

	OFFICE OF THE COMMISSIONER
	CUSTOM HOUSE, KANDLA
	NEAR BALAJI TEMPLE, NEW KANDLA
Phone : 02836-271468/469 Fax: 02836-271467	
DIN- 20240771ML000000D622	A File No. GEN/ADJ/ADC/2125/2023-Adjn-O/o Commr-Cus-Kandla
B Order-in-Original No. KDL/ADC/DPB/13/2024-25	
C Passed by Dev Prakash Bamanavat Additional Commissioner of Customs, Custom House, Kandla.	
D Date of Order 26.07.2024	
E Date of Issue 26.07.2024	
F SCN NO. & Date Waiver of Show Cause notice	
G Noticee / Party / Importer / Exporter <ul style="list-style-type: none"> i. 1 M/s. Green Polyplast Industries (IEC No: AAUFG8689F), Shed No.222 Special Type, Phase-I, KASEZ, Gandhidham, Kutch – 370 230. ii. M/s Green Polyplast Industries, Plot No.62, GIDC Area, Anjar (IEC:AAUFG8689F). iii. M/s G W Scrap Trading, Sarkhej, Ujala Estate Ahmedabad, Gujarat, IEC:DUXPA2483M iv. M/s Agna Trading Co. Plot No.20, Keya Industries, Pipodara, Surat – 394 110 (IEC:AEDPG1614D) 	

1. यह मूल आदेश संबन्धित को निःशुल्क प्रदान किया जाता है।

This Order - in - Original is granted to the concerned free of charge.

2. 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:

“ सीमाशुल्कआयुक्त (अपील),

7 वीं मंजिल, मृदुलटावर, टाइम्सऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009”

**“THE COMMISSIONER OF CUSTOMS (APPEALS),
Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380009.”**

3. उक्त अपील यह आदेश भेजने की दिनांक से 60 दिन के भीतर दाखिल की जानी चाहिए।

Appeal shall be filed within sixty days from the date of communication of this order.

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए 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 –

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्यप्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मदसं-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 जापन के साथ इयूटि/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

Proof of payment of duty / interest / fine / penalty etc. should be attached with the appeal memo.

6. अपील प्रस्तुत करते समय, सीमा शुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के अन्य सभी प्रावधानों के तहत सभी मामलों का पालन किया जाना चाहिए।

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

7. इस आदेश के विरुद्ध अपील हेतु जहां शुल्कया शुल्क और जुर्माना विवाद में हो, अथवा दण्ड में, जहां केवल जुर्माना विवाद में हो, Commissioner (A) के समक्ष मांग शुल्क का 7.5% भुगतान करना होगा।

An appeal against this order shall lie before the Commissioner (A) on payment of 7.5% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.

BRIEF FACTS OF THE CASE:

M/s. Green Polyplast Industries (IEC No: AAUFG8689F), Shed No.222 Special Type, Phase-I, KASEZ, Gandhidham, Kutch – 370 230 is having valid Letter of Approval (LoA), dated 24.01.2022 issued vide F.No. KAEZ/IA/22/2021-22 (RUD-1) by the Development Commissioner, KASEZ are engaged in the business of warehousing and trading of import of various goods as approved in their Letter of Approval from their unit in KASEZ.

2. M/s Green Polyplast Industries (henceforth, referred to as SEZ Unit) had filed 06 Bills of Entry on behalf of their 03 Clients (Importers) for warehousing at their SEZ Unit. The details of Bills of Entry, Importers along with IEC & Description of goods etc., (RUD-2) are detailed in the table below:

TABLE-I

Sr. No	Bill of Entry no.	Description of the Goods	Quantity of the Goods	Declared Assessable Value in Rs.	Name of the DTA Client
1	1009234 dated 19.06.2023	Plastic regrind	6.64 Mts	Rs.220581	M/s Green Polyplast Industries, Plot No.62, GIDC Area, Anjar (IEC:AAUFG8689F)
		Plastic Lumps	4.5 Mts	Rs.152812	
		Recycled Plastic Agglomerates	11.3 Mts	Rs.375386	
2	1009233 dated 19.06.2023	Plastic Regrind	4.95 Mts	Rs.166289	M/s Green Polyplast Industries, Plot No.62, GIDC Area, Anjar (IEC:AAUFG8689F)
		Recycled Plastic Agglomerates	10.2 Mts	Rs.342656	
		Plastic Regrind (PE)	7.6 Mts	Rs.255312	
3	1010148 dated 03.07.2023	HDPE Regrind (PE)	28.34 Mts	Rs.1309063	G W Scrap Trading, Sarkhej, Ujala Estate Ahmedabad, Gujarat, IEC:DUXPA2483M
4	1010144 dated 03.07.2023	HDPE Regrind (PE)	22.98 Mts	Rs.1013229	G W Scrap Trading, Sarkhej, Ujala Estate Ahmedabad, Gujarat, IEC:DUXPA2483M
5	1009033 dated 10.06.2023	Plastic Regrind	20.7 Mts	Rs.872901	Agna Trading Co. Plot No.20, Keya Industries, Pipodara, Surat – 394 110 (IEC:AEDPG1614D)
6	1007442 dated 15.05.2023	Plastic Regrind	21.725 Mts	Rs.717794	Green Polyplast Industries, Plot No.62, GIDC Area, Anjar(IEC:AAUFG8689F)
TOTAL				Rs. 54,26,023	

