



OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOM HOUSE: MUNDRA, KUTCH
 MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421
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A	File No.	CUS/APR/INV/303/2024-Gr 5-6-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/AK/87/2024-25
C	Passed by	ARUN KUMAR Hon'ble Additional Commissioner of Customs Custom House, Mundra.
D	Date of Order	06.07.2024
E	Noticee/Party/ Importer/ Exporter	M/s S. M. Enterprises (IEC FAIPK6663N); KH No, 675, 1st Floor, Blk-A, Plot No. 373, Landmark Near Hansraj Model School, Shiv Mandir, Ramesh Enclave, Delhi- North- West Delhi- 110081
F	DIN No.	DIN- 20240771MO0000107146

1. यह अपील आदेश संबंधित 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:

“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
Having his office at 4th Floor, HUDCO building, Ishwar Bhuvan Road,
Navrangpura, Ahmedabad-380 009.”

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must 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 Facts of the Case

Name of Importer	M/s S. M. Enterprises
IEC No.	IEC-FAIPK6663N
Address of Importer	KH No, 675, 1 st Floor, Blk-A, Plot No. 373, Landmark Near Hansraj Model School, Shiv Mandir, Ramesh Enclave, Delhi- North- West Delhi- 110081
Name of SEZ Entity	M/s OWS Warehouse Services LLP, APSEZ Mundra
SEZ Ware House Bill of Entry for Home Consumption	1005172 dated 08.03.2024
Description of Goods as per BE	Electronic Goods
B/L No	GDWV24013901 dated 21.02.2024
Container No	ESDU4097837

On the basis of data analysis, it was noticed that one Container No ESDU4097837 destined to SEZ Mundra was lying at the Terminal for long time. The Terminal-In date for the container was 09.03.2024. Further as per the IGM details (2370731 dated 06.03.2024), both the importer and consignee were mentioned as M/s OWS Warehouse Services LLP which is a SEZ warehouse unit. The goods are declared as Electronics Goods which appeared prone to be mis-declared/misclassified items. Therefore, on the reasonable ground that the consignment may have undeclared/mis declared goods, the container was put on hold at terminal itself on 21.03.2024 for examination and inquiry into the matter.

2. EXAMINATION OF THE GOODS AND INVESTIGATION CONDUCTED:

2.1 Acting upon the input, the cargo imported vide Container No ESDU4097837 and IGM No. 2370731 dated 06.03.2024 was kept on hold for examination and inquiry into the matter. The container was moved to the Seabird CFS, Mundra. The examination of the container was done on 03.04.2024 under Section 17(2) of the Customs Act, 1962 read with Section 22 of the SEZ Act, 2005 in presence of Pradipsinh Jadeja, representative of importer, M/s S M Enterprises and Shri Baliram Nemande, Deputy Manager- Operation, SEA BIRD- CFS, APSEZ.

2.2 During the examination, it was learnt that SEZ Warehouse Bill of Entry No 1005172 dated 08.03.2024 for the above said consignment was filed by the SEZ entity M/s OWS Warehouse Services LLP on behalf of the importer M/s S M Enterprises.

2.3 Further, during examination, the quantity of the items declared in the SEZ BE and found during the examination of the cargo was compared and it was noticed that there was a difference in the quantity of some items in comparison to the items declared in the ware house 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 one as under:

