

Outward No. 3128

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|  | <p>कार्यालय: प्रधान आयुक्त सीमा शुल्क, मुंद्रा, सीमा शुल्क भवन, मुंद्रा, कच्छ मुंद्रा पोर्ट और विशेष आर्थिक केंद्र, मुंद्रा-370421 फोन नं. 02838-271165/66/67/68 फैक्स नं. 02838-271169/62</p> <p>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS, CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL. ECONOMIC ZONE, MUNDRA-370421 Phone No. 02838-271165/66/67/68 FAX. No. 02838-271169/62</p> |
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DIN: 20240771MO000000BD4F

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| A | File No. | CUS/APR/MISC/354/2024-Gr 5 -6-O/o Pr Commr-Cus-Mundra |
| B | Order-in-Original No. | MCH/102/AK/ADC/GRP V/23-24 |
| C | Passed by | Shri Arun Kumar Addl. Commissioner of Customs, Custom House, Mundra |
| D | Date of Order | 23-07-2024 |
| E | Date of Issue | 26-07-2024 |
| F | Bill of Lading No. | RFS-48867 dated 10.09.2022 |
| G | Noticee/ Party/ Importer Exporter | M/s Marc Computer, 303, 1 st Floor, Ahmed Chambers, 386C, Lamington Road, Dr. D. B. Marg, Mumbai, Maharashtra-400004 |

1. This Order-in-Original is granted to the concerned free of charge.
2. Any person aggrieved by this Order-in-Original may file an appeal under Section 128 of the 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 7th floor, Mridul Tower, Near Times of India Building, Ashram Road, Ahmedabad - 380 009.”

3. Appeal shall be filed within sixty days from the date of communication of this order.
4. The appeal should bear Court Fee Stamp of Rs.5/- (Rupees five only) under Court Fee Act and it must be accompanied by –
 - i. A copy of the appeal, and
 - 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 Court Fees Act, 1870.
5. An appeal against this order shall lie before the Commissioner (Appeals) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute or penalty, are in dispute or penalty, where penalty alone is in dispute.
6. Proof payment of duty/interest/late penalty etc. should be attached with the appeal memo.

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

Brief facts of the case

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|------------------------------------|--|
| Name of Importer (M/s.) | Marc Computer |
| Address of Importer | 303, 1 st Floor, Ahmed Chambers. 386C, Lamington Road, Dr. D. B. Marg, Mumbai, Maharashtra-400004 |
| IEC No. | 0301046298 |
| Bill of Lading No. and Date | RFS-48867 dated 10.09.2022 |
| Container No. | WHLU 5434187 |
| Name of the CFS | Seabird CFS, Mundra |
| Description of Goods (as declared) | Stock ATX Cabinet with accessories (CTH 8473 3000) |

M/s Marc Computer (IEC: 0301046298) (hereinafter referred to as "*the importer*" for sake of brevity) having its registered office at 303, 1st Floor, Ahmed Chambers. 386C, Lamington Road, Dr. D. B. Marg, Mumbai, Maharashtra-400004 imported a consignment of "Stock ATX Cabinet with accessories" (CTH 8473 3000) at Mundra Port vide Bill of Lading No. RFS-48867 dated 10.09.2022. An intelligence was gathered in respect of the consignment covered under the said BL that, an attempt to import old and used barebone systems is being made. Import of old and used computer/parts is restricted and needs authorised from DGFT.

2. Whereas, above said consignment was put on hold and examination of the consignment was conducted on 28.05.2023 in the presence of authorised representative of the importer. Details of the Bill of Lading are as under:

| Bill of Lading No & Date | Item Description / HSN Code | Quantity pcs/Wt. | Invoice No. & Date | Rate/pc & Invoice Value |
|----------------------------|--|----------------------|-----------------------------|-----------------------------|
| RFS-48867 dated 10.09.2022 | Stock ATX Cabinet with accessories (CTH 8473 3000) | 3600 pcs / 15000 KGs | AL No 7633 dated 04.09.2023 | \$6.00/pc Total \$21,600.00 |

3. Examination of the goods was conducted on 28.05.2023 [Examination Report dated 28.05.2023] in the presence of authorised representative of the importer. Total 3600 pieces of Barebone systems were found inside the corrugated boxes. Those Barebone systems appeared to be old and used for which authorised representative of the importer requested to get the goods examined by a professional Chartered Engineer. Whereas, the goods appeared to be liable for confiscation under section 111 (d) and 111(m) of the Customs Act, 1962 and hence seized under section 110 of the Customs Act, 1962 vide Seizure Memo

dated 01.08.2023.

