

		<p style="text-align: center;">OFFICE OF THE COMMISSIONER CUSTOM HOUSE, KANDLA NEAR BALAJI TEMPLE, NEW KANDLA Phone : 02836-271468/469 Fax: 02836-271467</p>
<p><b>DIN- 20250371ML000051E23</b></p>		
A	File No.	GEN/ADJ/ADC/490/2024-Adjn-O/o Commr-Cus-Kandla
B	Order-in-Original No.	KDL/ADC/VS/09/2026-27
C	Passed by	Vishwajeet Singh Additional Commissioner of Customs, Custom House, Kandla.
D	Date of Order	24.04.2026
E	Date of Issue	24.04.2026
F	SCN NO. & Date	GEN/ADJ/ADC/490/2024-Adjn-O/o Commr-Cus-Kandla dated 12.03.2024
G	Noticee / Party / Importer / Exporter	M/s. Sunrise International (Unit-II), Gandhidham and M/s Worldwide Exim Overseas Network, Mumbai.

- यह मूल आदेश संबंधित को निःशुल्क प्रदान किया जाता है।  
This Order - in - Original is granted to the concerned free of charge.
- यदि कोई व्यक्ति इस मूल आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमाशुल्क अधिनियम 1962 की धारा 128A 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, मृदुलटावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड़, अहमदाबाद 380 009”**  
**“THE COMMISSIONER OF CUSTOMS (APPEALS),**  
**Having his office at 7<sup>th</sup> Floor, Mridul Tower, Behind Times of India,**  
**Ashram Road, Ahmedabad-380009.”**

- 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.
- 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 be accompanied by –
  - उक्त अपील की एक प्रति और  
A copy of the appeal, and
  - 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 जापान 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 जहाँ शुल्क या शुल्क और जुर्माना विवाद में हो अथवा दंड में जहाँ केवल जुर्माना विवाद में हो, आयुक्त (अपील) के समक्ष मांग शुल्क का 7.5% की राशि का 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, when only penalty alone is in dispute.

## **BRIEF FACTS OF THE CASE:**

M/s. Sunrise International (Unit-II) (**hereinafter referred to as 'SEZ unit'**) is situated at Shed No. 306-307, Sector-III, Kandla Special Economic Zone, Gandhidham, Kutch. Letter of Approval (LOA) dated 13.11.2020 was granted to them vide F. No. KASEZ/IA/24/2020- 21 by the Development Commissioner, Kandla SEZ under section 15(9) of the SEZ Act, 2005 read with Rule 18 of the SEZ Rules, 2006 to operate as an SEZ unit and carry out authorized operations of Warehousing Service Activity.

**2.** The said SEZ Unit, namely, M/s. Sunrise International (Unit-II) had filed Bill of Entry vide no. 1001430 dated 01.02.2022 for warehousing the goods declared as "LLDPE Agglomerate" on behalf of DTA Client namely M/s Worldwide Exim Overseas Network, 208 Bharat Chamber, 52/C, Baroda Street, Musjid Bunder East, Mumbai, Maharashtra 400009, holding IEC NO: FWPPM6566P. Based on information received by the SIIB, Custom House, Mundra that Container No. INKU 6531876 (40) filed under BE No. 1001430 dated 01.02.2022 and Bill of Lading No. JEAMUN1200179 dated 20.01.2022 destined to KASEZ, Gandhidham had a scanning mismatch as reported in the container scanning report. Accordingly, the container was put on hold and examined at Hind CFS, Mundra Port by the SIIB Officers of Mundra-CH as per the provisions of the Customs Act, 1962. The examination of the said container was carried out by the SIIB Officers of Mundra-CH under Panchnama dated 05.02.2022 in presence of Shri Kiran Nair, Authorized Representative on behalf of the importer M/s Worldwide Exim Overseas Network and the authorized representative of the CFS. After examination proceedings the

consignment was released for transshipment to KASEZ and presently the imported goods are lying in the premises of M/s. Sunrise Internationals (Unit-II), KASEZ.

**3.** During the examination proceedings carried out by the officers of SIIB, Mundra-CH it was observed that the cargo was declared as "LLDPE Agglomerate under CTH 39011010" and a total of 980 woven sacks were de-stuffed from the container. Whereas, prima facie it appeared that goods were of different types i.e. in some woven sacks bags there were shredded plastic material, in some other bags, the goods appeared to be plastic granules/pellets type and in the remaining woven sacks bags, the goods appeared to have been lumps of plastic. It was observed by the Officers of SIIB, Mundra-CH that out of 980 bags, 152 bags were found to be of Plastic granule/pellet like material, 115 bags were found to be of lumps and remaining 713 bags were found to be of shredded plastic material containing mix material. Whereas, as per declaration in the packing list, BL and other import documents the goods were supposed to be LLDPE Agglomerate under CTH 39011010. However, upon examination, it appeared that 152 bags contained plastic granule like material and 115 bags contained plastic lump like material, which appeared to be other than declared goods and thus these goods appeared to have been mis-declared by the importer which required further investigation in the matter. Accordingly, samples were drawn and sent for testing at CRCL Kandla Laboratory by the officers of SIIB, Mundra-CH vide Test Memo No.165 to 171 all dated 05.02.2022. The details of Test Memo queries and findings in test reports are as detailed below.

**3.1** Whereas, the Test query in respect of all the Test Memos No. 165 to 171 for the goods having declared Description as "LLDPE Agglomerate" and declared CTH – 39011010:-

- i. Nature/Description of Goods.
- ii. Composition.
- iii. Whether the goods are other than Scrap/waste.
- iv. Whether the goods are Re grind/ Lumps/ Agglomerated/ Flakes/ Reprocessed/ Recycled/Offgrade/Sweeping.
- v. Whether the goods are composed of single thermoplastic material or otherwise.
- vi. Whether the goods are Non-hazardous in nature or otherwise.
- vii. Correct description of the goods.

