



सीमा शुल्क(अपील) आयुक्त का कार्यालय, अहमदाबाद

OFFICE OF THE COMMISSIONER OF CUSTOMS (APPEALS), AHMEDABAD,

चौथी मंज़िल **4th Floor**, हडको भवन **HUDCO Bhawan**, ईश्वर भुवन रोड़ **Ishwar Bhuvan Road**
नवरंगपुरा **Navrangpura**, अहमदाबाद **Ahmedabad - 380 009**
दूरभाष क्रमांक **Tel. No. 079-26589281**

DIN - 20250571MN000000AC2C

क	फ़ाइल संख्या FILE NO.	S/49-01/CUS/MUN/2023-24
ख	अपील आदेश संख्या ORDER-IN- APPEAL NO. (सीमा शुल्क अधिनियम, 1962 की धारा 128क के अंतर्गत)(UNDER SECTION 128A OF THE CUSTOMS ACT, 1962) :	MUN-CUSTM-000-APP-033-25-26
ग	पारितकर्ता PASSED BY	Shri Amit Gupta Commissioner of Customs (Appeals), Ahmedabad
घ	दिनांक DATE	27.05.2025
ङ	उद्भूत अपील आदेश की सं. व दिनांक ARISING OUT OF ORDER-IN- ORIGINAL NO.	Order - In - Original No. MCH/ADC/MK/174/2023-24 dated 03.03.2023
च	अपील आदेश जारी करने की दिनांक ORDER- IN-APPEAL ISSUED ON:	27.05.2025
छ	अपीलकर्ता का नाम व पता NAME AND ADDRESS OF THE APPELLANT:	M/s. Scoda Tubes Limited (IEC: 0810018306), Survey No. 1568/1569, Village Rajpur, Taluka-Kadi, Dist-Mehsana-382715



1	यह प्रति उस व्यक्ति के निजी उपयोग के लिए मुफ्त में दी जाती है जिनके नाम यह जारी किया गया है।
	This copy is granted free of cost for the private use of the person to whom it is issued.
2.	सीमाशुल्क अधिनियम 1962 की धारा 129 डी डी (1) (यथा संशोधित) के अधीन निम्नलिखित श्रेणियों के मामलों के सम्बन्ध में कोई व्यक्ति इस आदेश से अपने को आहत महसूस करता हो तो इस आदेश की प्राप्ति की तारीख से 3 महीने के अंदर अपर सचिव/संयुक्त सचिव (आवेदन संशोधन), वित्त मंत्रालय, (राजस्व विभाग) संसद मार्ग, नई दिल्ली को पुनरीक्षण आवेदन प्रस्तुत कर सकते हैं।
	Under Section 129 DD(1) of the Customs Act, 1962 (as amended), in respect of the following categories of cases, any person aggrieved by this order can prefer a Revision Application to The Additional Secretary/Joint Secretary (Revision Application), Ministry of Finance, (Department of Revenue) Parliament Street, New Delhi within 3 months from the date of communication of the order.
	निम्नलिखित सम्बन्धित आदेश/Order relating to :
(क)	बैगेज के रूप में आयातित कोई माल।
(a)	any goods exported
(ख)	भारत में आयात करने हेतु किसी वाहन में लादा गया लेकिन भारत में उनके गन्तव्य स्थान पर उतारे न गए माल या उस गन्तव्य स्थान पर उतारे जाने के लिए अपेक्षित माल उतारे न जाने पर या उस गन्तव्य स्थान पर उतारे गए माल की मात्रा में अपेक्षित माल से कमी हो।
(b)	any goods loaded in a conveyance for importation into India, but which are not unloaded at their place of destination in India or so much of the quantity of such goods as has not been unloaded at any such destination if goods unloaded at such destination are short of the quantity required to be unloaded at that destination.
(ग)	सीमाशुल्क अधिनियम, 1962 के अध्याय X तथा उसके अधीन बनाए गए नियमों के तहत शुल्क वापसी की अदायगी।
(c)	Payment of drawback as provided in Chapter X of Customs Act 1962 and the rules made thereunder.
3.	पुनरीक्षण आवेदन पत्र संगत नियमावली में विनिर्दिष्ट प्रारूप में प्रस्तुत करना होगा जिसके अन्तर्गत उसकी जांच की जाएगी और उस के साथ निम्नलिखित कागजात संलग्न होने चाहिए :
	The revision application should be in such form and shall be verified in such manner as may be specified in the relevant rules and should be accompanied by :
(क)	कोर्ट फी एक्ट, 1870 के मद सं.6 अनुसूची 1 के अधीन निर्धारित किए गए अनुसार इस आदेश की 4 प्रतियां, जिसकी एक प्रति में पचास पैसे की न्यायालय शुल्क टिकट लगा होना चाहिए।
(a)	4 copies of this order, bearing Court Fee Stamp of paise fifty only in one copy as prescribed under Schedule 1 item 6 of the Court Fee Act, 1870.
(ख)	सम्बद्ध दस्तावेजों के अलावा साथ मूल आदेश की 4 प्रतियां, यदि हो
(b)	4 copies of the Order-in-Original, in addition to relevant documents, if any
(ग)	पुनरीक्षण के लिए आवेदन की 4 प्रतियां
(c)	4 copies of the Application for Revision.
(घ)	पुनरीक्षण आवेदन दायर करने के लिए सीमाशुल्क अधिनियम, 1962 (यथा संशोधित) में निर्धारित फीस जो अन्य रसीद, फीस, दण्ड, जब्ती और विविध मदों के शीर्ष के अधीन आता है में रु. 200/- (रुपए दो सौ मात्र) या रु. 1000/- (रुपए एक हजार मात्र), जैसा भी मामला हो, से सम्बन्धित भुगतान के प्रमाणिक चलान टी.आर.6 की दो प्रतियां. यदि शुल्क, मांगा गया ब्याज, लगाया गया दंड की राशि और रुपए एक लाख या उससे कम हो तो ऐसे फीस के रूप में रु. 200/- और यदि एक लाख से अधिक हो तो फीस के रूप में रु. 1000/-
(d)	The duplicate copy of the T.R.6 challan evidencing payment of Rs.200/- (Rupees two Hundred only) or Rs.1,000/- (Rupees one thousand only) as the case may be, under the Head of other receipts, fees, fines, forfeitures and Miscellaneous Items being the fee prescribed in the Customs Act, 1962 (as amended) for filing a Revision Application. If the



