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| OFFICE OF THE COMMISSIONER CUSTOM HOUSE, KANDLA NEAR BALAJI TEMPLE, NEW KANDLA Phone : 02836-271468/469 Fax: 02836-271467 | | |
| DIN- 20240671ML00000530C3 | | |
| A | File No. | GEN/ADJ/ADC/1979/2023-Adjn-O/o Commr-Cus-Kandla |
| B | Order-in-Original No. | KDL/ADC/DPB/06/2024-25 |
| C | Passed by | Dev Prakash Bamanavat Additional Commissioner of Customs, Custom House, Kandla. |
| D | Date of Order | 20.06.2024 |
| E | Date of Issue | 20.06.2024 |
| F | SCN NO. & Date | Waiver of Show Cause notice |
| G | Noticee / Party / Importer / Exporter | M/s. Ganga Impex Enterprise Shed No. 331, A-I Type, Marshalling Yard, Kandla Special Economic Zone, Gandhidham |

1. यह मूल 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 मूल आदेश से असंतुष्ट है तो वह सीमाशुल्क अपील नियमावली 1982 के नियम 3 के साथ पठित सीमा शुल्क अधिनियम 1962 की धारा 128A 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:

“ सीमाशुल्कआयुक्त (अपील),

7 वींमंजिल, मृदुलटावर, टाइम्सऑफ़इंडियाकेपीले, आश्रमरोड, अहमदाबाद 380 009”

“THE COMMISSIONER OF CUSTOMS (APPEALS),

Having his office at 7th Floor, Mridul Tower, Behind Times of India,
Ashram Road, Ahmedabad-380009.”

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 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 मदसं-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.

5. अपील प्रस्तुत करते समय, सीमाशुल्क (अपील) नियम, 1982 और सीमाशुल्क 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 का7.5% भुगतानकरनाहोगा।

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. Ganga Impex Enterprise(hereinafter referred to as 'SEZ unit') is situated at Shed No. 331, A-I Type, Marshalling Yard, Kandla Special Economic Zone, Gandhidham. Letter of Approval dated 10.06.2005 was granted to them vide F.No. KASEZ/IA/011/2005-06,now renewed upto 29.06.2025by F.No. KASEZ/IA/011/2005-06 dated: 17.11.2020 **(RUD-1)**by the Development Commissioner, Kandla SEZ under Section 15(9) of the SEZ Act,2005 read with Rule 18 of the SEZ Rules,2006 to operate as a SEZ Unit and carry out authorized operations of trading activity.

2. The said SEZ unit had filed Bill of EntryNo. 1008573 dated 03.06.2023for the import of goods**(RUD-2)**. The details of the said imported goods have been mentioned below for reference:-

Table- I

| Sr. No. | Bill of Entry No. & Date | Invoice No. & date | Description and CTH of goods declared in Bill of Entry | Quantity as per Bill of Entry |
|---------|--------------------------------|---------------------------------|--|----------------------------------|
| 1 | 1008573 dated 03.06.2023 | KDLGS006 dated 08.05.2023 | 1. MEN SOCKS (61159600) 2. GIRLS SOCKS (61159600) 3. BABY SOCKS (61159600) | 15840 DOZ 300 DOZ 1620 DOZ |

3. The goods were examined under Panchnama Proceedings dated 19.06.2023. The details of goods/markings found during examination proceedings in respect of Bills mentioned at Sr. No. 1 of Table-I above arelisted below for the purpose of illustration. The photographs taken during the examination are also reproduced under:

Table -II

| Sr. No. | Type and No. of Package | Markings on Goods | Quantity (in Dozen Pairs) |
|---------|---|--|---------------------------|
| 1. | 507 Green PP Bags with marking AK | Chan Reu; Foot Cover; no show liner; cotton blend with moisture wicking; shoe size 7-12; made in china, etc. | 50,700 |
| 2. | 20 Transparent Packages with marking AK ITEM NO: AK-1 | (one side label) Indoor Socks; KAIDIYS; 100%; (Other side label) KAIDIYS; Fashion KEEP WARM; Acrylic 80% Polyester 20%; Made in China. | 400 |
| 3. | 42 Transparent Packages with marking AK ITEM NO: AK-2 | (one side label) Indoor Socks; KAIDIYS; 100%; (Other side label) KAIDIYS; Fashion KEEP WARM; Acrylic 80% Polyester 20%; Made in China. | 840 |
| 4. | Green PP Bags with | (one side label) KAIDIYS; Baby Socks; | 2,700 |

| | | | |
|--|--------------------------------|--|--|
| | marking AK ITEM NO: AK-3 (135) | 100%; (Other side label) KAIDIYS; Fashion KEEP WARM; Acrylic 80% Polyester 20%; Made in China. | |
|--|--------------------------------|--|--|



Sr. No. 1



Sr. No. 2



Sr. No. 3





Sr. No. 4

3.2. In total, 54,640 Dozen Pairs are found against declared 17,760 Dozen Pairs. Further, Unit produced the local packing list on their letter head and the quantity in the local packing list was same as found during examination by the officers (**RUD-3**).

