

	<p>कार्यालय: प्रधान आयुक्त सीमाशुल्क, मुन्द्रा, सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421 OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS: CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421. PHONE : 02838-271426/271163 FAX :02838-271425 Email: group4-mundra@gov.in</p>	
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A	फा. सं./ FILE NO.	GEN/ADJ/ADC/1108/2025-Adjn
B	मूल आदेश सं. ORDER-IN-ORIGINAL NO.	MCH/ADC/ZDC/200/2025-26
C	द्वारा पारित किया गया PASSED BY	#ApprovedByName# #ApprovedByDesignation# Custom House, Mundra.
D	आदेश की तिथि DATE OF ORDER	19.09.2025
E	जारी करने की तिथि DATE OF ISSUE	#ApprovedDate#
F	नोटिसी/पार्टी / आयातक NOTICEE/ PARTY/ IMPORTER	M/s. RADHIKA EXPORTS CORPORATION, CROWN HEIGHTS, TWIN DISTRICT CENTRE, HOTEL CROWN PLAZA COMPLEX, SECTOR - 10, DELHI - 110 085
G	डिन सं . DIN NUMBER	20250971MO00000580BE

1. यहआदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1 में चार प्रतियों में नीचे बताए गए पते परअपील कर सकताहै-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमाशुल्कआयुक्त (अपील),
चौथी मंजिल, हुडको बिल्डिंग, ईश्वरभुवन 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/- 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 be 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 सं०-6 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 ज्ञापन के साथ ड्यूटी/ ब्याज/ 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, सीमाशुल्क) 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.

मामले के संक्षिप्त तथ्य

BRIEF FACTS OF THE CASE

Whereas, M/s. RADHIKA EXPORTS CORPORATION, located at 601, Crown Heights, Twin District Centre, Hotel Crown Plaza Complex, Sector - 10,

Delhi - 110 085 (hereinafter also referred to as ‘the Importer/the Noticee’ for the sake of brevity) having IEC No. 05194066786 have imported ALUMINIUM FOIL(SIZE:0.0053MMX1000MM) falling under Customs Tariff Item 76071999 through Mundra Port (INMUN1).

2. During the course of audit of Custom House (AP & SEZ) Mundra by the CERA for the period April to September 2021, it was noticed that M/s. RADHIKA EXPORTS CORPORATION filed the Bill of Entry No. 5438437 dated 14.09.2021 for the clearance of goods i.e. ALUMINIUM FOIL (SIZE:0.0053MMX1000MM) - under CTH 76071190 having assessable value of Rs. 1,19,98,299/- (Rs. One Crore Nineteen Lakh Ninety Eight Thousand Two Hundred and Ninety Nine Only) through their Custom Broker M/s. SSS SAI SHIPPING SERVICES P LTD and they have not paid Anti-Dumping Duty on import of said goods i.e. Aluminum Foil. After publication of Notification No. 51/2021-Customs (ADD) dated 16th September 2021, ‘Aluminium Foil of a thickness of 80 micron and below originated in or exported from China PR, Malaysia, Thailand and Indonesia attracts the Anti-Dumping Duty. The goods covered under Bill of Entry No. 5438437 dated 14.09.2021 were imported from People’s Republic of China, thus, the importer was liable to pay Anti-Dumping Duty on the imported goods terms of Notification No. 51/2021-Customs (ADD) dated 16th September 2021.

3. As per Notification No. 51/2021-Customs (ADD) dated 16th September 2021 provides for levy of Anti-Dumping Duty (ADD) on ‘Aluminium Foil of a thickness of 80 micron and below’ originating in, or exported from China PR, Malaysia, Thailand and Indonesia, with effect from the date of publication of the notification i.e., from 16 September 2021, the criteria specified in Table below are fulfilled:-

Table-A

S. No. (1)	Heading (2)	Description (3)	Country of Origin (4)	Country of Export (5)	Producer (6)	Amount (7)	Unit (8)	Currency (9)
1	7607	Aluminium Foil 80 micron and below	China PR	Any country including China PR	Jiangsu Zhongji Lamination Materials Co., Ltd	506.81	MT	USD
2	7607	Aluminium Foil 80 micron and below	China PR	Any country including China PR	Shanghai Sunho Aluminum Foil Co., Ltd	398.45	MT	USD
3	7607	Aluminium Foil 80 micron and below	China PR	Any country including China PR	Jiangsu Dingsheng New Materials Joint-Stock Co., Ltd	523.67	MT	USD
4	7607	Aluminium Foil 80 micron and below	China PR	Any country including China PR	Hangzhou Five Star Aluminium Co., Ltd	523.67	MT	USD
5	7607	Aluminium Foil 80 micron and below	China PR	Any country including China PR	M/s Jiangsu Fengyuan Aluminium Mstar Technology	510.24	MT	USD