**3.2** Whereas, the findings of CRCL Kandla in respect of samples forwarded vide Test Memos No. 165 to 171 are detailed as under:

- (i) Test Report no. SIIB-138 dated 11.02.2022 pertaining to Test Memo No. 165 dated 05.02.2022

*“Sample as received is in the form of off-white plastic cut pieces of irregular shape & sizes (**Agglomerated form**). It is composed of polyethylene having density less than 0.94 (single thermoplastic).*

*Whether scrap/waste/hazardous could not ascertained.”*

- (ii) Test Report No. SIIB-139 dated 11.02.2022 pertaining to Test Memo No. 166 dated 05.02.2022.

*“Sample as received is in the form of grayish plastic cut bits of irregular shape & sizes. It is composed of polyethylene (**LDPE**) (Single thermoplastic). Whether scrap/waste/hazardous could not ascertained. It is **other than LLDPE Agglomerates**.*

*Ash Content 9.4% by wt”*

- (iii) Test Report No. SIIB-140 dated 11.02.2022 pertaining to Test Memo No. 167 dated. 05.02.2022.

*“The sample as received is in the form of off white plastic cut pieces of irregular shapes and sizes (**agglomerate**). It is composed of polymeric material based on polyethylene, having density less than 0.94 (Single thermoplastic).Ash content 5.3% by wt. Whether the goods is waste/scrap/non-hazardous could not be ascertained.”*

- (iv) Test Report No. SIIB-141 dated. 11.02.2022 pertaining to Test Memo No. 168 dated 05.02.2022

*“The sample as received is in the form of greenish-pink coloured irregular pieces of polymeric material together with a few films of assorted shapes, sizes and colours (**agglomerates**). It is composed of polymeric material based on polyethylene having density less than 0.94 (single thermoplastic). Ash content- 6.0% by wt. Whether the goods is waste/scrap/non-hazardous could not be ascertained.”*

- (v) Test Report No. SIIB-142 dated 11.02.2022 pertaining to Test Memo No. 169 dated 05.02.2022.

*“The sample as received is in the form of assorted colour cut pieces of films & lumps of irregular shape & sizes along with coarse powder (**Agglomerate**). It is composed of polymeric material based polyethylene*

*(Single on thermoplastic). Ash content = 7.21%. Whether the goods is waste/scrap/non-hazardous could not be ascertained.”*

- (vi)** Test Report No. SIIB-143 dated 11.02.2022 pertaining to Test Memo No. 170 dated 05.02.2022.

*“The sample as received is in the form of mixture of assorted coloured shredded polymeric material together with small cut pieces of polymeric films of irregular shape & size and coarse powder (**agglomerate form**).*

*It is composed of polymeric material based on polyethylene (single thermoplastic) having density less than 0.94.% Ash content - 4.9. Whether the goods is waste/scrap/non-hazardous could not be ascertained.”*

- (vii)** Test Report No. SIIB-144 dated 11.02.2022 pertaining to Test Memo No. 171 dated 05.02.2022.

*“The sample as received is in the form of dirty brownish yellow **plastic lumps** of irregular shape and size. It is composed of polymeric material based on Polyethylene.”*

**3.3** From the examination details and the above test results, it was observed by the Officers of SIIB, Mundra-CH that a part of the cargo was other than Agglomerate as confirmed by the test results of CRCL Kandla reproduced above and accordingly part of the imported cargo appeared to have been mis-declared.

**3.4** During the course of inquiry proceedings, the officers of SIIB, Mundra-CH had recorded statement dated 03.03.2022 under Section 108 of the Customs Act, 1962 of Shri Rahul Chetan Mehta, Proprietor of the importer firm, namely, M/s. Worldwide Exim Overseas Network, Mumbai. The importer in his above referred statement dated 03.03.2022, *inter-alia*, had stated that-

- M/s. Worldwide Exim Overseas Network was registered in the year 11.03.2020, IEC No. FWPPM6566P. This is a Sole Proprietorship firm and they have imported about 40 to 45 Containers till date. This is the 3rd import consignment of LLDPE Agglomerate. Earlier two containers were also cleared from KASEZ.
- They are getting the benefit of duty deferment as and when their cargo is

cleared from the KASEZ Warehouse on piecemeal basis. The warehousing charges are also comparatively reasonable as compared to the CFS charges of Port.

- The clearance and documentation work is carried out by M/s. Akshar Impex Services, Prop. Mr. Nandkumar P. Nair, having office at Shop No. 15, Kandla Industrial Association Building, Nr. Punjab National Bank, - 370230.
  - On being asked that, as per the B.E No. 1001430 dated 01.02.2022, the goods declared are LLDPE Agglomerate 39011010 which is meant for Polymers of Ethylene in primary forms- having a specific gravity of less than 0.94. Sub-heading 39011010 pretends to LLDPE (Linear Low Density Polyethylene). Upon seeing the test reports given by CRCL Kandla Laboratory in respect of Test Memos No. 165 to 171 dated 05.02.2022, he signed all the test reports after seeing them and stated that the test reports no. 166, 169, 171 dated 05.02.2022 are different from LLDPE Agglomerates and the goods belong to the group of Polyethylene.
  - Upon being shown the Panchnama dated 05.02.2022 along with the photos of the material received in the container it was very much evident that whole of the cargo is not plastic agglomerates. On being asked the reason for the same, he stated that he accepts that whole of the cargo is not agglomerates, but they are of different types as narrated in the Panchnama. He further stated that he was totally unaware about this when he came to know about the cargo he complained to the shipper. The shipper sent updated packing list with complete details of no. of bags of agglomerates, reprocessed granules and lumps which we submitted to the department on 08.02.2022.
  - He accepted that there is some change in value although there is no change in the rate of duty. In case if the value is on the higher side of the overall cargo he is ready to pay the differential duty.
  - He is ready to pay the fine penalty and do not want show cause notice.
- 4.** Whereas, the SEZ Unit has declared the goods as LLDPE Agglomerate

classifying them under 39011010. Whereas, based on examination proceedings and lab test results, the details of imported goods along with quantity are as tabulated below:

