



**OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOM HOUSE: MUNDRA, KUTCH**

MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421

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A	File No.	CUS/APR/BE/283/2023-Gr 3-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/MK/20/2023-24
C	Passed by	Mukesh Kumari Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	04.05.2023
E	Date of Issue	04.05.2023
F	SCN No. & Date	SCN vide F. No. S/15-42/Enq-Arihant/SIIB-B/CHM/2028-19 dated 30.11.2022
G	Noticee/Party/ Importer/ Exporter	M/s. Arihant Agency 29, Mahaveer Market, New Cloth Market, Chittorgarh, Rajasthan-312001.
H	DIN No.	20230571MO0000444B96

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:

“ सीमा शुल्क आयुक्त (अपील),
7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009”
“**THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA**
Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, 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. Arihant Agency (IEC-BXTPB6123Q), 29, Mahaveer Market, New Cloth Market, Chittorgarh, Rajasthan (herein after referred to as 'the importer' for the sake of brevity) filed BE No. 8372275 dated 08.10.2018 for importation of 102.3 MTS (2294 Sqm) goods, declared as 'Crystallized Glass Panel-(C Grade)' (herein after referred to as 'the imported goods' for the sake of brevity) of declared value of Rs. 34,33,539/- and declared duty of Rs. 10,63,710/- .

2. An information was received to the effect that the goods have been declared as 'Crystallized Glass Panel – ("C" Grade)' [CTH-70169000] having rate of USD 0.45per KG, whereas, the goods are 'Artificial Marble (Quartz)' and appeared to be classifiable under CTH 68022190. It appeared that the importer has mis-declared description and the classification of the imported goods with an intention to evade appropriate Customs Duty.

2.1. Based on the above intelligence, Officers of the SIIB, Custom Mundra intercepted the goods covered under Bill of Entry No. 8372275 dated 08.10.2018, for examination. The examination of the imported goods was carried out on 11.10.2018 in presence of representatives of CB and CFS. During the examination, it was found that the imported goods are labelled as 'Artificial Marble'. The imported goods are packed on wooden pallets with different size marking on the side of the slabs and on each wooden pallet a packing list was attached on which description of the goods was given as "Material- Artificial Marble Slabs" and Product Name – Super White.

3. The goods found during the examination were labelled as "Artificial Marble Slabs". Accordingly, a statement of Shri Ankit Bhadktya, Authorised Representative of M/s. Arihant Agency was recorded on 16.10.2018 wherein he didn't agree to the fact, that the goods are Artificial Marble and submitted that the goods imported by them are 'Crystallized Glass Panel C Grade'. Therefore, representative samples of the imported goods have been drawn in presence of Authorized Representative of CHA of the importer and sent to CRCL, Kandla for Testing purpose.

3.1. Meanwhile, the importer vide letter dated 26.10.2018 has requested to release the goods on provisional assessment basis on submission of Bank Guarantee. Whereas, the imported goods appeared to be Artificial Marble and DGFT Notification 28 (Re-2015)/2015-2020 dated 17.09.2016

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reads as under;

S.O.(E) In exercise of the powers conferred by Section 3 of the Foreign Trade (Development and Regulation) Act. 1992 read with Para 1.02 and 2.01 of the Foreign Trade Policy, 2015-2020, as amended from time to time, the Central Government hereby amends the Import Policy Condition of Schedule-1 (Import Policy) in respect of following ITC(HS) Codes related to marble slabs w.e.f. 01.10.2016:

*6802 10 00, 6802 2110, 6802 21 20, **680221 90**, 6802 91 00, 6802 9200 and 25151220.*

2. Policy conditions stipulated under Notification No 100 dated 05.12.2014 are being amended, such that after amendment w.e.f. 1.10.2016, the policy conditions in respect of the above ITC (HS) Codes shall read as under:

*"Import **permitted freely provided cif value is US\$ 40 or above per square metre** (for maximum thickness of slab of 20mm)".*

3.2 As per DGFT Notification 28 (Re-2015)/2015-2020 dated 17.09.2016 minimum CIF value was Rs. USD 40 per square meter. However, in this case, CIF value is Rs. 20 USD per square meter. Accordingly, provisionally assessed the said BE No. 8372275 dated 08.10.2018 subject to Prov. Bond of Rs. 68,44,580/- & Payment of duty Rs. 18,60,000/- under protest by the importer vide Challan No. 1758 dated 02.11.2018. Thereafter, the goods have been released on provisional assessment basis on 06.11.2018.

3.3. The CRCL, Kandla forwarded the test report, which is reproduced as under;

"The sample as received is in the form of cut piece of white marble slab, having smooth surface on one side and rough surface on the other side.