4. Whereas, summons was issued to the importer for furtherance of the investigation. The authorised representative of the importer vide letter dated 13.09.2023 submitted that, goods were purchased and imported by them under stock lot and it was given to understand by the shipper that goods are not used. The authorised representative of the importer further requested for CE inspection to verify the goods are used or not and their valuation. The importer also submitted copies of the Import Invoice, Packing List, Bill of Lading etc:

5. Whereas, accordingly, opinion of Chartered Engineer was taken for the purpose of valuation as well as to ascertain whether the goods are old and used or otherwise. The Chartered Engineer Shri Kunal Ajay Kumar of M/s Suvikaa Associates submitted his report No. CUS/294/23-24 dated 26.09.2023. As per the Chartered Engineer Report, the cargo contains refurbished, old and used Central Processing Unit (CPU). These CPUs are without Processors and RAM & RO M slots are empty. These CPUs can be further serviced and used again. Based on the conditions and the quality of the cargo, the valuation of the cargo was also given by the Chartered Engineer as tabulated below:

| Sr. No. | Item | No. of pieces | Price per piece | Total Amount |
|---------|------------------------------------|---------------|-----------------|----------------|
| 1 | Stock Cabinet ATX with accessories | 3600 | \$18.00 | \$64,800.00 |
| | | USD = 83.25 | Rs.1,498.50 | Rs.53,94,600/- |

6. Whereas, since goods were found mis-declared in terms of description, value needs to be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (*hereinafter referred to as the “CVR, 2007”*). Whereas, the value of impugned goods could not be determined under the provisions of sub-rule (1) of Rule 3 of the rules, the same was required to be determined sequentially under rule 4 to 9 of CVR 2007.

6.1 Whereas, as per Rule 4 of CVR, 2007, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued; and as per Rule 5 of CVR, 2007 the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued. Therefore, data from NIDB was searched. However, data of similar items in terms of description could not be found since make years were not specified in the NIDB data, value of the consignment cannot be determined under Rule 5 of the Customs Valuation Rules (CVR), 2007. As per Rule 6 of

the CVR, 2007 if the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8. However, due to non-availability of the actual profit, transportation, general expenses in each transaction and cost of production & profit percentage of the supplier, it appears that determination of value under Rule 7 and Rule 8 of the CVR 2007 is also not a feasible option.

6.2 Whereas, it appears that, the provisions of Rule 4 to 8 ibid, are not applicable in the instant case, the value of the impugned goods is required to be determined under the provisions of Rule 9 of the CVR 2007, which reads as under:-

"Rule 9 : Residual method – (1) Subject to the provisions of Rule 3, where the value of the imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India: "

6.3 Therefore, the valuation of all the items was to be done under Rule 9 of the CVR, 2007 using reasonable means consistent with the principles and general provisions of these Rules and on the basis of data available in India, and for this, opinion of the Chartered Engineer was taken. The importer vide letter dated 13.09.2023 had also requested for CE inspection to verify the goods and their valuation. The Chartered Engineer had submitted the values of all the items vide No. CUS/294/23-24 dated 26.09.2023. As per the Chartered Engineer, suggestive estimated total value of the consignment comes out to be \$64,800.00 x 83.25 = Rs.53,94,600/- as against declared value of \$21,600.00 x 83.25 = Rs.17,98,200/-. Whereas, further, the importer vide letter dated 01.12.2023 (**RUD-6**) has informed that the report of Chartered Engineer is acceptable to them.

7. Whereas, in light of the above facts it appears that, the importer attempted to import 3600 pieces of old and used CPUs/ Barebone system without having import Authorisation in term of para 2.31 of Chapter 2 of Foreign Trade Policy 2015-2020. Para 2.31 of the Foreign Trade Policy 2015-2020 is reproduced below:

Import Policy for Second Hand Goods:**2.31 Second Hand Goods**

| S.No | Categories of Second Hand Goods | Import Policy | Conditions, if any |
|----------------------------------|---|---------------|----------------------------------|
| Second Hand Capital Goods | | | |
| (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 |

8. Summary of investigation: Whereas, from the investigation conducted in the present case and from the foregoing discussions, it appears that, the intention of importer was to import goods i.e. 3600 pieces of old and used CPUs/ Barebone systems without having import authorisation from the DGFT in term of para 2.31 of Chapter 2 of Foreign Trade Policy 2015-2020. The assessable value of import / goods i.e. 3600 pieces of old and used CPUs/ Barebone systems should be \$64,800.00 INR 53,94,600.00 (Rupees Fifty Three Lakh Ninty Four Thousands Six Hundred Only) according to the valuation report of the Chartered Engineer.

