

		OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 Phone No. 02838-271029/423 FAX No. 02838-271425 Email : importsectionmundra@gmail.com
A	File No.	CUS/APR/MISC/5440/2024-Gr 5-6-O/o Pr Commr-Cus-Mundr
B	Order-in-Original No.	MCH/ADC/AK/81/2024-25
C	Passed by	ARUN KUMAR Hon'ble Additional Commissioner of Customs Custom House, Mundra.
D	Date of Order	27.06.2024
E	Noticee/Party/Importer/ Exporter	M/s. Ananta Enterprise, Opp. Muslim Line, Manavadar Transport, Before Kesari Hind Pool, Rajkot-360003
F	DIN No.	DIN- 20240771MO000000A8AA

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/- रुपये का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

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

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए ।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्यूटी/ 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. Ananta Enterprise, Opp. Muslim Line, Manavadar Transport, Before Kesari Hind Pool, Rajkot-360003 having GSTIN-24ACAFA4140K1ZS imported the goods under BE- 6953637 & 6970826 dated 20.07.2023 & 21.07.2023 respectively. Based on examination order, Dock examination officers examined the goods imported under both the Bills of Entry and as the CB (M/s. Benchmark Shipping and Logistics) was not co-operating the Dock Examination Officers, matter regarding Bill of Entry 6970826 dated 21.07.2023 has been forwarded with quantification/Inventory of the goods to SIIB section for further investigation.

2. As the examination has already been done and inventory has been prepared by Docks Staff regarding Bill of Entry 6970826 dated 21.07.2023, CB was informed to arrange empaneled Chartered Engineer to conduct the valuation process under supervision of SIIB. Valuation process was conducted on 26.09.2023 under supervision of SIIB. During the inspection, goods were found in boxes of different sizes. Chartered Engineer opened boxes and inspected goods and submitted valuation report dated 29.09.2023.

3. Further, another file was received from Docks Examination related to same Importer regarding Bill of Entry No. 6953637 dated 20.07.2023 with examination report dated 23.08.2023, quantification and valuation report.

4. Based upon the import policy, goods imported vide BE no. 6953637 dated 20.07.2023 & 6970826 dated 21.07.2023 have been categorized into 04 categories for further investigation:

1: Old and used goods

2: Goods which require mandatory compliance like BIS, CDSCO etc.

3: Goods which may involve IPR violations

4: Free importable dutiable goods

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4.1 OLD AND USED GOODS

TABLE-I: OLD AND USED GOODS						
Sr. No	Description of the goods	Box	Total Qty.	Est. Price Per Unit (In Rs.)	Total Price. (In Rs.) (as per CE)	REMARKS
1	Personal Old Cloths (Misc Items)	1	500	2.95	1,476	Old and used Personal Belongings
2	Personal Old Cloths (Misc Items)	28	42	1.00	42	Old and used Personal Belongings
3	Monitoring Equipment (Old Bullet Camera)	1	2	25,000	50,000	Old and Used
4	Cables	1	1	200	200	Old and Used
5	Injection Molding Machine Controller	11	12	20	240	Damaged

6	Rollar Machine Parts (Stand)	1	2	36.90	73.80	Damaged
7	Printer Accessories	1	35	1,500	52,500	Damaged
8	Printer Accessories(Panel)	1	11	100	₹ 1,100	Damaged
9	Printer Accessories(Panel)	1	3	100	₹ 300	Damaged
10	Printer Accessories(Hopper Assembly)	1	13	300	₹ 3,900	Damaged
11	Printer Accessories(Circuit Board)	1	12	200	2,400	Damaged
12	Printer Accessories(Photosensitive Element)	1	22	1,150	25,300	Damaged
13	Printer Accessories(Pcba Board)	1	21	250	5,250	Damaged
14	Printer Accessories(Circuit Board)	1	8	300	2,400	Damaged
15	Printer Accessories(Plastic Item)	1	59	200	11,800	Damaged
16	Householde Cloth Bags Having Medical Books	3	29	8.12	235.42	Old and used Personal Belongings
17	Box(Hard Drive/Braclet And Mis Items)	1	29	13.53	392.37	Old and used Personal Belongings
18	Diablo-Robot - Direct Drive Self Balancing Wheeled Leg Robot	1	1	1,00,000	1,00,000	Damaged Goods
19	Ninebot Kick Scooter	1	1	40,000	40,000	Broken Parts
20	Second Hand Laptop(Lenovo)	1	1	2,500	2,500	Very Old and Used
21	Second Hand Laptop(Dell)	1	1	2,500	2,500	Very Old and Used
22	Second Hand Laptop(Lenovo)+	1	2	1250	2,500	Very Old and Used
23	Old Used Personal Belongings-1 (Including Tv/Heater/Kitchenware/Games/Water Dispenser/Shoes/Bread Machine And Other Misc Items)	1	1	3,000	3,000	Old and used Personal Belongings
24	Old Used Personal Belongings-2(Including Used Clothes/Pilow/Shoes/Luggage And Misc Item)	1	1			Old and used Personal Belongings
25	Old Used Personal Belongings-3(Including Used Clothes/Photo Albums/Shoes/Luggage And Other Varios Misc Items)	1	1			Old and used Personal Belongings
26	Old Used Personal Belongings-4(Including Various Electrical And Household Items)	1	1			Old and used Personal Belongings
27	Old Used Personal Belongings-5(Including Various Electrical And House Hold Items)	1	1			Old and used Personal Belongings
	Old Used Personal Belongings-					Old and used

28	6(Including Varios Electrical And House Hold Items)	1	1			Personal Belongings
29	Old Used Personal Belonging-7 (Food/Toys/Tea/Cases)	1	1			Old and used Personal Belongings
30	Wooden Items Used In Decoration	5	5	2,000	2,000	Old and used Personal Belongings
Total					3,10,110/-	

4.1.1 Import of 'Old and Used parts and accessories of printer, second hand Laptops, Hard drive etc.' are restricted under Para 2.31 (1) of the Foreign Trade Policy (2015-2020) ('FTP' in short). The goods, viz. parts of printer/photocopy machine is not allowed to be imported without authorization of DGFT.

4.1.2 In view of the above Table-I, it appears that the importer had mis-declared the description of the goods against both Bills of Entry with an intention to import restricted items, viz. old and used parts and accessories of printer, second hand Laptops, Hard drive etc. without obtaining any permission or authorization from Ministry of Electronics & Information Technology or DGFT respectively. Therefore, these acts of omission and commission on the part of the importer appears to have made the goods liable for confiscation under the provisions of Section 111 (d), 111 (m) & 111(l) of the Customs Act, 1962 and the importing firm has rendered themselves liable for penal action under Section 112 of the Customs Act, 1962.

4.2 Goods which require mandatory compliance like BIS, FSSAI, CDSCO etc.

Table II: Goods which require mandatory compliance like BIS, FSSAI, CDSCO etc.

