

		<p>प्रधान आयुक्त का कार्यालय, सीमा शुल्क सदन, मुन्द्रा</p> <p><b>OFFICE OF THE PRINCIPAL COMMISSIONER, CUSTOM HOUSE, MUNDRA</b></p> <p>Port User Building (PUB), Mundra (Gujarat – 370421)</p> <p>ईमेल: group4-mundra@gov.in</p>
A	File No.	GEN/SHED/Misc/372/2024-Dock Examn
B	OIO No.	MCH/ADC/AKM/ 261/2024-25
C	Order Date	20.01.2025
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. Ara Scrap Recyclers LLP, Plot No-09, Shrey Industrial Estate Daskroi, Ahmedabad- 382435
G	DIN	20250171MO0000222372

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 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, 4<sup>TH</sup> 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 मदसं०-6 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.

#### **Brief Facts of the case**

M/s. Ara Scrap Recyclers LLP, (IEC: ABRFM9652L) (hereinafter referred to as “the Importer” for sake of brevity) having address at Plot No-09, Shrey Industrial Estate Daskroi, Ahmedabad- 382435, filed the Bill of Entry No. 6897966 dated 26.11.2024 for import of Metal Scrap at Mundra Port through their CHA M/s Shakti Forwarders Pvt Ltd. Details of Bill of Entry is as under:

**TABLE – I**

Sr. No.	Bill of entry No. and Date	Description of goods	Quantity (MTS)	Value of goods in Rs.	Duty (in Rs.)
1.	6897966 dt. 26.11.2024	Aluminum Scrap Tense as per ISRI	55.594	99,64,391/-	21,16,935/-
		Aluminum Scrap Tally as per ISRI	3.04	3,89,708/-	82,794/-
		Heavy Melting Scrap for Melting Purpose	141.71	50,79,878/-	9,14,378/-
		Copper Barley as per ISRI	2.59	17,92,632/-	3,80,845/-
		Cast Iron Scrap for Melting Purpose	40.415	15,17,745/-	2,73,194/-
		Shredded Stainless Steel Melting Scrap Grade-304	29.853	31,97,682/-	5,75,583/-
		Shredded Stainless Steel Melting Scrap Grade-316	64.727	1,35,34,901/-	24,36,282/-

	Total Rs.			3,54,76,937/-	67,80,010/-
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2. The examination of the goods imported vide Bill of Entry 6897966 dt. 26.11.2024 were conducted by Docks Officer and the empanelled Chartered Engineer Sh Tushar Zankat. During the course of examination of the goods imported vide above said Bill of Entry, the goods were found to be some quantity of Electronics Waste, Battery Scrap and New Galvanized Nuts & Bolts in addition to declared goods. Inspection report dated 24.12.2024 has been submitted by the empanelled Chartered Engineer on 26.12.2024 and the relevant contents of the said inspection report dated 18.12.2024 are as follows:

- i. *The cargo consists of metallic scraps, **E-wastes, battery scrap and new galvanized nuts & bolts.***
- ii. *Among these, metallic scrap such aluminium, copper and heavy melting scrap are extracted from the discarded engines, DG sets, compressor, motors, cylinders, iron beam cuttings, heat exchangers, automotive parts, radiators, pumps and several machinery parts ,*
- iii. ***E-wastes were extracted from discarded computer parts, electrical panel, refrigerators and several electrical appliances***
- iv. ***As per our thorough inspection, we have identified heavily and extensively used Batteries as non-serviceable and scrapable Items.***
- v. *Hence the above-mentioned items cannot be used for any commercial purpose other than scrapping. since they did not have any useful life.*

3. Thereafter, the Chartered Engineer has submitted detailed inspection report **CE/TZ/MUN/DEC-070/2024-25 dated 24.12.2024**. Further, the detailed percentage wise metal scrap found during examination and CE report are as mentioned below: -