It is composed of carbonates of calcium, magnesium bounded with organic compound.

It has the characteristics of Artificial Marble

3.4. From the Test Report, it was noticed that the imported goods were 'Artificial Marble', accordingly, the same has been informed to the importer vide letter dated 26.11.2018. In response to the said letter the importer vide letter dated 03.12.2018 has submitted that their goods are Crystallized Glass Panel and it is different from Artificial Marble; that the Crystallized Glass Panel is manmade stone, made up of clay and quartz sand; that the basic thing which distinguished Crystallized Glass Panel from Artificial Stone is its glossy, smooth surface and whiteness which is

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not available in other artificial stones.

3.5. Further statement of the Authorized Signatory of Importer Shri Ankit Bhadktya has been recorded on 25.02.2021, wherein he submitted;

- That they have imported the said goods i.e. "Crystallized Glass Panels" only two times, under BE No. 8372275 dated 08.10.2018 and BE No.8603951 dated 25.10.2018. That both these consignments contained the similar goods and for both they have paid duty under protest.

- That due to the glossy nature and layer of glass above the goods, they classified the goods as 'Crystallized Glass Panels' and that their supplier also classified the goods under same description and heading i.e. CTH 70169000.
- That their supplier advised that they are supplying worldwide these goods as crystallized glass panel under CTH 70169000.
- That he doesn't agree to the test report as their goods are not artificial marble and should not be classified under CTH 68022190.

3.6. From the above, it appears that, though the importer agreed that the imported goods declared by them as Crystallized Glass Penal is manmade stone but the importer did not agree to the test report without providing specific/substantial facts. Further, the test report clearly shows that the imported goods have '*the characteristics of Artificial Marble*'. Moreover, as it is evident from the examination done under panchnama dated 11.10.2018 that the imported goods were labelled as "Artificial Marble Slabs". Therefore, it appears that the goods are Artificial Marble Slab. It appears that, the importer is denying the fact just to avoid payment of applicable duty.

4. Analysis of Enquiry

4.1. The importer has declared the imported goods covered under the said bill of entry as "Crystallized Glass Panel" classifying the same under CTH -70169000;

4.2 Whereas, the said CTH of Chapter 70 of Customs Tariff Act, 1975 read as under;

Chapter 70 - Glass and glassware

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7016 PAVING BLOCKS, SLABS, BRICKS, SQUARES, TILES AND OTHER ARTICLES OF PRESSED OR MOULDED GLASS, WHETHER OR NOT WIRED, OF A KIND USED FOR BUILDING OR CONSTRUCTION PURPOSES; GLASS CUBES AND OTHER GLASS SMALL WARES, WHETHER OR NOT ON A BACKING, FOR MOSAICS OR SIMILAR DECORATIVE PURPOSES; LEADED LIGHTS AND THE LIKE; MULTI-CELLULAR OR FOAM GLASS IN BLOCKS, PANELS, PLATES, SHELLS OR SIMILAR FORMS

7016 10 00 - Glass cubes and other glass small wares, whether or not on a backing, for mosaics or similar decorative purposes

7016 90 00 - Other

4.3. Going through the Chapter Head 7016, it is clearly seen that the said CTH deals with articles of Glass. However, the importer themselves submitted that the said imported goods i.e. Crystallized Glass Panel is manmade stone, made up of clay and quartz sand. Therefore, it appears that the imported goods are 'Artificial Marble (Quartz)' and appeared to be classifiable under CTH 68022190.

4.4. Chapter 68 of Customs Tariff Act, 1975 read as under;

Chapter 68: ARTICLES OF STONE, PLASTER, CEMENT, ASBESTOS, MICA OR SIMILAR MATERIALS; CERAMIC PRODUCTS; GLASS AND GLASSWARE.

6802 WORKED MONUMENTAL OR BUILDING STONE (EXCEPT SLATE) AND ARTICLES THEREOF, OTHER THAN GOODS OF HEADING 6801; MOSAIC CUBES AND THE LIKE, OF NATURAL STONE (INCLUDING SLATE), WHETHER OR NOT ON A BACKING; ARTIFICIALLY COLOURED GRANULES, CHIPPINGS AND POWDER, OF NATURAL STONE (INCLUDING SLATE)

6802 10 00 - Tiles, cubes and similar articles, whether or not rectangular (including square), the largest surface area of which is capable of being enclosed in a square the side of which is less than 7 cm; artificially colored granules, chippings and powder - Other monumental or building stone and articles thereof, simply cut or sawn, with a flat or even surface:

6802 21 -- Marble, travertine and alabaster:

6802 21 10 --- Marble blocks or tiles

6802 21 20 --- Marble monumental stone

6802 21 90 --- Other

4.5. From the above, it appears that the imported goods covered under the said bill of entry are Artificial Marble Slab and are correctly classifiable under CTH – 68022190. Further, the test report submitted by the CRCL,

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Kandla states that the goods are composed of carbonates of calcium, magnesium bounded with organic compound.

