



OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS
CUSTOM HOUSE: MUNDRA, KUTCH
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A	File No.	CUS/APR/BE/MISC/1010/2023-Gr 4-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/MK/138/2023-24
C	Passed by	Mukesh Kumari Additional Commissioner of Customs Custom House, Mundra.
D	Date of order	10.08.2023
E	Date of Issue	10.08.2023
F	SCN No. & Date	-----
G	Noticee/Party/ Importer/ Exporter	M/s Dhanshree Impex, Survey No. 475, Pal Lodhika Road, Opp. HP Petrol Pump, Village-Pal (Ravki), Rajkot (Gujarat)- 360004
H	DIN No.	20230871MO000000E10A

1. यह अपील आदेश संबंधित को निःशुल्क प्रदान किया जाता है।

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

2. यदि कोई व्यक्ति इस अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128 A के अंतर्गत प्रपत्र सीए- 1- में चार प्रतियों में नीचे बताए गए पते पर अपील कर सकता है-

Any person aggrieved by this Order - in - Original may file an appeal under Section 128 A of Customs Act, 1962 read with Rule 3 of the Customs (Appeals) Rules, 1982 in quadruplicate in Form C. A. -1 to:

“सीमा शुल्क आयुक्त (अपील),
7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009”
“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380 009.”

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

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

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- 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 accompanied by -

(i) उक्त अपील की एक प्रति और

A copy of the appeal, and

(ii) इस आदेश की यह प्रति अथवा कोई अन्य प्रति जिस पर अनुसूची-1 के अनुसार न्यायालय शुल्क अधिनियम-1870 के मद सं-6 में निर्धारित 5/- रुपये का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

This copy of the order or any other copy of this order, which must bear a Court Fee Stamp of Rs. 5/- (Rupees Five only) as prescribed under Schedule - I, Item 6 of the Court Fees Act, 1870.

5. अपील ज्ञापन के साथ ड्रूटि/ ब्याज/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये।

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

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

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

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

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

BRIEF FACTS OF THE CASE

1. M/s Dhanshree Impex, Survey No. 475, Pal Lodhika Road, Opp. HP Petrol Pump, Village-Pal (Ravki), Rajkot (Gujarat)-360004 holding IEC 2416917960 (hereinafter referred to as 'the importer' for the sake of brevity) filed Bill of Entry No. 6985567/21.07.2023 through their CB M/s Aman Seatrans Private Limited, for the clearance of 109.06 MTS of Re-rollable Scrap having total Assessable Value Rs.46,47,337/-, imported vide BL No. MEDUKW305065 / 07.07.2023 and Invoice No. KT-928-23 / 09.07.2023.

The details of Bills of Entry have been mentioned as under:

Bill of Entry No. & Date	Qty. (Mts.)	Declared CTH	Declared Description	Ass. Value (in Rs.)	Duty Payable declared (in Rs.)
6985567/ 21.07.2023	109.06	72044900	Re-rollable Scrap	46,47,337/-	8,36,521

1.2 The Examination in respect of the imported goods was conducted by the Officers of Docks Examination, Custom House Mundra. The Examination Report issued by them stated that imported goods are old second hand rusted ferrous pipes made of Cast Iron or Mild Steel classifiable under CTH 7304. Further, the imported goods being second hand, are restricted for import. As per ISRI guidelines, the wrought iron and steel scrap comprises of individual pieces not exceeding 60 inches or 5 feet approximately.

1.3 As the goods imported i.e. 'Re-rollable Scrap' were found mis-declared with reference to the declaration, and the same has been informed to the Authorized Representative of the CHA of the importer. The importer vide their letter dated 01.08.2023 have requested for the clearance of imported goods allowing mutilation U/s 24 of the Customs Act, 1962 at their own expense.

1.4 As per IS 2549:1994, the definition of re rollable scrap is as under:-

"It shall consist of seconds and defectives or cuttings/rejected ingots/blooms/billets, bars, rods, angles, shapes and sections, rails and railway materials such as wheels, tyres, axles, sleepers bars, fish plates and flat rolled products suitable for re-rolling without undergoing process of melting and of length 5 000 mm (Max) width 800 mm (Max) thickness/diameter 8 mm (minimum). In case of rails and railway materials there will be no size restriction."

1.5 In view of the above, it was evident that the Importer has mis-declared the imported goods as length of pipe is more than 5000 MM, hence, the subject goods imported vide Bill of Entry No. 6985567/21.07.2023 becomes liable for confiscation under Section 111(f) of the Customs Act, 1962.

RELEVANT LEGAL PROVISIONS

2. In context of this case, the following legal provisions are reproduced for reference:

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

2.1 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.]

2.2 Section 111. Confiscation of improperly imported goods, etc. – *The following goods brought from a place outside India shall be liable to confiscation:-*

(a)

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(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.

2.3 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;

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;

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;

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.

SUBMISSIONS MADE BY THE IMPORTER:

3. The Importer vide their letter dated 01.08.2023 have requested for the clearance of imported goods allowing mutilation U/s 24 of the Customs Act, 1962 at their own expense.