4.1. Since the subject goods mentioned in Table II above appeared to be mis-declared in terms of quantity, value & other particulars, etc., therefore the same appeared to be liable for confiscation under the provisions of the Customs Act, 1962 and hence the above mentioned goods valued at Rs. 7,47,998/- as per Bill of Entry, imported by the said SEZ Unit, were placed under seizure under Section 110 of the Customs Act, 1962.

Accordingly, the said goods were seized under Panchnama Proceedings dated 19.06.2023 (**RUD-4**), since the same appeared to be mis-declared in terms of quantity, value & other particulars, etc.,

4.2. The goods appeared to be not of a reputed brand. The transaction value of the identical goods at identical commercial level could not be found. However, import price data of similar goods was analyzed and declared unit price of the subject goods appeared to be fair vis-à-vis' contemporary import prices.

4.3. However, the subject goods appeared to be mis-declared in terms of quantity. Therefore, the valuation was re-determined in terms of quantity found and as per unit price declared by the unit. The quantification of total applicable duty and differential duty applicable (foregone) as per re-determined quantity is enclosed herewith (**RUD-5**).

5. Section 17 of the Customs Act, 1962 provides for self-assessment of duty on imported goods by the importer himself by filing a bill of entry. Under self-

assessment the importer has to ensure correct classification, applicable rate of duty, value and exemption notifications, if any, in respect of imported goods while presenting Bill of entry. Further, Rule 75 of the SEZ Rules,2006 also provides that unless and otherwise specified in these rules all inward or outward movements of the goods into or from SEZ by the Unit/Developer shall be based on self-declaration made by the Unit/Developer. While importing subject goods, the said SEZ unit were bound for true and correct declaration and assessment. As the said SEZ unit was engaged in business of trading in respect of subject goods, they were fully aware of specifications, characteristics, nature, quantity and description of the imported goods. From the above, it is evident that the said SEZ unit deliberately suppressed actual quantity of the said goods and *wrongly declared the quantity of said product/goods.*

6. As per Section 46 of the Customs Act, 1962, the importer, who is presenting the bill of entry should ensure the accuracy and completeness of the information given therein, the authenticity and validity of any document supporting it; and compliance with the restriction or prohibition, if any, relating to the goods under the Customs Act, 1962 or under any other law for the time being in force. The said SEZ Unit did not disclose the material facts relating to the subject goods imported by them in SEZ. The above discussed facts reveal that while importing the subject goods, the said SEZ Unit has mis-declared the quantity of the subject goods by deliberately suppressing the material facts relating to quantity and particulars of the same. They mis-declared the subject goods in terms of quantity and other particulars and thereby wrongly availed exemptions meant for SEZ Units. For the said act of suppression of material facts, the said goods appeared to be liable for confiscation under section 111 of the Customs Act,1962, since the said goods **did not appear to correspond in respect of quantity, value and other particulars** with the entry filed before Customs. For the said act of suppression of material facts, the said goods appear to be liable to confiscation under Section 111 of the Customs Act,1962, since the said SEZ Unit had availed exemption benefits meant for authorized operations. For the said act of suppression of material facts, mis-declaration of value of the imported goods and incorrect availment of exemption benefits meant for authorized operations based on incorrect/ false/ fabricated document(s), the said SEZ Unit has rendered themselves liable for penalty under Section 112, 114A, 114AA and Section 117 of the Customs Act, 1962.

7. In view of above, the Investigation report proposed the following:-

- a. The declared quantity, value and other particulars of the subject imported goods appeared to be incorrect and same needed to be rejected. The value needed to be re-determined as per quantity found during examination of the goods as mentioned in Sr.No. 1, 2, 3 & 4 of Table-II above, which amounts to Rs. 23,01,273/- as quantified in RUD-5.
- b. The mis-declared goods in terms of quantity mentioned at Sr. No. 1, 2, 3 & 4 of Table-II above, appeared to be liable for confiscation under Section 111 of the Customs Act, 1962.

c. The said SEZ unit appeared to be liable for penalty under Section 112, 114A, 114AA & 117 of the Customs Act, 1962.