**Table-II**

SN	Description	Declared			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	Aluminium Scrap Tense (CTH:76020010)	55.594	2100	116747.40	55.594	2100	116747.40	0
2	Aluminium Scrap Tally (CTH:76020010)	3.044	1500	4566.00	3.044	1800	5479.20	913.2
3	Heavy Melting Scrap (CTH:72044900)	141.71	420	59518.20	21.746	450	9785.70	-49732.5
4	Copper Barley Scrap	2.593	8100	21003.30	2.593	8400	21781.20	777.9

	(CTH:74040012)							
5	Cast Iron Scrap (CTH:7204100)	40.415	440	17782.60	40.415	450	18186.75	<b>404.15</b>
6	Shredded Stainless Steel Melting Scrap (CTH:72042190)	29.853	1255	37465.52	29.853	1500	44779.50	<b>7313.985</b>
7	Shredded Stainless Steel Melting Scrap (CTH:72042190)	64.727	2450	158581.15	64.727	2500	161817.50	<b>3236.35</b>
8	BATTERY SCRAP (Approx 31.07% of total weight of consignment)	105.006	Not Declared		105.006	1400	147008.40	<b>147008.4</b>
9	E WASTE(Approx 0.04% of total weight of consignment)	0.15			0.15	300	45.00	<b>45</b>
10	GALVANISED NUTS & BOLTS (Approx 4.38% of total weight of consignment)	14.808			14.808	900	13327.20	<b>13327.2</b>
	<b>TOTAL</b>	<b>458.90</b>			<b>341.936</b>			

4. In this regard, it is clear that the total quantity of un-declared cargo mentioned at Sr. 8 i.e BATTERY SCRAP (Approx 31.07% of total weight of consignment) is 105.006 MTS, having the value 147008.40 USD (Rs. 1,25,47,167/-) as determined by CE. For the import of lead scrap or used lead-acid batteries (ULAB) in India, there is need to obtain an import permit from the Ministry of Environment, Forest and Climate Change (MoEF&CC). The MoEF&CC is the designated authority for issuing licenses to import, export, process, recycle, or reuse hazardous wastes. Further, as per DGFT notification 54/2015-2020 dated 09.02.2022, import of battery lead scrap is restricted. Thus, it appears that the importer has failed to obtain required licence from MoEF&CC, hence the goods become prohibited and the same was not declared in the said Bill of Entry. Therefore, the said goods appear liable for absolute confiscation under Section 111(d) and 111(l) of the Customs Act 1962.

5. Further, the total quantity of un-declared cargo mentioned at Sr. 9 of Table-II i.e E WASTE (Approx 0.04% of total weight of consignment) is 0.15 MTS, having assessable value 45 USD (Rs. 3,841/-). Further, the import of Electronic waste (Old and damage) has been completely prohibited as per the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, as amended. Government had banned import of e-waste in the country by listing e-waste in the Schedule VI (Basel No. A1180) of the said rules. Accordingly, Electronic waste (Old and damage) having weight of approx. 0.15 MTS, has become prohibited in nature. The importer has attempted to import prohibited goods i.e. Electronic waste (Old and damage) to the tune of 0.15 MTS. Hence, it appears that since mis declaration has been found on

examination and prohibited goods are found to the tune of 0.15 MTS. which was not declared in the said Bill of Entry, Electronic waste (Old and damage) appear to be liable for absolute confiscation under Section 111(d) & 111(l) of the Customs Act, 1962.

6. Further, the total quantity of un-declared cargo mentioned at Sr. 10 of Table-II i.e GALVANISED NUTS & BOLTS (Approx 4.38% of total weight of consignment) is 14.808 MTS, having the value 13327.20 USD (Rs. 11,37,477/-) as determined by CE. The import of NUTS & BOLTS is classifiable under CTH 73181500 and is prohibited, however, import is free if CIF value is Rs. 129/- or above per Kg and subject to Policy condition no. 2 and 3 of Chapter 73 as per DGFT Notification No. 55/2023 dated 03.01.2024. Hence, it appears that since mis declaration has been found on examination and prohibited goods are found to the tune of 14.808 MTS. which was not declared in the said Bill of Entry, GALVANISED NUTS & BOLTS appear to be liable for absolute confiscation under Section 111(d) & 111(l) of the Customs Act, 1962.