SR.NO	DESCRIPTION	TOTAL QUANTITY	EST. PRICE PER Unit	TOTAL PRICE. (Provided by CE)	REMARKS
1	Scanner	2	₹ 19.68	₹ 39.36	BIS Required
2	Power Supply Units	1128	₹ 50.00	₹ 56,400.00	BIS Required
3	Transformer	1000	₹ 3.69	₹ 3,690.00	BIS Required
4	Cables	19	₹ 70.00	₹ 1,330.00	BIS Required
5	Lighting Controller	14	₹ 22.14	₹ 309.96	BIS Required
6	Ambient Lighting Sensor	28	₹ 68.88	₹ 1,928.64	BIS Required
7	Shaver	1	₹ 100.00	₹ 100.00	BIS Required
8	Ice Cream	10	₹ 54.12	₹ 541.20	FSSAI Required
9	Juicer	1	₹ 12.30	₹ 12.30	BIS required
10	Hair Fiber	8160	₹ 12.00	₹ 97,920.00	Policy Restriction
11	Hair Fiber	3600	₹ 12.00	₹ 43,200.00	Policy Restriction
12	Hair Fiber	7680	₹ 12.00	₹ 92,160.00	Policy Restriction
13	Hair Fiber	6000	₹ 12.00	₹ 72,000.00	Policy Restriction
14	Shampoo	350	₹ 10.00	₹ 3,500.00	CDSCO required
15	Nail Polish	1178	₹ 8.00	₹ 9,424.00	CDSCO required
16	Cosmetics	3197	₹ 12.00	₹ 38,364.00	CDSCO required
17	Nail Polish	35	₹ 18.00	₹ 630.00	CDSCO required

18	Aroma Products	3550	₹ 10.00	₹ 35,500.00	CDSCO required
19	Cosmetics	800	₹ 1.97	₹ 1,574.40	CDSCO required
20	Skin Care Products	550	₹ 5.00	₹ 2,750.00	CDSCO required
21	Shower Gel	3809	₹ 10.00	₹ 38,090.00	CDSCO required
22	Cosmetics	8754	₹ 10.00	₹ 87,540.00	CDSCO required
23	Shampoo	168	₹ 20.00	₹ 3,360.00	CDSCO required
24	Skin Care Products (Liquid Form)	890	₹ 14.00	₹ 12,460.00	CDSCO required
25	Power Bank	2050	₹ 100.00	₹ 2,05,000.0	BIS Required
26	Light	13	₹ 10.00	₹ 130.00	BIS Required
27	Oil (Skin Care Products)	6	₹ 1.46	₹ 8.76	CDSCO required
28	Power Bank	1	₹ 221.40	₹ 221.40	BIS Required
29	Battery	400	₹ 5.41	₹ 2,164.80	BIS Required
30	Nail Gel/Nail Tool	100	₹ 1.00	₹ 100.00	CDSCO required
31	Cosmetics	50	₹ 1.00	₹ 50.00	CDSCO required
32	Power Bank	97	₹ 5.00	₹ 485.00	BIS Required
33	Box(Razor/Toy/Books&Other Misc Items)	7	₹ 12.30	₹ 86.10	BIS Required
34	Tea Bag	1	₹ 7.38	₹ 7.38	FSSAI Required
35	Battery	11	₹ 7.87	₹ 86.59	BIS Required
36	Rechargeable Lamp	20	₹ 50.00	₹ 1,000.00	BIS Required
37	Dry Cell Batteries	16	50	₹ 800.00	BIS Required
38	Mini Washing Machine	124	₹ 1,450	₹ 1,79,800	BIS Required
39	Long Peng Lp2300i Portable Generator	2	₹ 8,000	₹ 16,000	BIS Required
40	2 Wheel Self Balancing Vehicle	2	₹ 9,000	₹ 18,000	BIS Required
41	Wireless Vocal Set	1	₹ 2,600	₹ 2,600	Wireless type approval required
42	Projector/Charging Selfie Stick/Cover/Battery	4	₹ 1,500	₹ 6,000	BIS Required
43	Zye Lipo Battery 1500 Mah	3	₹ 56	₹ 168	BIS Required
44	TATTU 16000mah 15 C BATTERY	12	₹ 150	₹ 1,800	BIS Required
45	Battery	1	₹ 1,200	₹ 1,200	BIS Required
46	Rechargeable Battry	1000	₹ 60	₹ 60,000	BIS Required
47	Travel Universal Adaptor	200	₹ 70	₹ 14,000	BIS Required
48	Power Supply	2900	₹ 30	₹ 87,000	BIS Required
49	Power Supply	1475	₹ 40	₹ 59,000	BIS Required
50	Laptop Charger	150	₹ 50	₹ 7,500	BIS Required
51	Dried Mashrooms	10kg	₹ 400	₹ 4,000	FSSAI Required
52	Power Supply	1000	₹ 40	₹ 40,000	BIS Required
53	Power Supply	1020	₹ 50	₹ 51,000	BIS Required
54	Dc Motor	2	₹ 200	₹ 400	BIS Required
55	Herewin 16000 Mah High Power Battery	10	₹ 200	₹ 2,000	BIS Required
56	Swit 420wh Large Capacity V Mount Battery	5	₹ 200	₹ 1,000	BIS Required
57	Very Hgh Powered Large Size Battery	10	₹ 2,000	₹ 20,000	BIS Required
58	Power Bank (Pb) & Radio	4(PB),2(RADIO)	₹ 3,000	₹ 18,000	BIS Required
59	Battry Rod	5	₹ 250	₹ 1,250	BIS Required
60	Motor And Driver	2	₹ 100	₹ 200	BIS Required
61	Led Solar Torch Light	480	₹ 50	₹ 24,000	BIS Required