Waiver of Show cause notice and personal hearing:-

8. The SEZ unit vide letter dated 05.12.2023 has requested for waiver of SCN and personal hearing in the instant matter.

8.1 In the instant matter, the issue pertains to Section 124 of the Customs Act. As per first proviso to Section 124 of the Customs Act, 1962 the show cause notice and personal hearing may be considered oral at the request of the person concerned. Therefore, in light of the said provision, the noticee was allowed waiver of Show cause notice and personal hearing.

Submission:-

9. The SEZ unit vide letter dated 05.12.2023 requested for spot adjudication of the said Bill of Entry for the final assessment of the goods. They have agreed with the re-evaluation of the goods as per NIDB data/Market price.

Discussion and Findings:-

10. I have gone through the Investigation report, submission of the noticee and all the documents available on record.

11. In the instant matter, I find that the issues to be decided before me are the following-

(i) whether the notice mis-declared the quantity and value of the subject imported goods and consequently whether the quantity and value needs to be re-determined as per quantity found during examination of the goods.

(ii) Whether the mis-declared goods in terms of quantity, are liable to confiscation under Section 111 of the Customs Act, 1962.

(iii) Whether the said SEZ unit is liable for penalty under Section 112, 114A, 114AA & 117 of the Customs Act, 1962.

12. I find that the said SEZ unit had filed Bill of Entry No. 1008573 dated 03.06.2023 for the import of goods. The details of the said imported goods are mentioned below for reference:-

Table- III

| Sr. No. | Bill of Entry No. & Date | Invoice No. & date | Description and CTH of goods declared in Bill of Entry | Quantity as per Bill of Entry |
|----------------|-------------------------------------|---------------------------------|---|--------------------------------------|
| 1 | 1008573 dated 03.06.2023 | KDLGS006 dated 08.05.2023 | 1. MEN SOCKS (61159600) 2. GIRLS SOCKS (61159600) 3. BABY SOCKS (61159600) | 15840 DOZ 300 DOZ 1620 DOZ |

13. I find that the goods were examined under Panchnama Proceedings dated 19.06.2023. The details of goods/markings found during examination proceedings in respect of Bills mentioned at Sr. No. 1 above are listed below for the purpose of illustration:-

Table -IV

| Sr. No. | Type and No. of Package | Markings on Goods | Quantity (in Dozen Pairs) |
|----------------|---|--|----------------------------------|
| 1. | 507 Green PP Bags with marking AK | Chan Reu; Foot Cover; no show liner; cotton blend with moisture wicking; shoe size 7-12; made in china, etc. | 50,700 |
| 2. | 20 Transparent Packages with marking AK ITEM NO: AK-1 | (one side label) Indoor Socks; KAIDIYS; 100%; (Other side label) KAIDIYS; Fashion KEEP WARM; Acrylic 80% Polyester 20%; Made in China. | 400 |
| 3. | 42 Transparent Packages with marking AK ITEM NO: AK-2 | (one side label) Indoor Socks; KAIDIYS; 100%; (Other side label) KAIDIYS; Fashion KEEP WARM; Acrylic 80% Polyester 20%; Made in China. | 840 |
| 4. | Green PP Bags with marking AK ITEM NO: AK-3 (135) | (one side label) KAIDIYS; Baby Socks; 100%; (Other side label) KAIDIYS; Fashion KEEP WARM; Acrylic 80% Polyester 20%; Made in China. | 2,700 |

14. I find that in total, 54,640 Dozen Pairs were found against declared 17,760 Dozen Pairs. It is pertinent to note that the said Unit had produced the local packing list on their letter head and the quantity in the local packing list was same as found during examination by the officers, as evident from the Panchnama dated 19.06.2023.

15. I find that the subject have been mis-declared in terms of quantity and value and the same has been accepted by the SEZ unit as they have agreed to the re-evaluation of subject goods in terms of the NIDB data/Market price.

Re-determination of quantity, value and other particulars:-

16. I find that the SEZ unit has mis-declared the quantity which in turn led to mis-declaration of transaction value of the imported goods.

