

	<b>प्रधान आयुक्त का कार्यालय, सीमा शुल्क सदन, एमपी और एसईजेड, मुंद्रा, कच्छ-गुजरात -370421</b> <b>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MP &amp; SEZ</b> <b>MUNDRA, KUTCH-GUJARAT</b> <b>PHONE : 02838-271426/271428</b> <b>FAX : 02838-271425</b>	
A	File No.	CUS/APR/INV/520/2024-Gr 5-6
B	Order-in-Original No.	<b>MCH/ADC/AKM/226/2024-25</b>
C	Passed by	<b>Amit Kumar Mishra</b> Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	<b>18.12.2024</b>
E	Noticee/Party/ Importer/ Exporter	M/s. Freeze Kool Appliances Private Limited 285/1,287,288/1,288/2,219, Village- Baska, Tehsil Halol, Near Mango Orchard, Halol, Panchmahal, Gujarat, 389350
F	DIN No.	<b>20241271MO0000444A3A</b>

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, हुड़को बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा, अहमदाबाद-380 009”  
“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA  
Having his office at 4<sup>th</sup> 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 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 ड्रूटि/ 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, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

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

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

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

### **Brief facts of the case**

M/s Freeze Kool Appliances Private Limited situated at Survey No-285/1,287, 288/1,288/2,219, Village- Baska, Tehsil Halol, Near Mango Orchard, Halol, Panchmahal, Gujarat, 389350 ('Importer' for the sake of brevity) have filed Bill of Entry No. 5534303 dated 10.09.2024 for import of purportedly said to be Refrigerator Conveyor Line- CTH-84282019 & Chest Freezer Components-CTH-84189900 through Customs Broker- M/s Bhavya Shipping- (AADPQ3093NCH002) at Mundra Port.

2. On the basis of intelligence developed by the officers of SIIB, Customs House, Mundra, regarding possible mis-declaration, above consignments being imported vide Bill of Entry No. 5534303 dated 10.09.2024 were kept on hold for examination and further inquiry by the SIIB Section, Custom House, Mundra.

### **3. INVESTIGATION CONDUCTED:**

3.1 Examination of the consignment covered under BE No. 5534303 dated 10.09.2024 [Containers (i) BMOU4789497 & (ii) CAIU7847318 covered under Bill of Lading No. CULVSHK2437800 dated 05.08.2024 and (iii) CULU6329216 and (iv) CULU6350403 covered under Bill of Lading No. CULVSHK2437802 dated 05.08.2024], on 28.09.2024 & 29.09.2024 at the Transworld Terminals Pvt. Ltd (Unit-2) ('the CFS' for the sake of brevity), APSEZ, Mundra in presence of authorized representative of the importer, CHA and the CFS. On verification of Container number and Seal Number, it was found that no seal was found affixed in the said containers as seal cut job was already given by the officer of Dock Examination.

3.2 Container No. CULU6350403/40HC & CULU6329216/40HC covered under Bill of Lading No. CULVSHK2437802 dated 05.08.2024 were examined on 29.09.2024 and cargo was completely de-stuffed in the open area near AC Point, Tower No. 1 of the CFS. A description of the goods found during examination is as under:

Sr No	Container No	Name/Description of item	No of Quantity
1	CULU6350403/40HC	1. Cabinet Carosel Track of Refrigerator Conveyor Line	1
		2. Duct for air flow of Refrigerator Conveyor Line	11
		3. Chain of Refrigerator Conveyor Line	1
		4. Chain Driver of Refrigerator Conveyor Line	2
		5. Guide lag mould opening systems of Refrigerator Conveyor Line	4
		6. Blower (in Parts) of Refrigerator Conveyor Line	159
2	CULU6329216/40HC	1. Slate Part of Refrigerator Conveyor Line	22

The importer has also produced certificate Ref. No. AYK/INSP/02344/2024 dated 25th September issued by the Govt approved Chartered Engineer Shri Anwar Y Kukkad Registration No Cat-VII/19/2013-14 dated 08.05.2024 certifying the said items to be new & un-used. Accordingly, the goods imported vide the abovementioned 02 Nos. of Containers covered under Bill of Lading No. CULVSHK2437802 dated 05.08.2024 has been found, as declared in respective Bill of Entry 5534303 dated 10.09.2024 which has been imported under advance authorization/licence no. 0531027062 dated 07.08.2024.

