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|  | 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/INV/365/2024-Gr 5-6-O/o Pr Commr-Cus-Mundra |
| B | Order-in-Original No. | MCH/ADC/AKM/173/2024-25 |
| C | Passed by | Amit Kumar Mishra ADDITIONAL COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE, MUNDRA. |
| D | Date of Order | 23.10.2024 |
| E | Noticee/Party/ Importer/ Exporter | M/s, ADK Engineering & solutions (IEC-08150201630) A-504, Empire Business Hub, Opp. Shakti Farm, Sola, Ahmedabad-380060 |
| F | DIN No. | 20241071MO000000F44B |

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:

“ सीमा शुल्क आयुक्त (अपील),

7 वीं मंजिल, मृदुल टावर, टाइम्स ऑफ इंडिया के पीछे, आश्रम रोड, अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS), MUNDRA
Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380 009.”

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

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

4. उक्त अपील के पर न्यायालय शुल्क अधिनियम के तहत 5/- रुपए का टिकट लगा होना चाहिए और इसके साथ निम्नलिखित अवश्य संलग्न किया जाए-

Appeal should be accompanied by a fee of Rs. 5/- under Court Fee Act it must be 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 facts of the case:

M/s ADK Engineering & Solutions (IEC-08150201630) A-504, Empire Business Hub, Opp. Shakti Farm, Sola, Ahmedabad-380060 ('Importer' for the sake of brevity) have filed Ware House Bill of Entry No. 3807195 dated 03.06.2024 for import of Laser Cutting Machine through Customs Broker- M/s Damji Khimji & Sons (AABCR4487QCH007) at Mundra Port. The supplier in this case is M/s Gweike Tech Co. Ltd., China.

2.1 During data analysis by the officer of the Special Intelligence and Investigation Branch (SIIB), Custom House, Mundra, it was gathered that vide Notification No. 15/2023-Customs (ADD) dated 22.12.2023 issued vide F. No. CBIC-190354/240/2023-T0 (TRU-I)-CBIC, Anti-Dumping Duty (ADD) has been imposed on some specific goods, falling under HSN- 84561100, 84569090, 84798199, 85152190, 85158090 and 90132000 i.e. Industrial Laser Machines in fully assembled, SKD or CKD form used for cutting, marking or welding operations imported from China. The relevant part of the said notification is reproduced herein under:

Notification No. 15/2023-Customs (ADD), Dated 22nd December, 2023

Whereas in the matter of 'Industrial Laser Machines, used for cutting, marking, or welding' (hereinafter referred to as the subject goods) falling under tariff items 84561100, 84569090, 85152190, 85158090 and 90132000 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), originating in, or exported from China PR (hereinafter referred to as the subject country), and imported into India, the designated authority in its final findings, issued vide notification 06/07/2022-DGTR, dated the 27th September, 2023 published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 27th September, 2023, read with corrigendum issued vide notification 06/07/2022-DGTR dated 6th December, 2023 published in the Gazette of India, Extraordinary, Part I, Section 1, dated the 7th December, 2023, has inter alia come to the conclusion that-

- (i) the subject goods have been exported to India from the subject country at dumped prices;
- (ii) the domestic industry has suffered material injury on account of subject imports from subject country;
- (iii) the material injury has been caused by the dumped imports of subject goods from the subject country,

and has recommended imposition of an anti-dumping duty on the imports of subject goods, originating in, or exported from the subject country and imported into India, in order to remove injury to the domestic industry.

Now, therefore, in exercise of the powers conferred by sub-sections (1) and (5) of section 9A of the Customs Tariff Act read with rules 18 and 20 of the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995, the Central Government, after considering the aforesaid final findings of the designated authority, hereby imposes on the subject goods, the description of which is specified in column (3) of the Table below, falling under tariff item of the First Schedule to the Customs Tariff Act as specified in the corresponding entry in column (2), originating in the country as specified in the corresponding entry in column (4), exported from the countries as specified in the corresponding entry in column (5), produced by the producers as specified in the corresponding entry in column (6), and imported into India, an anti-dumping duty calculated at the rate as specified in the corresponding entry in column (7) of the said Table, namely:-