3. Whereas 01 Container: SEGU4783860 under Bill of Entry No. 1010144 dated 03.07.2023, was selected for scanning by the RMS and marked as mismatch. Accordingly the goods were allowed for de-stuffing by the officers of KASEZ at the premises of SEZ Unit and the goods were examined by the Authorised Officer in the presence of authorized representative of the SEZ Unit. During examination, the goods imported vide Bill of Entry No. 1010144 dated 03.07.2023, were identified as "**Small pieces of used/waste plastic**" which appeared to be different from the declared goods - HDPE Regrind (PE) in Bill of Entry & to ascertain the nature of goods, the representative sample from the Cargo imported vide Bill of Entry No. 1010144 dated 03.07.2023 is drawn in the presence of authorized representative of the unit and forwarded to the CIPET Ahmedabad laboratory under TM No 3701 dated 26.07.2023 (RUD-3). Where, to ascertain the nature of goods imported vide other 05 Bill of Entry the representative sample from the Cargo under TM No. 3830, TM No. 3831, TM No 3832, TM No 3833 & TM No. 3834 dated 08.08.2023 was drawn in the presence of unit representative and forwarded to the CIPET Ahmedabad laboratory(RUD-3).

Detailed Examination: -

4. During the investigation proceedings, 100 percent examination of the goods imported vide 06 Bills of Entry as mentioned in Table-I is carried out by the Officers of Preventive & Intelligence Section and recorded in Panchnama dated 11.08.2023 (RUD-4).

4.1 The detailed examination report made during Panchnama dated 11.08.2023 is hereunder:

The goods were found to be packed in small PP Bags and Jumbo bags containing Plastic Regrind of "**Mixed Colour- Plastic material/cut pieces in assorted shape and size**".

Pictures of the goods taken during the examination is as under:







4.2 Whereas, on physical examination, the Goods were found to be contaminated with soil/dirt & other extraneous particles. On random examination of the goods viz., plastic regrinds by taking into hands the goods were found to be oily and the foul smell of the goods has been sensed by the Officer of KASEZ & the 02 individual Panchas.

Observations & Seizure:

5. During the 100 percent examination, the imported Goods were identified as “small pieces of plastic of assorted colours, shapes and sizes” and the goods were found to be oily and stinking with petrified smell. The import cargo ***appeared to be used plastic wastage*** and thus different from the description of the goods viz., Plastic Regrind, Recycled Plastic Agglomerates, HDPE Regrind & Plastic Lumps declared in the 06 Bills of Entry.

5.1 The imported cargo, appears to be transformed into primary form by crushing and grinding the ***old and used plastic material***, and on reasonable belief that the import cargo physically found was ***Plastic Waste & Scrap*** and is different from declared goods as ***“Plastic Regrind, Recycled Plastic Agglomerates, HDPE Regrind & Plastic Lumps” in Bills of Entry.***

A Panchnama dated 11.08.2023 in presence of two independent Panchas and unit representative of the SEZ Unit was drawn and accordingly imported Cargo was seized under Section 110 of the Customs Act, 1962.

Statement: -

6. During the enquiry proceedings, Statement of Shri Parvez Husenmiya Kadari, Partner of SEZ Unit has been recorded dated 18.08.2023(RUD-5) under Section 108 of Customs Act, 1962, wherein he inter alia stated that:

- He is the business partner of SEZ Unit and he looks after all the activities in regard to his business activity like dealing with Customers, Maintenance of book of accounts, documentation etc.,
- He has observed that goods imported through the 06 Containers and warehoused at SEZ Unit are plastic scrap and contaminated with dust.
- He has agreed with the content of the Panchnama and has stated that only few bags of the goods lying in the warehouse are contaminated with oil/dust and had foul smell.
- He believed only few bags of the goods visibly appears to be Post Consumer Plastic Waste and most of the goods appears to be regrinds of virgin/new plastic scrap/waste
- He would rely upon the yet to be received Test report.
- He is unaware about the nature of goods till the goods were de-stuffed and warehoused at SEZ Unit.
- He is aware that the Goods like Used Plastic Waste/ Scrap are restricted as per FTP and import of used goods is Prohibited.
- He will re-export the goods in case of non-compliance with Statutory Norms/ Rules.