3 . 3 Container No. CAIU7847318/40HC & BMOU4789497/40HC covered under Bill of Lading No. CULVSHK2437800 dated 05.08.2024 were also completely de-stuffed in the warehouse of the CFS in such a way that each item can be easily examined. On examination, following items were found:

Sr No	Container No	Name/Description of item	No of Quantity
1	CAIU7847318/40HC	1. Freezer	35
		2. Cabinet & Door (Unit having cabinet & door part of the freezer only)	9
		3. Cabinet (Units having cabinet part of freezer only)	18
		4. Door (units having door part of freezer only)	3
		5. EPS Pannel	37
2	BMOU4789497/40HC	1. Freezer	51
		2. Cabinet & Door (having cabinet & door part of freezer)	3
		3. EPS Pannel	35

However, as per Bill of Entry No. 5534303 dated 10.09.2024, the cargo covered under Bill of Lading No. CULVSHK2437800 dated 05.08.2024 declared as Chest Freezer Components (CTH: 84189900). Accordingly, the goods have been found mis-declared i.e. Freezers were not declared in the said Bill of Entry No. 5534303 dated 10.09.2024.

3.4 In view of aforesaid (Para No. 3.3), the importer was requested to get the goods covered under Bill of Lading No. CULVSHK2437800 dated 05.08.2024 evaluated by the Government Approved Chartered Engineer/Valuer in order to ascertain the correct assessable value for computation of applicable duty i.e. BCD, SWS, IGST leviable thereon., as all the goods covered under the said consignment has been mis-declared as Chest Freezer Components (CTH: 84189900). It is pertinent to mention that all the freezers are found either unbranded or of different unknown brands without mentioning specifications thereof.

3.4.1 Details of the goods found during examination in respect of Bill of Lading No. CULVSHK2437800 dated 05.08.2024 (Container No. CAIU7847318, BMOU4789497) and as evaluated by the Govt approved Chartered Engineer (Registration No. AM187438-4 dated 31.05.2024) vide Report No CE/TZ/MUN/SIIB-013/2024-25 dated 16.10.2024 is as under:

Sr No	Description of Goods/Items	No of Items	Value evaluated by the Govt approved Chartered Engineer (Value Per Items in USD)	Total Value (Item-wise) (USD)
1.	Freezer	86 (*)	170	14,620
2.	Cabinet & Door (Units Having	12	100	1,200

	<b>Cabinet &amp; Door Parts of Freezer Only)</b>			
3.	<b>FREEZER CABINET (UNITS HAVING CABINET PARTS ONLY)</b>	18	80	1,440
4.	<b>DOOR (UNITS HAVING DOOR PART OF FREEZER ONLY)</b>	3	20	60
5.	<b>EPS PANEL</b>	72	90	6,480
<b>Total</b>			<b>23,800 (USD)</b>	

(\*)

Note: Total 86 Nos. of Freezers consisting of (i) Deep Freezers i.e. Chest Type Freezers, (not exceeding 800L capacity)-56 Nos. and (ii) Vertical Freezers i.e. Freezers of upright type (not exceeding 900L capacity)-30 Nos.

3.4.2 The said importer has voluntarily accepted the abovementioned price ascertained by the Chartered Engineer as assessable value of the consignment imported by them covered under Bill of Lading No. CULVSHK2437800 dated 05.08.2024. (Container No. CAIU7847318, BMOU4789497) and shown their willingness to pay Customs duty leviable thereon accordingly.

3.4.3 In view of the above, it appears that the importer has under-valued the goods and imported by them by way of mis-declaration. Value declared in the BE No. 5534303 dated 10.09.2024 filed in respect to said Consignment imported under Bill of Lading No. CULVSHK2437800 dated 05.08.2024 (Container No. CAIU7847318, BMOU4789497) as 20068 (USD). Hence, the said cargo has been found under-valued to the extent of total 3,732/- USD.

#### **4. CLASSIFICATION OF THE IMPORTED GOODS:**

4.1 It is pertinent to mention here that principles for the classification of goods are governed by the Harmonized Commodity Description and Coding System (Harmonized System or HSN) issued by the World Customs Organization, Brussels and the General Rules for Interpretation specified there under. The General Rules for the Interpretation (GRI) specified in the Import Tariff are in accordance with the GRI specified in the HSN.

#### **GENERAL RULES FOR THE INTERPRETATION OF THE HARMONIZED SYSTEM**

1. *The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions:*

2. *(a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article*

*complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.*

*(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.*

3. *When by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:*

*(a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.*

*(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.*

*(c) when goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration*

4.2 The importer has classified the impugned item under CTH-84189900. Relevant provisions of HS Code 8418 are re-produced as under:

8418	Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps other than air-conditioning machines of heading 84.15	u	15.00	15.00	---	18.00	1.50	37.470	Free	
841810	- Combined refrigerator-freezers, fitted with separate external doors or drawers, or combinations thereof:									
84181010	-- Commercial type	u	15.00	15.00	---	18.00	1.50	37.470	Free	
84181090	-- Other	u	20.00	20.00	---	18.00	2.00	43.960	Free	Ntnf 67/2018-Cus.
84182100	- Refrigerators, household type:									
84182900	-- Compression-type	u	20.00	20.00	---	18.00	2.00	43.960	Free	Ntnf 67/2018-Cus.
841830	- Other	u	20.00	20.00	---	18.00	2.00	43.960	Free	Ntnf 67/2018-Cus.
84183010	- Freezers of the chest type, not exceeding 800 L capacity:									
84183090	-- Electrical commercial type	u	15.00	15.00	---	18.00	1.50	37.470	Free	
841840	-- Other	u	15.00	15.00	---	18.00	1.50	37.470	Free	
84184010	- Freezers of the upright type, not exceeding 900 L capacity:									
84184090	-- Electrical	u	15.00	15.00	---	18.00	1.50	37.470	Free	
	-- Other	u	15.00	15.00	---	18.00	1.50	37.470	Free	

