

		OFFICE OF THE PRINCIPAL COMMISSIONER OF CUSTOMS CUSTOM HOUSE: MUNDRA, KUTCH MUNDRA PORT & SPL ECONOMIC ZONE, MUNDRA-370421 Phone No. 02838-271029/423 FAX No. 02838-271425 Email : importsectionmundra@gmail.com
A	File No.	CUS/APR/SCN/1013/2023-Gr 5-6-O/o Pr Commr-Cus-Mundra
B	Order-in-Original No.	MCH/ADC/AK/88/2024-25
C	Passed by	ARUN KUMAR Hon'ble Additional Commissioner of Customs Custom House, Mundra.
D	Date of Order	08.07.2024
E	Noticee/Party/ Importer/ Exporter	M/s Gajwani Global (IEC: BITPM9155N), Bunder Road, Mundra-B, 2/2/96/63, Behind Hospital, Mudra Kachchh, Gujarat-370421
F	DIN No.	DIN- 20240771MO000000F702

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 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:

“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
Having his office at 4th Floor, HUDCO building, Ishwar Bhuvan Road,
Navrangpura, 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/- रुपये 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 ड्यूटी/ 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 FACT OF THE CASE

M/s Gajwani Global (IEC: BITPM9155N) having address at Bunder Road, Mundra-B, 2/2/96/63, behind Hospital, Mudra Kachchh, Gujarat-370421 (hereinafter referred to as 'the importer' or 'the Noticee' for sake of brevity) filed a Bill of Entry No. 5790448 dated 04.05.2023 through their CB M/s. Benchmark Shipping and Logistics (PAN No. COSPM1345E) for import and clearance of 'parts and accessories of printing machine' (hereinafter referred to as 'the goods') having declared assessable value of Rs. 6,30,473/-. The subject goods were imported from M/s. Electronic Way Trading LLC, Dubai (UAE). The subject goods were classified under CTH 84439990 of Custom Tariff Act, 1975. The total duty was assessed to Rs. 1,74,863/- (Including IGST).

2. NCTC has issued alert wherein intelligence conveyed that the consignment appeared to be a risky in relation to mis-declaration, IPR violation, BIS non-compliance etc. On the basis of the said alert, Bill of Entry 5790448 dated 04.05.2023 filed by M/s. Gajwani Global declaring the goods as 'parts and accessories of printing machine' and classifying the same under Chapter Tariff Heading (CTH) 8443 of Custom Tariff Act, 1975, was put up on hold and consignment examined under panchnama dated 15.05.2023 by the officers of SIIB, in the presence of representatives of Customs Broker, empanelled Chartered Engineer, representatives of CFS and Importer. During the examination of the consignment, goods appeared as old and used parts/accessories of photocopier machine and also found hard disc drive which were not declared in Bill of Entry.

2.1 During examination, all the cartons were opened one by one and examined thoroughly goods found as old and used and some cartons contained another small carton and on opening the small cartons, the goods found as hard disc drive in the packaging. The hard disc drive has different storage size and some are manufactured in Thailand and some in China. The goods appear to be old and used. The details of goods found during the course of Panchanama is as below:

TABLE-I

C a r t o n No. (given during the examination)	Description and Quantity of Goods found in Carton (on searching image from google lens)
Carton No. 1	1. Parts/Accessories of photocopy machine which appears to be Laser Unit, Quantity: 04. 2. Harddisk Drive- 250GB, Quantity: 25pcs, Brand Name: Seagate
Carton No. 2	1. Parts/Accessories of photocopy machine which appears to be Laser Unit, Quantity: 01. 2. Harddisk Drive- 250GB, Quantity: 25pcs, Brand Name: Seagate
Carton No. 3	1. Parts/Accessories of photocopy machine which appears to be HVT Unit, Quantity: 04pcs. 2. Harddisk Drive- 250GB, Quantity: 25pcs, Brand Name: Seagate
Carton No. 4	1. Parts/Accessories of photocopy machine which appears to be DP

	Unit, Quantity: 05pcs.
	2. Harddisk Drive- 250GB, Quantity: 25pcs, Brand Name: Seagate
Carton No. 5	1. Parts/Accessories of photocopy machine which appears to be Laser Unit: Quantity: 01pcs & Delivery Unit: Quantity: 01pcs.
	2. Harddisk Drive- 250GB, Quantity: 25pcs, Brand Name: Seagate
Carton No. 6	1. Parts/Accessories of photocopy machine which appears to be DC Board (new): Quantity- 50pcs, IBM Travelstar & Tosiba(storage unit): Quantity- 20pcs.
Carton No. 7	1. Parts/Accessories of photocopy machine which appears to be DC Board (new): Quantity- 05pcs, Primarily Board: Quantity- 20pcs.
Carton No. 8	1. Parts/Accessories of photocopy machine which appears to be Ink Roller, Quantity: 07pcs.
	2. Harddisk Drive- 320GB, Quantity: 25pcs, Brand Name: Seagate
Carton No. 9	1. Parts/Accessories of photocopy machine which appears to be DP Unit: Quantity- 02pcs, Laser Unit: Quantity- 02pcs.
	2. Harddisk Drive- 250GB, Quantity: 25pcs, Brand Name: Seagate
Carton No. 10	1. Parts/Accessories of photocopy machine which appears to be DP Unit: Quantity- 02pcs, HVT Unit: Quantity- 02pcs.
	2. Harddisk Drive- 250GB, Quantity: 20pcs, Brand Name: WD Blue Desktop
Carton No. 11	1. Parts/Accessories of photocopy machine which appears to be Laser Unit: Quantity- 05pcs.
	2. Harddisk Drive- 250GB, Quantity: 25pcs, Brand Name: Seagate
Carton No. 12	1. Parts/Accessories of photocopy machine which appears to be Wiring Set: Quantity- 01set, Ink Roller: Quantity- 02pcs, Outdoor Fan: Quantity- 02pcs, Front door: Quantity- 01pcs
	2. Harddisk Drive- 250GB, Quantity: 25pcs, Brand Name: Seagate
Carton No. 13	1. Parts/Accessories of photocopy machine which appears to be Front Door/Panel: Quantity- 02pcs, Main drive Assembly: Quantity- 04pcs
	2. Harddisk Drive- 250GB, Quantity: 25pcs, Brand Name: Seagate
Carton No. 14	1. Printer Board (new): Quantity- 28pcs.
Carton No. 15	1. Parts/Accessories of photocopy machine which appears to be HVT Board: Quantity- 04pcs, Fixing Material (unknown): Quantity- 04pcs, Ink Roller: Quantity- 01pcs.
Carton No. 16	1. Parts/Accessories of photocopy machine which appears to be Power Supply: Quantity- 03pcs, DP Unit: Quantity- 03pcs.
	2. Harddisk Drive- 500GB, Quantity: 20pcs, Brand Name: WD Green Power
Carton No. 17	1. Parts/Accessories of photocopy machine which appears to be Panel: Quantity- 02pcs, Printer Part (unknown): Quantity- 01pcs.
	2. Harddisk Drive- 250GB, Quantity: 25pcs, Brand Name: Seagate
Carton No. 18	1. Parts/Accessories of photocopy machine which appears to be Tray Panel: Quantity- 02pcs, Laser Unit: Quantity- 04pcs.
	2. Harddisk Drive- 250GB, Quantity: 25pcs, Brand Name: Seagate
Carton No. 19	1. Parts/Accessories of photocopy machine which appears to be Front Panel/door: Quantity- 01pcs, Printer Part (unknown): Quantity- 01pcs.
	2. Harddisk Drive- 250GB, Quantity: 25pcs, Brand Name: Seagate
Carton No. 20	1. Parts/Accessories of photocopy machine which appears to be Wiring Set: Quantity- 05pcs, Cartridge Set: Quantity- 02pcs.

