

	<p>OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOMS HOUSE, MP & SEZ MUNDRA, KUTCH-GUJARAT -370421 PHONE : 02838-271426/271428 FAX : 02838-271425</p>	
A	File No.	CUS/APR/BE/MISC/759/2023-Gr 5-6-O/o Pr Commr-Cus-Mundra
B	OIO No.	MCH/ADC/MK/90/2023-24
C	Passed by	Mukesh Kumari, Additional Commissioner (Import), Custom House, Mundra.
D	SCN No. & Date	Importer requested for waiver in PH/SCN vide their letter dated 07.06.2023
E	Noticee / Party / Importer	M/s. Ctipker Solutions Private Limited (IEC- AAKCC1494P), 1-Enclave, Prem Nagar, Ph-2, House No. 6, Block-U-1, Dharam, New Delhi -110086
F	DIN	20230671M0000000C492

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.



**OFFICE OF THE PRINCIPAL COMMISSIONER
OF CUSTOMS
CUSTOMS HOUSE, MP & SEZ
MUNDRA, KUTCH-GUJARAT -370421
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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. Ctipker Solutions Private Limited (IEC- AAKCC1494P), 1-Enclave, Prem Nagar, Ph-2, House No. 6, Block-U-1, Dharam, New Delhi - 110086, filed Bill of Entry No. 5941417 dated 13.05.2023 through their CHA M/s. Anon Global Logistics. (CHA Code AICPB2600FCH001) for import of Moulding Machine Set [84778090], Plastic Gear [39269099], Plastic Nozzle [96161020].

2. On the basis of the intelligence gathered by the SIIB the aforesaid Bill of Entry was put up on hold and the examination of goods was carried out on 23.05.2023. The goods/cargo of the said bill of entry was stuffed in a 40' Containers, the details of the Bill of Entry are as under.

Sr. No.	Description of Goods	Unit	Total qty. Pieces/Kgs	Ass. Value (USD)	Ass. Value (Rs.) [USD=82.60 INR]	Declared Duty Payable as per B/E (Rs.)
1	Moulding Machine Set	Pcs	10	20.00	1652	458
2	Plastic Gears	Kgs	4941.82	1800.00	148680	55710
3	Plastic Nozzle	Kgs	3630.00	2904.00	239870	105447
Total				4724.00	390202	161615

2.1. During the examination, it is observed that the goods Plastic Gears found to be Pullback Mechanism Part of Non-Electric Toy Cars and the Moulding Machine Set appears to be grossly undervalued. Accordingly, the goods were examined by the Chartered penal Engineer during the examination, the CE informed that the machines are Sections of Molding Machines, Compressor, Conveyor, Plastic Granule Grinder, Compressed Air Tank, Blender, Controls, Air inlet mesh & frames.

3. The importer has declared the imported goods i.e. Plastic Gear under CTH 39269099; whereas, the relevant part of Chapter Sub-heading 3926 read as under:

HSN Code	Description
3926	- Other Articles Of Plastics And Articles Of Other Materials Of Headings 3901 To 3914
3926 90	- Others

39269099	-	Other
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3.1 Whereas, CTH 9503 reads as under:

HSCN Code		Description
9503	-	TRICYCLES, SCOOTERS, PEDAL CARS AND SIMILAR WHEELED TOYS; DOLLS' CARRIAGES; DOLLS; OTHER TOYS; REDUCED-SIZE ("SCALE") MODELS AND SIMILAR RECREATIONAL MODELS, WORKING OR NOT; PUZZLES OF ALLKINDS
950300	-	Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls; other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds
	---	Parts
95030091	----	Of Electronic Toys
95030099	----	Others

3.2 Going through the above, it appears that the Chapter Sub-heading 3926 covers other articles of plastic. However, the goods i.e. Plastic Gears are found to be 'Pullback Mechanism Part of Non-Electric Toy Cars' i.e. part of Non-electric Toys. As mentioned above, Toys are classified under Chapter 95 of the Customs Tariff Act, 1975 and the Non-electric toys and parts thereof are classifiable under CTH 95030099.

4. Further, the importer has declared unit price of the 10 Machines/Machine parts of Molding Machine set as USD 02 each machine, which appears to be grossly undervalued and also as confirmed by the CE during the examination.

5.1 As the goods in the cargo i.e. Plastic Gears appear to be mis-declared and mis-classified and further, the goods i.e. the Moulding Machine Set apparently appeared to be grossly undervalued. Therefore, the transaction value declared by the importer under Section 14 of the Customs Act, 1962 appear liable to be rejected as per Rule 12 of the Customs Valuation (Determination of Value of Imported Goods), Rule, 2007 due to mis-declaration observed during examination.