4.6. Further, in the statement dated 25.02.2021, the importer has stated that they have imported the said goods i.e. "Crystallized Glass Panels" only two times, under BE No. 8372275 dated 08.10.2018 and BE No.8603951 dated 25.10.2018; that both these consignments contained the similar goods. However, going through the Bill of Entry data filed by the importer, it is noticed that, the importer had filed another Bill of Entry No. 8267382 dated 01.10.2018. Hence, it appears that overall the importer had filed 03 Bills of Entry for import of goods declaring as 'Crystallized Glass Panel' under CTH 70169000;

Bill of Entry No & Date	Description of Goods	Supplier	Qty. (Kg)	Rate per Kg (USD)	Conversion rate	Declared Value (Rs.)	Duty Declared (Rs.)
8267382 dated 01.10.2018	Crystallized Glass Panel	Nivana Diam Limited, Hongkong	76600	0.45	73.65	25,38,716	7,70,018
8372275 dated 08.10.2018	Crystallized Glass Panel	Nivana Diam Limited, Hongkong	102280	0.45	74.60	34,33,540	10,63,711
8603951 dated 25.10.2018	Crystallized Glass Panel	Nivana Diam Limited, Hongkong	74800	0.45	74.30	25,29,074	7,83,949
Total			253680			85,01,330	26,17,678

4.7 The Bill of entry No. 8372275 dated 08.10.2018 and No. 8603951 dated 25.10.2018 were provisionally assessed and importer had made payment under protest. Whereas, BE No. 8267382 dated 01.10.2018 has been assessed finally, as it was prior to the initiation of instant enquiry. The goods under the said bill of entry was supplied by the same supplier, hence, it appears that the goods imported in the said bill of entry were Artificial Marble Slabs instead of Crystallized Glass Panels. Therefore, the self-assessment done by the importer under section 17(1) of the Customs Act, 1962 appears incorrect and the impugned bills of entry need to be re-assessed under Section 17(4) of the Act, ibid correctly under tariff item 68022190 wherein BCD @20% (5% Concession in terms of Notification No. 50/2018 dated 30.06.2018 Sr. No. 647) with SWS @10% and IGST @18%.

Valuation of the Goods:

5 . As per DGFT Notification 28 (Re-2015)/2015-2020 dated 17.09.2016, the import of artificial marble slab is free provided CIF value is 40 USD or above per square meter. However, the declared CIF value of the imported goods is less than 40 USD per Sq. Meter. Accordingly, the total Assessable value of the imported goods works out to Rs. 1,69,94,316/- (Rupees One Crore Sixty-Nine Lakh Ninety-Four Thousand Three Hundred and Sixteen only) as detailed below:

Table-A

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BE No. & Date	Qty. Sqmtr	Declared Value (INR)	Exch rate	Declared Value in USD Per sqmtr	Value calculated as per 40 USD sqmtr	Revised Duty payable	Differential Duty Payable
8267382 dtd. 01.10.2018	1710	2538716	73.65	20.16	5037896	2149267	1379249
8372275 dtd. 08.10.2018	2294	3433540	74.60	20.07	6844580	2920035	1856324
8603951 dtd. 25.10.2018	1720	2529074	74.30	19.79	5111840	2180813	1396864
Total	5723.8	85,01,330			1,69,94,316	72,50,115	46,32,437

6. In view of above, it appears that the importer had declared the CIF value of imported goods as USD-20.06 per SQM (Rs. 1496.90/- per Sq. Mtr.) which is below the prescribed rate of USD 40per Sq. Mtr. vide notification No. 28 (Re-2015)/2015-2020 dated 17.09.2016. Hence, in terms of the said notification, the imported goods appear to be prohibited for import in India; further, the CIF value of the imported goods should be USD 40 per square meter when imported to India. Therefore, it appears that the importer has imported goods in violation of the DGFT policy on an incorrect valuation; hence, the said imported goods having assessable value Rs. 1,69,94,316/- are liable for confiscation under Sections 111(d) & 111(m) of the Customs Act, 1962, however, as the goods are not available, seizure under Section 110 of the Customs Act, 1962 of the Customs Act, 1962 cannot be done.

7. Relevant Provisions of Law:

7.1 Statutory provisions under Custom Act, 1962:

SECTION 17 Assessment of duty—

(1) 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.

SECTION 46 Entry of goods on importation

(4) The importer while presenting a bill of entry shall make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, and such other documents relating to the imported goods as may be prescribed.