	2. Harddisk Drive- 250GB, Quantity: 25pcs, Brand Name: Seagate
Carton No. 21	1. Parts/Accessories of photocopier machine which appears to be HVT Unit: Quantity- 03pcs, DC Board: Quantity- 04pcs, Main Drive Unit: Quantity- 01pcs, Door Unit: Quantity- 01pcs. 2. Harddisk Drive- 500GB, Quantity: 20pcs, Brand Name: WD Green Power
Carton No. 22	1. Parts/Accessories of photocopier machine which appears to be Control Panel: Quantity- 10pcs.
Carton No. 23	1. Parts/Accessories of photocopier machine which appears to be Laser Unit: Quantity- 05pcs. 2. Harddisk Drive- 250GB, Quantity: 25pcs, Brand Name: Seagate
Carton No. 24	1. Parts/Accessories of photocopier machine which appears to be Door Panel: Quantity- 01pcs, Main Drive Unit: Quantity- 01pcs, Delivery Unit: Quantity- 02pcs, HVT Unit: Quantity- 02pcs. 2. Harddisk Drive- 250GB, Quantity: 25pcs, Brand Name: Seagate
Carton No. 25	1. Parts/Accessories of photocopier machine which appears to be Door Panel: Quantity- 01pcs, Main Drive Unit: Quantity- 04pcs. 2. Harddisk Drive- 250GB, Quantity: 25pcs, Brand Name: Seagate
Carton No. 26	1. Parts/Accessories of photocopier machine which appears to be Door Panel: Quantity- 02pcs, Main Drive Unit: Quantity- 02pcs, HVT Unit: Quantity- 01pcs. 2. Harddisk Drive- 250GB, Quantity: 25pcs, Brand Name: Seagate
Carton No. 27	1. Parts/Accessories of photocopier machine which appears to be Door Panel: Quantity- 01pcs, Laser Unit: Quantity- 02pcs, Delivery Unit: Quantity- 01pcs 2. Harddisk Drive- 250GB, Quantity: 20pcs, Brand Name: WD Blue Desktop
Carton No. 28	1. Parts/Accessories of photocopier machine which appears to be DC Board: Quantity- 30pcs, Power Supply Unit: Quantity- 20pcs.
Carton No. 29	1. Parts/Accessories of photocopier machine which appears to be Delivery Unit: Quantity- 08pcs, Cartridge Unit: Quantity- 01pcs. 2. Harddisk Drive- 250GB, Quantity: 25pcs, Brand Name: Seagate
Carton No. 30	1. Parts/Accessories of photocopier machine which appears to be Door Panel: Quantity- 02pcs, Cartridge Unit: Quantity- 01pcs. 2. Harddisk Drive- 500GB, Quantity: 20pcs, Brand Name: WD Green Power
Carton No. 31	1. Parts/Accessories of photocopier machine which appears to be Laser Unit: Quantity- 20pcs, CCD Unit: Quantity- 10pcs.
Carton No. 32	1. Parts/Accessories of photocopier machine which appears to be Upper unit: Quantity- 03pcs.
Carton No. 33	1. Parts/Accessories of photocopier machine which appears to be Upper unit: Quantity- 03pcs.
Carton No. 34	1. Parts/Accessories of photocopier machine which appears to be Base unit/Trolley: Quantity- 02pcs.
Carton No. 35	1. Parts/Accessories of photocopier machine which appears to be Base unit/Trolley: Quantity- 02pcs.
Carton No. 36	1. Parts/Accessories of photocopier machine which appears to be Base unit/Trolley: Quantity- 02pcs.
Carton No. 37	1. Parts/Accessories of photocopier machine which appears to be Base unit/Trolley: Quantity- 02pcs.
Carton No. 38	1. Parts/Accessories of photocopier machine which appears to be

	Upper unit: Quantity- 03pcs.
Carton No. 39	1. Parts/Accessories of photocopier machine which appears to be ADF Unit: Quantity- 05pcs, Upper door: Quantity- 02pcs.
Carton No. 40	1. Parts/Accessories of photocopier machine which appears to be HVT Unit: Quantity- 02pcs, Printer Part (unknown): Quantity- 01pcs. 2. Harddisk Drive- 250GB, Quantity: 25pcs, Brand Name: Seagate
Carton No. 41	1. Parts/Accessories of photocopier machine which appears to be Control Panel: Quantity- 20pcs, Upper door: Quantity- 02pcs.
Carton No. 42	1. Parts/Accessories of photocopier machine which appears to be Paper Tray set machine: Quantity- 04pcs.
Carton No. 43	1. Parts/Accessories of photocopier machine which appears to be middle part machine set: Quantity- 08pcs.
Carton No. 44	1. Parts/Accessories of photocopier machine which appears to be Paper Tray set machine: Quantity- 04pcs.
Carton No. 45	1. Parts/Accessories of photocopier machine which appears to be Cartridge set Box: Quantity- 20pcs.
Carton No. 46	1. Parts/Accessories of photocopier machine which appears to be Wiring Kit Set: Quantity- 01pcs, Delivery Unit: Quantity- 03pcs, ADF Unit: Quantity- 09pcs.
Carton No. 47	1. Parts/Accessories of photocopier machine which appears to be Cartridge Roller: Quantity- 50pcs, Upper Door: Quantity- 06pcs.
Carton No. 48	1. Parts/Accessories of photocopier machine which appears to be Delivery Unit: Quantity- 04pcs, ADF Unit: Quantity- 08pcs.
Carton No. 49	1. Parts/Accessories of photocopier machine which appears to be Side Cover: Quantity- 02pcs, ADF Unit: Quantity- 01pcs, Middle part machine set: Quantity- 01pcs.
Carton No. 50	1. Parts/Accessories of photocopier machine which appears to be Base unit/Trolley: Quantity- 02pcs.
Carton No. 51	1. Parts/Accessories of photocopier machine which appears to be Side Cover: Quantity- 02pcs, ADF Unit: Quantity- 01pcs, Middle part machine set: Quantity- 01pcs.
Carton No. 52	1. Parts/Accessories of photocopier machine which appears to be Delivery Unit: Quantity- 01pcs, ADF Unit: Quantity- 08pcs, Upper Door: Quantity- 02pcs, Laser Unit: Quantity- 02pcs.
Carton No. 53	1. Parts/Accessories of photocopier machine which appears to be Mother Board: Quantity- 01pcs, ADF Unit: Quantity- 08pcs.
Carton No. 54	2. Parts/Accessories of photocopier machine which appears to be Middle part machine set: Quantity- 03pcs.
Carton No. 55	1. Parts/Accessories of photocopier machine which appears to be Side Cover: Quantity- 02pcs, ADF Unit: Quantity- 01pcs, Middle part machine set: Quantity- 01pcs.
Carton No. 56	1. Parts/Accessories of photocopier machine which appears to be Side Cover: Quantity- 02pcs, ADF Unit: Quantity- 01pcs, Middle part machine set: Quantity- 01pcs.
Carton No. 57	1. Parts/Accessories of photocopier machine which appears to be Side Cover: Quantity- 02pcs, ADF Unit: Quantity- 01pcs, Middle part machine set: Quantity- 01pcs.
Carton No. 58	1. Parts/Accessories of photocopier machine which appears to be Upper ADF Unit: Quantity- 04pcs.
Carton No. 59	1. Parts/Accessories of photocopier machine which appears to be ADF Unit: Quantity- 05pcs, Upper door: Quantity- 02pcs.