16.1 The valuation is re-determined in terms of quantity found and as per unit price declared by the unit. The quantification of total applicable duty and differential duty applicable (foregone) as per re-determined quantity is as given below:-

TABLE-V

| Import B/E No. and Date | Description of Goods as per BoE | CTH | Unit price self declared as per Unit per dozen (\$) | Quantity declared (Dz) | Total Value declared (in USD) | Duty Foregone (Rs.) | Quantity found (Dz) |
|-------------------------|---------------------------------|----------|---|------------------------|-------------------------------|---------------------|---------------------|
| 1008573 dt. 03.06.2023 | Men Socks | 61159600 | 0.5 | 15840 | 7920 | 244437.63 | 50700 |
| | Girls Socks | 61159600 | 0.5 | 300 | 150 | 4629.50 | 1240 |
| | Baby Socks | 61159600 | 0.5 | 1620 | 810 | 24999.30 | 2700 |
| | | | | 17760 | 8880 | 274066.43 | 54640 |

| Redetermination of Value as per quantity found (in USD) | Redetermination of Value as per quantity found (Rs.) (1\$=83.40 Rs.) | Redetermination of Landling Charge s @1%, as per quantity found (Rs.) | Redetermination of total value as per quantity found (Rs.) | Customs duty as per quantity found (Rs.) | IGST as per quantity found (Rs.) | Total Duty (foregone) as per quantity found (Rs.) | Differential duty (foregone) as per quantity found (Rs.) |
|---|--|---|--|--|----------------------------------|---|--|
| 25350 | ₹ 21,14,190.00 | ₹ 21,141.90 | 21,35,331.90 | ₹ 4,69,773.02 | ₹ 3,12,612.59 | ₹ 7,82,385.61 | ₹ 5,37,947.98 |
| 620 | ₹ 51,708.00 | ₹ 517.08 | 52,225.08 | ₹ 11,489.52 | ₹ 7,645.75 | ₹ 19,135.27 | ₹ 14,505.77 |
| 1350 | ₹ 1,12,590.00 | ₹ 1,125.90 | 1,13,715.90 | ₹ 25,017.50 | ₹ 16,648.01 | ₹ 41,665.51 | ₹ 16,666.21 |
| 27320.00 | 22,78,488.00 | 22,784.88 | 23,01,272.88 | 5,06,280.03 | 3,36,906.35 | 8,43,186.38 | ₹ 5,69,119.95 |

16.2 In view of the above, it is clear that the SEZ unit has mis-declared the quantity, value and the duty foregone on such imported goods. As per Rule 75 of the SEZ Rules, 2006 all inward or outward movement of goods into the zone by unit shall be based on self-declaration made. They have also accepted the mis-declaration.

CONFISCATION OF GOODS:-

17. It is apparent that the SEZ unit has mis-declared the quantity and value of the imported goods. Such mis-declaration has rendered their goods liable for confiscation under the provisions of Section 111(m) of the Customs Act, 1962. Further, in this regard, I rely on the judgement of CC Mumbai Vs Multimetal Ltd- 2002(Tri-Mumbai) wherein the Hon'ble Tribunal held that *when mis-declaration is established, goods are liable for confiscation irrespective of whether there was malafide or not.* This judgement of Hon'ble Tribunal has been upheld in Apex court in 2003 (ELT A309 (SC)).

18. Penalties on the SEZ unit under Section 112, 114A and 114AA of the Customs Act, 1962.

18.1 In this regard, I find that Section 112(a)(ii) mandates that in case of dutiable goods the importer/SEZ unit is liable to penalty not exceeding ten percent of the **duty sought to be evaded or five thousand rupees**, whichever is higher.

18.2 Further, I find that proviso to Section 112(a)(ii) mandates that if the duty determined under Section 28(8) alongwith interest under Section 28AA is paid within thirty days from the communication of order of the proper officer determining such duty, the amount of penalty shall reduce to twenty five percent of the penalty so determined. Therefore, it is apparent that the penalty under Section 112(a), in case of dutiable goods, depends upon the amount of duty determined/confirmed under the provision of Section 28(8) of the Customs Act, 1962.

18.3 However, demand of duty arises only on clearance of imported goods into Domestic Tariff Area (DTA) as the taxable event is clearance of goods from a SEZ to the DTA per the provisions of section 30 of the SEZ Act, 2005, reproduced herein below-

“30. Domestic clearance by Units.—Subject to the conditions specified in the rules made by the Central Government in this behalf,—

(a) **any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975 (51 of 1975), where applicable, as leviable on such goods when imported; and**

(b) the rate of duty and tariff valuation, if any, applicable to goods removed from a Special Economic Zone shall be at the rate and tariff valuation in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of duty

18.4 Further, it is pertinent to mention that duty foregone is entirely different from the duty evasion. In one case, it is the exemption or concession of duties allowed to the SEZ unit while importing goods into SEZ whereas the other is the evasion of duties of Customs by SEZ unit/DTA client, as the case may be, while clearing the goods into DTA. Therefore, differential duty foregone can't be taken into account while imposing penalty under Section 112 of the Customs Act, 1962.

