

	<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.	CUS/APR/BE/SAO/46/2024-Gr 2-O/o Pr Commr-Cus-Mundr
B	Order-in-Original No.	MCH/ADC/AK/127/2024-25
C	Passed by	ARUN KUMAR Hon'ble Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	24.08.2024
E	Noticee/Party/Importer/ Exporter	M/s. AB Impex (IEC- 05100703291), WZ-14A. 1St Floor, Manohar Park, East Punjabi Bagh, New Delhi-110026
F	DIN No.	20240871MO000000F38B

1. यह अपील आदेश संबन्धित 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 ज्ञापन के साथ ड्यूटी/ 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 FACT:

M/s AB Impex (IEC- 05100703291), WZ-14A. 1st Floor, Manohar Park, East Punjabi Bagh, New Delhi-110026 (hereinafter referred as 'Importer' for sake of brevity) has filed Bill of Entry No. 4317119 dated 04.07.2024 at Mundra Port through Customs Broker M/s DSR Logistics (CBC-AANFD4685MCH001) for import of miscellaneous decorative items and others having declared Assessable Value as Rs. 10,74,556/- and duty payable as Rs. 3,30,769/- at Mundra Port.

2 . 1 During the examination of the consignment by the Dock Examination Section, it was noticed that there was some un-declared cargo in the container. Furthermore, some items appeared as toy/electronic items which may covered under the purview of the BIS. Therefore, after conducting 100% examination of the cargo and inspection by the Chartered Engineer, the inquiry was transferred to the SIIB, CH, Mundra vide e-office file No CUS/SHED/OBJ/291/2024-Docks Examn-O/o Pr Commr- Cus. Mundra along with CE valuation report dated 20.07.2024.

2.2 On analysis of the examination report of the Docks officer, it appears that there was difference in the quantity of some items in comparison to the items declared in the BE. In case of some items, the quantity was found lesser than the declared quantity whereas, some items, were found not declared in the BE during the examination. On the other hand, some items which are declared in the BE were not found during the examination. The detail of items found during the course of Examination is as below:

TABLE-1

Sr. No.	Goods Description	Declared QTY	Total Pieces declared	CTH declared	Value Declared	Total Carton/Pallet/Bag found during examination	Pcs in per Carton found during examination	Total Pcs found during examination
1	Glass Decorative Show Piece	501.5	6018	70200090	133386.43	70	64	4480
2	World Cup Rotating Lamp Show Piece	ND*				56	50	2800
	Cat Show Piece	ND						

3	(Appears to be Toy)					20	160	3200
4	Decorative Lamp		ND			56	20	1120
5	Decorative Show Piece (Teddy)		ND			2	60	120
6	Plastic Show Piece		ND			2	96	192
7	Decorative Show Piece		ND			1	72	72
8 (1)	Notebook +	90	1080	48201090	9206.82	60	18	1080
8(2)	Empty Bottle	90	1080	39235090	29154.94	60	18	1080
9	Empty Glass Bottle	17	204	70109000	6912.79	11 + 1	18 + 6	198+6 = 204
10	Plastic Fiber	1	1	39269099	852.48	1	1	1
11	Lapato Abrasive	200	2400	68042290	110822.89	1	2400	2400
12	Graphite	185	185	38019000	491030.64	185	1	185
13	Iron Bolt	6000	6000	73181110	51149.03	2 Pallet (1800Kg)	3000	6000 (1800Kgs)
14	Photo Frame with Light	480	5760	83063000	51558.22	50	36	1800
15	Photo Frame with Light		ND			9	36	324
16	Photo Frame with Light		ND			1	90	90
17	Decorative Show Piece		ND			7	72	504
18	Photo Frame with Light		ND			4	36	144
19	Photo Frame with Light		ND			13	64	832
20	Plastic Packing Material Tape	220	220	39199090	18754.64	1 Pallet (220 Kgs)	1	220 Kgs
21	Bed Base Top		ND				1	1
22	Bed Back Side Support		ND				1	1
23	Bed Mattress		ND				1	1
24	Sofa 3-Seater		ND				1	1
25	Sofa 1 Seater		ND				1	1
26	Table with side stool		ND				2	2
27	Show Piece Stand		ND				2	2
28	Decorative Show Light		ND				2	2
29	Wardrobe for storage		ND				1	1
30	Chair with		ND				4	4