Carton No. 60	1. Parts/Accessories of photocopier machine which appears to be Base unit/Trolley: Quantity- 02pcs.
Carton No. 61	1. Parts/Accessories of photocopier machine which appears to be Base unit/Trolley: Quantity- 02pcs.
Carton No. 62	1. Parts/Accessories of photocopier machine which appears to be ADF Unit Part/cover: Quantity- 05pcs, ADF Unit: Quantity- 08pcs, Front Door: Quantity- 10pcs, Left and Right Door: Quantity- 10pcs each, Delivery Unit: Quantity- 05pcs, ADF Unit Part/Roller: Quantity- 04pcs, ADF Unit Part/Roller: Quantity- 04pcs, Main delivery Assembly: Quantity- 01pcs.
Carton No. 63	1. Parts/Accessories of photocopier machine which appears to be Upper ADF Unit: Quantity- 04pcs.
Carton No. 64	1. Parts/Accessories of photocopier machine which appears to be Middle part machine set: Quantity- 02pcs.
Carton No. 65	1. Parts/Accessories of photocopier machine which appears to be Middle part machine set: Quantity- 02pcs.
Carton No. 66	1. Parts/Accessories of photocopier machine which appears to be ADF Unit: Quantity- 05pcs, Upper door: Quantity- 02pcs.
Carton No. 67	1. Parts/Accessories of photocopier machine which appears to be Base unit/Trolley: Quantity- 02pcs.
Carton No. 68	1. Parts/Accessories of photocopier machine which appears to be Front Cover: Quantity- 07pcs, Finisher Cover: Quantity- 04pcs.
Carton No. 69	1. Parts/Accessories of photocopier machine which appears to be ADF Unit: Quantity- 05pcs, Upper door: Quantity- 02pcs.
Carton No. 70	1. Parts/Accessories of photocopier machine which appears to be Middle part machine set: Quantity- 03pcs.
Carton No. 71	1. Parts/Accessories of photocopier machine which appears to be Control Panel: Quantity- 15pcs, Front Door: Quantity- 14pcs.
Carton No. 72	1. Parts/Accessories of photocopier machine which appears to be Scanner/ Display Unit: Quantity- 04pcs.
Carton No. 73	1. Parts/Accessories of photocopier machine which appears to be Main Drive motor: Quantity- 10pcs, Front Door: Quantity- 06pcs, Tray PCB: Quantity- 07pcs.
Carton No. 74	1. Parts/Accessories of photocopier machine which appears to be Right Door: Quantity- 08pcs, Left Door: Quantity- 07pcs, Front Door: Quantity- 04pcs, Fuser Unit: Quantity- 15pcs, Drum Unit: Quantity- 10pcs, HVT Board: Quantity- 15pcs.
Carton No. 75	1. Parts/Accessories of photocopier machine which appears to be ADF Unit: Quantity- 01pcs, Finisher Cover: Quantity- 02pcs, Paper Tray: Quantity- 07pcs.
Carton No. 76	1. Parts/Accessories of photocopier machine which appears to be Front Door: Quantity- 08pcs.
Carton No. 77	1. Parts/Accessories of photocopier machine which appears to be Laser Unit, Quantity: 03, HVT Unit, Quantity: 03. 2. Harddisk Drive- 250GB, Quantity: 25pcs, Brand Name: Seagate
Carton No. 78	1. Parts/Accessories of photocopier machine which appears to be Base unit/Trolley: Quantity- 02pcs.
Carton No. 79	1. Parts/Accessories of photocopier machine which appears to be Cartridge Box: Quantity- 50pcs.
Carton No. 80	1. Parts/Accessories of photocopier machine which appears to be Power Supply: Quantity- 12pcs, Finisher Cover: Quantity- 04pcs.

Carton No. 81	1. Parts/Accessories of photocopier machine which appears to be Pickup Unit: Quantity- 18pcs, Wiring Set: Quantity- 17pcs, Main Drive Motor: Quantity- 08pcs, Fixing Motor: Quantity- 07pcs.
Carton No. 82	1. Parts/Accessories of photocopier machine which appears to be Left Door: Quantity- 07pcs, Finisher Cover: Quantity- 19pcs.
Carton No. 83	1. Parts/Accessories of photocopier machine which appears to be Scanner Unit: Quantity- 04pcs.
Carton No. 84	1. Parts/Accessories of photocopier machine which appears to be Scanner Unit: Quantity- 01pcs, Finisher Cover: Quantity- 10pcs, ADF Unit: Quantity- 01pcs, Paper Tray: Quantity- 01pcs.
Carton No. 85	1. Parts/Accessories of photocopier machine which appears to be Power Supply: Quantity- 08pcs, Wiring Set: Quantity- 07pcs, Fixing Unit: Quantity- 07pcs, Right Door: Quantity- 07pcs, Front Board: Quantity- 07pcs, DP Unit: Quantity- 02pcs, Drum Unit: Quantity- 10pcs, HVT Board: Quantity- 07pcs.
Carton No. 86	1. Parts/Accessories of photocopier machine which appears to be Fuser Unit: Quantity- 10pcs, CCD Unit: Quantity- 07pcs, DP Unit: Quantity- 02pcs, Drum Unit: Quantity- 10pcs, Finisher Cover: Quantity- 08pcs.
Carton No. 87	1. Parts/Accessories of photocopier machine which appears to be Base unit/Trolley: Quantity- 02pcs.
Carton No. 88	1. Parts/Accessories of photocopier machine which appears to be Scanner Unit: Quantity- 04pcs.
Carton No. 89	1. Appears to be miscellaneous Parts/Accessories of photocopier machine. 2. Harddisk Drive- 250GB, Quantity: 25pcs, Brand Name: Seagate
Carton No. 90	1. Parts/Accessories of photocopier machine which appears to be Delivery Unit, Quantity: 05pcs. 2. Harddisk Drive- 250GB, Quantity: 25pcs, Brand Name: Seagate
Carton No. 91	1. Parts/Accessories of photocopier machine which appears to be ADF/Scanner Unit: Quantity- 06pcs.
Carton No. 92	1. Parts/Accessories of photocopier machine which appears to be ADF/Scanner Unit: Quantity- 06pcs.
Carton No. 93	1. Parts/Accessories of photocopier machine which appears to be Middle part machine set: Quantity- 03pcs, Main Drive Assembly: Quantity- 03pcs.
Carton No. 94	1. Parts/Accessories of photocopier machine which appears to be Middle part machine set: Quantity- 03pcs, Main Drive Assembly: Quantity- 03pcs.
Carton No. 95	1. Parts/Accessories of photocopier machine which appears to be Middle part machine set: Quantity- 03pcs, Main Drive Assembly: Quantity- 03pcs.
Carton No. 96	1. Parts/Accessories of photocopier machine which appears to be Base unit/Trolley: Quantity- 02pcs.
Carton No. 97	1. Parts/Accessories of photocopier machine which appears to be Middle part machine set: Quantity- 03pcs, Main Drive Assembly: Quantity- 03pcs.
Carton No. 98	1. Parts/Accessories of photocopier machine which appears to be HVT Unit, Quantity: 09pcs. 2. Harddisk Drive- 500GB, Quantity: 20pcs, Brand Name: Samsung