Chapter 84										
HS CODE (1)	ITEM DESCRIPTION (2)	UNIT (3)	BASIC (4)	EFFECTIVE (5)	PRE. (6)	IGST (7)	SWS (8)	TOTAL (9)	POLICY (10)	REMARKS (11)
8418 50 00	- Other furniture (chests, cabinets, display counters, showcases and the like) for storage and display, incorporating refrigerating or freezing equipment - Other refrigerating or freezing equipment; heat pumps:	u	15.00	15.00	---	18.00	1.50	37.470	Free	
8418 61 00	-- Heat pumps other than air conditioning machines of heading 8415	u	15.00	15.00	---	18.00	1.50	37.470	Free	
8418 69	-- Other									
8418 69 10	-- Ice-making machinery	u	15.00	15.00	---	18.00	1.50	37.470	Free	
8418 69 20	-- Water cooler	u	15.00	15.00	---	18.00	1.50	37.470	Free	
8418 69 30	-- Vending machine other than automatic vending machine	u	15.00	15.00	---	18.00	1.50	37.470	Free	
8418 69 40	-- Refrigeration equipment/devices specially used in leather industries for manufacturing of leather articles	u	15.00	15.00	---	18.00	1.50	37.470	Free	
8418 69 50	-- Refrigerated farm tanks, industrial ice cream freezer	u	15.00	15.00	---	18.00	1.50	37.470	Free	
8418 69 90	N50 Truck refrigeration unit		0.00		---	18.00	0.00	18.000		Ntnr 50/2017-Cus. - Sl. No.438
8418 69 90	-- Other	u	15.00	15.00	---	18.00	1.50	37.470	Free	
8418 91 00	-- Parts:									
8418 91 00	-- Furniture designed to receive refrigerating or freezing equipment	kg.	7.50	7.50	---	18.00	0.75	27.735	Free	
8418 99 00	-- Other	kg.	7.50	7.50	---	18.00	0.75	27.735	Free	

4.3 In view of the above, it is clear that the impugned items are more appropriately falls under the group of items classifiable under the following HSN of heading 8418 as elaborated hereinunder:

GOODS FOUND	APPROPRIATE CTH
Freezer (Chest Type, not exceeding 800L capacity)-56 Nos.	84183010
Freezer (Freezers of upright type, not exceeding 900L capacity)-30 Nos.	84184010
Cabinet & Door (Units Having Cabinet & Door Parts of Freezer Only)	84189900
FREEZER CABINET (UNITS HAVING CABINET PARTS ONLY)	84189900
DOOR (UNITS HAVING DOOR PART OF FREEZER ONLY)	84189900
EPS PANEL	84189900

4.4 From above, it appears that the goods i.e. (i) Freezer (Chest Type, not exceeding 800L capacity)-56 Nos. falls under CTH-84183010 and (ii) Freezer (Freezers of upright type, not exceeding 900L capacity)-30 Nos. falls under CTH-84184010 have been mis-declared as Chest Freezer Component and accordingly, mis-classified under CTH-84189900 by the importer. It is also relevant to mention here that goods have been classified by the importer under HSN: 84189900 which attracts BCD @7.5%, SWS @0.75% & IGST @18% whereas HSN-84183010 as mentioned in the above table attracts BCD @15%, SWS @1.50% & IGST @18%. Hence, it appears that the importer has misclassified the impugned imported items, to evade payment of

Customs duty leviable thereon.

5. Further, it is found that in terms of Refrigerating Appliances (Quality Control) Order, 2020 [further amended as Refrigerating Appliances (Quality Control) Order, 2022 made effective from 01.01.2024] readwith Deep Freezers-Specification (Second Revision), Indian Standard IS 7872: 2018 has been made applicable for import of “Deep freezers of top access type, having a storage volume up to and including 1000 litre, with both hard top, glass top”. The Quality Control Order mandates that all the products covered therein imported into the country must be having BIS license/certification and be marked with ISI and BIS license number.

5.1 Here, it is pertinent to mention that the Government of India has imposed mandatory certification on certain products for which many qualities control orders are being issued. The products which are covered under quality control order shall conform to the Indian Standard which makes mandatory to have BIS license/compulsory registration to import a product in India. So BIS licence is mandatory for the products which are covered under quality control order issued by Government of India. Foreign Manufacturers Certification Scheme is one such arrangement that the Bureau of Indian Standards has been running since 2000 to grant a licence to the manufacturer located outside India. FMCS is a scheme under which the Bureau of Indian Standards grants a license to a foreign manufacturer for the use of the BIS “Standard mark” on a product which shall conform to the relevant Indian Standard(s). The license is granted by Foreign Manufacturers Certification Department (FMCD) at BIS headquarters in New Delhi.