	amount of duty and interest demanded, fine or penalty levied is one lakh rupees or less, fees as Rs.200/- and if it is more than one lakh rupees, the fee is Rs.1000/-.	
4.	मद सं. 2 के अधीन सूचित मामलों के अलावा अन्य मामलों के सम्बन्ध में यदि कोई व्यक्ति इस आदेश से आहत महसूस करता हो तो वे सीमाशुल्क अधिनियम 1962 की धारा 129 ए (1) के अधीन फॉर्म सी.ए.-3 में सीमाशुल्क, केन्द्रीय उत्पाद शुल्क और सेवा कर अपील अधिकरण के समक्ष निम्नलिखित पते पर अपील कर सकते हैं	
	In respect of cases other than these mentioned under item 2 above, any person aggrieved by this order can file an appeal under Section 129 A(1) of the Customs Act, 1962 in form C.A.-3 before the Customs, Excise and Service Tax Appellate Tribunal at the following address :	
	सीमाशुल्क, केन्द्रीय उत्पाद शुल्क व सेवा कर अपीलिय अधिकरण, पश्चिमी क्षेत्रीय पीठ	Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench
	दूसरी मंज़िल, बहुमाली भवन, निकट गिरधरनगर पुल, असारवा, अहमदाबाद-380016	2 nd Floor, Bahumali Bhavan, Nr.Girdhar Nagar Bridge, Asarwa, Ahmedabad-380 016
5.	सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (6) के अधीन, सीमाशुल्क अधिनियम, 1962 की धारा 129 ए (1) के अधीन अपील के साथ निम्नलिखित शुल्क संलग्न होने चाहिए-	
	Under Section 129 A (6) of the Customs Act, 1962 an appeal under Section 129 A (1) of the Customs Act, 1962 shall be accompanied by a fee of -	
(क)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए या उससे कम हो तो एक हजार रूपए.	
(a)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;	
(ख)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पाँच लाख रूपए से अधिक हो लेकिन रुपये पचास लाख से अधिक न हो तो; पांच हजार रूपए	
(b)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees ;	
(ग)	अपील से सम्बन्धित मामले में जहां किसी सीमाशुल्क अधिकारी द्वारा मांगा गया शुल्क और व्याज तथा लगाया गया दंड की रकम पचास लाख रूपए से अधिक हो तो; दस हजार रूपए.	
(c)	where the amount of duty and interest demanded and penalty levied by any officer of Customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees	
(घ)	इस आदेश के विरुद्ध अधिकरण के सामने, मांगे गए शुल्क के 10% अदा करने पर, जहां शुल्क या शुल्क एवं दंड विवाद में हैं, या दंड के 10% अदा करने पर, जहां केवल दंड विवाद में है, अपील रखा जाएगा।	
(d)	An appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute.	
6.	उक्त अधिनियम की धारा 129 (ए) के अन्तर्गत अपील प्राधिकरण के समक्ष दायर प्रत्येक आवेदन पत्र- (क) रोक आदेश के लिए या गलतियों को सुधारने के लिए या किसी अन्य प्रयोजन के लिए किए गए अपील : - अथवा (ख) अपील या आवेदन पत्र का प्रत्यावर्तन के लिए दायर आवेदन के साथ रुपये पाँच सौ का शुल्क भी संलग्न होने चाहिए.	
	Under section 129 (a) of the said Act, every application made before the Appellate Tribunal	
	(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose, or	
	(b) for restoration of an appeal or an application shall be accompanied by a fee of five Hundred rupees.	



