


Outward No. 9063

		<p>प्रधान आयुक्त का कार्यालय, सीमा शुल्क सदन, मुन्द्रा</p> <p>OFFICE OF THE PRINCIPAL COMMISSIONER, CUSTOMS HOUSE, MUNDRA</p> <p>Port User Building (PUB), Mundra (Gujarat – 370421)</p> <p>ईमेल: group4-mundra@gov.in</p>
A	File No.	CUS/94/2025-Docks Examn-O/o Pr Commr-Cus-Mundra
B	OIO No.	MCH/ADC/AKM/ 254 /2024-25
C	Order Date	15.01.2025
D	Passed by	Amit Kumar Mishra, Additional Commissioner of Customs, Customs House, AP & SEZ, Mundra.
E	SCN No. & Date	Importer requested for waiver of SCN & PH
F	Noticee / Party / Importer	M/s Shree Ram Industries, ground floor, Plot No 61, Polaris Ind, Kuha, Daskroi, Kuha-382433.
G	DIN	20250171MO0000000FD9

1. यह अपील 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 अपील आदेश से असंतुष्ट है तो वह सीमा शुल्क अपील नियमावली 1982 के नियम 6(1) के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 129A(1) के अंतर्गत प्रपत्र सीए3-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(, चौथी मंजिल, हुडको बिल्डिंग, ईश्वर भुवन रोड, नवरंगपुरा,
अहमदाबाद **380009**”

**“The Commissioner of Customs (Appeals), Mundra, 4TH Floor,
Hudco Building, Ishwar Bhuvan Road, Navrangpura, Ahmedabad-
380009.”**

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

Appeal shall be filed within three months 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 –

5. उक्त अपील पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपये कोर्ट फीस स्टाम्प जबकि इसके साथ संलग्न आदेश की प्रति पर अनुसूची- 1, न्यायालय शुल्क अधिनियम, 1870 के मदसं-6 के तहत निर्धारित 0.50 पैसे की एक न्यायालय शुल्क स्टाम्प वहन करना चाहिए।

The appeal should bear Court Fee Stamp of Rs.5/- under Court Fee Act whereas the copy of this order attached with the appeal should bear a Court Fee stamp of Rs.0.50 (Fifty paise only) as prescribed under Schedule-I, Item 6 of the Court Fees Act, 1870.

6. अपील ज्ञापन के साथ ड्यूटी/ दण्ड/ जुर्माना आदि के भुगतान का प्रमाण संलग्न किया जाना चाहिये। Proof of payment of duty/fine/penalty etc. should be attached with the appeal memo.
7. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और सीमा शुल्क अधिनियम, 1962 के सभी मामलों में पालन किया जाना चाहिए।

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

8. 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 (Appeals) 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.

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Brief Facts of the case

M/s Shree Ram Industries, (IEC: 0809007355) (hereinafter referred to as “the Importer” for sake of brevity) having address at ground floor, Plot No 61, Polaris Ind, Kuha, Daskroi, Kuha-382433, filed the Bill of Entry 6989147 dated 01.12.2024 for import of “Automotive Engines” and “Heavy Melting Scrap” at Mundra Port through their CHA M/s Jai Ambe Logistics.

TABLE – I

Sr. No.	Bill of entry No. and Date	Country of Origin	Description of goods	Quantity (MTS)	Value of goods in Rs.	Duty (in Rs.)
1.	6989147 dt. 01.12.2024	USA	Automotive Engines	21.669	16,64,504/-	2,99,611/-
2.			Aluminium Scrap Automotive Engines	1.361	1,93,992/-	41,214/-
	Total Rs.				18,58,496/-	3,40,825/-

2. The examination the goods imported vide Bill of Entry 6989147 dt. 01.12.2024 were conducted by Docks Officer and the empaneled Chartered Engineer Sh Tushar Zankat. During the course of examination of the goods imported vide Bill of Entry No. 3688225 dated 27.05.2024, the goods were found to be mis declared in terms of quantity. Inspection report dated 12.12.2024 has been submitted by the empaneled Chartered Engineer and the

relevant contents of the said inspection report dated 18.12.2024 are as follows:

1. The cargo consist of approx 70 to 75 Nos of discarded and non-serviceable Automotive Engines which comprises of approx 85% of Heavy Melting Scrap and 15% of Aluminium Scrap.
2. The cargo consist of scarp and can't be serviceable for conversion for re-use/ for any purpose / application and such having no use other than scrap.
3. Thereafter, the Chartered Engineer has submitted detailed inspection report CE/TZ/MUN/DEC-077/2024-25 dated 28.12.2024. Further, the detailed percentage wise metal scrap found during examination and CE report are as mentioned below: -

Table-II

SN	Description	Declared in Bill of Entry			Ascertained as Per CE report			Diff in Amount in USD
		Qty. in MTS	Unit Price in USD	Amount in USD	Qty. in MTS	Unit Price in USD	Amount in USD	
		1	2	3	4	5	6	
1	Heavy Melting Scrap (CTH:72044900)	21.669	900	19502.1	19.58	900	17622	-1880.1
2	Aluminium Scrap (CTH:76020010)	1.361	1670	2272.87	3.45	1680	5796	3523.13
3		23.03		21774.97	23.03		23418	1643.03

4. In this regard, it is clear that, the imported goods were found to be mis-declared at the time of examination of the goods in terms of quantity and value, and therefore, the whole consignment consisting of Heavy Melting Scrap 85% (approx. 19580 Kgs), Aluminium Scrap 15% (Approx. 3450 Kgs.) appears to be liable for confiscation under Section 111(l) & 111(m) of the Customs Act, 1962.

5. Valuation of imported goods for the purposes of calculation of Customs duties is governed by the provisions of Section 14 of the Customs Act, 1962, which provides that:

"For the purposes of the Customs Tariff Act, 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 or 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:".

6. Further, the Customs Valuation Rules (Determination of Price of imported goods) 2007 (here-in-after referred to as the 'CVR, 2007'), having been framed under the provisions of Section 14, provide for determination of value in a variety of situations. More specifically, Rule 12 of Customs Valuation (Determination of Value of Imported goods) Rules, 2007 provides for rejection of

the declared value when there is a doubt that the declared value does not represent the true transaction value. The declared value can also be rejected in case the parameters such as description, quantity, country of origin, brand, grade, specification etc., that have relevance to the value, are mis-declared. Further, Rule 3 of the CVR, 2007 provides that subject to Rule 12, value of the goods shall be the Transaction Value adjusted in accordance with Rule 10.....". Rule 12 of the CVR, 2007, in turn, provides that 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 the 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. Further, as per Rule 3 (4), "If the value cannot be determined under the provisions of sub-rule (1), the value shall be determined by proceeding sequentially through rules 4 to 9".

7. Thus, in terms of Rule 12 of the said CVR, 2007, value declared by an importer can be rejected in certain circumstances. Explanation (1) to the said Rule 12 ibid lists out certain reasons based upon which the proper officer has the powers to raise doubts on the accuracy of the declared value. Mis-declaration of the description of the goods is one such reason. In the impugned imports, the description of the goods has been mis-declared inasmuch as that the "Heavy Melting Scrap 85% (approx. 19580 Kgs), Aluminium Scrap 15% (Approx. 3450 Kgs.)". It, therefore, appears that the declared value of Rs. 18,58,496/- is liable to be rejected under the provisions of Rule 12 of the CVR, 2007 and liable to be re-determined by proceeding sequentially through Rules 4 to 9.

8. As per Rule 4 of the CVR, 2007, subject to the provisions of Rule 3, the value of imported goods shall be the Transaction Value of identical goods sold for export to India and imported at or about the same time as the goods being valued, subject to certain conditions and parameters. 'Identical goods' are defined as those imported goods which are same in all respects including physical characteristics, quality, reputation as the goods being valued except for minor differences in appearance that do not affect value of the goods. Further, as per Rule 5 of the CVR, 2007, value of imported goods shall be the Transaction Value of similar goods sold for export to India and imported at or about the same time as the goods being valued, subject to certain conditions and parameters. Scrutiny of import data available in the Customs database reveals that there are no contemporaneous imports of consignments of "Heavy Melting Scrap 85% (approx. 19580 Kgs), Aluminium Scrap 15% (Approx. 3450 Kgs.)". Accordingly, value of the subject goods cannot be determined under Rule 4 or 5 of the CVR, 2007. In these cases, under the provisions of Rule 3 of the CVR, 2007, the transaction value is liable to be re-determined by proceeding sequentially through Rules 6 to 9.

