



प्रधान आयुक्त का कार्यालय, सीमा शुल्क,अहमदाबाद

"सीमाशुल्कभवन,"पहलीमंजिल,पुरानेहाईकोर्टकेसामने,नवरंगपुरा,अहमदाबाद – 380 009.

दूरभाष : (079) 2754 4630E-mail: cus-ahmd-adj@gov.inफैक्स : (079) 2754 2343

PREAMBLE

| | | |
|------|--|--|
| A | फाइलसंख्या/ File No. | : VIII/10-139/ICD-SND/O&A/HQ/2024-25 |
| B | कारणबताओनोटिससंख्या-तारीख / Show Cause Notice No. and Date | : Waiver of SCN by the Importer |
| C | मूलआदेशसंख्या/ Order-In-Original No. | : 94/ADC/VM/O&A/2024-25 |
| D | आदेशतिथि/ Date of Order-In-Original | : 04.07.2024 |
| E | जारीकरनेकीतारीख/ Date of Issue | : 04.07.2024 |
| F | द्वारापारित/ Passed By | : Vishal Malani, Additional Commissioner, Customs, Ahmedabad. |
| G | आयातककानामऔरपता / Name and Address of Importer / Passenger | : M/s. Shree Umiya Traders (IEC: 0806921318) 21/2, B/H Kadva Patidar Wadi, Usmanpura Road, Opposite Jain Temple, Ahmedabad-380013. |
| (1) | यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हे यह जारी किया जाता है। | |
| (2) | कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के ६० दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), ४वि मंजिल, हुडको भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है। | |
| (3) | अपील के साथ केवल पांच (५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए: | |
| (i) | अपील की एक प्रति और; | |
| (ii) | इस प्रति या इस आदेश की कोई प्रति के साथकेवल पांच (५.00) रुपये पे न्यायलय शुल्क टिकिट लगा होना चाहिए। | |
| (4) | इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ७.५% अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा। | |

BRIEF FCATS OF THE CASE :

M/s. Shree Umiya Traders (IEC: 0806921318), having address at 21/2, B/H Kadva Patidar Wadi, Usmanpura Road, Opposite Jain Temple, Ahmedabad-380013, filed Bill of Entry No. 3890619 dated 08.06.2024 at Customs **ICD Sanand**, Ahmedabad, through their Customs Broker M/s. Dilip A Goplani, Ahmedabad for the import of different types of goods under Invoice No. PAN030801 dated 08.03.2024 from the foreign supplier i.e. M/s Henan Shengbang Medical Technology Co. Ltd., CHINA. Total declared assessable value is Rs. 2013319.47 and total duty assessed is Rs.4,82,235/-.

2. The details of the goods under import as declared by the importer are as follow:

TABLE-I

| Item S. No. | Description of goods | Qty (in Kgs) | Declared Value (USD per Kg) | Assessable Value (Declared) (Rs.) | Self-Assessed Total Duty (Rs.) |
|-------------|--|--------------|-----------------------------|-----------------------------------|---|
| 1 | Heating Element (CTH: 85149000) | 06 | 18.33 | 10066.6 | BCD (7.5%) + SWS (10%) + IGST (18%) =2792/- |
| 2 | Dental Plaster (CTH: 25202090) | 1250 | 0.50 | 57196.58 | BCD (5%) + SWS (10%) + IGST (5%) =6163/- |
| 3 | Dental Investment Material (CTH: 30064000) | 22912.50 | 0.9281 | 1946056.29 | BCD (10%) + SWS (10%) + IGST (12%) =473281/- |

2. The Bill of Entry was assessed by the Faceless Assessment Group (FAG) on First check basis. During examination some discrepancies were noticed by the examining officer, which were reported in the examination report as below:

"On examination of goods (item No. 1), the cargo is a machine, appearing to be of use in dental process. There are few heating elements along with the said machine. The CTH 85149000 pertains to parts, whereas on examination it is found as machine. Accordingly, there appears to be misclassification of goods. Further, value of the goods is also appearing to be low.