7. Whereas, the investigation proceedings, revealed that the import cargo is Plastic Waste/Scrap (**Restricted Goods**) and the same cannot be considered as goods falling under CTH 3901 as declared in Bill of Entry. It appears that the SEZ Unit has mis-declared CTH as 3901 1090 in all their 06 Bills of Entry and Correct CTH for import cargo shall be **3915 9090**.

7.1 Whereas, ***the goods classifiable under CTH: 3915 are restricted and are permissible for import in SEZ by manufacturing Units operating as Plastic Recycling Unit in SEZ only*** through valid permission granted under Rule 18 of SEZ Rules, 2006.

7.2 Whereas, as per the Letter of Approval granted to SEZ Unit, the Unit is engaged in business of trading and warehousing activities only. The unit is not authorized to warehouse/trade the goods falling under CTH :3915 (RUD-1).

7.3 In view of the above facts and circumstances, it appears that the SEZ Unit has purposefully and intentionally mis-declared the goods in their Bill of Entry and attempted to import the cargo of Plastic Waste and Scrap in the guise of Plastic Regrind/Recycled Plastic Agglomerates/Plastic Lumps to contravene the provisions of import policy as stipulated by DGFT and mis-declared the Custom Tariff item No. on purpose and intent to circumvent the restrictions/prohibitions imposed through the Import Policy – DGFT & Special Economic Zone Act, 2005.

8. The following are the legal provisions, which are in general applicable in the present case. The list given herein is indicative and not exhaustive, as the context of legal provisions may otherwise require reference of other legal provisions, reference of which are also to be invited, as and when required:

8.1. The SEZ Act, 2005 & SEZ Rules, 2006

- Section 15(9) of the SEZ Act, 2005.
- Rule 18 of the SEZ Rules, 2006.
- Rule 27(10) of the SEZ Rules, 2006.
- Rule 29(1) of the SEZ Rules, 2006.
- Rule 29(2) of the SEZ Rules, 2006.

8.2. The Customs Act, 1962:

- Section 2(22), 2(33), 2(39) Of the Customs Act, 1962.

- Section 11 of the Customs Act, 1962.
- Section 11A(a) of the Customs Act, 1962.
- Section 46 of the Customs Act, 1962
- Section 111 (d), 111(m) and 111(o) of the Customs Act, 1962.
- Section 112 of the Customs Act, 1962.
- Section 114AA of the Customs Act, 1962.

8.3 *The Foreign Trade (Development and Regulation) Act, 1992.*

- Section 11 of FTDR Act, 1992.

8.4 *The Foreign Trade (Regulation) Rules, 1993*

- Rule 11 of the Foreign Trade (Regulation) Rules, 1993.
- Rule 14 of the Foreign Trade (Regulation) Rules, 1993.

8.5 *Public Notice No. 392/92-97 dated 01.01.1997 issued by DGFT*

9 Whereas, in view of the discussions in forgoing paras, it appears that the attempt to import the above discussed goods by SEZ Unit is considered as violation of the restrictions imposed under Public Notice No. 392/92-97 dated 01.01.1997 issued by DGFT, appears to fall under the ambit of "**prohibited goods**" as defined under Section 2(33) of the Customs Act, 1962.

9.1 Whereas, in terms of Section 11A (a) of the Customs Act, 1962 the act again amounts to "**Illegal import**" by them in as much as they attempted to import the goods in contravention of the provisions of the Section 46 of the Customs Act, 1962 read with Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and Rule 11 & 14 of the Foreign Trade (Regulation) Rules, 1993.

9.2 Whereas, in terms of Section 2(39), the act also amounts to "**smuggling**" of the goods by them in as much as they attempted to import

the prohibited goods as discussed above rendering the said goods liable to confiscation under section 111 of the Customs Act, 1962.