SECTION 28 Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded

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(4) Where any duty has not been levied or not paid or has been short-levied or short-paid or erroneously refunded, or interest payable has not been paid, part-paid or erroneously refunded, by reason of,-

(a) collusion; or

(b) any willful mis-statement; or

(c) suppression of facts,

by the importer or the exporter or the agent or employee of the importer or exporter, the proper officer shall, within five years from the relevant date, serve notice on the person chargeable with duty or interest which has not been so levied or not paid or which has been so short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

(5) Where any duty has not been levied or not paid or has been short-levied or short paid or the interest has not been charged or has been part-paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts by the importer or the exporter or the agent or the employee of the importer or the exporter, to whom a notice has been served under sub- section (4) by the proper officer, such person may pay the duty in full or in part, as may be accepted by him, and the interest payable thereon under section 28AA and the penalty equal to fifteen per cent of the duty specified in the notice or the duty so accepted by that person, within thirty days of the receipt of the notice and inform the proper officer of such payment in writing.

Explanation- For the purposes of this section, "relevant date" means,-

(a) in a case where duty is not levied or not paid or short-levied or short-paid, or interest is not charged, the date on which the proper officer makes an order for the clearance of goods;

(b) in a case where duty is provisionally assessed under section 18, the date of adjustment of duty after the final assessment thereof or re-assessment, as the case may be;

(c) in a case where duty or interest has been erroneously refunded, the date of refund;

(d) in any other case, the date of payment of duty or interest.

SECTION 28AA Interest on delayed payment of duty— (1)

Notwithstanding anything contained in any judgment, decree, order or direction of any court, Appellate Tribunal or any authority or in any other provision of this Act or the rules made thereunder, the person, who is liable to pay duty in accordance with the provisions of section 28, shall, in addition to such duty, be liable to paid interest, if any, at the rate fixed under sub-section (2), whether such payment is made voluntarily or after determination of the duty under that section.

(2) Interest at such rate not below ten per cent. and not exceeding thirty -six per cent. per annum, as the Central Government may, by notification in the Official Gazette, fix, shall be paid by the person liable to pay duty in terms of

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section 28 and such interest shall be calculated from the first day of the month succeeding the month in which the duty ought to have been paid or from the date of such erroneous refund, as the case may be, up to the date of payment of such duty.

SECTION 111 Confiscation of improperly imported goods, etc. - The following goods brought from a place outside India shall be liable for confiscation:

..

(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.

...

...

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;

(ii) in the case of dutiable goods, other than prohibited goods, subject to the provisions of section 114A, to a penalty not exceeding ten per cent. of the duty sought to be evaded or five thousand rupees, whichever is higher:

Provided that where such duty as determined under sub-section (8) of section 28 and the interest payable thereon under section 28AA is paid within thirty days from the date of communication of the order of the proper officer determining such duty, the amount of penalty liable to be paid by such person under this section should be twenty-five percent of the penalty so determined;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made

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under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

SECTION 114A Penalty for short-levy or non-levy of duty in certain cases.

- Where the duty has not been levied or has been short-levied or the interest has not been charged or paid or has been part paid or the duty or interest has been erroneously refunded by reason of collusion or any willful mis-statement or suppression of facts, the person who is liable to pay the duty or interest, as the case may be, as determined under sub-section (8) of section 28 shall also be liable to pay a penalty equal to the duty or interest so determined.

Provided that where such duty or interest, as the case may be, 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 the 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 duty or interest, as the case may be, so determined:

Provided further that the benefit of reduced penalty under the first proviso shall be available subject to the condition that the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso:

Provided also that where the duty or interest determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the purposes of this section, the duty or interest as reduced or increased, as the case may be, shall be taken into account:

Provided also that in case where the duty or interest determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal

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or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available if the amount of the duty or the interest so increased, along with the interest payable thereon under section 28AA, not more than twenty-five percent of the consequential increase in penalty have also been paid within thirty days of the communication of the order by which such increase in the duty or interest takes effect:

Provided also that where any penalty has been levied under this section, no penalty shall be levied under section 112 or section 114.

Explanation. - For the removal of doubts, it is hereby declared that-

(i) the provisions of this section shall also apply to cases in which the order determining the duty or interest under sub-section (8) of section 28 relates to notices issued prior to the date* on which the Finance Act, 2000 receives the assent of the President;

(ii) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.

SECTION 114AA Penalty for use of false and incorrect material —

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

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

Section 11: Contravention of provisions of this Act, rules, orders and foreign trade policy

11.(1) No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made there under and the foreign trade policy for the time being in force.