5.2. Further, it also appears that in terms of Rule 3 (3) of the said rules,

the value has to be re-determined by proceeding sequentially under the said Rules. In the instant case, the value of imported goods could not be determined in terms of Rule 4 (Transaction value of identical goods) and Rule 5 (Transaction value of similar goods), as the goods under import could not be compared with similar goods in the absence of exact description and quality of the goods in terms of design, sizes etc. The value of the goods under import could not be determined, considering the cost of production, profit margin etc. as per Rule 7 (Deductive Value) and Rule 8 (Computed Value) of the Customs Valuation (Determination of Value of Imported Goods), Rule, 2007, as the goods have not been manufactured in India and enquiries at the back end is not possible. Thus, the value of impugned goods merit to be re-determined under residual method i.e. Rule 9 of the said Rules by conducting market inquiry to ascertain the fair value.

5.3 Therefore, the valuation of goods is determined under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods), Rule, 2007 using reasonable means consistent with the principles and general provisions of these Rules and therefore, opinion of the Chartered engineer was taken by way of market research. The Chartered Engineer vide their reports No. CE/TZ/MUN/JUN-004/2023-24 dated 26.05.2023 submitted as under:

Sr. No.	Description of items as per the Declaration	Qty in Units as per BE	Evaluated CIF value by the CE in USD	Declared Invoice CIF value in USD	CE Remark
1	Moulding Machine Set	10 Nos	12,000 (1200 per Nos)	20 (2 per Nos)	New Items
2	Plastic Gear (1800000 Psc)	4941.82 Kgs	1,800 (0.364 per Kgs)	1,800 (0.364 per Kgs)	New Items
3	Plastic Nozzle (1452000 Pcs)	3630 Kgs	2,904 (0.364 per Kgs)	2,904 (0.364 per Kgs)	New Items
	Total		16,704	4,724	

6. In the context of this case, the following legal provisions are reproduced:

Section 46: *Entry of goods on importation. – “(1) The importer of any goods, other than goods intended for transit or trans-shipment, shall make entry*

thereof by presenting electronically to the proper officer a Bill of Entry for home consumption or warehousing in the prescribed form:

Provided that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a Bill of Entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(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.”

Section 111(m): any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 [in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54].

Section 112-Penalty for improper importation of goods, etc. - Any person - (a) - who in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

SECTION 14. Valuation of goods. - (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the rules made in this behalf:

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the

extent and in the manner specified in the rules made in this behalf:

Provided further that the rules made in this behalf may provide for,-

- (i)
- (ii)
- (iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section:

Provided also that such price shall be calculated with reference to the rate of exchange as in force on the date on which a Bill of Entry is presented under section 46, or a shipping bill of export, as the case may be, is presented under section 50.

- (2)

Customs Valuation (Determination of Value of Imported Goods) Rules, 2007; Notification No. 94/2007 - Customs (N.T.)

Rule 2. Definitions-(d) "identical goods" means imported goods –

- (i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods;
- (ii) produced in the country in which the goods being valued were produced; and
- (iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person,

but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;

Rejection of declared value. -

(1) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, after receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of sub-rule (1) of rule 3.

(2) At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a

reasonable opportunity of being heard, before taking a final decision under sub-rule (1).

Explanation. -(1) For the removal of doubts, it is hereby declared that:-

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) the non-declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents.

7. In terms of section 46 (4) of Customs Act 1962, the importers of any goods are required to declare correct details/particulars in bill of entry being filed by them. Further in terms of section 46 (4A) of Customs Act 1962, importer who presents a bill of entry shall ensure-

- a. The accuracy and completeness of the information given therein.
- b. The authenticity and validity of any document supporting it.
- 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.

8. In the instant case, the importer had filed the bill of entry with incorrect particulars as discussed above. Therefore, the said goods i.e. 'Part of Non-Electric Toy Cars' and 'Molding Machine Set' are liable for

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confiscation under Section 111 (m) of Customs Act 1962. Accordingly, the goods have been seized under Section 110 of the Customs Act, 1962 vide Seizure Memo dated 07.06.2023.

9. The importer vide their letter dated 07.06.2023 gave their consent for re-assessment of the Bill of Entry under Correct CTH and on the enhanced value and requested for the waiver of SCN/PH.