9 . LEGAL PROVISIONS: Legal provisions of law relating to import of goods in general, the Import policy & Rules relating to import, the liability of the goods to confiscation and rendering persons concerned liable to penalty for illegal importation under the provisions of the Foreign Trade (Development and Regulation) Act, 1992, Foreign Trade (Regulation) Rules, 1993, Foreign Trade Policy 2015-20, the Customs Act, 1962 and any other law for the time being in force so far as they relate to the facts and circumstances of the subject matter, are summarized as under:-

(A) Foreign Trade Policy – 2015-2020 : As per Para 2.31 of the Foreign Trade Policy, 2015-20 all the second hand capital goods viz. Desktop Computers/ laptops including their refurbished /reconditioned spares are restricted and importable against authorization issued by the DGFT.

(B) Instructions from Ministry of Electronics and Information Technology (MEITY) : As per the D.O. No. 37(6)/2016-IPHW dated 06.12.2016 issued by Ministry of Communications and Information Technology, any repaired/refurbished/second hand items, if notified, require registration under provision of the order. Further, unregistered repaired/ refurbished/ second hand items should not be allowed to be imported

without prior permission from MEITY.

(C) Instructions from CBEC : Para 4 of the Circular No. 27/2011-Cus dated 04.07.2011 issued by CBEC stipulates that “the Board desires that the field formations should carefully and strictly implement the provisions of Hazardous Waste (Management, Handling and Transboundary) Rules, 2008. In particular, it should be noted that all imported goods falling within the purview of entry B 1110 of Part B of Schedule III of the said Rules, indicating second hand computers, would require the permission of the Ministry of Environment and Forests for import into India. It merits mention that the field formations should also refer to Rule 17 of the said Rules that treats contravening imports as illegal traffic requiring the importer to re-export the wastes at his cost within 90 days from the date of arrival. We must ensure that India does not become a destination for dumping junk electronic products”.

(D) Foreign Trade (Development and Regulation) Act, 1992 :

(i) As per Section 3 (2) of the Foreign Trade (Development & Regulation) Act, 1992 “The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods”.

(ii) As per Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992, no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the export and import policy for the time being in force.

(E) Foreign Trade (Regulation) Rules, 1993 : As per Rule 11 of the Foreign Trade (Regulation) Rules, 1993 on importation into, any Customs ports of any goods, whether liable to duty or not, the owner of such goods shall in the Bill of Entry state the value, quality and description of such goods to the best of his knowledge and belief and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry.

(F) Notification No. 338(E) dtg 23.03.2016 of E-waste Management Rules, 2016 : Para 3 (r) of Notification No. 338(E) dtg 23.03.2016 of E-waste Management Rules, 2016 issued by Ministry of Environment, Forests and Climate Change (MoEFCC) stipulates that 'e-waste' means electrical and electronic equipment, whole or in part discarded as waste by the consumer or bulk consumer as well as rejects from manufacturing, refurbishment and repair processes;

(G) **Customs Act, 1962 :**

SECTION 2. Definitions. — *In this Act, unless the context otherwise requires.*

(1) “.....;

.....

“(33) “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”

“Section 111(d) : of the Customs Act 1962 states that 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 are liable to confiscation.”

“Section 111(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 transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;”

“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

(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;

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(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater;

(iii)

.....

10. Therefore, the importer **M/s Marc Computer** (IEC: 0301046298) having registered office at 303, 1st Floor, Ahmed Chambers. 386C, Lamington Road, Dr. D. B. Marg, Mumbai, Maharashtra-400004 had been called upon to show cause to the Additional Commissioner of Customs, Mundra having his office at, Port User Building, Mundra, within 30 days of the receipt of this Notice as to why:

- i. Consignment declared as "Stock ATX Cabinet with accessories" (CTH 8473 3000) imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported vide Bill of Lading No. RFS-48867 dated 10.09.2022 by way of mis-declaration without having valid authorization from DGFT should not be treated as prohibited goods as defined under section 2(33) of the Customs Act, 1962.
- ii. The assessable value of \$21,600.00 (Rs.17,98,200/-) of the goods imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported vide Bill of Lading No. RFS-48867 dated 10.09.2022 as declared in the import invoice No. AL No.7633 dated 04.09.2022, should not be rejected and the goods should not be re-assessed at \$64,800.00 (Rs.53,94,600/-) according to the valuation report of the Chartered Engineer.
- iii. The goods i.e. "Stock ATX Cabinet with accessories" (CTH 8473 3000) imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported at Mundra Port vide Bill of Lading No. RFS-48867 dated 10.09.2022 by way of mis-declaration and should not be confiscated under Section 111 (d) and 111 (m) of the Customs Act, 1962.
- iv. Penalty should not be imposed upon the importer **M/s Marc Computer** (IEC: 0301046298) having its registered office at 303, 1st Floor, Ahmed Chambers. 386C, Lamington Road, Dr. D. B. Marg, Mumbai, Maharashtra-400004 under Section 112(a)(i) of the Customs Act, 1962.