7.2 Foreign Trade (Regulation) Rules, 1993:

Rule 11: Declaration as to value, quality & quantity of imported goods:

On the 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 or any other documents prescribed under the Customs Act, 1962, state the value, quantity and description of the 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 or any other documents.

Conclusion of Investigation:

9. The impugned Bill of Entry were self-assessed by the importer in terms of Section 17(1) of the Customs Act, 1962. If the goods are to be freely imported by classifying under CTH 68022190, the minimum CIF value of the goods shall be USD 40 per Sq Mtr. The goods become prohibited automatically if the CIF value is less than USD 40 per Sq Mtr, whereas, as seen in table at para 5, the declared CIF value of the imported goods is below USD 40 per Sq. Mtr in all the three Bills of Entry; hence, as such the goods so imported are prohibited in nature. Therefore, the goods were imported in violation of Section 3 and Section 11 of F T (D & R) Act, 1992 and Rule 11 of the Foreign Trade (Regulation) Rules, 1993. Hence, the impugned goods pertaining to the Bill of Entry, with total declared value of Rs. 85,01,330/- and having revised assessable value of Rs. 1,69,94,316/- (Rupees One Crore Sixty-Nine Lakh Ninety-Four Thousand Three Hundred and Sixteen only) are appears to be liable for confiscation under Section 111(d) & 111(m) of the Customs Act, 1962 read with Foreign Trade (Development & Regulation) Act and Rules/Policy made thereunder.

9.1. Further, it is evident from the examination done under Panchnama dated 11.10.2018, that the imported goods are actually "Artificial Marble Slabs" and also the imported goods were labelled as "Artificial Marble". However, the importer had mis-declared the goods as 'Crystallized Glass Panel'. Further, the Test Report received from CRCL, Kanda also states that the said imported goods have the characteristics of Artificial Marble, though the importer did not accept the facts that they have mis-declared and mis-classified the goods. Further, in his statement dated 25.02.2021, the Authorized Representative of the importer has stated that they have imported the said goods i.e. "Crystallized Glass Panels" only two times, under BE No. 8372275 dated 08.10.2018 and BE No.8603951 dated 25.10.2018. Whereas, going through the Bill of Entry data file by the said importer, it is observed that the importer has imported the said goods three times as detailed above. It appears that the importer has wilfully and knowingly mis-declared the imported goods as 'Crystallized Glass Panel' by classifying the same under CTH 70169000 instead correctly declaring the

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imported goods as “Artificial Marble Slab” under CTH 68022190, with an intention to avoid payment of duty and/or importation of prohibited goods declaring the value of the goods below USD 40 per Sq Mtr. Therefore, the total differential duty amounting to Rs. 46,32,437/- (Rupees Forty-Six Lakh Thirty-Two Thousand Four Hundred and Thirty-Seven) is required to be recovered from the importer under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. Further, the mis-declaration of the goods in terms of description, classification and value of the goods appears to be done by the importer with a wilful intension to evade payment of appropriate customs duty leviable on the imported goods; hence, the importer rendered themselves liable for penalty under Section 114A for short payment of duty on self-assessed Bill of Entry. Further, the is also liable for penalty under Section 114AA as the importer voluntary mis-declared the imported goods as “Crystallized Glass panels” which is actually classifiable as “Artificial Marble”

9.2. The importer at the time of provisional assessment of the goods paid differential duty totally amounting to Rs. 33,50,000/- (Rs. 18,60,000/- vide manual Challan No.1758 dated 02.11.2018 for BE No. 8732275 dated 08.10.2018 against Bond of Rs. 68,44,580 and Rs.14,90,000/- vide manual challan no. 1799 dated 14.11.2018 for BE No. 8603951 dated 25.10.2018 against Bond of Rs. 51,71,738/-) under protest.

10. Therefore, M/s. Arihant Agency (IEC-BXTPB6123Q), was issued the SCN F. No. S/15-42/Enq-Arihant/SIIB-B/CHM/2028-19 dtd. 30.11.2022 requiring them to show cause to the Additional Commissioner of Customs, Custom House, Mundra having office situated at 1st Floor, Custom House, PUB, Mundra, as to why:

- i. the goods totally valued to **Rs. 1,69,94,316/- (Rupees One Crore Sixty-Nine Lakhs Ninety-Four Thousand Three Hundred and Sixteen only)** covered under impugned Bill of Entry should not be confiscated under the provisions of Section 111(d) and Section 111(m) of the Customs Act, 1962 as the goods are prohibited for importation as the declared CIF is less than 40USD per Sq Mtr as determined by the Notification No. 28(RE-2015)/2015-20 dated 17.09.2016 issued by DGFT, Ministry of Commerce and Industry, Department of Commerce;
- ii. the declared classification i.e. 70169000 of impugned imported goods covered by BE No. 8267382 dated. 01.10.2018, BE No. 8372275