TABLE-A

S. No as per BE	S. No. as per packing list	Item Description as per bill of entry	Quantity - as declared in the Invoice & Packing List			Quantity - as found during examination			Difference (excess/short)		
			CTN	Qty/ Ctn	Total Qty	CTN	Qty/ Ctn	Total Qty	CTN	Qty/ Ctn	Total Qty
1	1	Wire with connector L 20 CMS (For computer)	1	2000	2000	1	2000	2000	0	0	0
	2	Wire with connector L 40 CMS 2PIN/USB/ST-3RC (F) (For computer)	20	1100	22000	20	1100	22000	0	0	0
	3	Wire with connector L 70 CMS 2PIN/USB/ST-3RC (F) (For computer)	8	500	4000	8	500	4000	0	0	0
	4	Wire with connector L 1.5M CMS 2PIN/USB/ST-3RC (F) (For computer)	6	500	3000	7	500	3500	1	0	500
	5	Wire with connector L 3M CMS 2PIN/USB/ST-3RC (F) (For computer)	6	300	1800	6	300	1800	0	0	0
	6	Wire with connector L 10 M CMS 2PIN/USB/ST-3RC (F) (For computer)	17	100	1700	0	0	0	-17	-100	-1700
2	7	Populated PCB Board for Induction spare with plastic panel (Mix 2 Type Assorted Models)	19	108	2052	18	108	1944	-1	0	-108
	8	Populated PCB Board for Induction spare with plastic panel (Mix 2 Type Assorted Models)	26	76	1976	26	76	1976	0	0	0
3	9	Induction Coil L 44 (N W 350.00 KGS)	50	20.04	1002	36	20	720	-14	-0.04	-282
4	10	Mini Invertor PCB Board for LED TV (Mix Assorted Models)	40	100.2	4008	20	100	2000	-20	-0.2	-2008
5	11	Only glass for Induction Cooker (BLK) (N.W. 360.00 KGS)	30	20	600	30	20	600	0	0	0
6	12	Fan Spare Parts for Induction Cooker ICX7 (N.W. 782.00 KGS)	104	40	4160	73	40	2920	-31	0	-1240
	13	Fan Spare Parts for Induction Cooker ICX7 (N.W. 1592.00 KGS)	354	12	4248	270	12	3240	-84	0	-1008
	14	Fan Spare Parts for	135	10	1350	35	10	350	-100	0	-1000

		Induction Cooker ICX7 (N.W. 540.00 KGS)									
7	15	Spare Parts- Compressor (N.W. 820.00 KGS)	90	4	360	224	1	224	134	-3	-136
8	16	Chinese MALE/FEMALE RJ45/LAN/SOCKET (F) & ST- COUPLOR (MIX ASSORTED MODELS)	2	250	500	0	0	0	-2	-250	-500
	17	Chinese MALE/FEMALE RJ45/LAN/SOCKET (F) & ST- COUPLOR (MIX ASSORTED MODELS)	45	10000	450000	5	10000	50000	-40	0	-400000
	18	Chinese MALE/FEMALE RJ45/LAN/SOCKET (F) & ST- COUPLOR (MIX ASSORTED MODELS)	170	5000	850000	131	5000	655000	-39	0	-195000
9	19	Spare Parts- CONVERTOR (N.W. 32.00 KGS)	2	500	1000	2	500	1000	0	0	0
10	20	Small Chinese RGB Controller with Remote (N.W. 180.00 KGS)	15	125.1	1876.5	48	100	4800	33	-25.1	2923.5
	21	Small Chinese RGB Controller with Remote (N.W. 224.00 KGS)	28	50.04	1401.12	9	50	450	-19	-0.04	-951.12
	22	Small Chinese RGB Controller with Remote (N.W. 18.00 KGS)	1	300	300	0	0	0	-1	-300	-300
	23	Small Chinese RGB Controller with Remote (N.W. 16.00 KGS)	1	250.08	250.08	0	0	0	-1	-250.08	-250.08
11	24	Mouse Pad Accessories for Computer (Unbranded) (Mix Assorted Models) (N.W. 140.00 KGS)	10	100.08	1000.8	14	100	1400	4	-0.08	399.2
	25	Mouse Pad Accessories for Computer (Unbranded) (Mix Assorted Models) (N.W. 68.00 KGS)	4	150	600	0	0	0	-4	-150	-600
12	26	Spare Parts-PU Belt (N.W. 112.00 KGS)	8	4999.68	39997.44	8	5000	40000	0	0.32	2.56
	27	Spare Parts Strap	13	2000.16	26002.08	7	2000	14000	-6	-0.16	-