9.3 Whereas, from the above facts it appears that by adopting the above modus operandi the said importer attempted to import the subject consignment by mis-declaration of the goods. They appeared to have deliberately mis-declared the goods before the Customs Authorities and thereby has contravened the provisions of the Section 46 of the Customs Act, 1962 read with Section 11 of the Foreign Trade (Development and Regulation) Act, 1992 and Rule 11 & 14 of the Foreign Trade (Regulation) Rules, 1993, in as much as they had intentionally mis-declared the goods. The mis-declaration of true and correct description by wilful misstatement and suppression of facts by the above said importer is in contravention of the provisions of the Customs Act, 1962 as discussed herein above.

Accordingly, following charges were proposed in the Investigation report.

10 Now, therefore, the DTA client/Importer, namely, **M/s Agna Trading Co.** Plot No.20, Keya Industries, Pipodara, Surat – 394 110 (IEC:AEDPG1614D) is hereby 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 20700 kg of the imported goods declared as “Plastic Regrind” under Customs Tariff Item 39011090 of the Customs Tariff Act, 1975, in the Bills of Entry no. 1009033 dated 10.06.2023, should not be rejected and re-classified as “Plastic Waste/Scrap” under Customs Tariff item 3915 9090;
- b. The mis-declared goods mentioned in Bill of Entry no. 1009033 dated 10.06.2023, totally valued at Rs.8,72,901 (Rupees Eight Lakh Seventy Two Thousand Nine Hundred and One only) above should not be held

liable for confiscation under section 111(d), 111(m) and 111(o) of the Customs Act,1962;

- c. Penalty under Section 112 of the Customs Act, 1962 should not be imposed on them for reasons discussed above.
- d. Penalty under Section 114AA of the Customs Act, 1962 should not be imposed on them for reasons discussed above.

10.1 Now, therefore, the DTA client/Importer, namely, ***M/s G W Scrap Trading, Sarkhej, Ujala Estate Ahmedabad, Gujarat, IEC:DUXPA2483M*** is hereby 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 28340 kg of the imported goods declared as “HDPE Regrind” under Customs Tariff Item 39011090 of the Customs Tariff Act,1975, in the Bills of Entry no. 1010148 dated 03.07.2023 should not be rejected and re-classified as “Plastic Waste/Scarp” under Customs Tariff item 3915 9090;
- b. The classification of 22980 kg of the imported goods declared as “HDPE Regrind” under Customs Tariff Item 39011090 of the Customs Tariff Act,1975, in the Bills of Entry no. 1010144 dated 03.07.2023 should not be rejected and re-classified as “Plastic Waste/Scarp” under Customs Tariff item 3915 9090;
- c. The mis-declared goods mentioned in Bill of Entry no. 1010148 dated 03.07.2023, totally valued at Rs.13,09,063 (Rupees Thirteen Lakh Nine Thousand Sixty Three only) above should not be held liable for confiscation under section 111(d), 111(m) and 111(o) of the Customs Act,1962.
- d. The mis-declared goods mentioned in Bill of Entry no. 1010144 dated 03.07.2023, totally valued at Rs.10,13,229 (Rupees Ten Lakh Thirteen Thousand Two Hundred and Twenty Nine only) above should not be

held liable for confiscation under section 111(d), 111(m) and 111(o) of the Customs Act,1962.

- e. Penalty under Section 112 of the Customs Act, 1962 should not be imposed on them for reasons discussed above.
- f. Penalty under Section 114AA of the Customs Act, 1962 should not be imposed on them for reasons discussed above.

10.2 Now, therefore, the **DTA client/Importer**, namely, **M/s Green Polyplast Industries**, Plot No.62, GIDC Area, Anjar (IEC:AAUFG8689F)is hereby 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 21725 kg of the imported goods declared as “Plastic Regrind” under Customs Tariff Item 39011090 of the Customs TariffAct,1975, in the Bills of Entry no. 1007442 dated 15.05.2023, should not be rejected and re-classified as “Plastic Waste/Scarp” under Customs Tariff item 3915 9090;
- b. The classification of 6640 kg of the imported goods declared as “Plastic Regrind” under Customs Tariff Item 39011090 of the Customs TariffAct,1975, in the Bills of Entry no. 1009234 dated 19.06.2023, should not be rejected and re-classified as “Plastic Waste/Scrap” under Customs Tariff item 3915 9090;
- c. The classification of 4500 kg of the imported goods declared as “Plastic Lumps” under Customs Tariff Item 39011090 of the Customs TariffAct,1975, in the Bills of Entry no. 1009234 dated 19.06.2023, should not be rejected and re-classified as “Plastic Waste/Scrap” under Customs Tariff item 3915 9090;
- d. The classification of 11300 kg of the imported goods declared as “Recycled Plastic Agglomerates” under Customs Tariff Item 39011090 of the Customs TariffAct,1975, in the Bills of Entry no. 1009234 dated