ORDER-IN-APPEAL

Appeal has been filed by M/s. Scoda Tubes Limited (IEC: 0810018306), Survey No. 1568/1569, Village Rajpur, Taluka-Kadi, Dist-Mehsana-382715 (hereinafter referred to as the 'appellant') in terms of Section 128 of the Customs Act, 1962, challenging the Order-in-Original no. MCH/ADC/MK/174/2023-24 dated 03.03.2023 (hereinafter referred to as 'the impugned order') passed by the Additional Commissioner of Customs, Mundra (hereinafter referred to as the 'adjudicating authority').

2. Facts of the case, in brief, are that the appellant had imported consignments of Stainless-Steel Seamless Pipes (Hot Finish) from China under three Bills of Entry under DEEC Licence No. 0811006057 dated 20.09.2022. Details of Bills of Entry are as under:

Bill of Entry No. and date	Name of the supplier	Invoice No. and date	Inward date	Container No.	Total Weight of the Imported goods (in MTs)
4111833 dated 10.01.2023	M/s. Daqiao Stainless Steel Tube Co Limited, China	BR1105B01-01 Date 21.12.2022	19.01.2023	CAAU5211005	28.058
4111899 dated 10.01.2023	M/s. Wenzhou Bolai Stainless Steel Co Limited, China	22-B5-12008 Date 19.12.2022	16.01.2023	FCIU9519743	25.471
4045554 dated 05.01.2023	M/s. MTSCO Steel Co Limited, China	22SM-K083Y-A Date 09.12.2022	11.01.2023	TEMU7313213	26.185
TOTAL					79.714

2.1 Intelligence developed by the Special Intelligence & Investigation Branch (SIIB), Mundra Customs, indicated evasion of Anti-Dumping Duty on imports of Stainless-Steel Seamless Tubes and Pipes with specifications of diameters up to and including 6 NPS, or comparable thereof, after issuance of Notification No. 31/2022-Customs (ADD) dated 20-12-2022 issued by Under Secretary from F.No. CBIC-190354/243/2022-TO (TRU-I)-CBEC.

2.2 The said Notification imposed Anti-Dumping Duty on import of 'Stainless-Steel Seamless Tubes and Pipes' with specifications of diameters up to and including 6 NPS, or comparable thereof in other units of measurement, whether manufactured using hot extrusion process or hot piercing process and whether sold as hot finished or cold finished pipes and tubes, including subject



goods imported in the form of defectives, non-prime, or secondary grades (hereinafter referred to as the subject goods) falling under chapter heading 7304 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. It may be noteworthy to highlight that millimeters is the unit of measurement being followed in import consignments. Thus, in order to refer to the measurement in millimeters, 6 NPS, as specified in the Notification dated 20-12-2022, is equal to 168.3 mm as per available online literature.

2.3 Subsequent to the publishing of the Notification No. 31/2022-Customs (ADD) dated 20-12-2022 issued by Under Secretary from F.No. CBIC-190354/243/2022-TO(TRU-I)-CBEC, it was observed that the said Bills of Entry mentioned in the above table were not filed with ADD notification. Accordingly, container nos. CAAU5211005, FCIU9519743, and TEMU7313213 were placed on hold for examination purposes.