Table

| SN | Tariff Item | Description of Goods | Country of origin | Country of Export | Producer | Duty as % of CIF |
|-----|---|---|-------------------|--------------------------------|---|------------------|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) |
| 1 | 84561100, 84569090, 85152190, 85158090 and 90132000 | Industrial Laser Machines, in fully assembled, SKD or CKD form, used for cutting, marking, or welding operations* | China PR | Any country including China PR | GD Han's Yueming Laser Group Co., Ltd. Han's Laser Smart Equipment Group Co., Ltd. Han's Laser Technology Industry Group Co., Ltd. Han's MP Laser Technology Co., Ltd. Suzhou Songu Intelligent Equipment Co., Ltd. | 24.66% |
| 2 | -do- | -do- | China PR | Any country including China PR | Jiangsu Yawei MachineTool Co., Ltd. Jiangsu Yawei Chuangkeyuan Laser Equipment Co., Ltd. | 43.35% |
| 3 | -do- | -do- | China PR | Any country including China PR | TRUMPF (China) Co., Ltd. Jiangsu Jinfangyuan CNC Machine Co., Ltd. | Nil |
| 4 | -do- | -do- | China PR | Any country including China PR | HSG Laser Co., Ltd Jinan Hongshi Laser Technology Co., Ltd | 22.54% |
| 5 | -do- | -do- | China PR | Any country including China PR | Bystronic (Tianjin) Laser Ltd Bystronic Laser AG Bystronic (Shenzhen) Laser Technology Co., Ltd | 30.16% |
| 6 | -do- | -do- | China PR | Any country including China PR | Jinan Bodor CNC Machine Co., Ltd | 84.22% |
| 7 | -do- | -do- | China PR | Any country including China PR | Jinan Oree Laser Equipment Co., Ltd. Shandong Oree Laser Technology Co. Ltd | 87.30% |
| 8 | -do- | -do- | China PR | Any country including | Gweike Tech Co., Ltd | 90.49% |

| | | | | | | | |
|----|------|------|-------------------------|-----------------|--------------------------------|---------------------------|---------|
| 9 | -do- | -do- | China PR | China PR | Any country including China PR | Any, other than SN 1 to 8 | 147.20% |
| 10 | -do- | -do- | Any other than China PR | China PR | Any | | 147.20% |

the scope of the product includes Laser Cutting Machines, Laser Marking Machines, and Laser Welding machines.

In view of the above, it was noticed that w.e.f. 22.12.2023, ADD was payable on Industrial Laser Machines (HSN- 84561100, 84569090, 84798199, 85152190, 85158090 and 90132000) imported from China on the rate specified in the above notification. In the present case, the imported goods, i.e. Laser Cutting machines supplied by M/s Gweike Tech Co. Ltd. China is covered at the Sr. No. 8 of the above table and **ADD @ 90.49%** of CIF value is leviable on such item. Here, it is pertinent to mentioned that the ADD is imposed under **Section 9A of the Customs Tarif Act** read with Rules 18 & 20 of the Customs Tariff (Identification, Assessment and collection of Anty Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995.

2.2 From scrutiny of the Bill of Entry filed by the importer, it was noticed ADD was not mentioned in the payable duties along with BCD+SWS+IGST. Therefore, the consignment covered under BE No. 3807195 dated 03.06.2024 filed by the importer for import of Laser Cutting Machine from China without considering the element of ADD was kept on hold for further examination and investigation by the SIIB, CH, Mundra.

INVESTIGATION CONDUCTED:

3.1 The Examination of the aforesaid consignments was done under provisions of the Customs Act, 1962 on 18.06.2024. The seal no. & container no. was matched with the customs documents and found correct. On visual inspection, two mechanical which appeared as part of a single unit was found stuffed in the container. Further, following detail were mentioned on the mark and label affixed on the machine:

TABLE-1

| LASER CUTTING MACHINE | |
|------------------------------|---------------------|
| Manufacturer | Gweike Tech Co. Ltd |
| Model No. | LF3015GA |
| Series No. | 69643 |
| Laser Power | 300CW |
| Power requirement | 380V/50 Hz |
| Ex- Factory Date | 2024/02/04 |

From the above detail available on the machine itself, it was confirmed that the items under import is a new **Laser Cutting Machine manufactured by M/s Gweike Tech Co. Ltd. China**.