18.5 Further, it is pertinent to note that though the Section 112 of the Customs Act, 1962 provides for **Penalty for improper importation of goods**, the SEZ Act, 2005 doesn't have any provisions for levying duty on the goods lying in SEZ unit. It is only when goods are cleared into DTA, liability of duty arises which in turn would empower the proper officer of Customs to impose penalty not exceeding 10% of duty evasion under Section 112 of the Customs Act, 1962.

18.5 However, it is amply clear that the SEZ unit has mis-declared the goods in terms of quantity, value and duty foregone which has rendered the goods liable for confiscation, therefore, it is important to penalise the noticee with penalty of Rs. 5,000/- provided in the provisions of Section 112(a)(ii) of the Customs Act, 1962.

18.6 With regard to penalty under Section 114A of the Customs Act, 1962, I find that Section 114A attracts penalty for non/short payment of duty by way of collusion/willful mis-statement/fraud. However, as discussed in the foregoing paras, demand of duty arises only on clearance of imported goods into Domestic Tariff Area (DTA) and the goods have not been cleared into DTA and are still lying in SEZ unit.

Therefore the SEZ unit is not liable to penal action under Section 114A of the Customs Act, 1962

18.7 With regard to penalty under Section 114AA of the Customs Act, 1962, I find that the SEZ unit has made a false statement and document while presenting the Bill of Entry by mis-declaring the goods in terms of quantity, value and duty foregone, rendering themselves liable for penalty under Section 114AA of the Customs Act, 1962. Rule 75 of the SEZ Rules, 2006 mandates that unless and otherwise specified in these rules, all inward or outward movements of the goods into or from SEZ by the Unit shall be based on self-declaration made by the Unit. While importing subject goods, the said SEZ unit was bound for true and correct declaration and assessment. The said SEZ unit was fully aware of specifications, characteristics, nature and description of the goods imported and warehoused. Such act on their part has rendered them liable for penal action under Section 114AA of the Customs Act, 1962.

18.8 With regard to penalty under Section 117 of the Customs Act, 1962, I find that the said Section provides for penal provisions in contravention of the provisions of Act for which no express penalty is elsewhere provided for such contravention, however in the instant matter, the noticee has already been held liable for penal actions under Sections 112(a) and 114AA of the Customs Act, 1962 for improper importation of goods by mis-declaring the subject goods in terms of quantity, value and duty foregone. Therefore, the SEZ unit is not liable for penal action under Section 117 of the Customs Act, 1962.

19. In view of the above discussion and findings, I hereby pass the following order-

- i. I reject the quantity, value and other particulars of the goods declared by the SEZ unit in Bill of Entry No. 1008573 dated 03.06.2023 and order to re-determine the same as mentioned in Table-IV and Table-V above. The total value of the goods is Rs. 23,01,273/-.
- ii. I order to confiscate the subject goods valued at Rs. 23,01,273/- under the provisions of Section 111(m) of the Customs Act, 1962.

However, I give them an option to pay fine of Rs. 2,30,127/- (Rupees Two lakhs thirty thousand one hundred and twenty sevenonly) under the provisions of Section 125(1) of the Customs Act, 1962.

- iii. I impose penalty of Rs. 5,000/- (Rupees Five thousand only) under Section 112(a)(ii) of the Customs Act, 1962.
- iv. I impose penalty of Rs. 1,00,000/- (Rupees One lakh only) under Section 114AA of the Customs Act, 1962.
- v. I refrain from imposing penalty under Section 117 of the Customs Act, 1962 for the reasons discussed above.

20. This order is issued without prejudice to any other action that may be taken against the SEZ unit or any other person under the Customs Act, 1962 or any other law for the time being in force.

(Dev Prakash Bamanavat)
Additional Commissioner
Customs House, Kandla

F.No. GEN/ADJ/ADC/1979/2023-Adjn-O/o Commr-Cus-Kandla
DIN-20240671ML00000530C3

To,

M/s. Ganga Impex Enterprise
Shed No. 331, A-I Type, Marshalling Yard,
Kandla Special Economic Zone, Gandhidham

Copy to:-

1. The Development Commissioner, Kandla Special Economic Zone, Gandhidham, Kutch.
2. The Deputy Commissioner, KASEZ, Gandhidham
3. The Superintendent, Review/TRC/EDI, Kandla Customs House, Kandla.
4. Guard File.