



A	FILE NO.	GEN/ADJ/ADC/630/2023-ADJN.
B	DE-NOVO ORDER-IN- ORIGINAL NO	MCH/ADC/MK/95/2023-24
C	PASSED BY	MUKESH KUMARI, ADDITIONAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MUNDRA.
D	DATE OF ORDER	30-06-2023
E	DATE OF ISSUE	30-06-2023
F	OIO NO & DATE OIA NO & DATE	MCH/ADC/SK/43/2021-2022 DATED 28.07.2021 MUN-CUSTM-OOO-APP-757-22-23 DATED 03.02.2023
G	NOTICEE / PARTY / IMPORTER	M/s Thousand Oak Innovation LLP, Plot No. 11 to 14, Survey No. 23/P1, At: Lakhadhir Nagar, Near Navagam, Lilapar Road, MORBI – 363641.
H	DIN NUMBER	20230671MO0000621779

1. The Order – in – Original is granted to concern free of charge.
2. 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

**The Commissioner of Customs (Appeal), MUNDRA
4th floor, HUDCO Building, IshwarBhuvan Road,
Navrangpura, Ahmedabad– 380009.**

3. Appeal shall be filed within Sixty days from the date of Communication of this Order.
4. Appeal should be accompanied by a Fee of Rs. 5/- (Rupees Five Only) under Court Fees Act it must accompanied by (i) copy of the Appeal, (ii) 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. Proof of payment of duty / interest / fine / penalty / deposit should be attached with the appeal memo.
6. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respect.
7. 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 or Penalty are in dispute, where penalty alone is in dispute.

**THIS CASE HAS BEEN REMITTED BY THE COMMISSIONER (APPEALS)
CUSTOMS, AHMEDABAD VIDE OIA NO. MUN-CUSTM-OOO-APP-757-22-23 DATED
03.02.2023 FOR ISSUANCE OF APPROPRIATE ORDER UNDER THE CUSTOMS ACT,
1962.**

BRIEF FACTS OF THE CASE :

This Case Has Been Remitted by The Commissioner (Appeals) Customs,

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Ahmedabad Vide OIA No. MUN-CUSTM-OOO-APP-757-22-23 Dated 03.05.2023 for Issuance Of Appropriate Order Under the Customs Act, 1962 after following the principles of natural justice and adhering to legal provisions.

2.1 M/s. Thousand Oak Innovation LLP, Plot No.11-14, Survey No. 23 / P1, At. Lakhdir Nagar, Lilapar Road, Morbi, Gujarat-363641, having IEC Code No.: AAPFT1918F (hereinafter also referred to as “the importer”) filed Bill of Entry No. 3707651 & 3707862 (**3707862 is incorrect the correct number of Bill of Entry is 3708262**) both dated 26.04.2021 through their Customs Broker, M/s. Sai Clearing and Forwarding Agency, for clearance of goods “PVC Resin Grade SG-5” having total weight of 52 MTS (26 MTS for each Bill of Entry) as per the below mentioned Table-I & II. The said goods having combined assessable value of Rs 56,22,916/- have been classified by the importer under Tariff Item 39041020 of the First schedule of the Customs Tariff Act, 1975 and imported vide BL No.- : MEDUT4877899 Dated 11.03. 2021 & MEDUT4908223 Dated 20.03. 2021. The goods are covered under Commercial Invoice No. IN210320IN dated 08.03.2021 & IN210304IN dated 12.03.2021 issued by M/s. Tianjin Bohai Chemical Industry Group, China. The said goods have been imported by the importer from China through Exporter M/s Tianjin Bohai Chemical Industry Group Supply and Sales Co. Ltd, China.