3.2 Thereafter, to get the clarification from the importer regarding non levy of ADD in the BE, a summons dated 21.06.2024 were issued to the importer firm. In response, Shri Harshit Vijaykumar Shah, partner of the importer firm appeared on 21.06.2024 and in his statement recorded on the same day, wherein he, *inter-alia* stated that

- *He was one of the partners of M/s ADK Engineering & Solutions.*

- *Other partners of the firm are Shri Ankit Patel and Shri Chetan Gangera.*
- *This firm is in operation since 2015.*
- *This firm is engaged in the business of trading and service supports of CNC (Computer Numeric Control) Machines used in metal industry.*
- *He showed his agreement that Warehouse BE No. 3807195 dated 03.06.2024 has been filed by CB- M/s Damji Khimji & Sons on their behalf.*
- *Vide this BE, they have imported Fiber Laser Cutting Machine and classified the same under HSN- 84561100.*
- *On being perused and shown the Notification No. 15/2023-Customs (ADD) dated 22.12.2023 issued vide F. No. CBIC-190354/240/2023-T0 (TRU-I)-CBIC, vide which Anti-Dumping Duty (ADD) has been imposed on some specific goods imported from China, he showed his agreement that Laser Cutting Machine (HSN-84561100) imported by them vide BE No 3807195 dated 03.06.2024 from M/s Gweike Tech Co. Ltd., China falls at the Sr. No. 8 of the table of the said notification and attracts ADD @ 90.49% of the CIF value.*
- *On being asked as to why the ADD @ 90.49% of the CIF was not levied on the said imported item, he stated that they have purchased the said goods under BE No 3807195 dated 03.06.2024 from M/s Gweike Tech Co. Ltd., China vide proforma invoice no GWK202401207J dated 20.01.2024 and sold it to M/s Infix Techno, Shed No. 2, Survey No. 342/P3, Kalavad Road, Taluka- Lodhika, Rajkot on High Sea Sales basis vide High Sea Sales Contract- IN-GJ39638525988797W dated 01.03.2024.*
- *M/s Infix was likely to file Bill of Entry for this consignment under EPCG license and they were under impression that ADD was not applicable when the goods are being imported under EPCG license. However, on arrival of the cargo at Mundra Port, they came to know that ADD is applicable even when the cargo is imported under EPCG license. Accordingly, they asked to cancel their agreement and refused to take the cargo.*
- *Thereafter, M/s ADK Engineering & Solutions decided to re-export the said consignment and filed warehouse BE No. 3807195 dated 03.06.2024.*
- *They were in process of preparing the warehouse bond for the above BE, meanwhile they came to know about the hold of the consignment by the SIIB, Custom House, Mundra.*
- *On being asked as to why the BE was filed too late (on 03.06.2024) after entry inward of the goods (on 07.03.2024) he stated that initially, M/s Infix Techno was likely to file BE for the above consignment on high sea sales basis but due to applicability of ADD, they refused to do the same.*
- *They were in negotiation with M/s Infix Techno for release of the cargo which resulted into delay in processing of the consignment and at last they have filed Warehouse BE on 03.06.2024.*
- ***On being asked as to whether they have submitted any document to the Customs Mundra indicating therein their intention to re-export of the consignment imported vide WH BE No. 3807195 dated 03.06.2024 as on the BE itself, there was nothing mention about the same; he has categorically mentioned that they did not submit any document to the Customs Mundra indicating therein their intention to re-export of the consignment imported vide WH BE No. 3807195 dated 03.06.2024. He also showed his agreement with the fact that there is nothing mentioned about the ADD on the BE itself.***
- *On being asked to submit documentary evidence suggesting cancellation of High Sea Sales contract dated 01.03.2024 entered between M/s ADK and M/s Infix Techno, he stated that M/s Infix Techno was their regular customer therefore all the negotiation regarding clearance of the cargo was being done telephonically only. They do not have any documentary evidence regarding cancellation of High Sea Sales contract dated 01.03.2024 entered between them and M/s Infix Techno.*
- *Since, the cargo was lying at Mundra Port since long, they decided to re-export the cargo and accordingly, filed WH BE No. 3807195 dated 03.06.2024.*

3.3 Further, the importer vide letter dated 24.06.2024 and 25.06.2024 reiterated the facts stated by Shri Harshit Vijaykumar Shah, partner of the importer firm in his statement recorded on 21.06.2024 and further *inter alia* submitted that due to refusing of the High Sea Sales buyer, they applied to shipping line for NOC to re-export the impugned consignment which took 2 months for completion of formalities and at last they received NOC on 11.05.2024. The importer has also submitted copies of email communication between them and the shipping line in this regard. Thereafter, they applied for WH BE No. 3807195 dated 03.06.2024 concerning with relevant agencies. They were in process of preparing Warehouse Bond and Re-Export Bond.