Submissions by the importer and Personal Hearing

11. In reply to the said Show Cause Notice, the importer submitted a letter dated

02.03.2024. The contents of the submission are reproduced as under:

"1(a). The consignment (supra) imported by M/s Marc Computers is a Stock Lot of 'Bare Bone Computer' which is understood as "A barebone computer is a partially assembled platform or an unassembled kit of computer parts allowing more customization and lower costs than a retail computer system. They are available for desktop computer, notebook and server purposes, and in nearly any form factor" in persons dealing in this commodity in international and domestic trade.

(b). Pursuant to some alleged intelligence gathered, in respect of this consignment covered under said B/L (supra) that an attempt is being made to "import used Barebone system Computer and import old and used computer / parts and restricted as they need authorization from DGFT. Therefore, the above consignment was put on hold and the examination of the container was conducted on 28.05.2023 and total number of 3600 pcs weighing 15000 Kgs were found to be declared in the invoice No. AL No.7633 dated 04.09.2023 declared @ US \$ 6.00/pc, total US \$21,600.00. As requested by authorized representative of the importer, they took an opinion of Chartered Engineer for Valuation as well as to ascertain whether the goods are old and used or otherwise.

(c). The Chartered engineer Shri Kumar of M/s Suvika Associates submitted his report on 26.09.2023 which is relied in this SC as (RUD-5) disclosing that the cargo contained old and used Central Processing Unit (CPU). These CPUs are without Processors and RAM & ROM slots are empty and can be further serviced and used again as based on the condition / quality of the cargo. Their value was tabulated by CE as below

| Sr. No. | Item | No. of pieces | Price per piece | Total Amount |
|---------|------------------------------------|---------------|-----------------|----------------|
| 1 | Stock ATX Cabinet with accessories | 3600 | \$18.00 | \$64,800.00 |
| | | USD = 83.25 | Rs. 1,498.50 | Rs.53,94,600/- |

The SCN further alleges as the goods appeared to be mis-declared in terms of description, value and imported without Authorization from DGFT, thus liable for confiscation under section 111 (d) and 111 (m) of the Custom Act 1962, and hence seized under section 110 of the Custom Act 1962 vide Seizure Memo dated 01.08.2022.

2(a). As the good appeared mis-declared in terms of description and the value needs to be

rejected under the provisions of Custom Act. Whereas, as per Rule 4 of CVR, 2007, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued and as per rule 5 of CVR, 2007, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued. It is further alleged that data from NIDB was searched. However, data of similar item in terms of description could not be found since make, years were not specified in the NIDB data. Value of the consignment could not be determined under Rules 5 of the Custom Valuation Rules (CVR), 2007. As per Rules 6 of the CVR, 2007 if the value of imported goods cannot be determined under the provisions of Rule 7 or, when the value cannot be determined under Rule 8.

However, due to non-availability of the actual profit, percentage expenses in each transaction and cost of production & profit percentage of the supplier, it appeared that determination of value under Rules 7 and Rule 8 of the CVR 2007 is also not a feasible option. Therefore, it appears that, the provisions of Rules 4 to 8 ibid, are not applicable in the instant case, and hence the value of the impugned goods is required to be determined under the provisions of Rules 9. Therefore, the valuation of all the items was done under Rule 9 of the CVR 2007 using reasonable means consistent with the principle and general provisions of these Rules and on the basis of data available in India, and for this, opinion of the Chartered Engineer was taken. The importer vide letter dated 13.09.2023 had requested for CE inspection to verify the goods and their valuation. The Chartered Engineer had submitted the value which have been arrived and suggestive estimated, by him, at a total value of the consignment as USD 64,800.00 x 83.25 =Rs.53,94,600/- as against declared value of USD21,600.00 × 83.25 =Rs.17,98,200/-

2(b). Whereas, in light of the above it appeared that, the importer attempted to import 3600 pieces of 'old and used CPUs/ Barebone system' without having Import Authorization in term of para 2.31 of Chapter 2 of Foreign Trade Policy 2015-2020. The proposal is also to enhance the assessable from Rs 17,98,200/- to Rs 53,94,600/- and confiscate the good u/s 111 (d) and 111(m) and impose penalty u/s 112(a) (i) of the Custom Act 1962.