*The goods (items at S. No. 2&3) have been classified as dental plaster under CTH 25202090 and dental material for crown and bridge under CTH 30064000 respectively. The relevant portion of CTH 2520 is as under:
2520 plasters (consisting of calcined gypsum or calcium sulphate).*

*The relevant portion of CTH 3006400 is as under:
3006400 Dental cements and other dental fillings; bone reconstruction cements.*

The more appropriate classification of the goods(S. No. 2&3) appears to be falling under CTH 34070090. The relevant portion of CTH 340700 is as under:

*340700 Other dentistry, with a basis of plaster(of calcined gypsum or calcium sulphate)
34070090 --- Other."*

3. In view of the discrepancies in examination report, the FAG pushed the Bill of Entry to the Port Assessment Group (PAG). Accordingly, PAG raised a query to the importer, intimating them of the discrepancies in the examination report:

"On examination, it has been found that the item No. 1 is a complete machine along with heating elements. However, you have classified it as 'Parts' under CTH 85149000 and declared it to be 'Heating Elements' only. Therefore, it appears to be a mis-declaration. Accordingly, please submit detailed brochure/catalogue of the machine, its end use, documents regarding Value etc.

With reference to the item Nos. 2 & 3, the examination report has suggested proper CTH to be 34070090. Therefore, why these items not be re-classified under 34070090. Please clarify."

3.1 In reply to the aforesaid query importer consented to assess the BE as per the findings of the examination report i.e. for addition of the item "Titanium coating Machine" as additional item with Price of USD 250 and changing the Classification of the goods mentioned at item Sr. Nos. 2 & 3 of the BE to 34070090.

4. The importer has declared the goods at item Sr. No. 1 in BE as 'Heating Element' under CTH 85149000.

4.1 Further, it is pertinent to mention that the Customs Tariff Heading 8514900 covers:

| | |
|-------------|---|
| 8514 | INDUSTRIAL OR LABORATORY ELECTRIC FURNACES AND OVENS (INCLUDING THOSE FUNCTIONING BY INDUCTION OR DIELECTRIC LOSS); OTHER INDUSTRIAL OR LABORATORY EQUIPMENT FOR THE HEAT TREATMENT OF MATERIALS BY INDUCTION OR DIELECTRIC LOSS |
| | - *Resistance heated furnaces and ovens: |
| *8514 11 00 | -- Hot isostatic presses u 7.5% |
| *8514 19 00 | -- Other u 7.5% |
| 8514 20 00 | - Furnaces and ovens functioning by induction u 7.5% |

| | | |
|-----------------|---|--------------|
| | or dielectric loss | |
| | *Other furnaces and ovens: | |
| *8514 31 00 | -- Electron beam furnaces | |
| | u | 7.5% |
| *8514 32 00 | -- Plasma and vacuum arc furnaces | |
| | u | 7.5% |
| *8514 39 00 | -- Other | u |
| | 7.5% | |
| 8514 30 10 | --- For melting | u |
| | 7.5% | |
| 8514 30 90 | --- Other | u |
| | 7.5% | |
| 8514 40 00 | - Other equipment for the heat treatment of | |
| | u | 7.5% |
| | induction or dielectric loss | materials by |
| 85149000 | - Parts | kg. |
| | 7.5% | |

4.2 Therefore, from above, it appears that CTH 85149000 is for the parts of machines of Sub heading 8514. The heating elements appear to be rightly classified under 85149000. However, as per the examination report, one machine which was found to be undeclared in the BE and which is said to be electroplating instrument for dental implants, the proper classification appears to be 85433000. Also, the importer nas submitted its price to be USD 250.

5. With respect to the item No. 2 of the BE declared as 'Dental Plaster (25 Kg/Bag)' under CTH 25202090 and item No. 3 declared as 'Dental Investment Material for Crown & Bridge (400Gm*50Bags + 3.5 Liter Liquid) (Raw material to be used in dental Industry)' under CTH 30064000, the examination report has suggested proper classification under 34070090.