31	Cushion 3-Seater Chair with Cushion	ND					1	1
32	Pen Holder	157.5	1890	96089910	29788.34	Not declared in the Bill of Entry		
33	WPC Board with clips	180	180	39211390	141938.54	Not found during the examination		
					1074556			

2.3 Further, total assessable value of the imported items declared by the importer in BE was Rs. 10,74,556/- which appears incorrect due to non-declaration and mis declaration of the items under import. Therefore, value of the consignments declared by the importer under Rule 3 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 ('CV Rules' for sake of brevity) appears to be rejected in terms of Rule 12 of the Rules, *ibid*. To ascertain the value of cargo, attempts have been made to get the details from the previous bills of entry filed by the importer and well as NIDB data for similar and identical items during the relevant period was done, however, due to various items without specification and detail, valuation of identical or similar items cannot be ascertained. Thus, valuation of the item under import could not be determined in terms of Rule 4 to 8 of the CV Rules, *ibid*. Therefore, valuation of the goods was found required to be determined under residual method of valuation provided under Rule 9 of the CV Rules *ibid* and hence, opinion of the empanelled Chartered Engineer was sought for determination of the value of the goods under import. The empanelled chartered engineer Shri Ajay Jhala has submitted his observations vide report ABJ:INSP:CE:24-25:AB:01 dated 20.07.2024 and has opined the total value of the cargo to be USD 17042.08 (Rs. 14,36,647/-) instead of USD 12747 (Rs. 10,74,556/-) as declared in the BE.

2.4 Further, the CE vide his report has also submitted specific observations in related to following two items, which were suspected to be covered under purview of the BIS compliance.

(i) CAT Show Piece (Sr. No. 3 of the above table having total value of the item as per CE report- Rs. 26,976/-): Based on the physical and visual examination, the CAT Show Piece can also be use as a decorative item for various purposes such as: Car Dashboard Decorative item, Table Decorative item, Home decorative item, etc.

Thus, it appears that the impugned item is a show piece and not a toy as suspected during the Dock Examination report and hence out of purview of the

BIS, if any.

3.2 Photo Frame with Light (Sr. No. 14 to 19 having total value of the item as per CE report- Rs. 1,18,415/-): Based on the physical and visual examination, the Photo Frame consists of Glass frame with SMD / LED Chips as its integral part for illuminating the frame with Push button for ON & OFF purpose, without driver.

Thus, it appears that the impugned item is a photo frame without driver and hence out of purview of the BIS, if any.

2.5 From the above table, it appears that many of the items found during the examination were not declared in the Bill of Entry filed by the importer. Therefore, classification of these items is required to be ascertained. Furthermore, it appears that in some items declared by the importer, the classification opted by the importer is not correct. Therefore, the classification and valuation of the items under import is opined on the basis of description of the items and CE report is as under:

TABLE-2

Sr. No.	Goods Description	CTH declared	Value Declared (INR)	CTH as per investigation	Value as per CE report (INR)
1	Glass Decorative Show Piece	70200090	133386.43	70139900	237928
2	World Cup Rotating Lamp Show Piece	NA		94052900	68452
3	Cat Show Piece (Appears to be Toy)	NA		96020090	26976
4	Decorative Lamp	NA		94052900	67035
5	Decorative Show Piece (Teddy)	NA		39269099	1922
6	Plastic Show Piece	NA		39269099	3075
7	Decorative Show Piece	NA		39269099	1578
8 (1)	Notebook +	48201090	9206.82	48201090	40970
8(2)	Empty Bottle	39235090	29154.94	39233090	40970
9	Empty Glass Bottle	70109000	6912.79	70109000	7739
10*	Plastic Fiber	39269099	852.48	39269099	852.48
11	Laptop Abrasive	68042290	110822.89	68053000	111276
12	Graphite	38019000	491030.64	38019000	499056
13*	Iron Bolt	73181110	51149.03	73181110	51149.03
14	Photo Frame with Light	83063000	51558.22	83063000	48557
15	Photo Frame with Light	NA		83063000	14203
16	Photo Frame with Light	NA		83063000	4400