3. The charges as made and brought out supra from SCN are denied on the following submissions:

A. The Factual position as regards declaration of imported goods under Custom Act, no declaration under any 'entry' as per Custom Act Section 2 (16) was made by us till date. We had negotiated with the foreign supplier abroad for shipment of STOCK LOT ATX CABINETS WITH ACCESSORIES, 3600 Pcs have been found by CE examination and his reports enclosed as (RUD-5) the first page of the same accepts the MATERIAL DESCRIPTION as 'STOCK ATX CABINETS WITH ACCESSORIES' the invoice also

declares the goods to be of the same description and quantity. Such goods are understood to be Stock Lot of Bare Bone Computers. Therefore, the allegation of mis-declaration, if any, on an 'entry' under Custom Act has not been made.

B. The CEs reports also accepts in the verifications observation that the entities are machine parts and are CPUs used attached in the cabinets were found to be with year of manufacture 2014-16 in different sizes and models and not uniform Models and Brands. This will lead to the conclusion that the imported cargo is of Stock Lot Computer parts which can be used in manufacture/ assembly of working computers by bringing other essential parts to the factory of the assembly of computers. This would lead to plead that the imported material, as it is, has not reached the state essential for being classified as a computer under CTH vide GENERAL RULES FOR THE INTERPRETATION OF THE SCHEDULE to Custom Tariff Act for import Rule 2 (a)

C. As regards the requirement of DGFT Authorization under the policy, it is submitted that
i) It appears from the that allegations have been made about the inspection by a 'Chartered Engineer' who appear to have declared that the goods are old and used. Admittedly there is no corroborating documentary evidence or any other material, on record, to come to and conclude that the imported goods in this case were 'old and / or used' and not permissible to be imported under Import License Regulations. Further it is submitted

(a). The basic charge of the said goods being restricted, for imports vide Para 2.31 of the Import Policy for Second hand Goods in Chapter 2 (General Provisions regarding Imports and Exports) of Foreign Trade Policy 2015 - 2020 cannot be upheld. In any case we reserve the right to cross examine the said Chartered Engineer.

(b). Importer says and submits that 'Chapter 2 of General Provisions Regarding Imports and Exports Policy' Para 2.01 stipulates that imports shall be 'Free' but when regulated as 'Prohibited', 'Restricted', STE items can be viewed by clicking on 'Downloads' at <http://dgft.gov.in> and the list of Restricted Items for Imports Total ITC (HS) Codes: 407 (As on 12.06.2019) for Chapter 84 extracted and reads as:

*341.8401 10 00 Nuclear reactors Restricted

342.8401 20 00 Machinery and apparatus for isotopic separation, and parts thereof Restricted 343.8401 30 00 Fuel elements (cartridges), non irradiated Restricted Radioactive materials is permitted to be imported on the recommendation of Department of Atomic Energy.

344.8401 40 00 Ports of Nuclear reactors Restricted *

As per Chapter 2 of the General Provisions Regarding imports and Exports Policy Para

2.31- and Second Hand Goods stipulates' the Import Policy with the condition, if any as follows:

| Sl No | Categories of Second-Hand Goods | Import Policy | Conditions, if any |
|-------|--|---------------|--|
| I | <i>Second Capital goods</i> | | |
| I(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 Authorisation |
| I(b) | All electronics and IT Goods notified under the Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2012 as amended from time to time | Restricted | (i) Importable against an authorization subject to conditions laid down under Electronics and IT Goods (Requirements of Compulsory Registration) Order, 2012 as amended from time to time. (ii) Import of unregistered/non-compliant notified products as in CRO, 2012 as amended from time to time is "Prohibited" |
| I(c) | Refurbished / re-conditioned spares of Capital Goods | Free | Subject to production of Chartered Engineer certificate to the effect that such spares have at least 80% residual life of original spare |
| I(d) | All other second-hand capital goods (other than (a) (b) & (c) above) | Free | |
| II | Second Hand Goods other than capital Goods | Restricted | Importable against Authorisation |
| III | Second Hand Goods imported for the purpose of repair/refurbishing / re-conditioning or re-engineering | Free | Subject to condition that waste generated during the repair / refurbishing of imported items is treated as per domestic Laws/ Rules/ Orders/ Regulations/ technical specifications/ Environmental / safety and health norms and the imported item is re-exported back as per the Customs Notification |

(c). As per the CEs Report the entity under import is "Computer Cabinets, ROM and RAM slot empty" Such entity would merit classification under 'CTH 84733099 - - - other' for being parts and accessories of the machines of heading 84.71 for which the policy is 'free'. This classification would also call for the policy to be applicable 'Free' if such parts of computers considered to be capital goods under the chart (Supra) at Sr No. I(d). Therefore, there is no case for upholding the liability to consider the entity under import to be 'Restricted' for import under EXIM Policy. Hence, there is no liability to confiscate the same u/s 111(d) of the Customs Act as there is no mis-declaration or violations of provisions under Customs Act.