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- dated 08.10.2018, and 8603951 dated. 25.10.2018 should not be rejected and re-classified under CTH 68022190;
- iii. **differential duty of Rs. 46,32,437/- (Rupees Forty-Six Lakh Thirty-Two Thousand Four Hundred Thirty-Seven only)** on the aforesaid imported goods should not be demanded, confirmed and recovered from them under Section 28(4) of the Customs Act, 1962;
 - iv. the duty amounting to Rs. 33,50,000/- paid by the importer under protest at the time of provisional assessment of BE No. 8732275 dated 08.10.2018. and BE No. 8603951 dated 25.10.2018, should not be appropriated against the duty demand in para (iii) above;
 - v. interest at appropriate rates as provided under Section 28AA of the Customs Act, 1962 should not be levied and recovered from them;
 - vi. penalty should not be imposed on them under Section 114A of the Customs Act, 1962; and
 - vii. penalty should not be imposed on them under Section 114AA of the Customs Act, 1962.

PERSONAL HEARING AND WRITTEN SUBMISSIONS

11. Personal Hearing was fixed on 10.02.2023. Shri Akit Bhadktya consultant for the importer was appeared on 20.02.2023 for personal hearing and submitted their defence submission. Further, the importer vide their letter dated 13.02.2023 has informed that Crystallized Glass Penal is man-made material and having characteristics of artificial marble because its look like marble but little different. This is one kind of artificial marble use for table top, kitchen platform and window sides. This material recognised as same name in whole world.

11.1. In this connection, the Directorate of Revenue Intelligence (DRI) Ahmedabad, at same time (when SIIB investigate subject Shipment) enquiry the same issue with other all importers and hold the container in all port in India and examine the case, they also take sample for many containers in Mundra, Nhava Sheva and Tughlakabad. They also find the same thing that its deeper classified as Crystallized glass panel not as artificial marble and find that this material undervalued by importer. They accept this material as crystallized glass panel and increase the base value for all importer and release press note. They requested that they are not wilfully and knowingly mis-declared the goods as crystallized glass penal. They also accept to increase their declared value as DRI

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enhance in all other case and requested to consider the case on merits and drop the proceedings initiated against them vide the above referred SCN.

DISCUSSION & FINDINGS: -

12. I have carefully gone through the Show Cause Notice, submissions made before me and the available case records. Hence, I proceed to decide the case on the basis of facts, submissions made by the importer and documentary evidences available on records. In this case, the matter to be decided by me is as to whether;

- i. the declared classification i.e. 70169000 of impugned imported goods covered by BE No. 8267382 dated. 01.10.2018, BE No. 8372275 dated 08.10.2018, and 8603951 dated. 25.10.2018 should be rejected and re-classified under CTH 68022190 or not;
- ii. The imported goods totally valued at **Rs. 1,69,94,316/- (Rupees One Crore Sixty-Nine Lakhs Ninety-Four Thousand Three Hundred and Sixteen only)** covered under impugned Bill of Entry should be confiscated under the provisions of Section 111(d) and Section 111 (m) of the Customs Act, 1962 or not.
- iii. **differential duty of Rs. 46,32,437/- (Rupees Forty-Six Lakh Thirty-Two Thousand Four Hundred Thirty-Seven only)** on the aforesaid imported goods should be demanded, confirmed and recovered from them under Section 28(4) of the Customs Act, 1962 or not;
- iv. the duty amounting to Rs. 33,50,000/- paid by the importer under protest at the time of provisional assessment of BE No. 8732275 dated 08.10.2018. and BE No. 8603951 dated 25.10.2018, should be appropriated against the duty demand in para (iii) above;
- v. interest at appropriate rates as provided under Section 28AA of the Customs Act, 1962 should be levied and recovered from them or not;
- vi. The penalty is imposable upon the Importer under Section 114A & 114AA of the Customs Act, 1962 or not.

13. I find that the importer M/s Arihant Agency filed Bill of Entry No. 8372275 dated 08.10.2018 through their Customs Broker, M/s Prem Kumar Singh by declaring goods as "Crystallized Glass Panel" under CTH 70169000 having rate of USD 20.06 per Square meter. Based on the specific information SIIB, Custom House, Mundra put the imported goods on hold and during the examination found that the goods were labelled as

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“Artificial Marble’ instead of declared Crystallized Glass Panel C Grade goods. Therefore, the representative samples were drawn of the subject cargo and sent to CRCL, Kandla for testing purpose. Meanwhile, the goods covered under the subject bill of entry has been assessed provisionally on importer’s request subject to Bond of Rs. 68,44,580/- & payment of duty Rs. 18,60,000/- under protest by the importer vide challan no. 1758 dated 02.11.2018.

