



**OFFICE OF THE PRINCIPAL
COMMISSIONER OF CUSTOMS
CUSTOMS HOUSE, MP & SEZ
MUNDRA, KUTCH-GUJARAT -370421
PHONE : 02838-271426/271428
FAX :02838-271425**



A	File No.	CUS/APR/BE/MISC/757/2023-Gr 5-6-O/o Pr Commr-Cus-Mundra
B	OIO No.	MCH/ADC/MK/109/Gr-V/2023-24
C	Passed by	Mukesh Kumari, Additional Commissioner (Import), Custom House, Mundra.
D	SCN No. & Date	The importer requested for waiver in PH/SCN vide letter dated 08.06.2023
E	Noticee / Party / Importer	M/s. Mauria Enterprises, Statesman House, Fourth Floor, Barakhamba Road, New Delhi-110001
F	DIN	20230771MO0000000C69A

1. The Order – in – Original is granted to concern free of charge.
2. Any person aggrieved by this Order – in – Original may file an appeal under Section 128A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. 1.

The Commissioner of Customs (Appeal), MUNDRA,
Office at 7th floor, Mridul Tower, Behind Times of India,
Ashram Road Ahmedabad-380009

3. Appeal shall be filed within Sixty days from the date of Communication of this Order.
4. Appeal should be accompanied by a Fee of Rs.5/- (Rupees Five Only) under Court Fees Act it must accompanied by (i) copy of the Appeal, (ii) this copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs.5/- (Rupees Five Only) as prescribed under Schedule – I, Item 6 of the Court Fees Act, 1870.
5. Proof of payment of duty / interest / fine / penalty / deposit should be attached with the appeal memo.
6. While submitting the appeal, the Customs (Appeals) Rules, 1982 and other provisions of the Customs Act, 1962 should be adhered to in all respect.
7. An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty or Penalty are in dispute, where penalty alone is in dispute.

Brief Facts of the Case

M/s. Mauria Enterprises, Statesman House, Fourth Floor, Bara-Khamba Road, New Delhi – 110001 had filed a Bill of Entry No. 3325194 dated 16-11-2022 for import of Extension Board Different Configurations (3 Way, 4 Way, 5 Way, 6 Way); Mini Torch, Plastic Large Torch, Plastic Small Torch. The importer has declared the goods as “Plastic Torch – Large, Plastic Torch – Medium, Mini Torch, Plastic Torch – Small” from China (Port - CNSHK).

2. The case issue initiated with the receipt of NCTC Alert through email dated 17-11-2022. The information/intelligence is narrated hereunder:

- i. *The total declared assessable value of the consignment is ₹ 12,92,531/- and total declared duty is ₹ 4,00,426/- contained in Container No. WHSU5451135 appears to be too low for the containers.*
- ii. *Previous import of BE No. 8354423 dated 20-04-2022 filed at INBOM1 flagged as risky consignment for misdeclaration, concealment and non-compliance of BIS concluded with adjudication vide O-I-O No. 56/ADC/RM/2022-23 GR VB dated 01-07-2022 with the importer paid differential duty, fine and penalty in terms of the order. The goods were found imported without BIS was absolutely confiscated and ordered re-export.*
- iii. *Thus, BE No. 3325194, also appears to be a highly risky consignment in relation to misdeclaration/concealment in addition to non-compliance of BIS requirements. The GSTIN of importer is 07ABOFM3483E1Z1, effective from 20-08-2020.*
- iv. *The CHA – M/s JMD International is also a risky CHA as per the NCTC analysis.*
- v. *RMS has also prescribed 100% examination of the consignment for concealment and misdeclaration.*
- vi. *NCTC analysis of past seizures have revealed that, in similar consignments, branded goods and goods without BIS certification have been found in addition to massive undervaluation and misdeclaration with likelihood of concealment of other branded electronic items requiring mandatory BIS certification. Import of such goods without mandatory BIS certification and labelling is prohibited.*
- vii. *Accordingly, a thorough and detailed 100% examination of this consignment and necessary investigation may be carried out.*

3. In view of the NCTC alert, the consignment was placed under hold for examination at Seabird CFS, Mundra. Thereafter, enabling examination of the goods, the entire consignment was de-stuffed by unloading and placing it in the warehouse of the CFS. Examination revealed that the goods under import are 3, 4, 5, 6-Way Extension Boards with ratings of

10A and LED Torch of various sizes. All the products are affixed with a local brand name 'ONLITE'. The details of the goods declared by the importer in Bill of Entry No. 3325194 dated 16-11-2022 are as under:

