Act, 1962 or any other law for the time being in force, in respect of which the condition is not observed, shall be liable to confiscation. As the exemption under Notification No. 104/94-Cus dated 16.03.1994 was granted to the said re-imported goods subject to the condition of their re-exportation within prescribed time limit, whereas the said condition has not been observed, therefore, the aforesaid goods are liable for confiscation under Section 111(o) of the Customs Act, 1962. Therefore, the said imported goods totally valued at **Rs. 19,78,182/- (Rupees Nineteen Lakh Seventy-Eight Thousand One Hundred and Eighty Two Only)**, are liable for confiscation under Section 111(o) of the Customs Act, 1962.
19. I find that, the aforesaid acts of omission and commission on the part of the said importer have rendered them liable to penalty as provided under Section 112(a)(ii) of the Customs Act, 1962.
20. Section 111. Confiscation of improperly imported goods, etc. –

The following goods brought from a place outside India shall be liable to confiscation: -

(a) --

--

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

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 per cent. of the penalty so determined;*

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

ORDER

- i. I order to reject the exemption under Notification No. 104/94-Cus dated 16.03.1994 claimed and availed in respect of Bill of Entry No. 7231056 dated 27.06.2012.*
- ii. I order for confiscation of the goods of declared Assessable value of **Rs. 19,78,182/- (Rupees Ninteen Lakh Seventy-Eight Thousand One Hundred and Eighty Two Only)** under Section 111(o) of the Customs Act, 1962 read with conditions of Bond executed in terms of section 143 of the Customs Act,*

1962 read with Notification No. 104/94-Cus dated 16.03.1994 as amended / applicable. I impose a Redemption Fine of **Rs.190000/- (Rs. One Lakh Ninety Thousand Only)** under section 125 of the Customs Act, 1962.

- iii. I order to demand and recover the Duty forgone amount **Rs 5,11,409/-, (Rupees Five Lakh Eleven thousand Four Hundred and Nine Only)** along with applicable interest in terms of Bond executed under Section 143 of the Customs Act, 1962 read with Notification No. 104/94-Cus dated 16.03.1994, as amended / applicable.
- iv. I order to impose penalty of **Rs. 50000/- (Rs. Fifty Thousand only)** under Section 112(a)(ii) of Customs Act, 1962.
- v. I order to enforce the Re-export Bond furnished by the importer under Section 143(3) of the Customs Act, 1962 for recovery of the duty, interest, penalty and Redemption Fine.

22. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

(DIPAK ZALA)

ADDITIONAL COMMISSIONER OF CUSTOMS
CUSTOMS HOUSE, MUNDRA

To,

M/s Lauren Engineers & Constructors India Pvt Ltd (IEC:0311039316)
(C/O. Godwari Green Energy Ltd,
1x50 MW Solar Thermal Power Plant, Nokh, Jaisalmer, Rajasthan-111111)

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