5.2 Furthermore, as per para 2.03 of the Foreign Trade Policy (FTP)-2023, Domestic Laws/ Rules/ Orders/ Regulations/ technical specifications/ environmental/safety and health norms applicable to domestically produced goods shall apply, mutatis mutandis, to imports, unless specifically exempted.

5.3 Furthermore, as per Section 15 (1) of the Bureau of Indian Standards Act, 2016 (BIS, 2016) no person shall manufacture, import, distribute, sell, hire, lease, store, or exhibit for sale any goods, articles, processes, systems, or services notified under the BIS mandatory certification scheme without a Standard Mark, except under a valid license. Furthermore, even with a license, applying a Standard Mark is prohibited unless the goods or services conform to the relevant standards or prescribed essential requirements.

5.4 In the present case, the importer could not produced any details or documents which shows that the product i.e. **Freezer (Chest Type, not exceeding 800L capacity)-56 Nos. falls under CTH-84183010** imported by them are conform to the relevant standards or prescribed essential requirements in terms of BIS Act, 2016. Further, they could not produce any details or documents showing that the foreign manufacturer is holding any license for the use of the BIS “Standard Mark” on the said product which shall conform to the relevant Indian Standard (s). Thus, it appears that the said goods imported by the said importer are found manufactured by the foreign manufacturer who are neither registered with the Competent Authority nor holding any license for the use of BIS certification which is in violation and contrary to condition imposed vide BIS, 2016 and Quality Control Order issued by the Government of India, rendering the said goods as ‘prohibited’ for import into India.

## **6. Calculation of Differential Duty arises due to mis-declaration:-**

6.1 Considering the more appropriate HSN and value of goods as evaluation by the Govt Chartered Engineer vide their Report No CE/TZ/MUN/SIIB-013/2024-25 dated 16.10.2024, the Differential duty recoverable from the importer [in respect of goods covered under Bill of Lading No. CULVSHK2437800 dated 05.08.2024 & declared as Chest Freezer Components (CTH: 84189900) in B.E No. 5534303 dated 10.09.2024] is worked out as per worksheet i.e. **Annexure-**

A attached to this I.R. Accordingly, total value is determined to Rs. 20,20,620/- in respect of the imported item shown at Sr. No. 2 of the said B.E and differential duty required to be levied is ascertained at Rs. 2,03,396/- [BCD-115418.90/- +SWS-11541.84/- +IGST-76435.19/-].

## **7. LEGAL PROVISIONS:**

7.1 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;*

7.2 **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.

7.3 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:

*(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;*

*(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under Section 77 in respect thereof, or in the case of goods under transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54.*

7.4 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.

**7.5 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.

**7.6 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.*

## **8. OUTCOME OF THE INVESTIGATION:**

8.1 As discussed in foregoing paras, it appears that all goods imported and covered under Bill of Lading No. CULVSHK2437800 dated 05.08.2024 (shown at Sr. No. 2 of the said B.E No. 5534303 dated 10.09.2024 as Chest Freezer Components under CTH : 84189900) have been mis-declared by the said importer as Chest Freezer Components falls under CTH-84189900 and also under-valued by the importer which resulted into short payment of Customs duty to the tune of total **Rs. 2,03,396/-** [BCD-115418.90/- +SWS-11541.84/- +IGST-76435.19/-].

8.2 Here, it is pertinent to mention that the importer has declared assessable value of these items (covered under Bill of Lading No. CULVSHK2437800 dated 05.08.2024 and shown as Sr. No. 2 of the said B.E) as Rs. 17,22,940.56/- on the Bill of Entry No. 5534303 dated 10.09.2024 filed by them. Thus, it appears that the importer has undervalued the impugned items under import to the extent of Rs. 2,97,679.40/-. Thus, the valuation of the imported item shown at Sl. No. 2 of BoE needs to be rejected under Rule 12 of the CVR, 2007 and need to be re-determined as **Rs. 20,20,620/-** in terms of Rule 9 of CVR,2007. 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 they 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. 20,20,620/- in the B.E No. 5534303 dated 10.09.2024 liable for confiscation under Section 111 (m) of the Act, ibid and has thus rendered themselves liable for penal action under Section 112 (a) (ii) of the Customs Act, 1962.