19.06.2023, should not be rejected and re-classified as "Plastic Waste/Scrap" under Customs Tariff item 3915 9090;

- e. The classification of 4950 kg of the imported goods declared as "Plastic Regrind" under Customs Tariff Item 39011090 of the Customs TariffAct,1975, in the Bills of Entry no. 1009233 dated 19.06.2023, should not be rejected and re-classified as "Plastic Waste/Scrap" under Customs Tariff item 3915 9090;
- f. The classification of 10200 kg of the imported goods declared as "Recycled Plastic Agglomerates" under Customs Tariff Item 39011090 of the Customs TariffAct,1975, in the Bills of Entry no. 1009233 dated 19.06.2023, should not be rejected and re-classified as "Plastic Waste/Scrap" under Customs Tariff item 3915 9090;
- g. The classification of 7600 kg of the imported goods declared as "Plastic Regrind (PE)" under Customs Tariff Item 39011090 of the Customs TariffAct,1975, in the Bills of Entry no. 1009233 dated 19.06.2023, should not be rejected and re-classified as "Plastic Waste/Scrap" under Customs Tariff item 3915 9090;

h. The mis-declared goods mentioned in Bill of Entry no. 1009234 dated 19.06.2023, totally valued at Rs.7,48,779 (Rupees Seven Lakh Fourty Eight Thousand Seven Hundred and Seventy Nine only) above should not be held liable for confiscation under section 111(d), 111(m) and 111(o) of the Customs Act,1962.

i. The mis-declared goods mentioned in Bill of Entry no. 1009233 dated 19.06.2023, totally valued at Rs.7,64,257 (Rupees Seven Lakh Sixty Four Thousand Two Hundred and Fifty Seven only) above should not be held liable for confiscation under section 111(d), 111(m) and 111(o) of the Customs Act,1962.

j. The mis-declared goods mentioned in Bill of Entry no. 1007442 dated 15.05.2023, totally valued at Rs.7,17,994 (Rupees Seven Lakh Seventeen Thousand Nine Hundred and Ninety Four only) above should not be held liable for confiscation under section 111(d), 111(m) and 111(o) of the Customs Act,1962.

k. Penalty under Section 112 / 114AA of the Customs Act, 1962 should not be imposed on them for reasons discussed above

10.3. Now, therefore, the SEZ Unit, namely, M/s. Green Polyplast Industries (IEC No: AAUFG8689F), Shed No.222 Special Type, Phase-I, KASEZ, Gandhidham, Kutch – 370 230 is hereby 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 mis-declared goods mentioned in Bill of Entry no. 1009033 dated 10.06.2023, totally valued at Rs.8,72,901 (Rupees Eight Lakh Seventy Two Thousand Nine Hundred and One only) above should not be held liable for confiscation under section 111(d), 111(m) and 111(o) of the Customs Act,1962;
- b. The mis-declared goods mentioned in Bill of Entry no. 1010148 dated 03.07.2023, totally valued at Rs.13,09,063 (Rupees Thirteen Lakh Nine Thousand Sixty Three only) above should not be held liable for confiscation under section 111(d), 111(m) and 111(o) of the Customs Act,1962.
- c. The mis-declared goods mentioned in Bill of Entry no. 1010144 dated 03.07.2023, totally valued at Rs.10,13,229 (Rupees Ten Lakh Thirteen Thousand Two Hundred and Twenty Nine only) above should not be held liable for confiscation under section 111(d), 111(m) and 111(o) of the Customs Act,1962.
- d. The mis-declared goods mentioned in Bill of Entry no. 1009234 dated 19.06.2023, totally valued at Rs.7,48,779 (Rupees Seven Lakh Fourty Eight Thousand Seven Hundred and Seventy Nine only) above should not be held liable for confiscation under section 111(d), 111(m) and 111(o) of the Customs Act,1962.
- e. The mis-declared goods mentioned in Bill of Entry no. 1009233 dated 19.06.2023, totally valued at Rs.7,64,257 (Rupees Seven Lakh Sixty

Four Thousand Two Hundred and Fifty Seven only) above should not be held liable for confiscation under section 111(d), 111(m) and 111(o) of the Customs Act,1962.

- f. The mis-declared goods mentioned in Bill of Entry no. 1007442 dated 15.05.2023, totally valued at Rs.7,17,994 (Rupees Seven Lakh Seventeen Thousand Nine Hundred and Ninety Four only) above should not be held liable for confiscation under section 111(d), 111(m) and 111(o) of the Customs Act,1962.
- g. Penalty under Section 112 of the Customs Act, 1962 should not be imposed on them for reasons discussed above.
- h. Penalty under Section 114AA of the Customs Act, 1962 should not be imposed on them for reasons discussed above.