3.4 Further, vide letter dated 11.07.2024, the importer has submitted that they voluntarily relinquish their rights as to issuance of Show Cause Notice and Personal hearing as provided under Section 124 of the Customs Act, 1962 and requested to allow them for re-export of the cargo. The importer has also submitted that they are ready to pay the nominal fine and penalty as facing huge detention charges.

3.5 Further, on being asked, M/s Infix Techno vide letter dated 26.07.2024 and duly notarized under E-stamp certificate no. IN-GJ36938971850377W dated 29.07.2024 has submitted that they had done High Seas agreement with M/s ADK Engineering & Solutions for import of Laser cutting Machine and the same was imported vide BL No. YSQ2402195 but because of Anti-dumping duty, they cancelled the high sea agreement with M/s ADK and the payment made in respect to this consignment will be settled after re-export of the consignment. The after cancellation of the High Sea Sales agreement, the ownership of the consignment remains with M/s ADK Engineering & Solutions.

4. Relevant customs provisions related to filling Warehouse Bill of Entry are reproduced herein under:

Customs Act, 1962, as amended:

4.1 **As per Section 2 (23), *import*, with its grammatical variations and cognate expressions, means bringing into India from a place outside India;**

4.2 **As per Section 2 (25), *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;**

4.3 **As per Section (26), *importer*, in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes, any owner, beneficial owner or any person holding himself out to be the importer**

4.4 **Section 17 provides the provisions of the Assessment of duty as under: *Assessment of duty.-- (1) An importer entering any imported goods under section 46, or an exporter entering any export goods under section 50, shall, save as otherwise provided in section 85, self-assess the duty, if any, leviable on such goods.***

(2) The proper officer may verify the entries made under section 46 or section 50 and the self-assessment of goods referred to in sub-section (1) and for this purpose, examine or test any imported goods or export goods or such part thereof as may be necessary.

Provided that the selection of cases for verification shall primarily be on the basis of risk evaluation through appropriate selection criteria.]

(3) For the purposes of verification under sub-section (2), the proper officer may require

the importer, exporter or any other person to produce any document or information, whereby the duty leviable on the imported goods or export goods, as the case may be, can be ascertained and thereupon, the importer, exporter or such other person shall produce such document or furnish such information.]

(4) Where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods.

(5) Where any re-assessment done under sub-section (4) is contrary to the self-assessment done by the importer or exporter and in cases other than those where the importer or exporter, as the case may be, confirms his acceptance of the said re-assessment in writing, the proper officer shall pass a speaking order on the re-assessment, within fifteen days from the date of re-assessment of the bill of entry or the shipping bill, as the case may be.

4.5 Further, procedure of Entry of goods on importation are governed by the **Section 46** of the Act, *ibid* as under

(1) The importer of any goods, other than goods intended for transit or transhipment, shall make entry thereof by presenting electronically on the customs automated system to the proper officer a bill of entry for home consumption or warehousing in such form and manner as may be prescribed:

Provided further that if the importer makes and subscribes to a declaration before the proper officer, to the effect that he is unable for want of full information to furnish all the particulars of the goods required under this sub-section, the proper officer may, pending the production of such information, permit him, previous to the entry thereof (a) to examine the goods in the presence of an officer of customs, or (b) to deposit the goods in a public warehouse appointed under section 57 without warehousing the same.

(2) Save as otherwise permitted by the proper officer, a bill of entry shall include all the goods mentioned in the bill of lading or other receipt given by the carrier to the consignor.

(3) The importer shall present the bill of entry under sub-section (1) before the end of the day (including holidays) preceding the day on which the aircraft or vessel or vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing:

Provided that the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival:

Provided further that] a bill of entry may be presented 9[at any time not exceeding thirty days prior to] the expected arrival of the aircraft or vessel or vehicle by which the goods have been shipped for importation into India:

Provided also that where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay such charges for late presentation of the bill of entry as may be prescribed.

(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, and such other documents relating to the imported goods as may be prescribed.