**Table-I**

Sr. No	Test Memo No. (all dated 05.02.2022)	Declared description and Classification	Description/ Classification as per examination proceedings and Lab test results	Quantity found during examination
1	165	LLDPE Agglomerates 39011010	As declared	--
2	166	LLDPE Agglomerates 39011010	LDPE (cut bits) 39011020	152bags x 25kg = 3800 kg
3	167	LLDPE Agglomerates 39011010	As declared	
4	168	LLDPE Agglomerates 39011010	As declared	
5	169	LLDPE Agglomerates 39011010	As declared	
6	170	LLDPE Agglomerates 39011010	As declared	
7	171	LLDPE Agglomerates 39011010	Others 39011090	115 bags x 25kg =2875 kg

**5.** Whereas, the samples sent under Test Memo Nos. 166 & 171 were found to be other than LLDPE Agglomerates and appeared to be classifiable as LDPE (CTH-39011020) and Others (CTH-39011090) respectively. Whereas, the findings of lab test reports corroborated and reconfirmed the observations made during the examination of the goods under Panchnama dated 05.02.2022 and the statement dated 03.03.2022 of Shri. Rahul C. Mehta. Whereas, during the statement the DTA client had accepted that the imported goods were other than that declared in the Bill of Entry. He had attributed the reason for importing goods other than that declared in the B.E due to shipper's fault and had produced a letter dated 05.02.2022 from the shipper wherein the shipper JHR General Trading LLC had sent the revised packing list and accepted that some of the goods were other than LLDPE Agglomerates. Whereas, from the foregoing facts, it appeared that out

of the total 22520 Kgs of goods declared as LLDPE Agglomerates, 3800Kg of LDPE CTH 39011020 and 2875Kg of Lumps Others CTH 39011090 totaling 6675 Kg valued at Rs.3,78,772/- @ Rs. 56.475/- per Kg appeared to have been mis-declared and mis-classified. The details of same have been tabulated below for ready reference.

**Table-II**

Sr. No.	Declared description as per BE No. 1001430 dated 01.02.2022	Classification as per BE No. 1001430 dated 01.02.2022	Description as per examination proceedings and Lab test results	Classification as per examination proceedings and Lab test results	Quantity found during examination
1	LLDPE Agglomerates	39011010	LLDPE Agglomerates	39011010	15845 kg (found as declared)
2			LDPE (pellets/cut bits)	39011020	3800 kg <b>(mis-declared)</b>
3			Lumps-Others	39011090	2875 kg <b>(mis-declared)</b>

6. Based on the test results and finding of examination proceedings, it appeared that the goods of approx. weight 3800 kgs in 152 bags which were in the form of plastic cut bits/ pellets classifiable under CTH 39011020 and the goods of approx. weight 2875 kgs in 115 bags which were in the form of plastic lumps classifiable under CTH 39011090 were mis-declared in terms of description and classification and were liable for confiscation under reasonable belief as per the provisions of the Customs Act, 1962 and hence the said goods were placed under seizure under Section 110 of the Customs Act, 1962 vide Panchnama dated 28.09.2023.

7. Whereas, Section 17 of the Customs Act, 1962 provides for self-assessment of duty on imported and export goods by the importer and exporter himself by filing a bill of entry or shipping bill, as the case may be. Under self-assessment, the importer or exporter has to ensure correct description/classification, applicable rate of duty, value and exemption notifications, if any, in respect of imported/export goods while presenting bill of entry or shipping bill. Further, Rule 75 of the SEZ Rules, 2006 also provides that unless and otherwise specified in

these rules, all inward or outward movements of the goods into or from SEZ by Unit/Developer shall be based on self-declaration made by the Unit/Developer. While importing the subject goods, the said SEZ Unit and their DTA Client were bound for true and correct declaration and assessment. As the said SEZ unit was engaged in business of providing warehousing services in respect of the subject goods, they were fully aware of the specifications, characteristics, nature and description of the goods imported and warehoused on behalf of the DTA client. From the above, it is evident that the said SEZ Unit and the said DTA Client had deliberately suppressed specifications, characteristics, nature and description of the said product/goods.

**8.** Whereas, as per Section 46(4A) of the Customs Act, 1962, the importer who is presenting the bill of entry should ensure the accuracy and completeness of the information given therein, the authenticity and validity of any document supporting it and compliance with the restriction or prohibition, if any, relating to the goods under the Customs Act, 1962 or under any other law for the time being in force. Apparently, it appeared that the said SEZ Unit and the said DTA Client had violated the provisions of Section 46(4A) of the Customs Act, 1962 by way of mis-declaring the subject goods as detailed in the foregoing paras. Such indulgence and endeavor on their part were in violation of the provisions of Section 46 of the Customs Act, 1962, irrespective of the importability of the impugned goods and other aspects involved in the case, which made the impugned goods liable for confiscation in terms of Section 111f) and Section 111(m) of the Customs Act, 1962 and the said SEZ Unit and their DTA Client appeared to be liable for penalty under Section 112/114A and Section 117 of the Customs Act, 1962.

**9.1** In view of the above, the DTA Client/Importer, namely, M/s Worldwide Exim Overseas Network (IEC NO: FWPPM6566P), 208 Bharat Chamber, 52/C, Baroda Street, Musjid Bunder East, Mumbai, Maharashtra 400009 were issued SCN No. GEN/ADJ/ADC/490/2024-Adjn dated 12.03.2024 wherein they were called upon to Show Cause to the Additional Commissioner of Customs having his office situated at Customs House, Near Balaji temple, Kandla, District Kutch within 30 days from the receipt of the notice as to why:

- a.** The classification of 3800kg of the imported goods declared as “LLDPE Agglomerates” under Customs Tariff Item 39011010 of the Customs

TariffAct,1975, in the Bills of Entry no. 1001430 dated 01.02.2022, should not be rejected and re- classified as “LDPE (cut bits/ pellets)” under Customs Tariff item 39011020;

- b.** The classification of 2875kg of the imported goods declared as “LLDPE Agglomerates” under Customs Tariff Item 39011010 of the Customs TariffAct,1975, in the Bills of Entry no. 1001430 dated 01.02.2022, should not be rejected and re- classified as “Lumps-Others” under Customs Tariff item 39011090;
- c.** The mis-declared goods mentioned at Sr. No. 2 & 3 of Table-II above should not be held liable for confiscation under section 111(f) and 111(m) of the Customs Act,1962;
- d.** Penalty under Section 112 of the Customs Act, 1962 should not be imposed on them for reasons discussed above.
- e.** Penalty under Section 117 of the Customs Act, 1962 should not be imposed on the importer for the reasons discussed above.