					Co., Ltd.,			
6	7607	Aluminium Foil 80 micron and below	China PR	Any country including China PR	M/s Kunshan Aluminium Co., Ltd.	577.59	MT	USD
7	7607	Aluminium Foil 80 micron and below	China PR	Any country including China PR	Any producer other than mentioned in serial no 1 to 6	976.99	MT	USD
8	7607	Aluminium Foil 80 micron and below	Any country other than China PR, Indonesia, Malaysia and Thailand	China PR	Any	976.99	MT	USD
9	7607	Aluminium Foil 80 micron and below	Thailand	Any country including Thailand	Thai Ding Li New Materials Co., Ltd.	100.07	MT	USD
10	7607	Aluminium Foil 80 micron and below	Thailand	Any country including Thailand	Dingheng New Materials Co., Ltd	100.07	MT	USD
11	7607	Aluminium Foil 80 micron and below	Thailand	Any country including Thailand	M/s Loften (Thailand) Co., Ltd.	93.53	MT	USD
12	7607	Aluminium Foil 80 micron and below	Thailand	Any country including Thailand	M/s Varopakorn Public Company Limited	178.47	MT	USD
13	7607	Aluminium Foil 80 micron and below	Thailand	Any country including Thailand	Any producer other than mentioned in sl. No. 9, 10, 11, 12	339.93	MT	USD
14	7607	Aluminium Foil 80 micron and below	Any country other than China PR, Indonesia, Malaysia and Thailand	Thailand	Any	339.93	MT	USD
15	7607	Aluminium Foil 80 micron and below	Malaysia	any country	Any	850.45	MT	USD
16	7607	Aluminium Foil 80 micron and below	Any country other than China PR, Indonesia, Malaysia and Thailand	Malaysia	Any	850.45	MT	USD
17	7607	Aluminium Foil 80 micron and below	Indonesia	any country	Any	422.28	MT	USD
18	7607	Aluminium Foil 80 micron and below	Any country other than China PR, Indonesia, Malaysia and Thailand	Indonesia	Any	422.28	MT	USD

4. As per the Custom Tariff Act, particular of the goods falling under CTH 7607 are as described as below:

Table-B

7607	ALUMINIUM FOIL(WHETHER OR NOT PRINTED OR BACKED WITH PAPER, PAPERBOARD, PLASTIC OR SIMILER BACKING MATERIAL) OF A THICKNESS(EXCLUDING ANY BACKING) NOT EXCEEDING 0.2 MM			
7607 11	Rolled but not further worked	Kg.	7.5%	--
7607 1110	Ordinarily used for tea chest lining	Kg.	7.5%	--
7607 1190	Others	Kg.	7.5%	--
7607 19	Others			
7607 1910	Ordinarily used for tea chest lining	Kg.	7.5%	--
7607 1991	Plain	Kg.	7.5%	--
7607 1992	Embossed	Kg.	7.5%	--
7607 1993	Perforated or cut to Shape	Kg.	7.5%	--
7607 1994	Coated	Kg.	7.5%	--
7607 1995	Printed	Kg.	7.5%	--
7607 1999	Others	Kg.	7.5%	--
7607 20	Backed			
7607 2010	Ordinarily used for tea chest lining	Kg.	7.5%	--
7607 2090	Others	Kg.	7.5%	--

5. “Aluminum Foil” for the purpose of this ADD notification means “Aluminum foil whether or not printed or backed with paper, paper, board, plastics or similar packing materials of a thickness ranging from 5.5 micron to 80 micron.

6. Further, as per the subject notification, the description of goods does not include the import of the following:-

- (i) Alu Alu Laminate: Alu Alu Laminate of 40-50 Mic in AA8079 & AA8021 is a multi-Layered opaque laminate where Aluminum Foil and is backed with plastic film on both side with adhesives for use in packing capsules/tablets.
- (ii) Ultra-Light Gauge Converted:- Ultra Light Gauge Converted is an Aluminum Foil having thickness of 5.5 mic to 7 mic which is backed with craft paper and scrim or glass cloth whether plain or printed for use in insulation, spices packing, thermal fluid lines covering and tea bags application.
- (iii) Aluminum Foil Composite:- aluminum foil laminated with or backed with kraft paper and glass scrim or glass cloth with or without poly ethylene, whether printed or not printed. Aluminum foil laminated with or backed with Kraft paper however is within the scope of the product under consideration and proposed measures.
- (iv) Aluminum foil for capacitors:- Aluminum Foil for capacitors is an aluminum foil of 5 micron gauge with smaller width having 99.35% purity, for use in electrical equipment such as radios, televisions, telephones, computers, microwave ovens, electrical welders, magnetos, electronic testing equipment, copy machines, air conditioners, automobiles, fluorescent lights, mercury vapor street lamps, power transmission equipment, electric motors, control units, and similar articles.