		(N.W. 218.00 KGS)								12002.08
28	Spare Parts Strap (N.W. 240.00 KGS)	30	1000.8	30024	30	1000	30000	0	-0.8	-24
29	Spare Parts Strap (N.W. 9.00 KGS)	1	501.12	501.12	1	500	500	0	-1.12	-1.12
30	Spare Parts-Paper Card (N.W. 48.00 KGS)	8	10000.8	80006.4	8	10000	80000	0	-0.8	-6.4
31	Spare Parts-Glass (N.W. 60.00 KGS)	5	3000.96	15004.8	5	3000	15000	0	-0.96	-4.8
32	Spare Parts-Glass (N.W. 42.00 KGS)	3	4999.68	14999.04	3	5000	15000	0	0.32	0.96
33	Spare Parts-ONLY CASE (N.W. 96.00 KGS)	16	1000.8	16012.8	16	1000	16000	0	-0.8	-12.8
34	Spare Parts-ONLY CASE (N.W. 208.00 KGS)	26	2000.16	52004.16	26	2000	52000	0	-0.16	-4.16
35	Spare Parts-ONLY CASE (N.W. 14.00 KGS)	1	3000.96	3000.96	3	3000	9000	2	-0.96	5999.04
TOTAL		1295		1638737	1090		1031424	-205		-607313

2.4 Further, during examination, 380 boxes of Mobile Tempered Glass were also found which were undeclared in SEZ Bill of entry No 1005172 dated 08.03.2024 and packing list. Details of which is as below:

TABLE-B

S. No	Item found undeclared	No of cartons found undeclared	Piece per carton	Total No of pieces
1	Mobile Tempered glass	380	1000	3,80,000

2.5 The Mobile Tempered Glass are classifiable under **CTH 70071900**, which is meant for **Other Toughened (Tempered) Glass** and attracts Customs duty @ 15% (BCD)+ 10% (SWS) + 18% (IGST). The importer has not declared the said items in the SEZ Bill of Entry filed by them.

2.6 Further, total assessable value of the imported items declared by the importer in the SEZ-WH BE was Rs. 11,35,485/- which prima facie appeared 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 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.

2 . 7 The empanelled Chartered Engineer Shri Ajayrajsingh B. Jhala has submitted inspection reports vide report no. ABJ:CE:24-25:SIIB:MIX:LA:01 dated 10.05.2024. Outcome of the same is as under:

TABLE-C

S. No as per BE	S. No as per packing list	Item Description as per bill of entry	Total Qty declared as per Unit Qty of invoice	Value as declared		Total Qty found as per Unit Qty of invoice as per CE report	Unit Market price as per CE Report	Total Market price as per CE report	Average Assessabl Price of the goods
				Unit price (in Rs.)	Total value declared				
1	1	Wire with connector L 20 CMS (For computer)	Pcs 34500	3.76875	131484.62	2000	10	20000	11000
	2	Wire with connector L 40 CMS 2PIN/USB/ST-3RC (F) (For computer)	Pcs			22000	12	264000	145200
	3	Wire with connector L 70 CMS 2PIN/USB/ST-3RC (F) (For computer)	Pcs			4000	15	60000	33000
	4	Wire with connector L 1.5M CMS 2PIN/USB/ST-3RC (F) (For computer)	Pcs			3500	18	63000	34650
	5	Wire with connector L 3M CMS 2PIN/USB/ST-3RC (F) (For computer)	Pcs			1800	20	36000	19800
	6	Wire with connector L 10 M CMS 2PIN/USB/ST-3RC (F) (For computer)	Pcs			0	0	0	0
Total for 1			34500		131484.62	33300	75	443000	243650
2	7	Populated PCB Board for Induction spare with plastic panel (Mix 2 Type Assorted Models)	Pcs 4028	16.75	68229.03	1944	35	68040	37422
	8	Populated PCB Board for Induction spare with plastic panel (Mix 2 Type Assorted Models)	Pcs			1976	35	69160	38038
Total for 2			4028	16.75	68229.03	3920	70	137200	75460
3	9	Induction Coil L 44 (N W 350.00 KGS)	Kgs 350	75.375	26678.04	251.568	210	52829	29056
4	10	Mini Invertor PCB Board for LED TV (Mix Assorted Models)	Doz 334	37.6875	12729.24	166.66667	150	25000	13750
5	11	Only glass for	Kgs 360	75.375	27440	360	145	52200	28710