**9.2** Further, vide the above referred SCN dated 12.03.2024, the SEZ Unit, namely, M/s. Sunrise International (Unit-II), Shed No. 306-307, Sector-III, Kandla Special Economic Zone, Gandhidham were also called upon to Show Cause to the Additional Commissioner of Customs having his office situated at Customs House, Near Balaji temple, Kandla, District Kutch within 30 days from the receipt of this notice as to why:

- a.** The classification of 3800kg of the imported goods declared as “LLDPE Agglomerates” under Customs Tariff Item 39011010 of the Customs TariffAct,1975, in the Bills of Entry no. 1001430 dated 01.02.2022, should not be rejected and re- classified as “LDPE (cut bits/ pellets)” under Customs Tariff item 39011020;
- b.** The classification of 2875kg of the imported goods declared as “LLDPE Agglomerates” under Customs Tariff Item 39011010 of the Customs TariffAct,1975, in the Bills of Entry no. 1001430 dated 01.02.2022, should not be rejected and re- classified as “Lumps-Others” under Customs Tariff item 39011090;
- c.** The mis-declared goods mentioned at Sr. No. 2 & 3 of Table-II above should not be held liable for confiscation under section 111(f) and 111(m) of the Customs Act,1962;
- d.** Penalty under Section 112 of the Customs Act, 1962 should not be imposed on them for reasons discussed above.

- e. Penalty under Section 117 of the Customs Act, 1962 should not be imposed on the importer for the reasons discussed above.
- f. Bond-cum-Legal Undertaking in Form-H furnished by the said SEZ Unit should not be enforced towards the duty and other liabilities arising out of subject goods removed from the said SEZ unit to DTA as detailed in Annexure-A.

## **DEFENSE REPLY/WRITTEN SUBMISSIONS:**

### **10. Defense Reply filed by M/s Sunrise International (Unit-II)**

**10.1** M/s Sunrise International (Unit-II), Shed No. 306-307, Sector-III, Kandla Special Economic Zone, Gandhidham, Kutch have filed their written reply dated 23.04.2024 (received on 29.04.2024) in response to the present SCN No. GEN/ADJ/ADC/490/2024 dated 12.03.2024. At the outset, they have denied all the allegations levelled in the above referred SCN. They have submitted that the goods were correctly declared in all material particulars and thus the same are not liable to be confiscated under section 110(f) and 110(m) of the Customs Act, 1962 nor any penalty is imposable on them under section 112(a) and 117 of the Act *ibid*.

**10.2** They have submitted that the alleged variation in the shape of goods totally weighing 3800 Kgs and 2875 Kgs of LLDPE/Pellets and Lumps neither renders the goods liable to confiscation as there is no restriction or prohibition for import of the same and thus have not been proposed to be confiscated under section 110(d) of the Customs Act, 1962. It has been submitted by them that there was no proposal to change the classifiable value of the goods and therefore there is no differential duty demand in the SCN and that the goods are not liable to confiscation under section 111(m) of the Act *ibid*. That, the goods continue to remain classified under CTH 3901 and there is no change in rate of duty or any valuation of goods rather the value of cut bits/pellets and lumps shall definitely be less and thus it cannot be alleged that there was any deliberate attempt to evade any duty. Further, the cut bits and lumps classified under ITC (HSN 3901 1010) are freely importable without any restriction and thus there cannot be any allegation that there is any violation of any restriction or prohibition and thus the goods are not liable to confiscation under the provisions of section 110(d) of the Customs Act, 1962.

**10.3** Therefore, they have contended that as the alleged change is in the nature of goods, which remain classified under CTH 3901 and do not entail any liability of differential duty or violation of any restriction and thus the said violation cannot be said to be a material particular for the purpose of section 111 of the Act and thus the goods cannot be held liable for confiscation.

**10.4** It has also been submitted in their defense reply dated 23.04.2024 that the provisions of section 111(f) can be invoked if the goods are prohibited and there is any duty evasion in respect of the same and further the same are not mentioned in the import manifest. They have submitted that the goods were mentioned in the import manifest and the Bill of Entry has been filed in respect of the same and thus the same cannot be held for confiscation under section 111(f) of the Customs Act, 1962. Further, the provisions of section 111(f) can be invoked against the person liable to file the import manifest and in the absence of any Notice to such person under section 30 of the Customs Act, 1962, any notice to the importer will be in excess of jurisdiction. In support of their contention, they have relied upon the CBIC Circular No. 110/2003-Cus dated 22.12.2003 and they have submitted that in absence of any notice to the person liable to file IGM under section 30 of the Act, present SCN invoking provisions of section 111(f) of the Act is totally erroneous.

**10.5** M/s Sunrise International (Unit-II) have further submitted that the SCN has not alleged that the goods are prohibited or restricted for import in any manner and further there is no demand of differential duty and thus no penalty under section 112 of the Customs Act, 1962 can be imposed on them. They have submitted that the penalty under section 112 can only be invoked if the goods fall under sub clauses (i), (ii) or (iii) as mentioned above i.e. any prohibition is in force, subject to the provisions of section 114A and in respect of which the value stated in the entry. However, the SCN does not say that there is any violation of any prohibition or there is any proposed change in valuation and the provisions of section 114A have not been invoked and thus no penalty under section 112 is invocable and the SCN has wrongly and erroneously invoked the provisions of section 112 of the Act and thus the SCN is required to be dropped. Further, they have submitted that it is settled law that in case there is no demand of duty or the same is not sustainable and there is no violation of any restriction, no penalty can be imposed as laid down by the Hon'ble Supreme Court in the case of HMM Ltd-1995 (76) E.L.T. 497 (SC) and thus the SCN is required to be dropped.