- (v) Etched or formed Aluminum foils: Etched or formed Aluminum foils is Aluminum foil meant to be used in the manufacture of Electrolytic capacitor.
- (vi) Aluminum Composite panel: Aluminum Composite panel is a non-Aluminum core (often PE) bonded between two thin layers of Aluminum, for use in façade cladding and signage.
- (vii) Clad with compatible non clad Aluminum Foil: Clad with compatible non clad Aluminum Foil is a corrosion resistant Aluminum sheet formed from Aluminum surface layers metallurgically bonded to high strength Aluminum alloy core material for use in engine cooling and air conditioner system in automotive industry; such as radiation, condenser, evaporator, intercooler, oil cooler and heater.
- (viii) Aluminum Foil for beer bottle : Aluminum foil of 10.5 Micron with rough surface and perforated whether printed or not, to be used in beer bottle.

7. Accordingly, ADD at the rate 523.67 USD per MT (Exchange rate Rs.73.95 per USD) was leviable on these goods in terms of serial number 03 of ADD notification above. However, it was noticed that the said consignment was cleared without payment of ADD and corresponding 18% IGST on this ADD amount.

8. In view of the above, it appeared that the importer has not paid applicable Anti-Dumping duty as per Notification No. 51/2021-Customs (ADD) dated 16th September 2021 against the impugned imported goods declared as “Aluminum Foil” covered under Bill of Entry No. 5438437 dated 14.09.2021”. This resulted in short payment of duty of Rs. 18,91,356/- (ADD Rs. 16,02,844/- & IGST Rs. 2,88,512/-). (Details as per TABLE-A).

Table-C

Exchange Rate:- 73.95
Rs./Kg.

BE No. Date	Importer Name	Item Description	Weight	Assess value	ADD to be paid @ 523.67 USD /MT (38725.396 5Rs. /MT)	IGST to be paid on ADD	Different ial Duty to be paid (IGST +ADD)
5438437 . 14.09.202 1	RADHIKA EXPORTS CORPORATI ON	ALUMINIUM FOIL(SIZE:0.0053MM X1000MM)	41390 KGS	11998 299	1602844	288512	1891356

9. Relevant Legal provisions, in so far as they relate to the facts of the case:-

- A. The Customs Tariff Act, 1975.
- B. Section 46 of the Customs Act, 1962 provides for filing of Bill of Entry upon importation of goods, which casts a responsibility on the importer to declare truthfully, all contents in the Bill of Entry. Relevant portion of Section 46 (4) is reproduced below:-

“(i) 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”.

C. Section 28 (4) of the Customs Act, 1962 provides that “Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

- (a) collusion; or*
- (b) any willful mis-statement; or*
- (c) suppression of facts,*

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been [so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice”.

D. Section 28 (AA) of Customs Act, 1962 provides interest on delayed payment of duty-

(1) Where any duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person who is liable to pay the duty as determined under sub-Section (2), or has paid the duty under sub-Section (2B), of Section 28, shall, in addition to the duty, be liable to pay interest at such rate not below ten percent and not exceeding thirty-six per cent per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette, from the first day of the month succeeding the month in which the duty ought to have been paid under this Act, or from the date of such erroneous refund, as the case may be, but for the provisions contained in sub-Section (2), or sub-Section (2B), of Section 28, till the date of payment of such duty:

E. Section 114A of the Customs Act, 1962 deals with the penalty by reason of collusion or any willful mis-statement or suppression of facts. The relevant provision is reproduced below:-

114A - Penalty for short-levy or non-levy of duty in certain cases - Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-Section (8) of Section 28 shall also be liable to pay a penalty equal to the duty or interest so determined: Provided that where such duty or interest, as the case may be, 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 the 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 duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

10. It appears that the importer has willfully not self-assessed the B/E No. 5438437 dated 14.09.2021 with the applicable Anti-Dumping Duty (ADD) and

tried to evade the ADD along with IGST total amounting to Rs. 18,91,356/- applicable on the imported goods.

11. With the introduction of self-assessment under Section 17, more faith is bestowed on the importer, as the practices of routine assessment, concurrent audit etc. have been dispensed with. As a part of self-assessment, the importer has been entrusted with the responsibility to correctly self-assess the duty. However, in the instance case, the importer intentionally abused this faith placed upon it by the law of the land. Therefore, it appears that the importer has wilfully violated the provisions of Section 17(1) of the Act in as much as importer has failed to correctly self-assessed the impugned goods and has also wilfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Act.