Description of the goods	Qty (Doz)	Unit Price (USD)	Value in USD	USD Conversion Rate	Declared CIF value (in ₹)	Total Duty (BCD+ SW+ IGST) (in ₹)
3 Way Extension Board	402	5.20	2090.40	83.80	175176	54269
4 Way Extension Board	500	5.60	2800.00	83.80	234640	72691
5 Way Extension Board	530	6.00	3180.00	83.80	266484	82557
6 Way Extension Board	330	6.40	2112.00	83.80	176986	54830
Mini Torch	1034	2.40	2481.60	83.80	207958	64425
Plastic Torch Large	67	10.00	670.00	83.80	56146	17394
Plastic Torch Small	440	4.75	2090.00	83.80	175142	54259
TOTAL					1292531	400426

4. The quantity and weight the goods were found as declared in the import documents; no concealment was observed.

5. Whereas, statement of Shri Vishal Dwivedi, Authorised Representative was recorded on 09-05-2023 under the provisions of Section 108 of the Customs Act, 1962 wherein, he had interalia stated that their torches are basically flash lights operated with rechargeable batteries and BIS is not applicable on such flash lights.

6. Whereas, the importer declared the imported goods in general terms; however, on physical examination, the goods were found torches of different types and are appeared to be of different value. Therefore, as the value declared by the importer appears to be in-correct resulting in mis-declaration of the value (i.e. per unit pricing of the goods) off the cargo, the transaction value declared by the importer under Section 14 of the Customs Act, 1962 appears to be liable for rejection in terms of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods), Rule, 2007.

7. As regards –

a. the applicability of BIS on the product “3,4,5,6-Way Extension Boards with ratings of **10A**”, it is found that in terms of Indian Standard IS1293 : 2019 which provides that –

“Plugs and Sockets-Outlets for Household and Similar Purposes of Rated Voltage up to and Including 250 V and Rated Current up to and Including 16A – Specification”

However, the foreword of the same IS Standard provides “*Deletion of 10A current ratings in Table 2 – Preferred combination types and ratings*”. Since, the referred IS Standard has specifically deleted 10A current ratings, BIS will not be applicable on the Extension Boards which are marked as **10A ratings**.

b. the applicability of BIS on the Torches are concerned, it is to submit that Plastic Torch falls under the category of flashlights and not luminaire. Flashlights are covered under IS 2083 which does not warrant any requirement of mandatory BIS Certification.

8. In order to analyse the valuation of the goods, the goods were inspected by the Empanelled Chartered Engineer (CE) Shri Anwar Y. Kukar and the valuation submitted by the CE vide his report Ref. AYK:VAL: 01882 : 2023 dated 09-05-2023 is reproduced hereunder along with the applicable duty in terms of the enhanced valuation:

Description of the goods	Qty (Doz)	Rate per Doz (in ₹)	Rate as per CE	Value declared (in ₹)	Value as per CE (in ₹)	Duty as per declared value (BCD +SWS+IGST)	Re-assessed duty (BCD+ SWS+IGST)
Extension Boards:							
3 Way	402	435.8	576.28	175176	231665	54269	71770
4 Way	500	469.3	620.60	234640	310300	72691	96131
5 Way	530	502.8	664.93	266484	352413	82557	109178
6 Way	330	536.3	709.26	176986	234056	54830	72510
Torches:							
Mini	1034	201.1	425.00	207958	439450	64425	136142
Plastic Large	67	838	1108.22	56146	74251	17394	23003
Plastic Small	440	398.1	526.40	175142	231616	54259	71755
TOTAL					1873750	400426	580488

--	--	--	--

9. Further, DGFT Notification No.44(RE-2000)/1997-2002 dated 24.11.2000 provides for labelling of the goods imported into India which are covered by the provisions of 'Standards of Weights & Measures (Packaged Commodities) Rules, 1977'. This Notification mandates that compliance of labelling conditions have to be ensured before the import consignment of such commodities are cleared by Customs for home consumption. The goods imported under above Bill of Entry attract the provisions of the above Notification. However, the importer have not complied the same.

10. In view of the above, it is evident that the importer has mis-declared the assessable value of the imported goods in the said Bills of Entry 3325194 dated 16-11-2022. Moreover, the importer has not complied with the conditions of the DGFT Notification No.44 (RE-2000)/1997-2002 dated 24-11-2000. Therefore, the goods imported vide Bills of Entry No. 3325194 dated 16-11-2022 are liable for confiscation under Section Section 111(m) of the Customs Act, 1962.