62	Solarlight And Solar Panel	310	₹ 150	₹ 46,500	BIS Required
63	Led Light Set With Components	9	₹ 140	₹ 1,260	BIS Required
64	Lights	2	₹ 300	₹ 600	BIS Required
65	Palace Lipstick	4500	₹ 5	₹ 22,500	CDSCO required
66	Ms Glamour Face Glow Kit	64	₹ 15	₹ 960	CDSCO required
67	Ms Glamour All Matte Primer Moisturizer	252	₹ 15	₹ 3,780	CDSCO required
68	Ms Glamour Glow Getter	960	₹ 20	₹ 19,200	CDSCO required
69	Ms Glamour Eye Shadow	330	₹ 16	₹ 5,280	CDSCO required
70	Ms Glamour Glam Kit	720	₹ 16	₹ 11,520	CDSCO required
71	Ms Glamour Transculent Powder	270	₹ 20	₹ 5,400	CDSCO required
72	Ms Glamour Unidentifiable Item	350	₹ 20	₹ 7,000	CDSCO required
73	Coco Perfume	14	₹ 30	₹ 420	CDSCO required
74	Facial Serum, Body Lotion, Hair	180	₹ 40	₹ 7,200	CDSCO required
75	Cosmetic Item	14	₹ 68	₹ 952	CDSCO required
76	Liquid Drums (Hair Serum)	18	₹ 150	₹ 2,700	CDSCO required
77	Liquid Drums (Hair Serum)	2	₹ 300	₹ 600	CDSCO required
78	Shampoo	90	₹ 50	₹ 4,500	CDSCO required
79	Gas Stove/Induction	8	₹ 1,500	₹ 12,000	CDSCO required
80	Earphone	APPROX 100	₹ 50	₹ 5,000	BIS Required
81	Toys Bat Car	6	₹ 10	₹ 60	BIS Required
82	Flystick Toys	10	₹ 10	₹ 100	BIS Required
83	Toys Type 1	3	₹ 200	₹ 600	BIS Required
84	Toys Type 2	5	₹ 200	₹ 1,000	BIS Required
85	Toys Type 3	10	₹ 200	₹ 2,000	BIS Required
86	Toys Type 5	8	₹ 200	₹ 1,600	BIS Required
87	Toys Type 6	13	₹ 200	₹ 2,600	BIS Required
88	Toys Type 7	2	₹ 200	₹ 400	BIS Required
89	Toys Type 8	1	₹ 200	₹ 200	BIS Required
90	Toys Type 9	1	₹ 200	₹ 200	BIS Required
Total Price				15,94,014/-	

4.2.1 BIS-

DGFT has issued General Notes regarding Import Policy for Compliance of Imports with Domestic Laws. Note 2A of the General Notes regarding Import Policy Provides:

“2. Indian Quality Standards:

- A. *Mandatory Indian Standards of Bureau of Indian Standards (BIS):*
Quality of the products that are subject to mandatory Indian Standards, as applicable to domestic goods, shall be required to comply with quality specified for the product as per same Indian Standards. For compliance of this requirement, all manufactures/exporters of these products to India shall be required to obtain BIS license for using Standards mark on their product. The present list of ‘Items under mandatory BIS certification’ is given in Appendix – III of this Schedule. As and when BIS notifies the quality specifications for new product(s) as

an Indian Standards, the said Indian Standard would be deemed to be part of Appendix – III from the date of implementation of the said Indian Standards for the said product(s) and the import of that product(s) shall conform to that specified Indian Standard from the date of implementation as specified for the said product(s) by BIS.”

It is seen that goods mentioned in table-II required mandatory BIS Licence Certificate. However, importer has failed to provide any such Licence certificate for the impugned goods. Therefore, it is evident that the impugned goods under import are without BIS Certificate, therefore, they are to be deemed non-conforming to BIS Provisions. By virtue of the Note 2A of the General Notes on import Policy issued under para 2.03 of the FTP (Foreign Trade Policy), the impugned goods under import mentioned in above Table-II, are violating the provisions of the Foreign Trade Policy.

4.2.2 FSSAI-

– Note 4 of Food Safety & Standards Act, 2006 of General Notes regarding Import Policy:

- A. *Quality and Packaging requirements: Import of all such edible/food products including tea, domestic sale and manufacture of which are governed by Food Safety & Standards Act, 2006 and rules thereunder, shall also be subject to the conditions laid down in the aforesaid Act and rules framed thereunder. Import of all these products will have to comply with the quality and packaging requirements as laid down in the Act. Compliance of these conditions is to be ensured before allowing customs clearance of the consignment.*

It is seen from table-II, some of the goods required FSSAI certificate for clearance. However, importer has failed to provide any such certificate for the impugned goods. Therefore, it is evident that the impugned goods are imported without FSSAI Certificate, therefore, they are to be deemed non-conforming to the FSSAI Provisions. By virtue of the Note 4 of Food Safety & Standards Act, 2006 of General Notes regarding Import Policy, the impugned goods under import mentioned in above Table-II, are violating the provisions of the Foreign Trade Policy.

4.2.3 CDSCO-

As per Rule 129 of CDSCO, Registration of cosmetic products imported into the country-

“No cosmetic shall be imported into India unless the product is registered under the rules by the licensing authority appointed by the Central Government under rule 21 or by any person to whom such powers may be delegated under rule 22”.

It is seen from table-II, some of the goods required CDSCO certificate for clearance. However, importer has failed to provide any such certificate for the impugned goods. Therefore, it is evident that the impugned goods

are imported without CDSCO Certificate, therefore, they are to be deemed non-conforming to the CDSCO Provisions. By virtue of the Rule 129 of CDSCO, Registration of cosmetic products imported into the country, the impugned goods under import mentioned in above Table-II, are violating the provisions of the Foreign Trade Policy.

4.3 Goods which may involve IPR violations:

Table III: Goods which may involve IPR violations						
Sr.No	Description	Box	Total Quantity	Est. Price Per Piece	Total Price. (provided by CE)	Brand Name
1	Cloth Dryer (Whirlpool)	1	1	₹ 5,000.00	₹ 5,000.00	Whirlpool Brand
2	Charger	3	201	₹ 20.00	₹ 4,020.00	Counterfeit
3	Cpu Type Machine (Apple Logo)	1	1	₹ 3.69	₹ 3.69	Apple Brand (old and used)
4	Earphone	1	40	₹ 51.66	₹ 2,066.40	Counterfeit
5	Battery	1	300	₹ 29.52	₹ 8,856.00	Counterfeit
6	Mobile(Brand G)	1	10	₹ 1,000.00	₹ 10,000.00	Google Brand (Used and second-hand)
7	Huawai Mobile Pockets	1	1	₹ 12,000.00	₹ 12,000.00	Huawai Brand
8	Xiomi Tab	5	5	₹ 25,000.00	₹ 1,25,000.00	Xaiomi Brand
9	Mobile (Unkown Brand)	2	2	₹ 3,000.00	₹ 6,000.00	Google Brand (Used and second hand)
10	Lenovo Headphone/Earphone	1	65	₹ 100	₹ 6,500	LENOVO
11	JBL SPEAKER/APPLE AIRPODSPRO (2nd Gen)/APPLE DATACABLE/EARPHONE	1	110		₹ 4,000	JBL / APPLE
12	Data Cable Hdpi	1	481	₹ 5,000	₹ 5,000	Counterfeit/Fake Product
13	Samsung Usb Connector		50			SAMSUNG
14	Apple Wireless Charger		10			APPLE
15	Sony Headphone		50			SONY
16	Samsung Car Charger		10			SAMSUNG
17	Apple Earpod		25			APPLE
18	Data Cable		100			Counterfeit/Fake Product
19	Apple 14 Pro Cover		80			APPLE
20	Samsung Adaptor		50			SAMSUNG
	Total				1,88,446/-	

4.3.1 In view of the Intellectual Property Rights (Imported Goods) Enforcement Rules 2007, goods mentioned in above Table-III are required to be deemed as “Prohibited” within the meaning of Section 11 of the Customs Act, 1962 read with Rule-6 of the IPR Rules, 2007, which reads as under:

“6. Prohibition for import of goods infringing intellectual property rights. - After the grant of the registration of the notice by the Commissioner on due examination, the import of allegedly infringing goods into India shall be deemed as prohibited within the meaning of Section 11 of the Customs Act, 1962.”