2.2 An information has been gathered by the SIIB officers of the Custom House, Mundra, that some importers are not paying ‘Anti-Dumping Duty’ or paying less ‘Anti-Dumping duty’ on the product viz. ‘PVC Resin SG5(Suspension Grade)’ imported from China. Acting upon such information, examination of the goods imported by the importer was carried out by the SIIB officers of Custom House, Mundra. During examination proceedings dated 03.05.2021, it was found that the subject goods covered under Bills of Entry No. 3707651 & 3708262 both dated 26.04.2021 have been imported by M/s Thousand Oak Innovation LLP, Morbi, Gujarat from China through Exporter M/s Tianjin Bohai Chemical Industry Group Supply and Sales Co. Ltd, China. Further, it was found that the name “CNSG JILANTAI CHOR- ALKALI CHEMICAL CO. LTD” (Inner Mongolia Alashan Economic Development Area) is imprinted on the bags of subject goods , which is other than “CNSG JILANTAI SALT CHOR ALKALI CHEMICAL CO. LTD”, as per Sr.No. 1 of Notification No. 32/2019-Customs(ADD) dated 10.08.2019, and hence Anti-Dumping Duty should have been assessed USD 147.96 PMT, as per Sr. No. 2 of the Notification no. 32/2019-Customs(ADD) dated 10.08.2019 on import of subject goods vide said Bills. However, they have not levied & paid the ‘ADD’ in terms of Notification No. 32/2019-Customs(ADD) dated 10.08.2019. This resulted into non payment of Anti-Dumping Duty amounting to Rs. 5,85,892/- i.e Rs. 2,92,946/- in Bill of Entry No. 3707651 Dated 26.04.2021 and Rs. 2,92,946/- in Bill of Entry No. 3707651 Dated 26.04.2021

Further, Notification No. 50/2017-Cus dated 30.06.2017 prescribes the effective duty on specified goods and exemption to Customs Tariff Schedule. It was observed that against Sr. No. 267 for the entry “Polymers of Vinyl Chloride” in Column (3) of the said Notification dealing with description of goods, the entry “All goods other than Polymers of Vinyl Chloride” had been substituted vide Notification No. 25/2019 dated 06.07.2019. Thus, the said importer/CB had claimed BCD benefit in terms of Notification No. 50/2017-Cus dated 30.06.2017 (as amended) for the goods declared as PVC Resin, which was otherwise not available to them. Thus, it is also found during the course of examination that the importer has self-assessed the said Bills

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of Entry @ 7.5% BCD by claiming benefit of Sr. No. 267 of Notification No. 50/2017-Cus dated 30.06.2017. The serial no. 267, for the entry "Polymers of Vinyl Chloride" in column number (3) of the said notification dealing with description of goods, the entry "All goods other than Polymers of Vinyl Chloride" has been substituted vide Notification No. 25/2019 dated 06.07.2019. Therefore, it appears, after the said amendment the BCD applicable on the subject goods is @ 10%. Due to this, the total differential duty short paid comes to Rs. 8,73,816/-. The Calculation for the same is mentioned in Table-A, B & C as below:

Table-A (BE No. 3707651 Dated 26.04.2021)

The Differential Duty calculation	Duty as declared (BCD @ 7.5%)	Re-determined @ADD of USD 147.96 PMT (Rs.) (BCD @ 10%)	Differential Duty (B-A) Rs.
Assessable Value	2811458	2811458	
BCD	210859	281146	
SWS	21086	28115	
ADD	0	292946	
IGST	547813	614460	
Total Duty	779758(A)	1216666(B)	436908

Table-B (BE No. 3708262 Dated 26.04.2021)

The Differential Duty calculation	Duty as declared (BCD @ 7.5%)	Re-determined @ADD of USD 147.96 PMT (Rs.) (BCD @ 10%)	Differential Duty (B-A) Rs.
Assessable Value	2811458	2811458	
BCD	210859	281146	
SWS	21086	28115	
ADD	0	292946	
IGST	547813	614460	
Total Duty	779758(A)	1216666(B)	436908

Table-C

Differential Duty as per Table A (Rs.) Column(1)	Differential Duty as per Table B (Rs.) Column(2)	Total duty Short Paid (Rs.) (Column (3) [Column(1) + Column (2)]
4,36,908	4,36,908	8,73,816

During the course of examination when this discrepancy was brought to the notice of the Custom Broker of the importer, the importer vide letter dated 03.05.2021 has informed that they are ready to pay the differential duty and they don't want SCN & PH in this regard.

2.3 It appears from the above-said discussions that the self-assessment done by the importer in terms of Section 17(1) of the Customs Act, 1962 is not proper and therefore, liable to be rejected. It also appears that due to this incorrect self-assessment, the impugned goods are required to be re-assessed.