9. Rule-6 of the CVR, 2007 stipulates that where value cannot be determined under Rules 3, 4 and 5, the value shall be determined under the provisions of Rule 7 or, when the value cannot be determined under that Rule, under Rule 8, provided that at the request of the importer, and with the approval of the proper officer, the order of application of Rules 7 and 8 shall be reversed.

10. As per Rule 7 of the CVR, 2007, subject to the provisions of Rule 3, if the

goods being valued or identical or similar imported goods are sold in India, in the condition as imported, at or about the time at which the declaration for determination of value is presented, the value of the imported goods shall be based on the unit price at which the imported goods/identical goods/similar goods are sold in India in the greatest aggregate quantity to persons who are not related to the sellers subject to certain deductions. However, in absence of reliable data of sale of such goods to persons who are not related to the sellers in India, the value of the subject goods cannot be determined under the said Rule 7.

11. As per Rule 8 of the CVR, 2007, subject to the provisions of Rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of the cost or value of materials and fabrication or other processing employed in producing the imported goods and an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India. In the instant case, the parameters of value of materials and fabrication or other processing employed in producing the imported goods are not available. Therefore, recourse of Rule 9 has to be taken to arrive at the transaction value in the instant case. Rule 9 provides the residual method for arriving at the transaction value using reasonable means consistent with the principles and general provisions of the Customs Valuation Rules, 2007 and as per the conditions set out therein.

12. Further, the applicable Customs duty on the impugned goods is calculated as detailed below:

Table-III

Exchange Rate: 1 USD = INR 85.35

Bill of Entry No. Date	Description of Goods	Weight (MTS)	Price per MTS (INR)	Total Ass. Value (INR)	Total Duty Payable (INR)
6989147 dt. 01.12.2024	Heavy Melting Scrap 85%	19.58	900	15,04,037	2,70,726
	Aluminium Scrap 15%	3.45	1680	4,94,689	1,05,097
	Total	21944		19,98,726	
	Total (Duty Payable)				3,75,823
	Duty Declared				3,40,825
	Differential Duty				34,998

RELEVANT LEGAL PROVISIONS

13. The relevant legal provisions are reproduced below for ease of reference:

13.1 Section 2(25) defined the terms "Imported 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.

13.2 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.*

13.3 Section 111. Confiscation of improperly imported goods, etc. –

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

(a) --

(l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;

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

13.4 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;*

14. In view of the above, it appears that importer has mis-declared the quantity in the Bill of Entry 6989147 dt. 01.12.2024 and the total

assessable value re-determined at Rs. 19,98,726/- and the duty difference in respect of mis-declared goods are Rs. 34,998/- (As per Table-III above). The importer failed to observe the conditions of Section-46(4) of the Customs Act, 1962 and made the goods liable for confiscation under the provisions of Section 111(l) & 111(m) of the Customs Act 1962. For the said act of omission and commission, the importer appears liable to the penal action under the provisions of Section 112(a)(ii) of the Customs Act, 1962.

RECORD OF PERSONAL HEARING

15. The Importer vide letter dated 08.01.2025 has submitted that they do not want Show Cause Notice and Personal Hearing.

DISCUSSION & FINDING

16. I have carefully gone through the case records and applicable provisions of Law. I find that the Importer vide their letter dated 08.01.2025 has submitted that they do not want Show Cause Notice and Personal Hearing, thus, the condition of Principles 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.

17. The main issues before me are to decide whether-

- i. the whole consignment is liable for confiscation under Section 111(l) & 111(m) of the Customs Act, 1962.
- ii. The Importer is liable for penal action under the provisions of Section 112(a)(ii) of Customs Act, 1962.

18. I find that in Bill of Entry No. 6989147 dated 01.12.2024, the Importer declared the goods as "Automotive Engines (CTH: 72044900)" and "Aluminium Scrap Automotive Engines (76020010)", however, as per examination report and report of Chartered Engineer, the cargo contained "Heavy Melting Scrap 85% (approx. 19580 Kgs), Aluminium Scrap 15% (Approx. 3450 Kgs.)" which is different from the goods declared by the Importer.

19. I find that in the impugned imports, the description of the goods has been mis-declared inasmuch as that the "Heavy Melting Scrap 85% (approx. 19580 Kgs), Aluminium Scrap 15% (Approx. 3450 Kgs.)" has been mis-declared as "Automotive Engines (HMS approx. 94.1%)" and "Aluminium Scrap Automotive Engines (Approx. 5.9%)", therefore, the declared value of the said goods is liable to be rejected under the provisions of Rule 12 of the CVR, 2007 and liable to be re-determined by proceeding sequentially through Rules 4 to 9.