4.3.2 Further, Rule 12 of the IPR Rules, 2007 provides:

“Goods of a non-commercial nature contained in personal baggage or sent in small consignments intended for personal use of the importer are not subject to the above Rules.”

4.3.3 Further, the goods suspecting IPR issue are in very less quantity and Importer during his statement dated 09.01.2024 stated that he is willing to destroy the goods suspecting IPR angle at his cost.

4.4 Free importable dutiable goods:

4.4.1 Goods mentioned in table-IV are freely importable and dutiable goods. Therefore, CTH & Valuation of the goods pertain to goods mentioned in under Table-IV has been ascertained on the basis of the generic description of the goods as mentioned in examination report and description provided by the Chartered Engineer as per the specifications/technical information of the goods.

Table-IV (CTH & Valuation)

Sr No	Description	Hsn Code	Total Qty	Est. Price Per Piece	Total Price. (as per CE)
1	Mattress	94042990	1	328.00	328
2	Shoepad	64069090	6	14.76	89
3	Oil Pump Accessories (Motor)	85014090	500	1.23	615
4	Oil Pump Accessories	84133020	1	73.80	74
5	Oil Pump Accessories	84133020	5	4.92	25
6	Oil Pump Accessories	84133020	5	7.38	37
7	Elevator Hopper	84289090	5	200.00	1000
8	Car Kit	87089900	6	600.00	3600
9	Mini Brush	96033020	5000	5.00	25000
10	Sponge	96033020	5020	1.00	5020
11	Handbag (Small)	42022210	2000	20.00	40000
12	Mouse Pad	39269099	58	10.00	580
13	Tooth Brush	96032100	100	2.20	220
14	Hanging Neck Fan	84145190	100	7.38	738
15	Silicone Bakeware	39241090	1280	5.00	6400
16	Bio-Degradable Bag	39232990	16500	1.00	16500
17	Artificial Flower	67021090	50	15.00	750
18	Copper Wire	74081110	572	3.20	1829
19	Cloth (Female Under Garments)	62114390	24	20.91	502
20	Plastic Box	39231020	60	1.72	103
21	Mirror (Small)	70091010	18	2.46	44
22	Ornaments (Artificial)	71171920	412	6.15	2534
23	Globe	49059020	6	1.23	7
24	Timer	91069000	50	12.30	615
25	Fishing Tools (Fishhook)	95071000	135	7.38	996
26	Fishing Scissor / Fish Wire	95071000	800	1.23	984
27	Tableware	69120010	20	1.85	37
28	Sliding Door Accessories	83024900	1	800.00	800
29	Sliding Door Accessories (Monitoring Equipment)	83024900	1	600.00	600
30	Sliding Door Accessories	83024900	1	135.30	135
31	Metal Poles	73089070	4	93.48	374

32	High Beam Converter	87089900	28	54.12	1515
33	Cable	85446090	2000	15.00	30000
34	Glass Oil Film Remover	34059090	40	0.49	20
35	Wig Making Machine	84521019	2	29.52	59
36	Freezer Table	84186990	1	86.10	86
37	Table (Unidentified)	94031010	1	162.36	162
38	Steamer	85167990	1	194.34	194
39	Food Steamer	85167990	6	44.28	266
40	Tofu Machine	84388090	1	600.00	600
41	Cutting Machine	84389090	1	500.00	500
42	Noodle Machine	84381020	2	800.00	1600
43	Rice Steamer	85167990	2	300.00	600
44	Steamer	85167990	1	300.00	300
45	Flat Bed Press	84629000	1	1500.00	1500
46	Light Box	94054900	1	93.48	93
47	Fabric Permeability Tester	90248010	1	455.10	455
48	Flame Retardant Tester	90248010	1	553.50	554
49	Combustion Board	84099990	1	580.56	581
50	Observation Board	84099990	1	405.90	406
51	Ph Tester	90268090	1	671.58	672
52	Pilling Snag Ttr Machine	84798999	1	1130.00	1130
53	Apperance Testing Machine	84798999	1	194.34	194
54	Friction Color Fastness Tester	90248010	1	410.82	411
55	Momo Machine	84798999	1	356.70	357
56	Noodle Pressure Machine	84798999	1	455.10	455
57	Facial Washing Machine	84798999	1	295.20	295
58	Hair Fiber Glue	35069999	1000	10.00	10000
59	Printing Ink	32159090	20	0.50	10
60	Handbag (Small)	42029900	100	137.76	13776
61	Wrist Watch	91029990	104	78.72	8187
62	Plastic Article	39269099	600	7.87	4723
63	Toilet Cleaner	34029099	10	0.57	6
64	Hair Care Empty Bottles	39269099	100	1.46	146
65	Unidentified Equipment Parts	39269099	1	4.92	5
66	Plastic Nozzle	39269099	100	137.76	13776
67	Glass Bottle	70200090	1500	10.00	15000
68	Watch	91029990	4	22.14	89
69	Watch Strap Necklace/Earrings	71179090	100	4.92	492
70	Video Greeting Card	85437099	4	14.76	59
71	(Brand Hitry)Rocket 1 Top Down Resin 3 D Printer With Its Accessories (Usb Drive+ Pigments Bottles)	84778090	1(3D Printer) 6(Pigments) 1(Usb drive)	40000.00	320000
72	Large(5x5x5 Feet) Size Printing Machine With Accessories	84778090	1	8000.00	8000
73	15 Feet Long Unidentifiable Machine (Solar Panel Cleaning Robot)	84798999	1	12000.00	12000
74	Power Ampifier	85044090	5	1500.00	7500
75	Circuit Board	85044090	2	300.00	600
76	Floor Scrubber Machine	84798999	1	8000.00	8000