**10.6** Regarding imposition of penalty under section 117 of the Customs Act, 1962, they have stated that the SCN has invoked section 117 of the Act ignoring the fact that the provisions of section 112 have been invoked and thus the provisions of section 117 which is residuary provisions have been wrongly invoked as the same can be only invoked if no specific provision is invoked. They have submitted that the SCN invokes provisions of section 117 on the ground of misdeclaration which clearly confirms that the contravention is covered under the specific provisions and thus the residual provisions of law has been invoked erroneously. It is their submission that as it is settled law that the residual provisions can only be invoked when no specific provision is invocable and thus invoking of residual as well as specific provisions simultaneously clearly demonstrates that the SCN is issued merely on the basis of assumption and presumption and or doubts or suspicion as far as it is directed against us and the same is not legally sustainable.

**10.7** They have further place their reliance on the following judgments:-

- (i) Commissioner of Cus. & C.Ex., Ghaziabad Vs Rubi Impex [2017(357) E.L.T. 1239 (Tri.-All.)].
- (ii) Saisea Logistics (I) P. Ltd Vs Comm. Of Cus. (Import), Nhava Sheva [2009(246) E.L.T. 543 (Tri.-Mumbai)].
- (iii) Sindhu Cargo Services Ltd Vs. Commissioner of Customs, Coimbatore [2008(226) E.L.T. 282 (Tri.-Chennai)].
- (iv) Vetri Impex Vs. Commissioner of Customs, Tuticorin [2004(172) E.L.T. 347 (Tri.-Chennai)].
- (v) Chandan Mal M. Jain Vs. Collector of Customs, Bombay [1985(22) E.L.T. 587 (Tribunal)].
- (vi) Capstan Shipping & Estates Ltd. Vs. Commissioner of Customs (P), W.B. [2003(162) E.L.T. 1032 (Tri.-Kolkata)].
- (vii) Bholu Singh Vs. Collector of Customs (Preventive) [1993(66) E.L.T. 105 (Tribunal)].

Relying on the above judgments, they have submitted that no penalty can be imposed under section 112 or 117 of the Act and thus the SCN as far as it is

directed against them is required to be dropped. They have further submitted that the goods were lying uncleared since 01.02.2022, i.e. for more than two years and thus have incurred huge liability of rents etc. and which have so far mounted to Rs.6,50,000/- and thus they have already been punished very heavily due to detention of the goods in respect of which there is no duty evasion or any violation of any restriction and thus the goods are required to be allowed released at the earliest without imposing any penalties etc.

**10.8** It has been submitted by them that there was no deliberate attempt to evade any duty or restriction and we were not to gain any undue benefits and thus no penal action is justified in the facts and circumstances of the case. The following case laws have been quoted by them in support of the above:-

(i) 1990 (47) E.L.T. 161 (S.C.)

Akbar Baddrudin Jiwani V/s Collector of Customs.

(iii) 1983 E.L.T. 1261 (Tribunal)

Merck Spares, Delhi V/s CCE & C, New Delhi.

PROPOSITION

*Mensrea to be established for imposition of penalty. No penalty imposable when the party acts in a bonafide belief that the goods are not liable for confiscation.*

(iv) 1987 E.L.T. (J159) (S.C.)

Hindustan Steel Ltd. V/s State of Orissa.

PROPOSITION

*Penalty should not be originally imposed unless the party acted in conscious disregard of its obligations or acted deliberately in defiance of law.*

(v) 1994 (74) E.L.T. 481 (S.C.)

Grauer & Well (India) Ltd. v/s Collector of Central Excise, Baroda.

PROPOSITION

*Penalty should not be originally imposed unless the party acted in conscious disregard of its obligations or acted deliberately in defiance*

*of law.*

(vi) 1987 (32) E.L.T. 355 (A.P.)

Boddu Ramaiah v/s Government of India & Others.

(vii) 1992 (69) E.L.T. 481 (Tribunal)

Robindra Textile Mills v/s Collector of Central Excise.

*Penalty imposable only in case the person had knowledge that the goods are liable for confiscation under section 111 of the Customs Act, 1962.*

**10.9** M/s Sunrise International (Unit-II) have submitted that the SCN is merely issued on the basis of doubt and suspicion or assumption and presumption and these assumption and presumption or doubt and suspicion cannot take place of proof, howsoever grave, these may be, to prove the knowledge on the part of CB firm. As the SCN is issued merely on the basis of assumption and presumption or doubt and suspicion, the same is required to be dropped solely on this ground alone. The following case laws have been quoted by them in support of the above:-

(i) Tetra Plastics Pvt Ltd [2008 (227) E.L.T. 74(Tri)].

(ii) Hemraj Agrawalla Vs. Collector of Customs & C.Excise [2008 (227) E.L.T. 74(Tri)]

*“At best, it can be said that there is a suspicion to that effect and suspicion however strong cannot take place of proof”.*

(iii) Karungadan Abdul Rehman Vs. Collector of Customs & C. Excise, Cochin [1995(77) E.L.T. 333(Tri.)(Para7)]

*“No doubt, certain circumstances do endanger a grave suspicion in my mind, but the proceedings being penal in nature suspicion however grave it may be, can scarcely take the place of proof”.*

- (iv) Ashok K. Singh Vs. Collector of Customs  
[1989(39) E.L.T. 622 (Tri.)(Para 11)]

*“No doubt the appellant is both the exporter and importer of the goods. Such a situation may create a little suspicion, but such suspicion should not by itself lead to an adverse inference.*

- (v) Luxmi Enterprises Vs. Collector of C.Excise  
[1989(41) E.L.T. 139(Tri.) (Para 7)]

*“It is settled principles of law that suspicion how-so-ever grave cannot take the place of proof”*

- (vi) Parkeh & Co. Vs. Collector of Customs, Rajkot  
[1994(71) E.L.T. 310 (Tri.) (Para 37)]

*“Further, suspicion how-se-ever grave cannot take the place of legal proof (refer Babcock Venkateshwara Pvt. Ltd. Vs. Collector of customs-1985(20) E.L.T. 335(Tri.))*

Accordingly, they have prayed that the SCN may kindly be quashed.