(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.

(5) If the proper officer is satisfied that the interests of revenue are not prejudicially affected and that there was no fraudulent intention, he may permit substitution of a bill of entry for home consumption for a bill of entry for warehousing or vice versa.

4.6 Further, as per **Section 59** of the Act, ibid,

(1) the importer of any goods in respect of which a bill of entry for warehousing has been presented under section 46 and assessed to duty under section 17 or section 18 shall execute a bond (**Warehousing Bond**) in a sum equal to thrice the amount of the duty assessed on such goods, binding himself--

- (a) to comply with all the provisions of the Act and the rules and regulations made thereunder in respect of such goods;
- (b) to pay, on or before the date specified in the notice of demand, all duties and interest payable under sub-section (2) of section 61; and
- (c) to pay all penalties and fines incurred for the contravention of the provisions of this Act or the rules or regulations, in respect of such goods.

(2) For the purposes of sub-section (1), the Assistant Commissioner of Customs or Deputy Commissioner of Customs may permit an importer to execute a general bond in such amount as the Assistant Commissioner of Customs or Deputy Commissioner of Customs may approve in respect of the warehousing of goods to be imported by him within a specified period.

(3) The importer shall, in addition to the execution of a bond under sub-section (1) or sub-section (2), furnish such security as may be prescribed.

(4) Any bond executed under this section by an importer in respect of any goods shall continue to be in force notwithstanding the transfer of the goods to another warehouse.

(5) Where the whole of the goods or any part thereof are transferred to another person, the transferee shall execute a bond in the manner specified in sub-section (1) or sub-section (2) and furnish security as specified under sub-section (3).]

APPLICABILITY OF ANTI DUMPING DUTY:

5.1 Anti-Dumping Duty is imposed under **Section 9A of the Customs Tariff Act** read with Rules 18 & 20 of the Customs Tariff (Identification, Assessment and collection of Anti Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995. In pursuance of Section 9A (8) of the Customs Tariff Act, the provisions of the Customs Act, 1962 relating to the date of determination of rate of duty will apply to duty chargeable under Section 9(A)8 of the Customs Tariff Act as they apply in relation to the duties leviable under the Customs Act. Further, in terms of Section 15 (a) of the Customs Act, the date of presentation of Bill of Entry is the relevant date for determining the rate of duty and Section 15 (a) of the Customs Act will apply to ADD in terms of Section 9A (8) of the Customs Tariff Act. Relevant portion of the statute is reproduced herein under:

| | | | | | | | |
|---------------------------------|----------|----------|----------|----------------|----------------|---------------|----------------|
| As per Investigation | 3574010 | 268051 | 26805 | 3234122 | 7102988 | 1278538 | 4807515 |
| As declared in the WH BE | 3574010 | 268051 | 26805 | 0 | 3868866 | 696396 | 991252 |
| Difference | 0 | 0 | 0 | 3234122 | 3234122 | 582142 | 3816264 |

6. Relevant provisions of the Customs Act, 1962 related to confiscation and seizure of the imported goods are reproduced herein under:

6 . 1 **Section 111** of the Act, prescribes the Confiscation of improperly imported goods, etc. as under

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

(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 transshipment, with the declaration for transshipment referred to in the proviso to sub-section (1) of section 54.

6 . 2 **Section 112** of the Act provides the penal provisions for improper importation of goods, etc. which read as under:

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;]*

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees], whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees], whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest.

6.3 SECTION 124 prescribes the mandatory issuance of show cause notice before confiscation of goods, which read as under:

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person –

- a. is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;
- b. is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral.

Provided further that notwithstanding issue of notice under this section, the proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.

6.4 SECTION 125 provides the Option to pay fine in lieu of confiscation as under:

(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 where the proceedings are deemed to be concluded under the proviso to sub-section (2) of section 28 or under clause (i) of sub-section (6) of that section in respect of the goods which are not prohibited or restricted, 3 [no such fine shall be imposed]:

Provided further 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.