10. As the importers have imported Pullback Mechanism Part of Non-Electric Toy Cars by mis-declared and mis-classified the same as Plastic Gear under CTH 3926 and further, the goods i.e. the Moulding Machine Set are grossly undervalued as per the self-assessment done by the Importer, therefore rendered themselves liable for penal action under the provisions of Section 112 (a) of Customs Act, 1962.

RECORDS OF PERSONAL HEARING & WRITTEN SUBMISSION

11. The importer vide their letter dated 12.06.2023 submitted that they are ready to pay of differential duty and they do not want any SCN and personal hearing in the case.

DISCUSSION AND FINDINGS

12. I have carefully gone through the Investigation Report as well as facts of the case available on records. The importer vide letter dated 12.06.2023 requested for waiver of Personal Hearing and Show Cause Notice. Thus, I find that principle of natural justice as provided in Section 122A of the Customs Act, 1962 have been complied with and therefore, I proceed to decide the case on the basis of 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 the goods imported vide Bill of Entry No. 5941417 dated 13.05.2023 under Section 111(m) of the Customs Act, 1962, is rightly proposed or otherwise. If yes, whether redemption fine is also imposable under Section 125 of the Customs Act, 1962 if goods are redeemed for clearance purpose.
- ii. Whether the imposition of penalty on Importer M/s. Ctipker Solutions

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Private Limited under Section 112(a) of the Customs Act, 1962 is legitimately proposed or otherwise.

12.1 I find that M/s. Ctipker Solutions Private Limited (IEC-AAKCC1494P), 1- Enclave, Prem Nagar, Ph-2, House No. 6, Block-U-1, Dharam, New Delhi -110086, filed Bill of Entry No. 5941417 dated 13.05.2023 through their CHA M/s. Anon Global Logistics. (CHA Code AICPB2600FCH001) for import of Moulding Machine Set [84778090], Plastic Gear [39269099], Plastic Nozzle [96161020]. The details of the Bill of Entry are as mentioned below:

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Total				4724.00	390202	161615

12.2 I find that as per intelligence gathered by the SIIB, the aforesaid Bill of Entry was put up on hold and the examination of goods was carried out on 23.05.2023. During the examination, it is observed that the goods Plastic Gears found to be Pullback Mechanism Part of Non-Electric Toy Cars and the Moulding Machine Set appears to be grossly undervalued.

12.3 I find that the importer has declared the imported goods i.e. Plastic Gear under CTH 39269099. The Chapter sub-heading 3926 covers others articles of plastic. However, the goods i.e. Plastic Gears are found to be "Pullback Mechanism Part of Non-Electric Toy Cars" which should be classified under Chapter 95 of the Customs Tariff Act, 1975. Therefore, I find that the item Non-electric toys part i.e. "Pullback Mechanism" is classifiable under CTH 95030099.

12.4 I find that the importer has declared unit price of the Moulding Machine set 02 USD each machine which appears to be grossly undervalued. Therefore, the transaction value declared by the importer under Section 14 of the Customs Act, 1962 are liable to be rejected as per

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Rule 12 of the Customs Valuation (Determination of Value of Imported Goods), Rule, 2007 due to mis-declaration observed during examination. I also find that the value of the goods shall be re-determined under Rule 9 of the Customs Valuation (Determination of Value of Imported Goods), Rule, 2007 as discussed and suggested by the SIIB in para 5.2 & 5.3 above. The details of the re-determined value as per Investigation report and valuation report No. CE/TZ/MUN/JUN-004/2023-24 dated 26.05.2023 submitted by the Chartered Engineer vide their reports No. CE/TZ/MUN/JUN-004/2023-24 dated 26.05.2023 are as mentioned below:

Sr. No.	Description of items as per the Declaration	Qty in Units as per BE	Evaluated CIF value by the CE in USD	Declared Invoice CIF value in USD	CE Remark
1	Moulding Machine Set	10 Nos	12,000 (1200 per Nos)	20 (2 per Nos)	New Items
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	Total		16,704	4,724	

The details of the differential duty and differential Assessable value are as mentioned below:

BoE No./Date	Ass. Value (declared)	Ass. Value (As per Investigation Report)	Difference of Ass. Value	Duty (Declared)	Duty (as per Investigation Report)	Difference of Duty
5941417 / 13.05.2023	3,90,202/-	13,79,750/-	9,89,548/-	1,61,615/-	5,42,209/-	3,80,594/-

12.5 I find that the importer has mis-declared the impugned goods imported vide 5941417 dated 13.05.2023 in terms of the valuation and Classification. The Section 111(m) provides for confiscation of any goods which do not correspond in terms of valuation or in any other particular with the entry made under this Act. I therefore, hold that mis-declared goods in terms of valuation and Classification, having re-determined value of Rs. 13,79,750/- against B/E No. 5941417 dated 13.05.2023 are liable for confiscation under Section 111(m), of Customs Act, 1962.