## **11. Defense Reply filed by M/s Worldwide Exim Overseas Network**

**11.1** M/s Worldwide Exim Overseas Network, 208 Bharat Chamber, 52/C, Baroda Street, Musjid Bunder East, Mumbai, Maharashtra 400009, holding IEC NO: FWPPM6566P have also filed their written reply dated 23.04.2024 (received on 02.05.2024) in response to the present SCN No. GEN/ADJ/ADC/490/2024 dated 12.03.2024. At the outset, they have denied all the allegations levelled in the above referred SCN. They have submitted that the goods were correctly declared in all material particulars and thus the same are not liable to be confiscated under section 110(f) and 110(m) of the Customs Act, 1962 nor any penalty is imposable on them under section 112(a) and 117 of the Act *ibid*.

**11.2** Further, it is observed that they have furnished **identical reply** on the matter as submitted by M/s Sunrise International (Unit-II) which has been discussed at length already at **Para 10** above and therefore the same is not being

discussed herein. On the same grounds, they have also sought that the present SCN dated 12.03.2024 may be quashed.

## **12. PERSONAL HEARING:**

**12.1** Both M/s Sunrise International (Unit-II) and M/s Worldwide Exim Overseas Network in their above discussed defense replies had requested that they may be accorded opportunities for personal hearing before the matter is decided. Accordingly, in the interest of natural justice opportunities for personal hearing were accorded to them.

**12.2** On behalf of M/s. Sunrise International (Unit-II), Shri Jay Kumar Pillai, Manager and Authorized Representative had appeared before the Adjudicating Authority for Personal hearing on 12.11.2024. During the course of personal hearing, he had submitted the Power of Attorney given under the seal and signatures of Shri Rakesh Aggarwal, Proprietor of the above firm. He reiterated the grounds given in their written reply dated 23.04.2024 and further requested to set aside the impugned SCN and drop the proceedings with consequential relief thereafter.

**12.3** On behalf of M/s. Worldwide Exim Overseas Network, Shri Harikrishna Ghanshyam Modi, Authorized Representative had appeared before the Adjudicating Authority for Personal hearing on 20.03.2025. During the course of personal hearing, he had reiterated the grounds given in their written reply dated 02.05.2024 and further requested to set aside the impugned SCN and drop the proceedings with consequential relief thereafter.

## **DISCUSSIONS AND FINDINGS:**

**13.** I have carefully gone through the allegations levelled in the Show Cause Notice bearing no. GEN/ADJ/ADC/490/2024-Adjn dated 12.03.2024 issued by the Additional Commissioner, Custom House Kandla. I have also gone through the defense replies filed by the noticees namely M/s Sunrise International (Unit-II), Shed No. 306-307, Sector-III, Kandla Special Economic Zone, Gandhidham and M/s Worldwide Exim Overseas Network, 208, Bharat Chamber, 52/C, Baroda Street, Musjid Bunder East, Mumbai, Maharashtra and the submissions made by them during the course of Personal Hearing on 12.11.2024 and 20.03.2025 respectively.

**14.** I find that M/s. Sunrise International (Unit-II) which is a SEZ Unit situated at KASEZ Gandhidham and are authorised for warehousing activities had filed Bill of Entry No. 1001430 dated 01.02.2022 for warehousing the goods declared as "**LLDPE Agglomerate**" on behalf of DTA Client namely M/s Worldwide Exim Overseas Network. I find that the container no. INKU6531876 (40) filed under BE No. 1001430 dated 01.02.2022 and Bill of Lading No. JEAMUN1200179 dated 20.01.2022 had a scanning mismatch as reported in the container scanning report and thereafter the same was put on hold and examined at Hind CFS, Mundra Port by the SIIB Officers of Mundra-CH as per the provisions of the Customs Act, 1962 under Panchnama dated 05.02.2022 in presence of Shri Kiran Nair, Authorized Representative on behalf of the importer M/s Worldwide Exim Overseas Network and the authorized representative of the CFS.

**15.** I find that during the examination proceedings carried out by the officers of SIIB, Mundra-CH it was observed that the cargo was declared as "**LLDPE Agglomerate under CTH 39011010**" and a total of 980 woven sacks were de-stuffed from the container. I also find that during such examination proceedings, prima facie, the goods appeared to be of different types. I also find that the imported goods were declared to be LLDPE Agglomerate falling under CTH 39011010, whereas upon examination by the Officers of SIIB, Mundra it appeared that 152 bags contained plastic granule like material and 115 bags contained plastic lump like material, which appeared to be other than declared goods. I find that since the goods appeared to have been mis-declared by the importer requiring further investigation, samples were drawn and sent for testing at CRCL Kandla Laboratory by the officers of SIIB, Mundra-CH vide Test Memo No.165 to 171 all dated 05.02.2022.

**16.** I have also carefully gone through the Test Report No. SIIB-138 to SIIB-144 all dated 11.02.2022 submitted by CCL Kandla. I find that the Test Report No.SIIB-139 and Test Report No. SIIB-144 both dated 11.02.2022 have unambiguously pointed out that the samples tested by them were found to be other than LLDPE Agglomerates contrary to the declaration filed in the Bill of Entry No. 1001430 dated 01.02.2022 by M/s Sunrise International (Unit-II). For the sake of ease of reference, the relevant portion of the aforesaid Test Reports are reproduced as under:-

**Test Report No. SIIB-139 dated 11.02.2022 pertaining to Test Memo No. 166 dated 05.02.2022.**

“Sample as received is in the form of grayish plastic cut bits of irregular shape & sizes. It is composed of polyethylene (**LDPE**) (Single thermoplastic). Whether scrap/waste/hazardous could not ascertained. It is **other than LLDPE Agglomerates**. Ash Content 9.4% by wt”

**Test Report No. SIIB-144 dated 11.02.2022 pertaining to Test Memo No. 171 dated 05.02.2022.**

“The sample as received is in the form of dirty brownish yellow **plastic lumps** of irregular shape and size. It is composed of polymeric material based on Polyethylene.”

