



कार्यालय: प्रधान आयुक्त, सीमाशुल्क, मुन्द्रा,
सीमाशुल्क भवन, मुन्द्रा बंदरगाह, कच्छ, गुजरात- 370421

OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS:

CUSTOM HOUSE, MUNDRA PORT, KUTCH, GUJARAT- 370421.

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A	File No.	CUS/APR/BE/MISC/1270/2024-Gr 4-O/o Pr Commr-Cus-Mundra
B	OIO No.	MCH/ADC/AK/25/2024-25
C	Passed by	Arun Kumar, Additional Commissioner, Custom House, Mundra
D	Noticee / Party / Importer	M / s Shrutam Metals Private Limited, Basement Shed No 23 Wazirpur Industrial Area Delhi -110052
E	DIN	20240471MO000042424E

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,
Office at 7th floor, Mridul Tower, Behind Times of India,
Ashram Road 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.

Brief Facts of the case

M / s Shrutam Metals Private Limited (IEC: ABJCS9334A) (hereinafter referred to as “*the Importer*” for sake of brevity) having address at Basement Shed No 23 Wazirpur Industrial Area Delhi -110052, filed the following Bill of Entry for import of “Cold Rolled Stainless Steel Coils Grade J2” at Mundra Port through their CB M/s Kashish Impex.

TABLE - A

Bill of Entry No. & Date	Description of Goods	CTH	Qty. (Net wt.) Kgs.	Declared Value in (INR)	Declared Duty Payable (INR)
8665899 dated 07.11.2023	Cold Rolled Stainless Steel Coils Grade J2	72199090	55236	5148193	1427850
	Total			5148193/-	1427850/-

2. As per Circular dated 20.10.2023 issued by Ministry of Steel, it is mandatory for all the steel importers to apply and seek clarification for each and every consignment which is imported in the country without BIS license/certification. Further, vide CBIC letter F.No.401/88/2023-Cus.III dated 09.11.2023, it is further clarified that mandatory clarification is required only for steel products of those ITCHS codes which have been mapped with the Indian Standards notified under the Quality Control Order issued by Ministry of Steel.

3. Accordingly, as declared CTH 72199090 is mapped with the Indian Standards notified under the Quality Control Order issued by Ministry of Steel, therefore, mandatory clarification/NOC from Ministry of Steel was required in the instant case before clearance of the said goods.

4. The Importer vide letter dated 15.03.2024 addressed to the Deputy Commissioner, Dock Examination Section submitted the BIS NOC.

5. During the course of verification of documents in RMS Cell, Dock Examination Section, it was observed that:

“In response of Dept’s mail for NOC verification, the MoS replied that ‘the attached letter was not issued by Ministry of Steel’. It is evident from said mail, Importer has submitted fake/forged NOC.”

6. In view of the above, it appears that the imported goods have become liable for confiscation under Section 111(o) of the Customs Act, 1962, which is reproduced below for ease of reference:

Section 111. Confiscation of improperly imported goods, etc. -

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

.....

(o) any goods exempted, subject to any condition, from duty or any prohibition in respect of the import thereof under this Act or any other

law for the time being in force, in respect of which the condition is not observed unless the non-observance of the condition was sanctioned by the proper officer;

7. As the imported goods have become liable for confiscation under Section 111(o) of the Customs Act, 1962, the Importer is liable for penal action under Section 112(a)(ii) of the Customs Act, 1962, which is reproduced below for ease of reference:

SECTION 112. Penalty for improper importation of goods, etc.-

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

shall be liable, -

(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:

8. Further, it is clear that the Importer has submitted fake/forged Ministry of Steel NOC for clearance of the imported goods. Therefore, the Importer is also liable for penalty under Section 114AA of the Customs Act, 1962, which is reproduced below for ease of reference:

Section 114AA. Penalty for use of false and incorrect material. -

If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

9. Being Custom Broker (CB), M/s Kashish Impex is bound to comply with Customs Brokers Licensing Regulations (CBLR), 2018. The relevant Regulations of the CBLR, 2018 is reproduced below for ease of reference:

10. Obligations of Customs Broker — A Customs Broker shall —

.....

(d) advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;

.....