12. Therefore, it appeared that the duty short paid is required to be recovered under Section 28(4) of the Customs Act, 1962 along with interest as applicable rate under Section 28AA of the Customs Act, 1962. Further, penalty is required to be imposed on them under Section 114A of the Customs Act, 1962.

13. Therefore, on completion of investigation, a Show Cause Notice bearing No. CUS/APR/MISC/2318/2024-GR4-O/o Pr Commr-Cus-Mundra dated 30.11.2024 had been issued to M/s. RADHIKA EXPORTS CORPORATION, located at 601, Crown Heights, Twin District Centre, Hotel Crown Plaza Complex, Sector - 10, DELHI - 110 085, calling upon to show cause in writing to the Additional Commissioner of Customs, having office at Office of the Commissioner, Custom House, 5 B, Port User Building, Mundra Port, Mundra-Kutch within 15 (fifteen) days from the date of receipt of the notice, as to why:

- i. Differential duty amounting to **Rs. 18,91,356/-** (Rupees Eighteen Lakh Ninety One Thousand Three Hundred and Fifty Six Only) not paid/short paid by them on the aforesaid imported goods should not be demanded and recovered under Section 28(4) of the Customs Act, 1962.
- ii. The applicable interest on the amount as at Sr. No. (i) above should not be demanded and recovered under Section 28AA of the Customs Act, 1962.
- iii. Penalty should not be imposed under Section 114A of the Customs Act, 1962

Personal Hearing and Defence Submission:

14. Personal Hearing in the matter was fixed on Dated 23.06.2025, 07.07.2025 and 21.07.2025. However, the noticee M/s. RADHIKA EXPORTS CORPORATION has neither submitted any defence submission nor appeared for any of the personal hearings. Thereafter, on the request of the importer and in adherence to the principles of natural justice, a fourth Personal Hearing was granted on 18.08.2025. In connection with this hearing, the noticee submitted their written submission vide letter dated 20.07.2025, wherein they stated as follows:

1. *We Radhika Exports Corporation, 601, Crown Heights, Twin District Centre, Hotel Crown Plaza Complex, Sector-10 Delhi- 110085 [herein after referred to as the importer/the noticee], having IEC No.05194066786 imported 'Aluminum foil' (size 0.0053 MM X1000mm) classifiable under CTH 76071999 and filed Bill of Entry No.5438437 dated 14.09.2021 at*

Mundra Port [INMUN1]. Subsequently the said Bill of entry was assessed to duty on 15.09.2024 as could be evident from the details available on ICEGATE Portal. Accordingly, the noticee has paid total duty of Rs.33,27,728/- and Interest of Rs. 4,103/- and taken out of charge on 27.09.2021.

2. Surprisingly, based on the Audit objection raised by CERA during their audit of Customs House, (AP & SEZ), the noticee is served with the show cause notice under reference where under the noticee is called upon to show cause as to why;

(i). Differential duty amounting to R. 18,91,356/- (Rs. Eighteen Lakh Ninety-One Thousand Three Hundred and Fifty-Six) not paid/short paid by the notice on the aforesaid imported goods should not be demanded and recovered under Section 28(4) of the Customs Act, 1962;

(ii) The applicable Interest on the amount as mentioned at Sr.No.(1) above should not be demanded and recovered under Section 38AA of the Customs Act, 1962:

(iii) Penalty should not be imposed under Section 114A of the Customs Act, 1962.

3. While issuing the impugned notice it is alleged that, the noticee has not paid Anti-dumping duty (ADD) of Rs.18,91,356/- [Customs duty of Rs.16,02,844/- + IGST on ADD Rs.2,88,512/-] @ of 533.67 USD [Rs.73.951 USD] imposed vide Sr.No.3 of Notification No. 51/2021-Custums-ADD dated 16.09.2021 on 'Aluminum Foil' of thickness of 80 microns and below, when the goods is originated from China PR and cleared vide BE No. No.5438437 dated 14.09.2021.

4. It is further alleged that the noticee has contravened the provisions of Section 46(4) of the Customs Act, 1962 in as much as the importer failed to declared truthfully, all the contents of in the Bills of entry. The said section provides as under.

(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].

5. It is further alleged that the importer has willfully not self assessee B/E No.5438432 dated 14.00.2021 with the applicable Anti-Dumping Duty (ADD) and tied to evade the ADD along with 108T total amounting to Rs. 18,91,356 applicable on the Imported goods thereby contravened the provision of Section 17 of the Custom Act, 1962.