Carton No. 99	1. Parts/Accessories of photocopier machine which appears to be Power Supply: Quantity- 12pcs, Finisher Cover: Quantity- 04pcs.
Carton No. 100	1. Parts/Accessories of photocopier machine which appears to be Base unit/Trolley: Quantity- 02pcs.
Carton No. 101	1. Parts/Accessories of photocopier machine which appears to be ADF Unit: Quantity- 01pcs, Finisher Cover: Quantity- 02pcs, Paper Tray: Quantity- 02pcs.
Carton No. 102	1. Parts/Accessories of photocopier machine which appears to be Base unit/Trolley: Quantity- 02pcs.
Carton No. 103	1. Parts/Accessories of photocopier machine which appears to be ADF Unit: Quantity- 05pcs.
Carton No. 104	1. Parts/Accessories of photocopier machine which appears to be Base unit/Trolley: Quantity- 02pcs.
Carton No. 105	1. Parts/Accessories of photocopier machine which appears to be Base unit/Trolley: Quantity- 02pcs.
Carton No. 106	1. Parts/Accessories of photocopier machine which appears to be DC Board: Quantity- 30pcs, Power Supply Unit: Quantity- 20pcs.
Carton No. 107	1. Parts/Accessories of photocopier machine which appears to be Delivery Unit: Quantity: 01pcs, Laser Unit: Quantity: 05pcs, Upper Cover: Quantity: 02pcs. 2. Harddisk Drive- 250GB, Quantity: 25pcs, Brand Name: Seagate
Carton No. 108	1. Parts/Accessories of photocopier machine which appears to be Control Panel: Quantity- 15pcs, Front Door: Quantity- 14pcs.
Carton No. 109	1. Parts/Accessories of photocopier machine which appears to be ADF Unit: Quantity- 04pcs.
Carton No. 110	1. Parts/Accessories of photocopier machine which appears to be Power Supply: Quantity- 12pcs, Finisher Cover: Quantity- 18pcs, Front Door: Quantity- 10pcs, HVT Unit: Quantity- 10pcs, Cartridge Box: Quantity- 10.
Carton No. 111	1. Parts/Accessories of photocopier machine which appears to be Power Supply: Quantity- 12pcs, Front Door: Quantity- 10pcs, HVT Unit: Quantity- 10pcs.
Carton No. 112	1. Parts/Accessories of photocopier machine which appears to be Side Door: Quantity: 02pcs. 2. Harddisk Drive- 250GB, Quantity: 25pcs, Brand Name: Seagate
Carton No. 113	1. Parts/Accessories of photocopier machine which appears to be Delivery Unit: Quantity- 02pcs, Delivery Unit: Quantity- 02pcs, HVT Unit: Quantity- 02pcs. 2. Harddisk Drive- 250GB, Quantity: 25pcs, Brand Name: Seagate
Carton No. 114	1. Parts/Accessories of photocopier machine which appears to be HVT Unit: Quantity- 04pcs. 2. Harddisk Drive- 320GB, Quantity: 25pcs, Brand Name: Seagate
Carton No. 115	1. Parts/Accessories of photocopier machine which appears to be Panel: Quantity- 03pcs, Front Cover: Quantity- 18pcs, Front Door: Quantity- 17pcs.
Carton No. 116	1. Parts/Accessories of photocopier machine which appears to be ADF Unit: Quantity- 04pcs.
Carton No. 117	1. Parts/Accessories of photocopier machine which appears to be Cartridge Box: Quantity- 50pcs.
Carton No. 118	1. Parts/Accessories of photocopier machine which appears to be ADF Unit: Quantity- 05pcs.

Carton No. 119	1. Parts/Accessories of photocopy machine which appears to be Power Supply: Quantity- 03pcs, Side Door: Quantity- 02pcs, ADF Unit: Quantity- 09pcs.
Carton No. 120	1. Appears to be miscellaneous Parts/Accessories of photocopy machine.

2.2 Therefore, some of goods appeared to be mis-declared in terms of description, quantity and country of origin. Further, as the goods appear to be old and used, the goods appear to be prohibited for import under FTP (2015-20) and the Hazardous and Other Waste (Management and Transboundary Movement) Rules, 2016. Further, the empanelled Chartered Engineer vide its report dated 08.12.2023 reported that the goods were old and used and not re-conditioned.

3. The said goods have been seized vide Seizure Memo dated 24.06.2023 under the provisions of Section 110 (1) of the Customs Act, 1962 under the reasonable belief that the importer has contravened various provisions of Customs Act, 1962, FTP (2015-20), Foreign Trade (Development & Regulation) Act, 1992, Foreign Trade (Regulation) Rules, 1993 etc. which made goods liable for confiscation under the provisions of Section 111 (d) and 111 (m) of the Customs Act, 1962.

4. The goods have been seized vide Seizure Memo dated 24.06.2023, said goods were handed over under Supratnama dated 24.06.2023 to the representative of M/s. Empezar Logistics Pvt. Ltd. CFS, APSEZ, Mundra for safe custody and representative of CFS, undertake that they will not remove, sale, part with, deal with the goods without prior permission from the competent authority.

5. As the goods were found mis-declared and the goods were liable to confiscation, a search was conducted at the premises of importer as necessary to collect evidences for further investigation. During search, it was found that there is no such office in existence in the name of M/s. Gajwani Global.

6. Thereafter, various summons was issued to Mr. Mahefuzkhan Mahammad Yunus Malek, Proprietor of M/s. Gajwani Global under the provisions of Section 108 of the Customs Act, 1962 directing them to appear before the Investigating Officer to give the evidence in the ongoing investigations on 02.06.2023 & 09.08.2023 but neither anyone appeared on behalf of importer nor any written submission was received by this office against said summons.

7. During investigation, as the importer was not responding and found nonexistence, CB namely M/s. Benchmark Shipping and Logistics was also summoned directing them to appear before the Investigating Officer to give the evidence in the ongoing investigations on 02.06.2023, 26.06.2023 & 09.08.2023 but neither anyone appeared before this office on behalf of CB nor any written submission received by this office against said summons. Further, a letter was written to CB section that CB, M/s. Benchmark Shipping and Logistics is not cooperating in the investigation, hence appropriate action may be initiated against said CB.

8. As the importer was not responding against summons in respect of the goods covered under Bill of Entry no 5790448 dated 04.05.2023 (having total assessable value of Rs. 6,30,473/-) and as per CE certificate, goods are old and used, there is reasonable doubt to reject the declared Assessable Value under Rule 12 of the Customs Valuation (Determination of value of Imported Goods) Rules, 2007 *ibid*.

8.1 The Assessable Value is required to be re-determined under Rule 1 of rule 3 of the Customs Valuation (Determination of Value of the imported goods) Rules, 2007 by applying provisions of Rule 4 to 9 of said Rules *ibid*.

8.2 Since, the value of identical and similar goods, considering nature of import, quantity, place and time of importation could not be found from NIDB data, the rule 4 and 5 of the said rules cannot be invoked.

8.3 In terms of Rule 7 of the Customs Valuation Rules, 2007, the value of the goods imported shall be based on the unit price at which the imported goods or identical goods or similar goods are sold in the greatest aggregate quantity to persons who are not related to the seller in India. Since, the identical or similar goods were available in the markets which are sold in the greatest aggregate quantity; a market survey was conducted by empanelled Chartered Engineer Shri Ajayrajsinh B. Jhala on the basis of conversation with the various suppliers, General Inspection available on internet, Market Survey of similar goods, physical & visual examination of the goods, its quality and condition. Therefore, Rule-7 of the said rules has been invoked. Therefore, using reasonable means consistent with principles and general provisions of Rule 7 valuation rules, market survey was relied upon to re-determine the value wherein on the basis of average market value, Assessable value of the goods has been derived as under of the goods worked out as below:

Table-II

Sr. No.	Description of Goods	Quantity	Total Average C&F Value of the Goods Assessed by CE (i n USD) (approx.)	CIF Value (C&F Value + insurance amount (1.125 % of C&F))	CIF Value in INR (Exchange Rate: 1\$=83.15 Rupees)	Duty (7.5% BCD + 10% SWS + 18% IGST)
1	Parts and accessories of Printing Machine	120 Boxes	15,569/-	15,744/-	13,09,114/-	3,63,083/-

8.4 From above, Assessable Value of goods imported vide subject Bills of Entry No. 5790448 dated 04.05.2023 liable to be appropriately re-determined under Customs Valuation (Determination of value of Imported Goods) Rules, 2007 with total Assessable Value of **Rs. 13,09,114/-** and the corresponding duty calculated to be **Rs. 3,63,083/-**.