8.3 Further, it is also to mention that the goods **Freezer (Chest Type, not exceeding 800L capacity)-56 Nos. falls under CTH-84183010** valued at total Rs. 8,08,248/- [**also covered under the goods as discussed in para-7.2 above**] covered under the Refrigerating Appliances (Quality Control) Order, 2020 [further amended as Refrigerating Appliances (Quality Control) Order, 2022 made effective from 01.01.2024] readwith Deep Freezers-Specification (Second Revision), Indian Standard IS 7872: 2018. However, the same have been imported by the said importer from the foreign manufacturer without valid BIS registration/licence and accordingly in violation and contrary to condition imposed vide BIS, 2016 and Quality Control Order issued by the Government of India and hence in violation and contrary to the provisions of Foreign Trade Policy of Government of India. In view of the above, it appears that the importer had knowingly involved themselves in the suppression of the material facts and also indulged in mis-statement of facts. The importer by their acts of omission and commission renders imported goods liable for confiscation under Section 111(d) and 111(m) of the Act, ibid and has thus rendered themselves liable for penal action also under Section 112 (a) (i) of the Customs Act, 1962 to that extent.

## **9. WAIVER OF NOTICE AND PERSONAL HEARING: -**

The importer vide letter dated 03.10.2024 has requested as re-produced hereunder:

*" We are establishing a New Chest Freezer manufacturing factory for which it is very difficult to bear such a huge loss.*

*We humbly requested to please clear the above shipment asap. We do not want Show Cause Notice and personal hearing and the matter may be adjudicated at you end accordingly.*

*We will not file any appeal against applicable fine and penalty. We will pay duty penalty as applicable as per your order...."*

9.1 The importer vide letter dated 13.11.2024 also submitted as hereunder:

*"We hereby declare that we have import chest freezer samples of various model and capacity under the invoice No. HLS20240520A-1 dated 31.07.2024. BL NO. CULVSHK2437800 dated Aug.05, 2024 for RND and new development purpose only not for sale. We will dismantle all the samples and get their parts tested for new development.*

*We humbly requested to please clear the above shipment asap. We do not want Show Cause Notice and personal hearing and the matter may be adjudicated at you end accordingly.*

*We will not file any appeal against applicable fine and penalty. We will pay duty penalty as applicable as per your order."*

**10. In view of the above, it appears that:-**

- i. The classification and description of the imported item shown at Sr. No. 2 of the said B.E No. 5534303 dated 10.09.2024 as Chest Freezer Components under CTH : 84189900 is liable to be rejected and needs to be re-classified under (i) CTH: 84183010 (as Freezer- Chest Type, not exceeding 800L capacity-56 Nos.), (ii) CTH: 84184010 (as Freezers of upright type, not exceeding 900L capacity)-30 Nos.) (iii) CTH: 84189900 (as Cabinet & Door (12 units having cabinet & door parts of Freezer Only)), (iv) CTH:84189900 (as Freezer Cabinet (18 Units having cabinet parts only)), (v) CTH: 84189900 (as Door (3 units having door part of freezer only)), and (vi) CTH:84189900 (as 72 nos. of EPS Pannel of Freezer).
- ii. The declared value i.e. Rs. 17,22,940.56/- of the items shown at Sl. No. 2 of BE needs to be rejected under Rule 12 of the CVR, 2007 and need to be re-determined as **Rs. 20,20,620/-** in terms of Rule 9 of CVR,2007.
- iii. The imported goods (as mentioned at Sr. No. 1 of Annexure-A) having re-determined value of total **Rs. 8,08,248/-** [covered under Bill of Lading No. CULVSHK2437800 dated 05.08.2024 and shown at Sl. No. 2 of B.E No. 5534303 dated 10.09.2024] is liable for confiscation under Section 111(d) as well as Section 111(m) of the Act, ibid
- iv. The imported goods (as mentioned at Sr. No. 2 to 6 of Annexure-A) having re-determined value of total **Rs. 12,12,372/-** [covered under Bill of Lading No. CULVSHK2437800 dated 05.08.2024 and shown at Sl. No. 2 of B.E No. 5534303 dated 10.09.2024] is liable for confiscation under Section 111(m) of the Act, ibid.
- v. Differential duty amounting to total **Rs. 2,03,396/-** [BCD-115418.90/- +SWS-11541.84/- +IGST-76435.19/-] short levied on the above said imported items is required to be added into the Bill of Entry, filed by the importer and to be recovered from them.
- vi. Penalty under Section 112 (a) (i) and/or Section 112 (a) (ii) of Customs Act, 1962 is imposable upon the importer.

**Show Cause Notice and Personal Hearing:-**

As the importer has already requested for waiver of the show cause notice and personal hearing in the matter, necessary adjudication proceeding/action may be initiated in respect of the said Bill of Entry as per the Customs Act, 1962.