77	Round Shape Capacitor	85322990	468	20.00	9360
78	Metal Shower Head	73242900	2	2000.00	4000
79	Stainless Steel Wash Basin	73242900	1	2000.00	2000
80	Electric Vehicle Car Charger	85044090	10	50.00	500
81	Bra	62121000	546	3.00	1638
82	Water Pump	84138190	20	500.00	10000
83	Palace Lipstick Display Stand	94038900	50	20.00	1000
84	Linear Guide Rail	83024900	6	40.00	240
85	Screw Rod	73182990	6	30.00	180
86	Cartridge Powder	32159090	5kg+10kg	8.00	120
87	Eye Glass Cases	39269099	600	10.00	6000
88	Eye Glass Cloths	63079099	1000	3.00	3000
89	Swim Goggles	90041000	12	70.00	840
90	English Picture Book For Kids	49030010	40	10.00	400
91	Drum (Instruments)	92060000	4	300.00	1200
92	Silicone Bags	39269099	2000	4.00	7000
93	Rice Beating Machine	84798999	20	1000.00	20000
94	Rice Beating Machine	84798999	1	1000.00	1000
95	Electric Drill	84659500	2	100.00	200
96	Insole	64069090	450	30.00	13500
97	Sealing Wheel	87089900	60	40.00	2400
98	Pet Plastic Bowl	39249090	960	30.00	28800
99	Pet Plastic Bowl	39249090	40	30.00	1200
100	Pet Collar & Leash	39269069	1600	40.00	64000
101	Round Cloth	63079099	144	10.00	1440
102	Noodle Machine	84798999	1	1500.00	1500
103	Grinder	85098000	1	400.00	300
104	Toilet	69109000	1	5000.00	5000
105	Metal Tableware / Shower Set	73269099	4	2000.00	8000
106	New Cloth	63079099	2	150.00	300
107	Sealing Strip	39269099	32	20.00	640
108	Sealing Strip	39269099	800	15.00	12000
109	Magnetic Core	85059000	800	15.00	12000
110	Pet Clothing And Hangers	39269069	2	100.00	100
111	Cloths	63079099	1	300.00	300
112	Resistor / Plastic Terminal	85334090	8	2500.00	2500
113	Woolen Yarn	51099000	30kg	5.00	150
TOTAL					7,98,718/-

4.4.2 Duty calculation of the goods mentioned in above Table is calculated as below:

TABLE-V

Sr No	Description	Total Price.	BCD %	BCD	SWS%	SWS	IGST%	IGST	Total Duty (as per CE)
1	Mattress	328	25	82	10	8	18	75	165
2	Shoepad	89	20	18	10	2	18	19	39
3	Oil Pump Accessories (Motor)	615	10	62	10	6	18	123	191
4	Oil Pump Accessories	74	7.5	6	10	1	28	22	28

5	Oil Pump Accessories	25	7.5	2	10	0	28	7	9
6	Oil Pump Accessories	37	7.5	3	10	0	28	11	14
7	Elevator Hopper	1000	7.5	75	10	8	28	303	386
8	Car Kit	3600	15	540	10	54	28	1174	1768
9	Mini Brush	25000	20	5000	10	500	18	5490	10990
10	Sponge	5020	20	1004	10	100	18	1102	2207
11	Handbag (Small)	40000	15	6000	10	600	18	8388	14988
12	Mouse Pad	580	15	87	10	9	18	122	217
13	Tooth Brush	220	20	44	10	4	18	48	97
14	Hanging Neck Fan	738	20	148	10	15	18	162	324
15	Silicone Bakeware	6400	15	960	10	96	18	1342	2398
16	Bio-Degradable Bag	16500	15	2475	10	248	18	3460	6183
17	Artificial Flower	750	20	150	10	15	18	165	330
18	Copper Wire	1829	5	91	10	9	18	347	448
19	Cloth (Female Under Garments)	502	20/135	3240	0	0	5	187	3427
20	Plastic Box	103	15	15	10	2	18	22	39
21	Mirror (Small)	44	15	7	10	1	18	9	17
22	Ornaments (Artificial)	2534	25	633	0	0	3	95	728
23	Globe	7	0	0	10	0	12	1	1
24	Timer	615	10	62	1	6	18	123	191
25	Fishing Tools (Fishhook)	996	20	199	10	20	12	146	365
26	Fishing Scissor / Fish Wire	984	20	197	10	20	12	144	361
27	Tableware	37	20	7	10	1	12	5	14
28	Sliding Door Accessories	800	15	120	10	12	18	168	300
29	Sliding Door Accessories (Monitoring Equipment)	600	15	90	10	9	18	126	225
30	Sliding Door Accessories	135	15	20	10	2	18	28	51
31	Metal Poles	374	15	56	10	6	18	78	140
32	High Beam Converter	1515	15	227	10	23	28	494	744
33	Cable	30000	10	3000	10	300	18	5994	9294
34	Glass Oil Film Remover	20	10	2	10	0	18	4	6
35	Wig Making Machine	59	10	6	10	1	12	8	14
36	Freezer Table	86	15	13	10	1	18	18	32
37	Table (Unidentified)	162	10	16	10	2	18	32	50
38	Steamer	194	20	39	10	4	18	43	85
39	Food Steamer	266	20	53	10	5	18	58	117
40	Tofu Machine	600	7.5	45	10	5	18	117	166
41	Cutting Machine	500	7.5	38	10	4	18	97	139
42	Noodle Machine	1600	7.5	120	10	12	18	312	444

43	Rice Steamer	600	20	120	10	12	18	132	264
44	Steamer	300	20	60	10	6	18	66	132
45	Flat Bed Press	1500	7.5	113	10	11	18	292	416
46	Light Box	93	25	23	10	2	18	21	47
47	Fabric Permeability Tester	455	7.5	34	10	3	18	89	126
48	Flame Retardant Tester	554	7.5	42	10	4	18	108	154
49	Combustion Board	581	15	87	10	9	28	189	285
50	Observation Board	406	15	61	10	6	28	132	199
51	Ph Tester	672	0	0	10	0	18	121	121
52	Pilling Snag Ttr Machine	1130	7.5	85	10	8	18	220	313
53	Apperance Testing Machine	194	7.5	15	10	1	18	38	54
54	Friction Color Fastness Tester	411	7.5	31	10	3	18	80	114
55	Momo Machine	357	7.5	27	10	3	18	70	99
56	Noodle Pressure Machine	455	7.5	34	10	3	18	89	126
57	Facial Washing Machine	295	7.5	22	10	2	18	58	82
58	Hair Fiber Glue	10000	10	1000	10	100	18	1998	3098
59	Printing Ink	10	10	1	10	0	18	2	3
60	Handbag (Small)	13776	15	2066	10	207	18	2889	5162
61	Wrist Watch	8187	20	1637	10	164	18	1798	3599
62	Plastic Article	4723	15	708	10	71	18	990	1770
63	Toilet Cleaner	6	10	1	10	0	18	1	2
64	Hair Care Empty Bottles	146	15	22	10	2	18	31	55
65	Unidentified Equipment Parts	5	15	1	10	0	18	1	2
66	Plastic Nozzle	13776	15	2066	10	207	18	2889	5162
67	Glass Bottle	15000	10	1500	10	150	12	1998	3648
68	Watch	89	20	18	10	2	18	19	39
69	Watch Strap Necklace/Earrings	492	25/600 per Kg	60000	0	0	3	1815	61815
70	Video Greeting Card	59	7.5	4	10	0	18	12	16
71	(Brand Hitry)Rocket 1 Top Down Resin 3 D Printer With Its Accessories (Usb Drive+Pigments Bottles)	320000	7.5	24000	10	2400	18	62352	88752
72	Large(5x5x5 Feet) Size Printing Machine With Accessories	8000	7.5	600	10	60	18	1559	2219
73	15 FEET LONG UNIDENTIFIABLE MACHINE (Solar Panel Cleaning	12000	7.5	900	10	90	18	2338	3328

4.5 As per valuation report, Assessable value and Duty of freely importable dutiable goods is to be calculated as Rs. 7,98,718/- & Rs. 3,22,127/-respectively.