Therefore, I find that test results in respect of the samples sent to CRCL Kandla have confirmed that a part of the cargo was other than LLDPE Agglomerate and accordingly I find that there exists mis-declaration to the above extent on part of the importer while filing the Bill of Entry No. 1001430 dated 01.02.2022.

**17.** I have also gone through the voluntary statement of Shri Rahul Chetan Mehta, Proprietor of the importer firm namely M/s Worldwide Exim Overseas Network recorded on 03.03.2022. I find that during the course of recording of his statement on 03.03.2022, Shri Rahul Chetan Mehta had also accepted that the whole cargo imported under Bill of Entry No. 1001430 dated 01.02.2022 was not LLDPE Agglomerates.

**18.** I find that, the SEZ Unit had declared the entire goods as LLDPE Agglomerates classifying them under 39011010. Whereas, based on examination proceedings and lab test results, the details of imported goods along with quantity are as tabulated below:

**Table-III**

<b>Sr. No.</b>	<b>Test Memo No. (all dated 05.02.2022)</b>	<b>Declared description and Classification</b>	<b>Description/ Classification as per examination proceedings and Lab test results</b>	<b>Quantity found during examination</b>
1	165	LLDPE Agglomerates 39011010	As declared	--
2	166	LLDPE Agglomerates 39011010	<b>LDPE (cut bits) 39011020</b>	<b>152bags x 25kg = 3800 kg</b>

3	167	LLDPE Agglomerates 39011010	As declared	
4	168	LLDPE Agglomerates 39011010	As declared	
5	169	LLDPE Agglomerates 39011010	As declared	
6	170	LLDPE Agglomerates 39011010	As declared	
7	171	LLDPE Agglomerates 39011010	<b>Others 39011090</b>	<b>115 bags x 25kg =2875 kg</b>

**19.** I find that, it is evident from the Test Reports submitted by CRCL Kandla that the samples of goods sent under Test Memo Nos. 166 & 171 were found to be other than LLDPE Agglomerates and therefore they merit classification as LDPE (CTH-39011020) and Others (CTH-39011090) respectively instead of CTH39011010 for LLDPE as declared by the importer in the above referred Bill of Entry dated 01.02.2022. Thus, relying upon the CRCL Kandla Test Reports, preliminary findings during the examination proceedings conducted by the Officers of SIIB, CH Mundra and the admittance of Shri Rahul Chetan Mehta, Proprietor of the importer firm namely M/s Worldwide Exim Overseas Network, I hold that a part of the cargo imported under Bill of Entry No. 1001430 dated 01.02.2022 was mis-declared as shown below (**Table-IV**):- .

**Table-IV**

<b>Sr. No.</b>	<b>Declared description as per BE No.1001430 dated 01.02.2022</b>	<b>Classification as per BE No. 1001430 dated 01.02.2022</b>	<b>Description as per examination proceedings and Lab test results</b>	<b>Classification as per examination proceedings and Lab test results</b>	<b>Quantity found during examination</b>
1	LLDPE Agglomerates	39011010	LLDPE Agglomerates	39011010	15845 kg (found as declared)
2			LDPE (pellets/ cut bits)	39011020	3800 kg <b>(mis- declared)</b>
3			Lumps-Others	39011090	2875 kg <b>(mis- declared)</b>
<b>Total</b>					<b>22500 Kgs</b>

Thus, I find that out of the total 22520 Kgs of goods declared as LLDPE Agglomerates, 3800 Kg of goods were found to be LDPE falling under CTH

39011020 and 2875 Kg of goods were found to be Lumps-Others falling under CTH 39011090. Therefore, total goods amounting to 6675 Kg valued at Rs.3,78,772/- [@ Rs. 56.475/- per Kg] were mis-declared and mis-classified.

**20.** I have also gone through the defense reply filed by the SEZ Warehousing Unit namely M/s Sunrise International (Unit-II) and the actual importer firm namely M/s Worldwide Exim Overseas Network both dated 23.04.2024. I find that both the defense replies are almost identical and the noticee firms have denied all the allegations levelled in the SCN and they have maintained that the goods were correctly declared in all material particulars and thus the same are not liable for confiscation under Section 111(f) and 111(m) of the Customs Act, 1962. It is also their submission that the alleged variation in the shape of goods neither renders the goods liable for confiscation as there is no restriction or prohibition for import of the same. It has also been contended by them that despite the alleged change in the nature of goods, the goods remain to be classified under CTH 3901 and do not entail any liability of differential duty or violation of any restriction and therefore the said violation cannot be said to be a material particular for the purpose of section 111 of the Customs Act, 1962 and accordingly the goods cannot be held liable for confiscation. As regards imposition of penalty u/s 112 of the Customs Act, 1962 they have contended that the SCN issued to them does not allege that the goods are prohibited or restricted for import in any manner and further there is no demand for differential duty and therefore no penalty under section 112 of the Customs Act, 1962 can be imposed on them.

21. As regards, the imposition of penalty u/s 117 of the Act *ibid* is concerned, they have contended that the SCN has ignored the fact that the provisions of section 112 have been invoked and thus the provisions of section 117 which are residuary provisions have been wrongly invoked as the same can be invoked only if no specific provision is invoked. It has been submitted by them that the SCN has invoked provisions of section 117 on the ground of mis-declaration which clearly confirms that the contravention is covered under the specific provisions and thus the residual provisions of law have been invoked erroneously.