(m) discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;

10. As per CBLR, 2018, it is the duty of a Customs Broker (CB) to advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be. However, M/s Kashish Impex has failed to advise their client M/s Shrutam Metals Private Limited regarding submission of genuine BIS NOC from Ministry of Steel. Further, M/s Kashish Impex has failed to discharge their duties properly as they have not brought the fact of submission of forged/counterfeit BIS NOC to the notice of the Customs which indicates their involvement in attempting to clear the impugned consignment by submission of forged/counterfeit BIS NOC purported to be issued by Ministry of Steel and in suppressing the said facts with a malafide intention by collusion with the said Importer. Therefore, M/s Kashish Impex has contravened Customs Brokers Licensing Regulations (CBLR), 2018 made under Section 146(2) of the Customs Act, 1962. From above, it appears that M/s Kashish Impex is liable for penal action under Section 117 of the Customs Act, 1962 which is reproduced below for ready reference:

SECTION 117. Penalties for contravention, etc., not expressly mentioned. - Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding one lakh rupees.

RECORD OF PERSONAL HEARING

11. The Importer vide letter dated NIL received on 16.04.2024 has submitted that they received a call from Number +919717929681 with name Shyam who ensured about NOC and after some days they received mail from tcqco@gov-steel.com and got NOC and that after submission of NOC, they came to know that the NOC was forged and that they called on that mobile number too many times but no response was received. The Importer has further submitted that they applied for NOC on 02.04.2024 and got the same on 08.04.2024 which was verified by the Customs. The Importer has further submitted that they do not want Show Cause Notice and Personal Hearing and requested to release the goods as demurrage charges are almost 50% of the cargo.

12. The CB M/s Kashish Impex vide letter dated 22.04.2024 has submitted that they received BIS NOC from the Importer vide letter dated 15.03.2024 and submitted the same in RMS Cell, Dock Examination Section, for verification from issuing authority and that on receipt of instructions from RMS Cell, they uploaded the NOC in e-Sanchit and after verification of the same by department, they came to know that the said NOC has not been issued by Ministry of Steel and that there is no type of involvement from their side. The CB has further submitted that they do not require Show Cause Notice and Personal Hearing.

DISCUSSION & FINDING

13. I have carefully gone through the case records and applicable provisions of Law. I find that the Importer vide their letter dated NIL and the CB vide their letter dated 22.04.2024 have submitted that they do not want Show Cause Notice and Personal Hearing, thus, the condition of Principles of Natural Justice *under Section 122A of the Customs Act, 1962* has been complied with. Hence, I proceed to decide the case on the basis of facts and documentary evidences available on records.

14. The main issues before me to decide are whether-

- i. the imported goods are liable for confiscation under Section 111(o) of the Customs Act, 1962 or otherwise
- ii. the Importer is liable for penal action under Section 112(a)(ii) of the Customs Act, 1962 or otherwise
- iii. the Importer is also liable for penalty under Section 114AA of the Customs Act, 1962 or otherwise
- iv. the CB is liable for penalty under Section 117 of the Customs Act, 1962 or otherwise.

15. I find that the Importer M/s Shrutam Metals Private Limited filed Bill of Entry No. 8665899 dated 07.11.2023 for import of "Cold Rolled Stainless Steel Coils Grade J2" under CTH 72199090 having declared assessable value of Rs. 5148193/- at Mundra Port through their CB M/s Kashish Impex.

16. I find that as per Circular dated 20.10.2023 issued by Ministry of Steel read with CBIC letter F.No.401/88/2023-Cus.III dated 09.11.2023, it is mandatory for all the steel importers to apply and seek clarification for each and every consignment which is imported in the country without BIS license/certification for steel products of those ITCHS codes which have been mapped with the Indian Standards notified under the Quality Control Order issued by Ministry of Steel. Further, I find that as declared CTH 72199090 is mapped with the Indian Standards notified under the Quality Control Order issued by Ministry of Steel, therefore, mandatory clarification from Ministry of Steel was required in the instant case before clearance of the said goods.

17. I find that when RMS Cell, Dock Examination Section vide e-mail dated 15.03.2024 forwarded NOC purported to be issued by Ministry of Steel and uploaded in EDI System, to Ministry of Steel for verification of genuineness, Ministry of Steel vide e-mail dated 18.03.2024 replied that 'the attached letter was not issued by Ministry of Steel'. Therefore, it is evident that the Importer has submitted fake/forged NOC.

18. I find that the Importer vide letter dated NIL received on 16.04.2024 has submitted that they received a call from Number +919717929681 with name Shyam who ensured about NOC and after some days they received mail from tcqco@gov-steel.com and got NOC and that after submission of NOC, they came to know that the NOC was forged and that they called on that mobile number too many times but no response was received. The

submissions of the Importer do not stand ground as the Importer did not follow the due procedure by applying to Ministry of Steel for BIS NOC and rather followed unscrupulous route for procuring NOC.