5. In view of the above, goods found in the import consignment is actually mis-classified and misdeclared with a malafide intention to avoid provisions of the Foreign Trade Policy and evasion of duty. Thus, the non-payment of applicable duty has resulted in short levy of duties which needs to be recovered from the importer along with the applicable interest and penalty.

6. With the introduction of self-assessment under Section 17(1) of Customs Act, 1962 the onus lies on the importer to correctly self-assess the bill of entry with correct amount of leviable duties. By the said act of not correctly self-assessing the applicable BCD, the importer received undue monetary benefit and caused loss to the public exchequer to the tune of Rs. 3,22,126/-. They not only failed to declare and assess the correct duty payable on the goods but also mis-declared the goods in terms of classification and quantity, with an intention to evade payment of correct duty on the goods imported and to avoid foreign trade policy. Thus, there is a reason to believe that the importer deliberately and wilfully misstated the facts in terms of applicability of duty, causing loss to Govt. Revenue.

7. In view of the above, the importer, therefore, appeared liable for payment of duty of Rs. 3,22,126/- attempted to evade by them in respect of the goods imported by way of mis-declaration in terms of classification. The importer has, by his acts of omission, rendered the goods having total value of **Rs. 28,91,288/-** (as per CE for Table-I, Table-II, Table-III & Table-IV)) is liable for confiscation under section 111(d), 111(m) & 111(l) of the Customs Act, 1962 and is, therefore, also liable for penalty under section 112(a) of the Customs Act, 1962.

8. The relevant provisions of Customs Act,1962 are as under:

Section 11 of the Customs Act, 1962:

“(n) the protection of patents, trademarks, copyrights, designs and geographical indications;

(u) the prevention of the contravention of any law for the time being in force”

section 17(1) of the Customs Act, 1962,

an importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.

As per Section 46(4) of the Customs Act, 1962

the importer who is presenting the Bill of Entry shall, at the foot thereof, 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 relating to the imported goods.

SECTION 111. Confiscation of improperly imported goods, etc. The following goods brought from a place outside India shall be liable to 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;

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

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 such an act, or*
 - 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;*
- 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(m) shall be liable-*

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;

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

i. The classification of the goods as claimed by the importer under CTH mentioned in import documents is liable to be rejected and the goods are liable to re-classified in CTH as per Table-IV above and both the B/Es are liable to be re-assessed accordingly.

ii. The goods mentioned in Table I above having value of Rs. 3,10,110/- which were found to be Old and used goods imported are restricted under Para 2.31 (1) of the Foreign Trade Policy (2015-2020) and imported without obtaining any permission or authorization from Ministry of Electronics & Information Technology or DGFT, are liable for confiscation under Section 111(d), 111(m) and 111(l) of the Customs Act, 1962.

iii. The goods mentioned in Table II above having value of Rs. 15,94,014/- were found to be violating the provisions of the Foreign Trade Policy as much as they have been imported in violation of the BIS/FSSAI/CDSCO Rules. Hence, these are liable for confiscation under Section 111(d), 111(m) and 111(l) of the Customs Act, 1962.

iv. The goods mentioned in Table III above, having value of Rs. 1,88,446/-, were found to be counterfeit goods imported in violation of the IPR Rules, 2007. Hence, these are liable for confiscation under Section 111(d), 111(m) & 111(l) of the Customs Act, 1962 read with the Intellectual Property Rights, Rules 2007.

v. The goods mentioned in Table IV above, having value of Rs. 7,98,718/-, freely importable and dutiable goods are liable for confiscation under Section 111(m) & 111(l) of the Customs Act, 1962.

vi. Penalty is liable to be imposed under section 112(a) of the Customs Act, 1962 on the importer.

WAIVER OF PERSONAL HEARING AND SCN

10. The Importer, vide their letter dated 28.05.2024 received on 29.05.2024 through e-mail requested to wave off show cause notices and personal hearing in this matter.

DISCUSSION & FINDING

11. I have carefully gone through the facts of the case, records & evidences submitted before me and I find that as mentioned in para 10, importer has waived off SCN and PH, therefore, I find that the principle of natural justice as provided in section 122A of the Customs Act, 1962, has been satisfied. Hence, I proceed to decide the case on the basis of the documentary evidence available on records. I find that following main issue are involved in the subject matter, which are required to be decided-

i. Whether the classification of the goods as claimed by the importer under CTH mentioned in import documents is liable to be rejected and the goods are liable to re-classified in CTH as per Table-IV above and both the B/Es are liable to be re-assessed accordingly or otherwise.

ii. Whether the goods mentioned in Table I above having value of Rs. 3,10,110/- which were found to be Old and used goods imported are restricted under Para 2.31 (1) of the Foreign Trade Policy (2015-2020) and imported without obtaining any permission or authorization from Ministry of Electronics & Information Technology or DGFT, are liable for confiscation under Section 111(d), 111(m) and 111(l) of the Customs Act, 1962 or otherwise.

iii. Whether the goods mentioned in Table II above having value of Rs. 15,94,014/- were found to be violating the provisions of the Foreign Trade Policy as much as they have been imported in violation of the BIS/FSSAI/CDSCO Rules. Hence, these are liable for confiscation under Section 111(d), 111(m) and 111(l) of the Customs Act, 1962 or otherwise.

iv. Whether the goods mentioned in Table III above, having value of Rs. 1,88,446/-, were found to be counterfeit goods imported in violation of the IPR Rules, 2007. Hence, these are liable for confiscation under Section 111(d), 111(m) & 111(l) of the Customs Act, 1962 read with the Intellectual Property Rights, Rules 2007 or otherwise.

v. Whether the goods mentioned in Table IV above, having value of Rs. 7,98,718/-, freely importable and dutiable goods are liable for confiscation under Section 111(m) & 111(l) of the Customs Act, 1962 or otherwise.

vi. Whether Penalty is liable to be imposed under section 112(a) of the Customs Act, 1962 on the importer or otherwise.

11.1 I find that M/s. Ananta Enterprise, Opp. Muslim Line, Manavadar Transport, Before Kesari Hind Pool, Rajkot-360003 having GSTIN-24ACAFA4140K1ZS imported the goods under BE- 6953637 & 6970826 dated 20.07.2023 & 21.07.2023 respectively. Based on examination order, Dock examination officers examined the goods imported under both the Bills of Entry and as the CB (M/s. Benchmark Shipping and Logistics) was not co-operating the Dock Examination Officers, matter regarding Bill of Entry No. 6953637 dated 20.07.2023 and 6970826 dated 21.07.2023 has been forwarded with quantification/Inventory of the goods to SIIB section for further investigation.