The relevant portions of the Customs Tariff Headings/sub-headings are being re-produced below for reference:

Sub-heading 2520:

| | | |
|-------------|---|-----|
| 2520 | GYPSUM; ANHYDRITE; PLASTERS (CONSISTING OF CALCINED GYPSUM OR CALCIUM SULPHATE) WHETHER OR NOT COLOURED, WITH OR WITHOUT SMALL QUANTITIES OF ACCELERATORS OR RETARDERS | |
| 2520 10 | - Gypsum; anhydrite : | |
| 2520 10 10 | --- Natural | kg. |
| | *2.5% | |

| | | | |
|-------------------|-----|----------------------|------------|
| 2520 10 20 | --- | Marine *2.5% | kg. |
| 2520 10 90 | --- | Other *2.5% | kg. |
| 2520 20 | - | Plasters: | |
| 2520 20 10 | --- | Calcined *5% | kg. |
| 2520 20 90 | --- | Other *5% | kg. |

Sub- heading 3006:

3006 PHARMACEUTICAL GOODS SPECIFIED IN NOTE 4 TO THIS CHAPTER

**3006 40 00 - Dental cements and other dental fillings;
kg. 10%
bone reconstruction cements**

Sub-heading 3407:

**3407 MODELLING PASTES, INCLUDING THOSE PUT
UP FOR CHILDREN'S AMUSEMENT:
PREPARATIONS KNOWN AS "DENTAL WAX" OR
AS "DENTAL IMPRESSION COMPOUNDS", PUT
UP IN SETS, IN PACKINGS FOR RETAIL SALE OR
IN PLATES, HORSESHOE SHAPES, STICKS OR
SIMILAR FORMS; OTHER PREPARATIONS FOR
USE IN DENTISTRY, WITH A BASIS OF PLASTER
(OF CALCINED GYPSUM OR CALCIUM
SULPHATE)**

340700 - Modelling pastes, including those put up for children's amusement; preparations known as "dental wax" or as "dental impression compounds", put up in sets, in packings for retail sale or in plates, horseshoe shapes, sticks or similar forms; **other preparations for use in dentistry, with a basis of plaster (of calcined gypsum or calcium sulphate):**

34070010 --- Modelling pastes, including those put up for kg.
10%
children's amusement

| | | |
|----------|-----------|-----|
| 34070090 | --- Other | kg. |
| | 10% | |

6. In the instant case, the goods at Sr. No. 2 & 3 of the BE are declared to be 'dental plaster' & 'dental investment material for crown and bridge' respectively. On the basis of examination report and importer's submissions, it appears that both the items are to be used in industry related to molding/casting of dental implants and other dental purposes. On perusal of the Customs Tariff heading/sub-heading notes above in para 5, specifically mentions that 340700

covers other preparations for use in dentistry, with a basis of plaster (of calcined gypsum or calcium sulphate). Also, from above, it is clearly seen that 3006 4000 covers 'Dental cements and other dental fillings, bone reconstruction cements', however, in the instant case item No. 3 declared as 'dental investment material for crown and bridge' under 30064000 is not to be used as dental cement, instead it is to be used for moulding/ casting of dental implants with the help of dental impressions. Therefore, it clearly appears that the goods mentioned at item No. 2 & 3 of the BE are mis-classified and needs re-classification under CTH 34070090 as proposed in examination report.

7. In light of the above, it appears that the description, classification and value of the subject goods do not correspond to the description, classification and value as declared by the importer in the Bill of Entry no. 3890619 dated 08.06.2024.

8. On account of the above, it appears that the importer has mis-declared and mis-classified the goods thereby violating Section 46(4) & 46(4A) of the Customs Act 1962. Accordingly, the goods imported vide BE no. 3890619 dated 08.06.2024 appears to be liable for confiscation under Section 111(l) & 111(m) of the Customs Act, 1962 and for his act of omission and commission, the importer is liable for penalty under Section 112 (a) & 114AA of the Customs Act, 1962. The relevant provisions are summarized as under:

a. Section 46. Entry of goods on importation.