19. In view of the above, the imported goods became liable for confiscation under Section 111(o) of the Customs Act, 1962. Section 111(o) of Customs Act, 1962 empowers confiscation for non-fulfilment of 'post-importation conditions'. However, the Importer vide letter dated 10.04.2024 submitted Ministry of Steel NOC which was sent for authentication from the Ministry of Steel vide e-mail dated 25.04.2024. In reply, Ministry of Steel vide e-mail dated 26.04.2024 has informed that the said NOC/clarification is found correct/true. As the condition of mandatory NOC has been fulfilled by the Importer, therefore, the import stands regularised and Section 111(o) of Customs Act, 1962 becomes inapplicable. I hold accordingly.

20. As I have held that Section 111(o) of Customs Act, 1962 is inapplicable in the instant case, therefore, I hold that the imposition of penalty on the said Importer under Section 112(a)(ii) of Customs Act, 1962 is not sustainable.

21. However, I find that the Importer vide letter dated NIL received on 16.04.2024 has admitted that they received NOC from third person. I further find that the Importer vide letter dated 15.03.2024 addressed to the Deputy Commissioner, Dock Examination Section submitted the said NOC. Therefore, it is evident that the Importer did not follow the due procedure by applying to Ministry of Steel for BIS NOC and submitted forged NOC purported to be issued by Ministry of Steel for clearance of the impugned consignment, therefore, I hold that the Importer is liable for penal action under Section 114AA of Customs Act, 1962.

22. Further, I find that as per CBLR, 2018 read with Section 146(2) of the Customs Act, 1962, it is the duty of a Customs Broker (CB) to advise his client to comply with the provisions of the Act, other allied Acts and the rules and regulations thereof, and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be. I find that the CB M/s Kashish Impex vide letter dated 22.04.2024 has submitted that they received BIS NOC from the Importer vide letter 15.03.2024 and submitted the same in RMS Cell, Dock Examination Section, for verification from issuing authority and that on receipt of instructions from RMS Cell, they uploaded the NOC in e-Sanchit. I find that the arguments submitted by the CB are not sufficient in discharging their obligations as a Customs Broker as it is their duty to advise their client (the Importer) to follow the provisions of the Act, other allied Acts and the rules and regulations thereof. Further, I find that the CB M/s Kashish Impex has also failed to bring the matter of the said non-compliance to the notice of the proper officer. Further, I find that the CB M/s Kashish Impex, after receipt of the BIS NOC from the Importer, submitted the same in Customs without confirming the veracity of the said BIS NOC, which is easily verifiable from the dedicated portal of Ministry of Steel (tcqco-steel@gov.in). Therefore, I hold that M/s Kashish Impex has contravened Customs

Brokers Licensing Regulations (CBLR), 2018 and therefore, the CB M/s Kashish Impex is liable to penalty under Section 117 of the Customs Act, 1962.

23. In view of the foregoing discussion and findings, I pass the following order:

ORDER

- i. I refrain from holding the goods imported vide Bill of Entry No. 8665899 dated 07.11.2023 having declared assessable value of Rs. 5148193/-, liable to confiscation under Section 111(o) of Customs Act, 1962.
- ii. I refrain from imposition of penalty under Section 112(a)(ii) of Customs Act, 1962 on the Importer M/s Shrutam Metals Private Limited.
- iii. I order to impose a penalty of Rs.13,50,000/- (Rs. Thirteen Lac Fifty Thousand Only) on the Importer M/s Shrutam Metals Private Limited under Section 114AA of Customs Act, 1962.
- iv. I order to impose a penalty of Rs. 2,50,000/- (Rs. Two Lac Fifty Thousand Only) under Section 117 of Customs Act, 1962 on the CB M/s Kashish Impex.
- v. The goods imported vide Bill of Entry No. 8665899 dated 07.11.2023 are to be released only after payment of applicable duties and Penalties as above.

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

Akr

Date: 29-04-2024 **732** (Arun Kumar)
Additional Commissioner Customs
Custom House, Mundra

To,

Date: 29-04-2024

i. **M/s Shrutam Metals Private Limited** (IEC: ABJCS9334A)
Basement Shed No 23, Wazirpur Industrial Area,
Delhi -110052.

ii. **M/s Kashish Impex**
Office No. 5, Ground Floor, Plot No. 37,
Sunshine Arcade 2, Sector - 8, Gandhidham - 370201.

Copy to:

1. The Dy. Commissioner of Customs, Review Section, CH, Mundra

2. The Dy. Commissioner of Customs, TRC Section, CH, Mundra
3. The Dy. Commissioner of Customs, EDI Section, CH, Mundra
4. Guard file