2.4 The goods covered under Bill of Entry No. 4111833 dated 10.01.2023 stuffed in container no. CAAU5211005 lying at All Cargo CFS, Mundra, were examined on 25.01.2023 in the presence of a representative of Customs Broker, i.e., M/s. Siya Clearing and Forwarding Pvt. Ltd. As regards examination, the dimensions of the pipes were measured with the help of a measurement tape available at CFS. The dimensions of pipes found are "42.16mm x 2.77mm, 42.16mm x 3.56mm". Measuring the diameter of the pipes revealed that the sizes of pipes of a total weight of 28.058 MTs are much below 6 NPS.

2.5 The consignment covered under Bill of Entry No. 4111899 dated 10.01.2023 stuffed in container no. FCIU9519743 lying at Seabird CFS, Mundra, was also examined on 25.01.2023 in the presence of a representative of Customs Broker M/s. Siya Clearing and Forwarding Pvt. Ltd. As regards examination, the dimensions of the pipes were measured with the help of a measurement tape available at CFS. The dimensions of pipes found are "88.9mm x 5.49mm, 114.3mm x 6.02mm, 219.08mm x 8.18mm, and 323.85mm x 9.53mm". Measuring the diameter of the pipes revealed the size of some pipes of a total weight of 4.301 MTs are much below 6 NPS.



The examination of goods covered under Bill of Entry No. 4045554

dated 05.01.2023 stuffed in container no. TEMU7313213 lying at Seabird CFS, Mundra, was carried out in the presence of a representative of Customs Broker M/s. Siya Clearing and Forwarding Pvt. Ltd. As regards examination, the dimensions of the pipes were measured with the help of a measurement tape available at CFS. The dimensions of pipes found are "219.08mm x 3.76mm, 168.2mm x 10.09mm, 168.2mm x 7.11mm, 219.08mm x 8.18mm, 88.9mm x 3.05mm, and 114.3mm x 3.05mm". Measuring the diameter of the pipes revealed the size of some pipes of a total weight of 18.171 MTs are much below 6 NPS.

2.7 As per the examination carried out by the SIIB officers, the diameter of the pipes revealed that the size of the pipes of a weight of 50.53 MTs (out of a total weight of 79.714 MTs) are much below 6 NPS in all three Bills of Entry.

2.8 The importer, vide its letter dated 25.01.2023, submitted that they don't want any SCN and requested for waiver of Show Cause Notice and to decide the case on merit basis.

2.9 Consequently, the adjudicating authority passed a impugned speaking order wherein the adjudicating authority ordered as under :-

i. She confirmed and ordered the re-assessment of all three Bills of Entry, i.e., 4111833 dated 10.01.2023, 4111899 dated 10.01.2023, and 4045554 dated 05.01.2023 under Section 17(4) of the Customs Act, 1962, with the imposition of Anti-Dumping Duty leviable in terms of Notification No. 31/2022(ADD) dated 20-12-2022.

ii. She confirmed and ordered for confiscation of the goods pertaining to all three Bills of Entry, i.e., 4111833 dated 10.01.2023, 4111899 dated 10.01.2023, and 4045554 dated 05.01.2023, as goods declared are in contravention of Section 46 of the Act and are therefore liable for confiscation under Section 111(m) of the Customs Act, 1962. However, she gave an option to redeem the goods in lieu of confiscation under the provision of section 125 of the Customs Act, 1962 on payment of a Redemption Fine of Rs. 9,00,000/- (Rs. Nine lac only).

iii. She imposed a penalty of Rs. 9,50,000/- (Rs. Nine Lac Fifty Thousand Only) on the appellant under section 112(a)(ii) of the Customs Act, 1962.



3. SUBMISSIONS OF THE APPELLANT:

Being aggrieved with the impugned order, the Appellant has filed the present appeals wherein they have submitted grounds which are as under:-

3.1 The appellant has submitted that it is not disputed that the impugned goods are imported under Advance Authorization and entire quantity of the impugned goods are to be used for manufacture of finished goods to be exported in terms of the Advance Authorization. In case of import under Advance Authorization, Customs duties leviable under each and every provisions of the Customs Tariff Act, 1975 are not to be paid in cash and are to be debited in the license/bond. The appellant was ready to make payment of the ADD and had already requested to debit the same after re-calling of the Bills of Entry for and re-assessment.