## **DISCUSSION AND FINDINGS**

11. I have carefully gone through the facts and findings of the case, legal provisions mentioned above and subsequent, submission made by the importer M/s. Freeze Kool Appliances Pvt. Limited. As the importer has already requested for waiver of the show cause notice and personal hearing in the matter during investigation. Therefore, the 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 points to be decided in the instant case are as to:

- i. Whether the classification and description of the imported item shown at Sr. No. 2 of the said B.E No. 5534303 dated 10.09.2024 as Chest Freezer Components under CTH : 84189900 is liable to be rejected and needs to be re-classified under (i) CTH: 84183010 (as Freezer- Chest Type, not exceeding 800L capacity-56 Nos. ), (ii) CTH: 84184010 (as Freezers of upright type, not exceeding 900L capacity)-30 Nos.) (iii) CTH: 84189900 (as Cabinet & Door (12 units having cabinet & door parts of Freezer Only)), (iv) CTH: 84189900 (as Freezer Cabinet (18 Units having cabinet parts only)), (v) CTH: 84189900 (as Door (3 units having door part of freezer only)), and (vi) CTH: 84189900 (as 72 nos. of EPS Pannel of Freezer).
- ii. Whether the declared value i.e. Rs. 17,22,940.56/- of the items shown at Sl. No. 2 of B.E needs to be rejected under Rule 12 of the CVR, 2007 and need to be re-determined as Rs. 20,20,620/- in terms of Rule 9 of CVR,2007.
- iii. Whether the imported goods (as mentioned at Sr. No. 1 of Annexure-A) having re-determined value of total Rs. 8,08,248/- [covered under Bill of Lading No. CULVSHK2437800 dated 05.08.2024 and shown at Sl. No. 2 of B.E No. 5534303 dated 10.09.2024] is liable for confiscation under Section 111(d) as well as Section 111(m) of the Act, ibid
- iv. Whether the imported goods (as mentioned at Sr. No. 2 to 6 of Annexure-A) having re-determined value of total Rs. 12,12,372/- [covered under Bill of Lading No. CULVSHK2437800 dated 05.08.2024 and shown at Sl. No. 2 of B.E No. 5534303 dated 10.09.2024] is liable for confiscation under Section 111(m) of the Act, ibid.
- v. Whether Differential duty amounting to total Rs. 2,03,396/- [BCD-115418.90/- +SWS-11541.84/- +IGST-76435.19/-] short levied on the above said imported items is required to be added into the Bill of Entry, filed by the importer and to be recovered from them.
- vi. Whether Penalty under Section 112 (a) (i) and/or Section 112 (a) (ii) of Customs Act, 1962 is imposable upon the importer.

12. I find that M/s. M/s Freeze Kool Appliances Private Limited imported Refrigerator Conveyor Line- CTH-84282019 & Chest Freezer Components-CTH-84189900 and filed Bill of Entry No. 5534303 dated 10.09.2024 through Customs Broker- M/s Bhavya Shipping-(AADPQ3093NCH002) at Mundra Port for clearance the same. The above consignment covered under said BoE was kept on hold by SIIB for examination and further enquiry. During examination, it was found that the cargo covered under Bill of Lading No. CULVSHK2437800 dated 05.08.2024 mentioned as Chest Freezer Components under CTH: 84189900 were not declared in the said Bill of Entry No. 5534303 dated 10.09.2024. The importer was requested to get the goods covered under Bill of Lading No. CULVSHK2437800 dated 05.08.2024 evaluated by the Government Approved Chartered Engineer/Valuer in order to ascertain the correct assessable value for computation of applicable duty i.e. BCD, SWS, IGST leviable thereon., as all the goods covered under the said consignment has been mis-declared as Chest Freezer Components (CTH: 84189900). I also find that all the freezers are found either unbranded or of

different unknown brands without mentioning specifications thereof. The Govt approved Chartered Engineer (Registration No. AM187438-4 dated 31.05.2024) vide Report No CE/TZ/MUN/SIIB-013/2024-25 dated 16.10.2024 has submitted their valuation report (As discussed in para 3.4.1 supra) which is voluntarily accepted by the importer as assessable value of the consignment imported by them covered under Bill of Lading No. CULVSHK2437800 dated 05.08.2024. (Container No. CAIU7847318, BMOU4789497) and shown their willingness to pay Customs duty leviable thereon accordingly.

From the above forgoing paras, I find that the goods declared in the said BoE found to be mis-declared and *prima facie* appeared to have been mis-declared in respect of value. Hence, the said cargo has been found under-valued total 3,732/- USD to evade customs duty leviable thereon and the importer has already accepted the valuation done by Chartered Engineer in his statement (As discussed in para 3.4.2 supra).