9. In view of the facts above, it appeared that the importer is involved in importation of old and used parts and accessories of photocopier machine by mis-declaring its description. Import of 'Old and Used parts and accessories of printing machine' are restricted under Para 2.31 (1)(a) (ii) of

the Foreign Trade Policy (2015-2020) ('FTP' in short). The goods, viz. parts of printer/photocopy machine should not be allowed to be imported without prior permission from the Ministry of Environment, Forest and Climate change in terms of the Rule 12(4) of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 as the said goods are duly covered under Basel No. B1110 of part 'B' of the Schedule-III of the said Rules. Since, the imports appeared to have been made in violation of the Import Policy and without permission from Ministry of Environment, Forest and Climate change, as the importer did not produce any permission/authorization for importation of old and used part and accessories of printing machine, the goods were seized under Section 110 of CA, 1962

10. In view of the above it appeared that the importer had deliberately mis-declared the description of the goods against Bill of Entry No. 5790448 dated 04.05.2023 with an intention to import restricted items, viz. old and used parts and accessories of printing machine without obtaining any permission or authorization from Ministry of Electronics & Information Technology or DGFT respectively. Therefore, these acts of omission and commission on the part of the importers have made the goods liable for confiscation under the provisions of Section 111 (d) and 111 (m) of the CA, 1962 and the importing firm has rendered themselves liable for penal action under Section 112 of the Customs Act, 1962.

11. It also appeared that the CB firm M/s. Benchmark Shipping and Logistics aided and abetted in clearance of restricted goods in violation of Import Policy and accordingly contravened the provisions of Regulation 10 of CBLR, 2018. Therefore, it appeared that the CB firm M/s. Benchmark Shipping and Logistics also contravened the provisions of Regulation 17 (9) of CBLR, 2018 as they failed to supervise the acts of their employees to ensure the proper conduct of his employees in the transaction of business and he shall be held responsible for all acts or omissions of his employees during their employment.

12. Provisions of Law: The relevant provisions of law relating to import of goods in general, the Import policy & Rules relating to import, the liability of the goods to confiscation and rendering persons concerned liable to penalty for illegal importation under the provisions of the Foreign Trade (Development and Regulation) Act, 1992, Foreign Trade (Regulation) Rules, 1993, Foreign Trade

Policy 2015-20, the Customs Act, 1962, the provisions of the Customs Brokers' Licensing Regulations (CBLR), 2013 and any other law for the time being in force so far as they relate to the facts and circumstances of the subject matter, are summarized as under: -

A. Foreign Trade Policy – 2015-2020

As per Para 2.31 of the Foreign Trade Policy, 2015-20 all the second hand capital goods viz. Personal computers/ laptops including their refurbished /reconditioned spares are restricted and importable against authorization issued by Regional Authority.

B. Instructions from MeitY :

As per the D.O. No. 37(6)/2016-IPHW dtd 06.12.2016 issued by Ministry of Communications and Information Technology, any repaired/refurbished/second hand items, if notified, require registration under provision of the order. Further, unregistered repaired/ refurbished/ second hand items should not be allowed to be imported without prior permission from MeitY.

C. Instructions from CBEC :

Para 4 of the Circular No. 27/2011-Cus dated 04.07.2011 issued by CBEC stipulates that “the Board desires that the field formations should carefully and strictly implement the provisions of Hazardous Waste (Management, Handling and Transboundary) Rules, 2008. In particular, it should be noted that all imported goods falling within the purview of entry B 1110 of Part B of Schedule III of the said Rules, indicating second hand computers, would require the permission of the Ministry of Environment and Forests for import into India. It merits mention that the field formations should also refer to Rule 17 of the said Rules that treats contravening imports as illegal traffic requiring the importer to reexport the wastes at his cost within 90 days from the date of arrival. We must ensure that India does not become a destination for dumping junk electronic products”.

D. Foreign Trade (Development and Regulation) Act, 1992

- i. As per Section 3 (2) of the Foreign Trade (Development & Regulation) Act, 1992 “The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods”.
- ii. As per **Section 11(1)** of the Foreign Trade (Development and Regulation) Act, 1992, no export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the export and import policy for the time being in force.

E. Foreign Trade (Regulation) Rules, 1993:

*As per **Rule 11** of the Foreign Trade (Regulation) Rules, 1993 on importation into, any Customs ports of any goods, whether liable to duty or not, the owner of such goods shall in the Bill of Entry state the value, quality and description of such goods to the best of his knowledge and belief and shall subscribe a declaration of the truth of such statement at the foot of such Bill of Entry.*

F. Notification No. 338(E) dtd 23.03.2016 of E-waste Management Rules, 2016:

Para 3 (r) of Notification No. 338(E) dtd 23.03.2016 of Ewaste Management Rules, 2016 issued by Ministry of Environment, Forests and Climate Change (MoEFCC) stipulates that 'e-waste' means electrical and electronic equipment, whole or in part discarded as waste by the consumer or bulk consumer as well as rejects from manufacturing, refurbishment and repair processes;

G. Customs Act, 1962:

i. Section 2(33) of the CA, 1962, defines “prohibited goods”

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

ii. Section 17(1) of the Customs Act, 1962:

provides for self-assessment of duty on imported goods by the importer himself by filing a Bill of Entry. Under this mode of self-assessment, the bills of entry were self-assessed by importer, with regard to correctness of classification, value, rate of duty, exemption notification or any other relevant particular having bearing on correct assessment of duty on import.

iii. Section 46 (4) of the Customs Act, 1962,

the importer while presenting a Bill of Entry shall at the foot thereof 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.

iv. Section 111(d) of the Customs Act, 1962 –

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

v. Section 111(m) of the Customs Act, 1962 states that

[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 transshipment, with the declaration for transshipment referred to in the proviso to subsection (1) of section 54;]

vi. Section 112 of the Customs Act, 1962 provides that any person:

- a. *who in relation to any goods, does or omits to do an act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such act, or*
- b. *who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, 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 for improper importation of goods.*
 - (i) *in 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 Rupees Five thousand whichever is*

greater

H. **Customs Brokers' Licensing Regulations, 2013 (CBLR, 2013)**

i. Regulation 10: **Obligations of Customs Broker.** - A Customs

Broker shall-

- d. *advise his client to comply with the provisions of the Act and in case of non-compliance, shall bring the matter to the notice of the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be;*
- e. *exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any work related to clearance of cargo or baggage;*
- f. *not withhold information contained in any order, instruction or public notice relating to clearance of cargo or baggage issued by the Commissioner of Customs, from a client who is entitled to such information;*
- m. *discharge his duties as a Customs Broker with utmost speed and efficiency and without any delay;*
- n. *verify antecedent, correctness of Importer Exporter Code (IEC) number, identity of his client and functioning of his client at the declared address by using reliable, independent, authentic documents, data or information;*