7. Consequently, the imported goods at Sr. No. 2 i.e Aluminium Scrap Tally (CTH: 76020010), Sr. No. 3 i.e Heavy Melting Scrap (CTH: 72044900), Sr. 4 i.e Copper Barley Scrap (CTH:74040012), Sr. 5 i.e Cast Iron Scrap (CTH:7204100), Sr. 6 i.e Shredded Stainless Steel Melting Scrap (CTH:72042190) and Sr. 7 i.e Shredded Stainless Steel Melting Scrap (CTH:72042190) of Table-I 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 Aluminium Scrap Tense (Approx. 16.45%), Aluminium Scrap Tally (Approx.0.9%), HMS Scrap (Approx. 6.43%), Copper Barley Scrap (Approx. 0.77%), Cast Iron Scrap (Approx. 11.96%), Shredded Stainless Steel Melting Scrap 304 (Approx. 8.83%), Shredded Stainless Steel Melting Scrap 316 (Approx. 19.15%), Battery Scrap (Approx. 31.07%), Electronic waste (Approx. 0.04%), GALVANISED NUTS & BOLTS (Approx. 4.38%) appears to be liable for confiscation under Section 111(m) of the Customs Act, 1962.

8. 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:".*

9. 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".

10. 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 "Aluminium Scrap Tense (Approx. 16.45%), Aluminium Scrap Tally (Approx.0.9%), HMS Scrap (Approx. 6.43%), Copper Barley Scrap (Approx. 0.77%), Cast Iron Scrap (Approx. 11.96%), Shredded Stainless Steel Melting Scrap 304 (Approx. 8.83%), Shredded Stainless Steel Melting Scrap 316 (Approx. 19.15%), Battery Scrap (Approx. 31.07%), Electronic waste (Approx. 0.04%), GALVANISED NUTS & BOLTS (Approx. 4.38%)". It, therefore, appears that the declared value of Rs. 3,54,76,937/- 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.

11. 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 "Aluminium Scrap Tense (Approx. 16.45%), Aluminium Scrap Tally (Approx.0.9%), HMS Scrap (Approx. 6.43%), Copper Barley Scrap (Approx. 0.77%), Cast Iron Scrap (Approx. 11.96%), Shredded Stainless Steel Melting Scrap 304 (Approx. 8.83%), Shredded Stainless Steel Melting Scrap 316 (Approx. 19.15%), Battery Scrap (Approx. 31.07%), Electronic waste (Approx. 0.04%), GALVANISED NUTS & BOLTS (Approx. 4.38%)". 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.

12. 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.

13. 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.

14. 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.

15. In the view of the above, the assessable value of the impugned goods Rs. 3,54,76,937/- declared in the BE No. 6897966 dated 26.11.2024 is liable to be rejected under Rule 12 of CVR, 2007 and assessable value of the impugned goods is to be re-determined as Rs. 4,60,00,053/- under Rule 9 *ibid*, i.e. as per the residual method on the basis of report submitted by the empanelled CE. 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) (CFS wt. 22300)	Price per MTS (USD)	Total Ass. Value (INR)	Total Duty Payable (INR)
6897966 dt. 26.11.2024	Aluminium Scrap Tense (CTH:76020010)	55.594	2100	99,64,391	21,16,935
	Aluminium Scrap Tally (CTH:76020010)	3.044	1800	4,67,650	99,352
	Heavy Melting Scrap (CTH:72044900)	21.746	450	8,35,209.5	1,50,338
	Copper Barley Scrap (CTH:74040012)	2.593	8400	18,59,025	3,94,950