3.2 Further, the Bills of Entry wherein the appellant had declared country of origin/export as China and the impugned goods were shown with specification of OD in mm As the appellant had given full and correct particulars as regards the nature and size of the goods, it is difficult to believe that the appellant knowingly lapsed the mention of the notification for levy of ADD on the impugned goods with any dishonest intention of evading proper payment of ADD. Rather, it is a fact that pipes weighing 11.056 MTs shown against the Sr No. 2 and 3 in the Bill of Entry No. 4045554 dated 05.01 2023 are having OD of 168.280 mm and had there been any ill-will or intent to evade, the appellant could have managed to make the OD of those 11.056 MTs of pipes as 168.310 (just above 168.300 mm) to keep 11.056 MTs of pipes out of the purview of levy of ADD in terms of the Notification No. 31/2022-Customs (ADD) dated 20.12.2022.

3.3 The appellant has also submitted that it is also an admitted fact that only part of the impugned goods are found to be leviable to ADD. Thus, there is no mis-declaration on the part of the appellant with respect to the transaction.

3.4 The appellant has submitted that the appellant failed to mention the notification for the levy of ADD on the impugned goods but fact which cannot be ignored is that the system also validated the transaction without noticing the mistake committed by the appellant and therefore, it cannot be said that the appellant alone was negligent and not the department.



3.5 The appellant has submitted that Section 111(m) of the Customs Act, 1962 applies only when there is a mis-declaration of any material particulars. In the present case, the appellant has not mis-declared any material particulars and therefore, the provisions of Section 111(m) are not attracted in the fact of the case. As regards the imposition of penalty, it is submitted that there was no malafide on the part of the appellant and it was only an inadvertent error. Penalty is not imposable merely for lapse of mentioning the notification for levy of ADD in Bills of Entry in absence of willful intention to evade payment of duty. In this regard, the appellant referred to a decision of the Hon'ble Tribunal in case the Commissioner of Customs (Import), Mumbai Vs Vidhi Dyestuff Manufacturing Ltd. Reported at 2015 (327) E.L.T. 500 (Tri.-Mumbai) wherein the Tribunal, in an identical case, has held that imposition of penalty is not warranted in the facts of the case.

3.6 The appellant had filed the Bills of Entry timely along with supporting documents viz. Bill of Lading, Invoice, Packing list etc. and all the details like description, quantity, value, country of origin and specification of the goods are found correct in all respect. The appellant had duly complied with the provisions of sub-sections (1), (2) and (3) as well as clause (a), (b) and (c) of sub-section 4A of Section 46 of the Customs Act, 1962, which chronologically deals with presenting of Bill of Entry including all the goods as per Bill of Lading, time of presenting Bill of Entry, ensuring accuracy etc of the information, provided in the Bill of Entry, authenticity and validity of the supporting documents and compliance with any other law. The appellant while presenting the Bills of Entry had made and subscribed to a declaration as to the truth of the contents of all Bills of Entry and has thus complied the provision made under sub-section 4 of Section 46 of the Customs Act, 1962. The only lapse was that ADD notification for levy of ADD on the impugned goods was not shown at the time of presenting the Bills of Entry. The appellant had specifically submitted that imposition of ADD on the impugned goods was recent levy and such lapse was noticed by themselves, immediately before taking delivery of the impugned goods imported under the Bill of Entry No. 4045554 dated 05.01.2023. It is an undisputed fact that the said Bill of Entry was passed in RMS and OOC was also granted on 11.01.2023. It is a fact that container was de-stuffed in the CFS for delivery of the impugned goods to the appellant well before the containers were put on hold by SIIB, examination of the impugned goods was carried out by SIIB on 25.01.2023 and Investigation Report is dated 06.02.2023. Had there been any



intent to evade ADD, the appellant would have taken immediate delivery of the impugned goods. The appellant preferred not to take delivery of the impugned goods despite OOC and preferred to inform the department for re-assessment of the impugned goods for levy of ADD. Section 46 of the Customs Act, 1962 as reproduced, reads as under:

SECTION 46. Entry of goods on importation. (1) The importer of any goods, other than goods intended for transit or transshipment, 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 that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make Entry by presenting electronically on the customs automated system, allow an Entry to be presented in any other manner

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 at any time not exceeding thirty days prior to the expected arrival of the aircraft or vessel



[Handwritten signature]

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.