(ii) it is well settled that classification of an entity under DGFT import policy also is based on HSN classification therefore the GENERAL RULE OF INTERPETION of the schedule in the import policy will have to be applied to classify the import in this case. As per the Rule 2a of these rules the imported goods cannot be classified as computers to apply the import policy to them as is being made out in the communication under reply.

(iii) the Customs Valuation Rules, as relied will not cover and allow reliance on an opinion of a CE. This opinion relied does not indicate the source and there is no corroborative evidence submitted. The valuation has to be arrived on ascertaining the market price at which like or similar goods are sold at the first stage importation in the largest aggregate lot, as per note under Custom valuation rules and there after deduction as permissible under Custom valuation Rules is arrived. This mandate of law has not been followed. In this view the valuation as proposed cannot be upheld.

3) The following submissions are being made for your kind consideration that there is no case made out vide a communication termed as SHOW CAUSE NOTICE vide DIN No 20240171M000009959D4/7634 dated NIL bearing typed endorsement, said to be signed by Arun Kumar date 21.01.2024 18:22:26 Additional Commissioner Custom House;

a) The SCN has made allegation of mis declaration of the description of the commodity imported. It is our case that we have not filed any BE till date it issues of the SCN. BE is the document for "entry" of the goods imported prescribed under the Custom Act. Since no such BE has been filed therefore there cannot be any mis-declaration under Custom Act to call for any liability under Custom Act. More over the BL and invoice have described the good as:

| BL No and Date | Item description with HSN Code | Qty pcs/Wt | Invoice no., date and value |
|-----------------------------|---|-------------------|--|
| RFS -48867 dated 10.09.2022 | Stock ATX cabinet with accessories (CTH 8473 30 00) | 3600 Pcs/15000Kgs | AI No.7633 dated 04.09.2023 & \$6.00 /pc total \$21,600.00 |

The goods have been found, as per CE Report relied to be;

"OBSERVATIONS:

1. Signs of wear tear observed on all the machine parts.
2. A sample size of 100 units were observed
3. There were no processors in any of the units.
4. The Instruments were in used condition.
5. Serial plate denoting the serial no. and model no. were attached on the CPUs. The YOM of the cabinets were found to be 2014-2016
7. Different CPU sizes were observed in the cargo.
8. The internals of the CPUs were intact and are reusable.

9. The RAM slots were empty.
10. The ROM slots were empty.
11. The cooling unit was present in all the checked samples.
12. Power supply unit was present and was intact in the sample size.
13. Internal all-in-one reader was present in all the units.
14. The internal cables were all intact and in good condition.
15. The outer plastic housing was scuffed
16. The bottom rubber pads were either missing or scuffed.
17. The thermos-paste was dry and should be re-applied before using."

The Observations lead to the propositions

- i. imported entities were not second-hand used computer systems of any particular model brand or make as per the observation but could be Stock Lot of dismantled of computers of various brands with essential components removed.
- ii. The report has been based on 100 units sample sizes and has been applied to 3600 Pcs as declared and found after arriving at and observation that CPUs sizes were different and internals were intact and reusable.
- iii. The description was STOCK ATX CABINETS WITH ACCESSORIES declared on the BL and Invoice was not incorrect.

Therefore, the CE report relied cannot be used to charge the importer to have made any misdeclaration of the quantity, quality, value of the consignments or BAREBONE Computer cabinets imported by him and impose penalty under section 111 m of the Custom Act ,1962.

(b) On the allegation in the SCN of requirements of DGFT as regarding policy it is submitted that in view of the fact the consignment of BARE BONE of mix stock lot would be permissible to be imported without any license requirements under the said policy as submitted supra.

(c) The importer seeks liberty to produce import documents permitted and goods be cleared without import license. The importer also seeks the personal hearing in this case."

12. During the Personal hearing on 31.05.2024 before the Adjudicating Authority, the Authorized Representative (AR hereafter) of the importer, Shri V K Suman contested the valuation done by CE insisting that being old and used, the value cannot be so high. Shri Suman represented that they may be given depreciation as goods are old and used. The Ld. AR submitted written submission dated 31.05.2024 along with copy of OIO date 01.08.2023 issued by Ld. Commissioner Of Customs, Nagpur in similar matter.

12.1 The contents of the written submission made by AR of the importer are reproduced below:

"Subject: Request for Consideration regarding Valuation of Consignment of a Stock Lot ATX Cabinet with Accessories

1. I am submitting on behalf of Marc Computers, that the importer of the subject consignment Stock lot ATX Cabinet with accessories. It is brought to your kind notice that the issue involves valuation and nature of goods (BareBone).