Cast Iron Scrap (CTH:7204100)	40.415	450	15,52,239	2,79,403
Shredded Stainless Steel Melting Scrap (CTH:72042190)	29.853	1500	38,21,930	6,87,947
Shredded Stainless Steel Melting Scrap (CTH:72042190)	64.727	2500	1,38,11,124	24,86,002
BATTERY SCRAP (Approx 31.07%)	105.006	1400	1,25,47,167	Import not permitted
E WASTE(Approx 0.04%)	0.15	300	3841	Import not permitted
GALVANISED NUTS & BOLTS (Approx 4.38%)	14.808	900	11,37,477	Import not permitted
<b>Total</b>	<b>341.936</b>		<b>4,60,00,053</b>	
<b>Total (Duty Payable)</b>				<b>62,14,927</b>
<b>Duty Declared</b>				<b>67,80,010</b>

16. In view of the above, it appears that BATTERY SCRAP 105.006 MTS (Approx 31.07%), E WASTE 0.15 MTS (Approx 0.04%) and GALVANISED NUTS & BOLTS 14.808 MTS (Approx 4.38%) having re-determined total assessable value of Rs. 1,36,88,485/-, appear to be liable for confiscation under Section 111(d) & 111(l) of the Customs Act, 1962.

### **RELEVANT LEGAL PROVISIONS**

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

17.1 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.*

17.2 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.*

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

*The following goods brought from a place outside India shall be liable to*



confiscation: -

(a) --

--

(d) 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;

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(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;

#### 17.4 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;

18. In view of the above legal position and facts mentioned hereinabove, it appears that the Importer has contravened the provisions of Section 46 of the Customs Act, 1962 and hence, as during examination, undeclared prohibited goods were found to be imported, hence, BATTERY SCRAP 105.006 MTS (Approx 31.07%), E WASTE 0.15 MTS (Approx 0.04%) and GALVANISED NUTS & BOLTS 14.808 MTS (Approx 4.38%) appear to be liable for confiscation under Section 111(d) & 111(l) of the Customs Act, 1962. Further, the whole consignment consisting of "Aluminium Scrap Tense (Approx. 16.45%), Aluminium Scrap Tally (Approx. 0.9%), HMS Scrap (Approx. 6.43%), Copper Barley Scrap (Approx. 0.77%), Cast Iron Scrap (Approx. 11.96%), Shredded Stainless Steel Melting Scrap 304 (Approx. 8.83%), Shredded Stainless Steel Melting Scrap 316 (Approx. 19.15%), Battery Scrap (Approx. 31.07%), Electronic waste (Approx. 0.04%), GALVANISED NUTS & BOLTS (Approx. 4.38%)", appears to be liable for confiscation under Section 111(m) of the

Customs Act, 1962. Consequently, it appears that the importer has rendered themselves liable for penal action under the provisions of Section 112(a)(i) of Customs Act, 1962 for import of prohibited goods viz. BATTERY SCRAP, E WASTE and GALVANISED NUTS & BOLTS and Section 112(a)(ii) of Customs Act, 1962 for import of other goods viz. HMS Scrap, Copper Scrap and Aluminium Scrap, Cast Iron Scrap and Stainless Steel Scrap mis-declared in terms of quantity and value.

### **RECORD OF PERSONAL HEARING**

19. The Importer vide letter dated 02.01.2025 has submitted that they do not want Show Cause Notice and Personal Hearing. Further, vide their letter dated 16.01.2025 they have submitted that supplier has dispatched restricted items by mistake and requested to allow to sell these material to party who have specific licence otherwise they are ready to Re-export these restricted items at their cost.

### **DISCUSSION & FINDING**

20. I have carefully gone through the case records and applicable provisions of Law. I find that the Importer vide their letter dated 02.01.2025 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.

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

- i. BATTERY SCRAP, E WASTE and GALVANISED NUTS & BOLTS are liable for absolute confiscation under Section 111(d) & 111(l) of the Customs Act, 1962,
- ii. the whole consignment is liable for confiscation under Section 111(m) of the Customs Act, 1962.
- iii. The Importer is liable for penal action under the provisions of Section 112 (a)(i) & 112(a)(ii) of Customs Act, 1962.