(1)-----

(2)-----

(3)-----

(4) *The importer while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, [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.]

b. "111. Confiscation of improperly imported goods, etc.

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

(a)

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

(m) [any goods which do not correspond in respect of value or in any other particular] [Substituted by Act 36 of 1973, Section 2, for certain words (w.e.f. 1.9.1973).] 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]

;

c. "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)

shall be liable, -

(i).....

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty [not exceeding the duty sought to be evaded on such goods or five thousand rupees,] [Substituted by Act 14 of 2001, Section 107, for certain words (w.e.f. 11.5.2001).] whichever is the greater;"

d. "SECTION 114AA. [Penalty for use of false and incorrect material.

- If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.]"

PERSONAL HEARING AND SUBMISSIONS :

9. The importer vide reply submitted on e-sanchit dated 02.07.2024 has submitted, that the undeclared machine found on examination is electroplating instrument used in dental industry for changing the colour of the dental implants using temperature as per the requirements of the patient and that they are in process of

placing a big order with the supplier and the supplier has sent the same without their prior knowledge and it is valued at merely 250USD and that this has happened unintentionally and is a human error.

Further with reference to the item No. 2, the importer has submitted that, dental plaster is used in dental industry to make sample models and study purposes in dental industry and the CTH declared is generally used in dental industry and that as per the examination officer's comments we agree to the suggested CTH of 34070090.

With reference to the item No. 3 of the BE, they have submitted that they have imported the Dental investment material, which is used to cast the metal material and other parts after melting and have further agreed to the CTH of 34070090 suggested in examination report.

9.1 With regard to the opportunity of availing Personal Hearing (PH), the importer vide reply submitted on e-sanchit dated 02.07.2024 has submitted that, they **do not want any Show Cause Notice (SCN) and/ or Personal Hearing in this matter.**

DISCUSSION AND FINDINGS :

10. I have carefully gone through the relevant case records.

10.1 I find that M/s. Shree Umiya Traders (IEC: 0806921318) filed Bill of Entry No. 3890619 dated 08.06.2024 for the import of different types of goods under Invoice No. PAN030801 dated 08.03.2024 from the foreign supplier i.e. M/s Henan Shengbang Medical Technology Co. Ltd., CHINA. Total declared assessable value is Rs.20,13,319.47 and total duty assessed is Rs.4,82,235/-.

The details of the goods under import as declared by the importer are as follow:

TABLE-II

| Item S. No. | Description of goods | Qty (in Kgs) | Declared Value (USD per Kg) | Assessable Value (Declared) (Rs.) | Self-Assessed Total Duty (Rs.) |
|-------------|--|--------------|-----------------------------|-----------------------------------|---|
| 1 | Heating Element (CTH: 85149000) | 06 | 18.33 | 10066.6 | BCD (7.5%) + SWS (10%) + IGST (18%) =2792/- |
| 2 | Dental Plaster (CTH: 25202090) | 1250 | 0.50 | 57196.58 | BCD (5%) + SWS (10%) + IGST (5%) =6163/- |
| 3 | Dental Investment Material (CTH: 30064000) | 22912.50 | 0.9281 | 1946056.29 | BCD (10%) + SWS (10%) + IGST (12%) =473281/- |

11. I find that the Bill of Entry was assessed by the Faceless Assessment Group (FAG) on First check basis. During examination some discrepancies were noticed by the examining officer, which were reported in the examination report as below:

“On examination of goods (item No. 1), the cargo is a machine, appearing to be of use in dental process. There are few heating elements along with the said machine. The CTH 85149000 pertains to parts, whereas on examination it is found as machine. Accordingly, there appears to be misclassification of goods. Further, value of the goods is also appearing to be low.

The goods (items at S. No. 2&3) have been classified as dental plaster under CTH 25202090 and dental material for crown and bridge under CTH 30064000 respectively. The relevant portion of CTH 2520 is as under:

2520 plasters (consisting of calcined gypsum or calcium sulphate).