11.2 On the basis of the examination report and investigation carried out, I find that the goods imported vide BE no. 6953637 dated 20.07.2023 & 6970826 dated 21.07.2023 found into 04 categories: -

11.3 Goods found Old and used as detailed in Table-I at para 4.1

above.

11.3.1 Import of 'Old and Used parts and accessories of printer, second hand Laptops, Hard drive etc.' are restricted under Para 2.31 (1) of the Foreign Trade Policy (2015-2020) ('FTP' in short). The goods, viz. parts of printer/photocopy machine should not be allowed to be imported without authorization of DGFT.

Further, revised Para 2.31(1) of the Foreign Trade Policy, 2015-20 reads as under:

S No.	Categories of Second Hand Goods	Import Policy	Conditions, if any
(a)	i. Desktop Computers ii. Refurbished/re-conditioned spares of re-furbished parts of Personal Computers/Laptops iii. Air Conditioners iv. Diesel generating sets	Restricted	Importable against Authorization
(b)	All electronics and IT Goods notified under the Electronics and IT Goods (Requirement of Compulsory Registration) Order, 2012 as amended from time to time.	Restricted	(i) Importable against Authorization subject to conditions to down under "Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 as amended from time to time." (ii) Import of unregistered/non-complaint notified products as in CRO, 2012, as amended from time to time is prohibited".

11.3.2 In view of the Para 2.31(1) of the Foreign Trade Policy, 2015-20, refurbished/re-conditioned spares or re-furbished parts of Personal Computers/Laptops are 'Restricted' and cannot be imported without Authorization. In the instant case, I find that the importer has failed to obtain the authorisation from the competent authority and thus violated the above policy condition. As per above Table-I, it appears that the importer had mis-declared the description of the goods against both Bills of Entry with an intention to import restricted items, viz. old and used parts and accessories of printer, second hand Laptops, Hard drive etc. without obtaining any permission or authorization from Ministry of Electronics & Information Technology or DGFT respectively.

11.3.3 I find that the goods mentioned in Table I above having value of **Rs. 3,10,110/-** (as per CE) were found to be Old and used goods imported are restricted under Para 2.31 (1) of the Foreign Trade Policy (2015-2020). Without obtaining any permission or authorization from Ministry of Electronics & Information Technology or DGFT. Therefore, these acts of omission and commission on the part of the importers have made the goods liable for confiscation under the provisions of Section 111(d), 111(m) and 111(l) of the Customs Act, 1962, which is confirm accordingly.

11.4 Goods which require mandatory compliance like BIS, FSSAI, CDSCO etc, as detailed in Table-II in para 4.2 above.,

11.4.1 DGFT has issued General Notes regarding Import Policy for Compliance of Imports with Domestic Laws. Note 2A of the General Notes regarding Import Policy Provides:

“2. Indian Quality Standards:

- B. Mandatory Indian Standards of Bureau of Indian Standards (BIS):
Quality of the products that are subject to mandatory Indian Standards, as applicable to domestic goods, shall be required to comply with quality specified for the product as per same Indian Standards. For compliance of this requirement, all manufactures/exporters of these products to India shall be required to obtain BIS license for using Standards mark on their product. The present list of ‘Items under mandatory BIS certification’ is given in Appendix – III of this Schedule. As and when BIS notifies the quality specifications for new product(s) as an Indian Standards, the said Indian Standard would have deemed to be part of Appendix – III from the date of implementation of the said Indian Standards for the said product(s) and the import of that product(s) shall conform to that specified Indian Standard from the date of implementation as specified for the said product(s) by BIS.”*

I find that goods mentioned in Table-II required mandatory BIS Licence. However, I find that importer has failed to provide any such Licence certificate for the impugned goods. Therefore, it is evident that the impugned goods under import are without BIS Certificate, therefore, they are to be deemed non-conforming to the BIS Provisions. By virtue of the Note 2A of the General Notes on import Policy issued under para 2.03 of the FTP (Foreign Trade Policy), the impugned goods under import mentioned in above Table-II mentioned in para 4.2, are violating the provisions of the Foreign Trade Policy.

11.4.2 Note 4 of **Food Safety & Standards Act, 2006** of General Notes regarding Import Policy:

- B. Quality and Packaging requirements: Import of all such edible/food products including tea, domestic sale and manufacture of which are governed by Food Safety & Standards Act, 2006 and rules thereunder, shall also be subject to the conditions laid down in the aforesaid Act and rules framed thereunder. Import of all these products will have to comply with the quality and packaging requirements as laid down in the Act. Compliance of these conditions is to be ensured before allowing customs clearance of the consignment.*

I find that some of the goods mentioned in Table-II required FSSAI certificate for clearance. However, I find that importer has failed to provide any such certificate for the impugned goods. Therefore, it is evident that

the impugned goods under import are without FSSAI Certificate, therefore, they are to be deemed non-conforming to the FSSAI Provisions. By virtue of the Note 4 of Food Safety & Standards Act, 2006 of General Notes regarding Import Policy, the impugned goods under import mentioned in above Table-II mentioned in para 4.2, are violating the provisions of the Foreign Trade Policy.

11.4.3 As per Rule 129 of **CDSCO**, Registration of cosmetic products imported into the country-

“No cosmetic shall be imported into India unless the product is registered under the rules by the licensing authority appointed by the Central Government under rule 21 or by any person to whom such powers may be delegated under rule 22”.

I find that some of the goods mentioned in Table-II required CDSCO certificate for clearance. However, I find that importer has failed to provide any such certificate for the impugned goods. Therefore, it is evident that the impugned goods under import are without CDSCO Certificate, therefore, they are to be deemed non-conforming to the CDSCO provisions. By virtue of the Rule 129 of CDSCO, Registration of cosmetic products imported into the country, the impugned goods under import mentioned in above Table-II mentioned in para 4.2, are violating the provisions of the Foreign Trade Policy.

11.4.4 I find that the goods mentioned in Table II above having total value of Rs. 15,94,014/- (as per CE) were found to be violating the provisions of the Foreign Trade Policy in violation of the BIS/FSSAI/CDSCO Rules. Hence, these are liable for confiscation under Section 111(d), 111(m) and 111(l) of the Customs Act, 1962 and the importing firm has rendered themselves liable for penal action under Section 112(a) of the Customs Act, 1962, which I confirmed accordingly.

11.5 Goods which may involve IPR violation, as detailed in Table-III in para 4.3 above.,

12.5.1 I find that the goods of the brands mentioned in above Table-III are counterfeit. Therefore, the goods infringing IPR are “Prohibited” within the meaning of Section 11 of the Customs Act, 1962 read with Rule-6 of the IPR Rules, 2007, which reads as under:

“6. Prohibition for import of goods infringing intellectual property rights. - After the grant of the registration of the notice by the Commissioner on due examination, the import of allegedly infringing goods into India shall be deemed as prohibited within the meaning of Section 11 of the Customs Act, 1962.”