2.4 On the basis of examination report of the said goods by the Officers of SIIB, Custom House, Mundra, it was revealed that the importer i.e. M/s. Thousand Oaks Innovation LLP, Plot No.11-14, Sr No.23/P1, Lakhdir Nagar, Lilapar Road Morbi, Gujarat-363641, has not levied & paid Anti-Dumping Duty, and also not paid Basic Customs Duty correctly at the time of filing the Bill of Entry under self-assessment procedure and it was clear that the said importer had not self-assessed the ADD as well as BCD correctly in the impugned Bills of Entry No. 3707651 & 3708262 both Dated 26.04.2021 which resulted into short payment of consequential IGST and ultimately resulting into short payment of total Customs duty amounting to Rs. 8,73,816/- . The non-payment of ADD as well as short payment of BCD by the importer in the Bills of Entry No. 3707651 & 3708262 both dated 26.04.2021, in terms of Sr. No. 2 of the Notification no. 32/2019-Customs(ADD) dated 10.08.2019 and in terms of Sr. No. 267 of the Notification No. 50/2017-Cus dated 30.06.2017 (as amended vide Notification No. 25/2019-Cus dated 06.07.2019) appears to be mis-declaration with intent to evade payment of applicable ADD, BCD & IGST thereon. In terms of Section 46(4) of the Customs Act, 1962, the importer of any goods is required to declare correct details/particulars in Bill of Entry being filed by them, and are also required to make and subscribe to a declaration to the truth of the contents of such Bill of Entry. Further, in terms of section 46(4A) of the Customs Act, 1962, importer who presents a Bill of Entry shall ensure (a) the accuracy and completeness of the information given therein, (b) the authenticity and validity of any document supporting it and (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force. In the instant case, the importer had filed Bill of Entry with incorrect particulars as discussed here in above. Therefore, the said goods also appear to be liable for confiscation under Section 111(m) of Customs Act 1962 and by these acts of commission or omission, the importer have rendered themselves liable for the penal action under the provisions of Section 112(a) of the Customs Act, 1962.

2.5 Accordingly, the matter before the Competent Authority to be adjudicated was to be decided in the instant case are:-

- I. (a) Whether the Anti-Dumping Duty not paid by the importer should not be collected @ USD 147.96 PMT in terms of Sr. No. 2 of the Notification No. 32/2019-Customs (ADD) dated 10.08.2019 and
 - (b) whether the BCD short paid by the importer @ 7.5% should not be collected @ 10% in terms of Sr. No. 267 of the Notification No. 50/2017-Cus dated 30.06.2017 (as amended vide Notification No. 25/2019-cus dated 06.07.2019). If Yes, Whether the goods imported vide Bill of Entry should not be re-assessed accordingly under Section 17(5) of the Customs Act, 1962.
- II. Whether the impugned goods are liable for confiscation under Section 111(m) of the Customs Act, 1962 and the importer is liable to penalty under Section 112(a) ibid.

2.6.1 After going through all the facts, the authority at relevant time passed an order to re-assess the impugned goods imported vide Bill of Entry No. 3707651 & 3708262 both Dated 26.04.2021 under Section 17(5) of the Customs Act, 1962 with levy & payment of ADD @ USD 147.96 PMT at Sr. No. 2 of the Notification No. 32/2019-customs(ADD) dated 10.08.2019 as well as levy & payment of BCD @ 10% in terms of Sr. No. 267 of the Notification No. 50/2017-

Cus dated 30.06.2017 (as amended vide Notification No. 25/2019-cus dated 06.07.2019). Accordingly, ordered to recover the differential duty from the importer before clearance of goods.

2.6.2 Confiscated the impugned goods covered vide Bill of entry No. 3707651 & 3708262 both Dated 26.04.2021 having combined assessable value of Rs. 56,22,916/- under Section 111(m) of the Customs Act, 1962. However, gave an option to the importer to redeem the same on payment of redemption fine equal to the differential duty as mentioned in (i) above in lieu of confiscation under Section 125 of Custom Act, 1962.

2.6.3 Also imposed a penalty equal to 10% of the differential duty, on M/s. Thousand Oak Innovation LLP, Plot No.11-14, Sr No.23/P1, Lakhdihir Nagar, Lilapar Road, Morbi, Gujarat-363641 under Section 112(a) of Customs Act, 1962.

3.1 On going through the EDI System it is found that the Bills of Entry were re-called and Re-assessed and the Differential Duty recovered by way of Debit from the Advance Authorization available with the Importer and Challan were generated for the Redemption Fine and Penalty only; Importer paid the amount and got the goods cleared.