3.7 Further, it is submitted that Section 17(4) of the Customs Act, 1962 empowers the Customs Officer to re-assess the duty on the imported goods where it is found on verification, examination or testing of the goods or otherwise that the self-assessment is not done correctly.

3.8 In this situation, it cannot be held that the appellant failed to comply with the provisions of Section 46 of the Customs Act, 1962 and attempted to evade the payment of ADD leviable on the impugned goods in terms of the Notification No. 31/2022-Customs (ADD) dated 20. 12.2022. Thus, all the facts goes long way to dispel an inference that there was any mala fide intention on the part of the appellant in making lapse of showing the notification for levy of ADD Rather it shows that the appellant acted in a bona fide manner and when



the lapse was noticed by them, they came forward with a request to re-assess the impugned goods for the levy of ADD without taking delivery of the impugned goods even when the goods were granted OOC.

PERSONAL HEARING:

4. Personal hearing in the matter was held on 03.02.2025 in virtual mode. Shri V H Hakani, Advocate, appeared for hearing representing the appellant. He had reiterated the submissions made in the appeal memorandum. Due to change of the appellate authority, personal hearing was again held on 13.05.2025. Shri K J Kinariwala, Consultant, appeared for hearing representing the appellant. He reiterated the submissions made in the appeal and stated that there is no misdeclaration and therefore consequent redemption fine or penalty is not tenable. He further submitted that even otherwise, duty Redemption fine and full penalty has been paid with in a week i.e before 30 days of the impugned and therefore the penalty is to be reduced to 25% of the penalty imposed.

DISCUSSION AND FINDINGS:

5 I have carefully gone through the case records, impugned order passed by the Additional Commissioner of Customs , Mundra and the defense put forth by the appellants in their appeal. The Appellant has filed the present appeal on 11.04.2023. In the Form C.A.-1, the Appellant has mentioned date of communication of the Order-In-Original dated 03.03.2023 as 03.03.2023. Hence the appeal has been filed within normal period of 60 days, as stipulated under Section 128(1) of the Customs Act, 1962. The appellant has paid the duty through DEEC Bond debit and also paid Redemption fine of Rs. 9,00,000/- and penalty of 9,50,000/- as per E-payment challan No. 2043148148 dtd 09.03.2023. As the appeal has been filed within the stipulated time-limit under Section 128(1) of the Customs Act, 1962 and with the mandatory pre-deposit as per Section 129E of the said Act, it has been admitted and being taken up for disposal.



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5.1 On going through the material on record, I find that following issues required to be decided in the present appeals which are as follows:

- i. Whether the appellant's failure to declare ADD under Notification No. 31/2022-Customs (ADD) constitutes misdeclaration or suppression of facts under Section 46 of the Customs Act, 1962 and whether the goods are liable for confiscation under Section 111(m) of the said Act due to non declaration of ADD or otherwise.
- ii. Whether the imposition of a redemption fine under Section 125 and penalty under Section 112(a)(ii) is justified, or if the appellant's claim of a clerical error negates liability.

5.2 Firstly, I take up the issue whether the appellant's failure to declare ADD under Notification No. 31/2022-Customs (ADD) constitutes misdeclaration or suppression of facts under Section 46 of the Customs Act, 1962. It is observed that the appellant has imported consignments of Stainless-Steel Seamless Pipes (Hot Finish) originating from China under three Bills of Entry, i.e., 4111833 dated 10.01.2023, 4111899 dated 10.01.2023, and 4045554 dated 05.01.2023, with a total of 79.714 MTs consignment weight in all three Bills of Entry. During examination, it was found that out of a total weight of 79.714 MTs of consignment, the diameter of the pipes of 50.53 MTs weight revealed the size to be much below 6 NPS. It is observed that the Anti-Dumping Duty was effective from 20-12-2022 on Stainless-Steel Seamless Pipes and Tubes imported from China or manufactured in China or originated from China but exported from some other country. The instant import under Bills of Entry falls in the category of Serial No. 10 of Notification No. 31/2022-Customs (ADD) dated 20-12-2022 issued by Under Secretary from F.No. CBIC-190354/243/2022-TO(TRU-I)-CBEC, which categorizes Stainless-Steel Seamless Tubes and Pipes (with diameter up to and including 6 NPS) having origin in China PR and produced by any manufacturer as leviable to Anti-Dumping Duty @ 3801 USD per MT.