17	Decorative Show Piece	NA		83063000	20394
18	Photo Frame with Light	NA		83063000	6312
19	Photo Frame with Light	NA		83063000	24548
20	Plastic Packing Material Tape	39199090	18754.64	39199090	19473
21	Bed Base Top	NA		94035010	16860
22	Bed Back Side Support	NA		94035010	6744
23	Bed Mattress	NA		94042990	10116
24	Sofa 3 Seater	NA		94016100	27819
25	Sofa 1 Seater	NA		94016100	13488
26	Table with side stool	NA		94036000	3372
27	Show Piece Stand	NA		94052900	5058
28	Decorative Show Light	NA		94054900	23604
29	Wardrobe for storage	NA		94035090	9695
30	Chair with Cushion	NA		94016100	13488
31	3 Seater Chair with Cushion	NA		94016100	10116
32	Pen Holder	96089910	29788.34	96089910	0
33	WPC Board with clips	39211390	141938.54	39211390	0
			10,74,556		14,37,226

* in case of item under Sr. No. 10 & 13 above, the CE has suggested value of the item slightly lesser than the value declared by the importer in the BE. Therefore, for the sake of revenue, the item declared by the importer in the BE for these items, has been considered for the purpose of Assessment.

2.6 In view of the above, it appears that the importer has declared the total assessable value of the consignment as **Rs. 10,74,556/-** in the Bill of Entry. However, as per the report submitted by the Chartered Engineer the suggestive value of the consignment is **Rs. 14,37,226/-**. Thus, it appears that the subjected consignment was undervalued to the extent of **Rs. 3,62,670/-**. Thus, the valuation of the imported items needs to be rejected under Rule 12 of the CVR, 2007 and need to be re-determined. The valuation of all the items under import is required to be done under Rule 9 of the Rules, by way of valuation report of the Chartered Engineer on the basis of market research as discussed in para supra.

2.7 In view of the above, it appears that the importer has undervalued the items under import to the tune of Rs. 3,62,670/-. The duty liability on the imported items w.r.t. their respective CTH is calculated as under:

TABLE-3

Sr. No.	CTH declared	Duty Declared				Duty as per Investigation				Difference			
		BCD	SWS	IGST	Total	BCD	SWS	IGST	Total	BCD	SWS	IGST	Total
1	70200090	13339	1334	26651	41323	47586	4759	52249	104593	34247	3425	25598	63270
2	NA					17113	1711	15710	34534	17113	1711	15710	34534
3	NA					2698	270	5390	8357	2698	270	5390	8357
4	NA					16759	1676	15385	33819	16759	1676	15385	33819
5	NA					288	29	403	720	288	29	403	720
6	NA					461	46	645	1152	461	46	645	1152
7	NA					237	24	331	591	237	24	331	591
8 (1)	48201090	921	92	1226	2239	4097	410	5457	9964	3176	318	4231	7725
8(2)	39235090	4373	437	6114	10924	6145	615	8591	15351	1772	177	2478	4427
9	70109000	691	69	1381	2142	774	77	1546	2397	83	8	165	256
10	39269099	128	13	179	319	128	13	179	319	0	0	0	0
11	68042290	11082	1108	22142	34333	11128	1113	22233	34473	45	5	91	140
12	38019000	36827	3683	95677	136187	37429	3743	97241	138413	602	60	1564	2226
13	73181110	7672	767	10726	19166	7672	767	10726	19166	0	0	0	0
14	83063000	10312	1031	7548	18891	9711	971	7109	17791	-600	-60	-439	-1100
15	NA					2841	284	2079	5204	2841	284	2079	5204
16	NA					880	88	644	1612	880	88	644	1612
17	NA					4079	408	2986	7472	4079	408	2986	7472
18	NA					1262	126	924	2313	1262	126	924	2313
19	NA					4910	491	3594	8994	4910	491	3594	8994
20	39199090	2813	281	3933	7027	2921	292	4084	7297	108	11	151	269
21	NA					4215	422	3869	8506	4215	422	3869	8506
22	NA					1686	169	1548	3402	1686	169	1548	3402
23	NA					2529	253	2322	5104	2529	253	2322	5104
24	NA					6955	695	6384	14035	6955	695	6384	14035
25	NA					3372	337	3095	6805	3372	337	3095	6805
26	NA					843	84	774	1701	843	84	774	1701
27	NA					1265	126	1161	2552	1265	126	1161	2552
28	NA					5901	590	5417	11908	5901	590	5417	11908
29	NA					2424	242	2225	4891	2424	242	2225	4891
30	NA					3372	337	3095	6805	3372	337	3095	6805
31	NA					2529	253	2322	5104	2529	253	2322	5104
32	96089910	2979	298	3968	7245	0	0	0	0	-2979	-298	-3968	-7245
33	39211390	14194	1419	28359	43973	0	0	0	0	-14194	-1419	-28359	-43973
		105331	10533	207904	323769	214208	21421	289717	525347	108877	10888	81813	201578

In view of the above, it appears that the importer has short levied/not levied the duty amounting to Rs. 2,01,578/- (BCD- 1,08,777/-+ SWS- 10,888/- + IGST- 81,813/- in the Bill of entry filed by the them by way mis declaration/not declaration and undervaluation of the items under import.

2.8. A Summons dated 12.08.2024 was issued to the importer to clarify the matter. In response, Shri Bharat Bhushan Sadhana, authorised representative of the importer appeared and, in his statement, recorded on 12.08.2024, he, inter-alia stated that:

- *he is the Authorized representative in M/s AB Impex (IEC- No. 05100703291 and looks after all the sales, purchase and accounts related work in the firm M/s AB Impex. All the import and customs related work is looked after by him in the firm. His wife Smt Aarti Sadana is proprietor in the firm. He submitted the authority letter dated 12.08.2024. He has been working and looking after the work in firm since last 10-12 years.*
- *M/s AB Impex is engaged in the import of miscellaneous household items in the firm and then supplying them to their customers in and around the Delhi.*
- *On being shown and perused, the Bill of Entry No 4317119 dated 04.07.2024, he stated that the said Bill of entry has been filed by their CHA M/s DSR Logistics on their behalf. The said Bill of entry has been filed for the import of miscellaneous household items like Decorative Showpieces, notebooks, photo frame and other items.*
- *he agreed that during the examination of the consignment, some mis-declared items have been found He further stated that the said consignment was ordered telephonically to their supplier situated at China.*
- *he was present during the docks examination of the consignment imported under the BE No 4317119 dated 04.07.2024.*
- *some of the items found during the examination are clubbed under a single head in the item declared as per the Bill of entry and packing list.*
- *that one item Photoframe along with LED light is without driver, as such it does not require BIS. Further the CAT Toy is a decorative showpiece as such it also does not requires BIS. He further submitted the photographs of the said items.*
- *he agrees with the findings of examination report and valuation of the cargo as submitted by the Chartered Engineer under Valuation report ABJ:INSP;CE:24-25:AB:01 dated 20.07.2024 as per which the value of the cargo is amounted to USD 17,042.08/-.*
- *he agreed to classify the undeclared/declared items goods under respective CTH as deemed fit under the Customs Tariff head.*
- **He further stated that they do not want any SCN or PH in the matter and ready to pay applicable duty, fine and penalty in the matter and requested to adjudicate the matter accordingly and release the cargo at the earliest.**

LEGAL PROVISIONS:

3.1 As per Section 2 (39), '**smuggling**', in relation to any goods, means *any act or omission which will render such goods liable to confiscation under section 111 or section 113;*

3 . 2 **SECTION 46** of the Act, prescribes that 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.