		Induction Cooker (BLK) (N.W. 360.00 KGS)								
6	12	Fan Spare Parts for Induction Cooker ICX7 (N.W. 782.00 KGS)	Kgs	2914	92.125	271472.34	873.08	250	218270	120049
	13	Fan Spare Parts for Induction Cooker ICX7 (N.W. 1592.00 KGS)	Kgs				968.76	300	290628	159845
	14	Fan Spare Parts for Induction Cooker ICX7 (N.W. 540.00 KGS)	Kgs				104.65	200	20930	11512
Total for 6				2914	92.125	271472.34	1946.49	750	529828	291405
7	15	Spare Parts- Compressor (N.W. 820.00 KGS)	Kgs	820	75.375	62502.83	510.272	310	158184	87001
8	16	Chinese MALE/FEMALE RJ45/LAN/SOCKET (F) & ST-COPLOR (MIX ASSORTED MODELS)	THD	1350	314.0625	428754.2	0	0	0	0
	17	Chinese MALE/FEMALE RJ45/LAN/SOCKET (F) & ST-COPLOR (MIX ASSORTED MODELS)					50	1115	55750	30663
	18	Chinese MALE/FEMALE RJ45/LAN/SOCKET (F) & ST-COPLOR (MIX ASSORTED MODELS)					655	1115	730325	401679
Total for 8				1350	314.0625	428754.2	705	2230	786075	432341
9	19	Spare Parts- CONVERTOR (N.W. 32.00 KGS)	Kgs	32	71.1875	2303.63	32	170	5440	2992
10	20	Small Chinese RGB Controller with Remote (N.W. 180.00 KGS)	Kgs	438.00	58.63	25966.62	609.60	75	45720	25146
	21	Small Chinese RGB Controller with Remote (N.W. 224.00 KGS)					57.15	75	4286	2357
	22	Small Chinese RGB Controller with Remote (N.W. 18.00 KGS)					0.00	0	0	0
	23	Small Chinese RGB Controller with Remote (N.W. 16.00 KGS)					0.00	0	0	0

11	24	Mouse Pad Accessories for Computer (Unbranded) (Mix Assorted Models) (N.W. 140.00 KGS)	Kgs	138	58.63	125966.62	666.75	150	50006	27503
	25	Mouse Pad Accessories for Computer (Unbranded) (Mix Assorted Models) (N.W. 68.00 KGS)	Kgs			0.00	0	0	0	0
Total for 11				208	75.38	15854.36	182	160	29120	16016
12	26	Spare Parts-PU Belt (N.W. 112.00 KGS)	Kgs	1047.00	58.63	62070.90	151.20	100	15120	8316
	27	Spare Parts Strap (N.W. 218.00 KGS)				52.92	125	6615	3638	
	28	Spare Parts Strap (N.W. 240.00 KGS)				113.40	125	14175	7796	
	29	Spare Parts Strap (N.W. 9.00 KGS)				1.89	125	236	130	
	30	Spare Parts-Paper Card (N.W. 48.00 KGS)				302.40	80	24192	13306	
	31	Spare Parts-Glass (N.W. 60.00 KGS)				56.70	140	7938	4366	
	32	Spare Parts-Glass (N.W. 42.00 KGS)				56.70	140	7938	4366	
	33	Spare Parts-ONLY CASE (N.W. 96.00 KGS)				60.48	130	7862	4324	
	34	Spare Parts-ONLY CASE (N.W. 208.00 KGS)				196.56	130	25553	14054	
	35	Spare Parts-ONLY CASE (N.W. 14.00 KGS)				34.02	130	4423	2432	
Total for 12				1047	58.63	62070.9	1026.27	1225	114052	62729
TOTAL (1 TO 12) (DECLARED ITEMS)				46381	950.5775	1135485.81	43067.017	5645	2382935	1310614
1	1	Mobile Tempered Glass		NOT DECLARED			380000	8.5		3230000
GRAND TOTAL				46381		1135486	423067	5654	2382935	4540614