13. Further, I find that the importer has classified the impugned item under CTH-84189900. the impugned items are more appropriately falls under the group of items classifiable under the following HSN of heading 8418 is elaborated as under:

GOODS FOUND	APPROPRIATE CTH
Freezer (Chest Type, not exceeding 800L capacity)-56 Nos.	84183010
Freezer (Freezers of upright type, not exceeding 900L capacity)-30 Nos.	84184010
Cabinet & Door (Units Having Cabinet & Door Parts of Freezer Only)	84189900
FREEZER CABINET (UNITS HAVING CABINET PARTS ONLY)	84189900
DOOR (UNITS HAVING DOOR PART OF FREEZER ONLY)	84189900
EPS PANEL	84189900

The goods i.e. (i) Freezer (Chest Type, not exceeding 800L capacity)-56 Nos. falls under CTH-84183010 and (ii) Freezer (Freezers of upright type, not exceeding 900L capacity)-30 Nos. falls under CTH-84184010 have been mis-declared as Chest Freezer Component and accordingly, mis-classified under CTH-84189900 by the importer. It is to mention that goods have been classified by the importer under HSN: 84189900 which attracts BCD @7.5%, SWS @0.75% & IGST @18% whereas HSN-84183010 as mentioned in the above table attracts BCD @15%, SWS @1.50% & IGST @18%. Hence, I find that the importer has misclassified the impugned imported items, to evade payment of Customs duty leviable thereon.

14. I find that in the investigation report, it was alleged that in terms of Refrigerating Appliances (Quality Control) Order, 2020 [further amended as Refrigerating Appliances (Quality Control) Order, 2022 made effective from 01.01.2024] readwith Deep Freezers-Specification (Second Revision), Indian Standard IS 7872: 2018 has been made applicable for import of “Deep freezers of top access type, having a storage volume up to and including 1000 litre, with both hard top, glass top”. The Quality Control Order mandates that all the products covered therein imported into the country must be having BIS licence/certification and be marked with ISI and BIS license number.

15. I find that the Government of India has imposed mandatory certification on certain products for which many qualities control orders are being issued. The products which are covered under quality control order shall conform to the Indian Standard which makes mandatory to have BIS licence/compulsory registration to import a product in India. So BIS licence is mandatory for the

products which are covered under quality control order issued by Government of India. As per Section 15 (1) of the Bureau of Indian Standards Act, 2016 (BIS, 2016) no person shall manufacture, import, distribute, sell, hire, lease, store, or exhibit for sale any goods, articles, processes, systems, or services notified under the BIS mandatory certification scheme without a Standard Mark, except under a valid license. Furthermore, even with a license, applying a Standard Mark is prohibited unless the goods or services conform to the relevant standards or prescribed essential requirements.

16. Further, I find that the importer could not produce any details or documents during investigation which shows that the product i.e. **Freezer (Chest Type, not exceeding 800L capacity)-56 Nos. falls under CTH-84183010** imported by them are conform to the relevant standards or prescribed essential requirements in terms of BIS Act, 2016. Further, they could not produce any details or documents showing that the foreign manufacturer is holding any licence for the use of the BIS "Standard Mark" on the said product which shall conform to the relevant Indian Standard (s). Thus, it appears that the said goods imported by the said importer are found manufactured by the foreign manufacturer who are neither registered with the Competent Authority nor holding any licence for the use of BIS certification which is in violation and contrary to condition imposed vide BIS, 2016 and Quality Control Order issued by the Government of India, rendering the said goods as '**prohibited**' for import into India.

17. The goods **Freezer (Chest Type, not exceeding 800L capacity)-56 Nos. falls under CTH-84183010** valued at total Rs. 8,08,248/- [also covered under the goods as discussed in para-7.2 above] covered under the Refrigerating Appliances (Quality Control) Order, 2020 [further amended as Refrigerating Appliances (Quality Control) Order, 2022 made effective from 01.01.2024] readwith Deep Freezers-Specification (Second Revision), Indian Standard IS 7872: 2018. However, the same have been imported by the said importer from the foreign manufacturer without valid BIS registration/licence and accordingly in violation and contrary to condition imposed vide BIS, 2016 and Quality Control Order issued by the Government of India and hence in violation and contrary to the provisions of Foreign Trade Policy of Government of India. In view of the above, it appears that the importer had knowingly involved themselves in the suppression of the material facts and also indulged in mis-statement of facts. The importer by their acts of omission and commission renders imported goods liable for confiscation under Section 111(d), 111(l) and 111(m) of the Act, ibid and has thus rendered themselves liable for penal action also under Section 112 (a) (i) of the Customs Act, 1962 to that extent.

18. I find that all goods imported and covered under Bill of Lading No. CULVSHK2437800 dated 05.08.2024 (shown at Sr. No. 2 of the said B.E No. 5534303 dated 10.09.2024 as Chest Freezer Components under CTH : 84189900) have been mis-declared by the said importer as Chest Freezer Components falls under CTH-84189900 and also under-valued by the importer which resulted into short payment of Customs duty to the tune of total **Rs. 2,03,396/-** [BCD-115418.90/- +SWS-11541.84/- +IGST-76435.19/-].