6. Accordingly, the said ADD and 100T is proposed to be demanded and recovered in terms of Section 20(4) of the Customs Act, 1962 along with Interest in terms of Section S8AA of the Customs Act, 1962, besides penalty is proposed in terms of Section 114A of the Customs Act, 1962.

7. At the outset the noticee denies all the allegations and averment levelled against them in the impugned notice as the same are levelled without appreciating correct provisions of law applicable to ADD. In support of their claim the noticee submit their submission as under.

8. The Anti-Dumping Duty is levied in terms of Section BA of the Customs Tariff Act, 1975. For recovery of duties, the provisions of Customs Act, 1962 made applicable vide Section BA(8) of Custom Tariff Act, 1975 which provides that;

(8) The provisions of the Customs Act, 1962 (52 of 1962) and all rules and regulations made thereunder, including but not limited to those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds exemptions, interest, recovery, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act or all rules or regulations made thereunder, as the case may be.

9. Further the relevant date for determination of duty is stipulated in Section 15 of the Customs Act, 1962 which provides that;

15. (1) The rate of duty and tariff valuation, if any, applicable to any imported goods shall be the rate and valuation in force:-

(a) in the case of goods entered for home consumption under section 46 on the date on which a bill of entry in respect of such goods is presented under that section:-

(b) in the case of goods cleared from a warehouse under section, on the date on which a bill of entry for home consumption in respect of such goods is presented under that section);

(c) in the case of any other goods, on the date of payment of duty:

Provided that if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft for the vehicle by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry Awards or the arrival, on the case may be.

10. Thus harmonious reading of Section BA of the Customs Tariff Act, 1875 read with Section 15(1)(8) of the Customs Act, 1963 reveals that in the case of goods entered for home consumption under section 46 on the date on which a Bill of entry in respect of such goods is presented under that section.

11. In the case of Sunrise Enterprise Versus Commissioner Of Central Excise, Jalandhar, Final Order No. C/A/54698/2014-CU(DB), dated 28-10-2014 in Appeal No. C/90/2008-CU(LB) reported at 2018 (315) ELT. 621 (Tri. LB) wherein the facts of the matter and what has been held by the Hon'ble Tribunal [Larger bench] as under:

Valuation (Customs) Anti-dumping duty- Date of presentation of bill of entry is relevant date for determining applicable rate of duty - Finance Act. 2009. by substitution of Section 38(8) of Customs Tariff Act, 1975 has made Section 15(a) of Customs Act. 1962 applicable to anti-dumping duty with retrospective effect- On facts, held that as bills of entry were presented in 2007, prior to date of final anti-dumping notification, and assessed under provisional notification to a rate of anti-dumping duty final anti-dumping notification was not applicable. (paras 5,6)

The Civil Appeal Diary No. 27096 of 2015 filed by Commissioner of Central Excise, Chandigarh against the CESTAT Final Order No. C/A/54698/2014-CU(DB), dated 28-10-2014 as reported in 2015 (315) ELT. 621 (TL-LB) (Sunrise Enterprise v Commissioner) reported at 2015 (324) ELT. A126 (S.C.) [18-09-

2015), While dismissing the appeal, the Supreme Court passed the following order.

3. Having gone through the records of the case, we are of considered opinion that the appeal, being devoid of any merit, is liable to be dismissed and, is dismissed accordingly."

12. The noticee further submit that the Bill of Entry for home consumption was accepted and assessed by the proper officer. Duty imposed subsequently to filing of Bills of entries is not leviable.

13. In the case of Commissioner of Customs, Chennai vs POS Hyndai Steel Mig, reported at 2002 (144) E.L.T. 326 (Tri. Chennai) the Hon'ble Tribunal, in its Final Order No. 38/2002 and Misc. Order No. 357/2001, dated 11-1-2008 in Appeal No. C/838/2000 has held that

Rate of duty-Customs-Relevant date- Bill of Entry Date of presentation - Bill of Entry complete in all respects being accepted and endorsed by Assistant Commissioner on 1-6-1998 itself, Special additional duty not leviable on goods- Section 15(1) of Customs Act, 1863 [par Majority: 3/ Shri P.G. Chacko, Member (J) and S.I. Peeran, Member (J). Bill of entry was complete in all respect on 1-6-1998. There was no mistake on the part of the importer. The more fact that the bill of entry has been shown the number on 2-6-1898 will not in any way make the bill of entry as having been presented on 2-6-1898 as for the reasons that bill of entry has been accepted and endorsed by the Assistant Commissioner 1-6-1998 itself. Therefore, Special additional duty is nor leviable on the goods (2022 (SELT 27 (C) retied on) (para 7)

14. In this regard the noticee would like to submit that they have filed their Bill of Entry for Home consumption on 14.09.2021, and it was assessed to duty on 15.09.2021. The assessment of Bill of Entry is always followed only after Entry Inward order issued by the proper officer in terms of Section 31 of the Customs Act, 1962.