3.3. Further, **Section 111** of the Act, prescribes the Confiscation of improperly imported goods, etc. as under

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

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

(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.

3.4 Further, Section 112 of the Act provides the penal provisions for improper importation of goods, etc. which read as under:

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;]

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

3.5 SECTION 124 prescribes the mandatory issuance of show cause notice before confiscation of goods, which read as under:

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person –

- a. is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;
- b. is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and
- (c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.

3.6 SECTION 125 provides the Option to pay fine in lieu of confiscation as

under:

(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 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:

Provided *that where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, 3 [no such fine shall be imposed]:*

Provided *further that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.*

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

4. **Summary of Investigation Report** issued by SIIB, Customs House Mundra vide F. No. F. No. CUS/SHED/OBJ/291/2024-Docks Examn-O/o Pr Commr-Cus. Mundra dated 21.08.2024: -

4.1 From the above discussion, it appears that the importer has filed 4317119 dated 04.07.2024 for import of Miscellaneous items. Upon examination of the consignment, it was noticed that there was a difference in the quantity of some items in comparison to the items declared in the BE. In case of some items, the quantity was found lesser than the declared quantity whereas, in some items, the quantity was found more than the declared as detailed in Table-1 above.

4.2 In view the discrepancies noticed during the examination, it appears that the assessable value of the imported items declared by the importer in the BE, i.e. Rs. 10,74,556/- was incorrect in light of mis declaration of the

imported items in terms of quantity as well as undeclared items as discussed above. Therefore, value of the consignments declared by the importer under Rule 3 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 ('CV Rules' for sake of brevity) appears to be rejected in terms of Rule 12 of the Rules, *ibid*. Since, the items found during the examination are of unbranded with no specification, the valuation of the same could not be determined in terms of Rule 4 to 8 of the CV Rules, *ibid*. Therefore, valuation of the goods was found to be determined under residual method of valuation provided under Rule 9 of the CV Rules *ibid* and hence, opinion of the empanelled Chartered Engineer was sought for determination of the value of the goods under import. As per the report submitted by the Chartered Engineer the suggestive value of the consignment is Rs. 14,37,226/-, as detailed in Table-2 above. Thus, it appears that the subjected consignment was undervalued to the extent of Rs. 3,62,670/-.

4.3 In view of the above, it appears that the importer has not declared/ mis declared the items under import vide BE No. 4317119 dated 04.07.2024 in terms of value and quantity. Therefore, it appears that the importer has contravened Section 14 and Section 46 of the Customs Act, 1962 read with Rule 11 of the CVR, 2007 in as much as the failed to declare correct value of the goods in the Customs document filed by them. These acts of omission and commission on the part of importer has made the imported goods having re-determined value of Rs. 14,37,226/- in the BE No. 4317119 dated 04.07.2024 and liable for confiscation under Section 111 (1) & (m) of the Act, *ibid* and has thus rendered themselves liable for penal action under Section 112 (a) (ii) of the Customs Act, 1962.

4.4 Further, it appears that by way of non-declaration of the imported goods as well as undervaluation of the declared imported goods, the importer has short levied/not levied the duty amounting to Rs. 2,01,578/- (BCD- 1,08,777/- + SWS- 10,888/- + IGST- 81,813/-) in the Bill of entry, as tabulated in Table-3) which is required to be recovered from them by way of re-assessment of the Bill of Entry.

5. Recommendation based on above investigation:-

- i. The undeclared/mis declared imported items vide BE No. 4317119 dated 04.07.2024 are required to be classified under their respective CTH as discussed in Table-2 above.