2.8 Whereas, the importer has declared the total assessable value of the consignment as **Rs. 11,35,486/-** in the SEZ Bill of Entry. However, as per the report submitted by the Chartered Engineer the suggestive value of the consignment is **Rs. 45,40,614/-** including the value of the Mobile Tempered Glass which have been not declared in the BE. Thus, it appeared that the subjected consignment was undervalued to the tune of **Rs. 34,05,128/-** by way of non-declaration of the imported goods as well as undervalue of the declared imported goods.

3 . 1 In the present matter, DTA Bill of Entry has not been filed till date. Here, it is pertinent to mention that as per Rules 48 of SEZ rules, 2006, some of the provisions of Customs Act, 1962 come in picture only after filling of DTA bill of Entry.

The Rule 47 (4) of the SEZ Rules, 2006 read as under:

(4) Valuation and assessment of the goods cleared into Domestic Tariff Area shall be made in accordance with Customs Act and rules made thereunder.

The Rule 48(2) of the SEZ rules is reproduced below:

“(2) Valuation of the goods and/or services cleared into Domestic Tariff Area shall be determined in accordance with provisions of Customs Act and rules made thereunder as applicable to goods when imported into India”

3.2 Here, it is pertinent to mention that the importer has filed a SEZ WH Bill of Entry for Home consumption without any mention of re-export, and during self-assessment, they have levied the applicable BCD instead of recognizing the non-applicability of BCD in the case of re-export. Additionally, it should be noted that when goods are imported for re-export purposes, this must be declared in the import Bill of Entry (BOE). Upon examining the submitted documents, it is clear that the invoice and packing list were issued to the consignee declared as the importer, and the Bill of Lading listed the importer as the notify party.

3.3 Furthermore, a warehouse BOE is typically filed when goods are imported and stored in a bonded warehouse without immediate payment of customs duties. The duties are deferred until the goods are either cleared for domestic consumption or re-exported. During the self-assessment process, the importer levied the applicable BCD, which further supports the interpretation that the goods were not intended for re-export. In the case of goods meant for re-export, the BCD would be zero, and this should be explicitly stated. The self-assessment process allows importers to declare the classification and applicable duties on imported goods. By levying the BCD, the importer effectively confirmed that the goods were meant for domestic clearance (DTA) and not re-export. Therefore, based on these facts, it is evident that the, though the SEZ Unit/Importer did not file a DTA BE, but the available information supports the conclusion that the goods were intended for DTA clearance only.

3.4 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, *ibid* read with Rule 47(4) and 48(2) of the SEZ Rules, 2006 by way of valuation report of the Chartered Engineer on the basis of market research as discussed in para supra.

4.1 A comparison of the valuation and customs duty leviable on the items declared and items as per inventory prepared during the examination report/CE report has been done and

the total Customs duty applicable on the imported consignment found as under:

TABLE-D

S. No. as per BE	CTH	Duty as declared				Duty as per investigation				Differential Duty			
		BCD @7.5/ 10/ 15/ 20%	SWS	IGST	Total	BCD @7.5/ 10/ 15/ 20%	SWS	IGST	Total	BCD @7.5/ 10/ 15/ 20%	SWS	IGST	Total
CONSIGNMENT DECLARED IN BE													
1*	85369090	13148	1315	26271	40734	24365	2437	48681	75483	11217	1122	22411	34749
2**	85299090	10234	1023	14308	25565	11319	1132	15824	28275	1085	108	1516	2709
3*	85169090	2668	267	5330	8265	2906	291	5805	9002	238	24	475	737
4**	85299090	1909	191	2669	4770	2063	206	2883	5152	153	15	214	382
5***	85167990	5488	549	6026	12063	5742	574	6305	12621	254	25	279	558
6*	85169090	27147	2715	54240	84102	29141	2914	58223	90277	1993	199	3983	6175
7****	84149090	4688	469	12179	17335	6525	653	16952	24130	1837	184	4774	6795
8*	85369090	42875	4288	85665	132828	43234	4323	86382	133939	359	36	717	1111
9*	85369090	230	23	460	714	299	30	598	927	69	7	138	213
10*	85369090	2597	260	5188	8044	2750	275	5495	8521	154	15	307	476
11**	39269099	2378	238	3325	5941	2402	240	3359	6001	24	2	34	61
12*	91149091	6207	621	12402	19230	6273	627	12533	19433	66	7	131	204
		119571	11957	228062	359590	137019	13702	263040	413761	17448	1745	34978	54171
CONSIGNMENT NOT DECLARED													
1*	70071900					484500	48450	677331	1210281	484500	48450	677331	1210281
TOTAL		119571	11957	228062	359590	621519	62152	940371	1624042	501948	50195	712309	1264452
	* BCD @ 10% / ** BCD @15% / *** BCD@ 20% / **** BCD@7.5%												

4.2 In view of the above, it appeared that the importer has undervalued the items under import vide SEZ BE No. 1005172 dated 08.03.2024. As per the Chartered Engineer, suggestive estimated total value of the cargo comes to **Rs. 45,40,614/-** as against declared value of **Rs. 11,35,486/-**. Therefore, it appeared that there was undervaluation of the goods to the tune of **Rs. 34,05,128/-** and short levy/non of the duty amounting to **Rs. 12,64,452/- (BCD- 5,01,948/- + SWS- 50,195/- + IGST- 7,12,309/-** (as tabulated above).

4.3 The CE valuation report was forwarded to the importer for acceptance or otherwise. In response, the importer, M/s SM Enterprises vide email dated 16.05.2024 has submitted that they accept all the contents of the CE report and agree the value which is given by the CE. The importer has also submitted that they don't want any SCN or PH and requested to decide the case of merit and ready to pay the duty or fine and penalty, whichever is applicable.

5. LEGAL PROVISIONS

5.1 As per **Section 2 (33)** of the Customs Act, 1962 'prohibited goods' means *any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with.*

5.2 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;*

5.3 **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.

5.4. 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.*

5.5 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.

5.6 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.

5.7 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.*

OUTCOME OF THE INVESTIGATION:

6.1 From the above discussion, it appeared that the importer has filed SEZ Bill of Entry No. 1005172 dated 08.03.2024 for import of Misc Electronic Goods. 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 SEZ 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-A above**. Furthermore, during examination, 380 boxes of Mobile Tempered Glass (in total 3,80,000 Pieces) were also found which were undeclared in SEZ Bill of Entry and packing list.

6.2 In view of the discrepancies noticed during the examination, it appeared that total assessable value of the imported items declared by the importer in the SEZ- BE, i.e. **Rs. 11,35,485/-** 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) appeared 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.

6.3 Further, as per the empanelled Chartered Engineer report, the suggestive value of the consignment is **Rs. 45,40,614/-** including the value of the Mobile Tempered Glass which have been not declared in the BE, as detailed in **Table-C above**. Thus, it appeared that the subjected consignment was undervalued to the tune of **Rs. 34,05,128/-** by way of non-declaration of the imported goods as well as undervaluation of the declared imported goods and short levy/non levy of the duty amounting to **Rs. 12,64,452/- (BCD- 5,01,948/-+ SWS- 50,195/- + IGST- 7,12,309/-** (as tabulated in **Table-D** above).

6.4 In view of the above, it appeared that the importer has not declared/ mis declared the items under import vide SEZ BE No. 1005172 dated 08.03.2024 in terms of value and quantity. Therefore, it appeared 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. 45,40,614/-** in the SEZ bill of entry No. **1005172 dated 08.04.2024** and liable for confiscation under Section 111 (1) &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.