19. The importer has declared assessable value of these items (covered under Bill of Lading No. CULVSHK2437800 dated 05.08.2024 and shown as Sr. No. 2 of the said B.E) as Rs. 17,22,940.56/- on the Bill of Entry No. 5534303 dated 10.09.2024 filed by them. Thus, I find that the importer has undervalued the impugned items under import to the extent of Rs. 2,97,679.40/-. Therefore, the valuation of the imported item shown at Sl. No. 2 of BoE needs to be rejected under Rule 12 of the CVR, 2007 and need to be re-determined as **Rs. 20,20,620/-** in terms of Rule 9 of CVR,2007. Further, I find 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 they 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. 20,20,620/- in the BoE No. 5534303 dated 10.09.2024 liable for confiscation under Section

111 (m) of the Act, ibid and has thus rendered themselves liable for penal action under Section 112 (a) (ii) of the Customs Act, 1962.

20. I find that Section 125 of the Customs Act, 1962 provides that whenever confiscation of any good is authorized by the Customs Act, 1962, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under the 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 officer thinks fit. I find that the said provision makes it mandatory to grant an option to owner of confiscated goods to pay fine in lieu of confiscation in case the goods are not prohibited. In the instant case, I note that the imported goods i.e. Chest Freezer Components and other items found to be mis-declared and *prima facie* appeared to have been mis-declared in respect of value. Thus, the said imported goods liable for confiscation under section 111(m) of the Customs Act, 1962.

21. I find that imported goods **Freezer (Chest Type, not exceeding 800L capacity)-56 Nos. falls under CTH-84183010** are prohibited in absence of mandatory BIS. Thus, the said imported goods become prohibited as per Section 111(d) and 111(m) of the Customs Act, 1962. By considering the facts, I find it appropriate to grant an option to re-export the offending goods on payment of suitable fine in lieu of confiscation of the subject goods.

22. In view of the aforesaid discussions and findings, I pass the following

### **ORDER**

- i). I order to reject the classification and description of the imported item shown at Sr. No. 2 of the said B.E No. 5534303 dated 10.09.2024 as Chest Freezer Components under CTH : 84189900 and order to re-classify the goods as per Annexure-A.
- (ii) I order to reject the declared value i.e. Rs. **17,22,941/-** of the items shown at Sl. No. 2 of BoE under Rule 12 of the CVR, 2007 and re-determined as **Rs. 20,20,620/-** in terms of Rule 9 of CVR,2007I.
- (iii) I order to re-assess the BE No. 5534303 dated 10.09.2024 under section 17(4) of the Customs Act, 1962 in view of CE Report dated 16.10.2024 (As discussed in para 3.4.1 supra) 5534303 dated 10.09.2024.

#### **(23) Break up of value declared in para (ii) of above.**

##### **23.1 Prohibited goods in absence of BIS certificate.**

(iv) I order to confiscate the imported goods (as mentioned at Sr. No. 1 of Annexure-A) having re-determined value of total Rs. 8,08,248/- [covered under Bill of Lading No. CULVSHK2437800 dated 05.08.2024 and shown at Sl. No. 2 of BoE No. 5534303 dated 10.09.2024] under Section 111(d) as well as Section 111(m) of the Act, ibid.

(v) As I have ordered for confiscation of the goods as mentioned in para (iii), since goods not being prohibited/restricted, I give the importer to redeem the said goods on payment of redemption fine of Rs 80,000/- (Rs. Eighty thousand Only) under Section 125 of the Customs Act, 1962, only for re-export purpose.

(vi). I impose a penalty of Rs. 40,000/- (Rupees Forty thousand Only) on the importer under Section 112 (a)(i) of the Custom Act, 1962.

**23.2 Dutiable goods.**

(vii) I order to confiscate the imported goods (as mentioned at Sr. No. 2 to 6 of Annexure-A) having re-determined value of total **Rs. 12,12,372/-** [covered under Bill of Lading No. CULVSHK2437800 dated 05.08.2024 and shown at Sl. No. 2 of B.E No. 5534303 dated 10.09.2024] under Section 111(m) of the Act, ibid.

(viii) As I have ordered for confiscation of the goods as mentioned in para (iii), since goods not being prohibited/restricted, I give the importer to redeem the said goods on payment of redemption fine of Rs 1,20,000 /- (Rs. One Lakh Twenty Thousand Only) under Section 125 of the Customs Act, 1962.

(ix). I impose a penalty of Rs. 20,000 /-(Rupees Twenty Thousand Only) on the importer under Section 112 (a) (ii) of the Custom Act, 1962.

24. 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.

Signed by  
Amit Kumar Mishra  
(Amit Kumar Mishra)  
Additional Commissioner  
Date: 18/12/2024 16:49:20  
Custom House, Mundra

To,  
M/s Freeze Kool Appliances Private Limited  
285/1,287,288/1,288/2,219, Village- Baska, Tehsil Halol,  
Near Mango Orchard, Halol, Panchmahal, Gujarat, 389350

Copy to:

1. The Assistant Commissioner of Customs (RRA), CH, Mundra.
2. The Assistant Commissioner of Customs (TRC), CH, Mundra
3. The Deputy Commissioner of Customs (SIIB), CH Mundra