5.3 It is observed that the instant imports under BEs No. 4111833 dated 10.01.2023, 4111899 dated 10.01.2023, and 4045554 dated 05.01.2023 had been inwarded after 20.12.2022. Now, considering the publication of Notification No. 31/2022-Customs (ADD) on 20-12-2022, Anti-Dumping Duty is applicable on the consignment contained in all three Bills of Entry in terms of proviso to Sub-section 1 of Section 15 of the Customs Act, 1962, as the Entry inward of



the vessel was after 20.12.2022, and such date shall be considered the date for determination of rate of duty. Thus, Anti-Dumping Duty is applicable on the consignment contained in all three Bills of Entry.

5.4 It is observed that that the appellant has failed to declare Anti-Dumping Duty while filing the Bill of Entry. The appellant, vide letter dated 24-02-2023, submitted that due to a clerical mistake, they missed the declaration of Anti-Dumping Duty, and they have no intention to evade the same. However, the appellant has not submitted any material evidence in support of the same, such as intimation to the customs officer, etc., till detention of the impugned goods by the SIIB, Mundra Customs.

5.5 It is observed that the appellant declared the goods' description, quantity, and specifications accurately but omitted the ADD notification, which was mandatory given its applicability. It is also observed that the appellant holds status as a Star Export House and thus it implies expertise in Customs compliance which makes such omissions less excusable. The experienced importers cannot claim ignorance of applicable duties. It is observed that the omission of the ADD notification constitutes a misdeclaration under Section 46, rendering the goods liable for confiscation under Section 111(m).

5.4 Section 111(m) of the Customs Act, 1962, allows confiscation of goods not corresponding to the Entry made in the Bill of Entry. It is observed that Section 111(m) allows confiscation of goods not corresponding to the declared particulars. The appellant in the instant case has not declared the proper duty with intent to evade the payment of Anti-Dumping Duty leviable in terms of Notification No. 31/2022(ADD) dated 20-12-2022. The non-declaration of ADD affected the duty liability, making the goods liable for confiscation. It is well-settled that even if the declaration is based on documents from the supplier, it is the importer's responsibility under self-assessment to ensure correctness of data and duty. Relevant portion of the rules are reproduced here under:



Section 111. Confiscation of improperly imported goods, etc. -
The following goods brought from a place outside India shall be liable to 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 trans-shipment, with the declaration for trans-shipment referred to in the proviso to sub-section (1) of section 54;

5.5 The appellant's argument that they informed the department for Bill of Entry No. 4045554 lacks documentary evidence prior to SIIB's intervention, weakening their claim of proactive correction. Further, the appellant has argued that that the Customs system validated the Bills does not absolve their responsibility, as Section 17 places the onus on the importer for self-assessment accuracy. Hence, the goods are liable for confiscation under Section 111(m) due to the non-declaration of ADD.

5.6 Now I come to the issue regarding the Redemption Fine under Section 125 imposed by the Adjudicating authority in the impugned order. The Adjudicating Authority has ordered for confiscation under Section 111(m) of the Customs Act, 1962 and given an option to redeem the goods in lieu of confiscation under the provision of section 125 of the Customs Act, 1962 on payment of a Redemption Fine of Rs. 9,00,000/- (Rs. Nine lac only). The legal provision under Section 125 of the Customs Act, 1962 is as under :-

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 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, [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.

Explanation. — For removal of doubts, it is hereby declared that in cases where an order under sub-section (1) has been passed before the date on which the Finance Bill, 2018 receives the assent of the President and no appeal is pending against such order as on that date, the option under said sub-section may be exercised within a period of one hundred and twenty days from the date on which such assent is received.]

5.7 The above provisions of Section 125 of the Customs Act, 1962 provides for option to pay fine in lieu of confiscation and stipulates that the fine shall not exceed the market value of the goods confiscated less duty chargeable thereon. The quantum of redemption fine is with in discretion of the adjudicating authority. Further imposition of redemption fine has been justified by the adjudicating authority in the impugned order after examining the facts and circumstances of the case. Hence I find that the redemption fines of Rs. 9,00,000/- imposed by the adjudicating authority as above is legal and proper and is therefore upheld.