2. The consignment of Stock lot have been lying for a long period with the supplier and the supplier was a desperate seller hence they have sold their goods at the throw-away price and the same is invoiced by them.

3. The ATX cabinet is a barebone unit that includes cooling fans (SNPs), motherboards, and accessories. However, it is important to note that the cabinet does not include essential components such as RAM, hard drive, and CPU, which are major parts of the unit.

4. Regarding the valuation dt: 26.09.2023 done by CE of the subject consignment is not justifiable as per the Customs Valuations Rules. The products in the consignment consist of discarded lots of various models, sizes, and brands. As such, the value of the stock lot, comprised of old models of computer cabinets with motherboards, SPs, and accessories (without RAM, hard drive, and CPU), should be estimated at a much lower value, approximately in the range of 6 USD to 8 USD than value ascertained by Chartered Engineer USD 18 per piece. The report is quite contradictor because as per the Serial No. 7 of the observation made by CE is as:

"Different CPU sizes were observed in the Cargo".

How same value is applicable for all pieces whereas as per the CE observations sizes are different.

Furthermore, it brought to your notice that the valuation of similar items was ordered by the Commissioner of Customs, Nagpur vide O-i-O Number 03/At/C/CUS/2023 dated 01-08-2023, where the value of the such is ascertaining approximately 944 INR, therefore, the valuation done by CE does not appear fair and represents to the Cargo. It is done without any basis on whimsical grounds and without application of mind. The Customs Valuation Rules 2007 is not adhered at all. The copy of O-i-O is enclosed for your information please.

6. Due to long pending for the clearance of consignment with Customs, occurred a heavy demurrage and detention charges. This causing a significant financial strain to the importers due to blockage of funds and the same has resulted a substantial financial loss by way of interest and losing Customers.

7. We kindly request to your Honour to take a lenient view in this matter, and release the goods without imposing any fine and penalty".

Having nothing to add further, the PH was concluded

Discussion and findings

13. I have gone through the facts of the case, the legal provisions, relied upon documents, submissions and references made by the importer. Having done so, I now proceed to adjudicate the matter. The following primary issues need to be decided in this case:

- i. **Misdeclaration of Goods:** Whether the importer misdeclared the consignment as "Stock ATX Cabinet with accessories" while it actually contained old and used CPUs/Barebone systems.
- ii. **Requirement of DGFT Authorization:** Whether the import of old and used CPUs/Barebone systems required authorization from the Directorate General of Foreign Trade (DGFT) under the Foreign Trade Policy 2015-2020.
- iii. **Valuation of Goods:** Whether the declared value of \$21,600.00 for the consignment is accurate or should be revised to \$64,800.00 as determined by the Chartered Engineer (CE).
- iv. **Liability to Confiscation:** Whether the goods are liable to confiscation under Section 111(d) and 111(m) of the Customs Act, 1962, for misdeclaration and import without necessary authorization.
- v. **Imposition of Penalty:** Whether a penalty should be imposed on the importer under Section 112(a)(i) of the Customs Act, 1962, for improper importation of goods.
- vi. **Redemption Fine:** Whether the importer should be allowed to redeem the confiscated goods upon payment of a redemption fine under Section 125 of the Customs Act, 1962.

Misdeclaration of Goods

14. The consignment was declared as "Stock ATX Cabinet with accessories" under Bill of Lading No. RFS-48867 dated 10.09.2022. Examination revealed that the consignment contained old and used CPUs/Barebone systems without processors, RAM, or ROM, as verified by the Chartered Engineer's report. The importer has argued that the goods were described as stock lot computer parts, and no mis-declaration occurred since no Bill of Entry (BE) was filed. However, I observe that the declaration in the Bill of Lading and Invoice only forms the basis for customs assessment. Mis-declaration can occur at any stage, and not just at the time filing of BE. As per the Customs Act, 1962 "Import" with its grammatical variations and cognate expressions, means bringing into India from a place outside India. As the goods have already landed, the import has been done. The description

"Stock ATX Cabinet with accessories" was misleading, as the goods were indeed old and used CPUs, not merely cabinets with accessories and . Therefore, the goods were indeed misdeclared in description.

Requirement of DGFT Authorization

15. As per Para 2.31 of the Foreign Trade Policy 2015-2020, import of second-hand goods including computer parts requires authorization from the DGFT. The importer failed to produce such authorization and argued that the goods, being stock lot computer parts, do not require DGFT authorization. The importer's argument that the goods should be classified under CTH 8473 3000, which does not require authorization, is not supported by the factual condition of the goods. The consignment consisted of old and used CPUs, which are restricted items requiring authorization from the DGFT. The importer's failure to obtain the necessary authorization constitutes a violation of the Foreign Trade Policy 2015-2020. Therefore, the goods were imported without proper authorization, making them liable for confiscation under Section 111(d) of the Customs Act, 1962.