Legal Provisions:

11. The relevant provisions of law pertaining to import of goods in general, the policy & rules relating to imports, the liability of the goods to confiscation and the persons concerned to penalty for illegal importation under provisions of Customs Act, 1962 and the other laws for the time being in force are summarized as under:

Section 2(25) defined the terms "Import Goods":

"Imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption.

Section 2(33) in the Customs Act, 1962

(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported, have been complied with;

Section 17(1) of the Customs Act, 1962

provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry. Under this mode of self-

assessment, the bill of entry was self-assessed by importer, with regard to correctness of classification, value, rate of duty, exemption notification or any other relevant particular having bearing on correct assessment of duty on import.

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, relating to the imported goods.

[(4A) the importer who presents a bill of entry shall ensure the following, namely:

- (a) The accuracy and completeness of the information given therein;
- (b) The authenticity and validity of any document supporting it; and
- (c) Compliance with the restriction or prohibition, if any, relating to the goods under this Act or under any other law for the time being in force.]

Section 110 of the Customs Act, 1962

provides for Seizure of goods, documents and things. - (1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods.

Section 111 of the Customs Act, 1962

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

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;

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

Any person,-

- a. who, in relation to any goods, does or omits to do any act which act or

omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111, shall be liable,-

- i. *in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;*
- 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 shall be twenty-five per cent. 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 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.*

Outcome of the investigation:

12. The Importer M/s. Mauria Enterprises, Statesman House, Fourth Floor, Barakhamba Road, New Delhi – 110001 had filed Bill of Entry No. 3325194 dated 16-11-2022 through their CHA M/s. Rajasthan Container

I/1274148/2023

Service for import of Extension Boards falling under CETH 85369090 and Torches falling under CTH-85131010.

13. The importer vide letter dated 22-05-2023 –

- agreed to re-assessment of said bill of entry;
- request permission to carry out labelling in terms of the conditions laid down in DGFT Notification No.44 (RE-2000)/1997-2002 dated 24-11-2000;
- requested not to issue SCN as they are ready to pay the applicable duty, fine and penalty and;
- they do not require any personal hearing in the case.

14. Whereas, the importer had filed the Bill of Entry under Section 46(4) of the Act, which emits an obligation on the importer to ensure accuracy of the declaration and authenticity of the documents supporting such declaration. As it appears that the Importer M/s. Mauria Enterprises has mis-declared the assessable value of the imported goods, the Bill of Entry No. 3325194 dated 16-11-2022 is required to be reassessed at the enhanced value furnished by the CE as reproduced above in Para and the importer is liable to discharge the duty on the applicable value. Moreover, the importer has not complied with the conditions of the DGFT Notification No.44 (RE-2000)/1997-2002 dated 24-11-2000 thus, the goods imported under Bill of Entry No. 3325194 dated 16-11-2022 are liable for confiscation under Section 111(d) and 111(m) of the Customs Act, 1962. Resultant, the importer has also rendered themselves for penal action under Section 112 of Customs Act 1962.

15. In view of the above, it is requested to take necessary adjudication procedure/actions for the live cargo as per the Customs Act, 1962. Outcome of the recoveries made may please be intimated to this office.

RECORDS OF PERSONAL HEARING & WRITTEN SUBMISSION

16. The importer Vide letter dated 08.06.2023, has requested for waiver of personal hearing and also requested to adjudicate the matter on merit.

DISCUSSION AND FINDINGS

17. I have carefully gone through the Investigation Report dated 07.06.2023 received from SIIB, Mundra, case records and applicable provisions of law. Vide letter dated 08.06.2023, importer has already

requested for waiver of personal hearing and also requested to adjudicate the matter on merit, I find that the condition of principle of natural justice under Section 122A of the Customs Act, 1962 has been complied with, Hence, I proceed to decide the case on the basis of facts and documentary evidences available on records. The following main issues are involved in Investigation Report, which are required to be decided:

- i. Whether, the confiscation of imported goods as mentioned in **table of Para 3 supra**, found to be undervalued and not to be complied the conditions of the DGFT Notification No.44 (RE-2000)/1997-2002 dated 24-11-2000 covered under Bill of Entry No. 4821602 dated 27.02.2023 is rightly proposed or otherwise. If yes, whether redemption fine is also imposable under Section 125 of the Customs Act, 1962.
- ii. Whether, the imposition of penalty on importer under Section 112 of the Customs Act, 1962 is legitimately proposed or otherwise.

18. I find that the importer has filed Bill of Entry No. 3325194 dated 16.11.2022 for import of various types of Goods. The details of declared goods are mentioned in **Para 3 Supra**.