The relevant portion of CTH 3006400 is as under:

3006400 Dental cements and other dental fillings; bone reconstruction cements.

The more appropriate classification of the goods(S. No. 2&3) appears to be falling under CTH 34070090. The relevant portion of CTH 340700 is as under:

340700 Other dentistry, with a basis of plaster(of calcined gypsum or calcium sulphate)

34070090 --- Other.”

12. I find that in view of the discrepancies in examination report, the FAG pushed the Bill of Entry to the Port Assessment Group (PAG). Accordingly, PAG raised a query to the importer, intimating them of the discrepancies in the examination report.

13. I find that in reply to the aforesaid query importer consented to assess the BE as per the findings of the examination report i.e. for addition of the item “Titanium coating Machine” as additional item

and changing the Classification of the goods mentioned at item Sr. Nos. 2 & 3 of the BE to 34070090.

14. I find that the importer has declared the goods at item Sr. No. 1 in BE as 'Heating Element' under CTH 8514900. The Customs Tariff Heading 8514900 covers:

| | | | |
|-----------------|---|---|------------|
| 8514 | INDUSTRIAL OR LABORATORY ELECTRIC FURNACES AND OVENS (INCLUDING THOSE FUNCTIONING BY INDUCTION OR DIELECTRIC LOSS); OTHER INDUSTRIAL OR LABORATORY EQUIPMENT FOR THE HEAT TREATMENT OF MATERIALS BY INDUCTION OR DIELECTRIC LOSS | | |
| | - *Resistance heated furnaces and ovens: | | |
| *8514 11 00 | -- Hot isostatic presses | u | |
| | 7.5% | | |
| *8514 19 00 | -- Other | u | |
| | 7.5% | | |
| 8514 20 00 | - Furnaces and ovens functioning by induction or dielectric loss | u | 7.5% |
| | *Other furnaces and ovens: | | |
| *8514 31 00 | -- Electron beam furnaces | u | 7.5% |
| *8514 32 00 | -- Plasma and vacuum arc furnaces | u | 7.5% |
| *8514 39 00 | -- Other | u | 7.5% |
| 8514 30 10 | --- For melting | u | 7.5% |
| 8514 30 90 | --- Other | u | 7.5% |
| 8514 40 00 | - Other equipment for the heat treatment of materials by induction or dielectric loss | u | 7.5% |
| 85149000 | - Parts | | kg. |
| | 7.5% | | |

14.2 Therefore, I find that CTH 85149000 is for the parts of machines of Sub heading 8514. The heating elements appear to be rightly classified under 85149000. However, as per the examination report, one machine which was found to be undeclared in the BE and which is said to be electroplating instrument for dental implants, merits proper classification under 85433000.

15. I find that, with respect to the item No. 2 of the BE declared as 'Dental Plaster (25 Kg/Bag)' under CTH 25202090 and item No. 3 declared as 'Dental Investment Material for Crown & Bridge

(400Gm*50Bags + 3.5 Liter Liquid)(Raw material to be used in dental Industry)' under CTH 30064000, the examination report has suggested proper classification under 34070090.

The relevant portions of the Customs Tariff Headings/sub-headings are:

Sub-heading 2520:

| | | |
|-------------------|---|------------|
| 2520 | GYPSUM; ANHYDRITE; PLASTERS (CONSISTING OF CALCINED GYPSUM OR CALCIUM SULPHATE) WHETHER OR NOT COLOURED, WITH OR WITHOUT SMALL QUANTITIES OF ACCELERATORS OR RETARDERS | |
| 2520 10 | - Gypsum; anhydrite : | |
| 2520 10 10 | --- Natural | kg. |
| | *2.5% | |
| 2520 10 20 | --- Marine | kg. |
| | *2.5% | |
| 2520 10 90 | --- Other | kg. |
| | *2.5% | |
| 2520 20 | - Plasters: | |
| 2520 20 10 | --- Calcined | kg. |
| | *5% | |
| 2520 20 90 | --- Other | kg. |
| | *5% | |