H. **the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016.**

- i. *Rule 3(23) "other wastes" means wastes specified in Part B and Part D of Schedule III for import or export and includes all such waste generated indigenously within the country;*
- ii. *Rule 12 (4) The import of other wastes in Part B of Schedule III may be allowed to actual users with the permission of the Ministry of Environment, Forest and Climate Change.*
- iii. *Rule 15 (2) In case of illegal import of the hazardous or other waste, the importer shall re-export the waste in question at his cost within a period of ninety days from the date of its arrival into India and its implementation will be ensured by the concerned Port and the Custom authority. In case of disposal of such waste by the Port and Custom authorities, they shall do so in accordance with these rules with the permission of the Pollution Control Board of the State where the Port exists.*
- iv. *Schedule II, Part B, Basel No. B1110 of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. Which are read as: - Used Electrical and electronic assemblies other than those listed in Part D of Schedule III. Electronic assemblies consisting only of metals or alloys Waste electrical and electronic assemblies or scrap (including printed circuit boards) not containing components such as accumulators and other batteries included in Part A of Schedule III, mercury-switches, glass from cathode-ray tubes and other activated glass*

and PCB-capacitors, or not contaminated with Schedule II constituents such as cadmium, mercury, lead, polychlorinated biphenyl) or from which these have been removed, to an extent that they do not possess any of the characteristics contained in Part C of Schedule III (note the related entry in Schedule VI, A1180)

13. Accordingly, a Show Cause Notice No. CUS/APR/SCN/1013/2023-Gr 5-6 dated 21.12.2023 was issued to **M/s. Gajwani Global**, having address at Bunder Road, Mundra-B, 2/2/96/63, Behind Hospital, Mundra, Kachchh, Gujarat-370421 (IEC: BITPM9155N), requiring them to show cause to the Additional Commissioner of Customs (Import), having his office at 1 st floor, Building No. 5B, Port User Building as to why: -

(i) The subject goods declared as 'part and accessories of printing machine' should not be held as old and used other waste covered under Schedule III, part B Basel No. B1110 of the (Management and Transboundary Movement) Rules, 2016 and the said goods are restricted for import under para 2.31 (1)(a)(ii) of Foreign Trade Policy (2015-2020);

(ii) The subject goods should not be held as E-waste/ Other Waste as per para 3(23) of Notification No. 395E) dated 04.04.2016 of the Hazardous and Other Waste (Management and Transboundary Movement) Rules, 2016 issued by Ministry of Environment, Forests and Climate Change (MoEFCC);

(iii) The restricted goods having re-determined value of Rs. 13,09,114/- imported without permission from the Ministry of Environment, Forest and Climate change or authorization from DGFT should not be absolutely confiscated under sections 111(d) & 111(m) of the Customs Act, 1962 read with Section 3(2) and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 and redemption fine should not be imposed under Section 125 of the Customs Act, 1962.

(iv) Penalty should not be imposed on M/s. Gajwani Global under section 112 (a) of the Customs Act, 1962 for import of Old and used Part and accessories of printing machine which are restricted for import under import policy;

13.1 Show Cause Notice No. CUS/APR/SCN/1013/2023-Gr 5-6 dated 21.12.2023 was issued to **Shri Mahefuzkhan Mahammad Yunus Malek, proprietor of M/s. Gajwani Global**, requiring them to show cause to the Additional Commissioner of Customs (Import), having his office at 1 st floor, Building No. 5B, Port User Building as to why: -

(i) penalty should not be imposed on Shri Mahefuzkhan Mahammad Yunus Malek, proprietor of M/s. Gajwani Global under section 112(a) of the Customs Act, 1962 for his act of

omission and commission which leads to the imported goods liable for confiscation.

(ii) penalty should not be imposed on Shri Mahefuzkhan Mahammad Yunus Malek, proprietor of M/s. Gajwani Global under section 117 of the Customs Act, 1962 for violating section 108 of the Customs Act, 1962 by not presenting himself before summons.

13.2 Show Cause Notice No. CUS/APR/SCN/1013/2023-Gr 5-6 dated 21.12.2023 also issued to **M/s. Benchmark Shipping and Logistics**, CB firm requiring them to show cause to the Additional Commissioner of Customs (Import), having his office at 1 st floor, Building No. 5B, Port User Building as to why: -

(i) penalty should not be imposed on M/s. Benchmark Shipping and Logistics under section 117 of the Customs Act, 1962 for violating section 108 of the Customs Act, 1962 and for omission and commission in executing his role as a Custom Broker under Regulations 11 (d), (e), (f), (m) & (n) of CBLR, 2013 by not presenting himself before summons.

PERSONAL HEARING AND WRITTEN SUBMISSION

14. The importer M/s Gajwani Global and Shri Mahefuzkhan Mahammad Yunus, proprietor of M/s Gajwani Global vide their letter dated 07.03.2024 received through email have requested to waive off show-cause notice and personal hearing in this matter. They take full responsibility for the importation of this cargo. Further, they inform that their Customs Broker M/s Benchmark Shipping and Logistics is absolved of any responsibility and unaware of the true nature of the imported commodity and customs broker (CB) must not be liable for the imported goods. Further, more we are solely responsible for any irregularities or miss declaration if found in our consignment/shipment or in any of the documents or cargo presented herewith. We understand that we alone are and will be solely liable for any penal action-monetary or otherwise in terms of provisions made under Customs law and all Allied Acts applicable. We further state, declare and undertake that CHA was not been consulted in any manner what so ever while placing/receiving order to/from our overseas supplier/buyer and also at the time of importation/exportation of goods into/from India or likewise similar goods or any catalogue or brochure have been physical produced or shown to our CHA in regard to this particular shipment. Bill of Entry / Shipping Bill so prepared and presented here by their CHA prior to offering cargo for import or export clearance only on the basis of documents provided by us. Appointment of CHA under this Authority is specific to and limited to process our documents as provided by us for Customs clearance with Customs Authority as a Licensed Custom House Agent (CHA) only. We further undertake that we are solely responsible and liable for any action that Department may choose to take in this regard and absolve CHA for any responsibility whatsoever. Further they requested to release their cargo, they are ready to pay applicable duty, fine and penalty.

14.1 The Customs Broker M/s Benchmark Shipping & Logistics vide

their letter dated 07.03.2024 received through email has informed that due to unfortunate demise of their authorise person Mr. Rashmi Ranjan's mother, this unforeseen circumstance compelled him to be out of town during the scheduled summons date, rendering him unable to personally attend and represent the company. Mr. Rashmi Ranjan, representative of Benchmark Shipping and Logistics, had humbly requested another suitable date to ensure fair representation against the subject case. However, the period of leave taken by Mr. Rashmi Ranjan was extended until 10th January 2024, which rendered him unable to attend subsequent summons issued by the department. This unforeseen event was beyond our control, and we assure you it was not a deliberate attempt to evade or ignore the summons. Given the circumstances, we firmly believe that the penalty provision under section 117 should not be applied in this case, we trust that our proactive communication and request for rescheduling the appearance demonstrate our commitment to resolving this matter in a fair and transparent manner. We appreciate your understanding and cooperation in considering our request. Should you require any additional information or documentation to support our case. In conclusion, we firmly believe that our actions were not only compliant with the regulations but also reflective of our commitment to the highest standards of professionalism and integrity. We earnestly request a fair and thorough examination of the explanations provided above, and we are prepared to cooperate fully by providing any additional information or documentation necessary for the resolution of this matter. We draw your attention to our letter dated 17/10/2023, where we formally communicated the unfortunate demise of Mr. Rashmi Ranjan's mother. This unforeseen circumstance compelled him to be out of town during the scheduled summons date, rendering him unable to personally attend and represent the company.