15. The Anti-dumping duty was imposed on the said goods vide Notification No.51/2021-Customa-(ADD) dated 16.09.2021. In the said notification itself it is mentioned that it shall have effect from publication of said notification in the official gazette. The noticee enclose herewith gazetted Notification, No.51/2021-Customs (ADD) which was published on 16.09.2021. This being the case date of filing bill of entry date 14.09.2021 and its assessment date 15.09.2021 would be the relevant date for levy of ADD. Since the Notification is effective from 16.09.2021, the demand of ADD and IGET lost its ground and does not hold any water.

16. This being the case demand of Rs. 18,91,350/- [Customs duty of Rs. 16,02,044/- IOST on ADD Rs.2,88,512/-] proposed to be recover is not sustainable.

17. Thus being the case the noticee is not liable to pay any Interest as demanded in the impugned notice Additionally, the noticee would like to submit that when they have filed their Bill of entry Notification No.51/2021-Customs (ADD) dated 16.08.3031 has effect from 18.00.2081 was not issued and not effective on the date of its assessment. This being the case the allegation of contravention of Section 46(4)(4A) of the Customs Act, 1962 is not correct.

19. Similarly, the noticee has correctly assessed duty and therefore the allegation of contravention of Section 17 of the Customs Act, 1962 is not correct but erroneous and not sustainable under the law.

20. As submitted herein above the noticee has nothing done willfully but has filed their Bill of Entry with bona-fide belief that on the date of filing bill of entry, the subject notification was not issued and not operative. This being the case the noticee is not liable to pay duty demanded in terms of Section 28(4) of the Customs Act, 1962, not liable to pay Interest in terms of Section 28AA of the Customs Act, 1962, the noticee is not liable to any penalty in terms of Section 114A of the Customs Act, 1962 proposed in the impugned notice.

21. In view of above, the noticee humbly submits that the proceedings initiated vide impugned notice be dropped and further request to allow them personal hearing before the case adjudicated finally.

DISCUSSION AND FINDINGS:

15. I have carefully gone through the facts of the case and Show Cause Notice dated 05.12.2024, the defence submissions, the arguments made by the noticee(s) during the personal hearing, the applicable legal provisions and the details of the case provided before me.

16. In the instant case, I find that the following main issues are required to be decided at the stage of adjudication:

- (i). Whether differential duty amounting to Rs. 18,91,356/- (Rs. Eighteen Lakh Ninety One Thousand Three Hundred and Fifty Six Only) not paid/short paid by them on the aforesaid imported goods should be demanded and recovered under Section 28(4) of the Customs Act, 1962;
- (ii) Whether the applicable interest on the amount as at Sr. No. (i) above should be demanded and recovered under Section 28AA of the Customs Act, 1962;
- (iii). Whether penalty should be imposed under Section 114A of the Customs Act, 1962.

17. I find that M/s. RADHIKA EXPORTS CORPORATION filed the Bill of Entry No. 5438437 dated 14.09.2021 for the clearance of goods i.e. ALUMINIUM FOIL(SIZE:0.0053MMX1000MM) - under CTH 76071190 having assessable value of Rs. 1,19,98,299/- (Rs. One Crore Nineteen Lakh Ninety Eight Thousand Two Hundred and Ninety Nine Only) through their Custom Broker M/s. SSS SAI SHIPPING SERVICES P LTD and they have not paid Anti-Dumping Duty on import of said goods i.e. Aluminum Foil. After publication of Notification No. 51/2021-Customs (ADD) dated 16th September 2021, 'Aluminium Foil of a thickness of 80 micron and below originated in or exported from China PR, Malaysia, Thailand and Indonesia attract the Anti-Dumping Duty. The goods covered under Bill of Entry No. 5438437 dated 14.09.2021 were imported from People's Republic of China, thus, the importer was liable to pay Anti-Dumping Duty on the imported goods terms of Notification No. 51/2021-Customs (ADD) dated 16th September 2021.

17.1. I also find that in accordance with the Notification No. 51/2021-Customs (ADD) dated 16th September 2021 provides for levy of Anti-Dumping Duty (ADD) on 'Aluminum Foil of a thickness of 80 micron and below' originating in, or exported from China PR, Malaysia, Thailand and Indonesia, with effect from

the date of publication of the notification i.e., from 16 September 2021, the criteria specified in Table-A above.