Sub- heading 3006:

| | | |
|-------------------|---|--|
| 3006 | PHARMACEUTICAL GOODS SPECIFIED IN NOTE 4 TO THIS CHAPTER | |
| ----- | | |
| ----- | | |
| ----- | | |
| 3006 40 00 | - Dental cements and other dental fillings; | |
| | kg. 10% | |
| | bone reconstruction cements | |

Sub-heading 3407:

| | | |
|-------------|--|--|
| 3407 | MODELLING PASTES, INCLUDING THOSE PUT UP FOR CHILDREN'S AMUSEMENT; PREPARATIONS KNOWN AS "DENTAL WAX" OR AS "DENTAL IMPRESSION COMPOUNDS", PUT UP IN SETS, IN PACKINGS FOR RETAIL SALE OR IN PLATES, HORSESHOE SHAPES, STICKS OR SIMILAR FORMS; OTHER PREPARATIONS FOR USE IN DENTISTRY, WITH A BASIS OF PLASTER (OF CALCINED GYPSUM OR CALCIUM SULPHATE) | |
| 340700 | - Modelling pastes, including those put up for children's amusement; preparations known as "dental wax" or as "dental impression compounds", put up in sets, in | |

packings for retail sale or in plates, horseshoe shapes, sticks or similar forms; **other preparations for use in dentistry, with a basis of plaster (of calcined gypsum or calcium sulphate):**

34070010 --- Modelling pastes, including those put up for kg.
10%
children's amusement
34070090 --- Other kg.
10%

16. I find that in the instant case, the goods at Sr. No. 2 & 3 of the BE are declared to be 'dental plaster' & 'dental investment material for crown and bridge' respectively. On the basis of examination report and importer's submissions, it came forth that both the items are to be used in industry related to molding/casting of dental implants and other dental purposes. On perusal of the Customs Tariff heading/sub-heading notes above in para 15, specifically mentions that 340700 covers other preparations for use in dentistry, with a basis of plaster (of calcined gypsum or calcium sulphate). Also, from above, it is clearly seen that 3006 4000 covers 'Dental cements and other dental fillings, bone reconstruction cements', however, in the instant case item No. 3 declared as 'dental investment material for crown and bridge' under 30064000 is not to be used as dental cement, instead it is to be used for moulding/ casting of dental implants with the help of dental impressions. Therefore, it is clear that the goods mentioned at item No. 2 & 3 of the BE are mis-classified and needs re-classification under CTH 34070090 as proposed in examination report.

17. In light of the above, I find that the description, classification and value of the subject goods do not correspond to the description, classification and value as declared by the importer in the Bill of Entry no. 3890619 dated 08.06.2024.

17.1 On account of the above, I find that the importer has mis-declared and mis-classified the goods thereby violating Section 46(4) & (4A) of the Customs Act 1962.

Section 46. Entry of goods on importation.

(1)-----

(2)-----

(3)-----

(4) *The importer while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such*

declaration, produce to the proper officer the invoice, if any, [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.]

17.2 Accordingly, I find that the goods imported vide BE no. 3890619 dated 08.06.2024 are liable for confiscation under Section 111(l) & 111(m) of the Customs Act, 1962 and for his act of omission and commission, the importer is liable for penalty under Section 112 (a) & 114AA of the Customs Act, 1962. The relevant provisions are summarized as under:

"111. Confiscation of improperly imported goods, etc.

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

(a)

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

(m) [any goods which do not correspond in respect of value or in any other particular] [Substituted by Act 36 of 1973, Section 2, for certain words (w.e.f. 1.9.1973).] 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] ;

"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)

shall be liable, -

(i).....

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty [not exceeding the duty sought to be evaded on such goods or five thousand rupees,] [Substituted by Act 14 of

2001, Section 107, for certain words (w.e.f. 11.5.2001).] whichever is the greater;”

“SECTION 114AA. [Penalty for use of false and incorrect material.

- If a person knowingly or intentionally makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document which is false or incorrect in any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.]”