- ii. The declared value, i.e. Rs. 10,74,556/- of the consignment covered under BE No. 4317119 dated 04.07.2024 is liable to be rejected under Rule 12 of the CVR, 2007 and required to be re-determined at Rs. 14,37,226/- in terms of Rule 9 of the Rules, *ibid* as detailed in Table-2 above.
- iii. The imported goods having re-determined value of Rs. 14,37,226/- is liable for confiscation under Section 111 (l) & (m) of the Act, *ibid*.
- iv. The differential duty amounting Rs. 2,01,578/- (BCD- 1,08,777/- + SWS- 10,888/- + IGST- 81,813/-) short levied/not levied on the imported items is required to be recovered from them by way of re-assessment of the Bill of Entry.
- v. Penalty under Section 112 (a) (ii) of Customs Act, 1962 is imposable upon the importer.

RECORDS OF PERSONAL HEARING & WRITTEN SUBMISSION

6. The Proprietor of M/s. AB Impex, Mrs Aarti vide their letter dated 22.08.2024 addressed to Additional Commissioner of Customs (Imports) requested that they do not want any personal hearing in the subject matter and requested to release the goods by adding fine and penalty and adjudicate the matter on merit basis.

DISCUSSION AND FINDINGS

7. I have carefully gone through the Investigation Report as well as facts of the case available on records. The Proprietor of M/s. AB Impex, Mrs Aarti vide their letter dated 22.08.2024 requested for waiver of Personal Hearing and requested to release the goods by adding fine and penalty and adjudicate the matter on merit basis. Thus, I find that principle of natural justice as provided in Section 122A of the Customs Act, 1962 have been complied with and therefore, I proceed to decide the case on the basis of documentary evidences available on records. The following main issues are involved in Investigation Report, which are required to be decided:

- i. Whether, the undeclared/mis declared goods pertaining to Bill of Entry No. 4317119 dated 04.07.2024 are required to be classified under their respective CTH as discussed in Table-2 above;
- ii. Whether, the declared value, i.e. Rs. 10,74,556/- of the consignment covered under

BE No. 4317119 dated 04.07.2024 is liable to be rejected under Rule 12 of the CVR, 2007 and required to be re-determined at Rs. 14,37,226/- in terms of Rule 9 of the Rules, *ibid* as detailed in Table-2 above;

- iii. Whether, the imported goods having re-determined value of Rs. 14,37,226/- is liable for confiscation under Section 111 (l) & (m) of the Act, *ibid*;
- iv. Whether, the differential duty amounting Rs. 2,01,578/- (BCD- 1,08,777/- + SWS- 10,888/- + IGST- 81,813/-) short levied/not levied on the imported items is required to be recovered from them by way of re-assessment of the Bill of Entry;
- v. Whether, Penalty under Section 112 (a) (ii) of Customs Act, 1962 is imposable upon the importer;

8 . I find that M/s AB Impex (IEC- 05100703291), WZ-14A. 1St Floor, Manohar Park, East Punjabi Bagh, New Delhi-110026 (hereinafter referred as 'Importer' for sake of brevity) has filed Bill of Entry No. 4317119 dated 04.07.2024 at Mundra Port through Customs Broker- M/s DSR Logistics (CBC-AANFD4685MCH001) for import of miscellaneous decorative items and others having declared Assessable Value as Rs. 10,74,556/- and duty payable as Rs. 3,30,769/- at Mundra Port.

9. I find that during the examination of the consignment by the Dock Examination Section, it was noticed that there was some un-declared cargo in the container. Furthermore, some items appeared as toy/electronic items which may covered under the purview of the BIS. Therefore, after conducting 100% examination of the cargo and inspection by the Chartered Engineer, the inquiry was transferred to the SIIB, CH, Mundra vide e-office file No CUS/SHED/OBJ/291/2024-Docks Examn-O/o Pr Commr- Cus. Mundra along with CE valuation report dated 20.07.2024.