17.2. Further, as per the subject notification, the description of goods does not include the import of the following: -

- (i) Alu Alu Laminate: Alu Alu Laminate of 40-50 Mic in AA8079 & AA8021 is a multi-Layered opaque laminate where Aluminum Foil and is backed with plastic film on both side with adhesives for use in packing capsules/tablets.
- (ii) Ultra-Light Gauge Converted: - Ultra Light Gauge Converted is an Aluminum Foil having thickness of 5.5 mic to 7 mic which is backed with craft paper and scrim or glass cloth whether plain or printed for use in insulation, spices packing, thermal fluid lines covering and tea bags application.
- (iii) Aluminum Foil Composite: - aluminum foil laminated with or backed with craft paper and glass scrim or glass cloth with or without poly ethylene, whether printed or not printed. Aluminum foil laminated with or backed with Kraft paper however is within the scope of the product under consideration and proposed measures.
- (iv) Aluminum foil for capacitors:- Aluminum Foil for capacitors is an aluminum foil of 5 micron gauge with smaller width having 99.35% purity, for use in electrical equipment such as radios, televisions, telephones, computers, microwave ovens, electrical welders, magnetos, electronic testing equipment, copy machines, air conditioners, automobiles, fluorescent lights, mercury vapor street lamps, power transmission equipment, electric motors, control units, and similar articles.
- (v) Etched or formed Aluminum foils: Etched or formed Aluminum foils is Aluminum foil meant to be used in the manufacture of Electrolytic capacitor.
- (vi) Aluminum Composite panel: Aluminum Composite panel is a non-Aluminum core (often PE) bonded between two thin layers of Aluminum, for use in façade cladding and signage.
- (vii) Clad with compatible non clad Aluminum Foil: Clad with compatible non clad Aluminum Foil is a corrosion resistant Aluminum sheet formed from Aluminum surface layers metallurgical bonded to high strength Aluminum alloy core material for use in engine cooling and air conditioner system in automotive industry; such as radiation, condenser, evaporator, intercooler, oil cooler and heater.
- (viii) Aluminum Foil for beer bottle: Aluminum foil of 10.5 Micron with rough surface and perforated whether printed or not, to be used in beer bottle.

17.3. As per section 15(**Date for determination of rate of duty and tariff valuation of imported goods**)

(1) The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force,-

(a) in the case of goods entered for home consumption under section 46, on the date on which a bill of entry in respect of such goods is presented under that section;

(b) in the case of goods cleared from a warehouse under section 68, on the date on which a bill of entry for home consumption in respect of such goods is presented under that section;

(c) in the case of any other goods, on the date of payment of duty:

[PROVIDED that if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft or the vehicle by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.]

(2) The provisions of this section shall not apply to baggage and goods imported by post.

17.4. As per the details available in the ICES system I find that although the subject BE 5438437 dt. 14.09.2021 was assessed on 15.09.2021 i.e. before the ADD vide notf. No. 51/2021-Customs (ADD) dated 16th September 2021 was levied. It is pertinent to mention that the inward date for the same is 23.09.2021 and the OOC was given on 27.09.2021. As the bill of entry has been presented before the date of entry inwards, therefore the relevant date in the case is 23.09.2021. That clearly shows that the subject import consignment falls under the purview of ADD levied vide the notf. 51/2021 supra.

17.5. I find that ADD at the rate 523.67 USD per MT (Exchange rate Rs.73.95 per USD) was leviable on these goods in terms of serial number 03 of ADD notification above. However, it was noticed that the said consignment was cleared without payment of ADD and corresponding 18% IGST on this ADD amount.

17.6. I find that the importer has not paid applicable Anti-Dumping duty as per Notification No. 51/2021-Customs (ADD) dated 16th September 2021 against the impugned imported goods declared as “Aluminum Foil” covered under Bill of Entry No. 5438437 dated 14.09.2021”. This resulted in short payment of duty of Rs. 18,91,356/- (ADD Rs. 16,02,844/- & IGST Rs. 2,88,512/-). (Details as per TABLE-A).

Table-D

Exchange Rate:- 73.95
Rs./Kg.

BE No. Date	Importer Name	Item Description	Weight	Assess value	ADD to be paid @ 523.67 USD /MT (38725.39 65Rs. /MT)	IGST to be paid on ADD	Differenti al Duty to be paid (IGST +ADD)
5438437 . 14.09.202 1	RADHIKA EXPORTS CORPORATI ON	ALUMINIUM FOIL(SIZE:0.0 053MMX1000 MM)	41390 KGS	11998299	1602844	28851 2	1891356

18. Demand of differential duty under section 28(4) of the Customs Act, 1962.

18.1. The section 28(4) of the Customs Act, 1962 provides for the following:

Section 28. Recovery of ²[duties not levied or not paid or short-levied or short-paid] or erroneously refunded. -

(1)

(2)

(3).....