22. I find that in Bill of Entry No. 6897966 dated 26.11.2024, the Importer declared the goods as "Aluminium Scrap Tense, Aluminium Scrap Tally, HMS Scrap, Copper Barley Scrap, Cast Iron Scrap, Shredded Stainless Steel Melting Scrap 304 , Shredded Stainless Steel Melting Scrap 316", however, as per examination report and report of Chartered Engineer, the cargo contained "Aluminium Scrap Tense (Approx. 16.45%), Aluminium Scrap Tally (Approx.0.9%), HMS Scrap (Approx. 6.43%), Copper Barley Scrap (Approx. 0.77%), Cast Iron Scrap (Approx. 11.96%), Shredded Stainless Steel Melting Scrap 304 (Approx. 8.83%), Shredded Stainless Steel Melting Scrap 316 (Approx. 19.15%), Battery Scrap (Approx. 31.07%), Electronic waste (Approx. 0.04%), GALVANISED NUTS & BOLTS (Approx. 4.38%)" which is different from the goods declared by the Importer.

23. I find that the Chartered Engineer vide CE Certificate No. **CE/TZ/MUN/DEC-070/2024-25 dated 24.12.2024** has suggested assessable value of BATTERY SCRAP as Rs. 1,25,47,167/-, assessable of E-waste as Rs. 3,841/- and assessable value of GALVANISED NUTS & BOLTS as Rs. 11,37,477/-.

24. I find that in the impugned imports, the description of the goods has been mis-declared inasmuch as that the “Aluminium Scrap Tense, Aluminium Scrap Tally, HMS Scrap, Copper Barley Scrap, Cast Iron Scrap, Shredded Stainless Steel Melting Scrap 304 , Shredded Stainless Steel Melting Scrap 316” instead of “Aluminium Scrap Tense (Approx. 16.45%), Aluminium Scrap Tally (Approx.0.9%), HMS Scrap (Approx. 6.43%), Copper Barley Scrap (Approx. 0.77%), Cast Iron Scrap (Approx. 11.96%), Shredded Stainless Steel Melting Scrap 304 (Approx. 8.83%), Shredded Stainless Steel Melting Scrap 316 (Approx. 19.15%). The impugned goods were found to be mis-declared at the time of examination of the goods in terms of quantity and value, and 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.

25. 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. As the value cannot be determined by proceeding sequentially through Rules 4 to 8 in the instant case, therefore, recourse of Rule 9 has to be taken to arrive at the transaction value and the CE has re-determined the total value of impugned goods as Rs. 4,60,00,053/-.

26. In the view of the above discussion, I hold that the assessable value of the impugned goods Rs. 3,54,76,937/- declared in the BE No. 6897966 dated 26.11.2024 is liable to be rejected under Rule 12 of CVR, 2007 and assessable value of the impugned goods is re-determined as Rs. 4,60,00,053/- under Rule 9 ibid, i.e. as per the residual method on the basis of report submitted by the empanelled CE. Further, the applicable Customs duty on the impugned goods is calculated as detailed below:

**Table-IV**

SN	Description	Declared			Ascertained as Per CE report		
		Qty. in MTS	Assessable Value (Rs.)	Duty (Rs.)	Qty. in MTS	Assessable Value (Rs.)	Duty (Rs.)
		1	2	3	4	5	6
1	Aluminium Scrap Tense (CTH:76020010)	55.594	99,64,391	21,16,935	55.594	99,64,391	21,16,935
2	Aluminium Scrap Tally (CTH:76020010)	3.044	3,89,708	82,794	3.044	4,67,650	99,352
3	Heavy Melting Scrap (CTH:72044900)	141.71	50,79,878	9,14,378	21.746	8,35,209.5	1,50,338
4	Copper Barley Scrap (CTH:74040012)	2.593	17,92,632	3,80,845	2.593	18,59,025	3,94,950
5	Cast Iron Scrap (CTH:7204100)	40.415	15,17,745	2,73,194	40.415	15,52,239	2,79,403
6	Shredded Stainless Steel Melting Scrap (CTH:72042190)	29.853	31,97,682	5,75,583	29.853	38,21,930	6,87,947