5.8 Now I come to the third issue i.e. imposition of penalty on Appellant under Section 112(a) (ii) of Customs Act, 1962, I refer to these penal provisions which are reproduced as under :-

“ 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, -

(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.”



A. I.

5.9 In the present case, the appellant has submitted that not mis-declared any material particulars and there was no mala fide on the part of the appellant and it was only an inadvertent error and hence penalty is not imposable merely for lapse of mentioning the notification for levy of ADD in Bills of Entry in absence of willful intention to evade payment of duty. The appellant has referred to a decision of the Hon'ble Tribunal in case the Commissioner of Customs (Import), Mumbai Vs Vidhi Dyestuff Manufacturing Ltd. Reported at 2015 (327) E.L.T. 500 (Tri.-Mumbai) wherein the Tribunal, in an identical case, has held that imposition of penalty is not warranted in the facts of the case.

5.10 It is observed that In Vidhi Dyestuff, the Tribunal set aside penalties where the importer's error was technical and lacked intent to evade duty. The case involved a misclassification without significant financial impact. The present case differs, as the non-declaration of ADD resulted in substantial duty differential of Rs. 1,60,65,441/-. The appellant's status as a Star Export House implies a higher standard of diligence.

5.11 It is relevant to refer to the observation of the Hon'ble CESTAT, Mumbai Bench in case of Shipping Corporation of India [2014 (312) E.L.T. 305 (Tri.-Mumbai)] where it is held that :

"6.17... However penalty under Section 112(a) is sustainable as the said section does not require any mens rea on the part of the appellants and mere violation of the statutory provisions would suffice. The decisions of the Hon'ble Apex Court in the case of Gujarat Travancore Agency v. CIT [(1989) 177 ITR 455 (S.C.) = 1989 (42) E.L.T. 350 (S.C.)] and Chairman, SEBI v. Sriram Mutual Fund & Anr. [2006-TIOL-72-SC-SEBI] refer and ratio of the same would apply..."

Similarly, in case of Imperial Trading LLC [2005 (181) E.L.T. 29 (Tri.-Mumbai)], it is held that:

"11. The Commissioner imposed a penalty of Rs. 2.00 lakhs on the importing firm under Section 112(a) of the Customs Act. The appellant, M/s. Impex Enterprises, caused the import of goods which are liable to confiscation under Section 111. Mens rea is not a necessary ingredient for imposing a penalty under Section 112(a) of the



said Act. However, having regard to the circumstances of the case, we reduce the penalty to Rs. 1.00 lakhs.”

6. In view of the above, I am of the considered view that the penalty under section 111(a)(ii) of the Customs Act, 1962 is correctly imposed and is upheld. However, I also consider the submission of the appellant that they have paid the entire duty, Redemption fine as well as penalty imposed under Section 111(a)(ii) of the said Act within 30 days of communication of impugned order dtd. 03.03.2023. It is observed that the goods were given Out of Charge on 10.03.2023 after the appellant paid the entire amount of duty reassessed on 06.03.2023 by way of DEEC Bond debit and also paid Redemption fine of Rs. 9,00,000/- and penalty of 9,50,000/- as per E-payment challan No. 2043148148 dtd 09.03.2023. In terms of proviso to Section 111(a)(ii) of the Customs Act, 1962, I find that the appellant has made payment of duty, redemption fine as well as penalty within 30 days of communication of impugned order dtd. 03.03.2023 and hence eligible for payment of reduced penalty of 25 % of the penalty determined in the impugned order i.e Rs. 2,37,500/-. Accordingly, I reduce the penalty amount from Rs. 9,50,000/- to Rs. 2,37,500/- imposed under Section 111(a) (ii) of the Customs Act, 1962.

7. Accordingly, the impugned order dated 03.03.2023 of the adjudicating authority stands modified to the above mentioned extent only. The appeal filed by the appellant succeeds to the above extent with consequential relief, if any.


(AMIT GUPTA)

Commissioner (Appeals),
Customs, Ahmedabad

F. No. S/49-01/CUS/MUN/2023-24

Date: 27.05.2025

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2. The Pr. Commissioner of Customs, Customs House, Mundra.
3. The Additional Commissioner of Customs, Custom House, Mundra.
4. Guard File.

सत्यापित/ATTESTED


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सीमा शुल्क (अपील), अहमदाबाद.
CUSTOMS (APPEALS), AHMEDABAD.