18. I find that the importer vide reply submitted on e-sanchit dated 02.07.2024 has submitted, that the undeclared machine found on examination is electroplating instrument used in dental industry for changing the colour of the dental implants using temperature and; that they are planning to place a big quantity order with the supplier and; that the supplier has sent the same without their prior knowledge and it is valued at merely 250USD and that this has happened unintentionally and is a human error. Further, I find that, with reference to the item No. 2 & 3, the importer has submitted that as per the examination officer's comments they agree to the suggested CTH of 34070090.

18.1 The importer's submission that that the said undeclared machine has been sent without their knowledge, cannot be accepted, more so when they are planning to place a big order. Therefore, it seems that they have brought the same intentionally as a sample and would have been well aware of the same.

18.2 With regard to the opportunity of availing Personal Hearing (PH), the importer vide reply submitted on e-sanchit dated 02.07.2024 has submitted that, they **do not want any Show Cause Notice (SCN) and/ or Personal Hearing in this matter.** The request for non-issuance of written Show Cause Notice is accepted in terms of the first proviso to Section 124 of the Customs Act and accordingly, the matter is taken up for decision on merits.

19. As the impugned goods are found to be liable to confiscation under Section 111(l) & 111(m) of the Customs Act, 1962, I find it necessary to consider as to whether redemption fine under Section

125(1) of the Customs Act, 1962 is liable to be imposed in lieu of confiscation in respect of the imported goods.

The Section 125(1) of the Customs Act, 1962 reads as under:

"125. *Option to pay fine in lieu of confiscation.*

(1) *Whenever confiscation of any goods is authorized 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, the provisions of this section shall not apply:

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."*

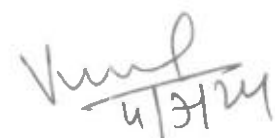
20. In view of aforementioned Discussion and Findings, I pass the following Order:

ORDER

- (i)** I order confiscation of the goods imported vide Bill of Entry No. 3890619 dated 08.06.2024 under Section 111(l) & 111(m) of the Customs Act, 1962.
- (ii)** I order to add One "Electroplating Instrument" under Customs Tariff Item 85433000 at unit price of USD 250.
- (iii)** Order to re-classify the goods mentioned at Sr. No. 2 & 3 both, of the BE 3890619 dated 08.06.2024 i.e. 'Dental Plaster' and

'Dental Investment Material for Crown & Bridge' under CTH 34070090 of the Customs Tariff Act, 1975.

- (iv) I give an option to the importer to redeem the goods on payment of redemption fine of **Rs.40,000/-** (Rupees Forty Thousand only) under section 125(1) of the Customs Act, 1962, for home consumption subject to provisions of Section 125(3) of the Customs Act, 1962.
- (v) I impose penalty of **Rs.14,000/-** (Rupees Fourteen Thousand only) on M/s. Shree Umiya Traders under Section 112(a) of the Customs Act, 1962;
- (vi) M/s. Shree Umiya Trader would be liable for payment of applicable duties and other levies/charges in terms of Section 125(2) of the Customs act, 1962 on reassessed Bill of Entry No. 3890619 by the proper officer.


4/3/24

(Vishal Malani)
Additional Commissioner
Customs: Ahmedabad

F. No. VIII/10-139/ICD-SND/O&A/HQ/2024-25
DIN : 20240771MN000000B592

Date:04.07.2024

BY RPAD/ Hand Delivery

To,
M/s. Shree Umiya Traders (IEC: 0806921318)
21/2, B/H Kadva Patidar Wadi,
Usmanpura Road, Opposite Jain Temple,
Ahmedabad-380013.

Copy to:

- (i) The Principal Commissioner of Customs, Ahmedabad. (Attn : RRA Section, Customs, Ahmedabad).
- (ii) The Dy. Commissioner of Customs (Import), ICD Sanand, Ahmedabad.
- (iii) The Deputy Commissioner of Customs (Task Force), Ahmedabad.
- (iv) The System In-Charge, Customs, HQ., Ahmedabad for uploading on the official web-site.
- (v) Guard File.