10. On analysis of the examination report of the Docks officer, I find that there was difference in the quantity of some items in comparison to the items declared in the BE. The quantity was found lesser than the declared quantity in some case, whereas, some items, were found not declared in the BE during the examination. On the other hand, some items which are declared in the BE were not found during the examination. The detail of items found during the course of Examination is mentioned in Table-A:

11. I find that total assessable value of the imported items declared by the importer in BE was Rs. 10,74,556/- which appears incorrect due to non-declaration and mis declaration of the items under import. Therefore,

value of the consignments declared by the importer under Rule 3 of the Customs Valuation (Determination of value of imported goods) Rules, 2007 ('CV Rules' for sake of brevity) appears to be rejected in terms of Rule 12 of the Rules, *ibid*. To ascertain the value of cargo, attempts have been made to get the details from the previous bills of entry filed by the importer and well as NIDB data for similar and identical items during the relevant period was done, however, due to various items without specification and detail, valuation of identical or similar items cannot be ascertained. Thus, valuation of the item under import could not be determined in terms of Rule 4 to 8 of the CV Rules, *ibid*. Therefore, valuation of the goods was found required to be determined under residual method of valuation provided under Rule 9 of the CV Rules *ibid* and hence, opinion of the empanelled Chartered Engineer was sought for determination of the value of the goods under import.

12. I have gone through the observation submitted by empanelled chartered engineer Shri Ajay Jhala vide his report ABJ:INSP:CE:24-25:AB:01 dated 20.07.2024 has opined the total value of the cargo to be USD 17042.08 (Rs. 14,36,647/-) instead of USD 12747 (Rs. 10,74,556/-) as declared in the BE.

CE has also submitted specific observations in related to following two items, which were suspected to be covered under purview of the BIS compliance.

(i) CAT Show Piece (Sr. No. 3 of the above table having total value of the item as per CE report- Rs. 26,976/-): Based on the physical and visual examination, the CAT Show Piece can also be use as a decorative item for various purposes such as: Car Dashboard Decorative item, Table Decorative item, Home decorative item, etc.

Thus, it appears that the impugned item is a show piece and not a toy as suspected during the Dock Examination report and hence out of purview of the BIS, if any.

3.2 Photo Frame with Light (Sr. No. 14 to 19 having total value of the item as per CE report- Rs. 1,18,415/-): Based on the physical and visual examination, the Photo Frame consists of Glass frame with SMD / LED Chips as its integral part for illuminating the frame with Push button for ON & OFF purpose, without driver.

Thus, it appears that the impugned item is a photo frame without

driver and hence out of purview of the BIS, if any.

13. From the above fact, I find that many of the items, during the examination were not found declared in the Bill of Entry filed by the importer. Therefore, classification of these items is required to be ascertained. Furthermore, it appears that in some items declared by the importer, the classification opted by the importer is not correct. Therefore, the classification and valuation of the items under import is opined on the basis of description of the items and CE report is mentioned in Table-2:

The item under Sr. No. 10 & 13 above, the CE has suggested value of the item slightly lesser than the value declared by the importer in the BE. Therefore, for the sake of revenue, I consider, the value declared by the importer in the BE for these items for the purpose of Assessment.

14. The importer has declared the total assessable value of the consignment as Rs. 10,74,556/- in the Bill of Entry. However, as per the report submitted by the Chartered Engineer the suggestive value of the consignment is Rs. 14,37,226/-. Therefore, I hold that value ascertained by Chartered Engineer as per Investigation Report, as discussed above, are true, correct and fair value. Thus, I find that the subject consignment was undervalued to the extent of Rs. 3,62,670/-. Therefore, the valuation of the imported items needs to be rejected under Rule 12 of the CVR, 2007 and need to be re-determined. The valuation of all the items under import is required to be done under Rule 9 of the Rules, by way of valuation report of the Chartered Engineer on the basis of market research as discussed in para supra.

15. I find that the importer has short levied/not levied the duty amounting to Rs. 2,01,578/- (BCD- 1,08,777/-+ SWS- 10,888/- + IGST- 81,813/-) in the Bill of entry filed by the them by way mis declaration/not declaration and undervaluation of the items as detailed in Table-3.