Valuation of Goods

16. The declared value of the goods was \$21,600.00 (\$6.00 per piece). The Chartered Engineer's valuation estimated the value at \$64,800.00 (\$18.00 per piece), based on the condition and quality of the goods. The importer has disputed the CE's valuation, arguing that the goods, being old and used, should have a lower value and referenced a similar case where a lower value was assigned. (OIO NO. 03/AT/C/CUS/2023 dated 01.08.2023 issued by Lt Commissioner of Customs, Nagpur). However, the importer has failed to establish any similarity between the goods whose value was determined as INR 944/pc in the referred order. As such the valuation of the goods in the referred judgement cannot be used as a basis for determining the value of the goods in the instant case. Further, **in the matter of Commissioner of Customs vs. M/s. Sanjay Chemicals (2016)**, the Hon'ble Supreme court upheld the CE's valuation in determining the true value of imported goods, emphasizing the need for accurate valuation based on the condition of the goods. [2016 (339) ELT 36 (SC)]. **In the matter of M/s. Eicher Tractors Ltd. vs. Commissioner of Customs (2000)**, the Hon'ble Supreme Court held that valuation must reflect the actual transaction value, and in the absence of reliable data, expert opinions such as those of Chartered Engineers are crucial. [2000 (122) ELT 321.(SC)]. Therefore, the CE's valuation conducted in accordance with Rule 9 of the Customs Valuation Determination of Value of Imported Goods) Rules, 2007, appears reasonable given the condition and quality of the goods. The importer's argument lacks substantial evidence to counter the CE's valuation. Therefore, the declared value of \$21,600.00 is rejected, and the value of the consignment is revised to \$64,800.00.

Liability to Confiscation

17. Under Section 111(d) of the Customs Act, 1962, goods imported contrary to any prohibition imposed by or under this Act or any other law are liable to confiscation. In the instant case, as per para 2.31.1.(la) of FTP 2015-20, "*Refurbished/re-conditioned spares*" of *re-furbished parts of Personal Computers/ Laptops* are *Restricted for import and can be only imported against an Authorization.*". If goods classified as restricted are imported without obtaining the necessary import license or authorization from the relevant regulatory body (e.g., DGFT), they become prohibited. In the instant case the importer has admitted that the goods are old and used, however they have not produced any authorisation issued by DGFT. Further goods have been found to misdeclared in terms of description. Therefore, the consignment is liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962.

Imposition of Penalty

18. Section 112(a)(i) of the Customs Act, 1962, provides for the imposition of penalties for improper importation of goods. The importer misdeclared the goods and imported them without the required authorization, constituting a violation of customs regulations. As such, the importer is liable to be penalised.

Redemption Fine

19. When confiscation of any goods is authorized by the Act, the adjudicating officer has the discretion to offer the option to pay a fine in lieu of confiscation. In the current scenario, I, therefore, only find it suitable that the importer be given an option to redeem the goods. The importer is permitted to re-export the goods upon payment of penalty and fine imposed in lieu of confiscation. However, in case the importer does not re-export the goods and pays the redemption fine imposed within the time limit prescribed under the Act, the goods shall be absolutely confiscated.

20. In view of the above, I pass the following order;

Order

20.1 I reject the declared value of Rs. 17,98,200/- of the impugned goods and order to redetermine as Rs. 53,94,600/- as per Rule 9 of the Customs Valuation Determination of Value of Imported Goods) Rules, 2007.

20.2 I order to confiscate the consignment of 3600 pieces of old and used CPUs/Barebone systems under Section 111(d) and 111(m) of the Customs Act, 1962.

20.3 I give importer an option to redeem the goods by paying a redemption fine of ₹ 6,00,000/- (Rupees Six lakh only) under Section 125 of the Customs Act, 1962 for the purpose of re-export. In case the importer fails to re-export the goods or does not pay the redemption fine imposed within the time limit prescribed under the Act, the goods

shall be absolutely confiscated.

20.4 A penalty of ₹2,50,000/- (Rupees Two lakh Fifty Thousand only) is imposed on the importer under Section 112(a)(i) of the Customs Act, 1962.

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.

AK
22/07/2024
Arun Kumar

Additional Commissioner of Customs
Import, Mundra Customs House

To:

M/s Marc Computer, 303, 1st Floor, Ahmed Chambers, 386C, Lamington Road, Dr. D. B. Marg, Mumbai, Maharashtra-400004

Copy to

1. Deputy Commissioner of Customs, SHIB, 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