DISCUSSION & FINDINGS:

4. I have carefully gone through the case records, Examination Report issued by the Officers of Docks Examination, and applicable provisions of Law. The importer have requested for the clearance of imported goods allowing mutilation U/s 24 of the Customs Act, 1962 at their own expense. I find that the condition of Principle of Natural Justice under Section 122A of the Customs Act, 1962 has been complied as importer vide letter dated 09.08.2023 has submitted for waiver of SCN and PH in this case. Hence, I proceed to decide the case on the basis of facts and documentary evidences available on records.

4.1 The issues before me are to decide whether-

a. The Goods imported by importer are liable for confiscation under section 111(m) and penalty should be imposed under section 112 a (ii) of the Customs Act, 1962 or otherwise.

4.2 I find that M/s Dhanshree Impex has imported consignments of "Re-rollable Scrap" under Bill of Entry No. 6985567/21.07.2023. During examination, it has found that importer has mis-declared the imported goods i.e. "Re-rollable Scrap" under CTH-72044900 which actually falls under CTH-7304. The importer has stated that imported goods are following Indian BIS Norms Code of Classification No. IS2549:1994, which allows the import of goods of maximum length 5000mm or 16.42 feet approximately, and requested for the mutilation of goods at their own expense U/s 24 of the Customs Act, 1962.

4.3 I find that the importer while filing impugned bill of entry has subscribed to a declaration regarding correctness of the contents of the Bill of Entry under Section 46(4) of the Act, ibid. Further, Section 46(4A) of the Act, ibid casts an obligation on the importer to ensure accuracy of the declaration and authenticity of the documents supporting such declaration. In the instant case, the importer failed to discharge the statutory obligation cast upon him and made wrong declaration about the declaration of the imported goods i.e. "Re-rollable Scrap". Thus, the importer has misdeclared the imported goods and hence, the goods are liable for confiscation under Section 111(f) of the Customs Act, 1962 and M/s Dhanshree Impex has made them-selves liable for penalty under section 112(a)(ii) of the Customs Act, 1962.

4.4 In this matter, reliance is taken from case of M/s Antarctic Industries Ltd. Versus Collector of Customs, Kandla in the year of 1998, the order from tribunal, New Delhi which is as under :-

"It is not disputed by the department that the imported material contained old, used and rusted pipe of different sizes. It has been the contention of the importer even before the original authorities that such goods may be serviceable in India but for the purpose of exporting country they were regarded as scrap. The importers have moved application

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immediately after the examination of goods for the mutilation of the goods. It is also observed from the Board's letter dated 16th June, 1995, that the Board after the examination of the matter in consultation with the Collector of Customs, Kandla intimated to the chamber that whenever serviceable goods are noticed they are ordered to be mutilated/converted into scrap and the consignments are assessed as steel scrap. Taking into consideration the facts and circumstances of the case and the Board letter dated 16th June 1995, we are of the view that the Commissioner should have allowed the mutilation of the goods before their clearance from the port as the goods were to be used by importer as scrap in their induction furnace. "

The above decision is squarely applicable in the instant case also, as the goods and sequence of events are also identical.

ORDER

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

- a) I order to allow mutilation of imported goods U/s 24 of the Customs Act, 1962. The expense thereof to be borne by the importer M/s Dhanshree Impex.
- b) I confirm and order for confiscation of the goods pertaining to Bill of Entry 6985567/21.07.2023 as goods declared are in contravention of Section 46 of the Act and are therefore liable for confiscation under Section 111 (f) of the Customs Act, 1962. However, I give an option to re-deem the goods in lieu of confiscation under provision of section 125 of customs Act, 1962 on payment of Redemption Fine of Rs.50,000/- (Rupees Fifty Thousand only).
- c) I impose a penalty of Rs. 25,000/- (Rupees Twenty Five Thousand Only) on the importer M/s Dhanshree Impex under section 112(a)(ii) of Customs Act, 1962.

6. This order is issued without prejudice to any other action which may be contemplated against the importer or any other person under provisions of the Customs Act, 1962 and rules/regulations framed thereunder or any other law for the time being in force in the Republic of India.

Signed by
 Mukesh Kumari
Additional Commissioner (Import),
 Date: 10-08-2023 11:08:21
Custom House, Mundra.

F. No. CUS/APR/BE/MISC/1010/2023-Gr 4-O/o Pr Commr-Cus-Mundra

Dated: 10-08-2023

To,

M/s Dhanshree Impex,

Survey No. 475, Pal Lodhika Road, Opp. HP Petrol Pump,

I/1346831/2023

Village-Pal (Ravki), Rajkot (Gujarat)-360004

Copy to:

1. The Dy. Commissioner of Customs, Review Section, CH Mundra.
2. The Dy. Commissioner of Customs, TRC, CH Mundra.
3. The Dy. Commissioner of Customs, EDI Section, CH Mundra.
4. CB M/s Aman Seatrans Private Limited, Gandhidham.
5. Guard file