3.2 Being aggrieved with the, Order, Importer preferred an Appeal before the Hon'able Appellate Authority i.e. Hon'able Commissioner (Appeals), Customs, Ahmedabad, interalia, submitted that the goods were imported without payment of Duty of Customs, IGST, ADD etc., against valid advance authorization under claim of benefit of Notification NO. 18/2015-Cus. Dated 01.04.2015 as amended, the appellant has furnished Bond supported by Bank Guarantee; that these facts are endorsed on the Advance Authorization in addition to Quantity and Value equal to goods imported were deducted from the permissible quantity and value under authorization; that there is no violation of any condition of notification, that there was no mis-declaration but only error in claiming rate of duty @ 7.5% instead of 10% without any intention to evade duty as importation of goods without payment of duty against Advance Authorization was already claimed in the check list for both Bills of Entry; that it was the appellant who requested the department to cancel out of Charge of one of the Bills of Entry and reassessment of both the bills of entry as the bills of entry was filed claiming 7.5% BCD instead of 10% due to an error; that even after the impugned order, proper officer has assessed bill of entry with NIL duty as goods were imported under Advance authorisation under the Notification 18/2015, hence there cannot be any malafide on the part of appellant; that they had not waived show cause notice and personal hearing, however, adjudicating authority has stated that the appellant have waived SCN and PH; that the goods were never seized under Section 110 of the Customs Act, 1962 and therefore same cannot be confiscated with an option to pay fine and cited case laws.

3.3 Advocate reuttered the submissions made at the time of filing of appeal; further submitted that goods were imported against Advance Authorization without payment of Duty, there was no effect on the assessment of duty as only quantity and value were debited in the script; that in reassessment of both bills of entry all the said duty were assessed to nil rate by allowing benefit of notification 18/2015-Customs, but penalty and fine was imposed on both bills of entry; that no penalty and fine is impossible merely for mentioning wrong rate of Customs Duty when goods were imported without payment of Customs Duty, ADD, IGST etc., against Advance Authorization.

3.4 Hon'able Appellate Authority, observed that, Adjudicating Authority observed

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that the appellant has not paid the ADD i.r.o. Sl. NO. 2 of the Notification and also not paid Basic Customs Duty @ 10% instead paid @ 7.5%. On the Other hand, the appellant has claimed the subject import was under an Advance Authorization in terms of Notification No. 18/2015 as amended and therefore exempted from payment of BCD, ADD, IGST, further submitted that even after re-assessment BCD, ADD & IGST assessed to NIL rate of duty by allowing benefit of Notification No. 18/2015.

Considering the submissions, Hon'able Appellate Authority, remitted the matter back to the proper officer for passing speaking order, shall examine available facts, documents, submissions and then pass speaking order afresh following principles of natural justice and adhering to the legal provisions.

4. Importer vide their letter Dated 01.03.2023, interalia, requested that the matter may please be taken up for final disposal at an early date and may decide on merits; however wished to be heard in person before any adverse decision and also conveyed that they appointed Shri P. D. Rachchh, Advocate.

4.1 Made further submission in the matter, vide their letter Dated 22.04.2023, wherein interalia, stated that,

4.1.1 Goods were imported without payment of duty of Customs, IGST, ADD etc., against valid Advance Authorization under claim of benefit of Notification No. 18/2015-Cus. Dated 01.04.2015 as amended; admitted facts on record that M/s Thousand Oak furnished Bond supported by Bank Guarantee as determined and accepted by Authority; these facts are endorsed on the Advance Authorization in addition to Quantity and Value equal to the goods imported were deducted from the permissible quantity and value under Advance Authorization. There is no violation of any condition of the notification; therefore, no ADD and IGST is liable to be paid, irrespective of fact that both the Bills of Entry are assessed with NIL BCD, ADD, IGST etc.;

4.1.2 that notification exempts materials imported into India against a Valid Advance Authorization in terms of FTP from whole of duty of customs leviable subject to the conditions stated therein.

4.1.3 that it is not matter of dispute and it has fulfilled all the conditions of the notification namely, provided Advance Authorization for debit; bears the description of imported material, quantity and value of export of resultant product; the quantity and value is within the limits allowed under the Authorization; that bond with security has duly executed; not matter of dispute that export obligation is not discharged within the time limit and evidence is presented that the authorization is not transferred or sold and therefore eligible for exemption from ADD.

4.1.4 Further submits that, it agrees that inadvertently rate of BCD 7.5% mentioned in place of 10% in the Bills of Entry filed, but it has no impact at any place as goods were imported against Advance Authorization without payment of duty under Notification, therefore, cannot be any malafide or intention to evade payment of Duty of Customs.