**CONFISCATION OF GOODS UNDER SECTION 111(f) AND 111(m) OF CUSTOMS ACT, 1962**

**22.1** I find that the defense reply submitted by the noticees is not tenable under law and I find them to be made with a perceived narrow interpretation of the

statutory provisions of the Customs Act, 1962. As far as the confiscation of goods u/s 111(f) and 111(m) of the Act *ibid* is concerned, I find that the above provisions have been rightly invoked in the subject show cause notice in as much as a part of the goods were not found to be as declared (LLDPE Agglomerates) in the Bill of Entry No. 1001430 dated 01.02.2022 as discussed *supra* in Para 14 to 19 above. The fact that the description and nature of goods were not in accordance with the particulars mentioned in the above referred Bill of Entry has also been admitted by Shri Rahul Chetan Mehta, Proprietor of the importer firm namely M/s Worldwide Exim Overseas Network recorded on 03.03.2022. The Test Reports submitted by CRCL, Kandla have yet again endorsed the fact that total goods amounting to 6675 Kg valued at Rs.3,78,772/- [@ Rs. 56.475/- per Kg] were mis-declared and mis-classified (3800 Kg of goods were found to be LDPE falling under CTH 39011020 and 2875 Kg of goods were found to be Lumps-Others falling under CTH 39011090).

**22.2** In context of the above, I find it prudent to reproduce verbatim the relevant text of section 111(f) and 111(m) of the Customs Act, 1962, as under:-

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

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

***(a)*** -----

***(b)*** -----

-----

***(f) any dutiable or prohibited goods required to be mentioned under the regulations in an arrival manifest or import manifest or import report which are not so mentioned;***

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***(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 trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54;***

**22.3** Thus, I find that as that total goods amounting to 6675 Kg valued at Rs.3,78,772/- [@ Rs. 56.475/- per Kg] were mis-declared and mis-classified (3800 Kg of goods were found to be LDPE falling under CTH 39011020 and 2875 Kg of goods were found to be Lumps-Others falling under CTH 39011090), in view of the provisions as stipulated under section 111(f) and 111(m) of the Customs Act, 1962, the same are liable for confiscation under the above referred statutory provisions. I

would also like to place my reliance on the judgment in the case of **CC Mumbai vs. Multimetal Ltd-2002 (Tri-Mumbai)** wherein the Hon'ble Tribunal has held that "*when misdeclaration is established, goods are liable for confiscation, irrespective of whether there was malafide or not*". The said judgment passed by learned Tribunal has been upheld by the Hon'ble Apex Court in **2003 ELT A 309 (SC)**.

**IMPOSITION OF PENALTY UNDER SECTION 112 AND 117 OF THE CUSTOMS ACT, 1962**

**22.4** I find that the act of omission and commission on part of the noticees as discussed in the foregoing paragraphs in as much as total goods amounting to 6675 Kg valued at Rs.3,78,772/- [ @ Rs. 56.475/- per Kg] were found to be mis-declared and mis-classified (3800 Kg of goods were found to be LDPE falling under CTH 39011020 and 2875 Kg of goods were found to be Lumps-Others falling under CTH 39011090) has rendered the goods liable for confiscation in terms of section 111(f) and 111(m) of the Customs Act, 1962 and accordingly I hold that the noticees are liable to be penalized under section 112 and 117 of the Act, *ibid*.

**23.** In view of the above discussion and findings, I hereby pass the following order-

- i. I reject the declared classification of 3800 Kg of the imported goods declared as "LLDPE Agglomerates" under Customs Tariff Item 39011010 of the Customs Tariff Act, 1975, in the Bill of Entry no. 1001430 dated 01.02.2022 and I further order to re-classify them as "LDPE (cut bits/ pellets)" under Customs Tariff item 39011020.
- ii. I reject the declared classification of 2875 Kg of the imported goods declared as "LLDPE Agglomerates" under Customs Tariff Item 39011010 of the Customs Tariff Act, 1975, in the Bills of Entry no. 1001430 dated 01.02.2022 and I further order to re-classify them as "Lumps-Others" under Customs Tariff item 39011090.
- iii. I hereby order to confiscate the goods seized during the course of Panchnama proceedings dated 05.02.2022 lying presently at

the premises of M/s Sunrise International (Unit-II), Shed No. 306-307, Sector-III, KASEZ, Gandhidham having value of **Rs.3,78,772/-** (Rupees Three Lakhs Seventy Eight Thousand Seven Hundred and Seventy Two only) as shown at Sr. No. 2 and 3 of Table-II above under the provisions of section 111(f) & section 111(m) of the Customs Act, 1962.

- iv. However, the noticees are also given an option of redemption of goods on payment of **Rs.1,00,000/-** (Rupees One Lakh Only) under the provisions of section 125 of the Customs Act, 1962.
- v. I impose penalty of **Rs. 10,000/-** (Rupees Ten Thousand Only) on M/s. Worldwide Exim Overseas Network under section 112(ii) of the Customs Act, 1962.
- vi. I impose Penalty of **Rs.10,000/-** (Rupees Ten Thousand Only) upon M/s Sunrise International (Unit-II) under Section under Section 112(ii) of the Customs Act, 1962.
- vii. I impose Penalty of **Rs.20,000/-** (Rupees Twenty Thousand Only) under Section 117 of the Customs Act, 1962 upon M/s Sunrise International and M/s Worldwide Exim Overseas Network, separately.
- viii. I order to enforce the Bond-cum-Legal Undertaking in Form-H furnished by M/s Sunrise International (Unit-II) towards liabilities arising out of subject goods which were mis-declared at the time of importation.

24. This order is issued without prejudice to any action that can be taken against SEZ Unit/Noticees or any other person under this Act, SEZ Act or any other act for the time being in force.

**(Vishwajeet Singh)**  
Commissioner (In-Situ)  
Custom House, Kandla.

F. No. GEN/ADJ/ADC/490/2023-Adjn-O/o Commr-Cus-Kandla

**To:**

1. M/s. Sunrise International (Unit-II)  
Shed No. 306-307, Sector-III,  
Kandla Special Economic Zone,  
Gandhidham, Kutch
2. M/s Worldwide Exim Overseas Network,  
208 Bharat Chamber, 52/C, Baroda Street,  
Musjid Bunder East, Mumbai,  
Maharashtra 400009

**Copy To-**

- (a) The Deputy/Assistant Commissioner (SIIB/RRA/TRC/EDI) for necessary action.
- (b) Guard File.