7	Shredded Stainless Steel Melting Scrap (CTH:72042190)	64.727	1,35,34,901	24,36,282	64.727	1,38,11,124	24,86,002
8	BATTERY SCRAP (Approx 31.07% of total weight of consignment)	Not Declared			105.006	1,25,47,167	Import not permitted
9	E WASTE (Approx 0.04% of total weight of consignment)				0.15	3841	Import not permitted
10	GALVANISED NUTS & BOLTS (Approx 4.38% of total weight of consignment)				14.808	11,37,477	Import not permitted
	<b>TOTAL</b>		3,54,76,937	67,80,010	<b>341.936</b>	<b>4,60,00,053</b>	<b>62,14,927</b>

I find that duty declared by importer i.e. Rs. 67,80,010/- is more than the duty payable i.e. Rs. 62,14,927/- as calculated in above Table-IV, however, item no. 3 i.e. Heavy Melting Scrap in the said BE has been declared 141.71 MTS but actually found 21.746 MTS at the time of examination. Therefore, duty is recalculated considering the Heavy Melting Scrap as 21.746 MTS and assessable value as re-determined by CE and thus duty short to be evaded is found as Rs. 2,08,709/- as calculated below:

SN	Description	Goods found during examination			Ascertained as Per CE report		
		Qty. in MTS	Assessable Value (Rs.)	Duty (Rs.)	Qty. in MTS	Assessable Value (Rs.)	Duty (Rs.)
		1	2	3	4	5	6
1	Aluminium Scrap Tense (CTH:76020010)	55.594	99,64,391	21,16,935	55.594	99,64,391	21,16,935
2	Aluminium Scrap Tally (CTH:76020010)	3.044	3,89,708	82,794	3.044	4,67,650	99,352
3	Heavy Melting Scrap (CTH:72044900)	21.746	7,79,529	1,40,315	21.746	8,35,209.5	1,50,338
4	Copper Barley Scrap (CTH:74040012)	2.593	17,92,632	3,80,845	2.593	18,59,025	3,94,950
5	Cast Iron Scrap (CTH:7204100)	40.415	15,17,745	2,73,194	40.415	15,52,239	2,79,403
6	Shredded Stainless Steel Melting Scrap (CTH:72042190)	29.853	31,97,682	5,75,583	29.853	38,21,930	6,87,947
7	Shredded Stainless Steel Melting Scrap (CTH:72042190)	64.727	1,35,34,901	24,36,282	64.727	1,38,11,124	24,86,002
	<b>TOTAL</b>		3,11,76,588	60,06,218		<b>3,23,11,568</b>	<b>62,14,927</b>

27. I find that the import of BATTERY SCRAP is restricted as per DGFT notification 54/2015-2020 dated 09.02.2022. For the import of lead scrap or

used lead-acid batteries (ULAB) in India, importer has to obtain an import permit from the Ministry of Environment, Forest and Climate Change (MoEF&CC). The MoEF&CC is the designated authority for issuing licenses to import, export, process, recycle, or reuse hazardous wastes.

However, the importer has failed to obtain required licence from MoEF&CC, hence the goods become prohibited. Thus, the importer attempted to import prohibited goods i.e. BATTERY SCRAP to the tune of 105.006 MTS having total value of Rs. 1,25,47,167/- which was not declared in the said Bill of Entry. Therefore, I hold the BATTERY SCRAP (105.006 MTS) liable for confiscation under Section 111(d) and 111(l) of the Customs Act 1962.