7 . In view of the above, it appeared that in the imported goods vide WH BE No. 3807195 dated 03.06.2024, Laser Cutting Machine classified under CTH-84561100 having declared CIF value of **Rs. 35,74,010/-** is liable for levy of ADD @ 90.49 % of the CIF value. But the importer has contravened the provisions of Section 17 & 46 of the Customs Act, 1962 read with Section 9A of the Customs Tariff Act, in as much they failed to assess and determine the levy of Anti-Dumping Duty in terms of Notification No. 15/2023-Customs (ADD) dated 22.12.2023 on the imported goods, i.e. Laser Cutting Machine. These acts of omission and commission on the part of importer has made these goods valuing at **Rs. 35,74,010/-** is liable for confiscation under Section 111 (m) of the Act, ibid and has thus rendered themselves liable for penal action under Section 112 (a) (ii) of the Customs Act, 1962.

8. In view of the above, it appeared that the importer has short levied the duty amounting to **Rs. 38,16,264/- (ADD-32,34,122/- + IGST- 5,82,142/-)** as detailed in Table-2 above in the aforesaid BE, which is now required to be added in the Warehouse Bill of Entry by way of re-assessment of the BE.

9. REQUEST FOR RE-EXPORT OF THE GOODS AND WAIVER OF SCN:

Shri Harshit Vijaykumar Shah, partner of the importer firm in his statement recorded on 21.06.2024 and letters submitted during the investigation has submitted that they intended to re-export of the cargo as the consignment was refused to get released by their high Sea Sale buyer M/s Infix Techno due to levy of ADD on the imported consignment. However, before start of the inquiry, no document was submitted by the importer through its CB to the Customs department indicating their intention to re-export of cargo. During the investigation, the importer in his statement recorded on 21.06.2024 and subsequent letters dated submitted on 25.06.2024, 11.07.2024 and 04.10.2024 has requested permission to allow re-export of the goods imported vide above said BE and also has relinquished their right to issuance of SCN and Personal hearing as provided under Section 124 of the Customs Act. The importer has also submitted that they are ready to pay nominal fine and penalty as they are facing huge detention charges.

10. In view of the above, it appeared that:-

- (i) The Laser cutting machine imported vide Warehouse BE No. 3807195 dated 03.06.2024 having declared CIF value of **Rs. 35,74,010/-** is liable for confiscation under Section 111 (m) of the Customs Act, 1962.
- (ii) Anti-Dumping Duty @ 90.49 % of CIF value is leviable on the said imported good in light of Notification No. 15/2023-Customs (ADD) dated 22.12.2023.
- (iii) Total differential duty amounting to **Rs. 38,16,264/- (ADD-32,34,122/- + IGST- 5,82,142/-)** as detailed in Table-2 above is required to be added in the Warehouse Bill of Entry by way of re-assessment of the BE.
- (iv) Penalty under Section 112 (a) (ii) of Customs Act, 1962 is imposable upon the importer.

Discussions and Findings

11. I have gone through the above chronology of events and submissions by the importer,

it is apparent that they have not submitted any documentary evidence to prove non-leviability of ADD on the subject goods. Hence, leviability of ADD in the instant case is not questionable.

12. I have gone through the facts of the case, legal provisions, statements and submissions made by the importer. The importer in his statement recorded on 21.06.2024 and subsequent letters dated submitted on 25.06.2024 and 11.07.2024 has requested for permission to allow re-export, for waiver of the Show Cause Notice and Personal Hearing and has requested for adjudication of the matter without SCN. I therefore find that the procedure as laid down Section 122A of the Customs Act, 1962 has been complied with.

12. Now I proceed to adjudicate the case before me. The main issues involved in this case are as follows:

- i. Whether Anti-Dumping Duty @ 90.49 % of CIF value is leviable on the said imported good in light of Notification No. 15/2023-Customs (ADD) dated 22.12.2023 should be levied on goods covered under WH BE No. 3807195 dated 03.06.2024, i.e. Laser Cutting Machine classified under CTH-84561100 having declared CIF value of **Rs. 35,74,010/-**;
- ii. Whether the goods covered under WH BE No. 3807195 dated 03.06.2024, i.e. Laser Cutting Machine classified under CTH-84561100 having declared CIF value of **Rs. 35,74,010/- is liable for confiscation under section 111(m) of the Customs Act, 1962**;
- iii. Whether the importer is liable to be penalized under section 112(a)(ii) of the Customs Act, 1962;
- iv. Whether the goods can be permitted to be re-exported under section 125 as has been requested by the importer.