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12.6 I find that the importer has agreed with the valuation report submitted by the Chartered Engineer and has agreed for re-assessment of the aforesaid Bill of Entry under correct CTH and ready to pay the differential duty along with applicable fine & penalty and requested for waiver of SCN and personal hearing in the case.

12.7 Section 125 of the Customs Act, 1962 provides that whenever confiscation of any goods is authorised by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods an option to pay in lieu of confiscation such fine as the said officers thinks fit. Considering these facts, I find it appropriate to grant an option to pay fine under Section 125 of the Customs Act, 1962 in lieu of confiscation of the goods for clearance purpose.

12.8 I find that the goods are mis-declared in terms of the valuation and classification and liable for confiscation under section 111(m) of the Customs Act, 1962. In as much as penalty under Section 112(a)(ii) of Customs Act, 1962 is concerned as goods are found undervalued, I find that by the acts of omission and commission, the importer had rendered himself liable for penalty under Section 112(a)(ii) of the Customs Act, 1962.

Therefore, the proposition of penalty under Section 112(a) (ii) of Customs Act, 1962 on importer M/s. Ctipker Solutions Private Limited, is legitimate and thus, the same is confirmed.

13. In view of the above discussion and findings, I pass the following order:-

ORDER

i. I order to reject the declared value of Rs. 3,90,202/- in the Bill of Entry No. 5941417 dated 13.05.2023 filed by the Importer M/s. Ctipker Solutions Private Limited as per Rule 12 of the Customs Valuation Rule, 2007 and order to re-determine the value as per Rule 9 of Customs Valuations Rules, 2007 as discussed in para 5.2 & 5.3 above. The value of the goods found mis-declared in terms of valuation and classification in the bill of entry no. 5941417 dated

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13.05.2023 to be re-determined as Rs. **13,79,750/-** (*Rupees Thirteen Lakhs Seventy Nine Thousands Seven Hundred Fifty only*).

- ii. I order for confiscation of the goods found mis-declared in terms of valuation and classification having re-determined value of Rs. 13,79,750/- for bill of entry no. 5941417 dated 13.05.2023 under Section 111(m) of the Customs Act, 1962. However, I give an option to the importer to redeem the goods on payment of redemption fine of Rs.1,40,000/- (Rupees One Lac Forty Thousand Only) under Section 125 of Customs Act, 1962 for clearance purpose.
- iii. I order to recover the differential duty of **Rs. 3,80,594/-** against Bill of Entry No. 5941417 dated 13.05.2023 filed by the importer M/s. Ctipker Solutions Private Limited.
- iv. I impose penalty of Rs.38,000/- (Thirty Eight thousand Only) under Section 112(a) (ii) of the Customs Act, 1962 on importer M/s. Ctipker Solutions Private Limited as the importer has mis-declared the goods in terms of valuation and classification in the Bill of Entry No. 5941417 dated 13.05.2023.

14. This order is issued without prejudice to any other action that may be taken in respect of the goods in question and/or against the persons concerned or any other person, if found involved, under the provisions of the Customs Act, 1962, and/or any other law for the time being in force in the Republic of India.

15. The Investigation Report No. S/43-79/SIIB-G/Ctipker/CHM/2023-24 dated 08.06.2023 issued by Dy. Commissioner of Customs, SIIB, Custom House, Mundra, is hereby disposed of.

Signed by

Mukesh Kumar JUMARI

ADDITIONAL COMMISSIONER

Date: 23-06-2023 16:35:49

ADC/JC-I-O/o Pr Commissioner-Customs-Mundra

By RPAD/ By Hand Delivery

To,

M/s. Ctipker Solutions Private Limited (IEC- AAKCC1494P),
1- Enclave, Prem Nagar, Ph-2,
House No. 6, Block-U-1, Dharam, New Delhi -110086

I/1258683/2023

Copy to:

1. The Dy. Commissioner of Customs, SIIB, Mundra Customs.
2. The Dy. Commissioner of Customs, RRA, Mundra Customs.
3. The Dy. Commissioner of Customs, EDI, Mundra Customs.
4. Office Copy.