13.1 I find from the Test report that the imported goods were ‘the *Characteristics of Artificial Marble*’ which is classifiable under CTH 68022190. As per DGFT Notification 28 (Re-2015)/2015-2020 dated 17.09.2016, if the goods are to be freely imported by classifying under CTH 68022190, the minimum CIF value of the goods shall be USD 40 per Sq Mtr. The goods become prohibited if the CIF value is less than USD 40 per Sq Mtr. In this case, the declared CIF value of the imported goods is around USD 20.06 per Sq Mtr i.e. below USD 40 per Sq Mtr in all the three Bill of Entry; hence, as such the goods so imported are prohibited in nature. Therefore, the goods were imported in violation of Section 3 and Section 11 of Foreign Trade (Development Regulation Act) 1992 and Rule 11 of the Foreign Trade (Regulation) Rules, 1993. Hence, the impugned goods pertaining to the Bills of Entry, as stated above in Table-A, with total declared value of Rs. 85,01,330/- and having revised assessable value of Rs. 1,69,94,316/- (Rupees One Crore Sixty-Nine Lakh Ninety-Four Thousand Three Hundred and Sixteen only) are to be liable for confiscation under Section 111(d) & 111(m) of the Customs Act, 1962 read with Foreign Trade (Development & Regulation) Act and Rules/Policy made thereunder.

13.2. Further, from the examination report, I find that the imported goods were labelled as “Artificial Marble Slabs” and also found to be “Artificial Marble Slabs”. However, the importer had mis-declared the goods as ‘Crystallized Glass Panel’. Also, the Test Report received from CRCL, Kandla states that the said imported goods have “” *the characteristics of Artificial Marble*. The Authorized Representative of the importer vide statement dated 25.02.2021 has stated that they have imported the said goods i.e. “Crystallized Glass Panels” only two times, under BE No. 8372275 dated 08.10.2018 and BE No.8603951 dated 25.10.2018. Whereas, on going through the Bill of Entry data file by the said importer, it is observed that the importer has previously imported the said goods three times with the same description as shown in **the table in para 4.6 above**. On being asked about the same, the importer was unable to justify

classification of the imported goods. Therefore, I find that the importer has wilfully and knowingly mis-declared the imported goods as 'Crystallized Glass Panel' by classifying the same under CTH 70169000 instead correctly declaring the imported goods as "Artificial Marble Slab" under CTH 68022190, with an intention to avoid payment of duty and policy condition for importation of prohibited goods by declaring the value of the goods below USD 40 per Sq Mtr.

13.3 I find that the bill of entry number 8267382 dated 01.10.2018 has been cleared finally before initiation of investigation, therefore, the total differential duty amounting to Rs. 13,79,249/- (Rupees Thirteen Lakh Seventy-Nine Thousand Two Hundred Forty-Nine Only) is required to be recovered from the importer under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962. However, the BE No. 8372275 dated 08.10.2018 and BE No. 8603951 dated 25.10.2018, the goods were released on the basis of provisional assessment, therefore, technically, the goods are available for confiscation. In this regard, I find that the provision of Section 28(4) of the Customs Act, 1962 provides for demand of duty not levied or short levied by reason of collusion or wilful misstatement or suppression of facts. As the noticee wilfully mis-declared the description of impugned imported goods by suppressing material facts, the said condition of Section 28 ibid is fulfilled in the instant case. Further, I find that the said provision provides that duty can be demanded by proper officer within five years from the relevant date. Thus, I find that Section 28(4) ibid provides mechanism to demand duty during the period starting from the relevant date and within five years from such relevant date. The relevant date has been defined in above mentioned Explanation-1 of Section 28. I find that in this case subject Bills of Entry were filed for clearance of the impugned goods but the goods could not be cleared as the goods were put on hold by SIIB. The goods were released only after granting of provisional assessment. In view of clause (a) of the said explanation, I find that the relevant date in this case will start from the date on which proper officer of Customs will make an order for the clearance of impugned goods. In the instance case, the clearance was given on provisional assessment. Therefore, technically, the goods are available with customs and I find it premature to demand the duty under Section 28(4) ibid, as this Section would kick in only after final clearance (not provisional release) of goods by customs after importation.