11. Thereafter, letter dated 27.09.2023 was received from M/s Green Polyplast Industries for granting the permission for re-testing at CRCL, New Delhi , which was granted by the Adjudicating Authority. Further , the Last date for issuance of SCN in the matter was 10.02.2024 , since the investigation was not completed and matter cannot be taken up for disposal and therefore extension for the further six months was granted by Hon'ble Commissioner, Customs Kandla U/s 28(9)(b) of the Customs Act., 1962 in view of incomplete investigation in the matter and for outcome of the test result of re-testing of the goods.

The samples were forwarded by the KASEZ Authority to CRCL , New Delhi who in turn vide their letter 29.02.2024 returned the samples by citing the reason that the previous test was not conducted at revenue Laboratory/CRCL , Kandla and same were tested at CIPET, Ahemdabad and as per Revenue Laboratory manual, the sample must be initially tested from any regional Custom house Laboratory for re-test.

Thereafter, the Adjudicating Authority has granted permission again for re-testing of the samples at CRCL, Kandla vide letter 21.03.2024 and accordingly samples were forwarded for re-testing at CRCL, Kandla which were also returned by them vide letter 19.04.2024 by citing that their laboratory does not have any facility for testing any Hazardous substances and initially the samples were tested at CIPET Ahmedabad and their laboratory is authorized for testing only fresh samples and not for re-testing.

Since , In the Investigation report , test report regarding only three Bills of entry i.e. for B.E. No. 1010148 dated 03.07.2023, 1010144 dated 03.07.2023 and 1007442 dated 15.05.2023 was received from CIPET , Ahmedabad and no clear observation regarding Bills of entry BoE no. 1009033 dated 10.06.2023, BoE no. 1009233 dated 19.06.2023 and BoE no.1009234 dated 19.06.2023 was reported by the CIPET, therefore this office vide letter dated 16.05.2023 asked Deputy Commissioner, KASEZ for clarification in the matter that whether the Investigation report in regards of these Bills of entry may be considered as final or further testing is required.

Thereafter, Deputy Commissioner, KASEZ informed vide letter 19.06.2024 that the sample of the Bills of entry were sent to CRCL , Kandla for complete result and specification and their report are as under-

(i) For Bill of entry-1009233 dated 19.06.2023 T.M. No. 5475 dated 28.05.2024-

Test Result- Nature- The sample as received is in the form of plastic cut pieces of assorted shape, Colour & sizes(Regrind form).

Composition-It is composed of pigment Polyethylene (HDPE)

Comments- Based on the physical appearance , forms and analytical findings, it may be considered waste/ scrap transformed into primary form.

whether it is post-consumer plastic or otherwise could not be ascertained and same may be verified at your end"

(ii) For Bill of entry-1009234 dated 19.06.2023 T.M. No. 5476 dated 28.05.2024-

Test Result- Nature- The sample as received is in the form of plastic cut pieces of assorted shape, Colour & sizes(Regrind form).

Composition-It is composed of pigment Polyethylene (HDPE)

Comments- Based on the physical appearance , forms and analytical findings, it may be considered waste/scrap transformed into primary form.

whether it is post-consumer plastic or otherwise could not be ascertained and same may be verified at your end"

(iii) For Bill of entry-1009033 dated 10.06.2023 T.M. No. 5476 dated 28.05.2024-

Test Result- Nature- The sample as received is in the form of plastic cut pieces of assorted shape, Colour & sizes(Regrind form).

Composition-It is composed of pigment Polyethylene (HDPE)

Comments- Based on the physical appearance , forms and analytical findings, it may be considered waste/scrap transformed into primary form.

whether it is post-consumer plastic or otherwise could not be ascertained and same may be verified at your end".

PERSONAL HEARING & SUBMISSION

12. All the Noticee vide their letters dated 25.06.2024 have requested for waiver of SCN and personal hearing. As per Section 124 of the Customs Act, 1962, the show cause notice can be waived at the request of the noticee. Therefore, the matter is taken up for adjudication.