(4) Where any duty has not been ¹⁰[levied or not paid or has been short-levied or short-paid] or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

(a) collusion; or

(b) any wilful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been ¹¹[so levied or not paid] or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

18.2. The Customs Act, 1962, allows for the recovery of short-paid or unpaid duties for up to five years if there is evidence of fraud, collusion, wilful misstatement, or suppression of facts by the importer, even after the final assessment of a bill of entry. In such a case, the demand of the anti-dumping duty is well within the scope of law.

19. Calculation of Interest under section 28AA of the Customs Act, 1962

19.1 The section 28AA of the Customs Act, 1962 provides for the following:

1 [Section 28AA. Interest on delayed payment of duty. -

(1) Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to pay interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten per cent and not exceeding thirty-six per cent per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

(3) Notwithstanding anything contained in sub-section (1), no interest shall be payable where,-

- (a) the duty becomes payable consequent to the issue of an order, instruction or direction by the Board under section 151A; and

- (b) such amount of duty is voluntarily paid in full, within forty-five days from the date of issue of such order, instruction or direction, without reserving any right to appeal against the said payment at any subsequent stage of such payment.

19.2. In view of above, the importer is also liable for payment of applicable interest on the same under section 28AA of the Customs Act, 1962.

20. I find that with the introduction of self-assessment under Section 17, more faith is bestowed on the importer, as the practices of routine assessment, concurrent audit etc. have been dispensed with. As a part of self-assessment, the importer has been entrusted with the responsibility to correctly self assess the duty. However, in the instance case, the importer intentionally abused this faith placed upon it by the law of the land. Therefore, it appears that the importer has wilfully violated the provisions of Section 17(1) of the Act in as much as importer has failed to correctly self-assessed the impugned goods and has also wilfully violated the provisions of Sub-section (4) and (4A) of Section 46 of the Act.

20.1. As per discussion hereinabove, I find that it evident that the importer has deliberately not assessed the BE with relevant ADD imposed vide Notification No. 51/2021-Customs (ADD) dated 16th September 2021 and hence is liable for payment of the same. Therefore, the importer is also liable for payment of applicable interest on the same under section 28AA of the Customs Act, 1962.

21. Penalty under section 114(A) of the Customs Act, 1962:

21.1 From the above discussions, I find that the importer has deliberately not paid ADD imposed by the Notification No. 51/2021-Customs (ADD) dated 16th September 2021, on 'Aluminium Foil of a thickness of 80 micron and below originated in or exported from China PR, Malaysia, Thailand and Indonesia. Since the goods covered under Bill of Entry No. 5438437 dated 14.09.2021 were imported from Thailand, with inward date 23.09.2021 and the OOC was given on 27.09.2021 i.e after publication of the above said ADD notification. thus, the importer was liable to pay Anti-Dumping Duty in terms of Notification No. 51/2021-Customs (ADD) dated 16th September 2021. And failure of payment of ADD so levied has held the importer liable for penalty under section 114(A) of the Customs Act, 1962.

22. In view of the forgoing discussions and finding, I pass the following

ORDER

- (i). I confirm and order for recovery of differential duty amounting to **Rs.18,91,356/-** (Rupees Eighteen Lakh Ninety One Thousand Three Hundred and Fifty Six Only) not paid/short paid by them on the aforesaid imported goods under Section 28(4) of the Customs Act, 1962.
- (ii). I confirm and order to recover applicable interest on the amount as at Sr. No. (i) above under Section 28AA of the Customs Act, 1962.
- (iii). I impose a penalty of **Rs. 18,91,356/-** (Rupees Eighteen Lakh Ninety-One Thousand Three Hundred and Fifty-Six Only) under Section 114A of the Customs Act, 1962

23. This order is issued without prejudice to any other action which may be required to be taken against any person as per the provision of the Customs Act, 1962 or any other law for the time being in force.

24. The Show Cause Notice bearing No. CUS/APR/MISC/2318/2024-GR 4-O/o Pr Commr-Cus-Mundra dated 30.11.2024 stands disposed in above terms.

#ApprovedByName#
#ApprovedByDesignation#
#ApprovedBySectionName#
Customs House, Mundra

To,

M/s. RADHIKA EXPORTS CORPORATION,
CROWN HEIGHTS, TWIN DISTRICT CENTRE,
HOTEL CROWN PLAZA COMPLEX, SECTOR - 10,
DELHI - 110 085

Copy To,

1. The Dy. Commissioner of Customs (RRA/TRC/EDI), CH, Mundra
2. Guard File