13.4 As discussed above, the impugned goods are liable to confiscation under Section 111(d) and 111(m) of the Customs Act, 1962. Since the impugned imported goods have already been cleared provisionally, an option of redeeming the goods is required to be granted to the noticee, against the order of confiscation by paying redemption fine as provided under Section 125 of the Customs Act, 1962. As discussed above, since the subject goods have been found to be prohibited and liable for confiscation. I find it appropriate to redeem under section 125 of the Customs Act, 1962. Section 125 of the Customs Act 1962 provides that whenever confiscation of any goods is authorised by the Customs Act, 1962, The Officer adjudicating it may, in the case of any goods, the importation or exportation whereof is prohibited under the Act or under any other law for the time being in force and shall, in the case of any other goods, give to the owner of the goods an option to pay in lieu of confiscation such fine as the said officer thinks fit. I find that as provided under Section 125(2) *ibid*, the noticee 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 differential duty can be recovered along with redemption fine when the noticee chooses to exercise the option to redeem the confiscated goods. Therefore, no need for demanding the duty separately under section 28(4) of the Customs Act, 1962.

13.5. Further, the mis-declaration of the goods in terms of description, classification and value of the goods appears to have been done by the importer with a wilful intention to evade payment of appropriate customs duty leviable on the imported goods. hence, the importer rendered themselves liable for penalty under Section 114A for short payment of duty on self-assessed Bill of Entry.

13.6. I find that the goods have labels of Artificial Marble but still importer had cleared the goods by the declaring the same as Crystallised Glass Panel under CTH 70169000 instead of correct description Artificial Marble under CTH 68022190. Therefore, importer has knowingly and intentionally suppressed the true facts of the case to evade higher rate of duty and avoid policy condition. Therefore, I find that the importer is also liable for penalty under Section 114AA as the importer has voluntarily mis-declared the imported goods.

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

ORDER

- i. I order to reject the declared description “Crystallised Glass Panel” and classification CTH 70169000 of impugned imported goods covered by BE No. 8267382 dated. 01.10.2018, BE No. 8372275 dated 08.10.2018, and 8603951 dated. 25.10.2018 and order to same re-classified under CTH 68022190 and change to correct description i.e. Artificial Marble.
- ii. I order to confiscate the goods covered by **BE No. 8372275 dated 08.10.2018, and 8603951 dated. 25.10.2018 having value of Rs. 1,19,56,420/-(Rupees One Crore Nineteen Lakh Fifty-Six Thousand Four Hundred Twenty Only)** under Sections 111(d) & 111(m) of the Customs Act 1962. However, I give an option to redeem the same on payment of redemption fine of Rs. 12,00,000/- (Rupees Twelve Lac Only) under Section 125(1) of Customs Act, 1962;
- iii. I hold the goods covered by BE No. 8267382 dated. 01.10.2018 liable for confiscation, however, I refrain from imposing the fine as goods are not available for confiscation.
- iv. I confirm and order to recover the differential duty of Rs. 13,79,249/- (Rupees Thirteen Lakh Seventy-Nine Thousand Two Hundred Forty-Nine Only) on the imported goods covered by BE No. 8267382 dated. 01.10.2018 under Section 28(4) of the Customs Act, 1962 along with applicable interest under Section 28AA of the Customs Act, 1962..
- v. I order to appropriate the amount of duty of Rs. 33,50,000/- (Rupees Thirty-Three Lakh Fifty Thousand only) has already been paid by M/s. Arihant Agency under protest at the time of provisional assessment of BE No. 8732275 dated 08.10.2018 and BE No. 8603951 dated 25.10.2018.
- vi. I impose a penalty of Rs. 13,79,249/- (Rs. Thirteen Lac Seventy Nine Thousand Two hundred Forty nine Only) on the importer M/s.

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Arihant Agency under Section 114A of the Customs Act, 1962 for the goods covered by BE No. 8267382 dated. 01.10.2018.

- vii. I impose a penalty of Rs. 8,00,000/- (Rs. Eight Lac Only) on the importer M/s. Arihant Agency under Section 112(a) (i) of the Customs Act, 1962 for the goods covered by BE No. 8372275 dated 08.10.2018, and 8603951 dated. 25.10.2018.
- viii. I also impose a penalty of Rs 15,00,000/- (Rs Fifteen Lac Only) on the importer M/s. Arihant Agency under Section 114AA of the Customs Act, 1962.

15. 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.

MUKESH KUMARI
Additional Commissioner (Import)
Custom House, Mundra

F.No. CUS/APR/BE/283/2023-Gr 3-O/o Pr Commr-Cus-Mundra

04-05-2023

To

M/s. Arihant Agency
29, Mahaveer Market, New Cloth Market,
Chittorgarh, Rajastha-312001.

Copy to;

- i. The Deputy/Assistant Commissioner (RRA), Custom House, Mundra
- ii. The Deputy/Assistant Commissioner (TRC), Custom House, Mundra
- iii. The Deputy/Assistant Commissioner (EDI), Custom House, Mundra
- iv. The Deputy/Assistant Commissioner, SIIB, Custom House, Mundra
- v. Guard File