4.1.5 Further, submits that, it is not the case that during examination some misdeclaration is unearthed, actually it had informed about mistake made in claim of partial exemption benefit in BCD and Import of Goods under Advance Authorization; also admitted facts on record that goods were imported without payment of duty of customs under proper Advance Authorization. Therefore, imposition of Penalty, confiscation of Goods and imposition of fine

does not arise at all; on record that there was no mis-declaration but only error was in claim of benefit of concessional rate of duty that too without any intention to evade duty as benefit of Notification of 18/2015-Cus. Claimed in both the Bills of Entry. Further submitted that, in any case goods were never seized under Section 110 of the Customs Act, 1962, therefore, same cannot be confiscated under 111(m) of the Customs Act, 1962 with an option to pay fine under Section 125 of the Customs Act, 1962 and cited various judgments viz. :

1. Commissioner Vs. Finesse Creation INC. {2010(255)E.L.T. A120 (S.C.)}
2. Shiv Kripa Ispat Pvt. Ltd., Vs. Commissioner of C. Ex. & Cust. Nasik {2009(235)E.L.T. 623 (Tri.LB)}
3. Commissioner of C. Ex., Amritsar Vs. Garg Forging & Casting Ltd., {2009(235)E.L.T. 472 (Tri.-Del)}
4. Commissioner of Customs, Kandla Vs. M. S. International Ltd., {2004(174)E.L.T. 101 (Tri-Del)}

4.1.6 Further, submits that as submitted in para supra there was no mens rea as it had written to the proper officer to recall both the bills of entry for re-assessment even after out of charge order was made in one of the bills of entry and also informed about the importation of goods under Advance Authorization.

4.1.7 Further, without admitting anything submits that penalty under Section 112 (a) provides for imposition of penalty only when any person who in relation to any goods, does or omits to do any act which would render such goods liable to confiscation under Section 111 of the Customs Act, 1962. As submitted in para supra they have never rendered goods liable to confiscation nor there was mis-declaration of goods nor it is the case of the department that goods was not correspondent in respect of value or in any other particular with the entry; only issue was claim of benefit of concessional rate of duty inadvertently in the check list and same were brought to the knowledge of the proper officer therefore, there cannot be any question of mis-declaration and rendered goods liable to confiscation. Therefore, goods cannot be confiscated and no penalty is imposable under Section 112 (a) *ibid*.

4.2 Personal Hearing in the matter, was held on 28.04.2023 in virtual mode, wherein, Shri P D. Rachchh, Advocate and Authorized Person appeared for hearing, interalia, reiterated the written submission made on 22.04.2023 and also requested to reassess 2 bills of entry without ADD as earlier done and also requested not to impose any fine and penalty, as goods were never seized so as per settled position of law, it cannot be confiscated, so no fine can be imposed; since goods were imported against Advance Authorization no Anti Dumping Duty were payable on Bills of Entry, Therefore, no penalty is imposable; further submitted that since SCN was never waived, no penalty can be imposed without SCN u/s 124 and without hearing. It was submitted that ADD may be assessed at NIL and also not to impose any penalty and fine.

DISCUSSION & FINDING

5. I have carefully gone through the facts of the case, allegation made in the show cause notice as well as those pleaded in the reply, OIO, OIA remitting the matter back to the adjudicating authority, following the principles of natural justice and legal provisions of the law under Customs Act / Rules.

5.1 Opportunity of Personal Hearing was offered, before deciding the de-novo

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proceedings and the same were held in virtual mode and was attended by the Advocate appointed by M/s Thousand Oak, therefore, the principle of natural justice is being followed in the matter.

5.2 It is observed that, the impugned Bills of Entry was recalled and re-assessed with BCD @10% and ADD as per Sl. NO. 2 of the Notification and Duty portion were paid through debit from the Advance Authorisation and Payment through Challan for Redemption Fine and Penalty before obtaining Out of Charge at relevant time.

Further, Importer in their appeal before the appellate authority challenged the imposition of Redemption Fine and Penalty by the then Adjudicating Authority on the ground that the goods were imported without payment of Duty of Customs, IGST, ADD etc., under the available Advance Authorization.

Hence, the case before me to take decisions limited to imposition of Redemption Fine and Penalty by the then Adjudicating Authority.