20. Further, I find that Rule-6 of the CVR, 2007 stipulates that where value cannot be determined under Rules 3, 4 and 5, the value shall be determined under the provisions of Rule 7 or, when the value cannot be determined under that Rule, under Rule 8, provided that at the request of the importer, and with the approval of the proper officer, the order of application of Rules 7 and 8 shall be reversed.

21. I find that the whole consignment has been found to be mis-declared in terms of quantity and value, therefore, I hold the whole consignment consisting

of "Heavy Melting Scrap 85% (approx. 19580 Kgs), Aluminium Scrap 15% (Approx. 3450 Kgs.)" actually, found during examination of the goods, liable for confiscation under Section 111(l) & 111(m) of the Customs Act, 1962.

22. Further, 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 has failed to discharge the statutory obligation cast upon him and made wrong declaration about the Quantity and Valuation of the imported goods. As hereinabove, the imported goods have been held liable for confiscation under provisions of Section 111(l) & 111(m) of the Customs Act, 1962, therefore, I hold the importer liable for penal action under Section 112(a) (ii) of the Customs Act, 1962.

23. Further, I find that as "Heavy Melting Scrap 85% (approx. 19580 Kgs), Aluminium Scrap 15% (Approx. 3450 Kgs.)" actually, found during examination of the goods, have been held liable for confiscation under provisions of Section 111(l) & 111(m) of Customs Act, 1962, I deem it fit to allow clearance of the same, on payment of Redemption Fine in terms of Section 125 of the Customs Act, 1962 which is reproduced below for ease of reference:

Section 125. Option to pay fine in lieu of confiscation. -

(1) 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 or, where such owner is not known, the person from whose possession or custody such goods have been seized, an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provided that, without prejudice to the provisions of the proviso to sub-section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.

(3) Where the fine imposed under sub-section (1) is not paid within a period of one hundred and twenty days from the date of option given thereunder, such option shall become void, unless an appeal against such order is pending.

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

ORDER

- i. I reject the declared transaction value of Rs. 18,58,496/- of the goods imported vide Bill of Entry No. 6989147 dated 01.12.2024 *under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods), Rule, 2007* read with Section 14 of the Customs Act, 1962. I order to re-determine the same as Rs. 19,98,726/- under Rule 9 of the CVR, 2007 read with Section 14 of the Customs Act, 1962. I order re-assessment of the goods imported vide Bill of Entry No. 6989147 dated 01.12.2024

accordingly including amendment of description, quantity and value of the goods.

- ii. I order for confiscation of "Heavy Melting Scrap 85% (approx. 19580 Kgs), Aluminium Scrap 15% (Approx. 3450 Kgs.)" actually found during examination of the goods having total re-determined value of Rs. **19,98,726/-** under Section 111(l) & 111(m) of Customs Act, 1962. However, I give an option to the Importer M/s Shree Ram Industries to redeem the said goods under provisions of Section 125 of Customs Act, 1962 on payment of Redemption Fine of Rs. 2,00,000/ (Rs Two Lakhs only).
- iii. I order to impose penalty of Rs. 5000/- (Rs. Five Thousand Only) under Section 112(a)(ii) of Customs Act, 1962 on the Importer M/s Shree Ram Industries .
- iv. The redeemable goods viz. "Heavy Melting Scrap 85% (approx. 19580 Kgs), Aluminium Scrap 15% (Approx. 3450 Kgs.)" are to be released only after payment of applicable duties, Redemption Fine & Penalty as above.

25. 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.

Additional Commissioner of Customs,
Import Assessment,
Customs House, Mundra.

Date: 15-01-2025

F. No. CUS/94/2025-Docks Examn-O/o Pr Commr-Cus-Mundra

To,
M/s Shree Ram Industries,
ground floor, Plot No 61, Polaris Ind,
Kuha, Daskroi, Kuha-382433.

Copy to:

1. The Dy. Commissioner of Customs, Review Section, CH, Mundra
2. The Dy. Commissioner of Customs, TRC Section, CH, Mundra
3. The Dy. Commissioner of Customs, EDI Section, CH, Mundra
4. Guard file