16. I have gone through the statement of Shri Bharat Bhushan Sadhana, authorised representative of the importer, recorded on 12.08.2024 against the Summons dated 12.08.2024 issued by SIIB, Customs House Mundra. I find that he agrees with the findings of examination report and valuation of the cargo as submitted by the Chartered Engineer under Valuation report ABJ:INSP;CE:24-25:AB:01 dated 20.07.2024 as per which the value of the cargo is amounted to USD 17,042.08/-. He also agreed to classify the undeclared/declared items goods under respective CTH as deemed fit under the Customs Tariff

headings.

17. I find that the importer is trying to clear the goods without declaring in the Bill of Entry to evade the Customs duty and which are required to be classified under their respective CTH as discussed in Table-2 above. I also find that the declared value, i.e. Rs. 10,74,556/- of the consignment covered under BE No. 4317119 dated 04.07.2024 is liable to be rejected under Rule 12 of the CVR, 2007 and required to be re-determined at Rs. 14,37,226/- in terms of Rule 9 of the Rules, ibid as detailed in Table-2 above.

The Section 111(l) provides for confiscation any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act. The Section 111(m) provides for confiscation of any goods which do not correspond in respect of value or in any other particular with the entry made under this Act. I therefore, hold that mis-declared/undeclared goods having re-determined value of Rs. Rs. 14,37,226/- for items covered under Bill of Entry No. 4317119 dated 04.07.2024 are liable for confiscation under Section 111(l) and 111(m) Customs Act, 1962. I find that by the acts of omission and commission, the importer had rendered himself liable for penalty under Section 112(a)(i) of the Customs Act, 1962.

18 . Section 125 of the Customs Act, 1962 provides that 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 an option to pay in lieu of confiscation such fine as the said officers thinks fit. Considering these facts, I find it appropriate to grant an option to pay fine under Section 125 of the Customs Act, 1962 in lieu of confiscation of the prohibited goods for re-export purpose.

19. In view of the above discussion and findings, I pass the following order:-

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ORDER

- i. I reject the classification of the goods declared by importer M/s. AB Impex vide Bill of Entry 4317119 dated 04.07.2024 and order to be

re-classified under their respective CTH as discussed in Table-2 above.

- ii. I order for rejection of the declared value of Rs. 10,74,556/- of the consignment covered under BE No. 4317119 dated 04.07.2024 under Rule 12 of the Customs Valuation Rules, 2007 and the value is to be re-determined at Rs. 14,37,226/- in terms of Rule 9 of the Customs Valuation Rules, 2007 as detailed in Table-2 above. I also order the re-assessment of the Bill of Entry accordingly.
- iii. I order for confiscation of the goods imported vide Bill of Entry No. 4317119 dated 04.07.2024 found undeclared/ mis-declared having re-determined value of Rs. 14,37,226/- under Section 111(l) and 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the goods on payment of redemption fine of Rs.1,85,000/-(Rs. One lakh Eighty Five thousand Only) under Section 125 of Customs Act, 1962.
- iv. I impose a penalty of Rs. 15,000/-(Rs. Fifteen Thousand Only) under Section 112(a)(ii) of the Customs Act, 1962 on importer M/s. AB Impex for the reasons as stated above.

20. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved, under the provisions of the Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

Signed by
Arun Kumar
Date: 24-08-2024 13:52:48 (Arun Kumar)
Additional Commissioner of Customs
Import Assessment,
Customs House, Mundra

To,

M/s AB Impex (IEC- 05100703291),
WZ-14A. 1St Floor, Manohar Park, East Punjabi Bagh,
New Delhi-110026

Copy to:

1. The Dy. Commissioner of Customs, SIIB, Mundra Customs.
2. The Dy. Commissioner of Customs, RRA, Mundra Customs.
3. The Dy. Commissioner of Customs, EDI, Mundra Customs.
4. Office Copy.