DISCUSSION AND FINDINGS:-

13. I find that M/s Green Polyplast Industries (SEZ Unit) had filed 06 Bills of Entry on behalf of Importers for warehousing at their SEZ Unit. The details of Bills of Entry, Importers along with IEC & Description of goods etc., (RUD-2) are detailed in the table below:

TABLE-I

Sr. No	Bill of Entry no.	Description of the Goods	Quantity of the Goods	Declared Assessable Value in Rs.	Name of the DTA Client
1	1009234 dated 19.06.2023	Plastic regrind	6.64 Mts	Rs.220581	M/s Green Polyplast Industries, Plot No.62, GIDC Area, Anjar (IEC:AAUFG8689F)
		Plastic Lumps	4.5 Mts	Rs.152812	
		Recycled Plastic Agglomerate s	11.3 Mts	Rs.375386	
2	1009233 dated 19.06.2023	Plastic Regrind	4.95 Mts	Rs.166289	M/s Green Polyplast Industries, Plot No.62, GIDC Area, Anjar (IEC:AAUFG8689F)
		Recycled Plastic Agglomerate s	10.2 Mts	Rs.342656	
		Plastic	7.6 Mts	Rs.255312	

		Regrind (PE)			
3	1010148 dated 03.07.2023	HDPE Regrind (PE)	28.34 Mts	Rs.1309063	G W Scrap Trading, Sarkhej, Ujala Estate Ahmedabad, Gujarat, IEC:DUXPA2483M
4	1010144 dated 03.07.2023	HDPE Regrind (PE)	22.98 Mts	Rs.1013229	G W Scrap Trading, Sarkhej, Ujala Estate Ahmedabad, Gujarat, IEC:DUXPA2483M
5	1009033 dated 10.06.2023	Plastic Regrind	20.7 Mts	Rs.872901	Agna Trading Co. Plot No.20, Keya Industries, Pipodara, Surat – 394 110 (IEC:AEDPG1614D)
6	1007442 dated 15.05.2023	Plastic Regrind	21.725 Mts	Rs.717794	Green Polyplast Industries, Plot No.62, GIDC Area, Anjar(IEC:AAUFG8689F)
TOTAL				Rs. 54,26,023	

14. I find that the goods were sent for testing to CIPET Ahmedabad vide various Test memos. The CIPET Ahmedabad provided test reports in respect of only three Bills of Entry viz.1010144, 1010148 and 1007442 as given below. Further samples were forwarded to CRCL kandla for testing of the goods in respect of rest of the three Bills of Entry. The Deputy Commissioner, Customs, KASEZ vide letter dated 19.06.2024 provided the remaining test reports. The details of all Six test reports are summarised below:-

S r. N o	Bill of Entry no.	Descripti on of the Goods	TM No. & date	Report given by-	Test Report No. and date	Findings of the report
1	100923 4 dated 19.06.2 023	Plastic regrind	5476 dated 28.05 .2024	CRCL, Kandla	1953 dated 12.06.202 4	(i)Composed of Polyethylene (HDPE)- In regrinded form (ii) May be considered as waste/scrap transformed into primary form
		-	-	-	-	-

		Plastic Lumps				
		Recycled Plastic Agglomerates	-	-	-	-
2	100923 3 dated 19.06.2 023	Plastic Regrind	5475 dated 28.05 .2024	CRCL Kandla	1952 dated 10.06.202 4	(i) Composed of Pigmented Polyethylene (HDPE)-in Regrind form. (ii) May be considered as waste/scrap transformed into primary form
		Recycled Plastic Agglomerates	-	-	-	-
		Plastic Regrind (PE)	-	-	-	-
3	101014 8 dated 03.07.2 023	HDPE Regrind (PE)	3831 dated 008.0 8.202 3	CIPET Ahmedabad	2522 dated 29.08.202 3	(i) Material may be considered as HDPE Regrind (ii) Dust Found (iii) Single thermoplastic
4	101014 4 dated 03.07.2 023	HDPE Regrind (PE)	3701 dated 26.07 .2023	CIPET Ahmedabad	2272 dated 07.08.202 3	(i) Material may be considered as HDPE Regrind (ii) Contaminated with Dust (iii) Single thermoplastic
5	100903 3 dated 10.06.2 023	Plastic Regrind	5477 dated 28.05 .2024	CRCL Kandla	1954 dated 13.06.202 4	(i) Composed of Polyethylene (HDPE)-in Regrind form. (ii) Having Bad smell (iii) May be considered as waste/scrap transformed into primary form
6	100744 2 dated 15.05.2 023	Plastic Regrind	3833 dated 08.08 .2023	CIPET Ahmedabad	2523 dated 29.08.202 3	(i) Material may be considered as LLDPE Regrind (ii) Free from Contamination (iii) Single thermoplastic

15. I find that the Investigation report has proposed, on visual inspection of the goods, that the importers/SEZ unit has mis-declared the goods imported vide Six Bills of Entry which has rendered the goods liable for confiscation.