13. Confiscation of goods covered under the WH BE No. 3807195 dated 03.06.2024

The Section 111 of the Customs Act , 1962 provides for scenarios under which imported goods can be confiscated. One of the scenarios is 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 transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54.”

14. I find that while filing the WH BE No. 3807195 dated 03.06.2024, i.e. Laser

Cutting Machine classified under CTH-84561100 having declared CIF value of **35,74,010/-**, being imported, the importer has not declared and self-assessed the Anti-Dumping duty which was applicable on the goods covered under said B/E. Therefore, I hold that the goods covered under the WH BE No. 3807195 dated 03.06.2024 liable for confiscation.

Penalty

15. The acts of commission and omission as discussed above, if allowed to pass, would have resulted in non-payment of Anti-Dumping duty and Customs duty to the tune of **Rs. 38,16,264/-**. In the era of self-assessment, where the Government is placing increased trust in importers and encouraging them by increased facilitation it is rightfully expected that the importers exercise due diligence while filing Bills of Entry keeping them abreast of all the newest developments with regards to imposition and applicability of duty. The importers are not expected to be ignorant of the specifications, quantum, event on which applicability of duty is dependent. Such ignorance in applicability of Anti-Dumping Duty at the time of filing WH BE No. 3807195 dated 03.06.2024, i.e. Laser Cutting Machine classified under CTH-84561100 having declared CIF value of **35,74,010/-** has led the goods to be liable for confiscation under Section 111 of the Customs Act, 1962.

43. Section 112 of the Customs Act, 1962 states that any person, *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 is liable to, 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.* Therefore, I only find it fit to impose penalty on the importer as laid down in the Act.

Re-exportability of goods as has been requested by the importer.

44. When confiscation of any goods is authorized by the Act, the adjudicating officer has the discretion to offer the option to pay a fine in lieu of confiscation. In the current scenario, I, therefore, only find it suitable that the importer be given an option to redeem the goods. The importer is permitted to clear the goods for home consumption upon payment of applicable duty and penalty and fine imposed in lieu of confiscation. However, since the importer has requested for permission for re-export of goods, the importer shall be permitted to re-export the goods upon payment of redemption fine imposed in lieu of confiscation along with penalty.

45. In view of the above, I pass the following order:

ORDER

- i. I confirm the leviability of Anti-Dumping Duty @ 90.49 % of CIF value on the said imported good in light of Notification No. 15/2023-Customs (ADD) dated 22.12.2023 covered under WH BE No. 3807195 dated 03.06.2024, i.e. Laser Cutting Machine classified under CTH-84561100 having declared CIF value of **Rs. 35,74,010/-** and Customs duty to the tune of **Rs. 38,16,264/- (ADD-32,34,122/- + IGST- 5,82,142/-)** as detailed in Table-2 above.
- ii. I hold the goods covered under WH BE No. 3807195 dated 03.06.2024, i.e. Laser Cutting Machine classified under CTH-84561100 having declared CIF value of **Rs. 35,74,010/- liable for confiscation under section 111(m) of the Customs Act, 1962**
- iii. I give the importer an option to re-export the goods on payment of Redemption fine under section 125 of Customs Act, 1962 of amount Rs 3,00,000/- (Rs. Three Lakhs only) in lieu of confiscation as ordered above.
- iv. I impose a penalty of Rs 2,50,000/- (Rs. Two Lakhs Fifty thousand only) under section 112(a)(ii) of the Customs Act, 1962 on the importer M/s ADK Engineering & Solutions (IEC-08150201630) A-504, Empire Business Hub, Opp. Shakti Farm, Sola, Ahmedabad-380060.

46. 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 CA 1962 and rules /regulation framed thereunder or any other law for the time being in force in the republic of India.

Amit Kumar Mishra
Additional Commissioner of Customs
Import, Mundra Customs House

To,

1. M/s ADK Engineering & Solutions (IEC-08150201630) A-504, Empire Business Hub, Opp. Shakti Farm, Sola, Ahmedabad-380060

Copy to

2. Deputy Commissioner of Customs, SIIB, Mundra Customs House
3. Assistant/Deputy Commissioner of Customs, Group 5, Mundra Customs House
4. Assistant/Deputy Commissioner of Customs, EDI, Mundra Customs House
5. Assistant/Deputy Commissioner of Customs, RRA Mundra Customs House
6. Assistant/Deputy Commissioner of Customs, TRC Mundra Customs House