6. I find that Importer M/s. Thousand Oak Innovation LLP, Plot No.11-14, Sr No.23/P1, Lakhdihir Nagar, Lilapar Road, Morbi, Gujarat-363641, having IEC Code No. : AAPFT1918F presented Bills of Entry No. 3707651 & 3708262 both dated 26.04.2021 through their Customs Broker, M/s. Sai Clearing and Forwarding Agency, for clearance of goods "PVC Resin Grade SG-5" having total weight of 52 MTS (26 MTS for each Bill of Entry) as per the above mentioned Table-I & II. The said goods having combined assessable value of Rs 56,22,916/- have been classified by the importer under Tariff Item 39041020 of the First schedule of the Customs Tariff Act, 1975 and imported vide BL No.- : MEDUT4877899 Dated 11.03. 2021 & MEDUT4908223 Dated 20.03. 2021. The goods are covered under Commercial Invoice No. IN210320IN dated 08.03.2021 & IN210304IN dated 12.03.2021 issued by M/s. Tianjin Bohai Chemical Industry Group, China. The said goods have been imported by the importer from China through Exporter M/s Tianjin Bohai Chemical Industry Group Supply and Sales Co. Ltd, China, as per the Provisions of the Section 17(1) of the Customs Act, 1962.

7. Grounds of Appeal, that the goods were imported without payment of Duty against valid Advance Authorization under Claim of Benefit of Notification No. 18/2015-Cus. Dated 01.04.2015 as amended; that appellant has furnished Bond and Bank Guarantee; these facts are endorsed on Advance Authorization in addition to Qty. and Value equal to goods imported were deducted from the permissible quantity and value under authorization; there is no violation of any condition of notification; that there was no mis-declaration but only error in claiming rate of duty without any intention and relied on various judgments.

7.1 Notification 18/2015-Cus. Dated 01.04.2015, hereby **exempts** materials imported into India against a valid Advance Authorisation issued by the Regional Authority in terms of paragraph 4.03 of the Foreign Trade Policy (hereinafter referred to as the said authorisation) from the whole of the duty of customs **leviable thereon** which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the whole of the additional duty, safeguard duty, transitional product specific safeguard duty and anti-dumping duty leviable thereon, respectively, under sections 3, 8B, 8C and 9A of the said Customs Tariff Act, subject to the conditions.

7.2 Section 2(14) define 'dutiable goods' as any goods which are chargeable to duty and on which duty has not been paid. As per section 2(15), 'duty' means a duty of customs leviable under Customs Act.

7.3 Section 17 (1) An importer entering any imported goods under section 46, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

7.4 Therefore, I found that, the Importer has to declare the correct duty rate as per the provisions of the Section 17(1) of the Customs Tariff Act, 1975 and then have to claim the Exemption Benefit if any made available by virtue of any Notification as per the provisions of the Customs Act, 1962 and allied acts made thereunder.

7.5 Self-Assessment done by the importer in terms of Section 17(1) of the Customs Act, 1962 is not proper and therefore, the same is liable to be rejected. It also appears that due to this incorrect self-assessment, the impugned goods are required to be re-assessed and liable for confiscation as per the provisions of the Section 111 (m) of the Customs Act, 1962; 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. Further, in case of prohibited goods, it provides discretion to the officer adjudging the case which has to be exercised in view of facts and circumstances of the case.

7.6 Section 112 (a) of the Customs Act, 1962, relates to penalty for improper Importation of Goods by Any Person, 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, shall be liable for penalty under section 114A of the Customs Act, 1962.

7.7 Therefore, there was failure on the part of the Importer to correctly assess their Duty Liability at relevant time and therefore the Redemption Fine and Penalty is imposable and the then Adjudicating Authority at relevant time ordered to imposed the Fine and Penalty which were paid by them before obtaining Out of Charge.