Further, Rule 12 of the IPR Rules, 2007 provides:

“Goods of a non-commercial nature contained in personal baggage or sent in small consignments intended for personal use of the importer are not subject to the above Rules.”

The goods are prohibited as much as the impugned goods are of different brands mentioned as in above Table-III and rendering them liable for confiscation under Section 111(d) of the Customs Act, 1962 read with the IPR, Rules 2007. Further, the goods suspecting IPR issue are in very less quantity and Importer during his statement dated 09.01.2024 stated that he is willing to destroy the goods suspecting IPR angle at his cost.

11.5.2 I find that the goods mentioned in Table III above, having value of **Rs. 1,88,446/-**, (as per CE) were found to be counterfeit goods imported in violation of the IPR Rules, 2007. Hence, these are liable for confiscation under Section 111(d), 111(m) & 111(l) of the Customs Act, 1962 and the importing firm has rendered themselves liable for penal action under Section 112(a) of the Customs Act, 1962 read with IPR Rules, 2007 which I confirmed accordingly.

11.6 Goods which free importable and dutiable goods, as detailed in Table-IV in para 4.4.1:

11.6.1 I find that Goods mentioned in Table-IV are freely importable dutiable goods, having value of Rs. 7,98,718/-. Therefore, CTH & Valuation of the goods pertain in mentioned in Table-IV has been ascertained on the basis of the generic description of the goods as mentioned in examination report and description provided by the Chartered Engineer as the specifications/technical information of the goods. Further, specifications/technical information cannot be ascertained from the testing as the number of items in the consignment is very high and sampling of each item was not possible. Hence, these are liable for confiscation under Section 111(m) & 111(l) of the Customs Act, 1962 and the importing firm has rendered themselves liable for penal action under Section 112(a) of the Customs Act, 1962.

12. I find that the goods were found mis-declared in terms of description and classification, the assessable Value declared by the importer is liable to be rejected under Rule 12 of Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. Further, the value of the above undeclared/ mis-classified goods were not available, therefore, for the valuation of the said goods, the Empanelled Chartered Engineer. Further, I find that the importer has mis-declared/mis-classified/un-declared some of the goods to circumvent the mandatory compliance requirement of Old & Used/BIS/FSSAI/CDSCO/IPR for import of such cargo and to avoid payment of higher rate of customs duty. The importer has, by his acts of omission, rendered the goods having total value of **Rs. 20,92,570/-** (as per CE for Table-I, Table-II & Table-III) is liable for confiscation under section 111(d), 111(m) & 111(l) of the Customs Act, 1962 and is, therefore, also liable for penalty under section 112(a) of the Customs Act, 1962.

13. Further, I find that the during the examination some goods which are freely importable having total value of **Rs. 7,98,717/-** (as per CE for Table-IV) is found mis-declared in terms of valuation, and classification therefore the import goods liable for confiscation under Section 111(I) & 111(m) of the Customs Act, 1962 and is, therefore, also liable for penalty

under section 112(a) of the Customs Act, 1962.

13.1 Since the impugned imported goods are not prohibited goods, an option of redeeming the goods needs to be examined, against the order of confiscation by paying redemption fine as provided under Section 125(1) of the Customs Act, 1962. The Section 125 ibid reads as under: -

“Section 125. Option to pay fine in lieu of confiscation. — (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 1[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.”

I find that as provided under Section 125(1) ibid, M/s. Ananta Enterprises, will have to pay the above mentioned amount of differential duty along with the redemption fine while exercising option to redeem the confiscated goods for home consumption. Thus, in view of these provisions, I hold that the goods can be re-deemed by M/s Ananta Enterprises on payment of redemption fine if they choose to do so.

14. I find that the importer while filing the impugned Bill of Entry has subscribed to a declaration regarding correctness of the contents of Bill of Entry under Section 46(4) of the Act, ibid. Further, Section 46(4A) of the Act, casts an obligation on the importer to ensure accuracy of the declaration and authenticity of the documents supporting such declaration. In the instant case, the importer failed to discharge the statutory obligation cast upon him and made wrong declaration about the description & CTH of imported goods. Therefore, I hold the liable for penalty under section 112(a) of the Customs Act, 1962.

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

ORDER

i. I reject the classification of the goods as claimed by the importer under CTH mentioned in import documents and order to re-classify same under CTH as per Table-IV above and also order to re-asses both the B/Es accordingly.

ii. I order for absolute confiscation of the goods mentioned in Table I above having value of Rs. 3,10,110/- under Section 111(d), 111(m) and 111(l) of the Customs Act, 1962.

iii. I order for absolute confiscation of the goods mentioned in Table II above having value of Rs. 15,94,014/- under Section 111(d), 111(m) and 111(l) of the Customs Act, 1962.

iv. I order for absolute confiscation of the goods mentioned in Table III above, having value of Rs. 1,88,446/-, were found to

be counterfeit goods imported in violation of the IPR Rules, 2007 under Section 111(d), 111(m) & 111(l) of the Customs Act, 1962 read with intellectual Property rights, Rules 2007. I further order to destroy these goods at the cost of importer.

v. I order to confiscate of the goods mentioned in Table IV above, having value of Rs. 7,98,717/-(Rupees Seven Lakh Ninety-Eight Thousand Seven Hundred and Seventeen Only) under Section 111(m) & 111(l) of the Customs Act, 1962, however, I give an option to the importer to redeem the confiscated goods on payment of Rs.4,00,000/- (Rs. Four Lakh Only) in lieu of confiscation under section 125 of the Customs Act 1962.

vi. I impose a penalty of Rs. 10,00,000/-(Rs. Ten Lakh only) upon the importer under section 112(a)(i) of the Customs Act, 1962 in relation to the goods mentioned Tables I,II,III.

vii. I impose a penalty of Rs.30,000/-(Rs. Thirty thousand only) upon the importer under section 112(a)(ii) of the Customs Act, 1962 in relation to goods mentioned in Table IV.

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 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

Arun Kumar

Date: 27-06-2024 18:03:15
(ARUN KUMAR)

**ADDITIONAL COMMISSIONER OF CUSTOMS
CUSTOMS HOUSE, MUNDRA
27-06-2024**

F. No. CUS/APR/MISC/5440/2024-Gr 5-6-O/o Pr Commr-Cus-Mundr

To,

**M/s. Ananta Enterprise,
Opp. Muslim Line, Manavadar Transport,
Before Kesari Hind Pool,
Rajkot-360003**

Copy to: - For information and necessary action, if any.

- (1) The Deputy/Assistant Commissioner (RRA), Custom House, Mundra
- (2) The Deputy/Assistant Commissioner (TRC), Custom House, Mundra

- (3) The Deputy/Assistant Commissioner (EDI), Custom House, Mundra
- (4) Guard File.