Further, with regard to the aforementioned allegations, we wish to assert that the impugned Bills of Entry were submitted by the us was based on the documentation provided by the importer. A thorough examination of all the documents reveals their correctness, and no discrepancies have been identified in any of the submitted documents. We diligently carried out the duties of scrutinizing and verifying the authenticity of the documents. There has been no lapse in fulfilling the responsibilities as a Customs Broker to submit accurate and pertinent documents. It is affirmed that no relevant information has been omitted, and the documents received from the importer were submitted for the purpose of clearing the imported goods. They also requested that they do not want any personal hearing, Show Cause Notice and summons in this regard.

DISCUSSION & FINDING

15. I have carefully gone through the facts of the case, records & evidences submitted before me. I find that importer & CB vide their Letter dated 07.03.2024 has waived off SCN and PH. Therefore, I find that the principles of natural justice as provided in section 122A of the Customs Act, 1962, has been completed. Hence, I proceed to decide the case on the basis of the documentary evidence available on records. I find that

following main issue are involved in the subject matter, which are required to be decided-

(i) Whether the subject goods declared as 'part and accessories of printing machine' should be held as old and used other waste covered under Schedule III, part B Basel No. B1110 of the (Management and Transboundary Movement) Rules, 2016 and the said goods are restricted for import under para 2.31 (1)(a)(ii) of Foreign Trade Policy (2015-2020) or otherwise;

(ii) Whether the subject goods should be held as E-waste/ Other Waste as per para 3(23) of Notification No. 395E) dated 04.04.2016 of the Hazardous and Other Waste (Management and Transboundary Movement) Rules, 2016 issued by Ministry of Environment, Forests and Climate Change (MoEFCC) or otherwise;

(iii) Whether the restricted goods having re-determined value of Rs. 13,09,114/- imported without permission from the Ministry of Environment, Forest and Climate change or authorization from DGFT should be absolutely confiscated under sections 111(d) & 111(m) of the Customs Act, 1962 read with Section 3(2) and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 and redemption fine should be imposed under Section 125 of the Customs Act, 1962 or otherwise.

(iv) Whether penalty should be imposed on M/s. Gajwani Global under section 112 (a) of the Customs Act, 1962 for import of Old and used Part and accessories of printing machine which are restricted for import under import policy or otherwise;

(v) Whether penalty should be imposed on Shri Mahefuzkhan Mahammad Yunus Malek, proprietor of M/s. Gajwani Global under section 112(a) of the Customs Act, 1962 for his act of omission and commission which leads to the imported goods liable for confiscation and section 117 of the Customs Act, 1962 for violating section 108 of the Customs Act, 1962 by not presenting himself before summons or otherwise.

(vi) Whether penalty should be imposed on M/s. Benchmark Shipping and Logistics under section 117 of the Customs Act, 1962 for violating section 108 of the Customs Act, 1962 and for omission and commission in executing his role as a Custom Broker under Regulations 11 (d), (e), (f), (m) & (n) of CBLR, 2013 by not presenting himself before summons or otherwise.

16. I find that M/s Gajwani Global having address at Bunder Road, Mundra-B, 2/2/96/63, Behind Hospital, Mundra Kachchh, Gujarat-

370421 (IEC: BITPM9155N) had filed Bill of Entry No. 5790448 dated 04.05.2023 through their CB M/s. Benchmark Shipping and Logistics for import and clearance of 'part and accessories of printing machine' at Mundra Custom House by mis-declaring the qty., description and quality of the goods and the goods were found to be old and used which are restricted for importation in terms of FTP, 2015-2020;

16.1 I find that on visual appearance of the goods, it appeared that the impugned goods were old and used. Therefore, the goods were seized under Seizure Memo dated 24.06.2023 under reasonable belief that the same are liable for confiscation under Section 111 of the Customs Act, 1962 and said goods were handed over under Supratnama dated 24.06.2023 to the representative of CFS, APSEZ, Mundra for safe custody and representative of CFS, undertake that they will not remove, sale, part with, deal with the goods without prior permission from the competent authority.

16.2 The empanelled Chartered Engineer vide its report dated 08.12.2023 reported that the goods were old and used and not re-conditioned. Therefore, as per Customs Guidelines read with FTP, 2015-20, the goods are restricted for importation subject to obtaining authorization from DGFT. However, in the instant case the importer failed to submit any permission from the Ministry of Environment, Forest and Climate change or authorization from DGFT for importation of old and used spares of printing machine.

16.3 I find that the import of old & used electronics parts is governed by the provisions of Foreign Trade Policy 2015-20. The importer has imported second hand electronics parts without necessary authorization from DGFT as required under Para 2.31(1)(a) of the Foreign Trade Policy 2015-20, which is reproduced as below: -

S No.	Categories of Second Hand Goods	Import Policy	Conditions, if any
(a)	i. Desktop Computers ii. Refurbished/re-conditioned spares of re-furbished parts of Personal Computers/Laptops iii. Air Conditioners iv. Diesel generating sets	Restricted	Importable against Authorization
(b)	All electronics and IT Goods notified under the Electronics and IT Goods (Requirement of Compulsory Registration) Order, 2012 as amended from time to time.	Restricted	(i) Importable against Authorization subject to conditions to down under "Electronics and Information Technology Goods (Requirement of Compulsory Registration) Order, 2012 as amended from time to time." (ii) Import of unregistered/non-complaint notified products as in CRO, 2012, as amended from time to time is prohibited".

16.4 I find that the goods, viz. parts of printer/photocopy machine are not allowed to be imported without prior permission from the Ministry of Environment, Forest and Climate change in terms of the Rule 12(4) of the Hazardous and Other Wastes (Management and Transboundary

Movement) Rules, 2016 as the said goods are duly covered under Basel No. B1110 of part 'B' of the Schedule-III of the said Rules. Central Board of Customs and Indirect Taxes (CBIC), vide Circular No. 27/2011-Customs dated 4th July, 2011 has clarified that items at B1110 of the said Schedule III can be imported with permission from Ministry of Environment and Forests; that this entry includes electrical and electronic assemblies (including printed circuit board electronic components and wires) destined for direct reuse and not for recycling or final disposal; that the Ministry of Environment and Forests has also confirmed that imports of second hand electronics parts would require the permission of that Ministry. It has been further clarified that all imported goods falling within the purview of entry B 1110 of Part B of Schedule III of the said Rules, indicating second hand computers, would require the permission of the Ministry of Environment and Forests for import into India, as given below.

Basel No.	Description of wastes
B1110	Used Electrical and electronic assemblies other than those listed in Part D of Schedule III
	Electronic assemblies consisting only of metals or alloys Waste electrical and electronic assemblies or scrap (including printed circuit boards) not containing components such as accumulators and other batteries included in Part A of Schedule III, mercurys witches, glass from cathode-ray tubes and other activated glass and PCB-capacitors, or not contaminated with Schedule II constituents such as cadmium, mercury, lead, poly chlorinated biphenyl) or from which these have been removed, to an extent that they do not possess any of the characteristics contained in Part C of Schedule III (note the related entry in Schedule VI, A1180)

16.5 I find the above description that the imports have been made in violation of the Import Policy and without permission from Ministry of Environment, Forest and Climate change, as the importer did not produce any permission/authorization for importation of old and used part and accessories of printing machine.

16.6 I find that the importer had deliberately mis-declared the description of the goods against Bill of Entry No. 5790448 dated 04.05.2023 with an intention to import restricted items, viz. old and used parts and accessories of printing machine without obtaining any permission or authorization from Ministry of Electronics & Information Technology or DGFT respectively. Therefore, these acts of omission and commission on the part of the importers have made the goods liable for confiscation under the provisions of Section 111 (d) and 111 (m) of the CA, 1962 and the importing firm has rendered themselves liable for penal action under Section 112 of the Customs Act, 1962 which I hold accordingly.