28. I find that the import of Electronic waste has been completely prohibited as per the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, as amended, however, the importer has attempted to import prohibited goods i.e. Electronic waste to the tune of 0.15 MTS having total value of Rs. 3,841/-, which was not declared the said Bill of Entry. Therefore, I hold Electronic waste liable for confiscation under Section 111(d) & 111(l) of the Customs Act, 1962.

29. I find that the import of NUTS & BOLTS is classifiable under CTH 73181500 and is prohibited, however, import is free if CIF value is Rs. 129/- or above per Kg and subject to Policy condition no. 2 and 3 of Chapter 73 as per DGFT Notification No. 55/2023 dated 03.01.2024. However, the importer has attempted to import prohibited goods i.e. GALVANISED NUTS & BOLTS to the tune of 14.808 MTS having total value of Rs. 11,37,477/-, which was not declared the said Bill of Entry. Therefore, I hold GALVANISED NUTS & BOLTS liable for confiscation under Section 111(d) & 111(l) of the Customs Act, 1962.

30. I find that as a consequence of import of undeclared prohibited goods, the whole consignment has been found to be mis-declared in terms of quantity and value, therefore, I hold the whole consignment consisting of "Aluminium Scrap Tense (Approx. 16.45%), Aluminium Scrap Tally (Approx. 0.9%), HMS Scrap (Approx. 6.43%), Copper Barley Scrap (Approx. 0.77%), Cast Iron Scrap (Approx. 11.96%), Shredded Stainless Steel Melting Scrap 304 (Approx. 8.83%), Shredded Stainless Steel Melting Scrap 316 (Approx. 19.15%), Battery Scrap (Approx. 31.07%), Electronic waste (Approx. 0.04%), GALVANISED NUTS & BOLTS (Approx. 4.38%)" actually found during examination of the goods, liable for confiscation under Section 111(m) of the Customs Act, 1962.

31. 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 CTH, Quantity and Valuation of the imported goods. As hereinabove, the imported goods have been held liable for confiscation under provisions of Section 111 of the Customs Act, 1962, therefore, I hold the importer liable for penal action under Section 112(a) of the Customs Act, 1962. Further, for importing prohibited goods viz. BATTERY SCRAP, E-waste and GALVANISED NUTS & BOLTS, I hold the Importer liable for penalty under Section 112(a)(i) of Customs Act, 1962 and for importing other mis-declared goods viz. Aluminum Scrap Tense, Aluminum Scrap Tally,

HMS Scrap, Copper Barley Scrap, Cast Iron Scrap, Shredded Stainless Steel Melting Scrap 304 , Shredded Stainless Steel Melting Scrap 316 mis-declared in terms of quantity and value, I hold the Importer liable for penalty under Section 112(a)(ii) of Customs Act, 1962.

32. Further, I find that as “Aluminium Scrap Tense (Approx. 16.45%), Aluminium Scrap Tally (Approx.0.9%), HMS Scrap (Approx. 6.43%), Copper Barley Scrap (Approx. 0.77%), Cast Iron Scrap (Approx. 11.96%), Shredded Stainless Steel Melting Scrap 304 (Approx. 8.83%), Shredded Stainless Steel Melting Scrap 316 (Approx. 19.15%),” actually found during examination of the goods, have been held liable for confiscation under provisions of Section 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.*

33. Further, I find that as “Battery Scrap (Approx. 31.07%), Electronic waste (Approx. 0.04%), GALVANISED NUTS & BOLTS (Approx. 4.38%)” actually found during examination of the goods, have been held liable for confiscation under provisions of Section 111(d), 111(l) and 111(m) of Customs Act, 1962, I deem it fit to allow re-export of the same, on payment of Redemption Fine in terms of Section 125 of the Customs Act, 1962

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

### **ORDER**

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- i. I reject the declared transaction value of Rs. 3,54,76,937/- of the goods imported vide Bill of Entry No. 6897966 dated 26.11.2024 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. 4,60,00,053/- (as held in Table-IV above) 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. 6897966 dated 26.11.2024 accordingly including amendment of description, quantity and value of the goods.