19. I find that on a specific intelligence, the Cargo of the Bill of Entry was put on hold and examined by the Officers of SIIB, Customs House, Mundra. The goods found in the cargo covered under Bill of Entry No. 3325194 dated 16.11.2022 are various types of goods **(as detailed mentioned in Table of Para 3 supra)**.

20. The applicability of BIS on the product “3,4,5,6-Way Extension Boards with ratings of **10A**”, it is found that in terms of Indian Standard IS1293: 2019 which provides that –

“Plugs and Sockets-Outlets for Household and Similar Purposes of Rated Voltage up to and Including 250 V and Rated Current up to and Including 16A – Specification”

However, the foreword of the same IS Standard provides “*Deletion of 10A current ratings in Table 2 – Preferred combination types and ratings*”. Since, the referred IS Standard has specifically deleted 10A current ratings, hence, I find that BIS is not applicable on the Extension Boards which are marked as **10A ratings**.

20.1 Further, the applicability of BIS on the Torches are concerned, I find

I/1274148/2023

that Plastic Torch falls under the category of flashlights and not luminaire. Flashlights are covered under IS 2083, which does not warrant any requirement of mandatory BIS Certification (not included in the list of products under compulsory certification).

21. Further, I find that declared value of the imported goods appears to be low. During examination, it was also found that importer has not fulfilled the compliance of Notification No. 44 (RE-44)/1997-2002 dated 24.11.2000. For the valuation, the goods were inspected by the Empaneled Chartered Engineer

Shri Anwar Y Kukar vide his report Ref. No. AYK:VAL:01882:2003 dated.09.05.2023 has submitted the valuation report of the goods as per the market survey. As per the CE report, the re-assessed value calculated is Rs. 18,73,750/-.

21.1 In view of above, I find that the importer has mis-declared the assessable value of the imported goods covered under Bill of Entry No. 3325194 dated 16.11.2022. Thus, the transaction values of above said Bill of Entry declared by the importer under Section 14 of the Customs Act, 1962 are liable to be rejected as per Rule 12 of the Customs Valuation (Determination of Value of Imported Goods), Rule, 2007 and the same are re-determined as per valuation report of CE.

22. Further, I find that it was proposed in Investigation Report that the goods are liable for confiscation under Section 111(d) & 111(m) of Customs Act, 1962. However, the Section 111(d) provides for confiscation of goods which are imported /attempted to be imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force. The importer has not fulfilled the compliance of Notification No. 44 (RE-44)/1997-2002 dated 24.11.2000. Therefore, I find that the impugned goods are liable for confiscation under Section 111(d) of Customs Act, 1962.

Further, the Section 111(m) provides for confiscation of any goods which do not correspond in respect of value or in any other particular with the entry made under this Act. I find that the goods were mis-declared in terms of value. I therefore hold that the goods are liable for confiscation under section 111(m) of the Customs Act, 1962.

23. Hence, in view of above discussion, I pass following order:

Order

24. I reject the declared assessable value of Rs.12,92,531/- of bill of entry no. 3325194 dated 16.11.2022 under Rule 12 of the Customs Valuation (Determination of Price of imported Goods) Rules, 2007 and the same is re-determined as Rs.18,73,750/- as per valuation report of Empaneled Chartered Engineer. I order to re-assess the above said Bill of Entry accordingly.

25. I order to confiscate the offended goods covered under above said Bill of Entry No. 3325194 dated 16.11.2022 under section 111(d) & 111(m) of the Customs Act, 1962, however, I give option to the importer to redeem the confiscated goods on payment of Rs. 2,00,000/- (Rupees Two Lakh Only) under Section 125 of Customs Act, 1962.

26. I impose a penalty of Rs.1,00,000/- (Rupees One Lakh Only) on the importer M/s Mauria Enterprises under Section 112 (a)(i) of the Customs Act, 1962.

27. Compliance of the Notification No. 44 (RE-2000)/1997-2002 dated 24.11.2000 to be ensured before clearance of the goods by the Docks Examining Officials.

28. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person in terms of any provision of the Customs Act, 1962 and/or any other law for the time being in force.

Signed by
Mukesh Kumari
Additional Commissioner of Customs
Date: 04-07-2023 16:05:30
Custom House Mundra

BY REGD. POST A.D/HAND DELIVERY

To,

**M/s Mauria Enterprises,
statesman house, fourth floor,
barakhamba road new delhi-11001**

I/1274148/2023

Copy to:-

1. The Deputy Commissioner of Customs (RRA/TRC), Custom House, Mundra.
2. The Deputy Commissioner of Customs (SIIB), Custom House, Mundra.
3. Guard File.