7.8 Further, they relied on various judgments in support of their claim that the goods are not seized and therefore the same cannot be confiscated with an option to pay fine in case of a . . . Commissioner Vs. Finesse Creation INC. {2010(255)E.L.T. A120 (S.C.)} is the case based on the Documents seized during the Search and Demand was for the Past Period based on the Documents, Here the Case is different and not identical therefore not applicable in this case.

b. Shiv Kripa Ispat Pvt. Ltd., Vs. Commissioner of C. Ex. & Cust. Nasik {2009(235)E.L.T. 623 (Tri.LB)} in the mentioned case, relates to the Clandestine Removal of the Goods based on Statement / Documents, Here the Case is different and not identical therefore not applicable in this case.

c. Commissioner of C. Ex., Amritsar Vs. Garg Forging & Casting Ltd., {2009(235)E.L.T. 472 (Tri.-Del)} in the mentioned case, relates to the Drawback Fraud, Here the Case is different and not identical therefore not applicable in this case.

d. Commissioner of Customs, Kandla Vs. M. S. International Ltd., {2004(174)E.L.T. 101 (Tri-Del)} in the case the adjudicating authority ordered for Confiscation of the Goods but no

Redemption Fine was imposed and therefore the tribunal dismissed the appeal, Here the Case is different and not identical therefore not applicable in this case.

7.9 From the above discussion in the matter, it was revealed that the importer M/s. Thousand Oaks, has not correctly levied & paid ADD, and also not correctly levied and paid BCD at the time of filing the Bill of Entry under self-assessment procedure and it was clear that that the said importer had not self-assessed the ADD as well as BCD correctly in the impugned Bills of Entry No. 3707651 & 3708262 both Dated 26.04.2021 which resulted into short payment of consequential IGST and ultimately resulting into short payment of total Customs duty amounting to Rs. 8,73,816/-. This is to be mis-declaration with intent to evade payment of applicable ADD, BCD & IGST thereon. In terms of Section 46(4) of the Customs Act, 1962, the importer of any goods is required to declare correct details/particulars in Bill of Entry being filed by them, and are also required to make and subscribe to a declaration to the truth of the contents of such Bill of Entry. Further, in terms of section 46(4A) of the Customs Act, 1962, importer who presents a Bill of Entry shall ensure (a) the accuracy and completeness of the information given therein, (b) the authenticity and validity of any document supporting it and (c) compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.

In the instant case, the importer had filed Bill of Entry with incorrect particulars as discuss hereinabove. Therefore, the said goods also liable for confiscation under Section 111(m) of Customs Act 1962 and by these acts of commission or omission, the importer have rendered themselves liable for the penal action under the provisions of Section 112(a) of the Customs Act, 1962.

8. Further, all the aspects / submissions made / requested by the Importer to the Appellate Authority and to the authority Deciding Denovo Proceedings, had already been submitted before the then adjudicating authority also at the relevant time and the reasons were discussed in detailed while passing the Speaking Order by them. Nothing new facts brought to the notice.

8.1 Further, on going through the facts of the case before me, I observed that, the then Adjudicating Authority while deciding the matter in the Speaking Order, instead of ordering to pay the amount in Cash, considered the request at relevant time and allowed to make the payment of Differential Duty as well as Anti Dumping Duty through the Advance Authorisation available with the Importer and the same were accepted by the Importer and not challenged in the their Appeal before the Appellate Authority.

8.2 Under the circumstances, I don't find any reason to interfere the speaking order issued by the then Adjudicating Authority to the extent of Redemption Fine and Penalty and I pass the following order.

ORDER

- 1. Importer has not challenged on the recovery of the Differential Duty and Anti-Dumping Duty ordered in the Order In Original No. MCH/ADC/SK/43/2021-22 Dated 28.07.2021, from them. I refrain from commenting / deciding on the same.**
- 2. I find that the Redemption Fine and Penalty imposed under Order In**

I/1267816/2023

Original No. MCH/ADC/SK/43/2021-22 Dated 28.07.2021 is Justified, True, Fair and Correct as per the provisions of the Customs Act, 1962 and does not require any interference / change, under the circumstances I don't find to interfere in the said matter and uphold the Demand Raised through Order In Original No. MCH/ADC/SK/43/2021-22 DATED 28.07.2021 and appropriate the amount of Redemption Fine and Penalty u/s 112A of the Customs Act, 1962 paid by the Importer while obtaining Out of Charge.

9. 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.

**ADDITIONAL COMMISSIONER
CUSTOMS, MUNDRA**

To,
M/s Thousand Oak Innovation LLP,
Plot No. 11 to 14, Survey No. 23/P1,
At: Lakhadhir Nagar,
Near Navagam, Lilapar Road,
MORBI – 363641.

Copy to :-

1. The Deputy Commissioner of Customs (RRA), Custom House, Mundra
2. The Deputy Commissioner of Customs (TRC/EDI), Custom House, Mundra
3. The Deputy Commissioner of Customs (Gr. II), Custom House, Mundra.
4. Guard File.



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