- ii. I order for confiscation of the BATTERY SCRAP found to the tune of 105.006 MTS having re-determined assessable value of Rs. 1,25,47,167/-, Electronic waste found to the tune of 0.15 MTS having re-determined assessable value of Rs. 3,841/- and GALVANISED NUTS & BOLTS found to the tune of 14.808 MTS having re-determined assessable value of Rs. 11,37,477/-, found during examination pertaining to Bill of Entry No. 6897966 dated 26.11.2024 under Section 111(d), 111(l) & 111(m) of the Customs Act, 1962. However, I give an option to the Importer M/s. Ara Scrap Recyclers LLP to re-deem the goods under provisions of Section 125 of Customs Act, 1962 for limited purpose of re-export to the same supplier on payment of Redemption Fine of **Rs. 13,00,000/- (Rs. Thirteen lakhs Only)**. If the Redemption fine imposed is not paid within a period of one hundred and twenty days from the date of receipt of this order, the option to re-deem the goods for re-export shall become void, unless an appeal against such order is pending.
- iii. I order for confiscation of "Aluminium Scrap Tense 55.594 MTS (Approx. 16.45%), Aluminium Scrap Tally 3.044 MTS (Approx.0.9%), HMS Scrap 21.746 MTS (Approx. 6.43%), Copper Barley Scrap 2.593 MTS (Approx. 0.77%), Cast Iron Scrap 40.415 MTS (Approx. 11.96%), Shredded Stainless Steel Melting Scrap 304 29.853 MTS (Approx. 8.83%), Shredded Stainless Steel Melting Scrap 316 64.727 MTS (Approx. 19.15%)" actually found during examination of the goods having total re-determined value of Rs. 3,23,11,568/- under Section 111(m) of Customs Act, 1962. However, I give an option to the Importer M/s. Ara Scrap Recyclers LLP to re-deem the said goods for home consumption under provisions of Section 125 of Customs Act, 1962 on payment of Redemption Fine of **Rs. 12,00,000/- (Rs. Twelve lakhs only)**. If the Redemption fine imposed is not paid within a period of one hundred and twenty days from the date of receipt of this order, the option to re-deem the goods for re-export shall become void, unless an appeal against such order is pending.
- iv. I order to impose penalty of **Rs. 7,00,000/- (Rs. Seven lakhs only)** under Section 112(a)(i) of Customs Act, 1962 and penalty of **Rs. 20,000/- (Rs. Twenty thousands only)** under Section 112(a)(ii) of Customs Act, 1962 on the Importer M/s. Ara Scrap Recyclers LLP.
- v. The redeemable goods viz. "Aluminium Scrap Tense 55.594 MTS (Approx. 16.45%), Aluminium Scrap Tally 3.044 MTS (Approx.0.9%), HMS Scrap 21.746 MTS (Approx. 6.43%), Copper Barley Scrap 2.593 MTS (Approx. 0.77%), Cast Iron Scrap 40.415 MTS (Approx. 11.96%), Shredded Stainless Steel Melting Scrap 304 29.853 MTS (Approx. 8.83%), Shredded Stainless Steel Melting Scrap 316 64.727 MTS (Approx. 19.15%)" imported vide Bill of Entry No. 6897966 dated 26.11.2024 are to be released only after payment of applicable duties, Redemption Fine & Penalty as above and the goods i.e. Battery Scrap 105.006 MTS (Approx. 31.07%), Electronic waste 0.15 MTS (Approx. 0.04%), GALVANISED NUTS & BOLTS 14.808 MTS (Approx. 4.38%) are to be re-exported to the same supplier only after payment of Redemption Fine and Penalty as above and any other applicable charges.

35. 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  
Import Section  
Custom House, Mundra

F. No. GEN/SHED/Misc/372/2024-Dock Examn Date: 20-01-2025

To,  
M/s. Ara Scrap Recyclers LLP,  
Plot No-09, Shrey Industrial Estate  
Daskroi, Ahmedabad-382435.

Copy to:

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