6.5 Furthermore, it appeared that by mis declaring the value of the goods under import, the importer has also short levied the duty amounting to **Rs. 12,64,452/- (BCD- Rs. 5,01,948/-+ SWS- Rs. 50,195/- + IGST- Rs. 7,12,309/-)** which is required to be added into the respective DTA Bills of Entry, likely to be filed by the importer.

7. In view of the above, it appeared that:-

- i. The declared value, i.e. **Rs. 11,35,485/- in case of** the consignment covered under House **SEZ W/H Bill of Entry No.** SEZ BE No. 1005172 dated 08.03.2024 is liable to be rejected at the time of filing DTA BE, under Rule 12 of the CVR, 2007 and required to be re-determined at **Rs. 45,40,614/-** as opined by the CE report at the time of filling of DTA Bill of Entry in terms of Rule 9 of the Rules, *ibid*, read with Rule 47 (4) of the SEZ Rules, 2006.
- ii. The Mobile Tempered Glass found concealed in the import consignment and not declared while filling of the SEZ BE by the importer is required to be classified under CTH **70071900**, which is meant for **Other Toughened (Tempered) Glass** and attracts Customs duty @ 15% (BCD)+ 10% (SWS) + 18% (IGST).
- iii. The imported goods having differential value of **Rs. 45,40,614/-** is liable for

confiscation under Section 111 (l) & 111 (m) of the Act, *ibid*,

- iv. The duty amounting to **Rs. 12,64,452/- (BCD- Rs. 5,01,948/-+ SWS- Rs. 50,195/- + IGST- Rs. 7,12,309/-)** short levied/not levied on the imported items by the importer is required to be added into the DTA Bill of Entry, likely to be filed by the importer.
- v. Penalty under Section 112 (a) (ii) of Customs Act, 1962 is imposable upon the importer.

8. WAIVER OF NOTICE AND PERSONAL HEARING: -

The importer vide letter date 06.05.2024 has submitted that they agree with the valuation opined by the Chartered Engineer in his reports and requested to decide the matter on merit and they do not want any SCN and PH in the matter and ready to pay fine and penalty in the matter.

DISCUSSIONs AND FINDINGS

9. Upon careful examination of the facts and evidence presented in this case, I find it necessary to deliberate on several critical aspects before reaching a conclusion. The primary issue revolves around the misdeclaration and undervaluation of goods imported by M/s S. M. Enterprises (IEC FAIPK6663N) under SEZ Bill of Entry for Warehousing. No 1005172 dated 08.03.2024. Since the importer has waived off the Show Cause Notice (SCN) and Personal Hearing (PH), the principles of natural justice and requirements of Section 122A of the Customs Act, 1962 (CA, 1962) have been duly met. It is imperative to determine whether the goods had been correctly declared and valued, and if not, to decide the appropriate consequences under the Customs Act, 1962.

10. First, I must ascertain whether the declared value Rs.11,35,485/-for the consignment under Bill of Entry No. **1005172** dated 08.03.2024 is accurate or not. As per the investigation report, during the examination of the consignment, the goods did not meet the qualitative and quantitative description declared under the Bill of Entry. The Chartered Engineer's inspection reports indicate significant undervaluation, with re-determined values of Rs. 45,40,614/- including the value of the Mobile Tempered Glass which have been not declared in the BE, as detailed in Table-C above. Given this evidence, I am convinced that the declared values do not reflect the true transaction value of the goods.

11. According to Section 14 of the Customs Act, 1962, the value of imported goods shall be the transaction value, including all elements of cost. The mis-declaration contravenes this requirement, necessitating a re-determination of value under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Therefore, I reject the declared values and uphold the valuations determined by the Chartered Engineer.