16. I find that the test reports have, interalia, reported that-

- (i) The goods are made of plastic materials (HDPE, LLDPE as the case may be).
- (ii) The goods are in regrinded form.
- (iii) The goods imported vide BoE No. 1010144, 1010148 were contaminated with dust whereas goods imported vide BoE No. 1007442 were free from contamination.
- (iv) The goods imported vide BoE no.109033 had bad smell.

17. In this regard, while examining the findings of the test reports given by CIPET Ahmedabad and CRCL, Kandla I find that the test reports have clearly affirmed the description of the goods (Plastic/HDPE/LLDPE regrinds) declared by the noticees. Now the pertinent question that needs to be decided is whether the subject goods can be classified as plastic waste/scrap, as envisaged in the Investigation report, on the basis of findings of the test reports.

18. I find that neither the Customs Act, 1962 nor the SEZ Act, 2006 have laid out the definition of plastic waste. In this regard, reliance is placed upon the Para no. 4 of the PUBLIC NOTICE NO. 58(PN)/9702 dated 23.12.1998 issued from F.No. IPC/4/5(451)/ 9297 Vol.I) by the DGFT, on subject- import of plastic waste by EPZs, which lays down the definition of plastic waste/scrap as given below:-

4. The description/definition of the plastic waste/scrap for this purpose would be;

"Plastic scrap/waste constitute those fractions of plastics generated by various plastic processing operations or those fractions generated in the production process of plastics in a plant, which have not been put to any use whatsoever and as such can be termed as virgin or new material which can be recycled into viable commercial

products using standard plastic processing techniques but without involving any process of cleaning, whereby effluents are generated"

19. I find that the test reports have categorically found the following:-

- a. The goods imported vide BoE No. 1010144, 1010148 were contaminated with dust whereas goods imported vide BoE No. 1007442 were free from contamination.
- b. The goods imported vide BoE no.109033 had bad smell.
- c. The goods imported vide BoE No. 1009233, 1009234 and 1009033 may be considered as 'waste/scrap transformed into primary form'

20. I find that the remarks of test reports in respect of BoE No. 1009233, 1009234 and 1009033 has clearly laid out that the said goods (pertaining to those 3 Bills of Entry) were in primary form and the same might have been transformed from plastic waste/scrap which implies that the raw material used in manufacturing process might have been plastic waste/scrap and not the subject goods. As per the definition reproduced above, it is apparent that the subject goods are recycled viable commercial products obtained from plastic waste/scrap through standard plastic processing techniques.

21. It is further worth noting that plastic regrind materials, as affirmed by the test reports, can't be classified as plastic waste/scrap on the basis of dust and bad smell coming out of the same, by overlooking the findings of the test reports. Dust and bad smell can arise out of various external factors like weather conditions (humidity, rainfall and temperature), packaging and handling of the goods etc.

22. Thus, I find that the description and classification of the imported goods declared by the noticees are correct and don't require any interference. Further as the goods have been correctly declared in terms of description and classification, the charges of confiscation and penalties are not attracted.

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

“I drop the proceedings initiated against the SEZ unit as well as the DTA clients/importers and Order to release the goods seized vide Panchanama dated 11.08.2023”.

24. This order is passed without prejudice to the action that can be taken against the SEZ unit/importer under the provisions of SEZ Act, 2005 or Foreign Trade (D&R) Act 1992 or any other law for the time being in force.

(Dev Prakash Bamanawat)
Additional Commissioner of Customs
Custom House, Kandla

To,

- i. **M/s. Green Polyplast Industries** (IEC No: AAUFG8689F), Shed No.222 Special Type, Phase-I, KASEZ, Gandhidham, Kutch – 370 230.
- ii. **M/s Green Polyplast Industries**, Plot No.62, GIDC Area, Anjar (IEC:AAUFG8689F).
- iii. **M/s G W Scrap Trading**, Sarkhej, Ujala Estate Ahmedabad, Gujarat, IEC:DUXPA2483M
- iv. **M/s Agna Trading Co.** Plot No.20, Keya Industries, Pipodara, Surat – 394 110 (IEC:AEDPG1614D)

Copy submitted to: -

1. The Development Commissioner, Kandla Special Economic Zone, Gandhidham, Kutch.
2. The Commissioner of Customs, Kandla.

Copy to: -

1. The Deputy/Assistant Commissioner of Customs, Review, Kandla Customs House, Kandla.
2. The Deputy/Assistant Commissioner, EDI to upload on customs website, Customs House, Kandla.

3. Guard File.