16.7 Further, I find that the assessable value of the goods claimed by M/s. Gajwani Global is required to be re-assess and the assessable value of the goods as detailed in Bill of Entry filed by the importer are required to be rejected and required to be correctly re-assess under Customs Act and charged to duties accordingly. Accordingly, the goods having assessable

value of Rs. 6,30,473/- (Rupees Six Lakh Thirty Thousand Four Hundred and Seventy-Three Only) appears liable to be rejected and re-assessed and determined (as per CE report) at Rs. 13,09,114/- (Rupees Thirteen Lakh and Nine Thousand One Hundred Fourteen Only) as discussed in paras 8.1–8.4 and shown in Table-II. I find that the goods as detailed in the Bill of Entry filed by the importer were imported by resorting to mis-declaration in terms of description, quality, nature, quantity and value and mis declared in the Bill of Entry filed under Section 46 of the Customs Act, 1962, before the designated authority of Customs. The goods having re-assessed value of **Rs. 13,09,114/- (Rupees Thirteen Lakh and Nine Thousand One Hundred Fourteen Only)** as detailed in Bill of Entry mentioned in Table-II is liable to confiscation under the provisions of Section 111 (d) and Section 111(m) of the Customs Act, 1962 for violation policy provisions and mis-declaration in terms of quantity, description, value.

16.8 Since, I have held, goods as liable for confiscation for violation various provisions of Customs Act, 1962. I find no reason not to hold importer liable for penal provision under section 112(a)(i) of the Customs Act, 1962. Therefore, I hold accordingly.

16.9 I find that Show Cause notice has been issued proposing penalty on Mr. Mahefuzkhan Mahammad Yunus Malek, proprietor of M/s Gajwani Global under section 112(a) and 117 of the Customs Act, 1962 for act of omission and/or commission and for the reason and allegation as discussed therein. In this regard I find it pertinent to mention that the proprietorship firm doesn't have an identity distinct from its of proprietor, therefore imposition of separate penalty on both would tantamount to imposition of double penalty for the same offence. Therefore, I hold that separate penalty under section 112(a) on the proprietor is not warranted. However, I note that they have not approached before the Customs officer to tender statement despite of multiple summons. This shows scant regard to the customs provisions. I feel it necessary to subject them to reasonable penalty under section 117 of the Customs Act, 1962. This penalty is very much warranted as the examination; investigation of the imported goods has resulted in unearthing of an attempt to import restricted goods by passing the stringent provisions of law of the laid which I hold accordingly.

16.10 I find that the allegations made in the subject show cause notice against the Custom Broker M/s. Benchmark Shipping and Logistics that the role of the Customs Broker, M/s. Benchmark Shipping and Logistics, is equally significant. Acting as a liaison between the importers and the customs authorities, CB was instrumental in an attempt to get clearance for the incorrectly declared goods. The CB became a conduit for the conspiracy by aiding in the clearance of mis-declared imported goods. Their involvement extended to the submission of improper documents, which falsely represented the imported goods by mis-declared goods into the country, contributing to the execution of the smuggling conspiracy. The Customs Broker's actions not only amounted to by-pass legal requirements but also an attempt to allow flow of restricted goods into the country. I find that CB firm M/s. Benchmark Shipping and Logistics has not done due diligence during filing of said Bill of Entry and attempted to clear the consignment which is restricted in nature. The CB was duty

bound to ensure that BE was being filed for the goods as mentioned in BE, to check and guide the importer about requirement of rule/provisions correcting. The said fact has not been complied by the CB. This is contravention of provisions of CBLR, 2018 by CB. Therefore, it appeared that the CB firm M/s. Benchmark Shipping and Logistics contravened the provisions of Regulation 10 (d), 10(e), 10(f), 10(m) & 10(n) of the CBLR, 2018. This made it crystal clear that in spite of being aware of the mis-declaration, CB firm aided and abetted in attempt to clear restricted consignment which made the goods liable for confiscation u/s. 111 (d) & 111 (m) of the CA, 1962 and for these acts of omission and commission, the CB firm M/s. Benchmark Shipping and Logistics has to be visited for penal action under section 117 of the Customs Act, 1962 which I hold accordingly.

17. As discussed above the subject goods “Old and Used parts and accessories or printing machine” found originated from UAE and imported in India without necessary authorization from DGFT as required under Para 2.31(1)(a) of the Foreign Trade Policy 2015-20. Since, the subject goods have been found to be restricted and liable for absolute confiscation.

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

ORDER

- i. I hold the subject goods declared as ‘part and accessories of printing machine’ as old and used other waste covered under Schedule III, part B Basel No. B1110 of the (Management and Transboundary Movement) Rules, 2016 and the said goods are restricted for import under para 2.31(1)(a)(ii) of Foreign Trade Policy (2015-2020).
- ii. I hold the subject goods as E-waste/ Other Waste as per para 3(23) of Notification No. 395E) dated 04.04.2016 of the Hazardous and Other Waste (Management and Transboundary Movement) Rules, 2016 issued by Ministry of Environment, Forests and Climate Change (MoEFCC).
- iii. I order for absolute confiscation of the restricted goods having re-determined value of Rs. 13,09,114/- imported without permission from the Ministry of Environment, Forest and Climate change or authorization from DGFT under sections 111(d) & 111(m) of the Customs Act, 1962 read with Section 3(2) and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992.
- iv. I impose penalty of Rs. 6,50,000/- (Rs. Six Lakh Fifty Thousand only) on M/s. Gajwani Global under section 112 (a)(i) of the Customs Act, 1962.
- v. I refrain imposing penalty on Shri Mahefuzkhan Mahammad Yunus Malek, proprietor of M/s. Gajwani Global under section 112(a) of the Customs Act, 1962.
- vi. I impose penalty of Rs.2,50,000/- (Rs. two lakh Fifty Thousand Only)

on Shri Mahefuzkhan Mahammad Yunus Malek, proprietor of M/s. Gajwani Global under section 117 of the Customs Act, 1962.

- vii. I impose penalty of Rs.2,50,000/-(Rs. two lakh Fifty Thousand only) on M/s. Benchmark Shipping and Logistics under section 117 of the Customs Act, 1962.

19. 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.

20. The Show Cause Notice bearing No. CUS/APR/SCN/1013/2023-GR-5-6 dated 21.12.2023 stands disposed in above terms.

Signed by

Arun Kumar

(ARUN KUMAR)

Date: 08-07-2024
ADDITIONAL COMMISSIONER
CUSTOM HOUSE, MUNDRA

F. No. CUS/APR/SCN/1013/2023-Gr 5-6-O/o Pr Commr-Cus-Mundra

To,

1. **M/s Gajwani Global (IEC: BITPM9155N),**
Bunder Road, Mundra-B, 2/2/96/63,
Behind Hospital, Mudra Kachchh,
Gujarat-370421.
2. **Shri Mahefuzkhan Mahammad Yunus Malek,**
Proprietor of M/s. Gajwani Global,
Bunder Road, Mundra-B, 2/2/96/63,
Behind Hospital, Mudra Kachchh,
Gujarat-370421.
3. **M/s. Benchmark Shipping and Logistics,**
Office no.- M-8, Mezzanine Floor, Ratnakala Arcade,
Near IDBI Bank, Adani Port Road, Mundra,
Kutch, Gujarat-370421.

Copy to: -

- i. The Deputy/Assistant Commissioner (**RRA/TRC/EDI**), Custom House, Mundra.
- ii. Guard File