12. Next, I need to consider whether the goods are liable for confiscation under Section

111(l) and 111(m) of the Customs Act, 1962. The sub- section 111(l) of the Act states that '*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' as liable for confiscation.* Further, sub section 111(m) inter alia provides for the confiscation of goods if their declared value and other particulars do not correspond to the declarations made under the Act. In the instant case the presence of Mobile Tempered Glass found concealed in the import consignment and not declared while filling of the SEZ BE . No 1005172 dated 08.03.2024 and significant undervaluation noticed in the declared value of goods makes this consignment fit for confiscation. Confiscation serves as a deterrent against non-compliance with customs laws, ensuring that importers declare the correct description, quantity, value, etc. of goods. In this case, the discrepancy between the declared and actual values justifies confiscation to uphold the integrity of customs processes.

13. The imported goods, with re-determined values of Rs. 45,40,614/- (including the value of the Mobile Tempered Glass which have been not declared in the BE) are liable for confiscation under Section 111(l) and 111(m) of the Customs Act, 1962. This ensures that mis-declaration and undervaluation do not go unchecked, maintaining the integrity of customs processes. However, under Section 125 of the Customs Act, 1962, I provide the importer with the option to redeem the confiscated goods on payment of a redemption fine. This option balances the need for enforcement with an opportunity for compliance.

14. Lastly, I must determine the appropriateness of imposing a penalty under Section 112(a)(ii) of the Customs Act, 1962. This section penalizes individuals involved in the improper importation of goods. The undervaluation and mis-declaration by M/s S. M. Enterprises (IEC FAIPK6663N) constitute significant violations, warranting a penalty to deter future infractions. The penalty may be up to ten percent of the duty sought to be evaded or five thousand rupees, whichever is higher. Given the substantial undervaluation in this case, I find it appropriate to impose a penalty commensurate with the gravity of the offense.

15. In view of the above I pass the following order:

15.1 I order confiscation of goods imported by M/s S. M. Enterprises (IEC FAIPK6663N) under SEZ Bill of Entry for Warehousing. No 1005172 dated 08.03.2024 having declared value of Rs.11,35,485/- re-determined to Rs. 45,40,614/- (including the value of the Mobile Tempered Glass which have been not declared in the BE) under section 111(l) and 111(m) of the Customs Act, 1962 and order to assess the DTA Bill of Entry accordingly once filed.

15.2 The importer is given the option to redeem the confiscated goods on payment of a redemption fine of Rs. 4,75,000/-(Rs. Four Lakh Seventy Five Thousand Only) under

Section 125 of the Customs Act, 1962, in lieu of confiscation.

15.3 A penalty of Rs. 50,000/-(Rs. Fifty Thousand Only) is imposed on the importer under Section 112(a)(ii) of the Customs Act, 1962, for mis-declaration and undervaluation.

15.4 The Mobile Tempered Glass found concealed in the import consignment and not declared while filling of the SEZ BE by the importer is required to be classified under CTH 70071900, which is meant for Other Toughened (Tempered) Glass and attracts Customs duty @ 15% (BCD)+ 10% (SWS) + 18% (IGST).

16. 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 CA 1962 and rules /regulation framed thereunder or any other law for the time being in force in the republic of India.

Signed by
Arun Kumar
Date: 06-07-2024 13:48:19

Arun Kumar

Additional Commissioner of Custom
Import, Mundra Customs House

To,

M/s S. M. Enterprises (IEC FAIPK6663N);
KH No, 675, 1st Floor, Blk-A, Plot No. 373,
Landmark Near Hansraj Model School, Shiv Mandir,
Ramesh Enclave, Delhi- North- West Delhi- 110081

Copy to

1. Deputy Commissioner of Customs, SIIB, Mundra Customs House
2. Assistant/Deputy Commissioner of Customs, Group 5, Mundra Customs House
3. Assistant/Deputy Commissioner of Customs, EDI, Mundra Customs House
4. Assistant/Deputy Commissioner of Customs, RRA Mundra Customs House
5. Assistant/Deputy Commissioner of Customs, TRC Mundra Customs House